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**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

**BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC PROJECT**

**TRANSCRIPT OF PROCEEDINGS**

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**CLOSING DATE: DECEMBER 21, 2017**

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**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

**BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC PROJECT**

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## PROJECT AGREEMENT

**THIS PROJECT AGREEMENT** (the "**Project Agreement**"), made as of December 1, 2017, by and between the **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, with offices at 201 East Washington Street, 7<sup>th</sup> Floor, Syracuse, New York 13202 (the "**Agency**"), **BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC**, a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, with offices at 1201 East Fayette Street, Suite 26, Syracuse, New York 13210 (the "**Company**").

### WITNESSETH:

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

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

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

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

**WHEREAS**, the Company submitted an application (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 all or a portion of an approximate .224 acre parcel of improved real property located at 618-620 North Townsend Street, in the City of Syracuse, New York (the "**Land**"); (ii) the construction of approximately 3,870 square feet of commercial space on the first floor (the 3,870 square feet of commercial space being referred to herein as the "**Commercial Space**" or the "**Facility**") which is part of a larger approximately 16,400 square foot building being constructed for use as an affordable housing complex, all located on the Land; (iii) the acquisition and installation in the Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the

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

**WHEREAS**, by resolutions of its members adopted on November 19, 2015 and October 17, 2017 (collectively, the "**Resolutions**"), the Agency authorized certain financial assistance for the benefit of the Project consisting of: (a) an exemption from New York State and local sales and use taxes for purchases and rentals related to the Project with respect to qualifying personal property included in or incorporated into the Project Facility or used in the acquisition, construction or equipping of the Project Facility in an amount not to exceed **\$32,972**; (b) an exemption from mortgage recording tax; and (c) an abatement from real property taxes through a \_\_\_\_-year payment in lieu of taxes agreement with the Company for the benefit of each municipality and school district having taxing jurisdiction over the Project (collectively referred to as the "**Financial Assistance**"); and

**WHEREAS**, it has been estimated and confirmed by the Company within its Application for Financial Assistance that: (i) the purchase of goods and services relating to the Project, and subject to New York State and local sales and use taxes, are estimated to cost an amount up to **\$412,152**; and therefore, the value of the State and local sales and use tax exemption benefits authorized and approved by the Agency cannot exceed **\$32,972**; (ii) the mortgage recording tax exemption amount shall be approximately **\$4,353** (as limited by Section 874 of the General Municipal Law); and (iii) real property tax abatement benefits to be provided to the Company over the 10-year benefit period of the anticipated payment in lieu of taxes agreement are estimated to be approximately **\$138,622.35**; and

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

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

**WHEREAS**, contemporaneously with the execution of this Project Agreement, the Company shall execute and deliver an environmental compliance and indemnification agreement in favor of the Agency (the "**Environmental Compliance and Indemnification Agreement**"); and

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

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

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

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

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

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

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

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

**ARTICLE I  
PURPOSE OF PROJECT**

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

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

**ARTICLE II  
REAL PROPERTY TAX EXEMPTION**

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

**ARTICLE III  
SALES AND USE TAX EXEMPTION**

**Section 3.01. Scope of Agency.** The Company agrees to limit its activities as agents for the Agency under the authority of the Resolutions and this Project Agreement to acquisition, reconstruction, installation and completion of the Project Facility. The right of the Company to act as agent of the Agency shall expire on the earlier of **August 30, 2019**, or sixty days after the issuance of a certificate of occupancy, unless extended by a resolution adopted by the members of the Agency, or unless terminated early in accordance with the terms of the Agency Lease. The value of the sales and use tax exemption benefits shall not exceed the amounts described in the Application and as set forth in Section 3.03(b) unless approved by a resolution adopted by the members of the Agency. All contracts entered into by the Company as agent for the Agency shall include the following language:

“This contract is being entered into by \_\_\_\_\_ (the “**Agent**”), as agent for and on behalf of the City of Syracuse Industrial Development Agency (the “**Agency**”), in connection with a certain project of the Agency for the benefit of the Agent consisting in part of the acquisition and installation of certain machinery, equipment and building materials, all for use in construction and/or incorporation and installation in certain premises located at 618-620 North Townsend Street, in the City of Syracuse, New York (the “**Premises**”). The machinery, equipment and building materials (collectively, the “**Equipment**”) to be used in the construction and/or incorporated and installed in the Premises shall be exempt from the sales and use taxes levied by the State of New York if the use and/or acquisition of the Equipment is effected in accordance with the terms and conditions set forth in the Project Agreement dated as of December 1, 2017 by and between the Agency and the Company (the “**Project Agreement**”); and the Agent represents that this contract is in compliance with the terms of the Project Agreement. This contract is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. By execution or acceptance of this contract, the vendor/contractor acknowledges and agrees to the terms and conditions set forth in this paragraph.”

**Section 3.02. Appointment of Sub-Agents.** Subject to the terms and conditions of this Project Agreement and pursuant to the Resolutions, the Agency hereby delegates to the Company the authority to appoint sub-agents of the Agency in connection with the Project, which may be agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents and other parties as the Company chooses (each, a “**Sub-Agent**”). The appointment of each such Sub-Agent will be effective only upon: (1) the execution by the

Sub-Agent and the Company of the Sub-Agent Appointment Agreement attached as Exhibit F to the Agency Lease (the “**Sub-Agent Agreement**”), the terms and provisions of which are incorporated herein; (2) the receipt by the Agency of a completed Form ST-60 in accordance with Section 3.03(c) below; and (3) receipt of any required insurance as set forth in the Sub-Agent Agreement.

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

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

(b) The Company further covenants and agrees that the 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 **\$412,152**, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed **\$32,972**.

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

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

(e) The Company further acknowledges and agrees that all purchases made in furtherance of the Project by the Company and any Sub-Agent shall be made using “IDA Agent or Project Operator Exempt Purchase Certificate” (Form ST-123, a copy of which is attached to the Sub-Agent Agreement), and it shall be the responsibility of the Company and the Sub-Agent, as the case may be, (and not the Agency) to complete Form ST-123. The Company acknowledges and agrees that it shall identify the Project on each bill and invoice for such purchases and further indicate on such bills or invoices that the Company is making purchases of tangible personal property or services for use in the Project as agent of the Agency. For purposes of indicating who the purchaser is, the Company acknowledges and agrees that the bill of invoice should state, “I, [NAME OF AGENT], certify that I am a duly appointed agent of the City of Syracuse Industrial Development Agency and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as



exempt from sales and use taxes under my Project Agreement with the City of Syracuse Industrial Development Agency.” The Company further acknowledges and agrees that the following information shall be used by the Company to identify the Project on each bill and invoice: Butternut Crossing Commercial Enterprises, LLC Project, 618-620 North Townsend Street, Syracuse, New York, IDA Project No. 31021715.

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

**Section 3.04. Hold Harmless Provisions.**

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

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

benefits laws or other employee benefit laws.

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

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

**Section 3.05. Insurance Required.**

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

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

**ARTICLE IV  
COMMITMENTS AND REPORTING**

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

(a) The total investment made with respect to the Project at the Project's completion date shall equal or exceed \$900,514, being the total project cost as stated in the Company's Application for Financial Assistance (the "**Investment Commitment**").

(b) There were no full time equivalent ("**FTE**") employees retained by the Project Facility as of the date of the Application for Financial Assistance (the "**Baseline FTE**"). The Company's application estimated the creation of one and a half (1.5) new FTEs (the "**New FTEs**") at the Project Facility within the first year years following completion of the Project Facility. The Company shall be required to meet and maintain the foregoing employment commitments during the Term hereof (the "**Employment Commitment**").

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

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

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

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

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

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

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

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

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

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

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

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

The Agency shall evaluate, annually as of December 31, or at any time information is brought to the Agency’s attention, whether a Local Sales Tax Benefit Violation, Job Deficit, Investment Deficit, Reporting Failure Event of Default or Material Violation (each a

“*Noncompliance Event*”) has occurred. Notwithstanding the foregoing, the Agency may determine whether an Event of Default has occurred pursuant to any Project Document in accordance with the terms of the Project Document.

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

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

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

(c) If a State-Mandated Recapture Event occurs or the Agency makes a Determination, the Company agrees and covenants that it will: (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company; and



provided in this Section.

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

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

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

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

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

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

By:   
William M. Ryan, Chairman

**BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC**

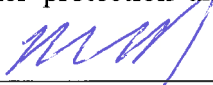
By: HV Consultants Holding Co., LLC, Manager  
By: Housing Visions Consultants, Inc., Manager

By:   
Benjamin P. Lockwood, Vice President

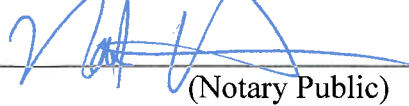
STATE OF NEW YORK )  
COUNTY OF ONONDAGA ) ss.:

BENJAMIN P. LOCKWOOD, being first duly sworn, deposes and says:

1. That I am the Vice President of Housing Visions Consultants, Inc., Manager of HV Consultants Holding Co., LLC, Manager of Butternut Crossing Commercial Enterprises, 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 21 day of December, 2017.

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

Natalie Patricia Hempson  
Notary Public in the State of New York  
Qualified in Onondaga County No. 02HE6203928  
My Commission Expires April 13, 2021



**EXHIBIT A**

Executed Copy of PILOT Agreement

**SEE TAB # 13**

A-1

**EXHIBIT B**

FORM OF ANNUAL REPORTING QUESTIONNAIRE

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

Date

COMPANY  
COMPANY ADDRESS

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

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

Sale - Leaseback Financing

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

Date of Financing:

Principal Amount Financed:

Maturity Date:

Original Interest Rate:

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

Name of Lender

Debt Retired in [year] Yes/No

Debt Refinanced in [year] Yes/No

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

Debt in Default as of [date] Yes/No

Current Interest Rate(s)

Rate range, if Variable

Principal balance outstanding as of [date]

Principal payments made during [year]

Payments in Lieu of Taxes (PILOT)

paid in [year]

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

New York State Sales Tax Exemptions Claimed [year]

New York Local Sales Tax Exemptions Claimed: [year]

New York State Mortgage Recording

Tax Exemption: [year]

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

From:

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

Re:

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

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

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

Comments:

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\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

2

**BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC**

**AND**

**CITY OF SYRACUSE  
INDUSTRIAL DEVELOPMENT AGENCY**

---

**COMPANY LEASE AGREEMENT**

---

**DATED AS OF DECEMBER 1, 2017**

## COMPANY LEASE AGREEMENT

**THIS COMPANY LEASE AGREEMENT** (the “*Company Lease*”), made and entered into as of December 1, 2017, by and between **BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC** (the “*Company*”), a limited liability company organized under the laws of the State of New York with an office at 1201 East Fayette Street, Suite 26, Syracuse, New York 13210 and **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY** (the “*Agency*”), a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York, with an office at 201 East Washington Street, 7<sup>th</sup> Floor, Syracuse, New York 13202.

### WITNESSETH:

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

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

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

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

**WHEREAS**, the Agency, by resolution adopted on November 19, 2015, agreed, at the request of the Company to undertake a project (the “*Project*”) consisting of: (A)(i) the acquisition of an interest in all or a portion of an approximate .224 acre parcel of improved real property located at 618-620 North Townsend Street, in the City of Syracuse, New York (the “*Land*”); (ii) the construction of approximately 3,870 square feet of commercial space on the first floor (the 3,870 square feet of commercial space being referred to herein as the “*Commercial Space*” or the “*Facility*”) which is part of a larger approximately 16,400 square foot building being constructed for use as an affordable housing complex, all located on the Land; (iii) the acquisition and installation in the Facility of furniture, fixtures and equipment (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain

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

**WHEREAS**, in accordance with Article 9-B of the Real Property Law of the State, the Company submitted the Commercial Space to the provisions of the Condominium Act and established a regime for the condominium ownership of the Facility. The Company has obtained the necessary no action letter from the NYS Attorney General's office and has filed, or caused to be filed, with the Onondaga County Clerk's office all necessary documents, including but not limited to a declaration, by-laws and plan, to successfully establish the Facility as a separate condominium from the balance of the improvements (collectively, the "**Condominium Documents**") and has obtained, or will obtain prior to the Closing Date, the necessary tax parcel identification number from the assessor's office; and

**WHEREAS**, the Company is, or upon completion will be, the current fee owner of the Project Facility; and

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

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

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

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



**ARTICLE I  
RECITALS AND DEFINITIONS**

**1.0 RECITALS.**

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

**1.1 DEFINITIONS.**

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

**1.2 INTERPRETATION.**

In this Company Lease, unless the context otherwise requires:

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

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

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

**ARTICLE II  
DEMISE; PREMISES; TERM**

**2.1 DEMISE.**

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

**2.2 DESCRIPTION OF PREMISES LEASED.**

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

### **2.3 TERM.**

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

### **2.4 MANDATORY CONVEYANCE.**

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

### **2.5 CONSIDERATION.**

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

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

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

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

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

(c) The Company has a valid and enforceable fee interest in the Land and the Facility and shall remain and retain such interests for the term of this Company Lease except as such interests maybe transferred to the Agency, unless otherwise consented to in writing by the Agency. The Company has, in accordance with Article 9-B of the Real Property Law of the State, submitted the Commercial Space to the provisions of the Condominium Act and established a regime for the condominium ownership of the Facility in which the Agency took an interest pursuant to the Company Lease and which is the subject of this Agency Lease; and for which the Company has obtained the necessary no action letter from the NYS Attorney General's office and has filed, or caused to be filed, with the Onondaga County Clerk's office the Condominium Documents and has obtained, or will prior to the Closing Date, the necessary tax parcel identification number from the assessor's office.

(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 or Operating Agreement nor the Condominium Documents.

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

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

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

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

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

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

**ARTICLE III  
DISPUTE RESOLUTION**

**3.1 GOVERNING LAW.**

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

**3.2 WAIVER OF TRIAL BY JURY.**

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

**ARTICLE IV  
MISCELLANEOUS CLAUSES**

**4.1 NOTICES.**

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

(a) To the Agency:

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

With a copy to:

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

(b) To the Company:

Butternut Crossing Commercial Enterprises, LLC  
1201 East Fayette Street, Suite 26  
Syracuse, New York 13210  
Attn: Rebecca Newman

With a copy to:

Bousquet Holstein, PLLC  
110 West Fayette Street  
One Lincoln Center  
Syracuse, New York 13202  
Attn: Paul Predmore, Esq.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents, or

employees shall be subject to potential liability, the party seeking such order or decree shall (1) agree to indemnify and hold harmless the Agency and its members, officers, agents, and employees against any liability incurred as a result of its compliance with such demand; and (2) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents, and employees against all liability expected to be incurred as a result of compliance with such request.

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

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

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

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

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

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

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

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

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

#### **4.13 REMEDIES.**

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



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

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

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


[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

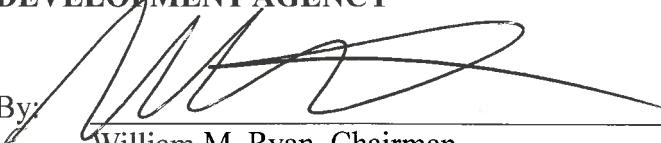
**BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC**

By: HV Consultants Holding Co., LLC, Manager

By: Housing Visions Consultants, Inc., Manager

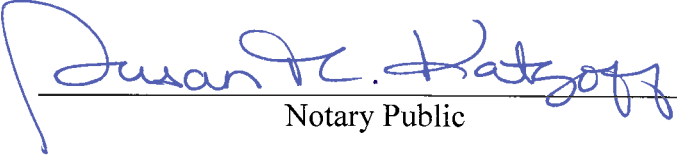
By:   
Benjamin P. Lockwood, Vice President

**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

By:   
William M. Ryan, Chairman

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

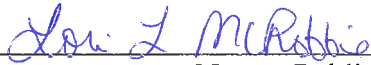
On the 21 day of December, 2017, before me, the undersigned, personally appeared **Benjamin P. Lockwood**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the 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

SUSAN R. KATZOFF  
Notary Public, State of New York  
Qual. in Onondaga Co. No. 02KA6120102  
Commission Expires on December 13, 2020

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

On the 20<sup>th</sup> day of December, 2017, before me, the undersigned, personally appeared **William M. Ryan**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
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 REAL PROPERTY**

**618-620 North Townsend Street: Tax Parcel Number 017.-08-22.1 (UNIT 1)**

The Unit designated as **Unit No. 1** in the Declaration comprising **BUTTERNUT CROSSING CONDOMINIUM** located in the City of Syracuse, County of Onondaga, New York, (hereinafter called the "**Property**"), made by Housing Visions Consultants, Inc. under the Condominium Act of the State of New York, as amended (Article 9-B of the Real Property Law of the State of New York), dated December 21st, 2017 and recorded in the office of the County Clerk of Onondaga County on the 22<sup>nd</sup> day of December, 2017 as Instrument Number **2017-00047870** (hereinafter called the "**Declaration**,"), which Unit is also designated as Unit 1, on page A1.1 of the Construction Drawings for **Butternut Crossing 618-620 N. Townsend Street, Syracuse** as certified and prepared by Holmes King Kallquist & Associates, Architects, and filed simultaneously with said Declaration in the Office of the County Clerk of Onondaga County (hereinafter called the "**Unit**"), together with others with the use of the Common Elements, as defined in said Declaration. The appurtenant interests of Unit 1 in the Common Elements is 29.5%. The land area of the Property is described as follows:

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Syracuse, County of Onondaga, State of New York being Lot 12 & part of Lot 11 of City Block 275D and being more particularly bounded and described as follows: Beginning at a point in the easterly line of North Townsend Street at the intersection of the southerly line of East Laurel Street thence North 59 deg. 25 min. 40 sec. East along the said southerly line of East Laurel Street, a distance of 79.50 feet to a point; thence South 30 deg. 32 min. 30 sec. East a distance of 50.00 feet to a point; thence North 59 deg. 25 min. 40 sec. East a distance of 36.00 feet to a point thence South 30 deg. 32 min. 30 sec. East a distance of 50.00 feet to a point; thence South 59 deg. 25 min. 40 sec. West a distance of 115.50 feet to a point in the said easterly line of North Townsend Street thence North 30 deg. 32 min. 30 sec. West along said easterly line of North Townsend Street, a distance of 100.00 feet to the point of beginning.

3

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

## Onondaga County Clerk Recording Cover Sheet

Received From :  
VANGUARD ABSTRACT  
COURTHOUSE  
SYRACUSE, NY 13202

Return To :  
BARCLAY DAMON  
PICK UP BOX

Method Returned : MAIL

First PARTY 1

BUTTERNUT CROSSING COMMERCIAL ENTERPRISES LLC

First PARTY 2

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

Index Type : Land Records

Instr Number : 2017-00047873

Book : Page :

Type of Instrument : Memorandum Of Lease

Type of Transaction : Deed Misc

Recording Fee: \$75.50

Recording Pages : 6

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

Real Estate Transfer Tax

RETT # : 5962

Deed Amount : \$0.00

RETT Amount : \$0.00

Total Fees : \$75.50

State of New York

County of Onondaga

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

On (Recorded Date) : 12/22/2017

At (Recorded Time) : 1:17:54 PM



Doc ID - 0260486400006

*Lisa Dell*  
Lisa Dell, County Clerk



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

Entered By: RSWEENIE Printed On : 12/22/2017 At : 1:19:59PM

Record and return to:  
Barclay Damon LLP  
125 E. Jefferson Street  
Syracuse, New York 13202  
Attn: Susan R. Katzoff, Esq.

**MEMORANDUM OF  
COMPANY LEASE AGREEMENT**

***NAME AND ADDRESS OF LESSOR:*** Butternut Crossing Commercial Enterprises, LLC  
1201 East Fayette Street  
Syracuse, New York 13210

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

***DESCRIPTION OF LEASED PREMISES:***

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

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

As of December 1, 2017.

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

The term of the Company Lease Agreement shall commence as of December 1, 2017 and continue in full force and effect until the earlier of: (1) June 30, 2028; or (2) an earlier termination in accordance with the terms of the Agency Lease Agreement.



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

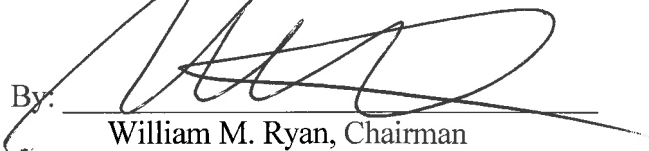
**BUTTERNUT CROSSING COMMERCIAL  
ENTERPRISES, LLC**

By: HV Consultants Holding Co., LLC, Manager

By: Housing Visions Consultants, Inc., Manager

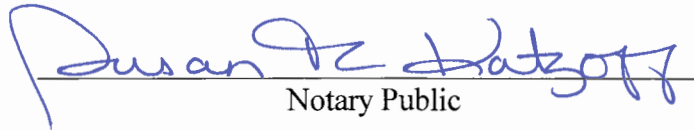
By:   
Benjamin P. Lockwood, Vice President

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
William M. Ryan, Chairman

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

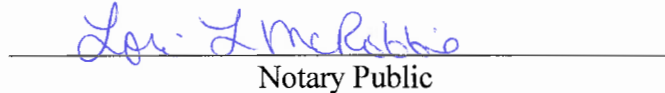
On the 21 day of December, 2017, before me, the undersigned, personally appeared **Benjamin P. Lockwood**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the 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

SUSAN R. KATZOFF  
Notary Public, State of New York  
Qual. in Onondaga Co. No. 02KA6120102  
Commission Expires on December 13, 2020

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

On this 20<sup>th</sup> day of December, 2017, before me, the undersigned, personally appeared **William M. Ryan**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

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

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

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE LAND**

**618-620 North Townsend Street: Tax Parcel Number 017.-08-22.1 (UNIT 1)**

The Unit designated as **Unit No. 1** in the Declaration comprising **BUTTERNUT CROSSING CONDOMINIUM** located in the City of Syracuse, County of Onondaga, New York, (hereinafter called the "**Property**"), made by Housing Visions Consultants, Inc. under the Condominium Act of the State of New York, as amended (Article 9-B of the Real Property Law of the State of New York), dated December 21st, 2017 and recorded in the office of the County Clerk of Onondaga County on the 22<sup>nd</sup> day of December, 2017 as Instrument Number 2017-00047870 (hereinafter called the "**Declaration**," ) which Unit is also designated as Unit 1, on page A1.1 of the Construction Drawings for **Butternut Crossing 618-620 N. Townsend Street, Syracuse** as certified and prepared by Holmes King Kallquist & Associates, Architects, and filed simultaneously with said Declaration in the Office of the County Clerk of Onondaga County (hereinafter called the "**Unit**"), together with others with the use of the Common Elements, as defined in said Declaration. The appurtenant interests of Unit 1 in the Common Elements is 29.5%. The land area of the Property is described as follows:

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# 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 ) <b>Butternut Crossing Commercial Enterprises, LLC</b> Mailing address <b>1201 East Fayette Street</b> City State ZIP code <b>Syracuse NY 13202</b> Single member's name if grantor is a single member LLC (see instructions)	Social security number  Social security number  Federal EIN <b>82-2889906</b> 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 ) <b>City of Syracuse Industrial Development Agency</b> Mailing address <b>201 East Washington Street, 7th Floor</b> City State ZIP code <b>Syracuse NY 13202</b> Single member's name if grantee is a single member LLC (see instructions)	Social security number  Social security number  Federal EIN <b>52-1380308</b> 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
	311500	Condo Unit #1 of 618-620 North Townsend Street	Syracuse	Onondaga

Type of property conveyed (check applicable box)

1 <input type="checkbox"/> One- to three-family house 2 <input type="checkbox"/> Residential cooperative 3 <input type="checkbox"/> Residential condominium 4 <input type="checkbox"/> Vacant land	5 <input checked="" type="checkbox"/> Commercial/Industrial 6 <input type="checkbox"/> Apartment building 7 <input type="checkbox"/> Office building 8 <input type="checkbox"/> Other _____	Date of conveyance <table style="border: 1px solid black; text-align: center; width: 100%;"> <tr> <td style="width: 33%;">12</td> <td style="width: 33%;">01</td> <td style="width: 33%;">2017</td> </tr> <tr> <td>month</td> <td>day</td> <td>year</td> </tr> </table>	12	01	2017	month	day	year	Percentage of real property conveyed which is residential real property _____ 0 % (see instructions)
12	01	2017							
month	day	year							

Condition of conveyance (check all that apply)

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

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

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

**Part I – Computation of tax due**

1	Enter amount of consideration for the conveyance (if you are claiming a total exemption from tax, check the exemption claimed box, enter consideration and proceed to Part III) ..... <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.

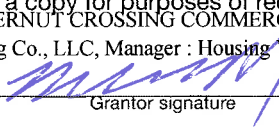
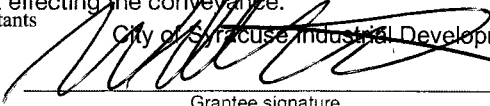
**Please note:** for purposes of determining whether the maximum principal amount secured is \$3,000,000 or more as described above, the amounts secured by two or more credit line mortgages may be aggregated under certain circumstances. See TSB-M-96(6)-R for more information regarding these aggregation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

BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC By: HV Consultants  
 Holding Co., LLC, Manager : Housing Visions Consultants, Inc., Manager

 _____ Grantor signature Benjamin P. Lockwood	Vice President _____ Title	 _____ Grantee signature William M. Ryan	Chairman _____ Title
---	----------------------------------	---	----------------------------

_____	_____	_____	_____
Grantor signature	Title	Grantee signature	Title

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





4

**BILL OF SALE TO AGENCY**

**BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC**, a limited liability company organized under the laws of the State of New York with an office to conduct business at 1201 East Fayette Street, Syracuse, New York 13210 (the "**Company**"), for the consideration of One Dollar (\$1.00), cash in hand paid, and other good and valuable consideration received by the Company from the City of Syracuse Industrial Development Agency, a public benefit corporation organized and existing pursuant to the laws of the State of New York (the "**Agency**"), having its office at 201 East Washington Street, 7<sup>th</sup> Floor, Syracuse, New York 13202, the receipt of which is hereby acknowledged by the Company, hereby sells, transfers, and delivers unto the Agency, its successors and assigns, all those materials, machinery, equipment, fixtures and furnishings now owned or hereafter acquired by the Company in connection with the Project Facility, as described in the Agency Lease entered between the Agency and the Company dated as of December 1, 2017 (the "**Agency Lease**"), and as listed on "**Exhibit A**" attached hereto.

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


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

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

**BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC**

By: HV Consultants Holding Co., LLC, Manager

By: Housing Visions Consultants, Inc., Manager

By:   
Benjamin P. Lockwood, Vice 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 **BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, 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.

**5**

**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

**AND**

**BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC**

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**AGENCY LEASE AGREEMENT**

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**DATED AS OF DECEMBER 1, 2017**

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## AGENCY LEASE AGREEMENT

**THIS AGENCY LEASE AGREEMENT**, dated as of December 1, 2017 (the "**Agency Lease**"), by and between the **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, a body corporate and politic and a public instrumentality of the State of New York, having its office at 201 East Washington Street, 7<sup>th</sup> Floor, Syracuse, New York 13202 (the "**Agency**"), and **BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC** a New York limited liability company having its office at 1201 East Fayette Street, Syracuse, New York 13210 (the "**Company**").

### WITNESSETH:

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

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

**WHEREAS**, the Agency, by resolution adopted on November 19, 2015, agreed, at the request of the Company to undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in all or a portion of an approximate .224 acre parcel of improved real property located at 618-620 North Townsend Street, in the City of Syracuse, New York (the "**Land**"); (ii) the construction of approximately 3,870 square feet of commercial space on the first floor (the 3,870 square feet of commercial space being referred to herein as the "**Commercial Space**" or the "**Facility**") which is part of a larger approximately 16,400 square foot building being constructed for use as an affordable housing complex, all located on the Land; (iii) the acquisition and installation in the Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition,

construction and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

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

**WHEREAS**, in accordance with Article 9-B of the Real Property Law of the State, the Company submitted the Commercial Space to the provisions of the Condominium Act and established a regime for the condominium ownership of the Facility in which the Agency took an interest pursuant to the Company Lease (as defined herein below) and which is the subject of this Agency Lease; and for which the Company has obtained the necessary no action letter from the NYS Attorney General's office and has filed, or caused to be filed, with the Onondaga County Clerk's office all necessary documents, including but not limited to a declaration, by-laws and plan, to successfully establish the Facility as a separate condominium from the balance of the improvements (collectively, the "**Condominium Documents**") and has obtained, or will prior to the Closing Date, the necessary tax parcel identification number from the assessor's office; and

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

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

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

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

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

**ARTICLE I  
RECITALS AND DEFINITIONS**

**1.0 RECITALS.**

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

**1.1 DEFINITIONS.**

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

**1.2 INTERPRETATION.**

In this Agency Lease, unless the context otherwise requires:

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

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

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

**ARTICLE II  
REPRESENTATIONS AND COVENANTS**

**2.1 REPRESENTATIONS OF THE AGENCY.**

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

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

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

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

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

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

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

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

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

(d) The Company has, in accordance with Article 9-B of the Real Property Law of the State, submitted the Commercial Space to the provisions of the Condominium Act and established a regime for the condominium ownership of the Facility in which the Agency took an interest pursuant to the Company Lease and which is the subject of this Agency Lease; and for which the Company has obtained the necessary no action letter from the NYS Attorney General's office and has filed, or caused to be filed, with the Onondaga County Clerk's office the Condominium Documents and has obtained, or will prior to the Closing Date, the necessary tax parcel identification number from the assessor's office.

(e) This Project is located in a Highly Distressed Area as defined in the Act.

(f) 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 or Operating Agreement nor the Condominium Documents;

(2) Require consent under (which has not been heretofore received) or result in a breach of or default under any credit agreement, indenture, purchase agreement, mortgage, deed of trust, commitment, the Condominium Documents, 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) The providing of Financial Assistance to the Project by the Agency:

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

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

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

(h) 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).

(i) 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.

(j) 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.

(k) 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.

(l) 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.

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

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

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

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

(q) 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.

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

(r) The amount of State and local sales and use tax benefits comprising the Financial Assistance approved by the Agency shall not exceed **\$32,972**. The Company shall not request, obtain nor claim State and local sales and use tax exemptions in excess of this amount.

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

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

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

The Company has conveyed to the Agency, pursuant to the Company Lease, a leasehold interest in the Land and Facility, as more fully described in **Exhibit "A"** attached hereto, any improvements now or hereafter constructed and installed thereon, subject to Permitted Encumbrances and all of its right, title and interest in the Equipment via a Bill of Sale, as more fully described in **Exhibit "B"** attached hereto. Under this Agency Lease, the Agency will convey, or will cause to be conveyed, to the Company, a subleasehold interest in the Project Facility subject to Permitted Encumbrances and exclusive of the Agency's Unassigned Rights.

**3.2 USE OF PROJECT FACILITY.**

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

**ARTICLE IV  
CONSTRUCTION AND EQUIPPING  
OF THE PROJECT**

**4.1 CONSTRUCTION AND EQUIPPING OF THE PROJECT FACILITY.**

(a) The Company shall promptly construct, equip and complete the Project Facility, all in accordance with the Plans and Specifications. Unless a written waiver is first obtained from the Agency, in accordance with the Agency's Local Access Policy, the Company and its Additional Agents (as defined herein), shall utilize local labor, contractors and suppliers for the construction and equipping of the Project Facility. For purposes of this Agency Lease, and in particular this Section 4.1, the term "**local**" shall mean Onondaga, Oswego, Oneida, Madison, Cayuga and Cortland Counties. Failure to comply with the local labor requirements of this Section 4.1 (collectively, "**Local Labor Requirements**") may result in the revocation or recapture of all benefits provided/approved to the Project by the Agency.

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

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

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



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

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

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

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

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

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

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

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

(1) The date of such completion;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The term of this Agency Lease shall commence on the date hereof and continue in full force and effect until the earlier of: (1) June 30, 2028; or (2) the early termination of this Agency Lease as provided herein.

(b) The Company hereby irrevocably designates the Agency as its attorney-in-fact, coupled with an interest, for the purpose of executing, delivering and recording terminations of the Agency Lease, the Company Lease, preparing a bill of sale together with any other

documents therewith and to take such other and further actions reasonably necessary to confirm the termination of the Agency's interest in the Project.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Company shall:

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

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

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

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

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

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

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

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

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

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

### **6.3 INSURANCE REQUIRED.**

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

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

(b) Workers' compensation insurance, disability benefits' insurance, and each other form of insurance which the Company is required by law to provide covering loss resulting



from injury, sickness, disability, or death of employees of the Company who are located at or assigned to the Project Facility;

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

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

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

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

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

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

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

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

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

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

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

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

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

## **7.1 DAMAGE OR DESTRUCTION.**

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

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

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

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

Company shall nonetheless complete such work and shall pay from its own moneys that portion of the costs thereof in excess of such Net Proceeds.

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

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

## **7.2 CONDEMNATION.**

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

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

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

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

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

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

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

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

## **ARTICLE VIII SPECIAL COVENANTS**

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

THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY, OR

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

## **8.2 HOLD HARMLESS PROVISIONS.**

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

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

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

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

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

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

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

(b) In the event of any claim against the Agency or its members, officers, agents, or employees by any employee of the Company, or any 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

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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

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 "D"** 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.

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

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

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

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

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

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

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

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commercial tenants, to require that such tenants report to the Company, in accordance with the terms of Section 8.5 hereof, the number of full and part time jobs created and maintained by each such tenant for inclusion in the Company's reporting to or at the request of the Agency.

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

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

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

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

## **8.11 EMPLOYMENT OPPORTUNITIES.**

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

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

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



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

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

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

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

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

(g) Pursuant to Section 875(3) of the Act, and in conjunction with Agency policy, the Agency shall and in some circumstances may, recover, recapture, receive or

otherwise obtain from the Company the portion of the Financial Assistance (the “*Recapture Amount*”) consisting of State and local sales and use tax exemption in accordance with the Agency’s Recapture Policy, a copy of which is attached hereto at **Exhibit “F”**, and the Project Agreement.

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

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

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

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

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

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

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

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

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

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

**ARTICLE X  
EVENTS OF DEFAULT AND REMEDIES**

**10.1 EVENTS OF DEFAULT DEFINED.**

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

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

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

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

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

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

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

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

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

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

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

## **10.2 REMEDIES ON DEFAULT.**

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

- 1) Terminate this Agency Lease;
- 2) Terminate the Company Lease;
- 3) Terminate the PILOT Agreement;
- 4) Terminate the Company's appointment as agent of the Agency; or

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

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

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

**10.3 REMEDIES CUMULATIVE.**

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

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

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

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

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

**ARTICLE XI  
MISCELLANEOUS**

**11.1 NOTICES.**

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

(a) If to the Agency, to:

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

With a copy to:

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

(b) If to the Company, to:

Butternut Crossing Commercial Enterprises, LLC  
1201 East Fayette Street, Suite 26  
Syracuse, New York 13210  
Attn: Rebecca Newman

With a copy to:

Bousquet Holstein, PLLC  
110 West Fayette Street  
One Lincoln Center  
Syracuse, New York 13202  
Attn: Paul Predmore, 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 8.4 and 11.14 hereof shall similarly survive the termination of this Agency Lease.

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

#### **11.14 DISCLOSURE.**

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

**such elements in writing, supply same to the Agency on or before the Closing Date, and request that such elements be kept confidential in accordance with Article 6 of the Public Officers Law. Failure to do so will result in the posting by the Agency of all information in accordance with Section 875 of the GML.**

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

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

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By: 

William M. Ryan, Chairman

**BUTTERNUT CROSSING COMMERCIAL  
ENTERPRISES, LLC**

By: HV Consultants Holding Co., LLC, Manager

By: Housing Visions Consultants, Inc., Manager

By: 

Benjamin P. Lockwood, Vice President

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

On the 20<sup>th</sup> day of December in the year 2017 before me, the undersigned, personally appeared **William M. Ryan**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

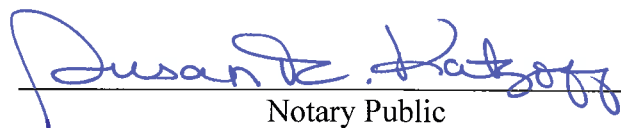


Notary Public

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

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

On the 21 day of December in the year 2017 before me, the undersigned, personally appeared **Benjamin P. Lockwood**, 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

SUSAN R. KATZOFF  
Notary Public, State of New York  
Qual. in Onondaga Co. No. 02KA6120102  
Commission Expires on December 13, 2020

**EXHIBIT "A"**

**REAL PROPERTY DESCRIPTION**

**618-620 North Townsend Street: Tax Parcel Number 017.-08-22.1 (UNIT 1)**

The Unit designated as **Unit No. 1** in the Declaration comprising **BUTTERNUT CROSSING CONDOMINIUM** located in the City of Syracuse, County of Onondaga, New York, (hereinafter called the "**Property**"), made by Housing Visions Consultants, Inc. under the Condominium Act of the State of New York, as amended (Article 9-B of the Real Property Law of the State of New York), dated December 21st, 2017 and recorded in the office of the County Clerk of Onondaga County on the 22<sup>nd</sup> day of December, 2017 as Instrument Number 2017-00047870 (hereinafter called the "**Declaration**,"), which Unit is also designated as Unit 1, on page A1.1 of the Construction Drawings for **Butternut Crossing 618-620 N. Townsend Street, Syracuse** as certified and prepared by Holmes King Kallquist & Associates, Architects, and filed simultaneously with said Declaration in the Office of the County Clerk of Onondaga County (hereinafter called the "**Unit**"), together with others with the use of the Common Elements, as defined in said Declaration. The appurtenant interests of Unit 1 in the Common Elements is 29.5%. The land area of the Property is described as follows:

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Syracuse, County of Onondaga, State of New York being Lot 12 & part of Lot 11 of City Block 275D and being more particularly bounded and described as follows: Beginning at a point in the easterly line of North Townsend Street at the intersection of the southerly line of East Laurel Street thence North 59 deg. 25 min. 40 sec. East along the said southerly line of East Laurel Street, a distance of 79.50 feet to a point; thence South 30 deg. 32 min. 30 sec. East a distance of 50.00 feet to a point; thence North 59 deg. 25 min. 40 sec. East a distance of 36.00 feet to a point thence South 30 deg. 32 min. 30 sec. East a distance of 50.00 feet to a point; thence South 59 deg. 25 min. 40 sec. West a distance of 115.50 feet to a point in the said easterly line of North Townsend Street thence North 30 deg. 32 min. 30 sec. West along said easterly line of North Townsend Street, a distance of 100.00 feet to the point 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 **BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC** (the "*Company*") and now or hereafter attached to, contained in or used or acquired in connection with the Project Facility (as defined in the Agency Lease or placed on any part thereof, though not attached thereto, including, but not limited to, pipes, screens, fixtures, furniture, heating, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, call systems, stoves, ranges, refrigerators, freezers, rugs, movable partitions, cleaning equipment, maintenance equipment, restaurant supplies and equipment, shelving, racks, flagpoles, signs, waste containers, outdoor benches, drapes, blinds and accessories, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery; and together with any and all products of any of the above, all substitutions, replacements, additions or accessions therefor, and any and all cash proceeds or non-cash proceeds realized from the sale, transfer or conversion of any of the above.

## EXHIBIT "C"

### TABLE OF DEFINITIONS

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

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

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

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

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

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

**Application:** means the application submitted by the Company to the Agency dated October 13, 2015, requesting the Agency undertake the Project, as same may be amended or supplemented from time to time.

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

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

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



**Closing Date:** means December 21, 2017.

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

**Company:** means BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC, a limited liability company, organized and existing under the laws of the State of New York having an address at 1201 East Fayette Street, Syracuse, New York 13210, and its permitted successors and assigns.

**Company Certification:** means the certification by the Company dated as of December 1, 2017 regarding compliance with the Agency's Local Labor Policy.

**Company Documents:** means the Company Lease, the Agency Lease, the Project Agreement, the PILOT Agreement, the Mortgage, the Environmental Compliance and Indemnification Agreement, the Bill of Sale, the Condominium Documents, 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 December 1, 2017 from the Company to the Agency, pursuant to which the Company leased the Project Facility to the Agency, as the same may be amended or supplemented from time to time.

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

**Condominium Act:** means Article 9-B of the New York State Real Property Law.

**Condominium Documents:** mean, collectively, the no action letter from the NYS Attorney General's office dated November 28, 2017 with respect to the Project Facility, the declaration, by-laws, plan and any and all other documents filed with the Onondaga County Clerk's office, or other entity, to successfully establish the Facility as a separate condominium from the balance of the improvements on the Land.

**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 December 1, 2017 by the Company to the Agency.

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

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

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

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

**Land:** means all or a portion of the real property located at 618-620 North Townsend Street in the City of Syracuse, County of Onondaga, State of New York, more particularly described on **Exhibit "A"** attached to the Agency Lease.

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

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

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

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

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

**Permitted Encumbrances:** means (A) utility, access and other easements and rights of way, and restrictions, encroachments and exceptions, that benefit or do not materially impair the utility or the value of the Property affected thereby for the purposes for which it is intended, (B) artisans', mechanics', materialmen's, warehousemen's, carriers', landlords', bankers', workmen's compensation, unemployment compensation and social security, and other similar

Liens to the extent permitted by the Agency Lease, including the lien of the Mortgage, (C) Liens for taxes (1) to the extent permitted by the Agency Lease or (2) at the time not delinquent, (D) any Lien on the Project Facility obtained through any Agency Document or Company Document or the Mortgage, (E) Liens of judgments or awards in respect of which an appeal or proceeding for review shall be pending (or is pending within ten days after entry) and a stay of execution shall have been obtained (or is obtained within ten days after entry), or in connection with any claim or proceeding, (F) Liens on any Property hereafter acquired by the Company or any subsidiary which liens are created contemporaneously with such acquisition to secure or provide for the payment or financing of any part of the purchase price thereof, (G) Liens consisting solely of restrictions under any applicable laws or any negative covenants in any applicable agreements (but only to the extent that such restrictions and covenants do not prohibit the execution, delivery and performance by the Company of the Agency Lease and the Mortgage, and (H) existing mortgages or encumbrances on the Project Facility as of the Closing Date or thereafter incurred with the consent of the Mortgagee and the Agency.

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

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

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

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

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

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

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

**Resolution or Resolutions:** means the Agency's resolutions adopted on November 19, 2015 authorizing the undertaking of the Project and the execution and delivery of certain documents by the Agency in connection therewith.

**Sales and Use Tax or State Sales and Use Taxes:** means, when used with respect to State sales and use taxes, sales and compensating use taxes and fees imposed by article twenty-

eight or twenty-eight-A of the State tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight.

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

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

**Unassigned Rights:** means:

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

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

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

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

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

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

**EXHIBIT "D"**

**FORM OF ANNUAL REPORTING REQUIREMENTS**

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

Date

COMPANY  
COMPANY ADDRESS

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

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

Sale - Leaseback Financing

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

Date of Financing:

Principal Amount Financed:

Maturity Date:

Original Interest Rate:

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

Name of Lender

Debt Retired in [year] Yes/No

Debt Refinanced in [year] Yes/No

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

Debt in Default as of [date] Yes/No

Current Interest Rate(s)

Rate range, if Variable

Principal balance outstanding as of [date]

Principal payments made during [year]

Payments in Lieu of Taxes (PILOT)

paid in [year]

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

New York State Sales Tax Exemptions Claimed [year]

New York Local Sales Tax Exemptions Claimed: [year]

New York State Mortgage Recording

Tax Exemption: [year]

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

From:

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

Re:

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

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

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

Comments:

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\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**EXHIBIT "E"**

**FORM OF SUB-AGENT AGREEMENT**

**THIS SUB-AGENT APPOINTMENT AGREEMENT** (the "**Agreement**"), dated as of \_\_\_\_\_, 20\_\_, is by and between **BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC** (the "**Company**"), with a mailing address of 1201 East Fayette Street, Syracuse, New York 13202 (the "**Company**"), and [NAME OF SUB-AGENT], a \_\_\_\_\_ of the State of New York, having an office for the transaction of business at \_\_\_\_\_ (the "**Sub-Agent**").

**WITNESSETH:**

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "**Agency**") was created by Chapter 641 of the Laws of 1979 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "**Act**") as a body corporate and politic and as a public benefit corporation of the State of New York (the "**State**"); and

**WHEREAS**, by resolution of its members adopted on November 19, 2015 (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 all or a portion of an approximate .224 acre parcel of improved real property located at 618-620 North Townsend Street, in the City of Syracuse, New York (the "**Land**"); (ii) the construction of approximately 3,870 square feet of commercial space on the first floor (the 3,870 square feet of commercial space being referred to herein as the "**Commercial Space**" or the "**Facility**") which is part of a larger approximately 16,400 square foot building being constructed for use as an affordable housing complex, all located on the Land; (iii) the acquisition and installation in the Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, under the Resolution and in the Agency Lease Agreement by and between the Company and the Agency dated as of December 1, 2017 (the "**Agency Lease**") the Agency appointed the Company as its agent for purposes of completing the Project and delegated to the Company the authority to appoint as agents of the Agency a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (the "**Additional Agents**" or "**Sub-Agents**"), for the purpose of completing the Project and benefitting



from the State and local sales and use tax exemption that forms a portion of the Financial Assistance all in accordance with the terms of the Resolution and the Agency Lease; and

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

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

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

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

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

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

c. that the failure of the Sub-Agent to promptly pay 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: Butternut Crossing Project, 618-620 North Townsend Street, Syracuse, New York, Project No. 31021715.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

n. that every controversy, dispute or claim arising out of or relating to this Agreement shall be governed by the laws of the State of New York, without regard to its conflicts-of-laws provisions that if applied might require the application of the laws of another

jurisdiction; and that the Sub-Agent irrevocably and expressly submits to the exclusive personal jurisdiction of the Supreme Court of the State of New York and the United States District Court for the Northern District of New York, to the exclusion of all other courts, for the purposes of litigating every controversy, dispute or claim arising out of or relating to this Agreement.

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

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

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

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

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

**BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC**

By: HV Consultants Holding Co., LLC, Manager

By: Housing Visions Consultants, Inc., Manager

By: \_\_\_\_\_  
Rebecca C. Newman, President

[NAME OF SUB-AGENT]

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

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

**FORM ST-123**



**IDA Agent or Project Operator  
Exempt Purchase Certificate**  
Effective for projects beginning on or after June 1, 2014

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

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

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

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

**To the seller:**

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

**Project information**

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

Name of IDA		
Name of project	IDA project number (see disc numbers)	
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 (please file and retain copy)	Date
Type or print the name, title, and relationship that appear in the signature box	



## Instructions

### To the purchaser

You may use Form ST-123 if you:

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

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

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

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

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

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

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

A contractor or subcontractor not appointed as agent or project operator of an IDA must present suppliers with Form ST-120.1, *Contractor Exempt Purchase Certificate*, when making purchases that are ordinarily exempt from tax in accordance with Tax Law sections 1115(a)(15) and 1115(a)(16). For more information, see Form ST-120.1.

### Exempt purchases

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

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

### Misuse of this certificate

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

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

### To the seller

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

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

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




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

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

### Privacy notification

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

### Need help?

	Visit our Web site at <a href="http://www.tax.ny.gov">www.tax.ny.gov</a> <ul style="list-style-type: none"> <li>• get information and manage your taxes online</li> <li>• check for new online services and features</li> </ul>
	<b>Sales Tax Information Center:</b> (518) 485-2599 To order forms and publications: (518) 457-5431
	<b>Text Telephone (TTY) Hotline</b> (for persons with hearing and speech disabilities using a TTY): (518) 485-5082

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

**RECAPTURE POLICY**

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

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## RECAPTURE POLICY

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

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

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

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

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

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

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

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

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

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

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

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

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

#### IV. ANNUAL ASSESSMENT

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

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

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

The Agency shall document its evaluation of the above criteria in writing and based upon its evaluation, the Agency shall determine whether to suspend, discontinue, recapture or terminate all or any portion of the financial assistance (the “*Determination*”). The Determination

shall provide terms, if any, by which a company may remedy any Noncompliance Event (other than a State Mandated Recapture Event) upon which the Determination was based. The company must submit written documentation to the Agency of compliance with all terms and conditions of the Determination in order for the Agency to consider whether to resume financial assistance to the company (which will be at the Agency's sole discretion).

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

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

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

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

Adopted: June 21, 2016

**EXHIBIT "F"**

**RECAPTURE POLICY**

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

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Adopted: June 21, 2016

6

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

## Onondaga County Clerk Recording Cover Sheet

Received From :  
VANGUARD ABSTRACT  
COURTHOUSE  
SYRACUSE, NY 13202

Return To :  
BARCLAY DAMON  
PICK UP BOX

Method Returned : MAIL

**First PARTY 1**

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

**First PARTY 2**

BUTTERNUT CROSSING COMMERCIAL ENTERPRISES LLC

Index Type : Land Records

Instr Number : 2017-00047874

Book : Page :

Type of Instrument : Memorandum Of Lease

Type of Transaction : Deed Misc

Recording Fee: \$75.50

Recording Pages : 6

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

**Real Estate Transfer Tax**

RETT # : 5963

Deed Amount : \$0.00

RETT Amount : \$0.00

Total Fees : \$75.50

State of New York

County of Onondaga

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

On (Recorded Date) : 12/22/2017

At (Recorded Time) : 1:19:05 PM



Doc ID - 0260486500006

*Lisa Dell*  
Lisa Dell, County Clerk



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

Entered By: RSWEENIE Printed On : 12/22/2017 At : 1:20:00PM

Record and return to:  
Barclay Damon LLP  
125 E. Jefferson Street  
Syracuse, New York 13202  
Attn: Susan R. Katzoff, Esq.

**MEMORANDUM OF  
AGENCY LEASE AGREEMENT**

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

***NAME AND ADDRESS OF LESSEE:*** Butternut Crossing Commercial Enterprises, LLC  
1201 East Fayette Street  
Syracuse, New York 13210

***DESCRIPTION OF LEASED PREMISES:***

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

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

As of December 1, 2017

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

The term of the Agency Lease Agreement shall commence as of December 1, 2017 and continue in full force and effect until the earlier of: (1) June 30, 2028; or (2) an earlier termination in accordance with the terms of the Agency Lease Agreement.

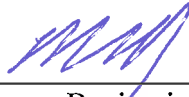
IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum as of the 1<sup>st</sup> day of December, 2017.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
William M. Ryan, Chairman

**BUTTERNUT CROSSING COMMERCIAL  
ENTERPRISES, LLC**

By: HV Consultants Holding Co., LLC, Manager  
By: Housing Visions Consultants, Inc., Manager

By:   
Benjamin P. Lockwood, Vice President

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

On this 20<sup>th</sup> day of December, 2017, before me, the undersigned, personally appeared, **William M. Ryan**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

*Lori L. McRobbie*

Notary Public

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

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

On this 21 day of December, 2017, before me, the undersigned, personally appeared, **Benjamin P. Lockwood**, 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.

*Susan R. Katzoff*

Notary Public

SUSAN R. KATZOFF  
Notary Public, State of New York  
Qual. in Onondaga Co. No. 02KA6120102  
Commission Expires on December 13, 2020



**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE LAND**

**618-620 North Townsend Street: Tax Parcel Number 017.-08-22.1 (UNIT 1)**

The Unit designated as **Unit No. 1** in the Declaration comprising **BUTTERNUT CROSSING CONDOMINIUM** located in the City of Syracuse, County of Onondaga, New York, (hereinafter called the "**Property**"), made by Housing Visions Consultants, Inc. under the Condominium Act of the State of New York, as amended (Article 9-B of the Real Property Law of the State of New York), dated December 21st, 2017 and recorded in the office of the County Clerk of Onondaga County on the 22<sup>nd</sup> day of December, 2017 as Instrument Number 2017-00047870 (hereinafter called the "**Declaration**,"), which Unit is also designated as Unit 1, on page A1.1 of the Construction Drawings for **Butternut Crossing 618-620 N. Townsend Street, Syracuse** as certified and prepared by Holmes King Kallquist & Associates, Architects, and filed simultaneously with said Declaration in the Office of the County Clerk of Onondaga County (hereinafter called the "**Unit**"), together with others with the use of the Common Elements, as defined in said Declaration. The appurtenant interests of Unit 1 in the Common Elements is 29.5%. The land area of the Property is described as follows:

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Syracuse, County of Onondaga, State of New York being Lot 12 & part of Lot 11 of City Block 275D and being more particularly bounded and described as follows: Beginning at a point in the easterly line of North Townsend Street at the intersection of the southerly line of East Laurel Street thence North 59 deg. 25 min. 40 sec. East along the said southerly line of East Laurel Street, a distance of 79.50 feet to a point; thence South 30 deg. 32 min. 30 sec. East a distance of 50.00 feet to a point; thence North 59 deg. 25 min. 40 sec. East a distance of 36.00 feet to a point thence South 30 deg. 32 min. 30 sec. East a distance of 50.00 feet to a point; thence South 59 deg. 25 min. 40 sec. West a distance of 115.50 feet to a point in the said easterly line of North Townsend Street thence North 30 deg. 32 min. 30 sec. West along said easterly line of North Townsend Street, a distance of 100.00 feet to the point of beginning.



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

Recording office time stamp

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

**Schedule A – Information relating to conveyance**

<b>Grantor/Transferor</b> <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 ) <b>City of Syracuse Industrial Development Agency</b> Mailing address <b>201 East Washington Street, 7th Floor</b> City State ZIP code <b>Syracuse NY 13202</b> Single member's name if grantor is a single member LLC (see instructions)	Social security number  Social security number  Federal EIN <b>52-1380308</b> 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 ) <b>Butternut Crossing Commercial Enterprises, LLC</b> Mailing address <b>1201 East Fayette Street</b> City State ZIP code <b>Syracuse NY 13202</b> Single member's name if grantee is a single member LLC (see instructions)	Social security number  Social security number  Federal EIN <b>82-2889906</b> 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
	311500	Condo Unit #1 of 618-620 North Townsend Street	Syracuse	Onondaga

Type of property conveyed (check applicable box)

1 <input type="checkbox"/> One- to three-family house 2 <input type="checkbox"/> Residential cooperative 3 <input type="checkbox"/> Residential condominium 4 <input type="checkbox"/> Vacant land	5 <input checked="" type="checkbox"/> Commercial/Industrial 6 <input type="checkbox"/> Apartment building 7 <input type="checkbox"/> Office building 8 <input type="checkbox"/> Other _____	Date of conveyance <table style="border: 1px solid black; text-align: center; width: 100%;"> <tr> <td style="width: 33%;">12</td> <td style="width: 33%;">01</td> <td style="width: 33%;">2017</td> </tr> <tr> <td>month</td> <td>day</td> <td>year</td> </tr> </table>	12	01	2017	month	day	year	Percentage of real property conveyed which is residential real property _____ 0 % (see instructions)
12	01	2017							
month	day	year							

Condition of conveyance (check all that apply)

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

For recording officer's use	Amount received	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**

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) ...See Schedule "A"..... k

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

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

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

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

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

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

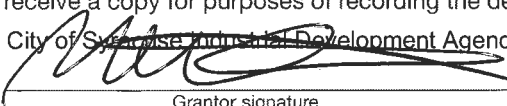
  - Other (attach detailed explanation).
3.  The real property being transferred is presently subject to an outstanding credit line mortgage. However, no tax is due for the following reason:
    - A certificate of discharge of the credit line mortgage is being offered at the time of recording the deed.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

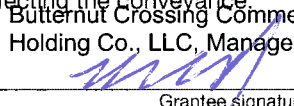
**Signature (both the grantor(s) and grantee(s) must sign)**

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

City of Syracuse Industrial Development Agency

Butternut Crossing Commercial Enterprises, LLC, By: HV Consultan Holding Co., LLC, Manager: Housing Visions Consultants, Inc., Man

  
 \_\_\_\_\_  
 William M. Ryan                      Chairman  
 Grantor signature                      Title

  
 \_\_\_\_\_  
 Benjamin P. Lockwood                      Vice President  
 Grantee signature                      Title

\_\_\_\_\_  
 Grantor signature                      Title                      Grantee signature                      Title

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

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

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

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

**Part I - New York State residents**

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

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

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

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

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

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

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

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

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

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

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

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

## **SCHEDULE "A"**

The document being recorded for which this NYS Form TP-584 is being provided is a Memorandum of Lease between the Grantor and the Grantee. The sum of the term of the lease and any options for renewal do not exceed forty-nine (49) years, and therefore said lease is not a Conveyance within the meaning of Article 31 of the Tax Law.

**7**



## CERTIFICATION

Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agency Lease Agreement by and between the parties dated as of December 1, 2017.

The undersigned, Benjamin P. Lockwood, Vice President and authorized signatory of Housing Visions Consultants, Inc., Manager of Butternut Crossing Commercial Enterprises, 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: December 21, 2017

**BUTTERNUT CROSSING COMMERCIAL  
ENTERPRISES, LLC**

By: HV Consultants Holding Co., LLC, Manager

By: Housing Visions Consultants, Inc., Manager

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

Benjamin P. Lockwood, Vice President

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# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
12/20/2017

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

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


<b>PRODUCER</b> James P Reagan Agency 8 E Main Street P O Box 191 Marcellus NY 13108	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): 315-673-2094      FAX (A/C, No): 315-673-1121 E-MAIL ADDRESS:														
	<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : AmTrust Insurance of Kansas Inc</td> <td>15954</td> </tr> <tr> <td>INSURER B : Wesco Insurance Company</td> <td>25011</td> </tr> <tr> <td>INSURER C : Hartford Life Insurance</td> <td>88072</td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </tbody> </table>		INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : AmTrust Insurance of Kansas Inc	15954	INSURER B : Wesco Insurance Company	25011	INSURER C : Hartford Life Insurance	88072	INSURER D :		INSURER E :		INSURER F :
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<b>INSURED</b> Housing Visions Unlimited Inc. 1201 E Fayette Street Syracuse NY 13210	HOUSVIS-01														

**COVERAGES**      **CERTIFICATE NUMBER:** 1210918307      **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD   WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:					EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY <input type="checkbox"/> AUTOS ONLY					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED    RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$ \$
A B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y N/A	KWC1074480 WWC3246398	1/1/2018 1/1/2018	1/1/2019 1/1/2019	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Disability		LNY643023001	1/1/2018	1/1/2019	Statutory

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
\*Named insured includes: Housing Visions Construction Co. Inc., Housing Visions Consultants Inc. and Dynamic Building Solutions LLC  
\*Work Comp policy #KWC1074480 is for New York  
\*Work Comp policy #WWC3246398 is for Pennsylvania  
C105.2 will be issued by the insurance carrier & follow under separate cover

<b>CERTIFICATE HOLDER</b>  City of Syracuse Industrial Development Agency 201 E. Washington St., Ste. 712 Syracuse NY 13202-1435	<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 
--	--

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

**Schedule**

Any person or organization as required by written contract

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

Endorsement Effective

Policy No.

Endorsement No. WC000313

Insured

Premium \$

Insurance Company

Countersigned by \_\_\_\_\_





**ADDITIONAL REMARKS SCHEDULE**

AGENCY Haylor, Freyer & Coon, Inc.		NAMED INSURED Butternut Crossing, LLC Butternut Crossing Commercial Enterprises, LLC Housing Visions Unlimited, Inc. Syracuse NY 13210	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

**ADDITIONAL REMARKS**

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,**  
**FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE**

- 1) 808-810 Butternut St., Syracuse, NY 13208
- 2) 1116-1120 Butternut St., Syracuse, NY 13208
- 3) 1117-1123 Butternut St. Bldg #1, Syracuse, NY 13208
- 4) 1117-1123 Butternut St. Bldg #2, Syracuse, NY 13208
- 5) 1230-1232 Butternut St., Syracuse, NY 13208
- 6) 1234-1236 Butternut St., Syracuse, NY 13208
- 7) 1227-1229 Butternut St., Syracuse, NY 13208
- 8) 618-620 North Townsend St., Syracuse, NY 13203
- 9) 700 North Townsend St., Syracuse, NY 13203

# ELITEPAC General Liability Extension

POLICY No. S 2190320

COMMERCIAL GENERAL LIABILITY  
CG 72 02 12 11

## SUMMARY OF COVERAGES (including index)

This is a summary of the various additional coverages and coverage modifications provided by this endorsement. No coverage is provided by this summary. Refer to the actual endorsement (Pages 3-through-8) for changes affecting your insurance protection.

DESCRIPTION	PAGE FOUND
Primary and Non-Contributory Provision - Additional Insureds	Page 7
Blanket Additional Insureds - As Required By Contract	Page 5
Broad Form Vendors Coverage	Page 6
Not-for-profit Members - Including Club Members	
Not-for-profit Members - as additional insureds	Page 5
Not-for-profit Members Medical Payments	Page 4
Not-for-profit Members - defined	Page 8
Damage To Premises Rented To You (\$500,000) (Including Fire, Lightning or Explosion)	Page 3
Electronic Data Liability (\$100,000)	Page 4
Golf Amendments	
Golfing Facilities - defined	Page 8
Golf and Tennis Pros - as additional insureds	Page 6
Limited Property Damage - caused by golf balls	Page 3
Members Medical Payments	Page 4
Products Amendment - Medical Payments - limited on premises coverage	Page 4
Recreational Medical Payments - limited amateur golf coverage	Page 4
Waiver of Rights of Recovery - members and guests	Page 7
Incidental Malpractice	
Exclusion modified	Page 6
Knowledge of Occurrence, Claim, Suit or Loss	Page 7
Liberalization Clause	Page 7
Medical Payments - increased limit (\$15,000)	Page 6
Mental Anguish Amendment (Not applicable to New York)	Page 8
Newly Formed or Acquired Organizations	Page 5
Non-Owned Aircraft	Page 3

<b>DESCRIPTION</b>	<b>PAGE FOUND</b>
Non-Owned Watercraft (under 60 feet)	Page 3
Personal And Advertising Injury	
Contractual Exclusion Amended (Excludes Advertisement)	Page 4
Discrimination and Humiliation Amendment (Not applicable in New York; Excludes Advertisement)	Page 7
Products Amendment - Not-for-profit and Golf	Page 4
Supplementary Payments Amended - Bail Bonds (\$5,000) and Loss of Earnings (\$1,000)	Page 4
Temporary Workers	
Employee Definition Amended (including status as an insured)	Page 8
Employer's Liability Exclusion Amended (Not applicable in New York)	Page 3
Injuries or Damages by Certain Employees (co-employee damages)	Page 5
Unintentional Failure to Disclose Hazards	Page 7
Waiver of Transfer of Rights of Recovery (subrogation)	Page 7
When Two or More Coverage Parts of this Policy Apply to a Loss	Page 3



**ELITEPAC**  
**General Liability Extension**

POLICY # S2190320

COMMERCIAL GENERAL LIABILITY  
CG 72 02 12 11

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies the insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

The **SECTIONS** of the Commercial General Liability Coverage Part identified in this endorsement will be amended as shown below. However, **when two or more Coverage Parts of this policy apply to a loss**, only the broadest coverage of this policy will apply, unless specifically stated otherwise within the particular amendment covering that loss.

**COVERAGES - Amendments**

**SECTION I - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**

**COVERAGE EXTENSION**

**Property Damage - "Golfing Facilities"**

If you operate a "golfing facility", Paragraph 1. **Insuring Agreement** under **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY** is amended to include the following:

"Property damage" to any property not owned by you, caused by golf balls originating from your premises, regardless of your legal liability for the damage. The most we will pay under this extension is a sub-limit of \$2,500 per "occurrence". No deductible applies to loss under this extension.

**EXCLUSIONS**

**Employer's Liability Amendment**

(This provision is not applicable in New York).

The following is added to Exclusion e. **Employer's Liability** under **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, 2. **Exclusions**:

This exclusion also does not apply to any "temporary worker".

**Non-Owned Aircraft, Auto or Watercraft**

The following is added to Exclusion g. **Aircraft, Auto Or Watercraft** under **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, 2. **Exclusions**:

This exclusion does not apply to:

- (6) A watercraft you do not own that is less than 60 feet long, and not being used to carry persons or property for a charge. Any person is an insured who uses or is responsible for the use of such watercraft with your expressed or implied consent. However, if the insured has any other valid and collectible insurance for "bodily injury" or "property damage" that would be covered under this provision, or on any other basis, this coverage is then excess, and subject to Condition 4. **Other Insurance, b. Excess Insurance** under **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**.

- (7) Any aircraft, not owned or operated by any insured, that is hired, chartered or loaned with a paid crew. However, if the insured has any other valid and collectible insurance for "bodily injury" or "property damage" that would be covered under this provision, or on any other basis, this coverage is then excess, and subject to Condition 4. **Other Insurance, b. Excess Insurance** under **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**.

**Damage To Premises Rented to You**

- A. The last paragraph of Paragraph 2. **Exclusions** under **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE** is deleted in its entirety and replaced with the following:

Exclusions c. through n. do not apply to damage by fire, lightning or explosion to premises rented to you or temporarily occupied by you with the permission of the owner. A separate limit of insurance applies to this coverage as described in **SECTION III - LIMITS OF INSURANCE**.

- B. Paragraph 6. under **SECTION III - LIMITS OF INSURANCE** is deleted in its entirety and replaced with the following:

6. Subject to Paragraph 5. above, the most we will pay under **COVERAGE A** for damages because of "property damage" to any one premises, while rented to you, or in the case of damage caused by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner, for all such damage caused by fire, lightning or explosion proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of the three, is the higher of \$500,000 or the amount shown in the Declarations for the **Damage To Premises Rented To You Limit**.

C. Paragraph a. of Definition 9. "Insured contract" under **SECTION V - DEFINITIONS** is deleted in its entirety and replaced with the following:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning or explosion to premises while rented to you or temporarily occupied by you with the permission of the owner is not an "insured contract";

#### **Electronic Data Liability**

Exclusion p. **Electronic Data** under **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions** is deleted in its entirety and replaced by the following:

#### **p. Electronic Data**

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data" that does not result from physical injury to tangible property.

The most we will pay for damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data" that results from physical injury to tangible property is a sub-limit of \$100,000 for "property damage" because of all applicable loss of "electronic data" arising out of any one "occurrence".

### **SECTION I - COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**

#### **EXCLUSIONS**

##### **Contractual Exclusion Amendment**

Exclusion e. **Contractual Liability** under **COVERAGE B PERSONAL AND ADVERTISING INJURY, 2. Exclusions** is deleted in its entirety and replaced with the following:

#### **e. Contractual Liability**

"Personal and advertising Injury" for which the insured has assumed liability in a contract or agreement arising out of an "advertisement". This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

### **SECTION I - COVERAGE C MEDICAL PAYMENTS**

#### **EXCLUSIONS**

##### **Any Insured Amendment**

Exclusion a. **Any Insured** under **COVERAGE C MEDICAL PAYMENTS, 2. Exclusions** is deleted in its entirety and replaced with the following:

#### **a. Any Insured**

To any insured.

This exclusion does not apply to:

- (1) "Golfing facility" members who are not paid a fee, salary, or other compensation;
- (2) "Not-for-profit members"; or
- (3) "volunteer workers".

This exclusion exception does not apply if **COVERAGE C MEDICAL PAYMENTS** is excluded by another endorsement to this Coverage Part.

##### **Product Amendment**

Exclusion f. **Products-Completed Operations Hazard** under **COVERAGE C MEDICAL PAYMENTS, 2. Exclusions** is deleted in its entirety and replaced with the following:

#### **f. Products-Completed Operations Hazard**

Included within the "products-completed operations hazard".

This exclusion does not apply to "your products" sold for use or consumption on your premises, while such products are still on your premises, if you are a not-for-profit operation or a "golfing facility".

This exclusion exception, does not apply if **COVERAGE C MEDICAL PAYMENTS** is excluded by another endorsement to this Coverage Part.

##### **Recreational Medical Payments - Amateur Golf**

Exclusion e. **Athletics Activities** under **COVERAGE C MEDICAL PAYMENTS, 2. Exclusions** is deleted in its entirety and replaced with the following:

#### **e. Athletics Activities**

To a person injured while practicing, instructing or participating in any physical exercises or games, sports or athletic contests.

If you are a "golfing facility", this exclusion does not apply to a person injured as a result of their participation in amateur athletics that are recreational in nature.

This exclusion exception does not apply if **COVERAGE C MEDICAL PAYMENTS** is excluded by another endorsement to this Coverage Part.

### **SECTION I - SUPPLEMENTARY PAYMENTS - COVERAGES A AND B**

#### **Expenses For Bail Bonds And Loss Of Earnings**

A. Subparagraph 1.b. under **SUPPLEMENTARY PAYMENTS - COVERAGES A AND B** is deleted in its entirety and replaced with the following:

- b. Up to \$5,000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

B. Subparagraph 1.d. under **SUPPLEMENTARY PAYMENTS - COVERAGES A AND B** is deleted in its entirety and replaced with the following:

- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$1,000 a day because of time off from work.

## **SECTION II - WHO IS AN INSURED - Amendments**

### **Not-for-Profit Organization Members**

The following paragraph is added to **SECTION II - WHO IS AN INSURED**:

If you are an organization other than a partnership, joint venture, or a limited liability company, and you are a not-for-profit organization, your officials, trustees, board members, insurance managers, and "not-for-profit members" are included as additional insureds, however only with respect to their liability for your activities or activities they perform on your behalf.

### **Employees As Insureds Modified**

- A. Subparagraph 2.a.(1)(a) under **SECTION II - WHO IS AN INSURED** does not apply to "bodily injury" to a "temporary worker" caused by a co-"employee" who is not a "temporary worker".
- B. Subparagraph 2.a.(2) under **SECTION II - WHO IS AN INSURED** does not apply to "property damage" to the property of a "temporary worker" caused by a co-"employee" who is not a "temporary worker".
- C. Subparagraph 2.a.(1)(d) under **SECTION II - WHO IS AN INSURED** does not apply to "bodily injury" caused by cardio-pulmonary resuscitation or first aid services administered by a co-"employee".

### **Newly Formed Or Acquired Organizations**

- A. Subparagraph 3.a. under **SECTION II - WHO IS AN INSURED** is deleted in its entirety and replaced with the following:
  - a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier. However, **COVERAGE A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization.

B. The following paragraph is added to **SECTION II - WHO IS AN INSURED**, Paragraph 3:

If you are engaged in the business of construction of dwellings three stories or less in height, or other buildings three stories or less in height and less than 25,000 square feet in area, you will also be an insured with respect to "your work" only, for the period of time described above, for your liability arising out of the conduct of any partnership or joint venture of which you are or were a member, even if that partnership or joint venture is not shown as a Named Insured. However, this provision only applies if you maintain or maintained an interest of at least fifty percent in that partnership or joint venture for the period of that partnership or joint venture.

This provision does not apply to any partnership or joint venture that has been dissolved or otherwise ceased to function for more than thirty-six months.

With respect to the insurance provided by this provision, **Newly Formed or Acquired Organizations**, the following is added to **SECTION IV - COMMERCIAL GENERAL LIABILITY**, Paragraph 4. **Other Insurance**, Subparagraph b. **Excess Insurance**:

The insurance provided by this provision, **Newly Formed or Acquired Organizations**, is excess over any other insurance available to the insured, whether primary, excess, contingent or on any other basis.

(All other provisions of this section remain unchanged).

### **Blanket Additional Insureds - As Required By Contract**

Subject to the **Primary and Non-Contributory** provision set forth in this endorsement, **SECTION II - WHO IS AN INSURED** is amended to include as an additional insured any person or organization whom you have agreed in a written contract, written agreement or written permit that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury" or "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your ongoing operations, "your product", or premises owned or used by you; however this provision does not include any architects, engineers, or surveyors with respect to any injury or damage arising out of the rendering or failure to render any professional services by or for you, including:
  - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and

b. Supervisory, inspection, architectural or engineering activities.

2. Your maintenance, operation or use of equipment, other than aircraft, "auto" or watercraft, rented or leased to you by such person or organization. A person or organization's status as an additional insured under this endorsement ends when their contract, or agreement with you for such rented or leased equipment ends. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the rental agreement or equipment lease expires.

The provisions of this coverage extension do not apply unless the written contract or written agreement has been executed (executed means signed by the named insured) or written permit issued prior to the "bodily injury" or "property damage" or "personal and advertising injury".

#### Broad Form Vendors Coverage

Subject to the **Primary and Non-Contributory** provision set forth in this endorsement, **SECTION II - WHO IS AN INSURED** is amended to include as an additional insured any person or organization (referred to below as vendor) whom you have agreed in a written contract or written agreement to add as an additional insured on your policy. Such person or organization is an additional insured only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business, however the insurance afforded the vendor does not apply to:

- a. "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement; however this exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- b. Any express warranty unauthorized by you;
- c. Any physical or chemical change in the product made intentionally by the vendor;
- d. Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- e. Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business in connection with the sale of the product; or

- f. Products which, after distribution or sale by you, have been labeled or re-labeled or used as a container, part of ingredient of any other thing or substance by or for the vendor; however this insurance does not apply to any insured person or organization, from who you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

The provisions of this coverage extension do not apply unless the written contract or written agreement has been executed (executed means signed by the named insured) prior to the "bodily injury" or "property damage".

#### Incidental Malpractice

Subparagraph 2.a.(1)(d) under **SECTION II - WHO IS AN INSURED** is deleted in its entirety and replaced with the following:

- (d) Arising out of his or her providing or failing to provide professional health care services. This does not apply to nurses, emergency medical technicians or paramedics. if you are not in the business or occupation of providing any such professional services.

#### "Golfing Facilities" - Golf or Tennis Pros

The following is added to **SECTION II - WHO IS AN INSURED**:

If you operate a "golfing facility", any golf or tennis pros are additional insureds. Golf or tennis pros means any person, other than your "employees", whose primary responsibilities include golf or tennis instruction or operation of a golf or tennis pro shop, however only with respect to their liability for your activities, or activities they perform on your behalf, or their liability for the maintenance, use or operation of golf or tennis pro shop premises you rent or lease to them.

#### SECTION III - LIMITS OF INSURANCE

##### Increased Medical Payments

Paragraph 7. under **SECTION III - LIMITS OF INSURANCE** is deleted in its entirety and replaced with the following:

7. Subject to Paragraph 5. above, the Medical Expense Limit under **COVERAGE C** will be \$15,000, or the amount shown in the Declarations for Medical Expense Limit, whichever is higher, for all medical expenses because of "bodily injury" sustained by any one person.

This provision, **Increased Medical Payments**, does not apply if **COVERAGE C MEDICAL PAYMENTS** is excluded by another endorsement to this Coverage Part.

**SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS - Amendments**

**Knowledge Of Occurrence, Claim, Suit Or Loss**

The following is added to Paragraph 2. **Duties in the Event of Occurrence, Offense, Claim or Suit** under **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:**

The requirements under this paragraph do not apply until after the "occurrence" or offense is known to:

1. You, if you are an individual;
2. A partner, if you are a partnership;
3. An "executive officer" or insurance manager, if you are a corporation;
4. Your members, managers or insurance manager, if you are a limited liability company; or
5. Your elected or appointed officials, trustees, board members, or your insurance manager if you are an organization other than a partnership, joint venture, or limited liability company.

**Primary and Non-Contributory Provision**

The following is added to Paragraph 4. **Other Insurance, b. Excess Insurance** under **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:**

This insurance shall be excess with respect to any person or organization included as an additional insured under this policy, any other insurance that person or organization has shall be primary with respect to this insurance, unless:

- (1) The additional insured is a Named Insured under such other insurance;
- (2) You have agreed in a written contract, written agreement or written permit to include that additional insured on your General Liability policy on a primary and/or non-contributory basis; and
- (3) The written contract or written agreement has been executed (executed means signed by the named insured) or written permit issued prior to the "bodily injury" or "property damage" or "personal and advertising injury".

**Unintentional Failure To Disclose Hazards**

The following is added to Paragraph 6. **Representations** under **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:**

However, if you should unintentionally fail to disclose any existing hazards in your representations to us at the inception date of the policy, or during the policy period in connection with any additional hazards, we shall not deny coverage under this Coverage Part based upon such failure to disclose hazards.

**Waiver Of Transfer Of Rights Of Recovery**

The following is added to Paragraph 8. **Transfer of Rights Of Recovery Against Others To Us** under **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:**

We will waive any right of recovery we may have against a person or organization because of payments we make for "bodily injury" or "property damage" arising out of your ongoing operations or "your work" done under a written contract or written agreement and included in the "products-completed operations hazard", if:

1. You have agreed to waive any right of recovery against that person or organization in a written contract or written agreement;
2. Such person or organization is an additional insured on your policy; or
3. You have assumed the liability of that person or organization in that same contract, and it is an "insured contract".

The section above only applies to that person or organization identified above, and only if the "bodily injury" or "property damage" occurs subsequent to the execution of the written contract or written agreement.

If you are a "golfing facility", we will also waive any right of recovery we may have against any of your members or their guests because of payments we make for "bodily injury" or "property damage" arising out of their actions at your premises to which this Coverage Part applies. However, this provision does not apply to "bodily injury" or "property damage" that is expected or intended by your member or their guest.

**Liberalization**

The following condition is added to **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:**

If we revise this Coverage Part to provide more coverage without additional premium charge, subject to our filed company rules, your policy will automatically provide the additional coverage as of the day the revision is effective in your state.

**SECTION V - DEFINITIONS**

**Discrimination And Humiliation**

(This provision does not apply in New York).

- A. The following is added to Definition 14. "Personal and advertising injury":

"Personal and advertising injury" also means "discrimination" or humiliation that results in injury to the feelings or reputation of a natural person, however only if such "discrimination" or humiliation is:

1. Not done by or at the direction of:
    - a. The insured; or
    - b. Any "executive officer" director, stockholder, partner, manager or member of the insured;
  2. Not done intentionally to cause harm to another person.
  3. Not directly or indirectly related to the employment, prospective employment or termination of employment of any person or persons by any insured.
  4. Not arising out of any "advertisement" by the insured.
- B. The following definition is added to SECTION V - DEFINITIONS:**
- "Discrimination" means:
- a. Any act or conduct that would be considered discrimination under any applicable federal, state, or local statute, ordinance or law;
  - b. Any act or conduct that results in disparate treatment of, or has disparate impact on, a person, because of that person's race, religion, gender, sexual orientation, age, disability or physical impairment; or
  - c. Any act or conduct characterized or interpreted as discrimination by a person based on that person's race, religion, gender, sexual orientation, age, disability or physical impairment.

**Electronic Data**

The following definition is added to **SECTION V - DEFINITIONS:**

"Electronic data" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), hard or floppy disks, CD-ROMS, tapes, drives, cell, data processing devices or any other media which are used with electronically controlled equipment.

For the purpose of the Electronic Data Liability coverage provided by this endorsement, Definition 17. "Property damage" is deleted in its entirety and replaced by the following:

- 17. "Property damage" means:**
- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

- b. Loss of, loss of use of, damage to, corruption of, inability to access, or inability to properly manipulate "electronic data", resulting from physical injury to tangible property. All such loss of "electronic data" shall be deemed to occur at the time of the "occurrence" that caused it.

For the purpose of the Electronic Data Liability coverage provided by this endorsement, "electronic data" is not tangible property.

**Employee Amendment**

Definition 5. "Employee" under **SECTION V - DEFINITIONS** is deleted in its entirety and replaced by the following:

5. "Employee" includes a "leased worker", or a "temporary worker".

**Golfing Facility**

The following definition is added to **SECTION V - DEFINITIONS:**

"Golfing facility" or "golfing facilities" means a golf course, golf club, driving range, or miniature golf course.

**Mental Anguish Amendment**

(This provision does not apply in New York).

Definition 3. "Bodily injury" under **SECTION V - DEFINITIONS** is deleted in its entirety and replaced with the following:

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time. This includes mental anguish resulting from any bodily injury, sickness or disease sustained by a person. (In New York, mental anguish has been determined to be "bodily injury").

**Not-for-profit Member**

The following definition is added to **SECTION V - DEFINITIONS:**

"Not-for-profit member" means a person who is a member of a not-for-profit organization, including clubs and churches, who receive no financial or other compensation.

# ADDITIONAL INSURED — MORTGAGEE, ASSIGNEE OR RECEIVER

POLICY NUMBER: s 2190320

COMMERCIAL GENERAL LIABILITY  
CG 20 18 04 13

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

## SCHEDULE

Name Of Person(s) Or Organization(s)	Designation Of Premises
<p>ANY PERSONS OR ORGANIZATIONS WHOM Y HAVE AGREED TO INCLUDE AS AN ADDITI INSURED ON YOUR POLICY IN A WRITTEN CONTRACT, WRITTEN AGREEMENT OR WRIT PERMIT VARIOUS VARIOUS, NY 13210</p>	<p>ANY AND ALL PREMISES FOR WHICH THE INSURED HAS ENTERED INTO A WRITTEN CONTRACT, WRITTEN AGREEMENT OR WRITTEN PERMIT WITH THE MORTGAGEE, ASSIGNEE OR RECEIVER</p>
<p>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</p>	

**A. Section II - Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to their liability as mortgagee, assignee, or receiver and arising out of the ownership, maintenance, or use of the premises by you and shown in the Schedule.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B.** This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

**C.** With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.



# NEW YORK CHANGES — CANCELLATION AND NONRENEWAL

IL 02 68 01 14

## THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART  
COMMERCIAL GENERAL LIABILITY COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
CRIME AND FIDELITY COVERAGE PART  
EQUIPMENT BREAKDOWN COVERAGE PART  
FARM COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

**A. Paragraphs 1., 2., 3. and 5. of the Cancellation Common Policy Condition are replaced by the following:**

1. The first Named Insured shown in the Declarations may cancel this entire policy by mailing or delivering to us advance written notice of cancellation.

**2. Cancellation Of Policies In Effect**

**a. 60 Days Or Less**

We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:

- (1) 30 days before the effective date of cancellation if we cancel for any reason not included in Paragraph **A.2.b.** below.
- (2) 15 days before the effective date of cancellation if we cancel for any of the reasons included in Paragraph **A.2.b.** below.

**b. For More Than 60 Days**

If this policy has been in effect for more than 60 days, or if this policy is a renewal or continuation of a policy we issued, we may cancel only for any of the reasons listed below, provided we mail the first Named Insured written notice at least 15 days before the effective date of cancellation:

- (1) Nonpayment of premium, provided however, that a notice of cancellation on this ground shall inform the first Named Insured of the amount due;
- (2) Conviction of a crime arising out of acts increasing the hazard insured against;
- (3) Discovery of fraud or material misrepresentation in the obtaining of the policy or in the presentation of a claim;

- (4) After issuance of the policy or after the last renewal date, discovery of an act or omission, or a violation of any policy condition, that substantially and materially increases the hazard insured against, and which occurred subsequent to inception of the current policy period;
- (5) Material physical change in the property insured, occurring after issuance or last annual renewal anniversary date of the policy, which results in the property becoming uninsurable in accordance with our objective, uniformly applied underwriting standards in effect at the time the policy was issued or last renewed; or material change in the nature or extent of the risk, occurring after issuance or last annual renewal anniversary date of the policy, which causes the risk of loss to be substantially and materially increased beyond that contemplated at the time the policy was issued or last renewed;
- (6) Required pursuant to a determination by the Superintendent that continuation of our present premium volume would jeopardize our solvency or be hazardous to the interest of our policyholders, our creditors or the public;
- (7) A determination by the Superintendent that the continuation of the policy would violate, or would place us in violation of, any provision of the Insurance Code; or



(8) Where we have reason to believe, in good faith and with sufficient cause, that there is a probable risk of danger that the insured will destroy, or permit to be destroyed, the insured property for the purpose of collecting the insurance proceeds. If we cancel for this reason, you may make a written request to the Department of Financial Services, within 10 days of receipt of this notice, to review our cancellation decision. Also, we will simultaneously send a copy of this cancellation notice to the Department of Financial Services.

3. We will mail or deliver our notice, including the reason for cancellation, to the first Named Insured at the address shown in the policy and to the authorized agent or broker.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata.

However, when the premium is advanced under a premium finance agreement, the cancellation refund will be pro rata. Under such financed policies, we will be entitled to retain a minimum earned premium of 10% of the total policy premium or \$60, whichever is greater. The cancellation will be effective even if we have not made or offered a refund.

**B. The following is added to the Cancellation Common Policy Condition:**

7. If one of the reasons for cancellation in Paragraph **A.2.b.** or **D.2.b.(2)** exists, we may cancel this entire policy, even if the reason for cancellation pertains only to a new coverage or endorsement initially effective subsequent to the original issuance of this policy.

**C. The following conditions are added:**

**1. Nonrenewal**

If we decide not to renew this policy we will send notice as provided in Paragraph **C.3.** below.

**2. Conditional Renewal**

If we conditionally renew this policy subject to:

- a. A change of limits;
- b. A change in type of coverage;
- c. A reduction of coverage;
- d. An increased deductible;
- e. An addition of exclusion; or

- f. Increased premiums in excess of 10%, exclusive of any premium increase due to and commensurate with insured value added or increased exposure units; or as a result of experience rating, loss rating, retrospective rating or audit;

we will send notice as provided in Paragraph **C.3.** below.

**3. Notices Of Nonrenewal And Conditional Renewal**

- a. If we decide not to renew this policy or to conditionally renew this policy as provided in Paragraphs **C.1.** and **C.2.** above, we will mail or deliver written notice to the first Named Insured shown in the Declarations at least 60 but not more than 120 days before:

(1) The expiration date; or

(2) The anniversary date if this is a continuous policy.

- b. Notice will be mailed or delivered to the first Named Insured at the address shown in the policy and to the authorized agent or broker. If notice is mailed, proof of mailing will be sufficient proof of notice.

- c. Notice will include the specific reason(s) for nonrenewal or conditional renewal, including the amount of any premium increase for conditional renewal and description of any other changes.

- d. If we violate any of the provisions of Paragraph **C.3.a., b.** or **c.** above by sending the first Named Insured an incomplete or late conditional renewal notice or a late non-renewal notice:

(1) And if notice is provided prior to the expiration date of this policy, coverage will remain in effect at the same terms and conditions of this policy at the lower of the current rates or the prior period's rates until 60 days after such notice is mailed or delivered, unless the first Named Insured, during this 60-day period, has replaced the coverage or elects to cancel;

(2) And if the notice is provided on or after the expiration date of this policy, coverage will remain in effect at the same terms and conditions of this policy for another policy period, at the lower of the current rates or the prior period's rates, unless the first Named Insured, during this additional policy period, has replaced the coverage or elects to cancel.

- e. If you elect to renew on the basis of a late conditional renewal notice, the terms, conditions and rates set forth in such notice shall apply:
    - (1) Upon expiration of the 60-day period, unless Subparagraph (2) below applies; or
    - (2) Notwithstanding the provisions in Paragraphs d.(1) and d.(2), as of the renewal date of the policy if the conditional renewal notice was sent at least 30 days prior to the expiration or anniversary date of the policy.
  - f. We will not send you notice of nonrenewal or conditional renewal if you, your authorized agent or broker or another insurer of yours mails or delivers notice that the policy has been replaced or is no longer desired.
- D. The following provisions apply when the Commercial Property Coverage Part, the Farm Coverage Part or the Capital Assets Program (Output Policy) Coverage Part is made a part of this policy:
1. Items D.2. and D.3. apply if this policy meets the following conditions:
    - a. The policy is issued or issued for delivery in New York State covering property located in this state; and
    - b. The policy insures:
      - (1) For loss of or damage to structures, other than hotels or motels, used predominantly for residential purposes and consisting of no more than four dwelling units; or
      - (2) For loss of or damage to personal property other than farm personal property or business property; or
      - (3) Against damages arising from liability for loss of, damage to or injury to persons or property, except liability arising from business or farming; and
    - c. The portion of the annual premium attributable to the property and contingencies described in 1.b. exceeds the portion applicable to other property and contingencies.
  2. Paragraph 2. of the **Cancellation Common Policy Condition** is replaced by the following:
    2. **Procedure And Reasons For Cancellation**
      - a. We may cancel this entire policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
        - (1) 15 days before the effective date of cancellation if we cancel for nonpayment of premium, provided however, that a notice of cancellation on this ground shall inform the first Named Insured of the amount due; or
        - (2) 30 days before the effective date of cancellation if we cancel for any other reason.
- b. But if this policy:
    - (1) Has been in effect for more than 60 days; or
    - (2) Is a renewal of a policy we issued; we may cancel this policy only for one or more of the following reasons:
      - (1) Nonpayment of premium, provided however, that a notice of cancellation on this ground shall inform the first Named Insured of the amount due;
      - (2) Conviction of a crime arising out of acts increasing the risk of loss;
      - (3) Discovery of fraud or material misrepresentation in obtaining the policy or in making a claim;
      - (4) Discovery of willful or reckless acts or omissions increasing the risk of loss;
      - (5) Physical changes in the covered property that make that property uninsurable in accordance with our objective and uniformly applied underwriting standards in effect when we:
        - (a) Issued the policy; or
        - (b) Last voluntarily renewed the policy;
      - (6) The Superintendent of Financial Services' determination that continuing the policy would violate Chapter 28 of the Insurance Law; or
      - (7) Required pursuant to a determination by the Superintendent of Financial Services that the continuation of our present premium volume would be hazardous to the interests of our policyholders, our creditors or the public.

3. The following are added:

**a. Conditional Continuation**

Instead of cancelling this policy, we may continue it on the condition that:

- (1) The policy limits be changed; or
- (2) Any coverage not required by law be eliminated.

If this policy is conditionally continued, we will mail or deliver to the first Named Insured written notice at least 20 days before the effective date of the change or elimination. We will mail or deliver our notice to the first Named Insured's last mailing address known to us. If notice is mailed, proof of mailing will be sufficient proof of notice. Delivery of the notice will be the same as mailing.

**b. Nonrenewal**

If, as allowed by the laws of New York State, we:

- (1) Do not renew this policy; or
- (2) Condition policy renewal upon:
  - (a) Change of limits; or
  - (b) Elimination of coverage;

we will mail or deliver written notice of non-renewal or conditional renewal:

- (a) At least 45 days; but
- (b) Not more than 60 days;

before the expiration date of the policy. We will mail or deliver our notice to the first Named Insured's last mailing address known to us. If notice is mailed, proof of mailing will be sufficient proof of notice. Delivery of the notice will be the same as mailing.

**E.** The following is added to the Farm Property - Other Farm Provisions Form - Additional Coverages, Conditions, Definitions, the Commercial Property Coverage Part and the Capital Assets Program (Output Policy) Coverage Part:

When the property is subject to the Anti-arson Application in accordance with New York Department of Financial Services' Insurance Regulation No. 96, the following provisions are added:

If you fail to return the completed, signed and affirmed anti-arson application to us:

- 1. Or our broker or agent within 45 days of the effective date of a new policy, we will cancel the entire policy by giving 20 days' written notice to you and to the mortgageholder shown in the Declarations.

- 2. Before the expiration date of any policy, we will cancel the policy by giving written notice to you and to the mortgageholder shown in the Declarations at least 15 days before the effective date of cancellation.

The cancellation provisions set forth in **E.1.** and **E.2.** above supersede any contrary provisions in this policy including this endorsement.

If the notice in **E.1.** or **E.2.** above is mailed, proof of mailing will be sufficient proof of notice. Delivery of the notice will be the same as mailing.

**F.** The following applies to the Commercial Property Coverage Part, the Farm Coverage Part and the Capital Assets Program (Output Policy) Coverage Part:

Paragraphs **f.** and **g.** of the **Mortgageholders Condition** are replaced by the following:

**f. Cancellation**

- (1) If we cancel this policy, we will give written notice to the mortgageholder at least:
  - (a) 10 days before the effective date of cancellation if we cancel for your nonpayment of premium; or
  - (b) 30 days before the effective date of cancellation if we cancel for any other reason.
- (2) If you cancel this policy, we will give written notice to the mortgageholder. With respect to the mortgageholder's interest only, cancellation will become effective on the later of:
  - (a) The effective date of cancellation of the insured's coverage; or
  - (b) 10 days after we give notice to the mortgageholder.

**g. Nonrenewal**

- (1) If we elect not to renew this policy, we will give written notice to the mortgageholder at least 10 days before the expiration date of this policy.
- (2) If you elect not to renew this policy, we will give written notice to the mortgageholder. With respect to the mortgageholder's interest only, nonrenewal will become effective on the later of:
  - (a) The expiration date of the policy; or
  - (b) 10 days after we give notice to the mortgageholder.

**G.** The following provisions apply when the following are made a part of this policy:

Commercial General Liability Coverage Part

Employment-Related Practices Liability Coverage Part

Farm Liability Coverage Form

Liquor Liability Coverage Part

Products/Completed Operations Liability Coverage Part

1. The aggregate limits of this policy as shown in the Declarations will be increased in proportion to any policy extension provided in accordance with Paragraph C.3.d. above.
2. The last sentence of Limits Of Insurance does not apply when the policy period is extended because we sent the first Named Insured an incomplete or late conditional renewal notice or a late non-renewal notice.

STATE OF NEW YORK  
WORKERS' COMPENSATION BOARD

**CERTIFICATE OF NYS WORKERS' COMPENSATION INSURANCE COVERAGE**


<b>1a. Legal Name &amp; Address of Insured (Use street address only)</b> Butternut Crossing, LLC Butternut Crossing Commercial Enterprises, LLC Housing Visions Unlimited, Inc. Syracuse NY 13210  <b>Work Location of Insured (Only required if coverage is specifically limited to certain locations in New York State, i.e., a Wrap-Up Policy)</b>	<b>1b. Business Telephone Number of Insured</b> 315-472-3820  <b>1c. NYS Unemployment Insurance Employer Registration Number of Insured</b> 20 61860  <b>1d. Federal Employer Identification Number of Insured or Social Security Number</b> 161375637
<b>2. Name and Address of the Entity Requesting Proof of Coverage (Entity Being Listed as the Certificate Holder)</b> City of Syracuse Industrial Development Agency 333 West Washington St. Suite 130 Syracuse NY 13202	<b>3a. Name of Insurance Carrier</b> Amtrust Insurance Company of Kansas  <b>3b. Policy Number of entity listed in box "1a"</b> KWC1074480  <b>3c. Policy effective period</b> _____ 1/1/2017 _____ to _____ 1/1/2018 _____  <b>3d. The Proprietor, Partners or Executive Officers are</b> <input checked="" type="checkbox"/> <b>included.</b> (Only check box if all partners/officers included) <input type="checkbox"/> <b>all excluded or certain partners/officers excluded.</b>

This certifies that the insurance carrier indicated above in box "3" insures the business referenced above in box "1a" for workers' compensation under the New York State Workers' Compensation Law. **(To use this form, New York (NY) must be listed under Item 3A on the INFORMATION PAGE of the workers' compensation insurance policy).** The Insurance Carrier or its licensed agent will send this Certificate of Insurance to the entity listed above as the certificate holder in box "2".

*The Insurance Carrier will also notify the above certificate holder within 10 days IF a policy is canceled due to nonpayment of premiums or within 30 days IF there are reasons other than nonpayment of premiums that cancel the policy or eliminate the insured from the coverage indicated on this Certificate. (These notices may be sent by regular mail.) Otherwise, this Certificate is valid for one year after this form is approved by the insurance carrier or its licensed agent, or until the policy expiration date listed in box "3c", whichever is earlier.*

**Please Note: Upon the cancellation of the workers' compensation policy indicated on this form, if the business continues to be named on a permit, license or contract issued by a certificate holder, the business must provide that certificate holder with a new Certificate of Workers' Compensation Coverage or other authorized proof that the business is complying with the mandatory coverage requirements of the New York State Workers' Compensation Law.**

**Under penalty of perjury, I certify that I am an authorized representative or licensed agent of the insurance carrier referenced above and that the named insured has the coverage as depicted on this form.**

Approved by: James D. Freyer, Jr  
(Print name of authorized representative or licensed agent of insurance carrier)  
  
Approved by:  12/15/2017  
(Signature) (Date)  
  
Title: CEO

Telephone Number of authorized representative or licensed agent of insurance carrier: 315-703-3235

**Please Note: Only insurance carriers and their licensed agents are authorized to issue Form C-105.2. Insurance brokers are NOT authorized to issue it.**

## Workers' Compensation Law

### **Section 57. Restriction on issue of permits and the entering into contracts unless compensation is secured.**

1. The head of a state or municipal department, board, commission or office authorized or required by law to issue any permit for or in connection with any work involving the employment of employees in a hazardous employment defined by this chapter, and notwithstanding any general or special statute requiring or authorizing the issue of such permits, shall not issue such permit unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that compensation for all employees has been secured as provided by this chapter. Nothing herein, however, shall be construed as creating any liability on the part of such state or municipal department, board, commission or office to pay any compensation to any such employee if so employed.

2. The head of a state or municipal department, board, commission or office authorized or required by law to enter into any contract for or in connection with any work involving the employment of employees in a hazardous employment defined by this chapter, notwithstanding any general or special statute requiring or authorizing any such contract, shall not enter into any such contract unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that compensation for all employees has been secured as provided by this chapter.

STATE OF NEW YORK  
WORKERS' COMPENSATION BOARD

**CERTIFICATE OF INSURANCE COVERAGE UNDER THE NYS DISABILITY BENEFITS LAW**

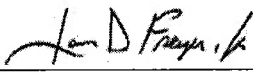
**PART 1. To be completed by Disability Benefits Carrier or Licensed Insurance Agent of that Carrier**

<p>1a. Legal Name and Address of Insured (Use street address only)</p> <p>Butternut Crossing, LLC Butternut Crossing Commercial Enterprises, LLC Housing Visions Unlimited, Inc. Syracuse NY 13210</p>	<p>1b. Business Telephone Number of Insured 315-472-3820</p> <p>1c. NYS Unemployment Insurance Employer Registration Number of Insured 20 61860</p> <p>1d. Federal Employer Identification Number of Insured or Social Security Number 161375637</p>
<p>2. Name and Address of the Entity Requesting Proof of Coverage (Entity Being Listed as the Certificate Holder)</p> <p>City of Syracuse Industrial Development Agency 333 West Washington St. Suite 130 Syracuse NY 13202</p>	<p>3a. Name of Insurance Carrier Hartford Life Insurance</p> <p>3b. Policy Number of entity listed in box "1a": LNY643023</p> <p>3c. Policy effective period: <u>1/1/2018</u> to <u>1/1/2019</u></p>

4. Policy covers:

- a.  All of the employer's employees eligible under the New York Disability Benefits Law
- b.  Only the following class or classes of the employer's employees:

Under penalty of perjury, I certify that I am an authorized representative or licensed agent of the insurance carrier referenced above and that the named insured has NYS Disability Benefits insurance coverage as described above.

Date Signed 12/15/2017 By   
(Signature of insurance carrier's authorized representative or NYS Licensed Insurance Agent of that insurance carrier)

Telephone Number 315-703-3235 Title CEO

**IMPORTANT:** If box "4a" is checked, and this form is signed by the insurance carrier's authorized representative or NYS Licensed Insurance Agent of that carrier, this certificate is COMPLETE. Mail it directly to the certificate holder.  
If box "4b" is checked, this certificate is NOT COMPLETE for purposes of Section 220, Subd. 8 of the Disability Benefits Law. It must be mailed for completion to the Workers' Compensation Board, DB Plans Acceptance Unit, 20 Park Street, Albany, New York 12207.

**PART 2. To be completed by NYS Workers' Compensation Board (Only if box "4b" of Part 1 has been checked)**

**State Of New York  
Workers' Compensation Board**

According to information maintained by the NYS Workers' Compensation Board, the above-named employer has complied with the NYS Disability Benefits Law with respect to all of his/her employees.

Date Signed \_\_\_\_\_ By \_\_\_\_\_  
(Signature of NYS Workers' Compensation Board Employee)

Telephone Number \_\_\_\_\_ Title \_\_\_\_\_

**Please Note:** Only insurance carriers licensed to write NYS disability benefits insurance policies and NYS licensed insurance agents of those insurance carriers are authorized to issue Form DB-120.1. **Insurance brokers are NOT authorized to issue this form.**

## Additional Instructions for Form DB-120.1

By signing this form, the insurance carrier identified in box "3" on this form is certifying that it is insuring the business referenced in box "1a" for disability benefits under the New York State Disability Benefits Law. The Insurance Carrier or its licensed agent will send this Certificate of Insurance to the entity listed as the certificate holder in box "2". *This Certificate is valid for the earlier of one year after this form is approved by the insurance carrier or its licensed agent, or the policy expiration date listed in box "3c".*

Please Note: Upon the cancellation of the disability benefits policy indicated on this form, if the business continues to be named on a permit, license or contract issued by a certificate holder, the business must provide that certificate holder with a new Certificate of NYS Disability Benefits Coverage or other authorized proof that the business is complying with the mandatory coverage requirements of the New York State Disability Benefits Law.

### DISABILITY BENEFITS LAW

#### §220. Subd. 8

(a) The head of a state or municipal department, board, commission or office authorized or required by law to issue any permit for or in connection with any work involving the employment of employees in employment as defined in this article, and notwithstanding any general or special statute requiring or authorizing the issue of such permits, shall not issue such permit unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that the payment of disability benefits for all employees has been secured as provided by this article. Nothing herein, however, shall be construed as creating any liability on the part of such state or municipal department, board, commission or office to pay any disability benefits to any such employee if so employed.

(b) The head of a state or municipal department, board, commission or office authorized or required by law to enter into any contract for or in connection with any work involving the employment of employees in employment as defined in this article, and notwithstanding any general or special statute requiring or authorizing any such contract, shall not enter into any such contract unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that the payment of disability benefits for all employees has been secured as provided by this article.





# EVIDENCE OF COMMERCIAL PROPERTY INSURANCE

DATE (MM/DD/YYYY)  
12/15/2017

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 Haylor, Freyer & Coon, Inc. 231 Salina Meadows Parkway P.O. Box 4743 Syracuse NY 13221		PHONE (A/C, No, Ext): 315-451-1500	COMPANY NAME AND ADDRESS Selective Ins. Co. of New York Selective Insurance Company PO Box 480 Branchville NJ 07826		NAIC NO: 13730
FAX (A/C, No):	E-MAIL ADDRESS: scorbett@haylor.com		IF MULTIPLE COMPANIES, COMPLETE SEPARATE FORM FOR EACH		
CODE:	SUB CODE:		POLICY TYPE		
AGENCY CUSTOMER ID #:			LOAN NUMBER	POLICY NUMBER S2190320	
NAMED INSURED AND ADDRESS Butternut Crossing, LLC Butternut Crossing Commercial Enterprises, LLC Housing Visions Unlimited, Inc. Syracuse, NY 13210			EFFECTIVE DATE 12/09/2017	EXPIRATION DATE 12/09/2018	CONTINUED UNTIL TERMINATED IF CHECKED
ADDITIONAL NAMED INSURED(S)			THIS REPLACES PRIOR EVIDENCE DATED:		

**PROPERTY INFORMATION (ACORD 101 may be attached if more space is required)  BUILDING OR  BUSINESS PERSONAL PROPERTY**

LOCATION / DESCRIPTION  
COMMERCIAL PROPERTY COVERAGE AMOUNT OF INSURANCE: BLANKET BUILDING AND BUSINESS PERSONAL PROPERTY  
See Attached...

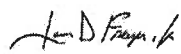
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE 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: \$ 223,022,498		DED: 2,500			
	YES	NO	N/A		
<input checked="" type="checkbox"/> BUSINESS INCOME	<input checked="" type="checkbox"/>			If YES, LIMIT:	<input checked="" type="checkbox"/> Actual Loss Sustained; # of months: 12
<input checked="" type="checkbox"/> RENTAL VALUE	<input checked="" type="checkbox"/>			If YES, indicate value(s) reported on property identified above: \$	
BLANKET COVERAGE	<input checked="" type="checkbox"/>			Attach Disclosure Notice / DEC	
TERRORISM COVERAGE		<input checked="" type="checkbox"/>		IN 01 32 01 16	
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"/>			CP 01 64 03 09 NY Changes - Fungus, Wet & Dry Rot	
REPLACEMENT COST	<input checked="" type="checkbox"/>			Historic restoration applies where required	
AGREED VALUE	<input checked="" type="checkbox"/>				
COINSURANCE		<input checked="" type="checkbox"/>		If YES, %	
EQUIPMENT BREAKDOWN (If Applicable)	<input checked="" type="checkbox"/>			If YES, LIMIT: \$223,022,498	DED: \$2,500
ORDINANCE OR LAW - Coverage for loss to undamaged portion of bldg	<input checked="" type="checkbox"/>			If YES, LIMIT: \$223,022,498	DED: \$2,500
- Demolition Costs	<input checked="" type="checkbox"/>			If YES, LIMIT:	DED:
- Incr. Cost of Construction	<input checked="" type="checkbox"/>			If YES, LIMIT:	DED:
EARTH MOVEMENT (If Applicable)			<input checked="" type="checkbox"/>	If YES, LIMIT:	DED:
FLOOD (If Applicable)			<input checked="" type="checkbox"/>	If YES, LIMIT:	DED:
WIND / HAIL INCL <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Subject to Different Provisions:	<input checked="" type="checkbox"/>			If YES, LIMIT:	DED:
NAMED STORM INCL <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Subject to Different Provisions:	<input checked="" type="checkbox"/>			If YES, LIMIT:	DED:
PERMISSION TO WAIVE SUBROGATION IN FAVOR OF MORTGAGE HOLDER PRIOR TO LOSS	<input checked="" type="checkbox"/>				

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

**ADDITIONAL INTEREST**

CONTRACT OF SALE	LENDER'S LOSS PAYABLE <input checked="" type="checkbox"/>	LOSS PAYEE	LENDER SERVICING AGENT NAME AND ADDRESS
MORTGAGEE	<input checked="" type="checkbox"/> Additional Insured		
NAME AND ADDRESS City of Syracuse Industrial Development Agency 333 West Washington St. Suite 130 Syracuse NY 13202			AUTHORIZED REPRESENTATIVE 

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AGENCY CUSTOMER ID: \_\_\_\_\_

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



## ADDITIONAL REMARKS SCHEDULE

Page 1 of 1

AGENCY Haylor, Freyer & Coon, Inc.		NAMED INSURED Butternut Crossing, LLC Butternut Crossing Commercial Enterprises, LLC Housing Visions Unlimited, Inc. Syracuse, NY 13210	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

### ADDITIONAL REMARKS

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,**  
**FORM NUMBER: 28 FORM TITLE: EVIDENCE OF COMMERCIAL PROPERTY INSURANCE**

#### REMARKS

Property Coverage includes Property under Renovation and/or Construction, including Hard and Soft Costs and Debris Removal.

#### Locations:

- 1) 808-810 Butternut St., Syracuse, NY 13208
- 2) 1116-1120 Butternut St., Syracuse, NY 13208
- 3) 1117-1123 Butternut St. Bldg #1, Syracuse, NY 13208
- 4) 1117-1123 Butternut St. Bldg #2, Syracuse, NY 13208
- 5) 1230-1232 Butternut St., Syracuse, NY 13208
- 6) 1234-1236 Butternut St., Syracuse, NY 13208
- 7) 1227-1229 Butternut St., Syracuse, NY 13208
- 8) 618-620 North Townsend St., Syracuse, NY 13203
- 9) 700 North Townsend St., Syracuse, NY 13203

#### LOCATION/DESCRIPTION

Property Coverage includes Property under Renovation and/or Construction, including Hard and Soft Costs and Debris Removal.

# NEW YORK CHANGES — CANCELLATION AND NONRENEWAL

IL 02 68 01 14

## THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART  
COMMERCIAL GENERAL LIABILITY COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
CRIME AND FIDELITY COVERAGE PART  
EQUIPMENT BREAKDOWN COVERAGE PART  
FARM COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

- A. Paragraphs 1., 2., 3. and 5. of the Cancellation Common Policy Condition are replaced by the following:
1. The first Named Insured shown in the Declarations may cancel this entire policy by mailing or delivering to us advance written notice of cancellation.
  2. **Cancellation Of Policies In Effect**
    - a. **60 Days Or Less**

We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:

      - (1) 30 days before the effective date of cancellation if we cancel for any reason not included in Paragraph A.2.b. below.
      - (2) 15 days before the effective date of cancellation if we cancel for any of the reasons included in Paragraph A.2.b. below.
    - b. **For More Than 60 Days**

If this policy has been in effect for more than 60 days, or if this policy is a renewal or continuation of a policy we issued, we may cancel only for any of the reasons listed below, provided we mail the first Named Insured written notice at least 15 days before the effective date of cancellation:

      - (1) Nonpayment of premium, provided however, that a notice of cancellation on this ground shall inform the first Named Insured of the amount due;
      - (2) Conviction of a crime arising out of acts increasing the hazard insured against;
      - (3) Discovery of fraud or material misrepresentation in the obtaining of the policy or in the presentation of a claim;
- (4) After issuance of the policy or after the last renewal date, discovery of an act or omission, or a violation of any policy condition, that substantially and materially increases the hazard insured against, and which occurred subsequent to inception of the current policy period;
  - (5) Material physical change in the property insured, occurring after issuance or last annual renewal anniversary date of the policy, which results in the property becoming uninsurable in accordance with our objective, uniformly applied underwriting standards in effect at the time the policy was issued or last renewed; or material change in the nature or extent of the risk, occurring after issuance or last annual renewal anniversary date of the policy, which causes the risk of loss to be substantially and materially increased beyond that contemplated at the time the policy was issued or last renewed;
  - (6) Required pursuant to a determination by the Superintendent that continuation of our present premium volume would jeopardize our solvency or be hazardous to the interest of our policyholders, our creditors or the public;
  - (7) A determination by the Superintendent that the continuation of the policy would violate, or would place us in violation of, any provision of the Insurance Code; or

(8) Where we have reason to believe, in good faith and with sufficient cause, that there is a probable risk of danger that the insured will destroy, or permit to be destroyed, the insured property for the purpose of collecting the insurance proceeds. If we cancel for this reason, you may make a written request to the Department of Financial Services, within 10 days of receipt of this notice, to review our cancellation decision. Also, we will simultaneously send a copy of this cancellation notice to the Department of Financial Services.

3. We will mail or deliver our notice, including the reason for cancellation, to the first Named Insured at the address shown in the policy and to the authorized agent or broker.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata.

However, when the premium is advanced under a premium finance agreement, the cancellation refund will be pro rata. Under such financed policies, we will be entitled to retain a minimum earned premium of 10% of the total policy premium or \$60, whichever is greater. The cancellation will be effective even if we have not made or offered a refund.

B. The following is added to the **Cancellation Common Policy Condition**:

7. If one of the reasons for cancellation in Paragraph **A.2.b.** or **D.2.b.(2)** exists, we may cancel this entire policy, even if the reason for cancellation pertains only to a new coverage or endorsement initially effective subsequent to the original issuance of this policy.

C. The following conditions are added:

**1. Nonrenewal**

If we decide not to renew this policy we will send notice as provided in Paragraph **C.3.** below.

**2. Conditional Renewal**

If we conditionally renew this policy subject to:

- a. A change of limits;
- b. A change in type of coverage;
- c. A reduction of coverage;
- d. An increased deductible;
- e. An addition of exclusion; or

- f. Increased premiums in excess of 10%, exclusive of any premium increase due to and commensurate with insured value added or increased exposure units; or as a result of experience rating, loss rating, retrospective rating or audit;

we will send notice as provided in Paragraph **C.3.** below.

**3. Notices Of Nonrenewal And Conditional Renewal**

- a. If we decide not to renew this policy or to conditionally renew this policy as provided in Paragraphs **C.1.** and **C.2.** above, we will mail or deliver written notice to the first Named Insured shown in the Declarations at least 60 but not more than 120 days before:

(1) The expiration date; or

(2) The anniversary date if this is a continuous policy.

- b. Notice will be mailed or delivered to the first Named Insured at the address shown in the policy and to the authorized agent or broker. If notice is mailed, proof of mailing will be sufficient proof of notice.

- c. Notice will include the specific reason(s) for nonrenewal or conditional renewal, including the amount of any premium increase for conditional renewal and description of any other changes.

- d. If we violate any of the provisions of Paragraph **C.3.a., b.** or **c.** above by sending the first Named Insured an incomplete or late conditional renewal notice or a late non-renewal notice:

(1) And if notice is provided prior to the expiration date of this policy, coverage will remain in effect at the same terms and conditions of this policy at the lower of the current rates or the prior period's rates until 60 days after such notice is mailed or delivered, unless the first Named Insured, during this 60-day period, has replaced the coverage or elects to cancel;

(2) And if the notice is provided on or after the expiration date of this policy, coverage will remain in effect at the same terms and conditions of this policy for another policy period, at the lower of the current rates or the prior period's rates, unless the first Named Insured, during this additional policy period, has replaced the coverage or elects to cancel.

- e. If you elect to renew on the basis of a late conditional renewal notice, the terms, conditions and rates set forth in such notice shall apply:
    - (1) Upon expiration of the 60-day period, unless Subparagraph (2) below applies; or
    - (2) Notwithstanding the provisions in Paragraphs d.(1) and d.(2), as of the renewal date of the policy if the conditional renewal notice was sent at least 30 days prior to the expiration or anniversary date of the policy.
  - f. We will not send you notice of nonrenewal or conditional renewal if you, your authorized agent or broker or another insurer of yours mails or delivers notice that the policy has been replaced or is no longer desired.
- D. The following provisions apply when the Commercial Property Coverage Part, the Farm Coverage Part or the Capital Assets Program (Output Policy) Coverage Part is made a part of this policy:
1. Items D.2. and D.3. apply if this policy meets the following conditions:
    - a. The policy is issued or issued for delivery in New York State covering property located in this state; and
    - b. The policy insures:
      - (1) For loss of or damage to structures, other than hotels or motels, used predominantly for residential purposes and consisting of no more than four dwelling units; or
      - (2) For loss of or damage to personal property other than farm personal property or business property; or
      - (3) Against damages arising from liability for loss of, damage to or injury to persons or property, except liability arising from business or farming; and
    - c. The portion of the annual premium attributable to the property and contingencies described in 1.b. exceeds the portion applicable to other property and contingencies.
  2. Paragraph 2. of the **Cancellation Common Policy Condition** is replaced by the following:
    2. **Procedure And Reasons For Cancellation**
      - a. We may cancel this entire policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
        - (1) 15 days before the effective date of cancellation if we cancel for nonpayment of premium, provided however, that a notice of cancellation on this ground shall inform the first Named Insured of the amount due; or
        - (2) 30 days before the effective date of cancellation if we cancel for any other reason.
- b. But if this policy:
    - (1) Has been in effect for more than 60 days; or
    - (2) Is a renewal of a policy we issued; we may cancel this policy only for one or more of the following reasons:
      - (1) Nonpayment of premium, provided however, that a notice of cancellation on this ground shall inform the first Named Insured of the amount due;
      - (2) Conviction of a crime arising out of acts increasing the risk of loss;
      - (3) Discovery of fraud or material misrepresentation in obtaining the policy or in making a claim;
      - (4) Discovery of willful or reckless acts or omissions increasing the risk of loss;
      - (5) Physical changes in the covered property that make that property uninsurable in accordance with our objective and uniformly applied underwriting standards in effect when we:
        - (a) Issued the policy; or
        - (b) Last voluntarily renewed the policy;
      - (6) The Superintendent of Financial Services' determination that continuing the policy would violate Chapter 28 of the Insurance Law; or
      - (7) Required pursuant to a determination by the Superintendent of Financial Services that the continuation of our present premium volume would be hazardous to the interests of our policyholders, our creditors or the public.

3. The following are added:

**a. Conditional Continuation**

Instead of cancelling this policy, we may continue it on the condition that:

- (1) The policy limits be changed; or
- (2) Any coverage not required by law be eliminated.

If this policy is conditionally continued, we will mail or deliver to the first Named Insured written notice at least 20 days before the effective date of the change or elimination. We will mail or deliver our notice to the first Named Insured's last mailing address known to us. If notice is mailed, proof of mailing will be sufficient proof of notice. Delivery of the notice will be the same as mailing.

**b. Nonrenewal**

If, as allowed by the laws of New York State, we:

- (1) Do not renew this policy; or
- (2) Condition policy renewal upon:
  - (a) Change of limits; or
  - (b) Elimination of coverage;

we will mail or deliver written notice of non-renewal or conditional renewal:

- (a) At least 45 days; but
- (b) Not more than 60 days;

before the expiration date of the policy. We will mail or deliver our notice to the first Named Insured's last mailing address known to us. If notice is mailed, proof of mailing will be sufficient proof of notice. Delivery of the notice will be the same as mailing.

E. The following is added to the Farm Property - Other Farm Provisions Form - Additional Coverages, Conditions, Definitions, the Commercial Property Coverage Part and the Capital Assets Program (Output Policy) Coverage Part:

When the property is subject to the Anti-arson Application in accordance with New York Department of Financial Services' Insurance Regulation No. 96, the following provisions are added:

If you fail to return the completed, signed and affirmed anti-arson application to us:

1. Or our broker or agent within 45 days of the effective date of a new policy, we will cancel the entire policy by giving 20 days' written notice to you and to the mortgageholder shown in the Declarations.

2. Before the expiration date of any policy, we will cancel the policy by giving written notice to you and to the mortgageholder shown in the Declarations at least 15 days before the effective date of cancellation.

The cancellation provisions set forth in E.1. and E.2. above supersede any contrary provisions in this policy including this endorsement.

If the notice in E.1. or E.2. above is mailed, proof of mailing will be sufficient proof of notice. Delivery of the notice will be the same as mailing.

F. The following applies to the Commercial Property Coverage Part, the Farm Coverage Part and the Capital Assets Program (Output Policy) Coverage Part:

Paragraphs f. and g. of the Mortgageholders Condition are replaced by the following:

**f. Cancellation**

- (1) If we cancel this policy, we will give written notice to the mortgageholder at least:
  - (a) 10 days before the effective date of cancellation if we cancel for your nonpayment of premium; or
  - (b) 30 days before the effective date of cancellation if we cancel for any other reason.
- (2) If you cancel this policy, we will give written notice to the mortgageholder. With respect to the mortgageholder's interest only, cancellation will become effective on the later of:
  - (a) The effective date of cancellation of the insured's coverage; or
  - (b) 10 days after we give notice to the mortgageholder.

**g. Nonrenewal**

- (1) If we elect not to renew this policy, we will give written notice to the mortgageholder at least 10 days before the expiration date of this policy.
- (2) If you elect not to renew this policy, we will give written notice to the mortgageholder. With respect to the mortgageholder's interest only, nonrenewal will become effective on the later of:
  - (a) The expiration date of the policy; or
  - (b) 10 days after we give notice to the mortgageholder.

- G. The following provisions apply when the following are made a part of this policy:

Commercial General Liability Coverage Part

Employment-Related Practices Liability Coverage Part

Farm Liability Coverage Form

Liquor Liability Coverage Part

Products/Completed Operations Liability Coverage Part

1. The aggregate limits of this policy as shown in the Declarations will be increased in proportion to any policy extension provided in accordance with Paragraph C.3.d. above.
2. The last sentence of Limits Of Insurance does not apply when the policy period is extended because we sent the first Named Insured an incomplete or late conditional renewal notice or a late non-renewal notice.

---

**MERCHANTS MUTUAL INSURANCE COMPANY**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**GENERAL LIABILITY FOLLOW FORM ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**COMMERCIAL LIABILITY UMBRELLA COVERAGE PART**

The following supersedes any provisions to the contrary.

It is agreed that with respect to Commercial General Liability, this insurance does not apply unless the liability is covered:

- A. By valid and collectible underlying insurance as shown in the Schedule of Underlying Insurance; and
- B. Only for such hazards which are covered by the underlying Commercial General Liability Insurance.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY  
AGAINST OTHERS TO US**

This endorsement modifies insurance provided under the following:

COMMERCIAL LIABILITY UMBRELLA COVERAGE PART

**SCHEDULE**

**Name Of Person Or Organization:**

AS REQUIRED BY WRITTEN CONTRACT AND PROVIDED BY THE UNDERLYING  
INSURANCE .

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

The **Transfer Of Rights Of Recovery Against Others To Us** Condition under **Section IV - Conditions** is amended by the addition of the following:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

**Merchants Mutual Insurance Company**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**Primary and Non-Contributing Insurance**  
**(Third Party)**

This endorsement forms a part of the Policy to which attached, effective on the inception date of the Policy unless otherwise stated herein. (The following information is required only when this endorsement is issued subsequent to preparation of the Policy.)

INSURED: HOUSING VISIONS UNLIMITED INC

ENDORSEMENT EFFECTIVE: 12/09/17

(12:01 a.m.)

This endorsement modifies insurance provided under the following:

**COMMERCIAL LIABILITY UMBRELLA COVERAGE FORM**

Section IV Conditions, item 5, Other Insurance and all sub-parts thereof, is deleted and replaced with the following as respects the Additional Insured shown below:

**Section IV - Conditions**

**5. Other Insurance**

With respect to the Additional Insured shown below, the insurance provided by this policy is excess only over such coverage as is provided the Additional Insured by "underlying insurance" listed in the schedule of "underlying insurance" of this policy. No other insurance available to the Additional Insured shall be primary to or contributory with this insurance. Rather, any such other insurance shall be considered excess of the insurance provided by this policy.

The Third Party to whom this endorsement applies is:

**AS REQUIRED BY WRITTEN CONTRACT AND PROVIDED BY THE UNDERLYING INSURANCE.**

Absence of a specifically named Third Party above means that the provisions of this endorsement apply as required by written contractual agreement with any Third Party for whom you are performing work.

All other terms and conditions of this policy remain the same.

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## ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT

**THIS ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT** (the “*Agreement*”) is made as of December 1, 2017, **BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC** (the “*Indemnitor*” or the “*Company*”), for the benefit of the **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY** (the “*Agency*”).

### RECITALS

**WHEREAS**, the Agency has undertaken at the request of the Indemnitor, a project (the “*Project*”) consisting of: (A)(i) the acquisition of an interest in all or a portion of an approximate .224 acre parcel of improved real property located at 618-620 North Townsend Street, in the City of Syracuse, New York, as more fully described on Schedule A annexed hereto (the “*Land*”); (ii) the construction of approximately 3,870 square feet of commercial space on the first floor (the 3,870 square feet of commercial space being referred to herein as the “*Commercial Space*” or the “*Facility*”) which is part of a larger approximately 16,400 square foot building being constructed for use as an affordable housing complex, all located on the Land; (iii) the acquisition and installation in the Facility of furniture, fixtures and equipment (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

**NOW, THEREFORE**, in consideration of the premises, Ten Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Indemnitor, intending to be legally bound, hereby agrees as follows:

1. **Recitals; Definitions.**

(a) The foregoing recitals are incorporated into this Agreement by this reference.

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

2. **Representations and Warranties.**

(a) Except as disclosed in Schedule B annexed hereto, Indemnitor represents and warrants that it has no knowledge of any deposit, storage, disposal, burial, discharge, spillage, uncontrolled loss, seepage or filtration of oil, petroleum or chemical liquids or solids, liquid or gaseous products or any hazardous wastes or hazardous substances (collectively,

“**Hazardous Substances**”), as those terms are used in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or in any other federal, state or local law governing hazardous substances, as such laws may be amended from time to time (collectively, the “**Hazardous Waste Laws**”), at, upon, under or within the Project Facility or any contiguous real estate, and (ii) it has not caused or permitted to occur, and shall not permit to exist, any condition which may cause a discharge of any Hazardous Substances at, upon, under or within the Project Facility or on any contiguous real estate.

(b) Except as disclosed in the reports listed on Schedule B annexed hereto, Indemnitor further represents and warrants that (i) it has not been nor will be involved in operations at or near the Project Facility which operations could lead to (A) the imposition of liability on Indemnitor or on any subsequent or former owner of the Project Facility or (B) the creation of a lien on the Project Facility under the Hazardous Waste Laws or under any similar laws or regulations; and (ii) it has not permitted, and will not permit, any tenant or occupant of the Project Facility to engage in any activity that could impose liability under the Hazardous Waste Laws on such tenant or occupant, on Agency, the Indemnitor or on any other owner of any of the Project Facility.

### 3. Covenants.

(a) Indemnitor shall comply strictly and in all respects with the requirements of the Hazardous Waste Laws and related regulations and with all similar laws and regulations and shall notify Agency immediately in the event of any discharge or discovery of any Hazardous Substance at, upon, under or within the Project Facility which is not otherwise already disclosed in Schedule B. Indemnitor shall promptly forward to Agency copies of all orders, notices, permits, applications or other communications and reports in connection with any discharge or the presence of any Hazardous Substance or any other matters relating to the Hazardous Waste Laws or any similar laws or regulations, as they may affect the Project Facility.

(b) Promptly upon the written request of Agency, Indemnitor shall provide Agency, at Indemnitor’s expense, with an environmental site assessment or environmental audit report prepared by an environmental engineering firm acceptable to the requesting Person, to assess with a reasonable degree of certainty the presence or absence of any Hazardous Substances and the potential costs in connection with abatement, cleanup or removal of any Hazardous Substances found on, under, at or within the Project Facility.

### 4. Indemnity.

(a) Indemnitor shall at all times indemnify and hold harmless Agency against and from any and all claims, suits, actions, debts, damages, costs, losses, obligations, judgments, charges, and expenses, of any nature whatsoever suffered or incurred by Agency, whether as contract vendor, owner, mortgagee, as mortgagee in possession, or as successor-in-interest to Indemnitor by foreclosure deed or deed in lieu of foreclosure, under or on account of the Hazardous Waste Laws or any similar laws or regulations, including the assertion of any lien thereunder, with respect to:

(1) any discharge of Hazardous Substances, the threat of a discharge of any Hazardous Substances, or the presence of any Hazardous Substances affecting the Project Facility whether or not the same originates or emanates from the Project Facility or any contiguous real estate including any loss of value of the Project Facility as a result of any of the foregoing;

(2) any costs of removal or remedial action incurred by the United States Government or any costs incurred by any other person or damages from injury to, destruction of, or loss of natural resources, including reasonable costs of assessing such injury, destruction or loss incurred pursuant to any Hazardous Waste Laws;

(3) liability for personal injury or property damage arising under any statutory or common law tort theory, including, without limitation, damages assessed for the maintenance of a public or private nuisance or for the carrying on of an abnormally dangerous activity at or near the Project Facility; and/or

(4) any other environmental matter affecting the Project Facility within the jurisdiction of the Environmental Protection Agency, any other federal agency, or any state or local agency.

The obligations of Indemnitor under this Agreement shall arise whether or not the Environmental Protection Agency, any other federal agency or any state or local agency has taken or threatened any action in connection with the presence of any Hazardous Substances.

(b) In the event of any discharge of Hazardous Substances, the threat of a discharge of any Hazardous Substances, or the presence of any Hazardous Substances affecting the Project Facility, whether or not the same originates or emanates from the Project Facility or any contiguous real estate, and/or if Indemnitor shall fail to comply with any of the requirements of the Hazardous Waste Laws or related regulations or any other environmental law or regulation, Agency may at its election, but without the obligation so to do, give such notices and/or cause such work to be performed at the Project Facility and/or take any and all other actions as Agency shall deem necessary or advisable in order to abate the discharge of any Hazardous Substance, remove the Hazardous Substance or cure the noncompliance of Indemnitor.

(c) Indemnitor acknowledges that Agency has relied upon the representations, warranties, covenants and indemnities of Indemnitor in this Agreement. All of the representations, warranties, covenants and indemnities of this Agreement shall survive the repayment of Indemnitor's obligations under the Agency Lease or other Company Documents.

5. **Attorney's Fees.** If Agency retains the services of any attorney in connection with the subject of the indemnity herein, Indemnitor shall pay Agency's costs and reasonable attorneys' fees thereby incurred. Agency may employ an attorney of its own choice.

6. **Interest.** In the event that Agency incurs any obligations, costs or expenses under this Agreement, Indemnitor shall pay such Person immediately on demand, and if such payment

is not received within ten (10) days, interest on such amount shall, after the expiration of the ten-day period, accrue at the interest rate set forth in the Agency Lease until such amount, plus interest, is paid in full.

7. **No Waiver.** Notwithstanding any terms of the Company Documents to the contrary, the liability of Indemnitor under this Agreement shall in no way be limited or impaired by: (i) any extensions of time for performance required by any of the Company Documents; (ii) any sale, assignment or foreclosure of the Agency Lease or any sale or transfer of all or part of the Project Facility; (iii) the accuracy or inaccuracy of the representations and warranties made by Indemnitor under any of the Company Documents; or (iv) the release of Indemnitor or any other person from performance or observance of any of the agreements, covenants, terms or conditions contained in the Company Documents by operation of law, Agency's voluntary act, or otherwise; and, in any such case, whether with or without notice to Indemnitor and with or without consideration.

8. **Waiver by Indemnitor.** Indemnitor waives any right or claim of right to cause a marshalling of Indemnitor's assets or to cause Agency to proceed against any of the security for the Agency Lease before proceeding under this Agreement against Indemnitor or to proceed against Indemnitor in any particular order; Indemnitor agrees that any payments required to be made hereunder shall become due on demand; Indemnitor expressly waives and relinquishes all rights and remedies (including any rights of subrogation) accorded by applicable law to indemnitors or guarantors.

9. **Releases.** Any one or more of Indemnitor and any other party liable upon or in respect of this Agreement or the Agency Lease may be released without affecting the liability of any party not so released.

10. **Amendments.** No provision of this Agreement may be changed, waived, discharged or terminated orally, by telephone or by any other means except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

11. **Joint and Several Liability.** In the event that this Agreement is executed by more than one party as Indemnitor, the liability of such parties is joint and several. A separate action or actions may be brought and prosecuted against each Indemnitor, whether or not an action is brought against any other person or whether or not any other person is joined in such action or actions.

12. **Consent to Jurisdiction.** Indemnitor consents to the exercise of personal jurisdiction over Indemnitor by any federal or state court in the State of New York and consent to the laying of venue in any jurisdiction or locality in the City of Syracuse. Service shall be effected by any means permitted by the court in which any action is filed.

13. **Notices.** All notices, certificates, and other communications hereunder shall be in writing, shall be sufficiently given, and shall be deemed given when (a) sent to the applicable address stated below by registered or certified mail, return receipt requested, and actually received by the intended recipient or by overnight courier or such other means as shall

provide the sender with documentary evidence of such delivery, or (b) delivery is refused by the addressee as evidenced by the affidavit of the Person who attempted to effect such delivery. The addresses to which notices, certificates, and other communications hereunder shall be delivered are as follows:

(a) If to the Agency, to:

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

With a copy to:

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

(b) To the Company:

Butternut Crossing Commercial Enterprises, LLC  
1201 East Fayette Street, Suite 26  
Syracuse, New York 13210  
Attn: Rebecca C. Newman

With a copy to:

Bousquet Holstein, PLLC  
110 West Fayette Street  
One Lincoln Center  
Syracuse, New York 13202  
Attn: Paul Predmore, 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.

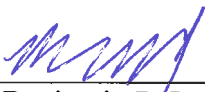
[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

**BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC**

By: HV Consultants Holding Co., LLC, Manager

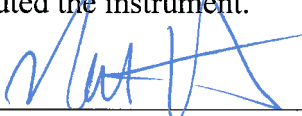
By: Housing Visions Consultants, Inc., Manager

By:   
Benjamin P. Lockwood, Vice President

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

On the 21 day of December, in the year 2017 before me, the undersigned, a notary public in and for said state, personally appeared **Benjamin P. Lockwood**, 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.

Natalie Patricia Hempson  
Notary Public in the State of New York  
Qualified in Onondaga County No. 02HE6203928  
My Commission Expires April 13, 2021

  
Notary Public

**SCHEDULE "A"**  
**LEGAL DESCRIPTION**

**618-620 North Townsend Street: Tax Parcel Number 017.-08-22.1 (UNIT 1)**

The Unit designated as **Unit No. 1** in the Declaration comprising **BUTTERNUT CROSSING CONDOMINIUM** located in the City of Syracuse, County of Onondaga, New York, (hereinafter called the "**Property**"), made by Housing Visions Consultants, Inc. under the Condominium Act of the State of New York, as amended (Article 9-B of the Real Property Law of the State of New York), dated December 21st, 2017 and recorded in the office of the County Clerk of Onondaga County on the 22<sup>nd</sup> day of December, 2017 as Instrument Number **2017-00041870** (hereinafter called the "**Declaration**," ) which Unit is also designated as Unit 1, on page A1.1 of the Construction Drawings for **Butternut Crossing 618-620 N. Townsend Street, Syracuse** as certified and prepared by Holmes King Kallquist & Associates, Architects, and filed simultaneously with said Declaration in the Office of the County Clerk of Onondaga County (hereinafter called the "**Unit**"), together with others with the use of the Common Elements, as defined in said Declaration. The appurtenant interests of Unit 1 in the Common Elements is 29.5%. The land area of the Property is described as follows:

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Syracuse, County of Onondaga, State of New York being Lot 12 & part of Lot 11 of City Block 275D and being more particularly bounded and described as follows: Beginning at a point in the easterly line of North Townsend Street at the intersection of the southerly line of East Laurel Street thence North 59 deg. 25 min. 40 sec. East along the said southerly line of East Laurel Street, a distance of 79.50 feet to a point; thence South 30 deg. 32 min. 30 sec. East a distance of 50.00 feet to a point; thence North 59 deg. 25 min. 40 sec. East a distance of 36.00 feet to a point thence South 30 deg. 32 min. 30 sec. East a distance of 50.00 feet to a point; thence South 59 deg. 25 min. 40 sec. West a distance of 115.50 feet to a point in the said easterly line of North Townsend Street thence North 30 deg. 32 min. 30 sec. West along said easterly line of North Townsend Street, a distance of 100.00 feet to the point of beginning.

## **SCHEDULE "B"**

### **EXCEPTIONS**

Except as disclosed on the Phase I Environmental Site Assessment Update dated November 2017 prepared by Synapse Property Resources. A copy of which is on file with the Agency.

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## CLOSING RECEIPT

### CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY LEASE/SUBLEASE TRANSACTION BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC

**CLOSING RECEIPT** executed December 21, 2017 by the City of Syracuse Industrial Development Agency (the “*Agency*”) and **BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC** (the “*Company*”) in connection with a certain project (the “*Project*”) consisting of: (A)(i) the acquisition of an interest in all or a portion of an approximate .224 acre parcel of improved real property located at 618-620 North Townsend Street, in the City of Syracuse, New York (the “*Land*”); (ii) the construction of approximately 3,870 square feet of commercial space on the first floor (the 3,870 square feet of commercial space being referred to herein as the “*Commercial Space*” or the “*Facility*”) which is part of a larger approximately 16,400 square foot building being constructed for use as an affordable housing complex, all located on the Land; (iii) the acquisition and installation in the Facility of furniture, fixtures and equipment (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

#### 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

**BUTTERNUT CROSSING COMMERCIAL  
ENTERPRISES, LLC**

By: HV Consultants Holding Co., LLC, Manager

By: Housing Visions Consultants, Inc., Manager

By: 

Benjamin P. Lockwood, Vice President



**11**

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

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December 1, 2017

Butternut Crossing Commercial Enterprises, LLC  
1201 East Fayette Street, Suite 26  
Syracuse, New York 13210  
Attn: Rebecca C. Newman

Re: City of Syracuse Industrial Development Agency  
Butternut Crossing Commercial Enterprises, LLC  
Butternut Crossing Project  
Sales Tax Appointment Letter

Dear Ms. Newman:

Pursuant to a resolution duly adopted on November 19, 2015, the City of Syracuse Industrial Development Agency (the “**Agency**”) appointed Butternut Crossing Commercial Enterprises, 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 all or a portion of an approximate .224 acre parcel of improved real property located at 618-620 North Townsend Street, in the City of Syracuse, New York (the “**Land**”); (ii) the construction of approximately 3,870 square feet of commercial space on the first floor (the 3,870 square feet of commercial space being referred to herein as the “**Commercial Space**” or the “**Facility**”) which is part of a larger approximately 16,400 square foot building being constructed for use as an affordable housing complex, all located on the Land; (iii) the acquisition and installation in the Facility of furniture, fixtures and equipment (the “**Equipment**” and together with the Land and the Facility, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (the “**Financial Assistance**”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement. The amount of State and local sales and use tax exemption benefits comprising the

December 1, 2017

Page 2

Financial Assistance approved by the Agency for the benefit of the Project shall not exceed **\$32,972**.

This appointment includes, and this letter evidences, authority to purchase on behalf of the Agency all materials to be incorporated into and made an integral part of the Project Facility and the following activities as they relate to any construction, improvement, equipping and completion of any of any buildings, whether or not any materials, equipment or supplies described below are incorporated into or become an integral part of such buildings: (1) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with construction, improvement and equipping; (2) all purchases, rentals, uses or consumption of supplies, materials, utilities and services of every kind and description used in connection with construction, improvement and equipping; and (3) all purchases, leases, rentals and uses of equipment, machinery and other tangible personal property (including installation costs), installed or placed in, upon or under such building or facility, including all repairs and replacements of such property, and with respect to such specific purchases or rentals, are exempt from any sales or use tax imposed by the State of New York or any governmental instrumentality located within the State of New York.

This agency appointment includes the power to delegate such agency, in whole or in part, to a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (collectively, "***Additional Agents***"). Additional Agents must be specifically appointed by the Company in accordance and compliance with the terms of the Agency Lease dated as of December 1, 2017 by and between the Agency and the Company (the "***Agency Lease***"). The Company hereby agrees to complete "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (Form ST-60) for itself and each Additional Agent who provide materials, equipment, supplies or services to the Project Facility and deliver said form to the Agency within fifteen (15) days of appointment such that the Agency can execute and deliver said form to the State Department of Taxation and Finance within thirty (30) days of appointment. The Agency's obligation to execute any Form ST-60 relative to an Additional Agent is subject to the satisfaction of the conditions in the Agency Lease relative to such appointments.

The Company agrees, whenever requested by the Agency, to provide, or cause its Additional Agents to provide and certify, or cause to be certified, such information regarding use of local labor, job creation, exemptions from State and local sales and use tax, real property taxes and mortgage recording taxes and other topics as the Agency from time to time reasonably considers necessary or appropriate, including, but not limited to, such information as to enable the Agency to make any reports required by law or governmental regulation, including but not limited to those required by §875 of the Act.

The Company acknowledges and agrees that pursuant to Section 875(3) of the Act, and in conjunction with the Agency's Recapture of Benefits Policy (the "***Recapture Policy***") dated as of June 21, 2016 and the Project Agreement between the Agency and the Company dated as of December 1, 2017, the Agency shall, and in some circumstances may, recover, recapture, receive

December 1, 2017

Page 3

or otherwise obtain from the Company some or all of the Financial Assistance (the "**Recapture Amount**").

Each supplier or vendor should identify the Project Facility on each bill or invoice and indicate thereon which of the Company or its Additional Agents acted as agent for the Agency in making the purchase.

In order to be entitled to use this exemption, you and each Additional Agent should present to the supplier or other vendor of materials for the Project Facility, a completed "IDA Agent or Project Operator Exempt Purchase Certificate" (Form ST-123).

In addition, General Municipal Law §874(8) requires you to file an Annual Statement with the New York State Department of Taxation and Finance ("**NYSDTF**") on "Annual Report of Sales and Use Tax Exemptions" (Form ST-340) regarding the value of sales and use tax exemptions you and your Additional Agents have claimed pursuant to the agency we have conferred on you with respect to this Project. The penalty for failure to file such statement is the removal of your authority to act as our agent. In addition, you must provide a copy of the completed Form ST-340 to the Agency within ten (10) days of the date it is due to be filed with the NYSDTF.

The agency created by this letter is limited to the Project Facility and will expire on the earlier of: (i) sixty (60) days after the issuance of a certificate of occupancy or similar document by the applicable municipality in which the Project Facility is located; or (i) **August 31, 2019**; unless the Agency Lease is terminated early in accordance with its terms in which case this appointment shall terminate at that time.

This letter is provided for the sole purpose of evidencing, in part, the exemption from New York State Sales and Use Taxes **for this project only**. No other principal/agent relationship is intended or may be implied or inferred by this letter.

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

Very truly yours

CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY

By:

  
William M. Ryan, Chairman

**12**

BARCLAY DAMON<sup>LLP</sup>

Susan R. Katzoff  
Partner

December 28, 2017

VIA CERTIFIED MAIL  
7017 1450 0000 0413 1585

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  
Butternut Crossing Commercial Enterprises, LLC  
(Butternut Crossing Commercial Enterprises, LLC Project)  
IDA Project No. 31021714

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 Butternut Crossing Commercial Enterprises, 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:ilm  
Enclosure



# 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 19-8) 31021714	
Street address 201 East Washington Street, 7th Floor		Telephone number (315) 448-8127	
City Syracuse		State NY	ZIP code 13202
Name of IDA project operator or agent Butternut Crossing Commercial Enterprises, LLC		Mark an X in the box if directly appointed by the IDA: <input type="checkbox"/>	Employer identification or social security number 82-2889906
Street address 1201 East Fayette Street		Telephone number (315) 472-3820	Primary operator or agent? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
City Syracuse		State NY	ZIP code 13202
Name of project Butternut Crossing Commercial Enterprises, LLC Project		Purpose of project (see instructions) other - commercial	
Street address of project site 618-620 North Townsend Street			
City Syracuse		State NY	ZIP code
Description of goods and services intended to be exempted from New York State and local sales and use taxes building materials, equipment, fixtures and furnishings installed in the Project Facility			

Date project operator or agent appointed (mm/dd/yy) 12/01/17	Date project operator or agent status ends (mm/dd/yy) 08/31/19	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: \$412,152	Estimated value of New York State and local sales and use tax exemption provided: \$32,972	

**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 12-20-17
	Telephone number (315) 448-8127

## Instructions

### Filing requirements

An IDA must file this form within 30 days of the date the IDA appoints any project operator or other person as agent of the IDA, for purposes of extending any sales and compensating use tax exemptions.

The IDA must file a separate form for each person it appoints as agent, whether directly or indirectly, and regardless of whether the person is the primary project operator or agent. If the IDA authorizes a project operator or agent to appoint other persons as agent of the IDA, the operator or agent making such an appointment must advise the IDA that it has done so, so that the IDA can file a form within 30 days of the date of the new agent's appointment. The IDA should not file this form for a person hired to work on an IDA project if that person is not appointed as agent of the IDA. The IDA need not file this form if the IDA does not extend any sales or use tax exemption benefits for the project.

If an IDA modifies a project, such as by extending it beyond its original completion date, or by increasing or decreasing the amount of sales and use tax exemption benefits authorized for the project, the IDA must, within 30 days of the change, file a new form with the new information.

If an IDA amends, revokes, or cancels the appointment of an agent, or if an agent's appointment becomes invalid for any reason, the IDA must, within 30 days, send a letter to the address below for filing this form, indicating that the appointment has been amended, revoked, or cancelled, or is no longer valid, and the effective date of the change. It should attach to the letter a copy of the form it originally filed. The IDA need not send a letter for a form that is not valid merely because the "Completion date of project" has passed.

### Purpose of project

For Purpose of project, enter one of the following:

- Services
- Agriculture, forestry, fishing
- Finance, insurance, real estate
- Transportation, communication, electric, gas, sanitary services
- Construction
- Wholesale trade
- Retail trade
- Manufacturing
- Other (specify)

### Mailing instructions

Mail completed form to:

**NYS TAX DEPARTMENT  
IDA UNIT  
W A HARRIMAN CAMPUS  
ALBANY NY 12227**

### Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

## Need help?



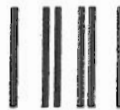
Internet access: [www.tax.ny.gov](http://www.tax.ny.gov)  
(for information, forms, and publications)



Sales Tax Information Center: (518) 485-2889  
To order forms and publications: (518) 457-5431



Text Telephone (TTY) Hotline  
(for persons with hearing and speech disabilities using a TTY): (518) 485-5082



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**BARCLAY DAMON, LLP**

Barclay Damon Tower  
125 East Jefferson Street  
Syracuse, NY 13202

Attw: Lori McElboie

3087413

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 type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p><b>X</b></p> <p>B. Received by (Printed Name) C. Date of Delivery</p> <p>D. Is the delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p><b>NEW YORK STATE TAX DEPT</b> <b>ALBANY, NY 12227</b></p> <p><b>JAN 02 2018</b></p>
<p>1. Article Addressed to:</p> <p>New York State Tax Department IDA Unit Building 8, Room 738 W.A. Harriman Campus Albany, New York 12227</p>	<p>3. Service Type <input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Registered Mail™</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input checked="" type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation™</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> Registered Mail Restricted Delivery over \$500</p>
<p>2. Article Number (Transfer from service label)</p> <p>7017 1450 0000 0413 1585</p>	



9590 9402 3272 7196 1701 60

7017 1450 0000 0413 1585

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PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions



**13**

**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT  
AGENCY**

**and**

**BUTTERNUT CROSSING COMMERCIAL  
ENTERPRISES, LLC**

**PAYMENT IN LIEU OF TAX AGREEMENT**

**Dated as of: DECEMBER 1, 2017**

**BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC  
Federal Tax ID #: 82-2889906**

**THIS PAYMENT IN LIEU OF TAX AGREEMENT**, (this *“Agreement”*) dated as of December 1, 2017 by and among the **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation organized and existing under the laws of the State of New York (hereinafter referred to as the *“Agency”*), having an office at 201 East Washington Street, 7<sup>th</sup> Floor, Syracuse, New York 13202 and **BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC**, a limited liability company organized under the laws of the State of New York, with offices at 1201 East Fayette Street, Suite 26, Syracuse, New York 13210 (hereinafter referred to as the *“Company”*).

**WITNESSETH:**

**WHEREAS**, the New York State Industrial Development Agency Act, being Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of the State of New York, as amended (hereinafter referred to as the *“Enabling Act”*) authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish real and personal property, whether or not now in existence or under construction, which shall be suitable for, among others, manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their recreation opportunities, prosperity and standard of living; and

**WHEREAS**, the Enabling Act further authorizes each such agency to lease and to sell its projects, to charge and collect rent therefor, to issue its bonds or notes for the purpose of carrying out any of its corporate purposes and, as security for the payment of the principal and redemption price of, and interest on, any such bonds or notes, to mortgage any or all of its facilities and to pledge the revenues and receipts therefrom to the payment of such bonds or notes; and

**WHEREAS**, pursuant to and in accordance with the provisions of the Enabling Act, Chapter 641 of the 1979 Laws of the State of New York, as amended (said chapter and the Enabling Act being hereinafter collectively referred to as the *“Act”*) created the Agency for the benefit of the City of Syracuse (hereinafter referred to as the *“Municipality”*) and the inhabitants thereof; and

**WHEREAS**, the Agency, by Resolution adopted on December 20, 2016, (the “**Resolution**”), resolved to undertake the “**Project**” (as hereinafter defined); and

**WHEREAS**, the Project will consist of: (A)(i) the acquisition of an interest in all or a portion of an approximate .224 acre parcel of improved real property located at 618-620 North Townsend Street, in the City of Syracuse, New York (the “**Land**”); (ii) the construction of approximately 3,870 square feet of commercial space on the first floor (the 3,870 square feet of commercial space being referred to herein as the “**Commercial Space**” or the “**Facility**”) which is part of a larger approximately 16,400 square foot building being constructed for use as an affordable housing complex, all located on the Land; (iii) the acquisition and installation in the Facility of furniture, fixtures and equipment (the “**Equipment**” and together with the Land and the Facility, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (the “**Financial Assistance**”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, in accordance with Article 9-B of the Real Property Law of the State, the Company submitted the Commercial Space to the provisions of the Condominium Act and established a regime for the condominium ownership of the Facility. The Company has obtained the necessary no action letter from the NYS Attorney General’s office and has filed, or caused to be filed, with the Onondaga County Clerk’s office all necessary documents, including but not limited to a declaration, by-laws and plan, to successfully establish the Facility as a separate condominium from the balance of the improvements (collectively, the “**Condominium Documents**”) and has obtained, or will obtain prior to the Closing Date, the necessary tax parcel identification number from the assessor’s office; and

**WHEREAS**, the Agency will lease the Land and Facility from the Company pursuant to that certain Company Lease Agreement dated as of December 1, 2017 (the “**Company Lease Agreement**”), between the Company and the Agency, obtain an interest in the Equipment pursuant to a bill of sale dated as of December 1, 2017 from the Company (the “**Bill of Sale**”), and sublease

the Project Facility back to the Company pursuant to that certain Agency Lease Agreement dated as of December 1, 2017, between the Agency and the Company (the “*Agency Lease Agreement*” and together with the Company Lease Agreement and the Bill of Sale collectively referred to as the “*Lease Agreement*”); and

**WHEREAS**, under the present provisions of the Act and Section 412-a of the Real Property Tax Law of the State of New York, the Agency is required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or supervision or control; and

**NOW, THEREFORE**, in consideration of the matters above recited, the parties hereto formally covenant, agree and bind themselves as follows, to wit:

## ARTICLE I

### REPRESENTATIONS AND WARRANTIES

#### **Section 1.01. Representations and Warranties by Agency**

The Agency does hereby represent and warrant as follows:

(a) Existence and Power. The Agency has been duly established under the provisions of the Act and has the power to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder.

(b) Intentions. The Agency intends to acquire a leasehold interest in the Project Facility from the Company and to sublease the Project Facility back to the Company, all pursuant to the provisions of the Lease Agreement.

(c) Authorization. The Agency is authorized and has the corporate power under the Act, its by-laws and the laws of the State of New York to enter into this Agreement and the transactions contemplated hereby and to perform and carry out all the covenants and obligations on its part to be performed under and pursuant to this Agreement. By proper corporate action on the part of its members, the Agency has duly authorized the execution, delivery and performance of this Agreement and the consummation of the transactions herein contemplated.

(d) Validity. The Agency is not prohibited from entering into this Agreement and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement by the terms, conditions or provisions of the Act, any other law, any order of any court or other agency or authority of government, or any agreement or instrument to which the Agency is a party or by which the Agency is bound, and this Agreement is a legal, valid and binding obligation

of the Agency enforceable in accordance with its terms.

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

The Company does hereby represent and warrant as follows:

(a) Existence. The Company is a New York limited liability company duly organized, validly existing and in good standing under the laws of the State of New York.

(b) Authorization. The Company is authorized and has the power under the laws of the State of New York to enter into this Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement. The Company has duly authorized the execution, delivery and performance of the Lease Agreement, this Agreement and the consummation of the transactions therein and herein contemplated. The Company is not prohibited from entering into this Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement by (and the execution, delivery and performance of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Agreement will not conflict with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its Articles of Organization, Operating Agreement or any other restriction or any law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Company is a party or by which it or any of its property is bound, and the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement will neither be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any of the foregoing, nor result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any of the foregoing, and this Agreement is a legal, valid and binding obligation of the Company enforceable in accordance with its terms.

(c) Title. The Company has valid and marketable fee title to the Project Facility, free and clear of all liens and encumbrances except for Permitted Encumbrances (as defined in the Lease Agreement).

(d) The Company has, in accordance with Article 9-B of the Real Property Law of the State, submitted the Commercial Space to the provisions of the Condominium Act and established a regime for the condominium ownership of the Facility in which the Agency took an interest pursuant to the Company Lease and which is the subject of this Agency Lease; and for which the Company has obtained the necessary no action letter from the NYS Attorney General's office and has filed, or caused to be filed, with the Onondaga County Clerk's office the Condominium Documents and has obtained, or will prior to the Closing Date, the necessary tax parcel identification number from the assessor's office.

(e) Governmental Consent. No further consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Company is required as a condition to the execution, delivery or performance of this Agreement by the Company or as a condition to the validity of this Agreement.

## ARTICLE II

### COVENANTS AND AGREEMENTS

#### **Section 2.01. Tax-Exempt Status of the Project Facility**

(a) Assessment of the Project Facility. Pursuant to the Act and Section 412-a of the Real Property Tax Law, the parties hereto understand that, upon acquisition of ownership or control of the Project Facility by the Agency, and for so long thereafter as the Agency shall own or control the Project Facility, the Project Facility shall be entitled to an exemption upon the first available assessment roll of the Municipality prepared subsequent to the acquisition by the Agency of ownership or control of the Project Facility. The time of commencement of the Agency's exemption shall be controlled by the Municipality's taxable status date, in conformity with Section 412-a of the Real Property Tax Law. The Company will be required to pay to the Municipality all taxes and assessments lawfully levied and/or assessed against the Project Facility, in spite of the Agency's actual ownership or control of the Project Facility, until the Project Facility shall be entitled to exempt status on the tax roll of the Municipality.

(b) Special Assessments. The parties hereto understand that the tax exemption extended to the Agency by the Act and Section 412-a of the Real Property Tax Law does not entitle the Agency to exemption from special assessments and special ad valorem levies. The Company will be required at all times to pay all special assessments and special ad valorem levies lawfully levied

and/or assessed against the Project Facility.

**Section 2.02. Payments in Lieu of Taxes**

(a) Agreement to Make Payments. The Company agrees that it shall make periodic payments in lieu of real property taxes in the amounts hereinafter provided. The said payments due to the Agency hereunder shall be paid by the Company, to the Municipality, on behalf of the Agency, by check made payable to “*Commissioner of Finance*”. Upon receipt of the Company's payment, the Municipality, on behalf of the Agency, will disburse the appropriate portion of the said payment to the County of Onondaga and the Municipality, or such other taxing jurisdiction, pursuant to the Act. This Company obligation shall exist for so long as the Agency retains an interest in the Project Facility. Notwithstanding the appearance of the Agency's exemption on the Municipality's tax roll for the 2018/2019 City and School portion of the real property tax due on the Land and Facility, the year 1 payment due for the City and School portion of the year 1 payment under **Exhibit “A”** shall commence on July 1, 2018. The year 1 payment due for the County and Water District portion of the year 1 payment under **Exhibit “A”** shall commence on January 1, 2019. Without regard to the Agency exemption, the Company shall continue paying real property tax through June 30, 2018 with respect to the City and School portion of the real property tax and through December 31, 2018 with respect to the County and Water District portion of the real property tax, based upon the assessment and the combined real property tax rate in effect for that period as if the Project Facility were privately owned and the Agency had no interest in the same.

(b) Amount of Payments in Lieu of Taxes. Unless otherwise stated, the Company's agreed upon annual payment in lieu of tax hereunder shall be an amount determined by reference to **Exhibit "A"**, attached hereto and made a part hereof. The payments in lieu of tax due, as set forth in **Exhibit “A”**, include any real property tax exemptions that might be afforded to the Company if the Project Facility were owned by the Company and not the Agency. As consideration for the benefits conferred on the Company pursuant to this Agreement, the Company hereby agrees to be bound by any determination by the City of Syracuse Board of Assessment Review resulting from a review of the assessment pertaining to the Project Facility and/or Additional Property throughout the term of this Agreement. The Company hereby agrees to waive any and all right to challenge or contest in a court of law (a “*Legal Challenge*”), those payments or the basis for those payments due pursuant to Exhibit “A.” It shall also be an event of default under Article IV of this Agreement



should the Company bring a Legal Challenge on the Project Facility and/or Additional Property.

(c) Additional Amounts in Lieu of Taxes. Commencing on the first tax year following the date on which any structural addition shall be made to the Facilities, or any new or additional building shall be constructed on the real property described in **Exhibit "B"** that is in addition to the Facilities (such structural additions and additional buildings being hereinafter referred to as "**Additional Property**"), the Company agrees to make additional periodic payments in lieu of real property taxes (such additional payments being hereinafter collectively referred to as "**Additional Payments**") to the Municipality on behalf of the Agency with respect to such Additional Property. Such Additional Payments shall be computed as follows:

By multiplying (1) the value placed on such Additional Property, as value is determined by the Municipality's assessor by (2) the tax rate or rates of the Municipality that would be applicable to such Additional Property if such Additional Property were owned or controlled by the Company and not the Agency; and (3) then reducing the amount so determined by the amounts of any properly acquired tax exemptions that would be afforded to the Company by the Municipality for such Additional Property as if it was owned or controlled by the Company and not the Agency.

(d) Revaluation. In the event of a real property assessment revaluation by the Municipality, the Company shall continue to make its payments in accordance with this Agreement; however, in the event that Exhibit "A" is no longer in effect, but payments are still being made hereunder for any reason, (including, but not limited to, the Agency still having an interest in the Project Facility), and would be effected by revaluation, each year's payments subsequent to such revaluation shall be adjusted to properly reflect revaluation, it being the intent of the parties that the level of payments following revaluation shall be equal to those payments contemplated by this Agreement.

(e) Damage or Destruction. In the event that all or substantially all of the Project Facility is damaged or destroyed, the Company shall continue to make the payments required by this Agreement for as long as the Agency shall own or control the Project Facility, without regard to such damage or destruction.

(f) Time of Payments. The Company agrees to pay the amounts due the Agency hereunder to the Municipality for each year of this Agreement, within the period that the

Municipality allows payment of taxes levied in such calendar year without penalty. The Company shall be entitled to receive receipts from the Municipality for such payments.

(g) Method of Payment. All payments by the Company hereunder shall be paid to the Municipality in lawful money of the United States of America, cash, money order or check.

**Section 2.03. PILOT Statements**

The Municipality and/or the Agency shall submit to the Company written semi-annual statements specifying the amount and due date or dates of any payments due to the Agency hereunder. Each semi-annual PILOT statement shall be submitted to the Company at the same time that tax statements/bills are mailed by the Municipality to the owners of privately owned property. Failure to receive a PILOT statement shall not relieve the Company of its obligation to make all payments provided for hereunder. If, for any reason, the Company does not receive an appropriate PILOT Statement, the Company shall have the responsibility and obligation to make all reasonable inquiries to the Municipality and the Agency and to have such a statement issued, and thereafter to make payment of the same no later than the due dates provided herein.

**Section 2.04. Obligations of Agency**

Requirement that Mortgagees Subordinate to Payments. The Agency and the Company agree that any mortgages on the Project Facility, given by either of them, shall provide that the rights of the mortgagees thereunder shall be subordinate to this Agreement and to the right of the Municipality to receive payments in lieu of taxes pursuant to Article II hereof.

**Section 2.05. Company to Furnish Information**

The Company agrees to promptly comply with the reporting and information requirements of the Agency and the Act, and to promptly furnish the applicable information required or requested by the Agency and/or the State of New York. The Company further agrees to assist the Agency with the preparation of any reports, or answer any inquiries, required by the State of New York in connection with the Act or the Agency's participation in the Project.

**Section 2.06. Interest**

(a) Agreement to Pay Interest on Missed Payments. If the Company shall fail to make any payment required by this Agreement when due, its obligation to make the payment so in default shall continue as an obligation of the Company until such payment in default shall have been made in full, and the Company shall pay the same together with interest thereon, to

the extent permitted by law, at the greater of: **(i) eighteen per cent (18%) per annum; or (ii) the rate per annum which would be payable if such amounts were delinquent taxes, until so paid in full.**

(b) Maximum Legal Rate. It is the intent of the Agency, the Municipality, and Company that in no event shall interest be payable at a rate in excess of the maximum rate permitted by applicable law (the "*Maximum Legal Rate*"). Solely to the extent necessary to prevent interest under this Agreement from exceeding the Maximum Legal Rate, any amount that would be treated as excessive under a final judicial interpretation of applicable law shall be deemed to have been a mistake and automatically canceled, and, if received by the Agency or Municipality, shall be refunded to the Company.

### ARTICLE III

#### LIMITED OBLIGATION OF THE AGENCY

##### **Section 3.01. No Recourse; Limited Obligation of the Agency**

(a) No Recourse. All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency and not of any member, director, officer, agent, servant or employee of the Agency in his individual capacity, and no recourse under or upon any obligation, covenant or agreement contained in this Agreement, or otherwise based on or in respect of this Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, director, officer, agent, servant or employee, as such, of the Agency or any successor public benefit corporation or political subdivision or any person executing this Agreement on behalf of the Agency, either directly or through the Agency or any successor public benefit corporation or political subdivision or any person so executing this Agreement. It is expressly understood that this Agreement is a corporate obligation, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any such member, director, officer, agent, servant or employee of the Agency or of any successor public benefit corporation or political subdivision or any person so executing this Agreement under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom. Any and all such personal liability of, and any and all such rights and claims against, every such member, director, officer, agent, servant or employee under or by reason of the obligations, covenants or

agreements contained in this Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

(b) Limited Obligation. The obligations and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State of New York or the Municipality, and neither the State of New York nor the Municipality shall be liable thereon. Furthermore, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project.

(c) Further Limitation. Notwithstanding any provision of this Agreement to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (i) the Agency shall have been requested to do so in writing by the Company and (ii) if compliance with such request is expected to result in the incurrence by the Agency (or any of its members, directors, officers, agents, servants or employees) of any liability, fees, expenses or other costs, the Agency shall have received from the Company security or indemnity satisfactory to the Agency for protection against all such liability, however remote, and for the reimbursement of all such fees, expenses and other costs.

## ARTICLE IV

### EVENTS OF DEFAULT

#### **Section 4.01. Events of Default**

Any one or more of the following events shall constitute an event of default under this Agreement, and the terms “*Event of Default*” or “*Default*” shall mean, whenever they are used in this Agreement, any one or more of the following events:

(a) Failure of the Company to pay any amount due and payable by it pursuant to this Agreement or the Lease Agreement.

(b) Commencement by the Company of a Legal Challenge, as defined in Section 2.02(b), to those payments or the basis for those payments due pursuant to Exhibit “A.”

(c) Failure of the Company to observe and perform any other covenant, condition or agreement on its part to be observed and performed under this Agreement (other than as referred to in paragraph (a) above) or the Lease Agreement, or any other Company Document (as defined in

the Agency Lease) and continuance of such failure for a period of thirty (30) days after written notice to the Company specifying the nature of such failure hereunder, or with respect to the Lease Agreement, continuance of such failure for the duration of any applicable cure period set forth therein after receipt of any required notice thereunder.

(d) Any warranty, representation or other statement by or on behalf of the Company contained in this Agreement or the Lease Agreement shall prove to have been false or incorrect in any material respect on the date when made or on the effective date of this Agreement or the Lease Agreement.

(e) The Company violates any federal, state or local environmental law or allows or causes any Hazardous Materials (as Hazardous Materials is defined and described in any federal, state or local law) to be released at, on, to, into or from the Project Facility, except as permitted by the Lease Agreement or within the terms and conditions of a permit, certificate, license or other written approval of an authorized governmental body, and fails to remedy such violation within thirty (30) days; or if such failure cannot be cured within thirty (30) days, fails to commence a cure within thirty (30) days and thereafter diligently prosecute the cure thereof.

(f) The occurrence of any Event of Default or Default under this Agreement, the Lease Agreement or any other Company Documents.

(g) Failure of the Company to commence the acquisition, construction, renovation, equipping and completion of the Project Facility within eight (8) months of the date of this Agreement.

#### **Section 4.02. Remedies on Company Default**

Whenever any Event of Default under Section 4.01 shall have occurred and be continuing with respect to this Agreement, and/or the Company shall be in default under the Lease Agreement, the Agency may take whatever action at law or in equity, following applicable notice, as may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations, agreements and covenants of the Company under this Agreement and/or the Lease Agreement. Notwithstanding anything herein to the contrary, if the Lease Agreement is terminated for any reason, this Agreement shall automatically terminate without any further notice or action required hereunder and the Project Facility shall immediately become taxable and revert to the tax roll.

The payment schedule contained in Exhibit "A" is for the benefit of the Company and its Project Facility. In the event that the Company defaults hereunder, and the Lease Agreement cannot be terminated, and/or the Agency's participation in the Project and this Agreement is not or cannot be terminated, the Company, or any assignee, or successor shall no longer be entitled to make payments under this Agreement pursuant to Exhibit "A". In such an event, payments shall be made hereunder, for any remaining term of this Agreement, as if the Project Facility was privately owned and assessed and without any further regard to Exhibit "A".

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

Whenever any Event of Default under Sections 4.01 shall have occurred and be continuing with respect to this Agreement or the Lease Agreement, the Agency may, upon notice to the Company provided for in this Agreement or the Lease Agreement, if any, terminate the Lease Agreement and record such termination or other necessary documents in the Onondaga County Clerk's Office, terminating the Agency's interest in the Project Facility and terminating this Agreement.

The recording of such a termination and any other documentation shall constitute delivery to, and acceptance of such, by the Company. In order to facilitate such a termination, the Company hereby appoints the Chairman or the Vice Chairman of the Agency as its agent for the purpose of executing and delivering all documents necessary to allow such termination by the Agency.

In the event that the Lease Agreement, for any reason, is extended by its terms, or for any reason this Agreement expires or terminates, but the Agency retains an interest or remains in title to the Project Facility, the Company shall continue to make payments in lieu of taxes to the Municipality, on behalf of the Agency, for as long as the Agency retains an interest in, or remains in title to, the Project Facility. Those payments shall be the equivalent of the real property taxes that would be due on the Project Facility if it were owned by the Company and the Agency had no interest therein. It is the intention of the parties hereto, that for so long as the Agency shall possess title to, or an interest in, the Property, the Company, or any permitted successors or assigns, shall make payments in lieu of taxes to the Municipality, on behalf of the Agency, that are either based upon Exhibit "A", or if Exhibit "A" is no longer applicable for any reason, are the equivalent of the real property taxes that would be due and owing if the Project Facility were privately owned and the Agency had no interest therein.

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

If the Company should default in performing any of its obligations, covenants and agreements under this Agreement and the Agency or the Municipality should employ attorneys (whether in-house or outside counsel) or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, pay to the Agency and/or the Municipality the reasonable fees and disbursements of such attorneys and such other reasonable expenses so incurred.

Furthermore, should the Company bring a Legal Challenge on the Project Facility and/or Additional Property during the term of this Agreement, and the Agency and/or the Municipality waives its right to declare a default under this Agreement in regard to such Legal Challenge, or such Legal Challenge is determined not to be a default of this Agreement by any Court of competent jurisdiction, the Company agrees that in the event that the Company is unsuccessful in its Legal Challenge, it will, on demand, pay to the Agency and/or the Municipality the reasonable fees and disbursements of any attorneys employed (whether in-house or outside counsel) for the defense of such Legal Challenge as well as such other reasonable expenses so incurred.

#### **Section 4.05. Remedies; Waiver and Notice**

(a) **No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute.

(b) **Delay.** No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(c) **Notice Not Required.** In order to entitle the Agency to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Agreement.

(d) **No Waiver.** In the event any provision contained in this Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such

waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Agreement shall be established by conduct, custom or course of dealing.

**ARTICLE V**  
**MISCELLANEOUS**

**Section 5.01. Term of Agreement**

(a) **General.** This Agreement shall become effective and the obligations of the Agency and the Company shall arise absolutely and unconditionally upon the execution and delivery of this Agreement. This Agreement shall terminate on the earliest to occur of: (i) the same date that the Agency Lease Agreement terminates; (ii) on any earlier date permitted under the Agency Lease Agreement; or (iii) upon the expiration on **June 30, 2028**, of the PILOT Schedule set forth in **Exhibit “A”** hereto. In the event of a termination of the Agency’s interest in the Project Facility, the Company's payments due hereunder shall be pro-rated to the extent necessary to allow the Municipality to issue a supplemental PILOT Statement based upon the Agency's transfer of ownership or control of the Project Facility to the Company, and the loss of the Agency's tax exemption on the said Project Facility.

(b) **Conflict.** In the event of a conflict between this Agreement or any of its terms on the one hand, and the Lease Agreement or any other Project documents on the other hand, the provisions most favorable to the Agency shall govern. The Agency and the Company agree that the Agency’s participation in this Agreement is for the benefit of the Company and that the Municipality must receive payments from the Company hereunder, during the entire term of this Agreement and/or the Agency’s ownership or control of the Project Facility.

**Section 5.02. Company Acts**

Where the Company is required to do or accomplish any act or thing hereunder, the Company may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Company.

**Section 5.03. Amendment of Agreement**

This Agreement may not be amended, changed, modified or altered unless such amendment, change, modification or alteration is in writing and signed by the Agency and the Company.



**Section 5.04. Notices**

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

- (a) To the Agency:  
City of Syracuse Industrial Development Agency  
201 East Washington Street, 7<sup>th</sup> Floor  
Syracuse, New York 13202  
Attention: Chairman

With a copy to:

Barclay Damon LLP  
Barclay Damon Tower  
125 East Jefferson Street  
Syracuse, New York 13202  
Attention: Susan R. Katzoff, Esq.

And to:  
Corporation Counsel  
City of Syracuse  
233 East Washington Street, Room 300  
Syracuse, New York 13202

- (b) To the Company:  
Butternut Crossing Commercial Enterprises, LLC  
1201 East Fayette Street, Suite 26  
Syracuse, New York 13210  
Attn: Rebecca C. Newman

With a copy to:

Bousquet Holstein, PLLC  
110 West Fayette Street  
One Lincoln Center  
Syracuse, New York 13202  
Attn: Paul Predmore, Esq.

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

**Section 5.05. Binding Effect**

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

**Section 5.06. Severability**

If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

**Section 5.07. Counterparts**

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

**Section 5.08. Applicable Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. Venue of any action or proceeding brought hereunder shall be in the State or Federal Courts located in Onondaga County, New York.

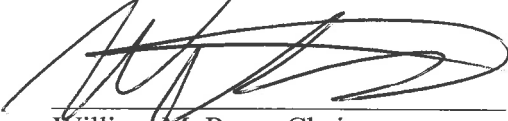
**Section 5.09. Assignment**

This Agreement may not be assigned by the Company without the prior written consent of the Agency.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

By:   
William M. Ryan, Chairman

**BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC**

By: HV Consultants Holding Co., LLC, Manager  
By: Housing Visions Consultants, Inc., Manager

By:   
Benjamin P. Lockwood, Vice President

STATE OF NEW YORK )  
COUNTY OF ONONDAGA ) ss:


On the 20<sup>th</sup> day of December, in the year 2017, before me the undersigned, a Notary Public in and for said state, personally appeared **William M. Ryan**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or he person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

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

STATE OF NEW YORK )  
COUNTY OF ONONDAGA ) ss:

On the 21 day of December, in the year 2017, before me the undersigned, a notary public in and for said state, personally appeared **Benjamin P. Lockwood**, 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

SUSAN R. KATZOFF  
Notary Public, State of New York  
Qual. in Onondaga Co. No. 02KA6120102  
Commission Expires on December 13, 20 20

**ACKNOWLEDGEMENT BY  
BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC**

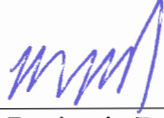
**BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC**, (the “*Company*”) hereby acknowledges receipt and review of this Agreement, and consents to, and approves of, the terms and provisions contained herein.

**IN WITNESS WHEREOF**, the Company has caused this Acknowledgment to be executed in its name by its duly authorized representative, dated as of December 1, 2017.

**BUTTERNUT CROSSING COMMERCIAL  
ENTERPRISES, LLC**

By: HV Consultants Holding Co., LLC, Manager

By: Housing Visions Consultants, Inc., Manager

By:   
\_\_\_\_\_ **Benjamin P. Lockwood, Vice President**

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

On the 21 day of December, in the year 2017, before me the undersigned, a notary public in and for said state, personally appeared **Benjamin P. Lockwood**, 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.

Natalie Patricia Hempson  
Notary Public in the State of New York  
Qualified in Onondaga County No. 02HE6203928  
My Commission Expires April 13, 2021

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

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

<b>Butternut Crossing Commercial Enterprises, LLC PILOT Schedule</b>		
<b>Year</b>	<b>Assessment</b>	<b>Payment</b>
1	$\$85,000 \times \text{tax rate}^*$	-
2	$\$85,000 \times \text{tax rate}$	-
3	$\$85,000 \times \text{tax rate}$	-
4	$\$85,000 \times \text{tax rate}$	-
5	$\$85,000 \times \text{tax rate}$	-
6	$\$85,000 \times \text{tax rate}$	-
7	$\$85,000 \times \text{tax rate}$	-
8	$[(\text{full assessment} - \$85,000) \times .25] + (\$85,000 \times \text{tax rate})$	-
9	$[(\text{full assessment} - \$85,000) \times .50] + (\$85,000 \times \text{tax rate})$	-
10	$[(\text{full assessment} - \$85,000) \times .75] + (\$85,000 \times \text{tax rate})$	-

\*tax rate = Combined Syracuse City, County, School District and Water District Real Property Tax Rate in effect for each year, or portion thereof, covered by the Agreement

**EXHIBIT "B"**

**LEGAL DESCRIPTION**

**618-620 North Townsend Street: Tax Parcel Number 017.-08-22.1 (UNIT 1)**

The Unit designated as **Unit No. 1** in the Declaration comprising **BUTTERNUT CROSSING CONDOMINIUM** located in the City of Syracuse, County of Onondaga, New York, (hereinafter called the "**Property**"), made by Housing Visions Consultants, Inc. under the Condominium Act of the State of New York, as amended (Article 9-B of the Real Property Law of the State of New York), dated December 21st, 2017 and recorded in the office of the County Clerk of Onondaga County on the 22<sup>nd</sup> day of December, 2017 as Instrument Number 2017-00049870 (hereinafter called the "**Declaration**,"), which Unit is also designated as Unit 1, on page A1.1 of the Construction Drawings for **Butternut Crossing 618-620 N. Townsend Street, Syracuse** as certified and prepared by Holmes King Kallquist & Associates, Architects, and filed simultaneously with said Declaration in the Office of the County Clerk of Onondaga County (hereinafter called the "**Unit**"), together with others with the use of the Common Elements, as defined in said Declaration. The appurtenant interests of Unit 1 in the Common Elements is 29.5%. The land area of the Property is described as follows:

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Syracuse, County of Onondaga, State of New York being Lot 12 & part of Lot 11 of City Block 275D and being more particularly bounded and described as follows: Beginning at a point in the easterly line of North Townsend Street at the intersection of the southerly line of East Laurel Street thence North 59 deg. 25 min. 40 sec. East along the said southerly line of East Laurel Street, a distance of 79.50 feet to a point; thence South 30 deg. 32 min. 30 sec. East a distance of 50.00 feet to a point; thence North 59 deg. 25 min. 40 sec. East a distance of 36.00 feet to a point thence South 30 deg. 32 min. 30 sec. East a distance of 50.00 feet to a point; thence South 59 deg. 25 min. 40 sec. West a distance of 115.50 feet to a point in the said easterly line of North Townsend Street thence North 30 deg. 32 min. 30 sec. West along said easterly line of North Townsend Street, a distance of 100.00 feet to the point of beginning.

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NYS DEPARTMENT OF TAXATION & FINANCE  
OFFICE OF REAL PROPERTY TAX SERVICES

RP-412-a (1/95)

INDUSTRIAL DEVELOPMENT AGENCIES  
APPLICATION FOR REAL PROPERTY TAX EXEMPTION  
(Real Property Tax Law, Section 412-a and General Municipal Law, Section 874)

**1. INDUSTRIAL DEVELOPMENT AGENCY (IDA)**

Name City of Syracuse Industrial Development Ag.  
Street 201 East 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 Butternut Crossing Commercial Enterprises, LLC  
Street 1201 East Fayette Street  
City Syracuse  
Telephone no. Day ( ) 315-472-3820  
Evening ( ) N/A  
Contact Christopher D. Tevisani  
Title \_\_\_\_\_

**3. DESCRIPTION OF PARCEL**

a. Assessment roll description (tax map no./roll year) 017.-08-22.1/1  
b. Street address 618-620 North Townsend Street  
c. City, Town or Village Syracuse  
d. School District Syracuse  
e. County Onondaga  
f. Current assessment \$95,000  
g. Deed to IDA (date recorded; liber and page)  
N/A lease/leaseback agreement -  
see Schedule A

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

a. Brief description (include property use) construction of approximately 3,870 square feet of commercial space  
b. Type of construction steel/wood  
c. Square footage 100 x 75.5  
d. Total cost \$900,514  
e. Date construction commenced 2018  
f. Projected expiration of exemption (i.e. date when property is no longer possessed, controlled, supervised or under the jurisdiction of IDA)  
June 30, 2028

**5. SUMMARIZE AGREEMENT (IF ANY) AND METHOD TO BE USED FOR PAYMENTS TO BE MADE TO MUNICIPALITY REGARDLESS OF STATUTORY EXEMPTION**

(Attach copy of the agreement or extract of the terms relating to the project).

a. Formula for payment See attached PILOT Agreement  
\_\_\_\_\_  
\_\_\_\_\_

b. Projected expiration date of agreement June 30, 2028

c. Municipal corporations to which payments will be made

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

d. Person or entity responsible for payment

Name Butternut Crossing Commercial  
 Title Enterprises, LLC  
 Address 1201 East Fayette Street  
Syracuse, NY 13202

e. Is the IDA the owner of the property?  Yes  No (check one)  
If "No" identify owner and explain IDA rights or interest in an attached statement. See Schedule A

Telephone \_\_\_\_\_

6. Is the property receiving or has the property ever received any other exemption from real property taxation? (check one)  Yes  No

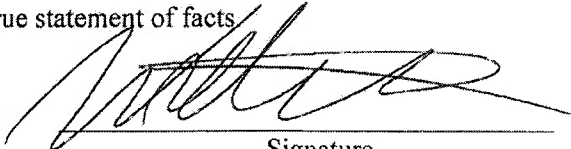
If yes, list the statutory exemption reference and assessment roll year on which granted: exemption \_\_\_\_\_ assessment roll year \_\_\_\_\_

7. A copy of this application, including all attachments, has been mailed or delivered on 12-29-17 (date) to the chief executive official of each municipality within which the project is located as indicated in Item 3.

**CERTIFICATION**

I, William M. Ryan, Chairman of \_\_\_\_\_  
Name Title  
City of Syracuse Industrial Development Agency hereby certify that the information  
Organization  
on this application and accompanying papers constitutes a true statement of facts

12-21-17  
Date

  
Signature

**FOR USE BY ASSESSOR**

1. Date application filed \_\_\_\_\_
2. Applicable taxable status date \_\_\_\_\_
- 3a. Agreement (or extract) date \_\_\_\_\_
- 3b. Projected exemption expiration (year) \_\_\_\_\_
4. Assessed valuation of parcel in first year of exemption \$ \_\_\_\_\_
5. Special assessments and special as valorem levies for which the parcel is liable:

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

\_\_\_\_\_  
Date

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

## SCHEDULE "A"

**Response to Item 3.g Deed to IDA:** Memorandum of Company Lease and Memorandum of Agency Lease, both dated as of December 1, 2017, were each recorded in the office of the Clerk of Onondaga County on December 22, 2017 as Instrument No. 2017-00047873 and Instrument No. 2017-00047874, respectively.

**Response to Item 5.e. *Is the IDA the owner of the property?***

No. The City of Syracuse Industrial Development Agency has a leasehold interest in the subject premises pursuant to a lease/leaseback arrangement as set forth in a certain Agency Lease and Company Lease each dated as of December 1, 2017, memorandums of which were filed as set forth above.



9590 9402 3272 7196 1702 21

USPS TRACKING

SYRACUSE

NY 130

BARCLAY DAMON

LLP

PH 11



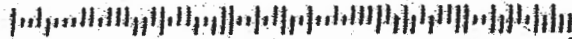
First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

United States  
Postal Service

\* Sender: Please print your name, address, and ZIP+4® in this box\*

BARCLAY DAMON, LLP  
Barclay Damon Tower  
125 East Jefferson Street  
Syracuse, NY 13202

ATTN: Lori McRobbie



3577413

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Hon. Joanne Mahoney  
County Executive, Onondaga Co.  
John Mulroy Civic Center,  
14<sup>th</sup> Floor, 421 Montgomery St.  
Syracuse, NY 13202



9590 9402 3272 7196 1702 21 13202

2. Article Number (Transfer from service label)

7017 1450 0000 0413 3985

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Tarela Puy

- Agent
- Addressee

B. Received by (Printed Name)

L. BEY

C. Date of Delivery

6/2/18

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

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery (over \$500)
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt



First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

9590 9402 2491 6306 6605 59

United States  
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box\*

**BARCLAY DAMON, LLP**  
Barclay Damon Tower  
125 East Jefferson Street  
Syracuse, NY 13202

Attn: *Don Meritto*

3077413

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>CSA Cannon</i> Agent  <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name)      C. Date of Delivery  <i>MAYOR</i>      <i>1/2/18</i></p>
<p>1. Article Addressed to:</p> <p><i>Honorable Stephanie A. Miner Mayor, City of Syracuse City Hall 233 E. Washington St., Syracuse, NY</i></p>  <p>13202</p> <p>9590 9402 2491 6306 6605 59</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>2. Article Number (Transfer from service label)</p> <p>7017 1450 0000 0413 3992</p>	<p>3. Service Type</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Adult Signature</li> <li><input type="checkbox"/> Adult Signature Restricted Delivery</li> <li><input checked="" type="checkbox"/> Certified Mail®</li> <li><input type="checkbox"/> Certified Mail Restricted Delivery</li> <li><input type="checkbox"/> Collect on Delivery</li> <li><input type="checkbox"/> Collect on Delivery Restricted Delivery</li> <li><input type="checkbox"/> Insured Mail</li> <li><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</li> <li><input type="checkbox"/> Priority Mail Express®</li> <li><input type="checkbox"/> Registered Mail™</li> <li><input type="checkbox"/> Registered Mail Restricted Delivery</li> <li><input checked="" type="checkbox"/> Return Receipt for Merchandise</li> <li><input type="checkbox"/> Signature Confirmation™</li> <li><input type="checkbox"/> Signature Confirmation Restricted Delivery</li> </ul>

**15**

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

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December 5, 2017

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

Re: City of Syracuse Industrial Development Agency  
Butternut Crossing Commercial Enterprises, LLC  
Butternut Crossing Project

Dear Mayor:

The City of Syracuse Industrial Development Agency (the “**Agency**”) has agreed to undertake, at the request of Butternut Crossing Commercial Enterprises, LLC (the “**Applicant**” and/or “**Company**”) a project (the “**Project**”) consisting of: (A)(i) the acquisition of an interest in all or a portion of an approximate .224 acre parcel of improved real property located at 618-620 North Townsend Street, in the City of Syracuse, New York (the “**Land**”); (ii) the construction of approximately 3,870 square feet of commercial space on the first floor (the 3,870 square feet of commercial space being referred to herein as the “**Commercial Space**” or the “**Facility**”) which is part of a larger approximately 16,400 square foot building being constructed for use as an affordable housing complex, all located on the Land; (iii) the acquisition and installation in the Facility of furniture, fixtures and equipment (the “**Equipment**” and together with the Land and the Facility, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (the “**Financial Assistance**”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Agency conducted a public hearing with respect to the Project as required by Section 859-a of the New York General Municipal Law on November 19, 2015, including the proposed

Financial Assistance at which persons interested and desiring to be heard were heard, and the Agency considered all statements or comments received.

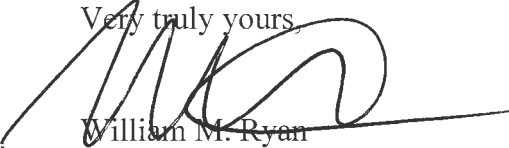
At a meeting of the Agency conducted on November 19, 2015, the Agency took action to approve its undertaking of the Butternut Crossing Project, and based upon, inter alia, the representations made by the Company to the Agency, the Agency made the following findings and determinations:

- a) The Project Facility constitutes a “project” within the meaning of the Act.
- b) The granting of the Financial Assistance will be an inducement to the Company to develop the Project Facility in the City of Syracuse.
- c) The construction, equipping and completion of the Project Facility will promote employment opportunities and help prevent economic deterioration in City of Syracuse by the creation and preservation of both full and part-time jobs.
- d) The construction, equipping, improvement and operation 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 of Syracuse.
- e) The Project will not result in the removal of any 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 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.
- f) The Project is a retail facility located in a Highly Distressed Area.

Section 862(2)(c) of the General Municipal Law requires that the chief executive officer of the municipality for whose benefit the Agency was created confirm the proposed action of the Agency.

Accordingly we hereby respectfully request that you sign the enclosed confirmation to evidence such confirmation.

Very truly yours,



William M. Ryan  
Chairman

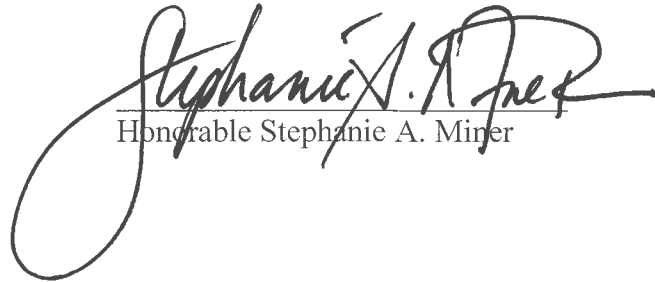
*Enclosure*



**CONFIRMATION OF CHIEF EXECUTIVE OFFICER OF THE CITY OF SYRACUSE  
PURSUANT TO SECTION 862(2)(c) OF THE GENERAL MUNICIPAL LAW**

I hereby confirm the action and findings taken by the City of Syracuse Industrial Development Agency at its meeting on November 19, 2015 with respect to its approval of the undertaking of the Butternut Crossing Project.

December 6, 2017



Honorable Stephanie A. Miner

**16**

**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**  
**BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC PROJECT**

**DOCUMENTS RECORDED WITH THE ONONDAGA COUNTY CLERK**  
**ON DECEMBER 22, 2107**

\* NBT Commercial Mortgage: Instrument No. 2017-00047886

NBT Assignment of Leases and Rents: Instrument No. 2017-00047887

HTFC Mortgage: Instrument No. 2017-00047902

UCC-1 Financing Statement from Butternut Crossing Commercial Enterprises, LLC and SIDA  
to NBT: Instrument No. 2017-00001033

Subordination and First Mortgagee Waiver Agreement Regulatory Agreement: Instrument  
No. 2017-00047904

**RECORD AND RETURN TO:**

Mazzotta, Sherwood & Vagianelis, P.C.  
9 Washington Square  
Albany, New York 12205  
Attention: John N. Vagianelis, Esq.

**CONSTRUCTION MORTGAGE AND SECURITY AGREEMENT**

**THIS CONSTRUCTION MORTGAGE AND SECURITY AGREEMENT (“Mortgage”)**, dated as of December \_\_\_, 2017, is made by **BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC (“Borrower”** and/or **“Mortgagor”**) a New York limited liability company having its principal office located at c/o Housing Visions Consultants, Inc., 1201 East Fayette Street, Syracuse, New York 13210, the holder of the fee title to the Real Property (hereinafter defined); and **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY (“Agency”)**, a New York public benefit corporation having its principal office located at 201 East Washington Street, 7<sup>th</sup> Floor, Syracuse, New York 13202, as the leasehold tenant of the Real Property and a mortgagor, to:

**NBT BANK, NATIONAL ASSOCIATION (the “Lender”)**, a national banking association having an office for business located at 52 S. Broad Street, Norwich, New York 13815.

**THIS MORTGAGE SECURES THE PRINCIPAL AMOUNT OF THREE HUNDRED TWENTY THOUSAND AND 00/100 DOLLARS (\$320,000.00).**

**THIS MORTGAGE IS EXECUTED AND DELIVERED IN CONJUNCTION WITH AND RECORDED CONCURRENTLY WITH THE FILING OF A CERTAIN CONSTRUCTION LOAN AGREEMENT DATED OF EVEN DATE HERewith (THE “LOAN AGREEMENT”), WITH AFFIDAVIT ATTACHED THERETO MADE BY BORROWER PURSUANT TO SECTION 22 OF THE NEW YORK LIEN LAW.**

**BIFURCATION PROVISION. CONTRACTORS, OTHER POTENTIAL LIENORS, AND ALL OTHER PARTIES AT INTEREST, TAKE NOTICE:** This Mortgage is intended as a “building loan mortgage” as that term is defined in the Lien Law of the State of New York (the Lien Law), only to the extent of the maximum principal amount of \$63,311.00 (the “Building Loan Funds”). The Building Loan Funds will be used solely for “Cost of Improvement” as defined in the Lien Law. The amount of \$58,500.00 from the Loan principal will be used exclusively for reimbursement of acquisition costs. The remainder of the amount of Loan principal, that is, \$256,689.00 (hereinafter the “Indirect Project Cost Funds”) is to be used for Project-related costs but which are not or may not be “Cost of Improvement” (hereinafter “Indirect Project Costs”). This Mortgage insofar as this Mortgage constitutes a building loan mortgage, and the covenant of Borrower under this Mortgage and the Loan Agreement to perform the Project in accordance with the terms of the Loan Agreement using the proceeds of the Loan, is applicable only to that portion of the Loan principal constituting the Building Loan Funds.

**DEFINITIONS. Any capitalized term used in this Mortgage, unless otherwise defined herein, shall have the same meaning given to it in the Loan Agreement. Any other capitalized term will have the meaning given to it in the Uniform Commercial Code in effect in the State of New York, as may hereafter be amended (“UCC”).**

**RECITALS.**

**FIRST RECITAL:**

**WHEREAS**, Borrower is the fee simple owner and sub-leasehold tenant to certain real estate located in the City of Syracuse, County of Onondaga, State of New York, having the street address of Condominium Unit #1 at 618-620 N. Townsend Street, more particularly described by metes and bounds on the attached **Schedule A** (the “**Real Property**”) and all of the Improvements (as hereinafter defined), and all Fixtures, Equipment, and other Personal Property (each, as hereinafter defined) now and hereafter affixed, attached, installed, and/or located at the Real Property and/or Improvements; and

**SECOND RECITAL:**

**WHEREAS**, Agency and Borrower have previously entered into (i) a certain Company Lease Agreement, dated as of December 1, 2017 (the “**Company Lease**”, a memorandum of which shall be recorded in the Office of the Onondaga County Clerk simultaneously herewith), wherein the Premises were leased by the Borrower to the Agency; and (ii) a certain Agency Lease Agreement, also dated as of December 1, 2017 (the “**Agency Lease**”, a memorandum of which shall be recorded in the Office of the Onondaga County Clerk simultaneously herewith, and collectively with the Company Lease, the “**Agency Lease Agreements**”), wherein the Premises were leased by the Agency back to the Borrower; and

**THIRD RECITAL:**

**WHEREAS**, the purposes of the transactions mentioned in the Second Recital are, primarily, to assist Borrower in developing, constructing, equipping, and renovation of existing Improvements on the Real Property, partially for commercial purposes (the “**Project**”); and

**FOURTH RECITAL:**

**WHEREAS**, Borrower has requested from Lender, and Lender has agreed to extend to the Borrower, a secured construction loan in the maximum principal amount of \$320,000.00 (the “**Loan**”, which term also includes any and all consolidations, extensions, renewals, paydowns, and/or changes in terms of the Loan) for the purpose of providing financing for the Project; and

**FIFTH RECITAL:**

**WHEREAS**, Lender has required, as security for the Loan, *inter alia* that Lender be given a first-

priority mortgage lien and encumbrance against the Real Property, Improvements, and the other Mortgaged Property (as hereinbelow defined); and

**SIXTH RECITAL:**

**WHEREAS**, in addition to the Note, this Mortgage, and the Loan Agreement, the Loan is also evidenced, governed and secured by certain documents and instruments, each of even date herewith (the “**Related Documents**” collectively), which include but are not limited to a security agreement, a guaranty of payment of the Loan, a guaranty of satisfactory and a lien-free completion of the Project (the “**Guaranties**”, collectively), and a hazardous substance indemnity agreement (the “**Environmental Indemnity**”). Hereinafter the words “Related Documents” include any and all consolidations, extensions, modifications, replacements, substitutions, amendments, restatements, and renewals thereof; and

**SEVENTH RECITAL:**

**WHEREAS**, Borrower is justly indebted to the Lender in the maximum principal sum of \$320,000.00, lawful money of the United States of America, to be advanced and payable in accordance with the terms of the Note and the Loan Agreement; and

**EIGHTH RECITAL:**

**WHEREAS**, the term “**Mortgage Indebtedness**” shall hereinafter mean, collectively, the Loan, as hereinabove defined, together with all obligations, claims, and liabilities arising out of or in conjunction with the Loan, without limitation; whether now or hereafter existing or arising, whether voluntary or involuntary, due or to become due, present or future, direct or indirect, absolute or contingent, liquidated or unliquidated; including, without limitation, all principal, interest (including, but not limited to, interest that accrues after the commencement of any bankruptcy or insolvency proceedings or similar proceedings for debtor relief, by or against Borrower whether or not allowed or allowable), penalties, premiums, sums, charges, claims, commitment or facility expenses, collateral management costs, fees, and expenses, all other fees and expenses (including, without limitation, attorney’s and/or accountants’ fees and expenses chargeable to and payable hereunder and/or under any other Related Document), court costs, and all other amounts of any kind or of any nature; and whether recovery upon such Indebtedness may be or hereafter may become barred by any statute of limitations, or whether such Indebtedness may be or hereafter may become otherwise unenforceable.

**A. GRANT OF MORTGAGE.**

**NOW, THEREFORE**, in order to secure the prompt and faithful payment of the Mortgage Indebtedness, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Borrower and Agency, each for themselves and not the other, do hereby mortgage, bargain, sell, convey, alien, enfeoff, release, confirm, assign, transfer, pledge, hypothecate, grant a Security Interest, and set over to the Lender all of the Borrower’s and Agency’s respective rights, titles, interests, and estates in and to the following property, whether now existing or hereafter arising (subject to and excepting

therefrom the Agency's Unassigned Rights as the term is defined in the Agency Lease):

### GRANTING CLAUSE I.

Real Property. All those certain lots, parcels, and pieces of real estate situate, lying and being in the City of Syracuse, County of Onondaga, and State of New York all as more particularly bounded and described in **Schedule A** hereto attached and made a part hereof, together with all and singular appurtenances, tenements, hereditaments, privileges, easements, rights of way, and franchises now or hereafter affecting, arising out of or belonging to any of said real estate, and together with all of the respective rights, titles and interests of the Borrower and Agency in and to the land lying in the streets and roads in front of and adjoining such real estate (hereinafter as to the foregoing, the "**Real Property**").

Oil and Gas Substances. In addition, but not as a limitation upon any other provision of this Mortgage, the Real Property encumbered by this Mortgage includes the following: All rights, titles, interests, and estates now owned or hereafter acquired by Mortgagor and Agency, if any, in and to all mineral interests, royalty interests, production payments, and other interests of any nature in all minerals, oil, gas, Oil and Gas Substances (as defined hereinbelow), and geothermal and similar matters, in, under, and/or below the surface of the Real Property and that may be produced from the Real Property and as may or may not be covered by any Oil and Gas Leases (as defined hereinbelow), and including Mortgagor's and Agency's, if any, undivided interests in all Oil and Gas Leases and the production of Oil and Gas Substances therefrom, and all Oil and Gas Substances in tanks or pipelines, and all rents, issues, profits, proceeds, products, revenues, and other income from or attributable to the Oil and Gas Leases, the Real Property covered thereby, and Mortgagor's and Agency's, if any, interests therein which are subjected or required to be subjected to the liens and security interests of this Mortgage, and all swap agreements and all cap, collar, floor, forward, exchange, protection, or similar agreements relating in any manner to Oil and Gas Substances (including any options with respect to any such agreement) into which Mortgagor and Agency, if any, have entered or shall enter into with the consent of Lender; and all of the rights, titles, interests and estates now owned or hereafter acquired by Mortgagor and Agency, if any, in and to all lease records, well records, title records, pool or unit records, production records, accounting records, magnetic media, computer records, correspondence, geophysical and geological data, well logs, consultant studies and analyses, core reports and all other geological, environmental, geophysical, engineering, accounting, title, legal, technical and business data and records (in any way relating to Oil and Gas Substances and/or Oil and Gas Leases) which are or at any time hereafter in the possession of Mortgagor and Agency, if any, or to which Mortgagor and Agency, if any, is now or hereafter becomes entitled to be in possession or to have access.

"**Oil and Gas Substances**" means, collectively, without limitation, all rights, titles, interest and estates now owned or hereafter acquired by Mortgagor or Agency in and to all oil, gas, and other minerals and their liquid or gaseous constituents, whether hydrocarbon or non-hydrocarbon, underlying the Real Property, and all other products refined therefrom. "Gas" includes but is not limited to coal stream gas, coalbed methane gas, gob gas, coalbed gas, methane gas, occluded methane/natural gas and all associated natural gas and all other commercial gas and all other hydrocarbons and non-hydrocarbons, contained in, associated with, emitting from, or produced/originating within any formation, gob area, coal seam, mined-out area, and all communicating zones within, on or under the Real Property.

“**Oil and Gas Leases**” means any and all leases of the Real Property, whether now owned or existing, or hereafter acquired or arising, for Oil and Gas Substances, together with any amendments thereto, and any royalty or other interest arising from compulsory or voluntary integration and unitization or pooling.

## GRANTING CLAUSE II.

Improvements and Personal Property. (a) All existing and future construction, equipping, buildings, structures, infrastructures, facilities, utilities and utility systems, parking facilities and parking lots and areas, additions, replacements and construction installed on, erected on and/or permanently affixed to the Real Property (collectively “**Improvements**”); (b) All “**fixtures**” (as defined in the UCC), including, without limitation, all plant fixtures, trade fixtures, business fixtures, building fixtures and fittings, machinery, equipment and all other articles of personal property of any nature whatsoever which are now or at any time hereafter becomes permanently attached or affixed to, installed at, or incorporated into the Real Property and/or Improvements as a permanent component thereof, including, but not limited to: (1) all lighting, heating, freezing, ventilation, security, air conditioning, communication and media, sprinkling, fire prevention, plumbing, pumping, irrigation, incineration, water, electric, gas and power equipment systems, engines and machinery; (2) all boilers, gas and electric fixtures, radiators, heaters, ranges, furnaces, oil burners or units thereof, elevators, motors, transformers, and generators; (3) all storm and screen windows, shutters, doors, awnings, shades, and blinds; all canopies, and signs; (4) all trees, shrubbery and other plantings on the realty; and (5) all building materials, building machinery and building equipment delivered on site to the Real Property and which become attached or incorporated into the Improvements during the course of, or in connection with any construction, reconstruction, rehabilitation, remodeling, or repair, of any Improvements from time to time (collectively “**Fixtures**”); (c) all “**equipment**” (as defined in the UCC), which is now or hereafter attached to, affixed to, installed at or under, and/or located at and used in connection with the operation and/or maintenance of, the Real Property, Improvements, and/or Fixtures; including, without limitation, all machinery, all equipment, furniture, furnishings, floor coverings, decorations, supplies, utensils, appliances, vehicles, canopies, signage (collectively, “**Equipment**”); and (d) all other Goods, chattels, and all other tangible personal property now or hereafter to become affixed to, attached to, located at, on, or in the Real Property, Improvements, Fixtures, Equipment, or now or hereafter to be used in connection with any of the foregoing; and including, without limitation, all tools, parts, accessories and supplies thereof, and all additions, accessions, increases, renewals, and replacements thereof and all articles given in substitution therefor, any alterations, replacements, substitutions, special tools, parts and fittings, any additions, renovations, rehabilitations, conversions, construction, and/or accessions to any of the foregoing whether made by or on behalf of Mortgagor or the Agency or by any of its respective successors in interest, and/or any other property or rights that from time to time hereafter, by installation or writing of any kind, may be subjected to the lien of this Mortgage, together with all proceeds of any of the foregoing (collectively as to (b), (c), and (d), the “**Personal Property**”); provided, however, that if any of the Personal Property shall be subject to a lease, conditional bill of sale, chattel mortgage or other agreement creating a Security Interest, then all of such right, title, interest and estate of Mortgagor or the Agency therein, together with the benefit of any deposit, or payments now or hereafter made thereon, shall be embraced within this Mortgage. “**Personal Property**” also includes, without limiting the generality of the foregoing, all Oil and Gas Substances or other minerals or similar substances produced and saved from or



attributable to the Real Property, whether in place, brought to the surface, or as extracted; all rents, royalties, issues, profits, proceeds, products, revenues and all other income attributable to Oil and Gas Substances or any lease thereof together with all equipment, inventory, fixtures, and any and all personal property related to the exploration, extraction, transportation, or storage of Oil and Gas Substances, and any Accounts, contract rights, and General Intangibles related to any of the foregoing.

(Hereinafter, the property described in Granting Clauses I and II is referred to collectively as the “**Tangible Property**”).

### GRANTING CLAUSE III.

Leases, Rents. (a) All leases (including, but not limited to, Oil and Gas Leases), subleases, tenancy agreements, licenses, rental agreements, occupancy agreements, use agreements, accounts, contract rights, options to purchase, rights of first refusal, parking agreements, operations agreements, vendor agreements, concession and concessionaire agreements, mining contracts, and all other contracts and agreements relating to the occupancy, possession, and/or use of the Real Property and Improvements, or any portion thereof; whether written or oral, whether now existing or hereafter entered into, together with any and all guaranties, modifications, addenda, attachments, extensions, extension options, purchase options, and any other rights, and all extensions, modifications, replacements, restatements, successions, substitutions and/or renewals thereof, which now exist or may hereafter be made excepting here from the Company Lease and the Agency Lease (hereinafter collectively, “**Leases**”); (b) without limitation, all credits, cash, receipts, deposits (whether for security or otherwise, to the extent permissible under Applicable Law), rents, advance rents, minimum rents, additional rents, issues, fees, common area charges, other charges, concession payments, profits, revenues, royalties, accounts receivable, all other benefits, and payments, income of every nature, and all other forms of consideration and/or obligations of tenants to landlords under Leases, both monetary and non-monetary; all Proceeds of the Leases (including, without limitation, termination payments), all Proceeds of any and all rights forfeited by tenants; all Proceeds of all liquidated damages following an event of default; and all Proceeds payable under any policy of insurance covering loss of rents or other revenues or profits resulting from untenability due to destruction or damage to the Tangible Property or any part thereof, or due to any other event covered under such policy; together with the immediate and continuing right to collect and receive the foregoing; whether due, or hereafter becoming due; and together with all other rights and claims of any kind that the landlord may have under the Leases (collectively, “**Rents**”), all of which are hereby assigned to the Lender; however, with respect to Rents, and as long as no uncured continuing Event of Default shall exist hereunder, or under the Note or under any of the other Related Documents, Borrower shall have the right to collect and use the Rents, without prior written consent of the Lender. Rents also specifically include, without limiting the foregoing or the generality thereof, all of the Borrower's and Agency's present and future rights, title and interest in, to and under any and all present and future Oil and Gas Leases and/or oil, gas and mineral Leases and/or mining or similar contracts or amendments thereto, including, without limitation, all rents, revenue, income, issues, royalties, bonuses, account receivable, cash or security deposits, advance rentals, profits and proceeds derived from the production and sale of or otherwise attributable to Oil and Gas Substances, minerals or other such products, including any compulsory or voluntary integration and unitization or pooling awards, produced and saved from or attributable to the Real Property, and other payments and benefits derived or to be derived from such

Leases of every kind and nature, whether due now or later, including without limitation Borrower's and/or Agency's right to enforce such Leases and contracts and to receive and collect payment and proceeds thereunder. Notwithstanding the foregoing, and as long as no uncured continuing Event of Default shall exist hereunder, or under the Note or under any of the other Related Documents, Borrower shall have the right to collect and use the Rents, without prior written consent of the Lender.

#### **GRANTING CLAUSE IV.**

Awards and Proceeds. The proceeds of any and all condemnation and/or insurance claims, awards or proceeds, other award(s), settlement(s), claim(s), judgment(s), and payment(s), including interest thereon, of any kind and nature, and all of the cash and non-cash proceeds thereof, heretofore made or hereafter to be made to and for the benefit of the present and all subsequent owners of the Tangible Property, Leases, Rents or any interest therein; including, but not limited to, any award or awards for any change or changes of grade of streets affecting the Real Property and/or Improvements, all of which said awards, settlements, claims, judgments, payments, interest, and proceeds are hereby assigned to the Lender, together with the insurance proceeds of any casualty or loss; and the Lender is authorized to collect and receive the proceeds of any such awards, settlements, claims, judgments and payments and the proceeds from the authorities or insurer making the same, and to give proper receipts and acquittances therefor, and to apply the same toward the payment of the Mortgage Indebtedness, and the Mortgagor hereby covenants and agrees upon request by the holder of this Mortgage to make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning or perfecting an assignment in the aforesaid awards, settlements, claims, judgments and payments and the proceeds to such holder of this Mortgage free, clear and discharged of any and all encumbrances of any kind or nature whatsoever.

Other Claims and Awards. All other rights, dividends and/or claims of any kind, nature or description whatsoever (including without limitation, damage, secured, unsecured, lien, priority, or administration claims); together with the right to take any action or file any papers or process in any court of competent jurisdiction, which may, in the opinion of Lender, be necessary to preserve, protect, or enforce such rights or claims; including without limitation the filing of any proof of claim in any insolvency proceeding under any State, Federal or other laws; including any rights, claims or awards accruing to or to be paid to the Mortgagor affecting all or any portion of the Tangible Property, Leases, and/or Rents. Lender's lien and interest in the foregoing rights and claims is hereby deemed to be presently vested and perfected as of the date hereof.

Property Insurance. All insurance policies now or hereafter obtained by the Mortgagor, or by any Person on their behalf, in connection with the Tangible Property, Project, Leases, and/or Rents.

#### **GRANTING CLAUSE V.**

After-Acquired Property; All Other Interests. Together with all other real property, fee, leasehold, beneficial, and/or equitable interest or interests, and all other interests, hereafter to become acquired, attached, affixed, installed or used or to be used hereafter, in connection with the Project undertaking and completion, the operation and/or maintenance of the Real Property and/or the Leases, or as become

convenient or necessary for the uses or purposes thereof; together with all improvement or additions made, or to be made, to the Real Property, and, also, all and every other estate, interest, property, or thing, which the Mortgagor or Agency owns or holds, or may hereafter acquire, with respect to the Mortgaged Property, without limitation; including, but not limited to, their respective estates held therein.

In the case that the Borrower or the Agency shall acquire any other estate, title or interest in the Mortgaged Property not now held by it or them, this Mortgage shall attach to, cover, encumber and become a lien upon such other estate, title or interest so acquired, self-operatively and without necessity of the execution, delivery and/or recording of any further document, instrument or agreement. Notwithstanding the foregoing, on written request of the holder of this Mortgage, Mortgagor and Agency shall execute, deliver, and record one or more such documents, instruments and/or agreements, as may, in the reasonable opinion of the Lender, be necessary, and with respect to the Agency as and in accordance with Article 18-A of the New York State General Municipal Law, required, or desired in order to further carry out the intent and meaning of this Section; and Borrower shall pay all costs, recording costs, mortgage tax (as and if applicable), transfer tax, counsel's fees, and/or other expenses, taxes, and/or recording fees, and any and all attorney's fees associated with the foregoing.

PROVIDED, HOWEVER, that upon payment in full, termination and discharge of all Indebtedness, and upon payment and performance of all other amounts and terms, conditions, and obligations under the Note, this Mortgage and the other Related Documents, then this Mortgage shall cease, terminate and be void, and the Lender shall furnish to the Mortgagor and Agency a satisfaction of this Mortgage in proper form for recording.

Hereinafter the property and rights described in Granting Clauses I through V inclusive are collectively referred to as the "Mortgaged Property."

## **B. REPRESENTATIONS AND WARRANTIES.**

The Agency and Borrower make the following representations and warranties (subject to the Agency's reservation and exception of its Unassigned Rights, as defined in the Agency Lease Agreements), respective and applicable to each of them, as set forth below:

(As to the Agency): Agency warrants that:

(i) Agency is the holder of a leasehold tenancy in and to the Mortgaged Property; subject only to those exceptions to title thereof as set forth in the Title Insurance, if any; Borrower's rights under the Agency Lease Agreements; the rights of any tenants, if any, as tenants, only, for a term or under unwritten leases, and/or any other Permitted Lien; and Agency has good right and lawful authority to enter into, execute and deliver this Mortgage to Lender and to mortgage, grant, convey, assign, pledge, encumber and hypothecate its interests in the Mortgaged Property.

(ii) Agency's right, title and interest in the Mortgaged Property is unencumbered by any liens and/or other encumbrances, except as expressly set forth in this Mortgage, or as set forth in the Title Insurance, or

in any other Related Document which it has concurrently executed and delivered to Lender for the same purposes as set forth in the Recitals to this Mortgage, and except for any Permitted Liens; and it has not heretofore mortgaged, granted, conveyed, assigned, pledged, encumbered and/or hypothecated any of its interests in the same to any Person other than pursuant to the Agency Lease Agreements or in connection with a Permitted Lien.

(As to Borrower): Borrower warrants that:

(i) Borrower is the owner and holder of the fee simple interest in and to the Mortgaged Property and a sub-leasehold tenancy pursuant to the Agency Lease Agreements, and which Agency Lease Agreements are in full force and effect, without rescission, termination, revocation or amendment; Borrower is in possession of the Mortgaged Property, subject only to those exceptions to title thereof as set forth in the Title Insurance, if any, the rights of any tenants, if any, as tenants, only, for a term or under unwritten leases, and/or any other Permitted Lien; and Borrower has good right and lawful authority to enter into, execute and deliver this Mortgage to Lender and to mortgage, grant, convey, assign, pledge, and encumber its interests in the Mortgaged Property.

(ii) Except for Permitted Liens, the Mortgaged Property is free and clear of any lien, charge, or encumbrance thereon, or affecting the title thereto. Borrower has not heretofore mortgaged, granted, conveyed, pledged, assigned and/or hypothecated any of its right, title or interest in the Mortgaged Property to any Person other than in connection with a Permitted Lien.

(iii) Borrower will maintain and preserve the liens of this Mortgage against the Mortgaged Property, until all Mortgage Indebtedness has been finally and indefeasibly paid in full and the Note and other Related Documents are terminated in writing, and Lender has executed and delivered to Borrower and Agency a satisfaction of this Mortgage suitable for recording in the Onondaga County Clerk's Office.

(iv) Borrower will forever warrant and defend title to the Mortgaged Property against any and all claims and demands whatsoever, except for Permitted Liens, or otherwise specifically set forth in this Mortgage.

(v) Any and all Leases existing as of the date of this Mortgage, if any, are in full force and effect, have not been modified or amended, and no uncured continuing event of default now exists with respect to Borrower's obligations to perform under any term, covenant, condition, or agreement under any Lease.

(vi) The Related Documents are all in full force and effect and have not been modified or amended, and there is no continuing uncured Event of Default existing under any Related Document, including, but not limited to, this Mortgage.

## C. ARTICLES I-V.

### ARTICLE I: COVENANTS

Borrower covenants and agrees with Lender as follows:

1.1. Pay and Perform. Borrower will timely pay, without default, all Mortgage Indebtedness. Mortgagor will timely perform, without default, all obligations, agreements, covenants, requirements, duties, and responsibilities required on their respective part under this Mortgage and the other Related Documents applicable to it or them, at Borrower's cost and expense.

1.2. Covenant to Construct the Project. Borrower covenants to Lender to construct and equip the Project on the Real Property with the proceeds of the Building Loan Funds in accordance with the Project Documents and in compliance with the terms of this Mortgage, the Loan Agreement, the Amended and Restated Operating Agreement, the Ancillary Documents, the requirements of the Permanent Loan Commitments, and Applicable Law, and to achieve Project Completion no later than the Latest Required Completion Date. All covenants, representations, warranties, conditions, obligations, and agreements of the Loan Agreement are incorporated herein by reference as if the entirety of the text thereof were fully set forth herein at length. The Loan Agreement with Section 22 Lien Law Affidavit attached thereto is a "building loan contract", as defined in the Lien Law, to the extent of the Building Loan Funds, and is filed concurrently and in conjunction with the recording of this Mortgage.

1.3. Further Acts. Borrower will pay, perform, execute, acknowledge and deliver all acts, conveyances, mortgages, and assurances as Lender may reasonably request to subject their respective rights, titles and interests of in the Mortgaged Property, to the lien of this Mortgage and the perfection and continuation of such lien.

1.4. Insure Property. Mortgagor will insure the Mortgaged Property, as more particularly described hereinbelow, at Borrower's cost and expense:

1.4.1. Property Loss; Builder's Risk: Multi-hazard property loss insurance for those Improvements which are not being actively constructed and/or renovated, and builder's risk insurance for all Improvements which are being actively constructed and/or renovated, said binders covering at minimum ninety (90) days measured from the Closing Date. Lender and its successors and assigns shall be named on such binders, and on the policies, as mortgagee and lender/loss payee. The builder's risk insurance policy shall name Borrower and General Contractor as insureds, and will be required to be maintained at all times prior to Borrower's achieving Project Completion. The binder or binders of insurance required hereunder must be accompanied by proofs of payment for at minimum a 90-day period following the effective date. The final policies shall be provided to Lender prior to expiration of the 90- day binders. Such insurance shall provide that coverage shall not be changed or terminated without sixty (60) days written notice to Lender by Registered Mail or ten (10) days' written notice by Registered Mail to Lender, in the case of nonpayment.

1.4.2. Flood Insurance. If at any time during the Loan term all or a portion of the Real Property and/or Improvements are evidenced as being within a federally-designated flood risk area as determined by the Federal Emergency Management Agency, then Borrower shall also provide to Lender a

flood insurance ACORD binder or policy acceptable, with limits (not to exceed the maximum amount of flood insurance permitted by law or regulations for the flood zone in which the Improvements are or will be located), and in form, content, from an insurance company, and in all other respects, satisfactory to Lender. The policy shall be required to name Lender and its successors and assigns thereon as mortgagee and loss payee. The policy of flood hazard insurance, if required, will be maintained throughout the term of the Loan.

1.4.3. General Liability Insurance. Borrower shall provide comprehensive general liability insurance issued on a per-occurrence basis, with coverage in a minimum amount of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate, or in such other amount as reasonably required by Lender. Lender shall be named thereon as an additional insured.

1.4.4. Worker's Compensation. Borrower shall maintain in-force worker's compensation insurance for its employees, if any; and Borrower shall cause General Contractor to maintain in-force and in-effect workers compensation insurance for its employees. Borrower shall require that all subcontractors who will provide labor or deliver materials to the Project provide evidence of their carrying in-force worker's compensation insurance for their employees.

All insurance required under the above subparagraphs shall be upon terms and conditions, with maximum limits, and in all other respects, acceptable to Lender.

General Requirements regarding Insurance. All insurance required under this section shall be procured from financially sound and generally recognized, responsible insurance company/ies authorized to write such insurance in the State of New York, upon terms, conditions, and amounts reasonably acceptable to Lender, and which are comparable to insurance carried by other companies for properties, projects, and businesses in the State of New York which are similar in type and character to the Mortgaged Property and the Business. Each such policy (other than workers compensation) shall provide for at least sixty (60) days' prior written notice to the Lender of termination, cancellation, or non-renewal of such policies and of any material change in the terms and conditions thereof (except in the case of non-payment, wherein the policy shall provide for at least ten (10) days' prior written notice). All insurance, except for worker's compensation insurance, will contain such endorsements as Lender may reasonably require and shall name thereon Lender setting forth its interests as required in paragraphs 1.4.1, 1.4.2, and 1.4.3 above as follows: "NBT Bank, National Association, its successors and/or assigns, 52 South Broad Street, Norwich, New York 13815".

1.4.5. Insurance Reports. Mortgagor will furnish to Lender, upon request, (a) reports on each insurance policy required pursuant to this Mortgage, showing such information as Lender may reasonably request, including without limitation, the following: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the properties and parties insured; (5) the then-current property values on the basis of which insurance has been obtained, and the manner of determining those values; and (6) the expiration date of the policy; and (b) policies and certificates evidencing such insurance, in forms acceptable to Lender. Mortgagor shall, upon request of Lender, have an independent appraiser reasonably satisfactory to Lender determine the cash value replacement cost of the Tangible Property. The cost of such appraisal shall be paid for by the Lender, unless there exists an uncured, continuing Event of Default, in which case Borrower will be required to make such payment.

1.5. Restore Property. If notice of loss or damage of the Mortgaged Property shall be given, the Mortgaged Property shall be restored, replaced, repaired or rebuilt by Mortgagor at Borrower's cost, and the proceeds of any such insurance shall be applied to the extent and in the manner provided hereafter in Section 1.9 of this Mortgage titled "Damage or Destruction".

1.6. Policies. Upon the request of Lender, Mortgagor will deliver or cause to be delivered to Lender a certified copy of the policies, or portions of the blanket insurance policies (if applicable) for the Mortgaged Property, so and in such manner and form, that Lender shall at all times, upon such request, until final and indefeasible payment in full of the Mortgage Indebtedness, have and hold said policy or portions thereof, and the proceeds thereof, as collateral and further security for the payment of the Mortgage Indebtedness.

1.7. Lender's Right to Effect Insurance. If Mortgagor fails to procure and deliver, and/or Borrower fails to pay for, any policy or policies of insurance and/or renewals thereof as required hereunder and/or in the Loan Agreement, Lender may at its option, but with no obligation to do so, effect such insurance and pay the premiums therefor; and Borrower shall repay to Lender upon demand any premiums so paid with interest at the Default Rate under the Note from the date of such advance until the date of repayment thereof in full; and the same shall be deemed a protective advance and secured by this Mortgage.

1.8. Maintenance. Mortgagor, at Borrower's cost and expense, will cause the Mortgaged Property to be maintained in good and tenantable repair, ordinary and reasonable wear and tear excepted, and will not permit any alteration of the Tangible Property or the removal or demolition of the same, in whole or in part, except with respect to restorations as set forth in Section 1.9 herein titled "Damage or Destruction".

1.9. Damage or Destruction. In case of casualty to the Mortgaged Property resulting in damage or destruction, Mortgagor shall promptly give written notice thereof to Lender. Lender may make proof of loss if Mortgagor fails to do so within fifteen (15) days of the casualty. All Proceeds of any insurance on the Mortgaged Property, including accrued Proceeds thereon, shall be held by Lender as part of the Mortgaged Property. As long as no Event of Default shall exist hereunder (beyond any applicable period of notice and cure), or under any other Related Document, Lender agrees that it will elect to make the insurance loss proceeds available to Borrower to restore the damage or destruction, at Borrower's cost and expense, and whether or not the insurance proceeds, if any, shall be sufficient for the purpose, and if Mortgagor shall elect to so rebuild or restore any damage or destruction in and to the Mortgaged Property, shall so restore, repair, replace, rebuild or renovate the same as nearly as possible to that value, condition and character which the Mortgaged Property had immediately prior to such damage or destruction. In the event Mortgagor shall not have (i) elected to rebuild, replace, restore, or repair within thirty (30) days of any casualty loss, and (ii) provided Lender with written evidence of cost breakdowns of such rebuilding, replacement, restoration, and/or repair, and evidence reasonably satisfactory to Lender of sufficient Proceeds of insurance and/or Mortgagor's capital to complete the rebuilding, replacement, restoration, and/or repair, then Lender may, at its election, apply the Proceeds to the reduction of the Indebtedness, payment of any lien affecting the Mortgaged Property, or the rebuilding, replacing, restoration and/or repairing of the Mortgaged Property. Disbursement of the insurance Proceeds and the application thereof shall be in accordance with

this section 1.9, whether or not Lender's security is impaired. Mortgagor hereby appoints Lender as its attorney in fact, with full power and authority to endorse in Mortgagor's name(s) any check or draft representing the Proceeds of any insurance on the Mortgaged Property, and to settle or compromise in Mortgagor's name(s) any claims with respect to such insurance. If Lender holds any Proceeds after payment in full of the Indebtedness, such Proceeds shall be paid to Mortgagor.

1.9.1. RPL Section 254. All the provisions of the above Section 1.9 and any other provisions of this Mortgage pertaining to insurance which may be required under this Mortgage, the Loan Agreement or any other Related Document, shall be construed with Section 254, Subdivision 4 of the New York Real Property Law; but, said Section 254 to the contrary notwithstanding, Mortgagor consents that Lender may, without qualification or limitation by virtue of said Section 254, retain and apply the insurance proceeds in accordance with Section 1.9 above without affecting the lien of this Mortgage for the full Mortgage Indebtedness.

1.9.2. Attorney's fees. In the case of damage or destruction of the Mortgaged Property as provided in this Section 1.9, Mortgagor and Lender, shall, as a first priority on the proceeds of insurance, be entitled to reimbursement of all reasonable costs, fees and expenses incurred in the determination and collection of any such awards, including their respective reasonable attorneys' reasonable fees and costs, and court costs. In such reimbursement, the reasonable fees and disbursements of Lender and its counsel shall be paid and satisfied prior to those of Mortgagor.

1.10. Changes and Alterations. Mortgagor shall have the right at any time and from time to time during the term of this Mortgage to make, at Borrower's cost and expense, changes and alterations in or to the Improvements, provided, however, that:

(a) During the pendency of the Project, any such change and alterations are made in accordance with the Project Documents and in compliance with the terms of the Loan Agreement and the applicable requirements under the Ancillary Documents, and, if such change is a Material Project Change (as defined in the Loan Agreement), shall be pre-approved in writing by Lender;

(b) any such change or alteration shall, when completed, be of such a character as not to materially reduce the economic value or materially change the character of the Mortgaged Property below its appraised value as set forth on any appraisal obtained for the Project and/or in any Ancillary Document or Project Document;

(c) Any such change or alteration, once commenced, shall be made promptly and completed (unavoidable delays excepted) in a good and workmanlike manner and in compliance with all applicable Permits, Requirements, and Applicable Law, including, but not limited to, any national or local Board of Fire Underwriters, or any other body hereafter exercising functions similar to any of the foregoing;

(d) No change or alteration shall, when completed, tie in or connect the Tangible Property with any other building on adjoining property without Lender's prior written consent, and, if required



under the respective terms of the Ancillary Documents, the prior written consent of the Permanent Lenders and/or HCR (as and if required under the applicable Ancillary Documents) and unless said adjoining property shall be encumbered by a mortgage held by Lender.

1.11. Use of Property. Mortgagor will use and operate the Mortgaged Property, or cause it to be used and operated, at Borrower's cost and expense, in compliance with all municipal zoning, use, and building codes applicable to the Mortgaged Property, and any other Applicable Law, Requirement, and code applicable to and governing the renovation, construction, use, occupancy, and/or operation of the Mortgaged Property. Mortgagor shall not suffer or permit the Mortgaged Property, or any portion thereof, to be used by the public, as such, without restriction or in such manner as might tend to impair either of Mortgagor's respective titles to the Mortgaged Property or any portion thereof, or in such manner as might make possible a claim or claims of adverse usage or adverse possession by the public, as such, or of an implied dedication of the Mortgaged Property or any portion thereof. Mortgagor shall not use or permit the use of the Mortgaged Property or any part thereof for any purpose which in the reasonable opinion of Lender would have a Material Adverse Effect on the then-value or character of the Mortgaged Property or any part thereof. Mortgagor shall perform and observe, and cause to be performed or observed, all of the terms, covenants, conditions and provisions as contained in and under all instruments of record affecting the Mortgaged Property, noncompliance with which may affect the security of this Mortgage, or which may impose any duty or obligation upon Mortgagor, and Mortgagor shall do and cause to be done all things reasonably necessary to preserve intact and unimpaired any and all easements, appurtenances, and other interests and rights in favor of or constituting any portion of the Mortgaged Property, all at Borrower's expense.

1.12. Payments of Taxes and Assessments. Borrower shall pay, before any fine, penalty, interest or cost may be added thereto, or become due or be imposed by operation of law for the nonpayment thereof (except as hereinafter provided with respect to rights of contestation), all taxes, payments in lieu of taxes, assessments, water and sewer rents, rates and charges, transit taxes, county taxes, charges for public utilities, excises, levies, vault and all other license and Permit fees and other governmental charges, general and special, ordinary and extraordinary, unforeseen and foreseen, of any kind and nature whatsoever which at any time prior to or during the term of this Mortgage, may be assessed, levied, confirmed, imposed upon, or grow or become due and payable on, of, or in respect of, or become a lien on, the Mortgaged Property or any part thereof, or any appurtenance thereto, prior to the lien of this Mortgage (collectively hereinafter as to all of the foregoing, the "**Taxes and Assessments**"); provided, however, that if by law, any Tax or Assessment may, at the option of the taxpayer, be paid in installments (whether or not interest shall accrue on the unpaid balance of such Tax or Assessment), then Borrower may exercise the option to pay the same (and any accrued interest on the unpaid balance of such Tax or Assessment) in installments and, in such event, shall pay such installments as the same respectively become due and before any fine, penalty, further interest or cost may be added thereto. The words "Taxes" and "Assessments" shall include (a) any other payment, tax or assessment or charge (by whatever name called) which is imposed upon or with respect to the Mortgaged Property in substitution for or in lieu of or in addition to any Tax or Assessment which would otherwise be payable, due to any change in the method of the taxation of real estate; (b) Taxes and Assessments levied and/or retroactively levied against the Real Property as a result of the loss of an exemption from such Tax or Assessment which the Real Property had theretofore acquired pursuant to any payment in lieu of taxation agreement, tax exemption agreement, Applicable Law, and/or a change in

Agency's estate or interest in the Mortgaged Property.

1.13. Proofs of Payments of Taxes and Assessments. Mortgagor, upon request of Lender, will furnish to Lender within thirty (30) days after the date when any Tax or Assessment would become delinquent, official receipts of the appropriate taxing authority, or other evidence reasonably satisfactory to Lender evidencing the payment thereof. A certificate, advance or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Tax or Assessment, showing nonpayment of such Tax or Assessment, shall be prima facie evidence that the Tax or Assessment is due and unpaid at the time of the making or issuance of such certificate, advance or bill.

1.14. Contestation At all times during which no Event of Default exists and is continuing beyond any applicable period of notice and cure provided herein or in the other Related Documents, and provided the same shall not cause a violation, breach or default under the Project Documents and/or Ancillary Documents, Mortgagor shall have the right to contest the amount or the validity, in whole or in part, of any Tax or Assessment by appropriate proceedings diligently conducted in good faith, and notwithstanding the provisions of this Section, Mortgagor may postpone or defer payment of such Tax and/or Assessment if, before the due date thereof, (i) Mortgagor has advised Lender of its intention of initiating such contest; (ii) Mortgagor shall at the request or demand of Lender (a) deposit or cause to be deposited with Lender a surety bond issued by a surety company of recognized responsibility reasonably acceptable to Lender, conditioned upon and securing the payment of the contested Tax and/or Assessment, plus all fines, interest, penalties or costs which may become due pending the determination of such contest, or (b) deposit or cause to be deposited with Lender a sum or sums reasonably acceptable to Lender, of the balance of such Tax and/or Assessment remaining unpaid, and, from time to time, but not more frequently than monthly, deposit additional amounts in order to keep on deposit at all such times an amount equal to, at minimum, one hundred twenty five (125%) per cent of the Tax and Assessment remaining unpaid plus all interest, penalties, costs and charges accrued or accumulated thereon, and thereafter to become accrued or accumulated; or (c) furnish or cause to be furnished to Lender other security which is reasonably satisfactory to Lender. If any such deposit is made or such security furnished, and Mortgagor continues in good faith to contest the validity of such Tax or Assessment by appropriate legal proceedings which shall operate to prevent the collection of such Tax or Assessment so contested and the sale of the Mortgaged Property or any part thereof to satisfy the same, Mortgagor shall be under no obligation to pay such Tax or Assessment, until such time as it has been finally determined by a court of competent jurisdiction or the applicable Governmental Authority charged with such power of determination, to be a valid lien on the Mortgaged Property. Lender shall have the full power and authority to apply or require the application of any amount so deposited to payment of any unpaid Tax or Assessment, to prevent the occurrence of or continuation of an Event of Default, or occurrence of the sale or forfeiture of the Mortgaged Property for nonpayment thereof, without liability, however, for any failure to apply any amount so deposited, unless Mortgagor or the Person making such deposit in writing requests the application of such amount to the payment of the particular Tax or Assessment with reference to which it was deposited. Any surplus remaining in the hands of Lender after the Tax or Assessment for which the deposit was made has been paid in full, shall be repaid to Mortgagor or the person making such monies or other charges required to be made under the provisions of this Mortgage, and in case of a such Event of Default, so much of such surplus shall be applied on account of such unpaid monies or other charges as shall be required to cure such default, and the remainder of such surplus, if any,

shall be repaid to Mortgagor or the person making such deposit.

1.14.1. Upon the termination of any proceedings as above stated, Borrower shall pay the amount of such Tax and Assessment, or part thereof as finally determined by such proceedings, the payment of which shall have been deferred during the prosecution of such proceedings, together with all costs, fees, interest, penalties or other liabilities in connection therewith; however, if monies have been deposited with the Lender pursuant to this Section, said funds may be used to make payment, and the balance remaining of the funds deposited pursuant to this Section, if any, shall be returned to Borrower.

1.15. Lender's Right to Pay Taxes and Assessments. If Borrower shall fail to pay any Tax or Assessment in accordance with the provisions of this Article, Lender, at its option, but without any obligation, may pay such Tax or Assessment, and Borrower will promptly repay to Lender, in good funds, the entire amount so paid by Lender, with interest thereon at the Default Rate as set forth in the Note, from the date of such payment by Lender to the day of indefeasible repayment of such amount to Lender, and the same shall be, until indefeasibly paid in full to Lender in good funds, deemed a part of the Mortgage Indebtedness and secured by this Mortgage.

1.16. Change in law. In the event of the passage, after the date of this Mortgage, of any law deducting from the value of the Mortgaged Property any lien thereon, for the purposes of taxation, or changing in any way the laws now in force for the taxation of mortgages or debts secured by mortgages, for Federal, State or local purposes, or the manner of the collection of any such taxes, so as to affect adversely the rights or interests of Lender, then Borrower shall bear and pay the full amount of such taxes; provided that, if for any reason payment by Borrower of any such new or additional taxes would be unlawful, or if the payment thereof would constitute usury or render this Mortgage or the Note wholly or partially usurious under any of the terms or provisions of this Mortgage or otherwise, Lender may, at Lender's option, declare the whole sum secured hereby with interest thereon, to be immediately due and payable, or Lender may, at Lender's option, pay the amount or portion of such taxes as renders this Mortgage or the Note unlawful or usurious, in which event Borrower shall concurrently therewith pay the remaining and lawful and non-usurious portion or balance of said taxes.

1.17. Payment of Taxes Imposed upon a Related Document. In the event that the obligations secured by this Mortgage or any other Related Document, or any assignment thereof, shall thereafter be held by a court of competent jurisdiction or departmental ruling to be subject to the payment of any documentary stamp, mortgage recording tax, or other tax, Borrower will immediately pay the same with interest and penalties, if any; and if Mortgagor fails to do so, Lender may (but without being obligated to pay such tax) pay the same, and Borrower will immediately repay such amount to Lender in good funds, together with interest thereon at the Default Rate as set forth under the Note from the date of Lender's payment thereof to the date of indefeasible repayment to Lender; and the same shall be deemed a part of the Mortgage Indebtedness and secured by this Mortgage.

1.18. Compliance All current and future laws, rules, regulations, ordinances and other Requirements of all Governmental Authorities, and/or any national or local Board of Fire Underwriters, or any other body exercising functions similar to those of the foregoing, affecting the Mortgaged Property (whether or not such law shall necessitate structural changes, character or historic preservation, restorations, renovations or improvements to the Mortgaged Property), shall be complied with by Mortgagor at the time Required, but in any event within any grace period applicable to such Requirement; subject to the right of Mortgagor to contest the same in good faith in the same manner, or as applicably so, set forth in the preceding section titled "Contestation", and pursuant to all other Applicable Law, subject to any restrictions contained in this Mortgage, any other Related Document, any Ancillary Document, or any Project Document as to such contestation. However, if such contestation of the validity or legality of any such law, rule, regulation, ordinance, and/or Requirement shall or would cause a breach of any of the terms of any Related Document, Ancillary Document, and/or Project Document, or cause the security or lien priority of this Mortgage or any other Collateral to be impaired, then Mortgagor shall not have the right to contest the same but compliance must be made therewith.

1.19. Records of Acquisition and Transfer. Mortgagor shall keep true and complete records pertaining to acquisition of title to the Mortgaged Property, all subsequent transfers of any interest therein or any part thereof, and all changes in the controlling interest (by way of changes in membership, ownership, control, capital, profits, equitable or beneficial interest or otherwise) in Mortgagor, or any other related Entity which does now or may hereafter own the Mortgaged Property or any interest therein (including, but not limited to, any transfer of interest in any portion of the Mortgaged Property as between Agency and

Borrower), including, but not limited to, a copy of the contract of sale, title report, deed, closing statement, transfer affidavit or certificate, questionnaire or return, statement of tentative assessment and any other notices or determinations of tax received from the New York State Department of Taxation and Finance, transferor's supplemental return, the date and cost of all "capital improvements" made to the Mortgaged Property or any part thereof by Mortgagor or any related party, and evidence of the payment of any tax thereon imposed by any Governmental Authority, and the filing of all reports and any other information or documentation required by any Governmental Authority. All such records shall be made available to the Lender for inspection from time to time upon request and/or demand. Nothing in this Section shall be construed as Lender's granting its permission to any transfer of any part of or interest in the Mortgaged Property, or any waiver of an Event of Default which would result therefrom.

1.20. Taxes Due On Transfers. If any Tax, Assessment, or any other tax, assessment, charge, claim, or liability shall be due and payable upon the conveyance of any interest in the Mortgaged Property or any part thereof pursuant to a judicial sale in any action, suit or proceeding brought to foreclose this Mortgage or by deed in lieu of foreclosure or by any other transfer of any interest in any portion of the Mortgaged Property (whether such Tax, Assessment, other, charge, claim and/or liability shall arise as a result of, or concurrent with such transfer, or retroactively), Mortgagor will, at the request of the Lender (a) provide Lender with copies of all such records, and prepare, execute, deliver and file any affidavits, questionnaires, returns or supplemental returns required and (b) pay any such Tax, Assessment, charge, claim and/or liability, together with all applicable interest and penalties thereon, which may be due and payable by reason of such conveyance. Borrower hereby irrevocably appoints the Lender, their agent and attorney-in-fact (which appointment shall be deemed to be an agency, coupled with an interest, and irrevocable) with full power of substitution, to prepare, execute, deliver and file on its and their behalf any and all affidavits, questionnaires, returns and supplemental returns which Borrower has or has failed or refused to execute and deliver to the Lender within ten (10) days after notice and request therefor by the Lender; and Mortgagor shall defend, indemnify and hold Lender harmless, at Borrower's cost and expense, from any liability or expenses including reasonable attorney's fees and costs resulting from such preparation, execution, delivery or filing.

1.21. Hazardous Substances; Environmental Liens.

1.21.1. Representations and Warranties. Mortgagor represents and warrants that, unless otherwise disclosed in the Environmental Report, (a) during the period of their ownership of and respective interests held in and to the Mortgaged Property, there has been no Spill, Release, threatened Release (as such terms are defined in one or more of the Environmental Laws, as said capitalized term is defined hereinbelow), manufacture, use, generation, storage, treatment, or disposal, of any Hazardous Substance (as hereinafter defined) by any Person, on, under, about or from the Real Property, which is, has been, or may be a breach of or in violation of any Environmental Law; (b) Mortgagor has had no notice provided to them, nor, to the best of their knowledge, has any other Credit Party, Developer, or Sponsor, or any member, director, officer, shareholder, and/or partner of any of them, has had such notice provided to it or them, nor has Mortgagor knowledge of, or reason to believe that there has been (i) any Spill, Release or threatened Release, or any use, generation, storage, treatment, or disposal, of any hazardous waste or substance in, on, from or arising out of the Real Property by any prior owners or users thereof, which is a breach of or in violation of any Environmental Law; or (ii) any actual or threatened litigation or material claims of any kind

against Mortgagor, the Real Property, or against any prior owner of the Real Property, by any Governmental Authority (including but not limited to any Environmental Agency, as hereinbelow defined), agent or other Person with respect to a Spill, Release, threatened Release, violation or alleged violation of any Environmental Law at, on, under, or related to the Real Property. The representations and warranties contained herein are based on Borrower's due diligence in investigating the Real Property, including, but not necessarily limited to, the Environmental Report. Mortgagor acknowledges that Lender shall have no obligation to make any Advance of Loan proceeds in the event that the Mortgaged Property shall be in violation of any Environmental Law.

1.21.2. Covenants; Compliance. Mortgagor covenants to the Lender that Mortgagor, Developer, and their respective Contractors, tenants, agents, and employees, have not and will not use Hazardous Substances on, from, or affecting the Real Property and/or the process of the renovation and construction of the Project, in any manner which violates, or would violate, given the passage of time and/or giving of notice, any Environmental Law. Borrower shall keep and/or cause the Property to be kept free from Hazardous Substances, except for such Hazardous Substances as are kept on, at, in or under the Property in compliance with applicable Environmental Laws. Without limiting the foregoing, Mortgagor shall not cause or permit the Real Property to be used to generate, manufacture, refine, stockpile, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Substances, except in compliance with all applicable Environmental Laws and with the applicable Permits which are Required by the applicable Governmental Authorities for such activities; nor shall Mortgagor cause or permit, as a result of any intentional or unintentional act or omission on the part of Mortgagor, Developer, or any Contractor, agent, employee, tenant or subtenant or other occupant or user of any portion of the Property, any Release, Spill (as hereinbelow defined), or discharge, of Hazardous Substances to occur onto, into, or under the Real Property, or from the Real Property onto any other adjoining property. Mortgagor shall comply, and will cause Developer, any tenants of the Real Property, and any and all subtenants, operators, Contractors, employees, occupants, and licensees of the Real Property to comply with, all Environmental Laws applicable to the Real Property, whenever and by whomever triggered, and shall obtain and comply with, and ensure that Developer, any tenants of the Real Property, and any and all subtenants, operators, Contractors, employees, occupants, and licensees, obtain and/or and comply with, any and all approvals, registrations or Permits required or issued thereunder in connection with all and any applicable Environmental Law and with the use, operation, maintenance thereof, and any use, storage, disposal, transport, recycling, and/or handling of any Hazardous Substances thereon, therewith and/or thereat; all at Borrower's sole cost and expense.

1.21.3. Notice. If, at any time during the Loan (and any renewal, extension, modification, consolidation, change in terms, amortization, and/or term out thereof), Mortgagor, Developer, and/or any of their respective affiliates, members, officers, shareholders, directors, or partners of any of them receives a notice, summons, complaint, action, demand, or claim from any Environmental Agency, other Governmental Authority, other Person or other party, and/or if a lien is filed against the Real Property by an Environmental Agency with respect to a violation or potential violation of any Environmental Law or the presence of a Hazardous Substance in, on, at, under, affecting, or emanating from the Real Property, Mortgagor shall promptly furnish to Lender copies thereof. In the event of any such receipt of such notice, summons, complaint, action, demand, claim, or notice of lien, Mortgagor shall, in accordance with the Requirements of such Environmental Agency, other Governmental Authority, or an agent or authority appointed by it or them,

to oversee or enforce such procedure, conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other type actions, necessary to contain, encapsulate, clean up, remove, and undertake and complete remediation of, all Hazardous Substances and remove any violations of Environmental Laws, all to the satisfaction of Lender and such Environmental Agency and/or other Governmental Authority. Mortgagor will in such instance obtain a "no further action required" letter and/or site closure letter from such Environmental Agency and/or Governmental Authority and promptly provide a copy thereof to Lender.

1.21.4. Future Tests and/or Inspections. Mortgagor shall allow Lender access to the Property during regular business hours on Business Days, to make such inspections and tests as Lender may, acting reasonably, deem appropriate, to determine compliance of the Property with this section of this Mortgage. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Mortgagor to any other Person. Such tests shall be at Lender's expense unless there exists an uncured continuing Event of Default in which case such tests shall be at Borrower's cost and expense. However, Lender shall have no obligation or continuing responsibility to either conduct such tests, or in any way to monitor or remediate the environmental condition of the Real Property, or its compliance or lack thereof with any Environmental Law. Notwithstanding the foregoing, however, Mortgagor shall conduct and complete any further and future investigations, studies, sampling, and testing pertaining to Hazardous Substances on, or affecting, or which may hereafter be on, or affect, the Real Property, upon Lender's request or demand (provided Lender shows reasonableness in its basis for making such request), all at Borrower's sole cost and expense; including, but not limited to, any investigations, studies, sampling, and/or testing of Hazardous Substances which have not been heretofore investigated under the Environmental Report and consented to by Lender in writing.

1.21.5. Indemnification. Mortgagor will forever defend, indemnify, and hold harmless Lender, its employees, agents, officers, shareholders, and directors, at Borrower's sole cost and expense, from and against any past, present and future claims, demands, penalties, fines, liabilities, settlements, damages, costs, response costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise, and whether or not the same were or should have been known to Mortgagor or Lender, and whether or not disclosed in the Environmental Report or any other environmental site assessment, report, investigation or testing, arising out of, or in any way related to (or allegations relating thereto) (a) the presence, disposal, Spill, Release, or threatened Release of any Hazardous Substances which are on, under, in, emanating from, or affecting the Real Property, including, but not limited to, the soil, water, vegetation, buildings, personal property, persons, animals, or otherwise; (b) any personal injury (including alleged wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substances; (c) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substances, and/or (d) any violation of any Environmental Law, any order, demand, or Requirement of any Environmental Agency and/or any other Governmental Authorities, any reopening, further inquiry, or reinvestigation of a past Spill case or investigation (whether or not officially closed by the Environmental Agency in such case), or any reasonable policies or requirements of Lender, which are based upon or in any way related to such Hazardous Substances, including without limitation, reasonable attorney's fees, consultant fees, special counsel's fees, expert counsel's fees, the reasonable costs incurred by any such counsels, reasonable investigation and laboratory fees, court costs, and reasonable litigation expenses. In

the event this Mortgage is foreclosed, or Mortgagor tenders a deed in lieu of foreclosure, which the Lender agrees to accept, Mortgagor shall be responsible for delivering the Property to the Lender free of any and all Hazardous Substances to the extent not otherwise permitted in this Mortgage and/or in the Loan Agreement and as set forth in the Environmental Report, all of the foregoing such that the condition of the Property shall conform with all applicable Environmental Laws.

1.21.6. Definitions in this Section. For purposes of this Section 1.21, the following terms shall have the following definitions:

1.21.6.1. “**Hazardous Substances**” means, collectively and without limitation, any hazardous or toxic substance, waste or material, or any other substance, pollutant, or condition to or poses a risk to human health or the environment, whether or not naturally occurring, including, but not limited to: (i) any “hazardous” or “toxic” material, substance or waste as defined in any of the Environmental Laws; (ii) petroleum in any form and/or petroleum based products, flammables, explosives, radioactive materials, asbestos, methane gas, lead based paint, urea formaldehyde insulation, polychlorinated biphenyls (PCB), radon, or mold or lead in drinking water; except for ordinary and necessary levels in office supplies, cleaning products, pest control supplies which are all of the foregoing stored in a safe and lawful manner, and/or which are contained in motor vehicles; (iii) underground storage tanks (“**UST**”); (iv) other than ordinary garbage stored lawfully, accumulations of debris, mining spoil or spent batteries; (v) volatile organic compounds (“**VOC**”); or (vi) any condition that would result in liability for an owner or operator under any governmental Requirement or Environmental Law, or be considered a recognized environmental condition (“**REC**”) as defined by the EPA and/or under the ASTM E1527 05 Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process (and any successor provision).

1.21.6.2. “**CERCLA**” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Sections 9601 et seq.), and any amendments thereto; and “**SARA**” means the Superfund Amendments and Reauthorization Act of 1986 Pub. L. No. 99 499 and any amendments thereto.

1.21.6.3. “**Environmental Laws**” means, without limitation, CERCLA, SARA, the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 49 U.S.C. Section 6901, et seq., the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq., the Clean Air Act 42 U.S.C. Section 7401 et seq., Articles 17 and 27 of the New York State Environmental Conservation Law, or other applicable State or Federal laws, rules, publications, or regulations adopted pursuant to any of the foregoing, or any other applicable environmental law, statute, act, rule, or ordinance enacted by any Environmental Agency.

1.21.6.4. “**Environmental Agency**” or “**Environmental Agencies**” means any agency, department, task force, or other body or organization charged by statute, law, rule, act, or ordinance with the application, regulation, interpretation, or enforcement of the Environmental Laws, and/or the promulgation of environmental conservation and/or preservation programs, and/or the review and Approval of environmental conservation or preservation plans for building construction and/or certain environmentally-conservative or -preservative equipment installed in, or used in connection with the operation of, such buildings; including, without limitation as to such bodies or organizations, the New York



Department of Environmental Conservation (DEC), and the United States Environmental Protection Agency (EPA); together with all of their respective and applicable departments, boards, bureaus, commissions, instrumentalities, and political, administrative, or executive subdivisions, agencies or sub-agencies of any of them

1.21.6.5. “**Release**” and “**Spill**” have the meanings ascribed to them in CERCLA and/or in any other Environmental Law.

1.21.7. Legal Action on Mortgagor’s Part. If a violation of this Section 1.21 of this Mortgage, or any subsection hereof, shall occur or is alleged to occur, then Mortgagor, at Borrower’s expense, shall have the right to cure or remediate any such violation or alleged violation, or, as and if required, retain the services of legal counsel to represent the interests of Mortgagor, and to defend, at Borrower’s expense, in any suit or litigation arising out of the facts evidencing a default by Mortgagor or by the Real Property pursuant to this Section 1.21 of this Mortgage; the interests of both Mortgagor and the Lender; subject to such legal counsel and the course of conduct of the defense being to the reasonable approval of Lender, and provided such cure, remediation, representation or defense is pursued diligently, and at no time shall the liens, rights and interests of Lender in the Mortgaged Property be placed in jeopardy, or the priority thereof be diminished. Mortgagor hereby (a) releases and waives any future claims against Lender, its employees, officers and directors, for indemnity or contribution in the event Mortgagor, or any other Credit Party, becomes liable for cleanup or other costs under any Environmental Laws,

#### 1.21.8 Environmental Liens.

1.21.8.1. To the best of Mortgagor’s knowledge after due inquiry and investigation, and except as may be otherwise disclosed in the Environmental Report, no lien has been attached to the Real Property as a result of the Administrator of the EPA expending monies from the Hazardous Substance Superfund for “Damages” and/or “Response Action Costs” as such terms are described in 42 U.S.C. Section 9607 arising from an intentional or unintentional action or omission of Mortgagor, Developer, any other Credit Party, or, any affiliate, subsidiary, officer, director, member, manager, partner, shareholder or principal thereof, or any previous owner and/or operator and/or tenant and/or user of the Mortgaged Property or any portion thereof, resulting in any Spill, Release, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of any Hazardous Substances, into the navigable waters, the waters of the contiguous zone, or the ocean waters of which the natural resources are under exclusive managing authority of the United States of America under the Magnuson Fishery Conservation and Management Act (16 U.S.C. Section 1801 et seq.), or any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States where damage may have resulted to the land, fish, wildlife, biota, air, water, ground water, drinking water supplies and other such resources belonging to, managed by, held in trust by, appertaining to or otherwise controlled by the United States and any State or local government.

1.21.8.2. In the event that there shall be a lien filed against the Mortgaged Property or any portion thereof by the EPA pursuant to and in accordance with the provisions of 42 U.S.C. Section 9607 as described in the preceding Section 1.20.8.1 hereof, which is not already disclosed in the Environmental

Report or in any other environmental site assessment, phase I, phase II, environmental questionnaire, and/or environmental screening report, and which is not being actively remediated pursuant to all applicable Environmental Laws and with Lender's prior written consent, then Mortgagor shall, within thirty (30) days from the date that Mortgagor, and/or other Credit Party, Developer, any affiliate, subsidiary, officer, director, member, manager, partner, shareholder or principal of any of them, is/are given notice that the lien has been placed against the Real Property, or within such shorter period of time in the event that the United States Government has commenced steps to cause the Mortgaged Property to be sold pursuant to the lien, either (a) pay or cause to be paid the claim and remove the lien from the Real Property, or (b) furnish (1) a bond satisfactory to the Title Insurer and Lender in the amount of the claim out of which the lien arises, (2) a cash deposit in the amount of the claim out of which the lien arises, or, and/or in addition to the foregoing, (3) other security reasonably satisfactory to the Lender in an amount sufficient to discharge the claim out of which the lien arises.

The provisions of this Section 1.21 of this Mortgage, and all subsections thereof, including (but not limited to) the obligation to indemnify, are independent of and in addition to any and all other obligations and liabilities which Mortgagor, other Credit Parties, and/or any affiliate, subsidiary, officer, director, member, manager, partner, shareholder or principal of any of them, have or may have to Lender under Applicable Law, common law, or any Related Documents with regard to environmental matters, and shall survive the transactions contemplated herein, indefeasible payment in full and discharge of all Mortgage Indebtedness, and the termination of this Mortgage, shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise, shall survive any subsequent transfer of the Property by Lender to a third party and shall continue for so long as Lender may have or may hereafter acquire any liability or obligation whatsoever with respect to environmental matters .

## 1.22. Condemnation.

1.22.1. Mortgagor will promptly notify the Lender in writing in the event that all or any part of the Mortgaged Property is materially damaged or destroyed or taken in any condemnation proceedings or by exercise of any right of eminent domain (hereinafter called, collectively "**Condemnation Proceedings**"). In the event that the Mortgaged Property, or any part thereof, shall be taken in Condemnation Proceedings, Mortgagor and Lender shall have the right to participate in any such Condemnation Proceedings and the award that may be made in any such Condemnation Proceedings or proceeds thereof shall be deposited with the Lender, and distributed in the manner set forth in this Section. The parties agree to execute, and cause to be executed, any and all further documents that may be required in order to facilitate collection of any award or awards and the making of any such deposit with Lender. The Mortgaged Property will be rebuilt, repaired, restored, and/or replaced, and the net proceeds of any award in any such condemnation proceeding shall be applied as provided in the following section of this Mortgage.

Section 1.22.1.1 The Whole Taken. If at any time during the term of this Mortgage, the whole or substantially all of the Mortgaged Property shall be taken in Condemnation Proceedings (or by agreement between Mortgagor and Lender, and those authorized to exercise such right), Lender may at its sole option apply such award or proceeds which it receives pursuant to this Section to payment of the Mortgage Indebtedness, including any of Lender's reasonable attorney's fees and costs incurred by Lender with respect to such Condemnation Proceedings, and any balance then remaining shall be paid to Mortgagor. In the

event that the amount of the award or proceeds received by Lender shall not be sufficient to pay the unpaid balance of the Mortgage Indebtedness (including any of Lender's reasonable attorney's fees and costs incurred by Lender with respect to such Condemnation Proceedings), with the accrued interest thereon, Mortgagor shall, within the ten (10) Business Days after the application of the award or proceeds as aforesaid, pay such deficiency to Lender, or cause such deficiency to be paid to Lender.

Section 1.22.1.2. Less than the Whole Taken. If at any time during the term of this Mortgage, less than the whole or substantially all of the Mortgaged Property shall be taken as aforesaid, all of the award or proceeds collected for damages to the Mortgaged Property, shall be held by Lender and applied and paid over toward the cost of demolition, repair, rebuilding, replacing, and restoration, substantially in the same manner and subject to the same conditions as those provided in Section hereof titled "Damage or Destruction", with respect to insurance and other monies. Any balance remaining in the possession of Lender after payment of such costs of demolition, repair, rebuilding, replacing, and restoration as aforementioned, shall be retained by Lender and applied in reduction of the Mortgage Indebtedness (including any of Lender's reasonable attorney's fees and costs incurred by Lender with respect to the foregoing). In the event that the costs of such demolition, repairs, rebuilding, replacing, and restoration shall exceed the net amount collected by Lender, Mortgagor shall pay the deficiency or the costs of such demolition, repair and restoration, as the case may be.

Section 1.22.1.3. Temporary Use Taken. If at any time during the term of this Mortgage the temporary use of the whole or substantially all of the Mortgaged Property shall be taken in Condemnation Proceedings, all of the award or proceeds collected by Lender pursuant to Section 1. 22.1 hereof, shall be held by Lender and applied by Lender toward the payments due on the Mortgage Indebtedness and any other sums as are due to Lender hereunder and/or under the other Related Documents, until such time as the Mortgage Indebtedness and any or all other sums as are due to Lender under this Mortgage or the other Related Documents are completely satisfied and paid, and the balance of such monies received by Lender shall be paid over to Mortgagor in equal monthly installments over the period covered by such temporary taking, except that, if such taking by Condemnation Proceedings results in changes and alterations to the Mortgaged Property or any part thereof which would necessitate an expenditure to restore the Mortgaged Property or any part thereof to its former condition or the condition thereof as contemplated under the Project Documents and/or Ancillary Documents, then such portion of the award or proceeds as in Lender's reasonable estimation shall be necessary to cover the cost of restoration shall be retained by Lender, without application as aforesaid, and, at the time of the termination of such temporary taking, be applied and paid over toward the restoration of the Mortgaged Property, or any part thereof, to its former condition, and/or the condition thereof as contemplated under the Project Documents and Ancillary Documents.

Section 1.22.4. Consequential Damages, etc. If Mortgagor shall be entitled to retain any award or awards made in Condemnation Proceedings for consequential damages or for the taking of rights in, under or above the streets adjoining said lands, or the rights and benefits of light, air or access to said streets, or for taking of space, or rights therein, below the surface of or above the Improvements, such awards shall be deposited with Lender, who, if it has not elected to apply the award or proceeds to reduce the Mortgage Indebtedness, shall apply and pay the same over towards the cost of any demolition, repair, rebuilding, replacing, and/or restoration of the Mortgaged Property as shall be necessitated by such taking, in substantially the same manner and subject to the same conditions as those provided in section titled

“Damage or Destruction” in this Mortgage, with respect to insurance and other monies, and any balance remaining in the possession of Lender shall be retained by Lender, and applied in reduction of the Mortgage Indebtedness in the same manner as provided in this Section with respect to the balance of the award or awards therein referred to.

Section 1.22.5. Effect of an Event of Default. Notwithstanding any provision of this Section to the contrary, if at any time during any demolition, repair, rebuilding, replacing and/or restoration of the Mortgaged Property as aforesated in this Section 1.22, there shall exist an uncured, continuing Event of Default, Lender shall have no obligation to apply the condemnation proceeds to further demolition, repair, rebuilding, replacement, or restoration, and may apply such condemnation proceeds to cure any default hereunder, under any other Related Document, to reduce the outstanding Mortgage Indebtedness, to complete any such demolition, repair, rebuilding, replacement, or restoration, or any one or more of the foregoing, as Lender, in its sole discretion, may determine.

Section 1.22.6. Reimbursement. In the case of any taking covered by the provisions of this Section, Mortgagor and Lender, shall, as a first priority on said funds, be entitled to reimbursement from any award or awards, of all reasonable costs, fees and expenses incurred in the determination and collection of any such awards, including their respective reasonable attorneys’ reasonable fees and costs, and court costs. In such reimbursement, the reasonable fees and disbursements of Lender and its counsel shall be paid and satisfied prior to those of Mortgagor.

Section 1. 27. Records and Accounting. Mortgagor will cause to be maintained true, accurate books of records and accounts pertaining to the Mortgaged Property and Project; and the Lender, or its agents, officers or employees may inspect such books, during normal business hours on Business Days.

Section 1.28. Inspect Mortgaged Property. In addition to the inspections required under the Loan Agreement as a condition to any Advance of Loan proceeds, the Lender or its agents, officers or employees, at any time during normal business hours on Business Days (and, unless a continuing uncured Event of Default exists, upon reasonable notice to Mortgagor), may enter upon and inspect the Mortgaged Property, to the extent further described in this Mortgage, the Loan Agreement and/or any other Related Document.

Section 1.29 Record Mortgage. Mortgagor and Agency will assist Lender to record and/or cause this Mortgage to be recorded in all offices where recordation hereof is necessary, and Borrower 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 agent or by the State of New York or other Governmental Authority upon this Mortgage and/or upon any of the Mortgage Indebtedness.

Section 1.30. Defense of Lender at Litigation. If any action or proceeding shall be commenced, except an action to foreclose this Mortgage or to collect the Mortgage Indebtedness, to which action or proceeding the Lender and/or Mortgagor is/are made a party/ies and in which it becomes necessary to defend or uphold the lien of this Mortgage, all costs incurred by the Lender for the expenses of such litigation (including court costs and reasonable counsel fees and expenses) shall be deemed part of the Mortgage Indebtedness and secured hereby, which Borrower agrees to pay. In any action or proceeding to

foreclose this Mortgage or to recover or collect the Mortgage Indebtedness, the provisions of law and Article II hereof respecting the recovery of costs, disbursements, and allowances, shall prevail unaffected by this Section.

Section 1.31 Lien Prohibition. Mortgagor will not create or permit to accrue upon all or any part of the Mortgaged Property, any debt, lien or charge which would be prior to or on a parity with the lien of this Mortgage, other than Permitted Liens. If any such debt, lien or charge, which is not a Permitted Lien, is created and attaches to the Mortgaged Property, Lender may at its option, but shall be under no obligation to do so, pay the same and Borrower will repay to Lender on demand any amount so paid by Lender, plus interest at the Default Rate set forth in the Note accruing from the date of such advance to the date of indefeasible repayment to Lender, and the same shall be secured by this Mortgage.

Section 1.32. Due on Sale. Lender may, at its option, declare immediately due and payable all sums secured by this Mortgage upon the sale or transfer, without the Lender's prior written consent, of all or any part of the Mortgaged Property, or any interest therein, except for Permitted Transfers; but Mortgagor covenants (and as also provided for in Granting Clause V hereinabove) that they shall notify Lender, in writing, no later than fifteen (15) Business Days prior to such transfer. A "sale or transfer" means the conveyance or alienation of the Mortgaged Property or any right, title or interest therein; whether legal, beneficial, or equitable, whether voluntary or involuntary, whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than five (5) years including extensions (except if such Lease has otherwise been prior disclosed to and consented to by Lender in writing), lease-option contract, or by sale, assignment, or transfer of any equitable and/or beneficial interest in or to any land trust holding title to the Mortgaged Property, or by any other method of conveyance of or alienation of the Mortgaged Property and/or interest therein.

Section 1.33. Waste. Upon the actual or threatened material waste to any part of the Mortgaged Property, Lender shall be at liberty, without notice, to apply for the appointment of a receiver of the Mortgaged Property and all income therefrom, and shall be entitled to the appointment of such receiver as a matter of right, without regard to the value of the Mortgaged Property as security for the Mortgage Indebtedness, or the solvency or insolvency of any Person then liable for the payment of the Mortgage Indebtedness.

Section 1.34. Lender's Right to Protective Advances to Cure Default. The Lender shall have the right to cure any Event of Default, and to pay all other expenses or costs necessary or desirable to preserve and defend the lien and priority of this Mortgage. Borrower shall reimburse the Lender for any amount so paid by the Lender pursuant to this Section, together with interest thereon from the date of payment by the Lender to the date of reimbursement to Lender at the Default Rate as set forth in the Note, together with such interest, shall be deemed a protective advance, and shall be secured by this Mortgage.

Section 1.35. Right to Recover from Time to Time. Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Mortgage Indebtedness without regard to whether or not the principal balance of the Mortgage Indebtedness or any part thereof shall be due, and without prejudice to the rights of Lender thereafter to bring an action of foreclosure or any other action for a default or defaults by Borrower existing at the time such earlier action was commenced, and to protect

and enforce its rights under this Mortgage, either by suit or suits in equity or at law, in any court or courts of competent jurisdiction, whether for specific performance of any covenant or agreement contained herein, or in aid of the execution of any powers herein granted, or for any foreclosure under this Mortgage, or for any other sale of the Mortgaged Property, so far as may be authorized by law, or for the enforcement of such other or additional appropriate legal or equitable remedies as Lender may deem most effective to protect and enforce such rights.

Section 1.36. Construction of Improvements and Incorporation of Loan Agreement. Borrower, as the fee simple owner of the Mortgaged Property and Project, shall construct, equip, and complete the Project on the Real Property, as required by and in accordance with the Project Documents, Loan Agreement, and Ancillary Documents. All representations, warranties, conditions, obligations, and agreements of the Loan Agreement are incorporated herein by reference as if the entire text thereof were fully set forth herein, and all of which representations, warranties, conditions, obligations, and agreements Borrower agrees to comply with, without material deviation and/or modification thereof, except as may be consented to in writing by Lender. The Loan Agreement is a “building loan contract”, as defined in the Lien Law, made between Borrower and Lender with respect to the Loan and Project, and will be filed concurrently with and in conjunction with the recording of this Mortgage in the Onondaga County Clerk’s Office.

Section 1.37. Notice of Construction. Borrower shall notify Lender before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialman's lien, common law lien, or other lien could be asserted on account of the work, services, or materials; and notwithstanding the foregoing, shall not commence such work (or accept such services or materials at the Property) until the recording of this Mortgage and filing of the Loan Agreement, unless the same has been otherwise prior permitted in writing by Lender, and Lender has been provided with mechanic’s lien waivers from each and every contractor, subcontractor, laborer, materialman, and supplier which has, to the date of filing and recording, provided labor, materials, services, and/or supplies to the Real Property, for all such labor, materials, services and/or supplies so provided.

Section 1.38. Additional Documents. At any reasonable time upon reasonable request of the Lender, Mortgagor will execute, acknowledge and deliver all such additional papers, documents, and instruments and all further assurances of title, and will do, or cause to be done, all further and reasonable acts and things, as may, subject to the conditions contained in this Mortgage, be proper or reasonably necessary to effectually carry out the intent of this Mortgage, at the sole cost and expense of Borrower.

## ARTICLE II: EVENTS OF DEFAULT AND REMEDIES OF LENDER

Section 2.1. The following shall be “**Events of Default**” under this Mortgage and the terms “**Events of Default**” or “**Default**” shall mean, whenever used in this Mortgage, any one or more of the following events:

1. Payment Default. Borrower fails to make any payment under the Note within thirty (30) days of the date upon which such payment is due (except for payment in full no later than the Maturity Date of the Note, which shall have no thirty (30)-day cure period).

2. **Other Monetary Defaults.** Borrower fails to make any payment or deposit required under the Loan Agreement, this Mortgage, or any other Related Document, on the date such payment is due.
3. **Other Manner of Defaults.** Any Credit Party fails to comply with or to perform, when required or due, any other term, obligation, covenant, or condition contained in the Note, or any term, obligation, covenant or condition contained in the Loan Agreement, this Mortgage or any other Related Document (including, but not limited to, the maintenance of all insurance required under the Loan Agreement, this Mortgage and/or other Related Documents), or the Ancillary Documents, applicable to it; or Borrower fails to comply with any term, obligation, covenant, or condition under any other loan of Borrower with Lender and/or contained in any other written agreement, document or instrument executed by Borrower to the order and benefit of Lender, if any, and such failure continues beyond any applicable notice and cure period contained therein; or Borrower breaks any other material written promise Borrower has made to Lender.
4. **Defaults in Favor of Third Parties.** A Credit Party defaults under, and fails to cure such default within any applicable cure period applicable under, any loan, extension of credit, security agreement, or any other agreement with, or in favor of, any other creditor with a loan secured by some or all of the Collateral; including, but not limited to, the Ancillary Documents; and/or such creditor exercises its rights or remedies under such agreement due to such default and failure to cure and the exercise of such remedy materially jeopardizes the Lender's security and/or lien priority in the Collateral or part thereof.
5. **False Statements.** Any warranty, representation or statement made or furnished to Lender by or on behalf of any Credit Party under the Note, the Loan Agreement, this Mortgage, any other Related Document, or Ancillary Document applicable to it, is false or misleading in any material respect at the time made or furnished.
6. **Termination, Insolvency, etc.** (a) A Credit Party ceases all Business operations and/or ceases to be a going concern; (b) Borrower and/or a Corporate Guarantor liquidates, dissolves, terminates, or sells all or substantially all of its assets; (c) Borrower and/or a Corporate Guarantor merges, acquires or consolidates with another organization; (d) the appointment of a receiver for any part of a Credit Party's property (including, but not limited to, any portion of the Collateral); (e) a general assignment by a Credit Party for the benefit of its creditors; (f) any type of creditor workout instituted against a Credit Party and/ or the Collateral; (g) the commencement of any bankruptcy or similar proceedings by or against a Credit Party; or (h) a Credit Party's admission to Lender in writing of its inability to pay its debts generally, as they become due in their ordinary course.
7. **Corporate Change.** (a) Any change in Control and/or a material change in executive management of any Credit Party or Borrower's Managing Member; (b) a reorganization of any Credit Party and/or Borrower's Managing Member in another jurisdiction; (c) a change in name of the Borrower; and/or (d) a material change in the capital or legal structure of any Credit Party; any of the foregoing, without Lender's prior written consent, which shall not be unreasonably withheld, delayed or conditioned.

8. **Cessation of Effect.** The Note, the Loan Agreement, this Mortgage, or any other Related Document ceases to be in full force and effect, including, but not limited to, the failure of this Mortgage to create and maintain a valid, first-priority mortgage lien against the Real Property, or the failure of any security agreement or other Related Document to create and maintain a valid and perfected Security Interest in any of the other Collateral, at any time and for any reason; except if caused by the direct gross negligence or willful misconduct of Lender.
9. **Liens; Default on Payments of Taxes, Assessments, etc.** Any portion of the Collateral becomes subject to any lien, charge, or encumbrance which is not a Permitted Lien, or becomes subject to any other adverse condition which jeopardizes or, in Lender's reasonable judgment, may jeopardize Lender's Security Interest and/or lien priority under this Mortgage or any other Related Document (including, but not limited to, Borrower's failure to pay any Tax or Assessment) unless (a) Borrower is contesting a Tax or Assessment in good faith; (b) Borrower gives Lender prior written notice of such contest and receives Lender's prior written consent; (c) such contest is conducted in accordance with recognized legal proceedings; (d) Borrower establishes adequate reserves therefor, against an unfavorable outcome; (e) at Lender's request or requirement, Borrower provides to Lender a surety bond naming Lender as an additional obligee thereon, or other security reasonably satisfactory to Lender; (f) Lender's liens and Security Interests in the Collateral, and the priority thereof, are not jeopardized thereby, in Lender's reasonable judgment; (g) there exists no Event of Default at the time Borrower notifies Lender of its intention to initiate such contest, and no Event of Default arises during the course of such contest; (h) the contest does not violate or cause a default under, or otherwise contravene the terms of, the Ancillary Documents or any Project Document.
10. **Creditor or Forfeiture Proceedings.** The filing of any levy, attachment, execution, claim, garnishment or other process against any portion of the Collateral and/or commencement of foreclosure or forfeiture proceedings, including, but not limited to, the Ancillary Documents, whether by judicial proceeding, self-help, repossession or any other method, by any creditor, Governmental Authority, or any other Person, against any part of the Collateral, including, but not limited to, a garnishment, attachment, or levy on or of any of Borrower's Deposit Accounts with Lender. However, the foregoing shall not apply in the event of a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the proceeding, provided that (a) Borrower gives Lender prior written notice of such dispute and receives Lender's prior written consent; (b) such dispute is conducted in accordance with recognized legal proceedings; (c) Borrower establishes adequate reserves therefor, against an unfavorable outcome; (d) at Lender's request or requirement, Borrower provides to Lender a surety bond naming Lender as an additional obligee thereon, or other security reasonably satisfactory to Lender; (e) Lender's liens and Security Interests in the Collateral, and the priority thereof, are not jeopardized thereby, in Lender's reasonable judgment; (f) there exists no Event of Default at the time Borrower notifies Lender of its intention to initiate such dispute, and no Event of Default arises during the course of such dispute; (g) the dispute does not violate or cause a default under, or otherwise contravene the terms of, the Ancillary Documents or any Project Document.
11. **Contestation of Related Documents.** Delivery or enforceability of the Note, the Loan Agreement,



this Mortgage, or any other Related Document shall be contested in any judicial forum, or the party or parties to such document shall deny that it, she, or they have any further liability or obligation thereunder.

12. **Adverse Change.** A Material Adverse Change occurs.
13. **Transfer of Collateral.** Except for Permitted Transfers, the sale, transfer, hypothecation, assignment, entering into any lease having a term of five (5) years or greater (unless such lease has been prior disclosed to and consented to in writing by Lender) or other disposition, conveyance or alienation of the Property or other Collateral, or any portion thereof or any interest therein, without Lender's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned; the foregoing is not intended to prohibit any transfer expressly provided for under the terms of the Amended and Restated Operating Agreement in effect as of the Closing Date, and as reviewed and accepted by Lender in writing prior to the Closing Date.
14. **Events Affecting Guarantor.** Guarantor revokes or rescinds its respective Guaranty/ies.
15. **Condemnation.** All or the material portion of the Property is condemned, seized or appropriated without compensation, and Borrower, as and if Required, does not, within thirty (30) days after such condemnation, seizure, or appropriation, initiate and diligently prosecute appropriate legal action to contest in good faith the validity of such condemnation, seizure, or appropriation.
16. **Damage or Destruction.** The Property, or the material portion thereof, is destroyed or materially injured by fire, explosion, accident, flood, or other casualty, unless Lender and/or Borrower, as applicable, has received insurance proceeds and if necessary, monies from Borrower's own capital (which is not part of the Construction Budget, unless such capital is part of Contingency Reserves as evidenced in the Construction Budget), sufficient, in the reasonable estimation of Lender, to enable (a) the satisfactory restoration of the Property to the same condition as immediately before its destruction or damage, (b) the satisfaction of all applicable terms and/or requirements of the Loan Agreement, this Mortgage, other applicable Related Documents, the Project Documents, the Ancillary Documents, and all relevant Requirements and Approvals regarding the Property and Project; and (c) the completion of the Project, in accordance with the terms of the Project Documents, the Loan Agreement, the Ancillary Documents, and all applicable Requirements and Approvals, no later than the Latest Required Completion Date.
17. **Breach of Project Construction, etc.** Project Completion is not achieved by the Latest Required Completion Date in compliance with the Project Documents, the Loan Agreement, the applicable Permanent Loan Documents, the other Ancillary Documents, and all applicable Requirements and Approvals; or an event of breach, or a violation, occurs under any Project Document which may reasonably be expected to cause a Material Adverse Effect upon Borrower's ability to achieve Project Completion no later the Latest Required Completion Date; or the Project is abandoned, or work on the Project ceases for a period of more than thirty (30) consecutive Business Days (except by reason of strikes, acts of God, fire or other causes entirely beyond Borrower's control; however, in such events, Borrower will restore the Project and Property in accordance with Paragraph 16

hereinabove.

18. **Failure to Insure an Advance, or this Mortgage.** Title Agent or Title Insurer refuses to insure any Advance as being secured by this Mortgage, and/or to secure this Mortgage as a valid first-priority mortgage lien on the Real Property, and continuation of such refusal for a period of ten (10) Business Days after notice thereof by Lender to Borrower.
19. **Other Terminations/Breaches.** Termination, voiding, rescission, revocation, forfeiture, cessation of full force and effect, violation or material breach of or under, or the occurrence, and continuation thereof beyond any applicable notice and cure period, if any, provided therein, of an event of default under, the Ancillary Documents and (a) which event or circumstance is not cured pursuant to the terms of the applicable document(s), such that the parties to said document(s) agree in writing that the document(s) have been restored to a state of full force and effect within (1) the applicable period of notice and cure provided in said document(s), if any, or (2) if no such period of notice and cure is provided or applicable, then within ten (10) Business Days of the occurrence of such event or circumstance; or (b) if the event or occurrence results in a lack of funds or financing for the Project, as set forth in the Construction Budget and/or in the Ancillary Documents, within ten (10) days of the happening of the event or occurrence, Borrower provides Lender with evidence, acceptable to Lender, of a replacement source of funds or financing, which will be subject to Lender's review and approval.
20. **Oil and Gas Substance Conveyance.** The sale, transfer, assignment, conveyance, farm out, lease, sublease, mortgage, pledge, or other disposal of oil, gas, other minerals, and/or Oil and Gas Substances, in and under the Real Property subsequent to the execution of the Note without the prior written consent of Lender. Further, notwithstanding any provision to the contrary in any Oil and Gas Lease, Borrower will be in default if it: (a) consents to the drilling of an oil or gas well or erection of a surface structure related to oil or gas exploration or development or access road within two hundred (200) feet of any structure, residence, barn, or water well located on Real Property; or (b) consents to the placement of a pipeline, gathering line, service road, or right of way within two hundred (200) feet of any structure, residence, or barn located on Real Property; or (c) consents to the storage of Oil or Gas Substances if an option of consent is contained in an Oil and Gas Lease, without the prior written consent of Lender which may be withheld in its sole discretion.

**Notice of Default and Opportunity to Cure.** Except for the above paragraphs #1, #6 and #20, titled, respectively, "Payment Default," "Termination, Insolvency, etc.," and "Oil and Gas Substance Conveyance", for any other Event of Default which does not by its terms otherwise provide a specific period of notice and cure, Lender shall provide Borrower with written notice of such Default and a thirty (30)-day opportunity to cure such Default, if curable; such thirty (30) day opportunity to cure to be measured from the date of the written notice of Default made and given by Lender to Borrower. Lender will accept, as the cure of any Material Adverse Change with regard to the General Contractor, Borrower's obtaining a replacement general contractor within such thirty (30)-day cure period, which will be subject to Lender's prior written approval, which will not be unreasonably withheld, delayed or conditioned In considering such approval Lender will require the replacement general contractor's most current financial statements; updated resume; currently-dated list of completed projects; other documents evidencing its financial wherewithal and

standing within its industry, similar to or the same as provided by Borrower to Lender with respect to the General Contractor within 30 days of Lender's consent of such replacement general contractor; a replacement construction contract or assignment of the General Construction Contract to the replacement general contractor; and a payment and performance bond substantially the same as the payment and performance bond provided by General Contractor to Borrower and Lender pursuant to the terms of the General Construction Contract; all of which will be subject to Lender's prior review and approval, which will not be unreasonably withheld, delayed or conditioned

Section 2.2. Effect of an Uncured Event of Default. Upon the occurrence and continuation beyond any applicable notice and cure period of any one or more Events of Default, the entire Mortgage Indebtedness and all other sums secured by this Mortgage shall, at the option of Lender, become immediately due and payable without notice or demand, and in any such uncured Event of Default, Lender may forthwith serve all notices required pursuant to the Note, this Mortgage, the Loan Agreement, and/or the other Related Documents. Upon the occurrence of an Event of Default under Paragraph 6, "Termination, Insolvency, Etc.", such acceleration shall be automatic and not optional. After the expiration of any applicable time limitations, and without further delay, Lender may forthwith serve any and all notices required pursuant to the Note, this Mortgage, the Loan Agreement, and/or the other Related Documents and after the expiration of any applicable time limitations (if any) provided with respect to the service of such notice, and without further delay, undertake any one or more of the following actions:

2.2.1. Foreclosure. Institute an action of mortgage foreclosure, or take such other action as the law may allow, or in equity, for the enforcement thereof and realization on the Mortgaged Property or any other security which is herein or elsewhere provided for, including, but not limited to, enforcement of performance under the other Related Documents, and proceed thereon to final judgment and execution thereon for the entire Mortgage Indebtedness, with interest at the default rate set forth in the Note, to the date of judgment, together with all other sums secured by this Mortgage, all costs of suit, interest at the Note default rate, or the highest rate permitted by law, whichever is greatest, on any judgment obtained by Lender until actual indefeasible payment is made of the full amount due Lender, and attorneys' fees for collection, which shall be in a reasonable sum for the work performed in connection therewith, without further stay, any law, usage or custom to the contrary notwithstanding.

2.2.2. Entry. Lender personally, or by its agents or attorneys, may, at any time or times, with or without force and with or without process of law, either by applying for appointment of a receiver, obtaining, and/or by execution upon, an assignment of Rents, or execution and/or enforcement of the Loan Agreement and/or any other Related Document, or otherwise, immediately to enter upon and into, and to take and maintain possession of, all or any part of the Mortgaged Property, together with all records, documents, leases, books, papers and accounts of Mortgagor relating thereto (including, without limitation of the foregoing enumeration, all Plans, Specifications, Contracts, Permits and any other Project Document), and may exclude Mortgagor or any other Credit Party, Developer, or any other Entity, and any of Mortgagor's or any other Credit Party or other Entity's respective agents, servants, affiliates, officers, directors, members, managers, partners, shareholders or principals, and/or contractors wholly therefrom, without liability for trespass, damages or otherwise; and Mortgagor agrees to forthwith surrender possession to Lender on demand after the happening of any continuing uncured Event of Default; and having and holding the same, Lender may and shall, as the attorney in fact or agent of Mortgagor irrevocably or in its

own name, and/or acting under such assignment of Rents, Loan Agreement, or any other Related Document, and under the powers herein granted, have the right to hold, use, operate, manage and control the Mortgaged Property and conduct the business thereof and the construction and renovation of the Project (without, however, any obligation to do so or the incurrence of any liability while doing so, all of which obligation and liability shall remain with Mortgagor), either personally or by its superintendents, managers, agents, servants, attorneys or receivers; and upon every such entry, the Lender, at the expense of Mortgagor, from time to time, either by purchase, repairs or construction, may maintain, complete, equip, renovate and/or restore the Mortgaged Property (including, but not limited to the Project Improvements), and shall become possessed as aforesaid, and in the course thereof, may make changes in the contemplated, ongoing, or completed Improvements, as it may deem reasonably desirable, and/or as otherwise provided in any of the Project Documents, and may insure the same; and likewise, from time to time, at the expense of Borrower, the Lender may make all other and additional and necessary or proper repairs, renewals and replacements and such useful alterations, additions, betterments and improvements thereto and thereon as it may deem advisable; and in every such case the Lender shall have the right to manage and operate the Mortgaged Property and to carry on the business thereof and exercise all respective rights and powers of Mortgagor with respect thereto either in the names of Mortgagor or otherwise, as it shall reasonably deem best; and the Lender shall be entitled to collect and receive and dispose of all earnings, revenues, Rents, issues, profits and income of the Mortgaged Property and every part thereof, and make and file reports with respect thereto; all in the same manner that Mortgagor, had a right or duty to so operate, manage, receive, dispose, and make and file such reports, prior to the occurrence of an uncured, continuing Event(s) of Default, but without any of the restrictions (if any) placed upon Mortgagor under this Mortgage with respect thereto; and after deducting the expenses of conducting the business thereof and of all maintenance, repairs, renewals, replacements, alterations, additions, betterments and improvements and the amounts necessary to pay for Taxes, Assessments, insurance, and prior or other proper charges upon the Mortgaged Property or any part thereof, as well as just and reasonable compensation for the services of the Lender and for all attorneys, counsel, agents, clerks, servants, and other employees by it properly engaged and employed, the Lender shall apply the moneys arising as aforesaid, first, to the payment of the unpaid principal Mortgage Indebtedness evidenced and secured hereby, and the interest thereon, when and as the same shall become payable; and second, to the payment of any other sums required to be paid by Mortgagor under the terms of this Mortgage, the Note, and the other Related Documents. In furtherance of these rights, Lender may require any lessee and/or sublessee, or other user of the Mortgaged Property, to make payments of Rent or use fees directly to Lender. If the Rents are collected by Lender, then Mortgagor irrevocably designates Lender as their attorney in fact to endorse instruments, checks and/or drafts received in payment thereof in the names of Mortgagor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this paragraph either in person, by agent, or through a receiver.

2.2.3. Receivership. Have a receiver appointed to enter into possession of the Mortgaged Property, collect the earnings, benefits, revenues, Rents, issues, profits and income therefrom and apply the same as the court may direct. Lender shall be entitled to the appointment of a receiver without notice and without the necessity of proving either the inadequacy of the security or the insolvency of Borrower, Guarantors, or any Person who may be legally or equitably liable to pay money secured by this Mortgage or perform the covenants of this Mortgage, the Loan Agreement or other Related Documents; and

Borrower, Guarantors, and each such Person, shall be deemed to have waived such proof and to have consented to the appointment of such receiver. Should the Lender or any receiver collect earnings, revenues, Rents, issues, profits or income from the Mortgaged Property, the money so collected shall not be substituted for payment of the Mortgage Indebtedness, nor can it be used to cure the default, without the prior written consent of the Lender. Lender shall be liable to account only for earnings, revenues, rents, issues, profits and income actually received by Lender.

2.2.4. Sale. Lender, or its legal representatives or assigns, may sell, transfer and set over the Mortgaged Property, and all other right, title and interest of Borrower, in and to the same, at public auction, as provided by law; and, as the attorney in fact of Borrower for that purpose by these presents duly and irrevocably authorized, constituted and appointed, to make, seal, execute and deliver to the purchaser or purchasers thereof a good and sufficient assignment, transfer or other conveyance in the law, for the Mortgaged Property with the appurtenances; which sale, so to be made, shall forever be a perpetual bar, both in the law and equity, against Mortgagor and against all Persons who may at any time claim under them; and Lender shall have the right to cause the Mortgaged Property to be sold upon such terms and conditions and in such manner as it may deem advisable, at public or private auction held at some reasonably convenient place in the County of Onondaga and State of New York, upon giving to Mortgagor not less than ten (10) days notice in writing of the time and place of such sale; to adjourn any such sale from time to time by announcement at the time and place appointed for such sale or for such adjourned sale; and upon the completion of any such sale to execute or cause to be executed such deed, assignment, bill of sale, certificate or other assurance to the purchaser as may be necessary to pass the title to the property so sold.

2.2.4.1. Manner of Sale. In exercising its rights and remedies, Lender shall be free to sell all or any part of the Mortgaged Property together or separately, in one sale or by separate sales, and in one or more parcels, in such manner or order as Lender in its sole discretion may elect. Lender shall be entitled to bid at any public sale on all or any portion of the Mortgaged Property.

Section 2.3. Choice of Remedy. Lender shall have the right to otherwise protect and enforce its rights under this Mortgage, either by suits or suits in equity or at law, in any court or courts of competent jurisdiction, whether for specific performance of any covenant or agreement contained herein, or in aid of the execution of any powers herein granted, or for foreclosure under this Mortgage, or for any other sale of the Mortgaged Property, so far as may be authorized by law, or for the enforcement of such other or additional appropriate legal or equitable remedies as Lender may deem most effective to protect and enforce such rights.

Section 2.4. Tenancy at Sufferance. If Mortgagor remain(s) in possession of the Mortgaged Property after the Mortgaged Property or a portion thereof is sold as provided herein, or Lender otherwise becomes entitled to possession of the Mortgaged Property or a portion thereof upon default, the party/ies remaining in possession shall become a tenant at sufferance of Lender or of the purchaser of the Mortgaged Property and shall, at Lender's option, either (a) pay a reasonable rental for the use of the Mortgaged Property, or (b) vacate the Mortgaged Property immediately upon the demand of Lender. In the case of the appointment of a receiver for the Mortgaged Property and collector of Rents and profits, such enforcement may be performed by such receiver.

Section 2.5. Marshalling of the Mortgaged Property. To the extent permitted by applicable law, Mortgagor hereby waives any and all right to have the Mortgaged Property marshaled.

Section 2.6. Nonjudicial Sale. If permitted by Applicable Law, Lender may foreclose Borrower's and/or the Agency's interests in all or any part of the Mortgaged Property by nonjudicial sale.

Section 2.7. Notice of Sale. Lender shall give Borrower and Agency reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition.

Section 2.8. Other Remedies. Lender shall have all other rights and remedies provided in this Mortgage, the Note, the Loan Agreement, any other Related Document, or otherwise available at law or in equity.

Section 2.9. Power of Sale. In the event of a continuing, uncured Event of Default, Lender may, either with or without entry or taking possession of the Mortgaged Property as provided in this Mortgage or otherwise, personally or by its agents or attorneys, and without prejudice to the right to bring an action for foreclosure of this Mortgage, sell the Mortgaged Property or any part thereof pursuant to any procedures provided for by Applicable Law, including, without limitation, any successor statutes to Article 14 of the New York Real Property Actions and Proceedings Law), and all estate, right, title, interest, claim and demand therein, and right of redemption thereof, at one or more sales as an entity or in parcels, and at such time and place upon such terms and after such notice thereof as may be required or permitted by Applicable Law.

Section 2.10. Resort to Security Interests, etc. Upon the occurrence of and continuation, beyond any applicable grace or cure period provided, of any Event of Default hereunder, Lender, in pursuance of the foregoing remedies, or in addition thereto (i) shall be entitled to resort to its several Security Interests for the payment of the sums secured by this Mortgage in such order and manner as Lender may think fit without impairing Lender's lien in, or rights to, any of such securities and without affecting the liability of any person, firm, corporation, or other entity for the sums secured by this Mortgage, except to the extent that the Mortgage Indebtedness shall have been reduced by the actual monetary consideration, if any, received by Lender from the proceeds of such security, (ii) may, in Lender's sole discretion, release for such consideration, or none, as Lender may require, any portion of the Mortgaged Property without, as to the remainder of the security, in any way impairing or affecting the lien of this Mortgage, or the priority thereof, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the Mortgage Indebtedness shall have been reduced by the actual monetary consideration, if any, received by Lender for such release; and/or (iii) may accept the assignment or pledge of any other property in place thereof as Lender may require, without being accountable for so doing to any other lienor.

Section 2.11. Failure to Enforce No Waiver. No failure by Lender to enforce and/or insist upon the strict continuing performance of any covenant, agreement, provision, term or condition of this Mortgage or to exercise right or remedy consequent upon a breach thereof, shall constitute a waiver of any such continuing breach or of any such covenant, agreement, provision, term or condition. No covenant,

agreement, provision, term or condition of this Mortgage to be performed or complied with by Borrower, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by Lender. No waiver of any breach shall affect or alter this Mortgage; but each and every covenant, agreement, provision, term and condition of this Mortgage shall continue in full force and effect with respect to any other then existing, or subsequent breach thereof.

Section 2.12. Rights Herein Additional. Each right and remedy of Lender provided for in this Mortgage shall be in addition to every other right or remedy provided for herein, in the other Related Documents, or now or hereafter existing at law, in equity or by statute or otherwise, and the exercise or beginning of the exercise by Lender of any one or more of the rights or remedies provided for in this Mortgage, the other Related Documents, or now or hereafter existing at law or in equity or by statute or otherwise, shall not preclude the simultaneous or later exercise by Lender of any or all other rights or remedies provided for herein, or in the other Related Documents, or now or hereafter existing at law, or in equity or by statute or otherwise.

Section 2.13. Rights to Enjoin Breach or Threatened Breach, etc. In the event of any breach or threatened breach by Borrower of any of the covenants, agreements, terms, or conditions contained in the Note, this Mortgage or any other Related Documents applicable to each of them, Lender shall be entitled to enjoin such breach or threatened breach, and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise, as though other remedies were not provided for in this Mortgage.

Section 2.14. Non-effect of Recovery of Judgment upon this Mortgage. No recovery of any judgment by the Lender and no levy of an execution under any judgment upon the Mortgaged Property, any other Collateral, and/or upon any other property of Mortgagor shall affect in any manner or to any extent, the lien of the Mortgage upon the Mortgaged Property or any part thereof, or any liens, rights, powers or remedies of the Lender hereunder, but such liens, rights, powers and remedies of the Lender shall continue unimpaired as before.

Section 2.15. Foreclosure Subject to Tenants. In the event that Lender shall have the right to foreclose this Mortgage, Borrower authorizes Lender at its option to foreclose this Mortgage subject to tenants under any Leases of the Real Property, and the failure to make any such tenants parties defendant to any such foreclosure proceeding and to foreclose their rights will not be asserted by Borrower as a defense to any proceeding instituted by Lender to either liquidate the Mortgaged Property in any action by Lender brought to enforce this Mortgage, or to collect the Mortgage Indebtedness or any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

Section 2.16. Other Obligors Not Released by any Action or Non-action, etc. Neither Mortgagor, Guarantors, nor any other Person now or hereafter obligated for the payment of the whole or any part of the Mortgage Indebtedness and/or all other sums now or hereafter secured by this Mortgage, shall be relieved of such obligation by reason of the failure of Lender to comply with any request of Mortgagor or of any other Person so obligated, to take action to foreclose this Mortgage, or otherwise enforce any of the provisions of this Mortgage, or by reason of the release, regardless of consideration, of the whole or any part of the security held for the Mortgage Indebtedness, or by reason of any agreement or stipulation between any subsequent owner or owners of the Mortgaged Property and Lender extending the time of payment or

modifying the terms hereof without first having obtained the consent of Mortgagor, Guarantors, or such other Person, and in the latter event, Mortgagor, Guarantors, and all such other Persons shall continue to be liable to Lender to the same extent and according to the terms of any such agreement of extension or modification, unless expressly released and discharged in writing by Lender. Regardless of consideration, and without necessity for any notice to or consent by the holder of any subordinate liens on the Mortgaged Property, Lender may release the obligation of anyone at any time liable for any of the Mortgage Indebtedness or any part of the Security Interests held for the Mortgage Indebtedness and may extend the time of payment or otherwise modify the terms thereof without, as to the Security Interest or remainder thereof, in any way impairing or affecting the lien of this Mortgage or the priorities of such liens, as security for the payment of the Mortgage Indebtedness as it may be so extended or modified, over any subordinate lien. The holder of any subordinate lien shall have no right to terminate any Lease affecting the Mortgaged Property whether or not subordinate to such lienholder's mortgage or other Security Interest. For the payment of the Mortgage Indebtedness, Lender may resort to any other security therefor held by Lender in such order and manner as Lender may elect.

Section 2.17. Attorney's Fees and Costs. If Lender institutes any suit or action to enforce any of the terms of this Mortgage, Lender shall be entitled to recover its actual attorneys' fees and attorneys' costs and expenses. Whether or not any court action is involved, all reasonable expenses incurred by Lender that in Lender's reasonable opinion are necessary at any time for the protection of its interest or the enforcement of its rights, shall become a part of the Mortgage Indebtedness, payable on demand, and shall bear interest from the date of expenditure until repaid at the Default Rate provided for in the Note. Expenses covered by this paragraph include, without limitation, subject, however, to any limits under applicable law, Lender's actual attorney's fees and attorneys' costs and expenses and Lender's actual legal expenses whether or not there is a lawsuit, including actual attorneys' fees, costs and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, and title insurance, to the extent permitted by applicable law. Borrower also will pay or cause to be paid any court costs, in addition to other sums provided by law.

Section 2.18. Immediate call. Upon commencement of suit in foreclosure of this Mortgage, the then-unpaid balance of the Mortgage Indebtedness, if not previously declared due, shall at once become due and payable.

### **ARTICLE III OTHER RIGHTS OF LENDER.**

Section 3.1. Right to Modify, etc. The Lender may, at any time and from time to time, without notice to, and without the consent of, any other Person, (1) extend the time of payment, or accelerate the time for payment (if such acceleration is a declaration of the entire Mortgage Indebtedness being immediately due and payable, such is to be upon the occurrence of a continuing, uncured Event of Default) of the Mortgage Indebtedness, or agree to modify the terms of the Note, the Loan Agreement, or this Mortgage or any other Related Document (including but not limited to increasing or decreasing scheduled payments of interest and/or principal), (2) release any Person liable for payment of any Mortgage



Indebtedness secured hereby or for performance of any obligation, (3) release all or any part of the security held for the Mortgage Indebtedness, or (4) exercise or refrain from exercising or waive any right Lender may have.

Section 3.2. Exercise of Rights Does not affect Liability of Others, Etc. Lender shall have such rights and may exercise them without affecting the lien or priority of this Mortgage upon the Mortgaged Property or any part thereof, and without affecting the liability of any guarantor or surety, notwithstanding the fact that guarantors, sureties, junior mortgages, judgments, or other claims or encumbrances may be impaired, prejudiced, or otherwise adversely affected thereby.

#### **ARTICLE IV MISCELLANEOUS**

Section 4.1. Waivers not continuing. A waiver, in one or more instances, of any of the terms and provisions of this Mortgage shall apply only to the particular instance or instances, at the particular time or times only, and shall not be deemed to be a continuing waiver.

Section 4.2. Rights Cumulative. No right or remedy conferred upon or reserved to the Lender is intended to be exclusive of any other remedy provided or permitted herein or by law, but shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter provided or permitted by law.

Section 4.3. Notice. Any notices required or permitted to be given hereunder shall be: (i) personally delivered or (ii) given by registered or certified mail, postage prepaid, return receipt requested, or (iii) forwarded by a nationally-recognized overnight courier service, in each instance addressed to the addresses set forth at the head of this Mortgage, or such other addresses as the parties may for themselves designate in writing as provided herein for the purpose of receiving notices hereunder. All notices shall be in writing and shall be deemed given, in the case of notice by personal delivery, upon actual delivery or rejection thereof, and in the case of appropriate mail or courier service, upon actual receipt or rejection of such delivery service.

Lender shall, upon provision of a written notice to Borrower and Agency under this Mortgage, provide a copy of such notice to the following:

Mortgagors' Counsel:

Bousquet Holstein PLLC  
110 West Fayette Street  
One Lincoln Center, Suite 1000  
Syracuse, New York 13202  
Attention: Paul M. Predmore, Esq.

Lender's Counsel:

Mazzotta, Sherwood & Vagianelis, P.C.  
9 Washington Square

Albany, New York 12205  
Attention: John N. Vagianelis, Esq.

Agency's Counsel:  
Barclay Damon, LLP  
Barclay Damon Tower  
125 East Jefferson Street  
Syracuse, New York 13202  
Attention: Susan R. Katzoff, Esq.

Notwithstanding the foregoing, any notice, request or demand to or upon Lender shall not be effective until actually received. A duplicate copy of each notice, demand, request or other communication given hereunder by Borrower, Agency or the Lender to the other shall be given to each of the others of Borrower or Agency. Borrower, Agency, and Lender may, by notice given hereunder, designate any further or different address to which subsequent notices, demands, requests and other communications shall be sent.

Section 4.4. Section 13 Lien Law Covenant. Mortgagor, in compliance with Section 13 of the Lien Law of the State of New York, covenants that it will receive any and all proceeds of the Loan as a trust fund to be applied first for the purpose of paying the Cost of Improvement (as defined in the Lien Law) and will apply the same first to the payment of all Cost of Improvement before using any part of the total of the same for any other purpose.

Section 4.5. This Mortgage is made pursuant to the Loan Agreement and is subject to all the provisions thereof as if they were fully set forth in and made part of this Mortgage.

Section 4.6. UCC Security Agreement. This Mortgage is both a real property mortgage and a security agreement under the UCC now and hereafter in effect in the State of New York. Mortgagor and Agency shall, at the request of the Lender, obtain, or cause to be obtained, and/or deliver any and all further instruments which the Lender may request in order to further secure and perfect the lien of this Mortgage. Mortgagor and Agency each hereby authorize the Lender to file, as the Lender deems necessary, appropriate financing statements under the UCC at the sole cost and expense of Borrower, including the costs of all filing fees, including, but not limited to, any UCC amending statements and UCC continuation statements, and Mortgagor and Agency hereby ratify any UCC 1 financing statement filed prior to the date of this Mortgage.

Section 4.7. Applicable Law. This Mortgage has been made in the State of New York and shall be governed exclusively by the applicable laws of such State, exclusive of its choice of law, rules, or principles.

Section 4.8 Severability. In the event that any provision of this Mortgage shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall neither invalidate nor render unenforceable any other provision hereof.

Section 4.9. Successors and Assigns. The covenants and agreements herein contained shall

bind and inure to the benefit of Lender, its successors and assigns.

Section 4.10. Agency Provisions.

**(a) Borrower's Obligations to Comply with the Agency Lease, the Company Lease and the Payment in Lieu of Taxes Agreement.** Borrower shall: (i) pay the all other sums of money due and payable at any time and from time to time under the Agency Lease, the Company Lease and the Payment in Lieu of Taxes Agreement, dated December 1, 2017 among the City of Syracuse, NY, the Agency and the Borrower (the "**PILOT Agreement**"), as and when such sums become due and payable, but in any event before the expiration of any grace period provided in the Agency Lease, the Company Lease and the PILOT Agreement for the payment of any such sum; and (ii) at all times fully perform, observe and comply with all other terms, covenants and conditions of the Agency Lease, the Company Lease and the PILOT Agreement to be performed, observed or complied with by Borrower as lessor under the Company Lease and lessee under the Agency Lease and as a party under the PILOT Agreement. If the Agency Lease, the Company Lease and/or the PILOT Agreement do not provide for a grace period for the payment of a sum of money, Borrower shall make the payment on or before the date on which the payment becomes due and payable. Borrower shall deliver evidence of the payment to Lender within ten (10) days after receipt of a written request from Lender for evidence of the payment.

**(b) Miscellaneous Provision.** (1) The Borrower and the Lender hereto, by accepting this Mortgage, acknowledge that the Agency is executing this Mortgage solely to subject its interest in the Mortgaged Property, if any, to this Mortgage. Notwithstanding anything herein to the contrary, the Lender acknowledges and agrees that their sole recourse against the Agency for any default hereunder shall be with respect to the Agency's interest in the Mortgaged Property. (2) Notwithstanding anything else herein to the contrary, the Lender acknowledges and agrees that the Agency has agreed to participate herein solely to subject its interests, if any, in the Mortgaged Property to this Mortgage and that any recourse or remedies the Lender may have as against the Agency hereunder shall be sought solely against the Agency's interest in the Mortgaged Property and not against any other assets of the Agency.

**(c) 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 Assignment, including but not limited to reasonable attorney's fees.

**(d) Hold Harmless Provisions.** The Borrower acknowledges that the terms of the Agency Lease Agreements, as amended and restated from time to time, are in full force and effect, including but not limited to the "Hold Harmless Provisions" contained in Section 8.2 thereof and incorporates same in this instrument and makes same applicable hereto as if fully set forth herein.

**(e) Subordination Provisions.** Notwithstanding anything herein to the contrary, Lender by accepting this Mortgage, acknowledges and agrees that the rights of Lender hereunder shall be subordinate to the rights of the Agency to receive payments in lieu of taxes pursuant to the PILOT Agreement and that such

payments in lieu of taxes to be made by Borrower to the Agency shall have the same force, priority and effect as a real property tax lien under New York State law against the Real Property.

Section 4.11. Condominium. The Mortgaged Property describes condominium unit #1 at 618-620 North Townsend Street (the “Unit”) which is a part of the Condominium (the “Condominium”). With respect to the Unit and the Condominium, Borrower agrees as follows:

(a) The Condominium Act. The Condominium was created pursuant to Article 9-B of the Real Property Law of New York (the “Condominium Act”) by the Declaration of Butternut Crossing Condominium dated December \_\_, 2017 and to be duly recorded in the Onondaga County Clerk’s Office (the “Declaration”), and a Condominium Board (the “Condominium Board”) governs the Condominium pursuant to the By-Laws of the Condominium (the “Bylaws”) which shall be recorded with the Declaration.

(b) Notices Regarding Insurance Coverage. Borrower will provide Lender with acceptable evidence of the master insurance policy for the Condominium and will thereafter give prompt notice to Lender of termination of or interruption in coverage of the master insurance policy for the Condominium and, in that event, will provide replacement insurance as required hereunder for the benefit of Borrower and Lender.

(c) Conflict in Insurance Requirements. In the event of conflict between the respective terms of Section 1.9 of this Mortgage concerning the use of insurance proceeds in the event of damage to the Unit or the terms of this Mortgage concerning the use of awards or taking of the Unit and the terms of the Declaration or Bylaws regarding the same, the terms and provisions of the Declaration or Bylaws will control. However, if pursuant to the terms of the Declaration or Bylaws any insurance proceeds or awards are paid to Borrower, then the terms of this Mortgage will control the disposition of such insurance proceeds or awards. In the event of (i) damage, destruction, condemnation or taking of all or any part of the Condominium which requires a vote of the unit owners of the Condominium to repair and restore the Condominium, and (ii) the occurrence and continuance of an event of default, Borrower hereby assigns its right to vote in such matters to Lender and hereby irrevocably appoints Lender its attorney-in-fact coupled with an interest to cast Borrower’s vote in such matters as Lender deems appropriate in its sole and absolute judgment.

(d) Compliance with Declaration and Bylaws. Borrower will fully and faithfully perform and comply with the terms, conditions, and provisions of the Declaration, Bylaws, rules and regulations of the Condominium and any other documents creating or governing the Condominium. Borrower will not, without the prior written consent of Lender, subdivide or partition the Unit or the common elements which are appurtenant to such Unit.

(e) Additional Defaults. The Loan will immediately become due at the option of Lender if:

(i) Borrower fails to fully and faithfully perform and comply with the terms, conditions and provisions of the Declaration, Bylaws, rules and regulations of the Condominium, or any other documents creating or governing the Condominium.

(ii) The Declaration, Bylaws, rules and regulations of the Condominium or any other

document creating or governing the Condominium is materially changed which affects the lien or security of this Mortgage as determined by Lender in its sole and absolute judgment.

(iii) The Condominium is terminated, or is withdrawn from the provisions of the Condominium Act, or the unit owners of the Condominium do not resolve to repair and restore the Condominium after damage to all or a substantial part of the Condominium or after condemnation or taking of any part of the Condominium.

(iv) The Condominium Act or any part or provision thereof is determined to be invalid or unenforceable and such determination adversely affects the lien of this Mortgage or the rights of Lender thereunder.

(v) Borrower subdivides or partitions the Unit or the common elements appurtenant to such Unit without the prior written consent of Lender.

(vi) There is a transfer, release, creation of liens, partition, subdivision, condemnation or taking of all or part of the common elements of the Condominium which adversely affects the lien or security of this Mortgage as determined by Lender in its sole and absolute judgment.

(f) Lender to Perform Borrower Obligations. Upon Borrower's failure to do so within ten (10) days after the request by Lender, Lender may pay for the account and on behalf of Borrower any amount which Borrower is obligated to pay, including common expenses or special assessments, to the Condominium Board or pursuant to the Declaration, Bylaws, rules and regulations of the Condominium or any other documents creating or governing the Condominium upon default by Borrower in paying the same, and Lender may perform any act, employ any person or entity, and cast any vote on behalf of Borrower which Borrower may or is obligated to do pursuant to the Declaration, Bylaws, rules and regulations of the Condominium or any other document creating or governing the Condominium upon default by Borrower in doing the same. The costs, expenses, disbursements, advances and fees (including reasonable attorney's fees and expenses) incurred by Lender hereunder together with interest thereon from the date of payment at the rate set forth in this Mortgage following default will be secured by the lien of this Mortgage, and shall be paid by Borrower upon demand, and upon default by Borrower in paying such items upon demand, the whole of the principal sum, all other sums and interest secured by this Mortgage will immediately become due at the option of Lender. Nothing contained in this Section shall obligate Lender to pay such amounts or perform such acts on behalf of Borrower upon default of Borrower. Furthermore, if Lender pays such amounts or performs such acts on behalf of Borrower, the same shall not constitute a waiver or forgiveness by Lender of Borrower's default under this Mortgage or an estoppel against Lender from declaring Borrower in default thereunder.

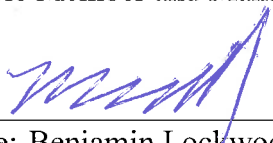
Section 4.12. Counterparts. This Mortgage may be executed in any number of counterparts all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Borrower and Agency have executed this Mortgage by and through their respective duly authorized representatives named below as of the date first above written.

**BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC**

By: HV Consultants Holding Co., LLC,  
its Managing Member

By: Housing Visions Consultants, Inc.,  
its Sole Member and Manager

By:   
\_\_\_\_\_  
Name: Benjamin Lockwood  
Title: Vice President

**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Name: William M. Ryan  
Title: Chairman

IN WITNESS WHEREOF, Borrower and Agency have executed this Mortgage by and through their respective duly authorized representatives named below as of the date first above written.

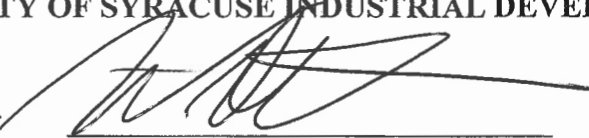
**BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC**

By: HV Consultants Holding Co., LLC,  
its Managing Member

By: Housing Visions Consultants, Inc.,  
its Sole Member and Manager


By: \_\_\_\_\_  
Name: Benjamin Lockwood  
Title: Vice President

**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

By:   
\_\_\_\_\_  
Name: William M. Ryan  
Title: Chairman

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

On this December 21, 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared **BENJAMIN LOCKWOOD**, 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 whose behalf such individual acted, executed the instrument.

  
STEPHEN M. MINARDI  
Notary Public, State of New York  
No. 02MI6353995  
Qualified in Albany County  
Commission Expires February 6, 2021

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

On this December \_\_\_, 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared **WILLIAM M. RYAN**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument; and acknowledged to me that he executed the same in his capacity; and that by his signature on the instrument, the individual, or the person upon whose behalf such individual acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC - STATE OF NEW YORK



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

On this December 21, 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared **BENJAMIN LOCKWOOD**, 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 whose behalf such individual acted, executed the instrument.

\_\_\_\_\_  
STEPHEN M. MINARDI  
Notary Public, State of New York  
No. 02MI6353995  
Qualified in Albany County  
Commission Expires February 6, 2021

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

On this December <sup>20<sup>th</sup></sup>, 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared **WILLIAM M. RYAN**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument; and acknowledged to me that he executed the same in his capacity; and that by his signature on the instrument, the individual, or the person upon whose behalf such individual acted, executed the instrument.

Lori L. McRobbie  
\_\_\_\_\_  
NOTARY PUBLIC - STATE OF NEW YORK

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 20\_\_18\_\_

618-620 North Townsend Street: Tax Parcel Number 017.-08-22.1 (UNIT 1)

The Unit designated as **Unit No. 1** in the Declaration comprising **BUTTERNUT CROSSING CONDOMINIUM** located in the City of Syracuse, County of Onondaga, New York, (hereinafter called the "**Property**"), made by Housing Visions Consultants, Inc. under the Condominium Act of the State of New York, as amended (Article 9-B of the Real Property Law of the State of New York), dated December 21st, 2017 and recorded in the office of the County Clerk of Onondaga County on the <sup>21<sup>st</sup></sup> day of December, 2017 as Instrument Number 2017-47870 (hereinafter called the "**Declaration**," ) which Unit is also designated as Unit 1, on page A1.1 of the Construction Drawings for **Butternut Crossing 618-620 N. Townsend Street, Syracuse** as certified and prepared by Holmes King Kallquist & Associates, Architects, and filed simultaneously with said Declaration in the Office of the County Clerk of Onondaga County (hereinafter called the "Unit"), together with others with the use of the Common Elements, as defined in said Declaration. The appurtenant interests of Unit 1 in the Common Elements is 29.5%. The land area of the Property is described as follows:

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Syracuse, County of Onondaga, State of New York being Lot 12 & part of Lot 11 of City Block 275D and being more particularly bounded and described as follows: Beginning at a point in the easterly line of North Townsend Street at the intersection of the southerly line of East Laurel Street thence North 59 deg. 25 min. 40 sec. East along the said southerly line of East Laurel Street, a distance of 79.50 feet to a point; thence South 30 deg. 32 min. 30 sec. East a distance of 50.00 feet to a point; thence North 59 deg. 25 min. 40 sec. East a distance of 36.00 feet to a point thence South 30 deg. 32 min. 30 sec. East a distance of 50.00 feet to a point; thence South 59 deg. 25 min. 40 sec. West a distance of 115.50 feet to a point in the said easterly line of North Townsend Street thence North 30 deg. 32 min. 30 sec. West along said easterly line of North Townsend Street, a distance of 100.00 feet to the point of beginning.

CVI Butternut Crossing Condo


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**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**  
**BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC PROJECT**

**DOCUMENTS RECORDED WITH THE ONONDAGA COUNTY CLERK**  
**ON DECEMBER 22, 2107**

NBT Commercial Mortgage: Instrument No. 2017-00047886

 NBT Assignment of Leases and Rents: Instrument No. 2017-00047887

HTFC Mortgage: Instrument No. 2017-00047902

UCC-1 Financing Statement from Butternut Crossing Commercial Enterprises, LLC and SIDA  
to NBT: Instrument No. 2017-00001033

Subordination and First Mortgagee Waiver Agreement Regulatory Agreement: Instrument  
No. 2017-00047904

**RECORD AND RETURN TO:**

**John N. Vagianelis, Esq.  
Mazzotta, Sherwood & Vagianelis, P.C.  
9 Washington Square  
Albany, New York 12205**

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**ASSIGNMENT OF LEASES AND RENTS**

**THIS ASSIGNMENT OF LEASES AND RENTS** (this “**Assignment**”), dated as of December \_\_\_, 2017, made by **BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC** (“**Borrower**” and/or “**Assignor**”), a New York limited liability company, the fee owner and sub-leasehold tenant of the Real Property, as hereinafter defined; having an address for business c/o Housing Visions Consultants, Inc., 1201 East Fayette Street, Syracuse, New York 13210; and **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY** (“**Agency**”) a New York public benefit corporation, the leasehold tenant of the Real Property; having an address for business at 201 East Washington Street, 7<sup>th</sup> Floor, Syracuse, New York 13202; to the order and benefit of:

**NBT BANK, NATIONAL ASSOCIATION**, a national banking association having an office at 52 S. Broad Street, Norwich NY 13815 (“**Lender**”), as assignee:

**Definitions.** Any capitalized terms, words, or acronyms not otherwise defined herein, shall have the same meanings attributed to them in the Loan Agreement, as hereinafter defined, or if not defined in the Loan Agreement, then in the Uniform Commercial Code in effect in the State of New York, as may be amended (UCC).

**FIRST RECITAL:**

**WHEREAS**, Borrower has requested from Lender, and Lender has agreed to extend to the Borrower, a secured, construction loan in the principal amount not to exceed \$320,000.00 (the “**Loan**”, which term also includes any and all consolidations, extensions, renewals, paydowns, and/or changes in terms of the Loan) for the purpose of providing financing for the Project; and

**SECOND RECITAL:**

**WHEREAS**, Borrower has acquired the legal and record title to the fee simple estate of a certain parcel of real property located in the City of Syracuse, County of Onondaga and State of New York, more particularly described by metes and bounds in the attached Schedule “A”, and having the street address of Condominium Unit #1 at 618-620 N. Townsend Street (the “**Real Property**”) for the purpose of furthering Borrower’s undertaking and completion of the Project thereon as, in part, a commercial space; and

### THIRD RECITAL:

**WHEREAS**, Agency and Borrower have previously entered into (i) a certain Company Lease Agreement, dated as of December 1, 2017 (the “**Company Lease**”, a memorandum of which shall be recorded in the Office of the Onondaga County Clerk simultaneously herewith), wherein the Premises were leased by the Borrower to the Agency; and (ii) a certain Agency Lease Agreement, also dated as of December 1, 2017 (the “**Agency Lease**”, a memorandum of which shall be recorded in the Office of the Onondaga County Clerk simultaneously herewith, and collectively with the Company Lease, the “**Agency Lease Agreements**”), wherein the Premises were leased by the Agency back to the Borrower; and

### FOURTH RECITAL:

**WHEREAS**, it is a condition precedent, *inter alia*, to the extension of the Loan by Lender to Borrower, that the Borrower and Agency shall each mortgage, give, grant, and assign, and grant a Security Interest to Lender in, all of their respective rights, titles, and interests in and to the Real Property (subject to and excepting therefrom the Agency’s Unassigned Rights as the term is defined in the Agency Lease), and all improvements now located and hereafter to become constructed and situated on the Real Property (the “**Improvements**”, collectively) and all fixtures, equipment, and other personal property now and hereafter to become attached, affixed, installed, and/or located and used in the operation and maintenance of the Real Property and Improvements (the “**Personal Property**”, collectively, and collectively with the Real Property and Improvements, the “**Property**”) as security for the Loan, and certain other tangible and intangible benefits and property of Borrower, all as more particularly described in the Related Documents (as hereinafter defined); and

### FIFTH RECITAL:

**WHEREAS**, the Loan is evidenced, governed, guarantied, and secured by various documents and instruments each of even date herewith (collectively the “**Related Documents**”), including, but not limited to, a Construction Loan Promissory Note (the “**Note**”) executed and delivered by Borrower to Lender; a bifurcated Construction Mortgage and Security Agreement (the “**Mortgage**”) executed and delivered by Borrower and Agency, collectively, as mortgagors, to Lender, as mortgagee, encumbering the Property (*inter alia*); and a Construction Loan Agreement (the “**Loan Agreement**”), entered into between Borrower and Lender with respect to the Loan and the construction, equipping, and renovation of the Improvements on the Real Property, filed concurrently with the recording of the Mortgage; and

### SIXTH RECITAL:

**WHEREAS**, as additional collateral and security for the Loan (including any consolidations, modifications, extensions, renewals, amortizations, and/or changes in terms of the Loan) Lender has required that all of Assignor’s and Agency’s respective rights, titles and interests in and to the Leases and Rents (each as hereinafter defined), whether now or hereafter

existing or arising, be assigned, transferred and set over to Lender (subject to Agency's reservation of certain Unassigned Rights, as defined in the Agency Lease); and

**WHEREAS**, the word "Indebtedness" shall hereinafter mean the Loan, as first defined above, together with all obligations, claims, and liabilities arising out of or in conjunction with the Loan, without limitation; whether now or hereafter existing or arising, whether voluntary or involuntary, due or to become due, present or future, direct or indirect, absolute or contingent, liquidated or unliquidated; including, without limitation, all principal, interest (including, but not limited to, interest that accrues after the commencement of any bankruptcy or insolvency proceedings or similar proceedings for debtor relief, by or against Borrower whether or not allowed or allowable), penalties, premiums, sums, charges, claims, commitment or facility expenses, collateral management costs, fees, and expenses, all other fees and expenses (including, without limitation, attorney's and/or accountants' fees and expenses chargeable to and payable hereunder and/or under any other Related Document), court costs, and all other amounts of any kind or of any nature; and whether recovery upon such Indebtedness may be or hereafter may become barred by any statute of limitations, or whether such Indebtedness may be or hereafter may become otherwise unenforceable; and

**NOW THEREFORE**, in consideration of the foregoing premises and recitals, and other good and valuable consideration, Assignor and Agency hereby agree, as follows:

**A. ASSIGNMENTS AND RIGHTS.**

1. Assignments. For consideration of One Dollar (\$1.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Agency each hereby irrevocably, unconditionally and absolutely assign, convey, set over, grant, hypothecate, and transfer to the Lender, its successors and assigns, all of their respective rights, titles and interests now owned and held by Assignor and/or Agency or hereafter acquired by Assignor and Agency, or either of them in and to the following property as security for the Indebtedness (subject to Agency's reservation of certain Unassigned Rights as defined in the Agency Lease) (including any and all consolidations, modifications, extensions, renewals, and/or changes in terms of the Indebtedness):

(a) All leases (including, but not limited to, Oil and Gas Leases, hereinbelow defined), subleases, tenancy agreements, licenses, rental agreements, occupancy agreements, use agreements, Accounts, contract rights, options to purchase, rights of first refusal, parking agreements, operations agreements, vendor agreements, concession and concessionaire agreements, mining contracts, and all other contracts and agreements relating to the occupancy, possession, and/or use of the Real Property and Improvements, or any portion thereof; whether written or oral, whether now existing or hereafter entered into, together with any and all guaranties, modifications, addenda, attachments, extensions, extension options, purchase options, and any other rights, and all extensions, modifications, replacements, restatements, successions, substitutions and/or renewals thereof, which now exist or may hereafter be made, excepting therefrom the Agency Lease Agreements (hereinafter collectively, "**Leases**");

(b) Without limitation, all credits, cash, receipts, deposits (whether for security or otherwise, to the extent permissible under Applicable Law), rents, advance rents, minimum rents, additional rents, issues, fees, common area charges, other charges, concession payments, profits, revenues, royalties, accounts receivable, all other benefits, and payments, income of every nature, and all other forms of consideration and/or obligations of tenants to landlords under Leases, both monetary and non-monetary; all Proceeds of the Leases (including, without limitation, termination payments), all Proceeds of any and all rights forfeited by tenants; all Proceeds of all liquidated damages following an event of default; and all Proceeds payable under any policy of insurance covering loss of rents or other revenues or profits resulting from untenability due to destruction or damage to the Property or any part thereof, or due to any other event covered under such policy; together with the immediate and continuing right to collect and receive the foregoing; whether due, or hereafter becoming due; and together with all other rights and claims of any kind that the landlord may have under the Leases (collectively, “**Rents**”). Rents also specifically include, without limiting the foregoing or the generality thereof, all of the Borrower's present and future rights, title and interest in, to and under any and all present and future Oil and Gas Leases and/or oil, gas and mineral leases and/or mining or similar contracts or amendments thereto, including, without limitation, all rents, revenue, income, issues, royalties, bonuses, account receivable, cash or security deposits, advance rentals, profits and proceeds derived from the production and sale of or otherwise attributable to Oil and Gas Substances, minerals or other such products, including any compulsory or voluntary integration and unitization or pooling awards, produced and saved from or attributable to the Real Property, and other payments and benefits derived or to be derived from such leases of every kind and nature, whether due now or later, including without limitation Borrower's and/or Agency's right to enforce such leases and contracts and to receive and collect payment and proceeds thereunder.

“Oil and Gas Substances” means, collectively, without limitation, all rights, titles, interest and estates now owned or hereafter acquired by Borrower and/or Agency in and to all oil, gas, and other minerals and their liquid or gaseous constituents, whether hydrocarbon or non-hydrocarbon, underlying the Real Property, and all other products refined therefrom. “Gas” includes but is not limited to coal stream gas, coalbed methane gas, gob gas, coalbed gas, methane gas, occluded methane/natural gas and all associated natural gas and all other commercial gas and all other hydrocarbons and non-hydrocarbons, contained in, associated with, emitting from, or produced/originating within any formation, gob area, coal seam, mined-out area, and all communicating zones.

“Oil and Gas Leases” means any and all leases, whether now owned or existing, or hereafter acquired or arising, for Oil and Gas Substances together with any amendments thereto, and any royalty or other interest arising from compulsory or voluntary integration and unitization or pooling.

2. Rights Granted. Assignor further gives and grants to Lender the power and authority (collectively, the “Rights”):



- (i) Take Possession. To enter upon and take possession of the Property and Improvements, and operate, develop, and manage the same;
- (ii) Lease. To lease or rent the Property and Improvements or any part thereof for such time and at such Rents and upon such consideration as Lender, in its sole discretion, may deem advisable (subject to all Applicable Law), and to enforce, modify, cancel or accept a surrender of the Leases insofar as permitted under the terms of the Leases, any applicable Governmental Approval, and Applicable Law;
- (iii) Demand, etc., Rents. To demand, collect, sue for, attach, levy, recover, receive, compromise, and adjust and make, execute, and deliver receipts and releases for, Rents which may be or may hereafter become due, owing or payable. Any Rents under this Assignment attributable to Oil and Gas Substances and their products shall be paid to Lender with no duty, obligation, or responsibility of any party paying the same to inquire into the right of Lender to receive the same;
- (iv) Receive and Deposit, etc., Rents. To receive, endorse and deposit for collection in the name of Lender any checks, promissory notes, instruments, or other evidences of indebtedness, whether made payable to Assignor or Lender, which are given in payment or on account of Rents, or by way of compromise or settlement of any indebtedness for such Rents;
- (v) Give Acquittances. To give acquittances for Rents received;
- (vi) Proceedings Related To Rents and Removal. To institute, prosecute, settle or compromise any summary or other proceedings for the recovery of the Rents or for removing any tenant(s);
- (vii) Proceedings Related to Protecting, etc., Property. To institute, prosecute, settle or compromise any proceedings for the protection of the Property, for the recovery of any damage done thereto, or for the abatement of any nuisance thereon or thereabouts;
- (viii) Defend Against Proceedings, etc., Brought. To defend, settle or compromise any legal proceedings brought or claims made against Assignor or its agents, employees, or servants, which may affect the Property; and, at the option of Lender, defend, settle or compromise any claims made or legal proceedings brought against Assignor or either of them which may affect the Property, Leases, or Rents;
- (ix) Develop and Manage Property; Construction. To develop and manage the Property, complete any ongoing construction and/or rehabilitation or development, and/or make any changes or improvements, structural or otherwise, on, in or to the Property and Improvements or any part thereof which Lender may deem necessary or expedient for the leasing, renting, or preservation thereof,

(x) Maintain Property. To keep and maintain the Property in tenantable and rentable condition and in a good state of repair;

(xi) Purchase Equipment, etc. To purchase such Equipment and supplies as may be necessary or desirable in the opinion of Lender for use in connection with the construction, rehabilitation, development, operation and/or maintenance of the Property;

(xii) Make Payments. To pay, from the Rents or from or out of any other funds, all taxes, payments in lieu of taxes, assessments, water charges, sewer rents, waste disposal, and other governmental charges levied, assessed or imposed against the Property or any part thereof, and any and all other charges, costs and expenses, which Lender may deem necessary or advisable to pay in connection with the management, maintenance, upkeep, and operation of the Property (including, without limitation, brokers' fees and any interest, principal and other payments due on any and all loans secured by mortgages, security agreements and/or financing statements on the Property),

(xiii) Obtain Insurance. To contract for and purchase such insurance as Lender may deem advisable or necessary for the protection of Lender and the Property, including, but not limited to, liability, fire and other losses and/or hazards, builder's risk, flood, boiler, plate glass, rent loss, pollution, demolition, and worker's compensation insurance;

(xiv) Comply with Laws. To execute and comply with all Applicable Laws and other Requirements of any Governmental Authority, which affect and/or have jurisdiction over the Property, Project, Leases, and/or Rents, and remove any and all violations which may be filed against the Property and/or Project;

(xvi) Enjoin, etc., Leases. To enforce, enjoin or restrain the violation of any of the terms, provisions and conditions of the Leases; and

(xvii) Other Acts. To do anything and everything which Assignor could or would do which might increase the Rents or which might diminish the expense of operating the Property, whether herein expressly authorized or not, and in all respects act in the place and stead of Assignor, and have all of the powers (but none of the obligations) as owner and landlord as respectively possessed by Assignor, for the purposes aforesaid, and/or for any purpose set forth or referred to in the Leases and in any Permit or Governmental Approval affecting and/or governing the use, operation, management, or maintenance of the Property and Project.

Priority. The assignments and rights granted hereunder are first-priority assignments and rights.

3. Exercise of Rights; No Obligation; License. All of the Rights may be exercised by Lender or by its agents, employees, servants or attorneys, in the name of Lender or in the name(s) of Assignor, and in such manner as Lender, its agents, employees, servants, or attorneys consider to be necessary, desirable, expedient, or appropriate; provided, however, that under no

circumstances is Lender under any obligation, nor shall Lender be under any obligation, to exercise any of the foregoing Rights and shall not, in any manner, be liable to Assignor, or any other Person, for failure to exercise such Rights. Lender, however, grants to Assignor, not as a limitation or condition hereof, but as a personal covenant available only to Assignor and its successors, and not to any tenant or other Person, a license to collect all of the Rents and to retain, use and enjoy the same, and otherwise exercise any and all of the Rights, unless and until an Event of Default shall exist and shall be continuing beyond any applicable period of notice and cure, whereupon such license shall automatically and immediately be revoked without the necessity of any notice to Assignor or any other action by Lender. Lender agrees that it shall not exercise any one or more of its Rights unless an Event of Default has occurred which is continuing beyond any applicable period of notice and cure.

4. Lender's Right to Receive, etc., Rents; Assignor's Notice to tenants. Subject only to the provisions of the license as set forth in Paragraph 3 hereinabove, Lender shall have the right to receive, collect, use and apply the Rents in accordance with this Assignment and the terms of the Related Documents; including, but not limited to, application of Rents toward costs incurred in exercising any of the Rights, or any other rights of Lender hereunder, or which Lender has under the Related Documents or otherwise by law or in equity. After application toward such costs, the Lender shall apply all remaining Rents collected and received by it to the reduction of the Indebtedness.

4.1. Acknowledgments; Directive to tenants to Pay Rent to Lender. To the extent permitted under Applicable Law concerning the rights of landlord under the Leases, Assignor hereby authorizes and directs the tenants named in the Leases, or any other or future tenants, lessees or occupants of the premises described and demised therein, upon receipt from Lender of written notice and acknowledgment to the effect that Lender is then the holder of the Note or successor instrument(s) evidencing the Loan and of the Mortgage, and that an uncured, continuing Event of Default exists thereunder or under this Assignment and/or under other Related Document(s), which is continuing beyond any applicable period of notice and cure as provided therein, to pay over to Lender all of the Rents arising or accruing under the Lease or from the premises described and demised therein, and to continue to do so until otherwise notified by Lender. Assignor covenants that, upon Lender's reasonable request, Assignor will obtain a written acknowledgment from each tenant (or future tenant) recognizing Lender as the mortgagee under the Mortgage and assignee under this Assignment, and promising to pay Rents directly to Lender upon being notified in accordance with the terms of this paragraph, and to attorn to Lender as the successor landlord under the Leases and perform for Lender, as successor landlord, all obligations set forth in the Lease; including, but not limited to, such certificates and/or written information required in order to enable Lender, at its option (but not as an obligation) to obtain and maintain federal low-income housing tax credits. Borrower releases tenants from any and all liability to Borrower for any and all payments of Rent so tendered.

5. Appointment of Receiver. From and after the occurrence of an Event of Default, and the continuation thereof beyond any applicable period of grace or cure, Lender shall be entitled to the appointment of a receiver for the Property, without notice to Assignor and without regard to the

adequacy of any security for the Loan.

6 Attorney-In-Fact. Assignor hereby irrevocably constitutes and appoints Lender as its true and lawful attorney, to undertake and execute any or all of the Rights and powers described herein 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 Lender, its agents, servants, employees or attorneys in, to or about the Property.

7. Lender Not Liable. Notwithstanding anything herein to the contrary, the Lender shall not be obligated to perform or discharge, and the Lender does not undertake to perform or discharge, or assume, any obligation, duty or liability with respect to the Leases or the Rents or with respect to the Property, Project, HTFC, other Permanent Lender or any other subordinate or permanent lender, General Contractor, or with respect to the Requirement of any Governmental Authority, the Ancillary Documents, or any Applicable Law governing the Project, by reason of this Assignment. This Assignment shall not, in and of itself, operate to place responsibility upon the Lender to any tenant, lessee, party, Governmental Authority, Permanent Lender or any other subordinate or permanent lender, or any other Person for the control, care, maintenance, management, operation, upkeep, repair, renting, expansion, construction, rehabilitation, renovation, equipping, completion, development or management of the Property and/or the Project, or to make the Lender responsible or liable for any violation or breach of any Permit, Lease, Ancillary Documents, any other agreement, or Requirement any Applicable Law, with respect to, and/or for any waste and/or negligent act committed on the Property and/or with respect to the Project, by Assignor, General Contractor, any other Contractor, Sponsor, Developer, or any of their applicable members, directors, shareholders, general partners, affiliates or subsidiaries, or any tenant; or for any dangerous or defective condition of or on the Property and/or the Project; or for any negligence in the control, care, maintenance, management, operation, upkeep, repair, renewal, expansion, construction, rehabilitation, equipping, development, and/or renovation of the Property and/or Project, but all such responsibilities and liabilities shall remain with the Borrower, to which Assignor agrees. Lender shall be accountable to Assignor only for monies actually received by it pursuant to this Assignment.

8. No Prejudice to Lender's Other Rights. It is understood and agreed that nothing contained in this Assignment shall prejudice or be construed to prejudice the rights of Lender under any of the Related Documents, without notice, to institute, prosecute and compromise any action which it would deem advisable to protect its interests and/or lien priority in the Property, Leases, Rents, and other Collateral, including, but not limited to, an action to foreclose or exercise its rights under the Mortgage or any other Related Document, and/or avail itself of its remedies under any other Related Documents, and in such actions, to move for the appointment of a receiver of the Rents in the manner set forth herein, or prejudice any rights which Lender shall have by virtue of any Event of Default. 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 all of Property shall be had thereunder.

9. No Waiver by Lender. Exercise or non-exercise by the Lender of the Rights granted in this Assignment, or collection and application of Rents by the Lender or its agent as described herein, shall not be a waiver of any Event of Default under this Assignment or any other Related Document.

10. No Discharge. Subject only to the provisions of this Assignment, no action of the Lender, or failure to act by the Lender, with respect to any of the obligations of the Assignor, as set forth in this Assignment and/or of Assignor or any Guarantor in the other Related Documents, or with respect to any other security or guaranty given for the payment or performance thereof, or with respect to any other document or instrument evidencing or relating to such obligations, shall in any manner affect, impair, or prejudice any of the Lender's rights and privileges under this Assignment, or discharge, release or modify any of the duties, liabilities, or obligations of Assignor, hereunder, or under the Note, Guaranties, or any other Related Documents.

10. Absolute Assignment. This Assignment is intended by the Assignor and Agency and the Lender to create, and shall be construed to create, an absolute assignment to the Lender as security for the Indebtedness, subject only to the terms and provisions hereof, and not only the granting of a Security Interest.

11. Termination of This Assignment. Upon payment in full of and discharge of all Indebtedness and the other Related Documents and the satisfaction of the Mortgage in the public records, this Assignment shall, automatically and self-operatively, become null and void and be of no further effect; but the affidavit, certificate, letter, or statement of any officer, agent or attorney of Lender showing any part of the Indebtedness remaining unpaid shall be and constitute conclusive evidence of the validity, effectiveness and continuing force and effect of this Assignment; and any Person may, and is hereby authorized, to rely thereon. Upon termination, Borrower shall assume payment of all unmatured or unpaid charges, expenses, or obligations incurred or undertaken by the Lender, if any, in connection with the operation and management of the Property and/or the Improvements.

B. REPRESENTATIONS AND WARRANTIES. In connection with and as part of the assignments and rights herein granted, the Assignor and Agency make the following representations and warranties, each for itself, as applicable:

1. Authority. Borrower is the fee owner and sub-leasehold tenant, in and to the Property and in and to the entire landlord's or lessor's interest in and to the Leases and Rents; and Agency has a leasehold interest in and to the Property and, insofar as such estate and title confers an interest in the Leases and Rents, Agency holds such interest therein free and clear of all other interests other than those of Borrower and Lender; and Borrower and Agency have the full right and lawful authority, and Borrower and Agency have taken all necessary action under their Organizational Documents and Applicable Law, to enter into this Assignment and assign their rights and interests in and to the Leases and Rents (subject to and excepting therefrom the Agency's Unassigned Rights as defined in the Agency Lease);

2. No Prior Assignment. Assignor has made no prior assignment of, or granted any Security Interest, in and to the Leases, Rents or their respective interests therein, except to the Lender (if at all);
3. No Acts Limiting Lender's Actions. Assignor has neither committed or omitted any acts which commission or omission might prevent or limit the Lender in acting under any of the provisions of this Assignment;
4. No Conflicts. The performance of the covenants under this Assignment and all covenants which are those of Assignor to be performed under the Leases neither conflict with nor constitute a breach or default under, Assignor's respective Organizational Documents, any Lease, or any agreement, indenture, or other instrument to which the Assignor, is a party, or under any Applicable Law or any administrative regulation, court decree, or other Requirement which is applicable to the Assignor, the Property, or the Project; including, but not limited to, any Ancillary Document.
5. No litigation. Assignor has not been made the subject of any action or claim, nor, as far as is known to the Assignor, has Assignor been threatened with any action or claim, which would materially interfere with their ability to execute and deliver this Assignment to the Lender, and to perform all of their respective obligations, or subject themselves to the respective liabilities, contained in this Assignment and/or the Leases;
6. No Default by tenants. To the best of the Assignor's knowledge, no continuing uncured default exists on the part of any tenant or a guarantor of any existing Lease, in the fulfillment, performance or observance of any of the terms, conditions, or covenants applicable to it or them, including, but not limited to, payment of Rents; and all of the Leases now extant are in full force and effect otherwise, without termination, rescission or repudiation;
7. No Anticipatory Rents. No Rents have been collected, or will be collected, which cover a period exceeding one month in advance of the date upon which such Rent is due, unless as provided for under the terms of a written Lease, and as prior consented to by the Lender in writing.

C. COVENANTS OF ASSIGNOR. The Assignor covenants that it shall, at all times during which any Indebtedness is outstanding and/or the Note and/or Mortgage are in force and effect:

1. Perform. Observe and perform faithfully every obligation which the Assignor is required to perform under the Leases, and comply with every Requirement set forth therein and/or referred to thereunder, with respect to the Leases, all Applicable Law and Governmental Requirements governing the same, including, but not limited to, all applicable provisions of the Ancillary Documents;

2. Enforce Leases. Enforce, or secure the performance of, at Borrower's sole cost and expense, every obligation to be performed by the tenants and/or guarantors of and under, or with respect to, the Leases;
3. Notice. Promptly give notice to the Lender of any notice of default received by, or given by Borrower, from or to any tenant and/or guarantor of a Lease, provided such Lease has a term in excess of one (1) year including extensions or options to extend, together with a copy of such notice;
4. Anticipation of Rent. Not collect any Rents for more than one (1) month in advance of the date upon which such Rent is due, or otherwise anticipate any Rents under any of the Leases, except as provided in the Leases and in the pro forma Lease used in renting the Property, or bona fide security deposits as provided under the terms of the Leases and pro forma Lease, except with the Lender's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed;
5. Further Assignments. Not further assign or grant a Security Interest in any of the Leases or Rents (except to the Lender or a Permanent Lender, provided, however, that the instrument granting such assignment or Security Interest to a Permanent Lender shall expressly state that it is and will at all times remain subject and subordinate to Lender's assignment and Security Interest hereunder), without the Lender's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed;
6. Waive Obligations. Not waive, condone, suffer, or in any manner discharge any tenants and/or guarantors under any Leases, from their obligations thereunder, except with the Lender's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed;
7. Cancel Leases. Not cancel, terminate, or abridge, or accept any surrender, voiding, cancellation or termination of any Lease, without the Lender's prior written consent, which shall not be unreasonably withheld, conditioned or delayed, except as provided in the Lease;
8. Materially Modify Leases. Not replace or materially modify a pro forma lease used and/or which is or may be Required, by Applicable Law or by any Governmental Authority with respect to the nature of the Property as residential apartment units for qualifying low-income persons, other than in the ordinary course of Assignor's Business and/or as Approved by such Applicable Law and/or Governmental Authority, and a true, complete copy of which material modification or replacement shall be provided to Lender;
9. Option to Purchase. Not enter into any agreement or Lease granting a tenant an option to purchase any portion of the Property or right of first refusal, without Lender's prior written consent and/or unless such option or right is wholly and expressly subordinated to

the lien of Mortgage and all rights of Lender under the Mortgage, including, but not limited to, foreclosure, deed in lieu of foreclosure, sale and/or purchase at auction, and any power of sale provisions under Applicable Law.

10. Provision in future Leases. If permitted under Applicable Law and/or other Requirement of any Governmental Authorities applicable to the Project, provide in all future Leases that a waiver or discharge, cancellation or surrender, or material modification of any such pro forma of the Leases, except as permitted in Paragraphs 6, 7 and 8 hereinabove, shall be voidable as against the Lender, at its option, unless Assignor has first obtained the prior written consent of the Lender;
11. Comply with Requirements. Comply with and cause compliance with all Requirements of all Governmental Authorities, and all Applicable Law, relating to and applicable to the Leases, the Property, the Improvements, and the Project;
12. Defend Against Actions. Appear in and defend against, at the Borrower's sole cost and expense, any action or proceeding arising under, or in any manner connected with the Leases, the Rents, or the obligations, duties, or liabilities of the tenants, or guarantors thereunder;
13. Not Subordinate or Subject. Not subordinate or agree to, or permit or consent to, a subordination of, and/or subject any of the Leases and/or any of a landlord's or tenant's rights thereunder and/or any of the property demised thereunder, to any other mortgage, encumbrance, lien, or security instrument (other than any Permitted Lien, as defined in the Loan Agreement) without the Lender's prior written consent, which shall not be unreasonably withheld, delayed, or conditioned.
14. Indemnification. Assignor agrees to indemnify and hold Lender harmless from and against any and all claims, liability, loss, damage, costs and expenses, including reasonable attorneys' fees and disbursements, which Lender may or shall incur under the Leases or by reason of this Assignment (including without limitation, expenses incurred in exercising any of the Rights or any other rights of Lender hereunder, or which Lender has or may have by law), or by reason of any action taken by Lender (or omission of an action) provided that any such act or omission of Lender does not involve direct and gross negligence or willful misconduct on the part of Lender, from and against any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms, covenants, obligations, and conditions contained in the Leases or Ancillary Documents. Should Lender incur any such liability, claims, loss, damage, cost or expense, the amount thereof, together with interest thereon from the date such amount was suffered or incurred by Lender or for which Lender became liable (whichever date is the earlier) until the same is paid by Borrower to Lender, at the highest default rate provided under the Note shall be payable by Borrower to Lender upon demand, or at the option of Lender, Lender may reimburse itself therefor out of any Rents collected. 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 Lender 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 sums then outstanding under the Note, and under the other Related Documents, and shall be so applied. Nothing contained herein shall operate or be construed to obligate Lender to perform any of the terms, covenants or conditions contained in the Leases or otherwise to impose any obligation upon Lender with respect to the Leases, the Ancillary Documents, the Project, or the Property and any construction, rehabilitation, equipping, operation, management, tenanting, and/or maintenance thereof.

15. Further Assurance. In addition to, and not as a limitation upon any other requirement of this Assignment or any other Related Document regarding the Leases, upon request or requirement of Lender, Assignor shall obtain, execute and/or deliver to Lender such further instruments as Lender may deem necessary to effectuate and/or perfect this Assignment, and/or to document or evidence the covenants of Assignor contained herein. Assignor, at Borrower's sole cost and expense, shall cause such further instruments to be obtained, recorded and/or filed, as applicable, in such manner and in such places as may be reasonably required by Lender. Such documentation may include, but will not be limited to, subordination agreements of tenants with respect to the subordination of their interests to Lender's rights under the Mortgage, and written acknowledgments from tenants of this Assignment and their agreement to pay and turn over all Rents to Lender or to its receiver or agent, upon receiving written notice from Lender of any uncured, continuing Event of Default, Lender's rescission of the license granted to Assignor under Paragraph A-3 hereinabove, and Lender's exercise of its rights under this Assignment.
16. Costs. Borrower shall pay all recording and filing fees with respect to this Assignment (and any replacements, modifications, restatements, corrections, certified copies, and corrective instruments and versions hereof, and restatements and/or extensions thereof) and any agreements, instruments and documents made pursuant to the terms hereof or ancillary hereto, including any UCC financing statements and amendment statements, 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 (and any replacements, modifications, restatements, corrections, restatements and extensions thereof). Should Borrower fail to pay the same, all such recording and filing fees and taxes may be paid by Lender on behalf of Assignor and the amount thereof, together with interest at the highest default rate provided under the Note, shall be payable by Borrower to Lender upon demand, or at the option of Lender, Lender may reimburse itself therefor out of the Rents. 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 Lender 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 sums then outstanding under the Note and other Related Documents, and shall be so applied.

D. MISCELLANEOUS.

1. Successors and Assigns. All of the representations, warranties, covenants, agreements, and provisions in this Assignment by or for the benefit of the Lender shall bind and inure to the benefit of its successors and assigns.

2. No Oral Changes. This Assignment may not be changed orally, but only by an agreement in writing signed by Lender and all the parties to this Assignment.

3. Choice Of Laws. This Assignment shall be governed by, construed and enforced in accordance with the laws of the State of New York, without reference to its choice of law rules, or principles.

4. Severability. If a court of competent jurisdiction finds any provision of this Assignment to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Assignment in all other respects shall remain valid and enforceable.

5. Waivers. The Lender shall not be deemed to have waived any rights under this Assignment unless such waiver is in writing and signed by the Lender. No delay or omission on the part of the Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by any party of a provision of this Assignment shall not constitute a waiver of or prejudice the party's right otherwise to demand strict compliance with that provision or any other provision. No prior waiver by the Lender, nor any course of dealing between the Lender and the Assignor, or any of their respective members and/or parent companies, and/or affiliates, subsidiaries, or principals of any of them, shall constitute a waiver of any of the Lender's rights or any of the Assignor's obligations as to any future transactions. Whenever consent by the Lender is required in this Assignment, the granting of such consent to the Assignor in any instance shall not constitute continuing consent to subsequent instances where such consent is required.

6. Costs and Expenses. In addition to those costs and expenses set forth in Paragraph C-16 hereinabove, Borrower agrees to pay all court costs, other costs, expenses, and reasonable attorney's fees incurred by Lender in connection with the enforcement of its rights and remedies hereunder (including, but not limited to, reasonable attorney's fees) related to modifications of or consents under this Assignment. The obligations of Borrower under this Paragraph shall survive the payment of the Note and the termination of this Assignment.

7. Agency Provisions:

**(a) Borrower's Obligations to Comply with the Agency Lease, the Company Lease and the Payment in Lieu of Taxes Agreement.** Borrower shall: (i) pay the all other sums of money due and payable at any time and from time to time under the Agency Lease, the Company Lease and the Payment in Lieu of Taxes Agreement, dated December 1, 2017 among the City of Syracuse, NY, the Agency and the Borrower (the "**PILOT Agreement**"), as and when such sums become due and payable, but in any event before the expiration of any grace period provided in the Agency Lease, the Company Lease and the PILOT Agreement for the payment of any such sum; and (ii) at all times fully perform, observe and comply with all other terms, covenants and conditions of the Agency Lease, the Company Lease and the PILOT Agreement to be performed, observed or complied with by Borrower as lessor under the Company Lease and lessee under the Agency Lease and as a party under the PILOT Agreement. If the Agency Lease, the Company Lease and/or the PILOT Agreement do not provide for a grace period for the payment of a sum of money, Borrower shall make the payment on or before the date on which the payment becomes due and payable. Borrower shall deliver evidence of the payment to Lender within ten (10) days after receipt of a written request from Lender for evidence of the payment.

**(b) Miscellaneous Provision.** (1) The Borrower and the Lender hereto, by accepting this Assignment, acknowledge that the Agency is executing this Assignment solely to subject its interest in the Real Property, if any, to this Assignment. Notwithstanding anything herein to the contrary, the Lender acknowledges and agrees that their sole recourse against the Agency for any default hereunder shall be with respect to the Agency's interest in the Real Property. (2) Notwithstanding anything else herein to the contrary, the Lender acknowledges and agrees that the Agency has agreed to participate herein solely to subject its interests, if any, in the Real Property to this Assignment and that any recourse or remedies the Lender may have as against the Agency hereunder shall be sought solely against the Agency's interest in the Real Property and not against any other assets of the Agency.

**(c) Agency Executing at the Direction of Borrower.** The Borrower directs the Agency to execute and deliver this Assignment 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 Assignment, including but not limited to reasonable attorney's fees.

**(d) Hold Harmless Provisions.** The Borrower acknowledges that the terms of the Agency Lease Agreements, as amended and restated from time to time, are in full force and effect, including but not limited to the "Hold Harmless Provisions" contained in Section 8.2 thereof and incorporates same in this instrument and makes same applicable hereto as if fully set forth herein.

**(e) Subordination Provisions.** Notwithstanding anything herein to the contrary, Lender by accepting this Assignment, acknowledges and agrees that the rights of Lender

hereunder shall be subordinate to the rights of the Agency to receive payments in lieu of taxes pursuant to the PILOT Agreement and that such payments in lieu of taxes to be made by Borrower to the Agency shall have the same force, priority and effect as a real property tax lien under New York State law against the Real Property.

8. Counterparts. This Assignment may be executed in any number of counterparts all of which taken together shall constitute one and the same instrument.



IN WITNESS WHEREOF, this Assignment has been duly executed as of the date first written above.

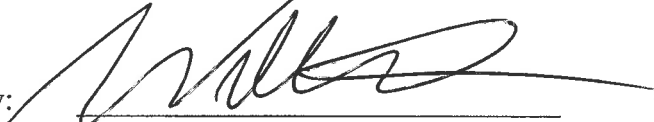
**BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC**

By: HV Consultants Holding Co., LLC,  
its Managing Member

By: Housing Visions Consultants, Inc.,  
its Sole Member and Manager

By: \_\_\_\_\_  
Name: Benjamin Lockwood  
Title: Vice President

**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

By:   
\_\_\_\_\_  
Name: William M. Ryan  
Title: Chairman

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

On this December 21, 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared **BENJAMIN LOCKWOOD**, 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 whose behalf such individual acted, executed the instrument.

\_\_\_\_\_  
STEPHEN M. MINARDI  
Notary Public, State of New York  
No. 02MI6353995  
Qualified in Albany County  
Commission Expires February 6, 2021



Unit 1 Butternut Crossing Condo

**618-620 North Townsend Street: Tax Parcel Number 017.-08-22.1 (UNIT 1)**

The Unit designated as **Unit No. 1** in the Declaration comprising **BUTTERNUT CROSSING CONDOMINIUM** located in the City of Syracuse, County of Onondaga, New York, (hereinafter called the "**Property**"), made by Housing Visions Consultants, Inc. under the Condominium Act of the State of New York, as amended (Article 9-B of the Real Property Law of the State of New York), dated December 21st, 2017 and recorded in the office of the County Clerk of Onondaga County on the 22<sup>nd</sup> day of December, 2017 as Instrument Number 17-47870 (hereinafter called the "**Declaration**," ) which Unit is also designated as Unit 1, on page A1.1 of the Construction Drawings for **Butternut Crossing 618-620 N. Townsend Street, Syracuse** as certified and prepared by Holmes King Kallquist & Associates, Architects, and filed simultaneously with said Declaration in the Office of the County Clerk of Onondaga County (hereinafter called the "**Unit**"), together with others with the use of the Common Elements, as defined in said Declaration. The appurtenant interests of Unit 1 in the Common Elements is 29.5%. The land area of the Property is described as follows:

NE

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Syracuse, County of Onondaga, State of New York being Lot 12 & part of Lot 11 of City Block 275D and being more particularly bounded and described as follows: Beginning at a point in the easterly line of North Townsend Street at the intersection of the southerly line of East Laurel Street thence North 59 deg. 25 min. 40 sec. East along the said southerly line of East Laurel Street, a distance of 79.50 feet to a point; thence South 30 deg. 32 min. 30 sec. East a distance of 50.00 feet to a point; thence North 59 deg. 25 min. 40 sec. East a distance of 36.00 feet to a point thence South 30 deg. 32 min. 30 sec. East a distance of 50.00 feet to a point; thence South 59 deg. 25 min. 40 sec. West a distance of 115.50 feet to a point in the said easterly line of North Townsend Street thence North 30 deg. 32 min. 30 sec. West along said easterly line of North Townsend Street, a distance of 100.00 feet to the point of beginning.




**18**

**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**  
**BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC PROJECT**

**DOCUMENTS RECORDED WITH THE ONONDAGA COUNTY CLERK**  
**ON DECEMBER 22, 2107**

NBT Commercial Mortgage: Instrument No. 2017-00047886

NBT Assignment of Leases and Rents: Instrument No. 2017-00047887

 HTFC Mortgage: Instrument No. 2017-00047902

UCC-1 Financing Statement from Butternut Crossing Commercial Enterprises, LLC and SIDA  
to NBT: Instrument No. 2017-00001033

Subordination and First Mortgagee Waiver Agreement Regulatory Agreement: Instrument  
No. 2017-00047904

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HOUSING TRUST FUND CORPORATION

and

BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC

and

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

---

RURAL and URBAN COMMUNITY INVESTMENT FUND  
PROGRAM

---

MORTGAGE AND SECURITY AGREEMENT

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DATED AS OF DECEMBER 21, 2017

This instrument affects real and personal property situated in the State of New York, \*\*\*Tax Info\*\*\*, County of Onondaga, and City of Syracuse, commonly known as Condominium Unit One of 618-620 North Townsend Street, Syracuse, New York 13203.

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RECORD AND RETURN TO:

STATE OF NEW YORK  
HOUSING TRUST FUND CORPORATION  
38-40 State Street  
Albany, New York 12207  
Attention: Counsel's Office

SHARS I.D. No. 20156054

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HOUSING TRUST FUND CORPORATION  
MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (“Mortgage”), made on December 21, 2017 among BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC, a limited liability company organized and existing under the laws of the State of New York, with its principal place of business at 1201 East Fayette Street, Syracuse, New York 13210 (“Mortgagor”), the CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY, an industrial development agency with its principal place of business at 201 E. Washington St., 7<sup>th</sup> Floor, Syracuse, New York 13202 (“SIDA”) and the HOUSING TRUST FUND CORPORATION, a public benefit corporation with its principal place of business at 38-40 State Street, Albany, New York 12207 (“Mortgagee”).

This Mortgage is made to secure payment of a debt of Mortgagor to Mortgagee for FIVE HUNDRED EIGHTY THOUSAND FIVE HUNDRED FOURTEEN DOLLARS (\$ 580,514.00) (“Loan”), payable according to and in the manner set forth in the promissory note executed by Mortgagor on this date in that amount (“Note”). This Mortgage also secures Mortgagor's performance and observance of all the provisions, obligations and covenants under this and other instruments delivered in connection with the debt evidenced by the Note, including the regulatory agreement executed between Mortgagor, SIDA and Mortgagee on this date (“Regulatory Agreement”) and construction loan agreement executed between Mortgagor and Mortgagee on this date (“Construction Loan Agreement”) which is hereby incorporated by this reference into this Mortgage as if fully set forth herein, this Mortgage and such other documents being hereinafter collectively referred to as the “Loan Documents”.

GRANTING CLAUSE

NOW THEREFORE, in consideration of the Loan, Mortgagor and SIDA, subject to SIDA's reservation of certain Unassigned Rights, as defined within the Agency Lease (as those terms are defined in Section 4.08 below), hereby mortgage, pledge and grant a security interest in all its estate, rights, title and interests in, and under any and all of the following described property (collectively “Mortgaged Property”):

(i) the property located in the City of Syracuse, County of Onondaga and State of New York as described in the annexed Schedule A ("Premises");

(ii) all the improvements, buildings and appurtenances now or hereafter erected on the property, and all air space, easements, privileges, rights in and to any land lying in the streets and ways adjacent thereto, mineral, oil and gas rights and profits, water, water rights, and water stock, now or hereafter obtained, and all payments at any time owing or due to Mortgagor by virtue of any sale, lease, transfer, conveyance or condemnation of any part thereof or interest therein including proceeds of insurance;

(iii) all right, title and interest of every nature of Mortgagor in and to all fixtures, equipment, appliances, furniture, furnishings, decorations, chattels and other personal property now or hereafter in or at the Premises or acquired in whole or in part or the cost of which is reimbursed to Mortgagor in whole or in part (collectively "Chattels");

(iv) all rents, royalties, issues, profits, revenue, income and other benefits of the Mortgaged Property, all leases and lettings of the Premises now or hereafter entered into and all right, title and interest of Mortgagor 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 by Section 2.01 hereof), to receive and collect the rents thereunder (collectively "Rents");

(v) all right, title and interest of every nature of Mortgagor in all moneys deposited or to be deposited in or with any financial institution of any nature including deposit accounts ("Accounts");

(vi) all right, title and interest of every nature of Mortgagor in all Contracts and Licenses as those terms are defined in the Regulatory Agreement as well as other general intangibles in any way related to the Premises; and

(vii) all extensions, additions, renewals and replacements, substitutions and accessions with respect to the foregoing ("Extensions").

TO HAVE AND TO HOLD UNTO Mortgagor, its successors and assigns forever.

PRIMARY COVENANT

Mortgagor will maintain the Mortgaged Property in compliance with the New York Private Housing Finance Law, Article XXVII, as may be amended from time to time, and the rules and regulations promulgated thereunder, as may be amended from time to time.

ARTICLE I COVENANTS OF THE MORTGAGOR

Section 1.01

Mortgagor will punctually pay such sums as become due under the Note at the time and place and in the manner specified in the Note.

Section 1.02

Mortgagor, within five (5) days upon request in person, or within ten (10) days upon request by mail, will furnish to Mortgagee a written statement duly acknowledged by an officer of Mortgagor certifying the principal amount then outstanding on the Note and certifying that no offsets or defenses exist against the Mortgage indebtedness.

Section 1.03

The Loan is subject to the trust fund provisions of Section 13 of the New York Lien Law.

Section 1.04

Mortgagor represents and warrants that together with SIDA it has good and marketable title to the Mortgaged Property, subject to no lien, charge or encumbrance except two liens, the Loan Documents and easements and restrictions of record, and that this Mortgage is and will remain a valid and enforceable lien on the Mortgaged Property subject only to the exceptions referred to herein. At its own cost and without expense to Mortgagee, Mortgagor will preserve such title, and will defend the validity and priority of the lien hereof against the claims of any and all other persons. This Mortgage is subordinate to the mortgage held by NBT Bank, National Association ("First Mortgage"), dated this date and to be recorded in the Onondaga County Clerk's Office ("First Mortgage").

Section 1.05

Mortgagor represents and warrants that is has good and marketable title to all Chattel, Rents and Accounts subject to no adverse claims, liens, security interests or restrictions except as created for the benefit of the other mortgagees listed above in the same priority as listed above.

Section 1.06

Mortgagor will pay, when due, all taxes, assessments, water rates and sewer rents, and all other public charges imposed against the Mortgaged Property. Mortgagor will, upon the request of Mortgagee, deliver to Mortgagee receipts evidencing such payments.

Section 1.07

Mortgagor will keep the Mortgaged Property insured at all times against loss by fire, casualty and such other hazards as may be required by Mortgagee for the benefit of Mortgagee. Loss payments under all such insurance policies shall be payable to Mortgagee and such policies shall contain a standard New York Mortgagee endorsement.

Section 1.08

Mortgagor will, at all times, maintain the Mortgaged Property in good operating order and condition and will promptly make, from time to time, all necessary or desirable repairs, renewals, replacements, additions, and improvements. The Mortgaged Property shall not be removed, demolished or altered without the prior written consent of Mortgagee.

Section 1.09

Mortgagor will comply with all the laws, ordinances and regulations affecting the Mortgaged Property and the conduct of Mortgagor's business operations.

Section 1.10

Mortgagor will preserve its existence in the form as it existed at the time of the execution of this Mortgage and not, in one transaction or a series of related transactions, merge into or consolidate with any other entity, sell all or substantially all of its assets nor change its name without the prior written consent of Mortgagee.

Section 1.11

Mortgagor certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any State or Federal department or agency.

ARTICLE II EVENTS OF DEFAULT AND REMEDIES

Section 2.01

The following shall be events of default ("Event of Default"):



(a) if default shall be made in the payment of any amount due under the Note and such default shall have continued for a period of fifteen (15) days.

(b) if default shall be made in the payment of any tax or other obligation required by Section 1.06 to be paid; or

(c) if default shall be made in the due observance or performance of any other covenant or condition on the part of Mortgagor contained in the Loan Documents, and such default shall have continued for a period of thirty (30) days (unless a shorter cure period is provided for in the Loan Documents) after written notice specifying such default and demanding that the same be remedied shall have been given to Mortgagor by Mortgagee (or if such default cannot with due diligence be cured within such period, Mortgagor shall have failed to commence to cure within such period, or having commenced, shall thereafter fail to prosecute and complete such cure with due diligence); or

(d) if Mortgagor shall make an assignment for the benefit of creditors, or shall institute any proceeding seeking relief on its behalf as debtor, or it is adjudicated bankrupt or insolvent; or

(e) if the Mortgaged Property shall be sold, conveyed or otherwise transferred or encumbered, or if there is a transfer of controlling interest in Mortgagor, without the prior written consent of Mortgagee; or

(f) any default, event of default or breach (however such terms may be defined) after the expiration of any applicable notice and cure periods under any other debt instrument secured by a mortgage, deed of trust or deed to secure debt on the Mortgaged Property shall be an Event of Default under this Mortgage and that any costs, damages or other amounts, including reasonable attorney's fee incurred by Mortgagee as a result of such Event of Default by Mortgagor, including amounts paid to cure any default or event of default shall be an obligation of Mortgagor and become a part of the indebtedness secured by this Mortgage.

#### Section 2.02

Upon the occurrence of any such Event of Default:

(a) Upon notice to Mortgagor, Mortgagee may enter into and upon the Mortgaged Property, and may exclude Mortgagor and SIDA; and may sell, use, operate, manage and control the Mortgaged Property and conduct the business thereof; and upon every such entry, Mortgagee at the expense of Mortgagor, may:

(i) make all necessary or proper repairs, renewals and replacements and such useful alterations, additions, betterments and improvements thereto and thereon as to it may seem advisable; and

(ii) complete the construction of the Mortgaged Property and take such other actions set forth in the Loan Documents and Mortgagee shall be entitled to collect and receive any and all income of the Mortgaged Property and, after deducting the expenses of conducting the business thereof and of all maintenance and improvements and amounts necessary to pay for taxes, assessments, insurance or other proper charges upon the Mortgaged Property, as well as all costs and expenses of and reasonable compensation for the services of Mortgagee or its attorneys, contractors, agents and employees, Mortgagee shall apply such income first, to the payment of the principal of the Note, the interest and charges thereon, and second, to the payment of any other sums required to be paid by Mortgagor under the Note and under this Mortgage. No such entry or action by Mortgagee shall create any liability to Mortgagor, SIDA or to any party holding under or claiming through Mortgagor or SIDA, nor shall such entry or action be deemed an eviction of any lessee of the Mortgaged Property or any part thereof; or

(b) With or without entry, Mortgagee may institute proceedings for the foreclosure of this Mortgage; or

(c) Mortgagee may take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Loan Documents and this Mortgage, or in aid of the execution of any power herein or therein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy as Mortgagee shall elect; or

(d) Mortgagee may pay any and all taxes due and owing on the Mortgaged Property and any and all payments due on any other mortgages, liens or other claims affecting the Mortgaged Property; said expenditures shall be at the expense of Mortgagor and secured by this Mortgage; or

(e) Mortgagee may exercise all the rights and remedies with respect to repossession, retention and sale of the Chattels, Rents, Accounts and Extensions and the disposition of the proceeds thereof as are accorded to a secured party by the applicable sections of Part 6 of Article 9 of the Uniform Commercial Code. To the extent permitted under the Uniform Commercial Code, Mortgagor and SIDA waive all rights of redemption and all other rights and remedies of a

debtor thereunder and all formalities prescribed by law relative to the sale or disposition of the Chattels, Rents, Accounts and Extensions after an Event of Default. Nothing contained in this subparagraph shall preclude Mortgagee from proceeding as to both the real property and the personal property covered by this Mortgage in accordance with its rights and remedies with respect to the real property, as provided in Section 9-601 (a)(2) of the Uniform Commercial Code.

Section 2.03

Upon any sale made under or by virtue of this Article II, judicial proceedings or of a judgment or decree of foreclosure and sale, Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and may credit to the purchase price the amount required to be paid by Mortgagor to Mortgagee and secured by this Mortgage, the expenses of the sale, the costs of the action and any other sums which Mortgagee is authorized to collect under this Mortgage.

Section 2.04

The proceeds of any foreclosure sale shall be applied in the following order of priority:

- (a) To the payment of the costs and expenses of such sale, including reasonable compensation to Mortgagee, its agents and counsel, and any judicial proceedings, the expenses of any receiver, and of all expenses, liabilities and advances made or incurred by Mortgagee under this Mortgage, including the costs of relocating tenants, taking possession of, maintaining and preserving the Mortgaged Property, and of completing construction of the Mortgaged Property, and all taxes or assessments, except any taxes, assessments or other charge subject to which the Mortgaged Property shall have been sold;
- (b) To the payment of the whole amount then due, owing or unpaid upon the Note including penalties; and
- (c) To the payment of the surplus, if any, to whomever may be lawfully entitled to receive the same.

Section 2.05

In addition to other remedies provided in this Mortgage, upon the occurrence of any Event of Default, Mortgagee may accelerate the entire principal of the Note then outstanding, interest and charges by declaring it to be immediately due and payable, and demand full payment thereof.

Section 2.06

No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given under the Loan Documents or hereunder or now or hereafter existing at law or in equity. No delay or failure of Mortgagee to exercise any right, power or remedy hereunder or under the Loan Documents shall impair any such remedy of Mortgagee or shall be construed to be a waiver thereof. No waiver of any breach shall constitute a waiver of any other then existing or subsequent breach.

Section 2.07

After the happening of any Event of Default and during its continuance, Mortgagee shall be entitled to the appointment of a receiver of the Mortgaged Property and of any and all the income thereof.

Section 2.08

Notwithstanding any agreement, representation, warranty or undertaking in this Mortgage or the Loan Documents, it is agreed that neither Mortgagee nor any successor or assign of the Mortgagee, nor any other person shall have any claim to proceed personally against Mortgagor, SIDA or any other person having an interest in the Mortgaged Property, or any assignee, successor, heir or representative of any of the foregoing, for any deficiency or any other sum owing by virtue of this Mortgage, the Note or the Loan Documents or for any obligation or liability hereto or thereunder, and Mortgagee for itself and any successor Mortgagee waives and releases such personal liability and agrees to look solely to the Mortgaged Property and the project for any sums due with respect to this Mortgage, the Note and the Loan Documents.

ARTICLE III SECURITY AGREEMENT

Section 3.01

Mortgagor, SIDA and Mortgagee expressly agree that this Mortgage shall also constitute a "security agreement" as such term is defined in the Uniform Commercial Code. The Mortgaged Property includes, and shall be deemed to include, inter alia, the Chattels, Rents, Accounts and Extensions, regardless of whether they are now held or hereafter acquired, of Mortgagor in, to and under the Mortgaged Property. By executing and delivering this Mortgage, Mortgagor and hereby grant, in the same manner and with the same effect described in the

Granting Clause hereof, Mortgagee a security interest in the Chattels, Rents, Accounts and Extensions which are subject to the Uniform Commercial Code. If any Event of Default shall occur, Mortgagee shall have, in addition to any and all other rights and remedies set forth in this Mortgage, and may exercise without demand, any and all rights and remedies granted to a secured party under the Uniform Commercial Code. The proceeds of any such sale of the Chattels, Rents, Accounts and Extensions, or any part thereof, shall be applied in the manner set forth in Section 2.04 of Article II of this Mortgage.

#### ARTICLE IV MISCELLANEOUS

##### Section 4.01

In the event any one or more of the provisions contained in this Mortgage or the Loan Documents shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Mortgage, but this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

##### Section 4.02

All notices hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when sent by certified or registered mail, return receipt requested, to the address herein set forth, or at such other address of which the party to receive such notice shall have notified the party giving such notice in writing except that any notice of such a change of address shall be deemed given when it is received.

##### Section 4.03

All the grants, covenants, terms, provisions and conditions herein shall run with the land, shall apply to and bind the successors and assigns of Mortgagor and all subsequent owners, encumbrancers and tenants of the Mortgaged Property, and shall inure to the benefit of the Mortgagee, its successors and assigns and all subsequent holders of this Mortgage.

##### Section 4.04

This Mortgage shall be construed and enforced in accordance with and shall be governed by the laws of the State of New York.

Section 4.05

This Mortgage may be amended, discharged or terminated only by a written instrument executed by Mortgagee and Mortgagor.

Section 4.06

This Mortgage may be executed in any number of counterparts or duplicates, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

Section 4.07

Notwithstanding anything to the contrary contained in the Loan Documents, in the event of any fire or other casualty to the Mortgaged Property or eminent domain proceedings resulting in condemnation of the Mortgaged Property or any part thereof, Mortgagor shall have the right to rebuild the Premises, and to use all available insurance or condemnation proceeds therefor, provided that (a) such proceeds are sufficient to keep the Note in balance and rebuild the Premises in a manner that provides adequate security to Mortgagee for repayment of the Note, or if such proceeds are insufficient then Mortgagor shall have funded any deficiency, (b) Mortgagee shall have the right to approve plans and specifications for any major rebuilding and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement, and (c) no continuing material default then exists by Mortgagor under the Loan Documents. If the casualty or condemnation affects only part of the Premises and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of the Note in a manner that provides adequate security to Mortgagee for repayment of the remaining balance of the Note.

Section 4.08

SIDA SPECIAL PROVISIONS. Notwithstanding any other term or condition contained in this Instrument:

(a) This Instrument is executed by SIDA solely for the purpose of subjecting its leasehold interest in the Mortgaged Property to the lien of this Instrument and for no other purpose. All representations, covenants and warranties of Mortgagor herein are hereby deemed to have been made by Mortgagor and not by SIDA. It is hereby agreed and understood that SIDA has not granted an interest in the Unassigned Rights as defined in the agency lease dated December 1, 2017 between SIDA and the Mortgagor, as the same may be amended or supplemented from time to time (“Agency Lease”)

(b) The obligations and agreements of SIDA 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 SIDA hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Mortgaged Property, and neither the members of SIDA nor any person executing this Instrument on its behalf shall be liable personally under this Instrument. No recourse shall be had for the payment of the principal of, or interest on the indebtedness which this Instrument secures, or for any claim based hereon, or otherwise in respect hereof, or based upon or in respect of this Instrument, or any mortgage supplemental hereto, against any past, present, or future member, officer, agent, servant, or employee, as such, of SIDA or of any successor or political subdivision, either directly or through SIDA or any such successor, all such liability of such members, officers, agents (except for the Mortgagor), 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 Instrument and the instruments evidencing the indebtedness it secures. Any judgment or decree shall be enforceable against SIDA only to the extent of its interest in the Mortgaged Property and any such judgment shall not be subject to execution on or by a lien on assets of SIDA other than its interest in the Mortgaged Property.

(c) No order or decree of specific performance with respect to any of the obligations of SIDA hereunder shall be sought or enforced against SIDA unless the party seeking such order or decree shall first have requested SIDA 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 SIDA 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 SIDA refuses to comply with such request and SIDA'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 SIDA an amount or undertaking sufficient to cover such reasonable fees and expenses whereupon SIDA shall agree to comply with such request. If SIDA refuses to comply with such request and SIDA'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 SIDA and its members, officers, directors, servants, agents (other than the Borrower) and employees against any liability incurred as a result of its compliance with such demand, and (2) if requested by SIDA, furnish to SIDA reasonably satisfactory security to protect SIDA and its members, officers, directors, servants, agents (other than the Mortgagor) and employees against all liability reasonably expected to be incurred as a result of compliance with such request whereupon SIDA shall agree to comply with such request. The agreement on the part of the Mortgagee shall not be construed in any way so as to effect or impair the lien of this Instrument or the Mortgagee's right to foreclose hereunder as provided by law or construed in any way so as to limit or restrict any of the rights or remedies of the Mortgagee in any foreclosure proceedings except as specifically set forth herein with respect to SIDA.

(d) Mortgagor shall: (i) pay the all other sums of money due and payable at any time and from time to time under the Agency Lease, the company lease agreement dated as of December 1, 2017 between the Mortgagor and SIDA as the same may be amended or supplemented from time to time ("Company Lease") and the payment in lieu of taxes agreement dated December 1, 2017 among the City of Syracuse, NY, SIDA and the Mortgagor ("PILOT Agreement"), as and when such sums become due and payable, but in any event before the expiration of any grace period provided in the Agency Lease, the Company Lease and the PILOT Agreement for the payment of any such sum; and (ii) at all times fully perform, observe and comply with all other terms, covenants and conditions of the Agency Lease, the Company Lease and the PILOT Agreement to be performed, observed or complied with by Mortgagor as lessor under the Company Lease and lessee under the Agency Lease and as a party under the PILOT Agreement. If the Agency Lease, the Company Lease and/or the PILOT Agreement do not provide for a grace period for the payment of a sum of money, Mortgagor shall make the payment on or before the date on which the payment becomes due and payable. Mortgagor shall deliver evidence of the payment to Mortgagee within ten (10) days after receipt of a written request from Mortgagee for evidence of the payment.

(e) The Mortgagor and the Mortgagee hereto, by accepting this Mortgage, acknowledge that SIDA is executing and participating in this Mortgage solely to subject its interest in the Mortgaged Property to this Mortgage. Notwithstanding anything herein to the



contrary, the Mortgagee acknowledges and agrees that its sole recourse against SIDA for any default hereunder shall be with respect to the SIDA's interest in the Mortgaged Property.

(f) The Mortgagor directs SIDA to execute and deliver this Mortgage to the Mortgagee, and further agrees to indemnify SIDA (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.

(g) The Mortgagor acknowledges that the terms of the Agency Leases, as amended and restated from time to time, are in full force and effect, including but not limited to the "Hold Harmless Provisions" contained in Section 8.2 thereof and incorporates same in this instrument and makes same applicable hereto as if fully set forth herein.

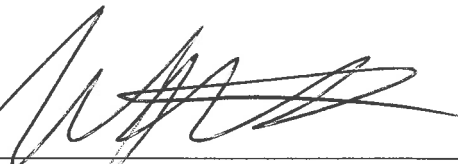
(h) Notwithstanding anything herein to the contrary, Mortgagee by accepting this Mortgage, acknowledges and agrees that the rights of Mortgagee hereunder shall be subordinate to the rights of SIDA to receive payments in lieu of taxes pursuant to the PILOT Agreement and that such payments in lieu of taxes to be made by Mortgagor to SIDA shall have the same force, priority and effect as a real property tax lien under New York State law against the Mortgaged Property.

(i) The Mortgagee will record or cause this Instrument to be recorded in the office of the Onondaga County Clerk.

[SIGNATURE PAGES FOLLOW]




CITY OF SYRACUSE  
INDUSTRIAL DEVELOPMENT AGENCY AUTHORITY

By:   
Name: William M. Ryan  
Title: Chairman

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

On December 20<sup>th</sup>, 2017, before me, the undersigned, personally appeared William M. Ryan, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 61MC5055591  
Commission Expires on Feb. 12, 2018

**618-620 North Townsend Street: Tax Parcel Number 017.-08-22.1 (UNIT 1)**

The Unit designated as **Unit No. 1** in the Declaration comprising **BUTTERNUT CROSSING CONDOMINIUM** located in the City of Syracuse, County of Onondaga, New York, (hereinafter called the "**Property**"), made by Housing Visions Consultants, Inc. under the Condominium Act of the State of New York, as amended (Article 9-B of the Real Property Law of the State of New York), dated December 21st, 2017 and recorded in the office of the County Clerk of Onondaga County on the 22<sup>nd</sup> day of December, 2017 as Instrument Number 2017-00049870 (hereinafter called the "**Declaration**," ) which Unit is also designated as Unit 1, on page A1.1 of the Construction Drawings for **Butternut Crossing 618-620 N. Townsend Street, Syracuse** as certified and prepared by Holmes King Kallquist & Associates, Architects, and filed simultaneously with said Declaration in the Office of the County Clerk of Onondaga County (hereinafter called the "**Unit**"), together with others with the use of the Common Elements, as defined in said Declaration. The appurtenant interests of Unit 1 in the Common Elements is 29.5%. The land area of the Property is described as follows:

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Syracuse, County of Onondaga, State of New York being Lot 12 & part of Lot 11 of City Block 275D and being more particularly bounded and described as follows: Beginning at a point in the easterly line of North Townsend Street at the intersection of the southerly line of East Laurel Street thence North 59 deg. 25 min. 40 sec. East along the said southerly line of East Laurel Street, a distance of 79.50 feet to a point; thence South 30 deg. 32 min. 30 sec. East a distance of 50.00 feet to a point; thence North 59 deg. 25 min. 40 sec. East a distance of 36.00 feet to a point thence South 30 deg. 32 min. 30 sec. East a distance of 50.00 feet to a point; thence South 59 deg. 25 min. 40 sec. West a distance of 115.50 feet to a point in the said easterly line of North Townsend Street thence North 30 deg. 32 min. 30 sec. West along said easterly line of North Townsend Skeet, a distance of 100.00 feet to the point of beginning.

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**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**  
**BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC PROJECT**


**DOCUMENTS RECORDED WITH THE ONONDAGA COUNTY CLERK**  
**ON DECEMBER 22, 2107**

NBT Commercial Mortgage: Instrument No. 2017-00047886

NBT Assignment of Leases and Rents: Instrument No. 2017-00047887

HTFC Mortgage: Instrument No. 2017-00047902

UCC-1 Financing Statement from Butternut Crossing Commercial Enterprises, LLC and SIDA  
to NBT: Instrument No. 2017-00001033

 Subordination and First Mortgagee Waiver Agreement Regulatory Agreement: Instrument  
No. 2017-00047904

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HOUSING TRUST FUND CORPORATION

and

NBT BANK, NATIONAL ASSOCIATION

and

BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC

and

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

---

RURAL AND URBAN COMMUNITY  
INVESTMENT FUND PROGRAM

---

SUBORDINATION AND FIRST MORTGAGEE WAIVER AGREEMENT

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DATED AS OF DECEMBER 21, 2017

This instrument affects real and personal property situated in the State of New York, County of Onondaga, and City of Syracuse, commonly known as: Condominium Unit One of 618-620 North Townsend Street, Syracuse, New York 13203.

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RECORD AND RETURN TO:

STATE OF NEW YORK  
HOUSING TRUST FUND CORPORATION  
38-40 State Street  
Albany, New York 12207  
Attention: Counsel's Office

SHARS I.D. No. 20156054

HOUSING TRUST FUND CORPORATION

SUBORDINATION AND FIRST MORTGAGEE WAIVER AGREEMENT

THIS AGREEMENT, made as of December 21, 2017, by and between the HOUSING TRUST FUND CORPORATION, a public benefit corporation with its principal place of business at 38-40 State Street, Albany, New York 12207 (“HTFC”), NBT BANK, NATIONAL ASSOCIATION, a banking corporation organized and existing under the laws of the State of New York, with its principal place of business at 52 S. Broad Street, Norwich, New York 13815, its successors and assigns (“NBT”), BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC, a limited liability company organized and existing under the laws of the State of New York, with its principal place of business at 1201 East Fayette Street, Syracuse, New York 13210 (“Mortgagor”), and the CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY, an industrial development agency with its principal place of business at 201 E. Washington St., 7<sup>th</sup> Floor, Syracuse, New York 13202 (“SIDA”)

WITNESSETH

WHEREAS, pursuant to Article XXVII of New York Private Housing Finance Law as may be amended from time to time (“Statute”), HTFC entered into a regulatory agreement on premises described in Schedule A annexed hereto (“Mortgaged Premises”) with Borrower and SIDA dated this date and to be recorded in the Onondaga County Clerk’s Office and incorporated herein by reference (“Regulatory Agreement”);

WHEREAS, HTFC is the owner and holder of a mortgage on the Mortgaged Premises, from Borrower and SIDA to HTFC, dated this date and to be recorded in the Onondaga County Clerk’s Office (“HTFC Mortgage”) which secures Borrower’s performance under the Regulatory Agreement and the promissory note in the amount of FIVE HUNDRED EIGHTY THOUSAND FIVE HUNDRED FOURTEEN DOLLARS (\$ 580,514.00) executed by Borrower on this date;

WHEREAS, the parties desire that NBT provide financing to Borrower;

WHEREAS, as a condition of financing from NBT, HTFC must agree to subordinate the HTFC Mortgage to the NBT’s mortgage in the amount of THREE HUNDRED TWENTY THOUSAND DOLLARS (\$ 320,000.00) (“NBT’s Mortgage”);



WHEREAS, as a condition to the subordination of the HTFC Mortgage, any mortgage on the Mortgaged Premises must be subject to the terms and conditions of the Statute and the Regulatory Agreement;

WHEREAS, NBT has requested that in the event NBT forecloses or obtains title to the Mortgaged Premises in accordance with law and the provisions of the NBT's Mortgage, the Mortgaged Premises shall not be subject to one or more provisions of the Statute or the Regulatory Agreement; and

WHEREAS, HTFC has found that it is necessary, in order to enable Borrower to obtain a mortgage loan from NBT, to waive certain provisions of the Statute and the Regulatory Agreement upon such terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of good and valuable consideration exchanged between the parties, it is hereby agreed as follows:

1. The HTFC Mortgage is hereby subordinated and made subject to the NBT's Mortgage.
2. In the event there shall be any default under the terms of the NBT's Mortgage, including, but not limited to, the failure to pay principal or interest of said NBT's Mortgage for sixty (60) days, NBT shall give HTFC notice of such default, and shall give HTFC a reasonable opportunity to cure such default before commencing foreclosure proceedings.
3. In the event there shall be any default under the terms of the HTFC's Mortgage, including, but not limited to, the failure to pay principal or interest of said HTFC's Mortgage for sixty (60) days, HTFC shall give NBT notice of such default, and shall give NBT a reasonable opportunity to cure such default before commencing foreclosure proceedings.
4. The Mortgaged Premises and the NBT's Mortgage are subject to the terms and conditions of the Statute and the Regulatory Agreement except that upon the foreclosure of NBT's Mortgage or NBT obtaining title to the Mortgaged Premises, in accordance with the law and provisions of NBT's Mortgage, the Mortgaged Premises shall not be subject to the Statute and the Regulatory Agreement.
5. All notices or other communication with respect to the subject matter of this Agreement shall be in writing and shall be deemed to have been given when sent by certified mail, return receipt requested, to the parties at the addresses first set out herein. A party may change the address by giving notice as provided herein, which will be effective upon receipt.

6. This Agreement may not be amended, modified, waived or rescinded in whole or in part nor may any other action or consent be given unless it is in writing, signed by and delivered to all the parties to this Agreement.

7. If any provision of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and each provision shall be valid and enforceable to the fullest extent permitted by law.

8. This Agreement may be executed in any number of counterparts or duplicates, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.


(9) The Mortgagor directs SIDA to execute and deliver this Agreement to HTFC, and further agrees to indemnify SIDA (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 Regulatory Agreement, including but not limited to reasonable attorney's fees.

(c) The Mortgagor acknowledges that the terms of the Agency Leases, by and among SIDA and the mortgagor, dated as of December 1, 2017, as amended and restated from time to time, are in full force and effect, including but not limited to the "Hold Harmless Provisions" contained in Section 8.2 thereof and incorporates same in this instrument and makes same applicable hereto as if fully set forth herein.

[SIGNATURE PAGES FOLLOW]

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

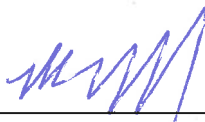
HOUSING TRUST FUND CORPORATION

By:   
Name: Sean Fitzgerald  
Title: Vice President

BUTTERNUT CROSSING COMMERCIAL  
ENTERPRISES, LLC

By: HV CONSULTANTS HOLDING CO., LLC  
Its Manager

By: HOUSING VISIONS CONSULTANTS, INC.  
Its Sole Member and Manager

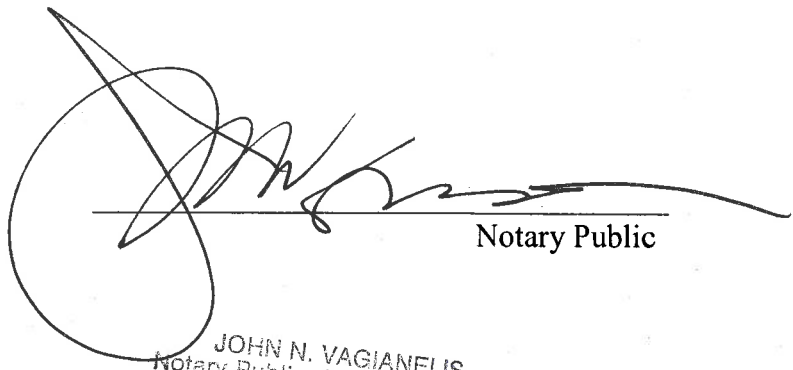
By:   
Name: Benjamin Lockwood  
Title: Vice President

NBT BANK, NATIONAL ASSOCIATION

By: Richard Driscoll  
Name: Richard Driscoll  
Title: Vice President

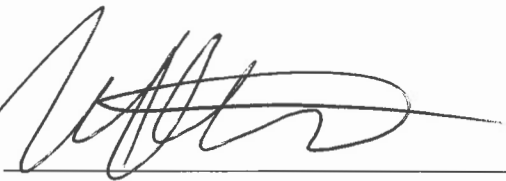
STATE OF NEW YORK )  
COUNTY OF Windsor ss.:

On December 21, 2017, before me, the undersigned, personally appeared Richard Driscoll, 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

JOHN N. VAGIANELIS  
Notary Public, State of New York  
No. 02VA5081511  
Qualified in Albany County  
Commission Expires July 7, 2019

CITY OF SYRACUSE  
INDUSTRIAL DEVELOPMENT ~~AUTHORITY~~ AGENCY

By: 

Name: William M. Ryan

Title: Chairman

STATE OF NEW YORK )

) ss.:

COUNTY OF ONDONDAGA)

On December 20<sup>th</sup>, 2017, before me, the undersigned, personally appeared William M. Ryan, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.




Notary Public

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

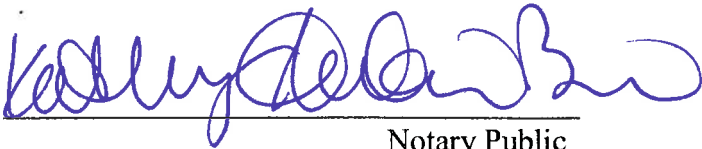
STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF ALBANY)

On December 20, 2017, before me, the undersigned, personally appeared Sean Fitzgerald, 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.

  
Sean P. Shea, Notary Public, State of New York  
Qualified in Rensselaer County  
No. 02SH5035018  
My Commission expires 10/24/18

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

On December 21, 2017, before me, the undersigned, personally appeared Benjamin Lockwood, 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  
KATHRYN ANTONACCI BROWN  
Notary Public, State of New York  
No. 01BR5021078  
Qualified in Onondaga County  
Commission Expires Dec. 6, 2021

**618-620 North Townsend Street: Tax Parcel Number 017.-08-22.1 (UNIT 1)**

The Unit designated as **Unit No. 1** in the Declaration comprising **BUTTERNUT CROSSING CONDOMINIUM** located in the City of Syracuse, County of Onondaga, New York, (hereinafter called the "**Property**"), made by Housing Visions Consultants, Inc. under the Condominium Act of the State of New York, as amended (Article 9-B of the Real Property Law of the State of New York), dated December 21st, 2017 and recorded in the office of the County Clerk of Onondaga County on the 22<sup>nd</sup> day of December, 2017 as Instrument Number **2017-00047870** (hereinafter called the "**Declaration**,"), which Unit is also designated as Unit 1, on page A1.1 of the Construction Drawings for **Butternut Crossing 618-620 N. Townsend Street, Syracuse** as certified and prepared by Holmes King Kallquist & Associates, Architects, and filed simultaneously with said Declaration in the Office of the County Clerk of Onondaga County (hereinafter called the "**Unit**"), together with others with the use of the Common Elements, as defined in said Declaration. The appurtenant interests of Unit 1 in the Common Elements is 29.5%. The land area of the Property is described as follows:

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Syracuse, County of Onondaga, State of New York being Lot 12 & part of Lot 11 of City Block 275D and being more particularly bounded and described as follows: Beginning at a point in the easterly line of North Townsend Street at the intersection of the southerly line of East Laurel Street thence North 59 deg. 25 min. 40 sec. East along the said southerly line of East Laurel Street, a distance of 79.50 feet to a point; thence South 30 deg. 32 min. 30 sec. East a distance of 50.00 feet to a point; thence North 59 deg. 25 min. 40 sec. East a distance of 36.00 feet to a point thence South 30 deg. 32 min. 30 sec. East a distance of 50.00 feet to a point; thence South 59 deg. 25 min. 40 sec. West a distance of 115.50 feet to a point in the said easterly line of North Townsend Street thence North 30 deg. 32 min. 30 sec. West along said easterly line of North Townsend Street, a distance of 100.00 feet to the point of beginning.

**20**



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HOUSING TRUST FUND CORPORATION

and

BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC

and

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

---

RURAL AND URBAN COMMUNITY INVESTMENT FUND PROGRAM

---

REGULATORY AGREEMENT

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DATED AS OF DECEMBER 21, 2017

This instrument affects real and personal property situated in the State of New York, \*\*\*Tax Info\*\*\* County of Onondaga, and City of Syracuse, commonly known as Condominium Unit One of 618-620 North Townsend Street, Syracuse, New York 13203

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RECORD AND RETURN TO:

STATE OF NEW YORK  
HOUSING TRUST FUND CORPORATION  
38-40 State Street  
Albany, New York 12207  
Attention: Counsel's Office

SHARS I.D. No. 20156054

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HOUSING TRUST FUND CORPORATION

REGULATORY AGREEMENT

AGREEMENT made as of December 21, 2017, among HOUSING TRUST FUND CORPORATION, a public benefit corporation with its principal place of business at 38-40 State Street, Albany, New York 12207 ("HTFC"), BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC, a limited liability company organized and existing under the laws of the State of New York, with its principal place of business at 1201 East Fayette Street, Syracuse, New York 13210 in its capacity as fee owner and sublessee ("Borrower") and the CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY, an industrial development agency with its principal place of business at 201 E. Washington St., Syracuse, New York 13202 ("SIDA").

WITNESSETH:

NOW THEREFORE, the parties agree that the Property and the Project (as defined below) will be made in association with a project owned by Butternut Crossing, LLC containing forty-seven (47) dwelling units of housing for persons of low income and will be developed and operated in accordance with the following terms and conditions:

SECTION I

1. Authorization

Pursuant to Article XXVII of the Private Housing Finance Law as may be amended from time to time ("Statute") and the rules and regulations of HTFC (NYCRR 1900 et seq.) as may be amended from time to time ("Regulations"), HTFC is authorized to enter into contracts with eligible applicants to provide (i) housing for persons of low income (the "Residential Space") and (ii) the creation, preservation or improvement of accompanying retail, commercial or community facility (the "Non-Residential Space").

2. Term

The term of this Agreement ("Term") shall commence as of this date and shall expire fifty (50) years after the final disbursement of the Loan (as defined herein) or upon satisfaction of all indebtedness required to be repaid, whichever occurs later.

3. Preference in Tenant Selection

Preference in selection of occupants shall be given to tenants of the Non-Residential Space that are (i) addressing critical unmet community needs (e.g. access to health care, affordable fresh foods, services for low income seniors, educational opportunities, day care for working families), (ii) ensuring the continuation of traditional commercial corridors in the community that would otherwise be disrupted by the development of ground floor residential space, and/or (iii) part of a concerted neighborhood revitalization plan.

4. Residential Space

The residential component required by the Statute is addressed in the HOME award made to Butternut Crossing, LLC (SHARS 20166054) made in conjunction with this award.

## SECTION II

1. Award

HTFC has agreed to make an award in the maximum amount FIVE HUNDRED EIGHTY THOUSAND FIVE HUNDRED FOURTEEN DOLLARS (\$ 580,514.00) ("Non-Residential Space Loan"), for a certain project as more fully described in the attached Exhibit A ("Project") with respect to land and improvements (collectively "Property") located in the City of Syracuse in the County of Onondaga, which Property is more fully described in the attached Schedule A.

2. Responsibilities for and Regulation of Project

During the Term hereof, Borrower shall operate and maintain the Project in compliance with applicable federal, state and local laws, rules, regulations and any applicable agreements relating to the Project executed by Borrower, including but not limited to:

- (a) the Statute;
- (b) the Regulations;
- (c) exhibits to this Agreement; and

(d) policies and procedures of HTFC as amended from time to time (“Policies and Procedures of HTFC”).

3. Reserve Accounts

Borrower shall establish, maintain and preserve an Operating Reserve Account and a Replacement Reserve Account in accordance with the Policies and Procedures of HTFC. Withdrawals from these and other accounts may only be made with the approval of HTFC.

(a) Borrower shall annually deposit into the Replacement Reserve Account an amount equal to \$ 968.00. Such deposits shall be made monthly in amounts equal to one-twelfth the annual amount.

(b) Borrower shall annually deposit into the Operating Reserve Account an amount not less \$ 697.00 plus any Excess Income (as defined below) remaining after payments are made pursuant to Paragraph 4. Such deposits shall be made monthly in amounts equal to one-twelfth the annual amount.

(c) If deposits to the Operating Reserve Account or the Replacement Reserve Account are reduced or suspended in any month, Borrower shall utilize such funds in accordance with the Policies and Procedures of HTFC.

(d) Pursuant to the terms of a mortgage and security agreement with Borrower executed of even date herewith, HTFC has perfected a security interest in the Operating Reserve Account and the Replacement Reserve Account. In the event this Agreement terminates prematurely for any reason, any funds deposited in the Operating Reserve Account and the Replacement Reserve Account will be recaptured by HTFC.

4. Limitation of Profits and Return on Equity

Borrower agrees that all income received from the operation of the Project for each fiscal year shall be used to (i) pay the operating expenses (exclusive of management incentive fees) of the Project for such fiscal year, in accordance with the annual budget approved by HTFC and (ii) make all scheduled reserve account payments in amounts required to maintain such reserve funds at the required levels.

5. Occupant Selection

(a) Borrower shall select occupants based upon the Policies and Procedures of the HTFC.

(b) Borrower shall adhere to the terms of the approved marketing plan attached as Exhibit B (“Marketing Plan”) for advertising and selection of eligible occupants.

(c) HTFC's prior written consent shall be required for (i) any lease of the Non-Residential Space, (ii) any change to a lease of the Non-Residential Space, (iii) any tenant or change of tenant of the Non-Residential Space, and (iv) any subleasing and sub-tenant of the Non-Residential Space.

6. Unit Rents and Resale Restrictions

(a) Borrower shall establish initial rents in accordance with the Affordability Plan attached as Exhibit C.

(b) Borrower shall submit to HTFC an annual schedule of rents in such form as required by HTFC, at least three months before the start of each of the Project’s fiscal years for HTFC’s review and approval.

(c) The Project and all the units therein may not be sold without HTFC approval.

7. Management and Operating Budget

(a) Borrower shall manage the Project in accordance with the management plan approved by HTFC.

(b) Borrower shall use its best efforts to adhere to the projected budget for operation of the Project approved by HTFC (“Operating Budget”). Borrower shall submit to HTFC an updated Operating Budget at least three months before the start of each of the Project’s fiscal years for HTFC’s review and approval.

(c) Debt service on loans to Borrower from any principal, owner or affiliate of Borrower, developer or sponsor of the Project shall be payable only from project revenues after payment of all operating expenses including other approved mortgage debt service and required reserve payments. Any expense payment to principal, owner or affiliate of the Borrower, developer or sponsor of the Project must be approved in advance by HTFC. The Non-Residential Space Loan shall not be used to pay any developer fees.

(d) Borrower shall comply with the Green Building and Energy Efficiency Standards attached as Exhibit D.

(e) Borrower shall not use the Non-Residential Loan for any costs associated with the Residential Space, including development or operating costs. Borrower shall not use loans associated with the Residential Space for any costs associated with the Non-Residential Space,

including development or operating costs. Income from the Residential Space may not be used to support the operations of the Non-Residential Space.

(f) A Non-Disturbance and Attornment Agreement in the form attached as Exhibit E (as may be amended from time to time) must be executed as pre-condition to any lease of any or all of the Non-Residential Space.

(g) Borrower shall submit a Non-Residential Tenant Approval form in the form attached as Exhibit F (as may be amended from time to time) when requesting approval for any change in tenancy of the Non-Residential Space as required by this Agreement.

8. Assignment

Borrower may not assign any right granted to it under this Agreement or delegate any obligation imposed on Borrower herein without the prior written consent of HTFC and any purported assignment or delegation without HTFC's prior written consent shall be void. Borrower will not transfer the controlling interest of Borrower or change any non-investor member or the controlling interest of any non-investor member without the prior approval of HTFC. For the purpose of this section, a transfer of more than ten percent (10%) ownership interest or transfer of stock in Borrower, in whole or in part, by a party holding ten percent (10%) or more of the ownership interest or stock of Borrower, or a transfer by more than one interest-holder or stockholder of the Borrower of ten percent (10%) or more of ownership interest or stock of Borrower, or any other similarly significant change in the ownership of such stock or in the relative distribution thereof, or with respect to the parties in control of Borrower, whether by increased capitalization, merger with another corporation, issuance of new or additional stock or by any other methods, shall be deemed a transfer of ownership with respect to this Agreement or the Property.

9. Agreement to Run With the Land; Recording

This Agreement shall apply to the Property, the Project and any successor projects thereto. This Agreement is intended to benefit HTFC and the State of New York as set forth in the Statute. This Agreement and all of the promises, agreements and covenants herein contained shall be deemed real covenants and shall run with the land and be binding upon the respective heirs, executors, administrators, successors and assigns of Borrower. HTFC and Borrower hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the Property and that Borrower's legal interest in the Property are rendered

less valuable thereby. HTFC and Borrower hereby further declare their understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Property by persons for whom the ordinary operations of private enterprise cannot provide an adequate supply of safe, sanitary affordable housing accommodations, and are the intended beneficiaries of such covenants. During the term of this Agreement, the covenants of Borrower set forth herein are enforceable by HTFC as a contract beneficiary whether or not Borrower are or remain indebted to HTFC. Borrower shall record this Agreement against the Property at such time, in such manner and in such places as may be required by HTFC and by any present or future law in order to publish notice of and to fully protect the priority of this Agreement and the interest of HTFC in the Property.

9A. Other Mortgages

The mortgage held by NBT Bank, National Association ("First Mortgagee"), dated this date and to be recorded in the Onondaga County Clerk's Office ("First Mortgage") is subject to this Agreement and the Statute. The terms, provisions and covenants of both this Agreement and the Statute are binding on Borrower and the First Mortgagee and shall remain binding on any transferee of the Project and the Property as the result of the foreclosure of the First Mortgage or otherwise, except insofar as HTFC may expressly agree to the contrary in writing.

10. Indemnification

To the fullest extent permitted by law, Borrower shall defend, indemnify and hold harmless HTFC and its agents and employees from and against claims, damages, losses and expenses, including, but not limited to, attorneys' fees arising out of or resulting from performance of this contract or the work to be performed pursuant hereto.

11. Non-Liability

Nothing in this Agreement or arising out of the development or operation of the Project shall impose any liability or duty whatsoever on HTFC, the State of New York or any of its agencies or subdivisions.

12. Equal Opportunity

Borrower agrees that it will, and will cause all its contractors and subcontractors engaged upon the Project to comply with the equal opportunity requirements attached as Appendix 1 ("Equal Opportunity Requirements").



13. Covenants of Borrower

Borrower covenants as follows:

(a) If a lien for the performance of work or the furnishing of labor or materials is filed against the Property, Borrower shall cause it to be satisfied, discharged or bonded at the earlier of the time of any request for disbursement or within a period of twenty (20) days after the date of filing of such lien;

(b) Borrower shall comply with all of the terms of any mortgage, deed of trust, security agreement, loan agreement, credit agreement or other instrument executed in favor of any other party; and

(c) Borrower shall comply with the conflict of interest restrictions of the Statute, Regulations and other federal and state laws.

(d) Borrower certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transaction by any State or Federal department or agency.

(e) Borrower shall have HTFC shall be added as mortgagee to all property insurance policies and as additional insured for all other policies of the Borrower, Fee Holder, contractors and/or construction managers and as sole loss payee for employee dishonesty.

14. Records and Reports; Inspections

Borrower shall maintain records, submit reports and cooperate with audits and inspections as stated in the Statute, Regulations, this Agreement and the Policies and Procedures of HTFC and sufficient to provide HTFC with any information necessary to file such reports as the Statute may require. Borrower shall submit management reports on its Project in such format and at such times as HTFC may prescribe.

15. Contracts

All contracts entered into by the Borrower for legal, accounting, architectural, engineering, technical, professional, consulting or other services which are to be paid for, in whole or in part, from the Loan shall be arms-length transactions and shall, if required by HTFC, be entered into only after an appropriate evaluation by HTFC of the experience and qualification of the contracting firm or individual and submission of the contract to HTFC for approval.

16. Modification

This Agreement may not be amended, modified or rescinded unless such amendment, modification or rescission is in writing, and signed by HTFC.

17. No Waiver

No term, provision or condition of this Agreement shall be deemed waived by HTFC's action or inaction unless the waiver is in writing, signed by HTFC and delivered to Borrower.

18. Notice of Investigation or Default

(a) Borrower certifies to the best of its knowledge, for the period beginning ten years prior to the date of this Agreement, Borrower has not: (i) been the subject of any governmental agency's investigation or audit; (ii) defaulted under any mortgage, deed of trust, security agreement, loan agreement or credit instrument executed in connection with any governmental agency's project; (iii) breached any agreement, credit agreement, lease or other instrument executed in connection with any governmental agency's project; (iv) been suspended, debarred or otherwise restricted by any governmental agency from doing business with such agency; (v) been convicted of, or been the subject of a complaint or indictment charging a felony; or (vi) defaulted on an obligation covered by a surety or performance bond or been the subject of a claim under an employee fidelity bond.

(b) Borrower shall notify HTFC within five days after obtaining knowledge of: (i) the commencement of any investigation or audit of its activities by any governmental agency; (ii) the alleged default by Borrower under any mortgage, deed of trust, security agreement, loan agreement or credit instrument, whether executed in connection with the Project or otherwise; or (iii) any alleged breach by Borrower of any agreement, credit agreement, lease or other instrument executed in connection with the Project. Borrower shall provide that, in the event of any alleged default under any of such instruments, the mortgagee, secured party, lender or lessor, as the case may be, shall simultaneously send to HTFC a copy of any notice of such alleged default sent to Borrower, and shall give HTFC a reasonable opportunity to cure such alleged default; if such mortgagee, secured party, lender or lessor fails to send such simultaneous notice, then Borrower itself shall immediately upon receipt send such notice to HTFC. For the purposes of this paragraph, the term "Borrower" shall include all officers, board members, general partners or other principals, including any person holding a controlling interest in Borrower.

19. Default

(a) Any of the following shall constitute an Event of Default hereunder:

(i) if Borrower fails, in the opinion of HTFC, to comply with or perform any of the conditions or covenants contained in this Agreement, the Statute, the Regulations or the Policies and Procedures of HTFC;

(ii) if at any time HTFC becomes aware that a representation or warranty made by Borrower with regard to its application or the Project is or was false or materially misleading;

(iii) if Borrower shall fail to comply with any of the terms of any mortgage, deed of trust, security agreement, loan agreement, credit agreement or other instrument executed in favor of any other party;

(b) Upon the occurrence of an Event of Default, and such default shall have continued for a period of thirty (30) days (unless a shorter cure period is provided for therein), after written notice specifying such default and demanding that the same be remedied shall have been given by HTFC to Borrower (or if such default cannot with due diligence be cured within such period, Borrower shall have failed to commence to cure within such period, or having commenced, shall thereafter fail to prosecute and complete such cure with due diligence), HTFC shall have the right to pursue any remedies available at law or in equity for any breach of this Agreement, including the right to terminate this Agreement; the right to injunctive relief; the right to enforce the provisions and/or specific performance of this Agreement; the right to remove any partner, member or shareholder, as applicable, of Borrower responsible manager director, officers for the violation; and the right to recover damages suffered by HTFC as a result of any breach of this Agreement by Borrower. Further, HTFC shall have the right to extend the term of this Agreement by the period of any noncompliance upon the recording of an amendment to this Agreement executed solely by HTFC against the Property. The period of noncompliance shall be presumed to be the period running from the date of issuance of any notice of default until cure of such Event of Default to HTFC's satisfaction.

(c) HTFC or a receiver shall have the right, but not the obligation, upon the happening of any uncured Event of Default as provided in (b) above, in addition to any other rights or remedies available to it, to enter into possession of the Property, operate the Project, collect the rents, pay all necessary costs of the Project in accordance with the terms of this

Agreement and the Loan Documents and perform or cause the performance of any and all work and labor necessary or desirable to complete the Project, protect the Property and the Project or to make repairs to the Project, prohibit distributions to partners, members or shareholders as applicable of Borrower until Borrower has cured the violation(s) and given satisfactory evidence it can operate the Project in compliance with this Agreement, provided, however, that the foregoing shall not be deemed to impose on HTFC the obligation to prosecute to completion any action taken pursuant hereto and HTFC shall have no liability to Borrower arising out of the failure to complete any work commenced pursuant to this Section. All sums expended by HTFC for such purposes shall be deemed to have been paid to Borrower. For this purpose, Borrower hereby constitutes and appoints HTFC its true and lawful attorney-in-fact with full power of substitution to complete the Project or make repairs in the name of Borrower, and hereby empowers said attorney or attorneys as follows: to employ or continue to employ such general contractor, subcontractors, material suppliers, laborers, agents, architects and inspectors as shall be required or may be reasonably desirable for said purposes; to pay, settle or compromise all existing bills and claims which are or may be liens against the Property, or may be necessary or desirable for the completion of any work or the clearance of title; to procure such insurance as may in its judgment be desirable; to execute all applications and certificates in the name of Borrower which may be required by any contract or subcontract; and to do any and every act with respect to work on the Project which Borrower may do in its own behalf. It is understood and agreed that this power of attorney shall be deemed to be a power coupled with a secured interest which cannot be revoked. Said attorney-in-fact shall also have power to prosecute and defend all actions or proceedings in connection with work performed on the Project and to take such action and require such performance as is deemed necessary. Borrower hereby conditionally assigns and quitclaims to HTFC all sums disbursed or to be disbursed hereunder and all retained sums subject to the condition that said sums, if any, be used for work performed on the Project and payment of related expenses as set forth herein.

(d) For the purposes of Section 19(c) above, and in connection with (i) any and all contracts and subcontracts for the provision of labor and the furnishing of materials, fixtures and articles in connection with the rehabilitation, construction, conversion, repairs to or maintenance of the Project which are now in existence or which may exist at any time or times in the future, together with any extensions or renewals thereof (collectively "Contracts"), and (ii) all licenses,

approvals, authorizations, consents, certificates and permits in connection with the rehabilitation, construction, conversion, repairs to or maintenance of and operation of the Project which are now in existence or which may exist at any time or times in the future, together with any extensions or renewals thereof (collectively "Licenses"), Borrower hereby assigns the Contracts and Licenses to HTFC, provided, however, Borrower shall enjoy and perform all of its rights and obligations under the Contracts and Licenses until the happening of an Event of Default. In addition, Borrower shall submit to HTFC a letter signed by each subcontractor and contractor under a Contract to the effect that, upon receipt of notice from HTFC of an uncured Event of Default, such subcontractor and contractor will recognize HTFC as Borrower's duly appointed successor and assign and will perform its obligations under such contract as if HTFC were the party with which it had contracted.

20. Dissolution, Liquidation or Termination

In the event of dissolution, liquidation or termination of Borrower (whether voluntary, involuntary or by operation of law), this Agreement may be terminated. Such termination shall not relieve Borrower from liability to HTFC pursuant to this Agreement. Whether voluntary, involuntary or by operation of law, Borrower, or its directors, partners or members as the case may be, shall obtain the prior approval of HTFC of any application in whatever form for dissolution and of any proposal or plan of dissolution and distribution of assets.

21. Exhibits

The following schedule, exhibits and appendix are hereby incorporated into this Agreement and Borrower, to the extent applicable, shall adhere to the provisions contained therein.

Schedule A	Description of Property
Exhibit A	Proposal Summary
Exhibit B	Marketing Plan
Exhibit C	Affordability Plan
Exhibit D	Green Building and Energy Efficiency Standards
Exhibit E	Non-Disturbance and Attornment Agreement
Exhibit F	Tenant Approval Form
Appendix 1	Equal Opportunity Requirements

22. Miscellaneous

(a) All notices or other communications with respect to the subject matter of this Agreement shall be in writing and shall be deemed to have been given when sent by certified mail, return receipt requested, to Borrower and to HTFC at the addresses first set out herein. A party may change the address by giving notice as provided herein, which will be effective upon receipt.

(b) This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

(c) This Agreement may be executed in any number of counterparts or duplicates, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

23. SIDA Provisions

(a) SIDA will assume the obligations of the Borrower under this Agreement if and only if SIDA takes ownership or control of the Property.

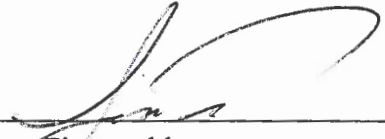
(b) The Borrower directs SIDA to execute and deliver this Regulatory Agreement to HTFC, and further agrees to indemnify SIDA (and its members, officers, directors, agents, servants and employees) for all fees and costs incurred in connection with the execution, delivery, recording, performing and enforcing of this Regulatory Agreement, including but not limited to reasonable attorney's fees.

(c) The Borrower acknowledges that the terms of the Agency Leases, by and among SIDA and the Borrower, dated as of December 1, 2017, as amended and restated from time to time, are in full force and effect, including but not limited to the "Hold Harmless Provisions" contained in Section 8.2 thereof and incorporates same in this instrument and makes same applicable hereto as if fully set forth herein.

(See Next Page)

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

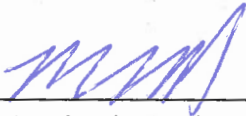
HOUSING TRUST FUND CORPORATION

By:   
Name: Sean Fitzgerald  
Title: Vice President


BUTTERNUT CROSSING COMMERCIAL  
ENTERPRISES, LLC

By: HV CONSULTANTS HOLDING CO., LLC  
Its Manager

By: HOUSING VISIONS CONSULTANTS, INC.  
Its Sole Member and Manager

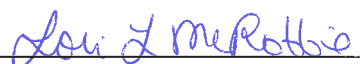
By:   
Name: Benjamin Lockwood  
Title: Vice President

CITY OF SYRACUSE  
INDUSTRIAL DEVELOPMENT ~~AUTHORITY~~ AGENCY

By:   
Name: William M. Ryan  
Title: Chairman

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

On December 20<sup>th</sup>, 2017, before me, the undersigned, personally appeared William M. Ryan, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


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

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



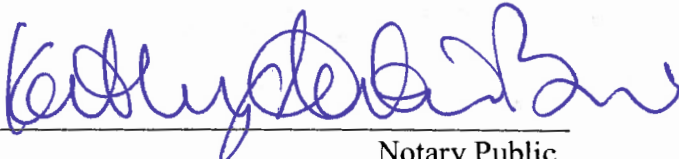
STATE OF NEW YORK)  
  ) ss.:  
COUNTY OF ALBANY)

On December 20, 2017, before me, the undersigned, personally appeared Sean Fitzgerald, 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.

  
Sean P. Shea, Notary Public, State of New York  
Qualified in Rensselaer County  
No. 02SH5035018  
My Commission expires 10/24/18

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

On December 21, 2017, before me, the undersigned, personally appeared Benjamin Lockwood, 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  
KATHRYN ANTONACCI BROWN  
Notary Public, State of New York  
No. 01BR5021078  
Qualified in Onondaga County  
Commission Expires Dec. 6, 2021

**618-620 North Townsend Street: Tax Parcel Number 017.-08-22.1 (UNIT 1)**

The Unit designated as **Unit No. 1** in the Declaration comprising **BUTTERNUT CROSSING CONDOMINIUM** located in the City of Syracuse, County of Onondaga, New York, (hereinafter called the "**Property**"), made by Housing Visions Consultants, Inc. under the Condominium Act of the State of New York, as amended (Article 9-B of the Real Property Law of the State of New York), dated December 21st, 2017 and recorded in the office of the County Clerk of Onondaga County on the 22<sup>nd</sup> day of December, 2017 as Instrument Number **2017-00041870** (hereinafter called the "**Declaration**,"), which Unit is also designated as Unit 1, on page A1.1 of the Construction Drawings for **Butternut Crossing 618-620 N. Townsend Street, Syracuse** as certified and prepared by Holmes King Kallquist & Associates, Architects, and filed simultaneously with said Declaration in the Office of the County Clerk of Onondaga County (hereinafter called the "**Unit**"), together with others with the use of the Common Elements, as defined in said Declaration. The appurtenant interests of Unit 1 in the Common Elements is 29.5%. The land area of the Property is described as follows:

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Syracuse, County of Onondaga, State of New York being Lot 12 & part of Lot 11 of City Block 275D and being more particularly bounded and described as follows: Beginning at a point in the easterly line of North Townsend Street at the intersection of the southerly line of East Laurel Street thence North 59 deg. 25 min. 40 sec. East along the said southerly line of East Laurel Street, a distance of 79.50 feet to a point; thence South 30 deg. 32 min. 30 sec. East a distance of 50.00 feet to a point; thence North 59 deg. 25 min. 40 sec. East a distance of 36.00 feet to a point thence South 30 deg. 32 min. 30 sec. East a distance of 50.00 feet to a point; thence South 59 deg. 25 min. 40 sec. West a distance of 115.50 feet to a point in the said easterly line of North Townsend Street thence North 30 deg. 32 min. 30 sec. West along said easterly line of North Townsend Street, a distance of 100.00 feet to the point of beginning.

**Proposal Summary**

Butternut Crossing  
 Onondaga County  
 Butternut and North Townsend Streets  
 Syracuse, NY 13208 and 13203



**HOUSINGVISIONS**  
Creating Affordable Housing for All

**Project Information**

Housing Visions' proposed Butternut Crossing project is a mixed-use, middle income housing development that will strengthen neighborhood revitalization efforts along Butternut and North Townsend Streets, two neighborhood main streets in Syracuse's Northside neighborhood. By rehabilitating and rebuilding scattered sites in this area, Butternut Crossing will address unmet residential and commercial demand, tackle blighted and vacant properties, and improve the quality of life for residents and neighbors. The mixed-use development reinforces the previous efforts by Housing Visions' Prospect Hill and Salina Crossing developments. The \$16mm development strengthens previous local investments by St. Joseph's hospital on the Northside, where the hospital has invested more than \$250 million in its campus and the immediate neighborhood. The affected neighborhoods are in Qualified Census Tracts (QCTs) 8,15,23 and have been prioritized by the City of Syracuse for redevelopment.

Butternut Crossing adds 47 housing units affordable to individuals and families earning between 30% and 60% of the Area Median Income; 13 units have Project Based Rental Assistance, 5 units designated for 40% AMI, 15 units designated for 50% AMI, 14 units designated for 60% AMI, and 6 middle income units designated for 90% AMI. The special population served by this project will be persons with physical disability/Traumatic Brain Injury (TBI). The mixed-use properties are located in traditional mixed-use areas where residents have easy, walkable access to commercial corridors.

The commercial space at 618-620 N. Townsend Street which is part of Condominium Unit One is proposed to cater to local professionals and residents, as well as hospital patrons with small scale local coffee shop/café type of use.

Project amenities include Energy Star appliances, cable hook-up, central air, private bulk storage, off-street reserved parking, and access to laundry, and community room facilities. All buildings are located in Onondaga County. Specific building details are as follows:

Site	Existing Addresses Syracuse, NY	Proposed Addresses Syracuse, NY	Type of Construction	# Floor s	# Units	Unit Type	# Visitable Units	ADA/ HV	Residential SF
1	808 Butternut Street 810 Butternut Street	808-810 Butternut Street	Demo/New	2	4	Family	2	-	4,964
2	1116 Butternut Street 1118 Butternut Street 1120 Butternut Street	1116 - 1120 Butternut Street	Demo/New	2	4	Family	2	0/1	4,964
3	1117 Butternut Street 1119 Butternut Street 1121 Butternut Street 1123 Butternut Street	1117-1123 Butternut Street	Demo/New	2	24	Family	24	4/2	24,360
4	1227 Butternut Street 1229 Butternut Street	1227-1229 Butternut Street	Rehab	2	3	Family	0	-	3,013
5	1230 Butternut Street 1232-4 Butternut Street	1230-1232 Butternut Street	Demo/New	2	4	Family	2	1/0	4,964
6	1232-4 Butternut Street 1236 Butternut Street	1234-1236 Butternut Street	Demo/New	2	4	Family	2	-	4,964
7	618-620 North Townsend 700 North Townsend	618-620 North Townsend Street	Demo/New	3	10	Family	10	1/0	10,589
Totals:					53		42	6/3	57,818

Butternut Crossing will stimulate the local economy. The General Contractor – Spoleta Construction – will encourage bids from local subcontractors, and will hire local laborers and vendors. Housing Visions' revitalization efforts also serve as catalysts that encourage area businesses and residents to invest more of their own resources in the neighborhood.

## Development Team/Ownership Information

The applicant, developer, and managing agent, Housing Visions Consultants, Inc. (HVC), a 501(c)(3) not-for-profit organization, is a subsidiary of and uses the employees of Housing Visions Unlimited, Inc. (HVU), a CHDO, Neighborhood Preservation Company, and a 501(c)(3) not-for-profit organization with extensive affordable housing experience. HVC has applied to HCR for CHDO status in the project neighborhood and has received approval. HVC will be directly responsible for all aspects of the development and property management, including acquisition, construction supervision, marketing, rent-up, and management. The law firm Bousquet Holstein PLLC will be used for the loan closings and organizational filings. The General Contractor, Spoleta Construction has been in the construction industry for over 50 years and has extensive experience in multifamily housing construction. The architect, Holmes King Kallquist & Associates, Architects, is experienced in meeting the design requirements established by NYS HCR and in designing energy efficient buildings. This development team has worked together successfully on numerous completed LIHTC projects in New York State.

The beneficial owner of the project will be Butternut Crossing LLC, a limited liability company, in which Enterprise Community Investment, Inc. is the Investing Member with a 99.99% share and HV Consultants Holding Co., LLC is the Managing Member with .01% share. HVC, as the Sole Member of HV Consultants Holding Co., LLC, will have effective project control. Butternut Crossing Housing Development Fund Corporation was created as title owner and nominee for the beneficial owner, providing construction sales tax and mortgage tax exemptions, and a Tax Agreement for the residential portion of the project. Additionally, HV Consultants Holding Co., LLC is the sole member of Butternut Crossing Commercial Enterprises, LLC a commercial holding limited liability company for the commercial aspect of the project. The commercial component of the project is budgeted separately in the development and operating budget.

Butternut Crossing will remain affordable for 50 years. HVC will purchase the buildings at the end of the initial 15-year LIHC compliance period through the Right of First Refusal.

## Project Design and Use Information

Housing Visions will substantially rehabilitate 1 existing buildings and construct 6 new buildings which will be constructed on sites where structurally unsound and substantially deteriorated buildings are slated for demolition. Housing Visions' designs for 6 new buildings are architecturally compatible with adjacent structures, using similar configurations (two-family or multi-family), uses (residential or mixed-use), and materials (wood frame, with porches and traditional siding colors and trim). The residential square footage of the project's units is within HCR's guideline when taking into account stairs, in-unit bulk storage and visitability requirements.

The 1 substantial rehab will help to preserve the existing streetscape by maintaining the buildings' original scale and facade. By virtue of the size of the buildings footprint, internal structural composition and existing floorplan, the redesign has exceeded the HCR maximum square footage for residential common space, for which a waiver has been requested and granted by HCR.

A NYSERDA Energy Performance Partner and Certified Home Energy Rater has been contracted to follow the Energy Star Version 3.0 requirements in order to meet HCR's Energy Efficiency requirement by participating in the NYSERDA Energy Star Labeled Homes Program. The project architect is a LEED AP accredited architect and will ensure the requirements of the Enterprise Green Communities program and the Design Guidelines are met. In addition, a HERS Provider has been contracted to oversee the design and construction of the project for final certification.

Butternut Crossing will provide six units that are accessible & move-in ready for person(s) with mobility impairments, and three units accessible and fully adapted for person(s) with hearing and/or vision impairments. An executed Housing Services Agreement is in place with ARISE to provide supportive services for the special needs population. The project will feature quality construction with a strong emphasis on long-lasting durable materials. All new and rehab residential-only construction will be wood framed. High-quality insulated hardie board will be used on all of the buildings, and masonry materials will be used at 618-620 North Townsend and 1117 Butternut. The two new construction buildings at 1117-1123 Butternut and 618-620 North Townsend will include an elevator and LED site lighting. All buildings will have a sprinkler system. Rigid Foam in the basement, closed cell spray foam and blown-in cellulose on interior

wall cavities, and attics with insulation value of R-49 along with proper air sealing, will minimize air leakage and create a comfortable living environment. Heating and central air conditioning equipment, as well as all appliances, bathroom fans, windows, and light fixtures, will be Energy Star labeled and installed in all units. Resilient flooring will be installed in living/dining areas, and hallways, and carpet will be provided in all bedrooms. Ceramic/Porcelain tile will be installed in all "wet areas," such as kitchen, bathrooms and entryways. Native tree/shrubs will be planted around each building.

In addition to featuring porches on several buildings to provide residents with private outdoor space, the project sites are all located within 2000 feet of a city park – Schiller Park to the North, and Highland Park to the South. Several of the four-family units feature back or side yards for additional open play space.

### **Land Information**

Butternut Crossing will transform 16 vacant properties into 7 completed buildings. Housing Visions has effective site control of 16 of the 16 parcels that comprise Butternut Crossing, through signed purchase contracts with the current owners. Housing Visions is working with the Syracuse Land Bank to acquire 14 blighted properties that are currently "zombie" properties, and has a long-term ground lease (50 + years) with St. Joseph's Hospital for the mixed/use building at 618-620 North Townsend Street.

A Phase 1 ESA was completed by an independent environmental engineering firm for all sites, and concluded that there are no environmental conditions that would impair the intended residential purposes of this project. All zoning and public approvals required by the City of Syracuse are in place.

### **Project Location and Market Information**

The Butternut Crossing neighborhoods are in a distressed urban market area. The entire development lies within Qualified Census Tracts 8, 15, and 23. The Syracuse Housing Authority has an extensive wait list for low- and moderate- income families needing affordable housing, and a Linkage Agreement has been established for referrals from those waiting lists. The housing in Butternut Crossing serves a critical need in the community, especially for persons who are physically disabled. Housing Visions has signed a Housing Services Agreement with local provider ARISE for serving persons with physical disabilities/Traumatic Brain Injury (TBI), and supplemental referral agreements from Catholic Charities of Syracuse, Self-Direct, and Liberty Resources. These providers have established that there is sufficient demand for the accessible and adapted units.

The Market Study reported a weighted average capture rate of 3.76% for the LIHTC Units and capture rates of 0.71% and 1.19% for the one and two-bedroom MIHP respectively. Housing Visions has maintained an approximate 95% occupancy in its managed portfolio over the previous 24 months. The sites are well-situated, within walking distance to bus service, recreation areas, health care, employment centers, libraries, schools, post offices, and grocery and other retail establishments.

Housing Visions will be developing 3,870 square feet of commercial space at 618-620 North Townsend Street Condominium Unit One. This space is crucial in helping create the mixed residential/commercial usage surrounding one of the City's anchor institutions in St. Joseph's Hospital. This will help to restore the vitality and complete the revitalization on this section of North Townsend Street and the efforts of St. Joseph's Hospital, Home Headquarters, Housing Visions, and other private parties.

### **Project Financing Information**

The City of Syracuse is demonstrating its support for Butternut Crossing with a commitment of \$558,975 in HOME funding, which will assist with the cost of residential development. The Syracuse Industrial Development Agency provided a 10-year PILOT agreement for the commercial portion of the project, and the City entered into a 15-year residential shelter rent tax agreement whereby Butternut Crossing will pay the greater of 8% of gross rents or \$26,500 annually. Enterprise Community Investment, Inc. has provided a Letter of Intent to provide competitive equity pricing for LIHTC at \$0.935 for federal tax credits.

Butternut Crossing has been awarded 13 Project Based Vouchers (PBV) by the Syracuse Housing Authority to help strengthen the operating side of the project.

Housing Visions has been awarded Community Investment Fund (CIF) to assist in financing the development of the commercial space in the mixed-use buildings. Developing commercial space in a weaker urban market carries a significantly higher risk in achieving success; the utilization of the CIF will help to mitigate some of this risk. Each of the specific commercial spaces has sufficient lease income projected to support the real-estate operating costs.

To round out the commercial financing, NBT Bank has committed to provide a \$320,000 construction loan to develop the commercial space in tandem with the overall project. Housing Visions Consultants, Inc. is deferring a portion of its developer fee during construction.

#### Residential Permanent Sources

Source Name	Amount of Funds	Assist Type	Financing Term (months)	Interest Rate %	Lien Position	Regulatory Term (years)
Leviticus Fund	400,000	Loan	50 Years	5.400%	1st	30
NYS HOME Program	2,200,000	Loan	50 Years	1.000%	Co-2nd	50
Middle Income Housing Program	1,614,517	Loan	50 Years	1.000%	Co-2nd	50
City of Syracuse – HOME Funds	558,975	Loan	50 Years	1.000%	3rd	50
Managing Member Equity (NYSERDA)	31,800	Equity	N/A	N/A	N/A	N/A
LIHC Equity – HCR LIHC Tax Credit	9,547,685	Equity	N/A	N/A	N/A	50
Developer Loan	800,000	Loan	50 Years	4.000%	4th	50
Deferred Developer's Fee	145,096	Other	N/A	N/A	N/A	N/A
<b>TOTAL</b>	<b>\$15,298,073</b>					

#### Commercial Permanent Sources

Source Name	Amount of Funds	Assist Type	Financing Term (months)	Interest Rate %	Lien Position	Regulatory Term (years)
Community Investment Fund	580,514	Loan	50 Years	1.000%	1st	50
Developer Equity	320,000	Equity	N/A	N/A	N/A	N/A
<b>TOTAL</b>	<b>\$900,514</b>					

Development cost risk is minimal. Housing Visions has successful experience on 40 tax credit projects, leveraging over \$300 million in funding with a total of 1300 units developed. The development team compiled a detailed construction cost analysis of previous projects and based the Butternut Crossing budget on this informed experience. The architecture, engineering, legal, and accounting professionals retained for the project have successfully worked on similar projects. The project capitalizes \$150,417 in Operating Reserves and \$53,000 in Replacement Reserves.

Construction costs are higher than average due to the project's scattered-site neighborhood revitalization approach. The large number of demolitions of existing buildings as well as the dramatic topographic relief of the sites increase the site work costs due to the retaining walls required and other onsite stormwater design features. Additional costs stem from the high quality and durability of the materials, and the additional parameters needed to achieve Energy Star Version 3.0 requirements; however, these upfront development costs will ensure low operational and maintenance costs in the future, as well as lower monthly utility costs for our residents. Housing Visions has been diligent in reviewing cost estimates to reduce cost without sacrificing quality and energy efficiency.

## **Summary**

Housing Visions will bring to the neighborhood quality, affordable rental housing through the demolition of existing vacant abandoned properties and replacing them new housing units. The resulting Butternut Crossing project will provide 53 housing units, as well as 3,870 square feet of leasable commercial space in two mixed-use buildings along a traditional commercial corridor. The new and rehabbed buildings will be seamlessly integrated into the existing fabric of the neighborhood. This comprehensive project will provide critical mass to achieve wholesale change and sustainable neighborhood revitalization.

Rev. 12/20/2017

EXHIBIT B

N/A



EXHIBIT C

**Exhibit 5 - Project Income and Operating Budget**

Project Name **Butternut Crossing**

Date: **11/22/17**

SHARS # (if assigned) **20156054**

<b>Table 1 - Total Effective Income</b>		
<b>Section A. Effective Residential Income</b>		
		\$ Amount
Income/Vacancy & Arrears		
1. Total Residential Monthly Income/Maintenance Fees:		\$35,087
2. Annual Gross Residential Income (Line 1 x 12):		421,044
3. Residential Vacancy & Arrears (Line 2) x %	5.00%	21,052
4. Net Residential Income (Line 2 minus Line 3):		399,992
5. Ancillary Residential Income:		
a. Laundry:		2,690
b. Parking:		0
c. Other (specify):		0
6. Total Ancillary Residential Income (Sum of Lines 5a through 5c):		2,690
7. Effective Residential Rental Income (Sum of Lines 4 and 6):		\$402,682
8. Residential Debt Service Subsidy (specify):		
<b>9. Total Residential Operating Income:</b>		<b>\$402,682</b>
<b>Section B. Effective Non-Residential Income</b>		
		\$ Amount
Income/Vacancy & Arrears		
10. Gross Annual Commercial/Civic/CSF Income:		\$38,700
11. Estimated % of Commercial/Civic/CSF Vacancy and Arrears		10.00%
12. Total Commercial/Civic/CSF Vacancy and Arrears		3,870
13. Net Non-Residential Income		34,830
13a. Will the income for this portion of the project be guaranteed through a master lease and/or developer guarantee?		
<b>14. Total Effective Income – Residential &amp; Non-Residential (Add Lines 9 + 13):</b>		<b>\$437,512</b>

### Exhibit 5 Project Income and Operating Budget

Project Name: **Butternut Crossing**  
 SHARS # (if assigned) **20156054**

Non-Residential Base  
 Date: **11/22/17**

**Table 2 - Base for Operating Budget Projections for Years 1 - 15**

A. Expense	B. Year 1 Cost	C. Type % Increase		D. Rationale for Estimate and Source	
				default expense Type	Variable
				default expense % change	3.00%
1. Total Effective Income	\$34,830	Other	2.00%		
2. Manager	0	Variable	3.00%		
3. Management Fee (enter %) <span style="float: right;">3.00%</span>	1,161	Other		3% of Gross Rent	
4. Accounting & Audit	0	Variable	3.00%		
5. Legal	0	Variable	3.00%		
6. Advertising	0	Variable	3.00%		
7. Office Supplies & Equipment	0	Variable	3.00%		
8. LIHC Monitoring Fee	0	Variable	2.00%		
9. Other Admin. (specify in column D)	500	Variable	3.00%	Miscellaneous Expense	
11. Janitor and Cleaning Payroll	0	Variable	3.00%		
12. Janitor and Cleaning Supplies	0	Variable	3.00%		
13. Exterminating	0	Variable	3.00%		
14. Garbage and Trash Removal	0	Variable	3.00%		
15. Security	0	Variable	3.00%		
16. Ground Expense	0	Variable	3.00%		
17. Maintenance and Repair Payroll	0	Variable	3.00%		
18. Maintenance and Repair Materials	0	Variable	3.00%		
19. Maintenance and Repair Contracts	0	Variable	3.00%		
20. Elevator	0	Variable	3.00%		
21. Snow Removal	0	Variable	3.00%		
22. Painting and Decorating	0	Variable	3.00%		
23. Other M & O (specify in column D)	4,257	Variable	3.00%	Maintenance/Upkeep	
25. Fuel Oil	0	Variable	3.00%		
26. Lighting/Electricity	540	Variable	3.00%	Based on estimate	
27. Water and Sewer	0	Variable	3.00%		
28. Gas	540	Variable	3.00%	Based on estimate	
29. Other Utilities (specify in column D)	830	Variable	2.00%	County Water Sewer Charge	
31. Real Estate Taxes	0	Variable	3.00%		
32. Payroll Taxes	0	Variable	3.00%		
33. Other Taxes (specify)	3,387	Other		Tax Agreement with SIDA	
34. Property and Liability Insurance	2,903	Variable	3.00%	Quote from Haylor, Freer & Coon Insurance	
35. Fidelity Bond Insurance	0	Variable	3.00%		
36. Other Insurance (specify in column D)	0	Variable	3.00%		
38. Operating Reserve	697	Other	3.00%		
39. Replacement Reserve	968	Variable	3.00%		
<b>40. Total Expenses</b>	<b>\$15,783</b>				
<b>41. Net Operating Income</b>	<b>\$19,047</b>				
<b>42. Debt Service (sources from Tab 2A)</b>	<b>Year 1 Cost</b>	<b>Type</b>	<b>% Increase</b>	<b>D. Source Name</b>	
4000	0	Fixed		Leviticus Fund	
HOME	0	Fixed		NYS HOME Program	
MIHP	0	Fixed		Middle Income Housing Program	
3000	0	Fixed		City of Syracuse - HOME	
CIF	580,514	1.000%		Community Investment Fund	
4000	0	Fixed		Developer Loan - Payment is contingent on sufficient cash	
	0	Fixed			
	0	Fixed			
	0	Fixed			
	0	Fixed			
<b>43. Total Debt Service</b>	<b>\$5,805</b>				
<b>44. Cash Flow</b>	<b>\$13,242</b>				
45. Repayment of Deferred Dev's. Fee	\$0	Fixed			

**Exhibit D**  
**Supplemental Design Requirements**

1. The Project will maintain the following standard:
  - a. The energy efficiency standards of the U.S. EPA ENERGY STAR Certified Homes Version 3.0.
2. The Project will provide, maintain, and utilize the following energy efficiency and green building measures:
  - a. For properties built prior to 1978, lead-safe work practices during renovation, remodeling, painting, demolition, and maintenance of any remaining lead. Such work shall comply with the latest editions of the HUD Guidelines for the Evaluation and Control of Lead-Based Paint in Housing, and EPA Renovation Repair and Painting Rule. Lead containing materials shall be safely maintained in adherence to applicable regulations and lead-safe practices.
  - b. The passive radon-reduction system, which will be activated should tests confirm the presence of radon gas in the building at or above the EPA Action Level.
  - c. ENERGY STAR labeled refrigerators and clothes washing machines, including appliances supplied by vendors.
  - d. ENERGY STAR labeled heating and air conditioning, if provided, or the equivalent, which will produce the same or comparable energy efficiency or savings.
  - e. ENERGY STAR rated fixtures or high efficacy lamps for all interior and exterior building lighting.
  - f. High efficiency lighting for all exterior site lighting.
  - g. Daylight sensors, or timers, to minimize electrical usage at all exterior building and site lighting.
  - h. Applied finishes, adhesive and sealants that meet Green Seal, or an equivalent, low-VOC standards.
  - i. Integrated pest management that includes environmental friendly pest management strategies and extermination practices that are safe for the health of the residents and the environment.

## Appendix 1

### **EQUAL OPPORTUNITY REQUIREMENTS**

In connection with this Agreement, Borrower agrees to abide by the provisions of Article 15-A of the Executive Law as may be amended from time to time ("Statute") and the regulations promulgated thereunder by the Division of Minority and Women's Business Development of the New York State Department of Economic Development as may be amended from time to time ("Regulations"). Borrower also agrees to include the provisions of this exhibit in every contract and subcontract in such a manner that the requirements of the provisions will be binding upon each contractor and subcontractor as to work performed in connection with this Agreement. Borrower agrees that the Housing Trust Fund Corporation ("HTFC") shall be deemed a third-party beneficiary of the provisions of this exhibit with respect to any contracts and subcontracts thereunder and shall have the full right of enforcement thereof.

#### 1. Cooperation with HTFC

Borrower shall at all reasonable times make available and provide to HTFC's Office of Fair Housing and Equal Opportunity (AOFHEO), HTFC or its agents all material and documents relating to this Agreement and shall allow the representatives of HTFC access to the location of the work and the individuals employed thereon to verify compliance with this agreement.

#### 2. Reports

After the award of this agreement, Borrower shall submit to OFHEO such reports, in form and manner and at such times as is required by HTFC.

#### 3. MINORITY AND WOMEN-OWNED BUSINESS Participation Goals.

(a) Participation goals have been adopted to ensure the opportunity for meaningful participation of minority and women-owned business enterprises in the work to be undertaken by Borrower and financed with funds provided by HTFC. These goals are expressed as a percentage of the total value of all work to be performed under the Agreement. These percentages are 20% for minority-owned business enterprises ("MBEs") and 10% for women-owned business enterprises ("WBEs"). Borrower agrees to make good faith efforts to achieve these participation goals.

(b) The Directory of Certified Minority and Women-owned Businesses published by the Division of Minority and Women's Business Development of the New York State Department of Economic Development lists the only enterprises which are recognized as minority or women-owned business enterprises for the purpose of meeting the participation goals.

4. Contract Attachment Requirements

Each contract or subcontract entered into by Borrower for the work to be performed shall include the following contract clauses:

a. Equal Employment Opportunity Pledge. The contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. For these purposes, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

b. Policy Statement. As a precondition to entering into this Agreement, the contractor shall submit an Equal Employment Opportunity Policy Statement to HTFC. The Policy Statement shall contain and the contractor shall, during the performance of this Agreement, agree to the following:

(i) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination.

(ii) The contractor shall state in all solicitations or advertisements for employees that, in the performance of state funded contracts, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

(iii) At the request of HTFC, the contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such employment agency, union or representative will affirmatively cooperate in the implementation of the contractor's obligations.

c. Minority-owned Business Enterprises/Women-owned Business Enterprises

(i) Good Faith Efforts to Achieve Participation Goals. The contractor will, and will cause its contractors and subcontractors to take the following good faith actions to achieve the participation goals:

(A) Actively and affirmatively solicit bids for contracts and subcontracts from qualified MBEs or WBEs, including circulation of solicitations to minority and women contractor associations.

(B) Obtain a copy of the Directory of Certified Minority and Women-owned Businesses and solicit bids from MBEs and WBEs in the Directory.

(ii) The contractor and its subcontractors shall at all reasonable times make available to HTFC or its agents all materials and documents relating to this Agreement and shall allow the representatives of HTFC access to the location of the work and the individuals employed thereon to verify compliance with this Agreement.

(iii) The parties agree as a condition of entering into such contract or subcontract to be bound by the provisions of Section 316 of the Executive Law.

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**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**  
**BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC PROJECT**

**DOCUMENTS RECORDED WITH THE ONONDAGA COUNTY CLERK**  
**ON DECEMBER 22, 2107**

NBT Commercial Mortgage: Instrument No. 2017-00047886

NBT Assignment of Leases and Rents: Instrument No. 2017-00047887

HTFC Mortgage: Instrument No. 2017-00047902

 UCC-1 Financing Statement from Butternut Crossing Commercial Enterprises, LLC and SIDA to NBT: Instrument No. 2017-00001033

Subordination and First Mortgagee Waiver Agreement Regulatory Agreement: Instrument No. 2017-00047904



# UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]
B. SEND ACKNOWLEDGMENT TO: (Name and Address)
<div style="border: 1px solid black; padding: 10px; margin: 10px auto; width: 80%;"> <p><b>Mazzotta, Sherwood &amp; Vagianelis, P.C.</b>  <b>9 Washington Square</b>  <b>Albany, New York 12205</b>  <b>Attention: John N. Vagianelis, Esq.</b></p> </div>

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

**1. DEBTOR'S EXACT FULL LEGAL NAME** - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME						
<b>BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC</b>						
OR	1b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
1c. MAILING ADDRESS			CITY	STATE	POSTAL CODE	COUNTRY
<b>1201 East Fayette Street</b>			<b>Syracuse</b>	<b>NY</b>	<b>13210</b>	<b>USA</b>
1d. <u>SEE INSTRUCTIONS</u>	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION	1f. JURISDICTION OF ORGANIZATION	1g. ORGANIZATIONAL ID #, if any		
Not Applicable		<b>Limited Liability Co.</b>	<b>New York</b>	<input checked="" type="checkbox"/> NONE		

**2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME** - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME						
<b>CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY</b>						
OR	2b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
2c. MAILING ADDRESS			CITY	STATE	POSTAL CODE	COUNTRY
<b>201 East Washington Street, 7th Floor</b>			<b>Syracuse</b>	<b>NY</b>	<b>13202</b>	<b>USA</b>
2d. <u>SEE INSTRUCTIONS</u>	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID #, if any		
Not Applicable		<b>Public Benefit Corp.</b>	<b>New York</b>	<input checked="" type="checkbox"/> NONE		

**3. SECURED PARTY'S NAME** (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME						
<b>NBT BANK, NATIONAL ASSOCIATION</b>						
OR	3b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
3c. MAILING ADDRESS			CITY	STATE	POSTAL CODE	COUNTRY
<b>52 S. BROAD STREET</b>			<b>NORWICH</b>	<b>NY</b>	<b>13815</b>	<b>USA</b>

4. This FINANCING STATEMENT covers the following collateral:

**All of the following, whether now owned or hereafter acquired, now existing or hereafter arising, and which is now or hereafter becomes attached to, affixed to, located at and used in the operation of, or is otherwise with respect to, the Real Estate located at Condominium Unit #1 at 618-620 N. Townsend Street, City of Syracuse, County of Onondaga, State of New York, and more particularly described by metes and bounds in the attached Schedule A, and currently identified as all or a part of tax parcel 17-08-22.1, and/or the Project (as defined in the attached collateral description): all Fixtures, Equipment, Leases and Rents and other Accounts and General Intangibles, Documents, Instruments, Deposit Accounts, Project Documents, Oil and Gas Substances, all as more particularly described in the attached collateral description.**

5. ALTERNATIVE DESIGNATION [if applicable]:	<input type="checkbox"/> LESSEE/LESSOR	<input type="checkbox"/> CONSIGNEE/CONSIGNOR	<input type="checkbox"/> BAILEE/BAILOR	<input type="checkbox"/> SELLER/BUYER	<input type="checkbox"/> AG. LIEN	<input type="checkbox"/> NON-UCC FILING
6. <input checked="" type="checkbox"/> This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Attach Addendum [if applicable]	7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) [OPTIONAL FEE]		<input type="checkbox"/> All Debtors	<input type="checkbox"/> Debtor 1	<input type="checkbox"/> Debtor 2	
8. OPTIONAL FILER REFERENCE DATA						

# 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>BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, 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. <u>SEE INSTRUCTIONS</u> Not Applicable	ADD'L INFO RE ORGANIZATION DEBTOR	11e. TYPE OF ORGANIZATION	11f. JURISDICTION OF ORGANIZATION	11g. ORGANIZATIONAL ID #, if any		
					<input type="checkbox"/> 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:

**Condominium Unit #1 at 618-620 N. Townsend Street, City of Syracuse, County of Onondaga, State of New York, and more particularly described by metes and bounds in the attached Schedule A, and currently identified as all or a part of tax parcel 17-08-22.1**

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:

**SEE ATTACHED DESCRIPTION OF THE COLLATERAL**

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

## ADDENDUM TO FINANCING STATEMENT

UCC DEBTORS: Butternut Crossing Commercial Enterprises, LLC and City of Syracuse  
Industrial Development Agency  
1201 East Fayette Street  
Syracuse, New York 13210

Collectively, "Debtors"

SECURED PARTY: NBT Bank, National Association  
52 S. Broad Street  
Norwich NY 13815

Any capitalized term not defined herein has the meaning given to it in the Uniform Commercial Code in effect in the State of New York, as may be amended ("UCC")

**The property in which the Security Interest is granted consists of the following; whether such property is now owned or hereafter acquired, is now existing or hereafter arises, and which is, or which hereafter becomes, attached to, affixed to, installed at, and/or located at and/or used in the operation and/or maintenance of, or otherwise affects or arises out of the Real Estate and/or Improvements, and/or which is part of, becomes part of, is incorporated into, is acquired with respect to, is used in the course of or in connection with, or otherwise affects or arises out of, the Project:**

- (A) Leases and Rents, the Project Documents, and all other Accounts and General Intangibles
- (B) Documents
- (C) Instruments
- (D) Equipment, Fixtures, and all other Personal Property
- (E) All Oil and Gas Substances and all other minerals and mined substances produced and saved from or attributable to the Real Estate at any time, together with all Equipment, Inventory, Fixtures, and any and all other personal property owned by Debtors, or either of them, and related to the exploration, extraction, transportation, or storage of any of the foregoing, and all Accounts, contract rights, and General Intangibles related to or arising out of such property
- (F) Any and all Deposit Account(s) of Debtors or either of them maintained with any bank or financial institution and the cash, monies and proceeds thereof, including, but not limited to, the Advance Account
- (G) to the extent not otherwise included, all claims, commercial tort claims, payment rights, judgments, and all other personal property now or hereinafter defined in Article 9 of the UCC, including any revisions thereof arising out of the Real Estate, Project, and Improvements

In addition, the word "Collateral" includes all the following, whether now owned or hereafter acquired, whether now existing or hereafter arising, and wherever located:

- (a) All attachments, accessions, accessories, tools, parts, supplies, increases, and additions to and all replacements of and substitutions for any Collateral.

(b) All products and produce of any of the Collateral.

(c) All Accounts, General Intangibles, Instruments, Rents, monies, payments, and all other rights, arising out of, accruing from, generated from, and/or deriving from the sale, lease, or other disposition of any of the Collateral; or which at any time constitute any of the Collateral.

(d) All Proceeds (including insurance Proceeds) from the sale, destruction, loss, or other disposition of any of the Collateral, and/or which may otherwise arise out of, accrue, generate from, derive from, and/or which are inherent in, any of the Collateral.

(e) All books, records, ledger cards, files, correspondence and data relating to any of the Collateral, whether in the form of a writing, photograph, microfilm, microfiche, or electronic media, together with all of Debtors' respective right, title, and interest in and to all computer software required to utilize, create, maintain, and process any such records or data on electronic media.

(f) All supporting obligations.

Definitions:

**Architect.** Holmes, King, Kallquist & Associates, Architects, LLP, the primary designer of the Project Improvements.

**Architect Contract.** An architect contract dated November 10, 2015, entered into between Architect and Borrower for the design of the Project; together with all exhibits and schedules attached thereto and all schedules and exhibits attached thereto and all amendments or modifications thereto and amendments thereto.

**Contracts.** Collectively, the Architect Contract and the General Construction Contract, and all other contracts and/or agreements now existing or hereafter entered into for the performance of work, services, or labor and/or provision of materials, supplies, Equipment, or other improvement to or on behalf of the Real Estate and Project; and any and all addenda, modifications, amendments, change orders, restatements, attachments, and schedules to any and all of the foregoing

**Equipment.** All "equipment" (as defined in the UCC) now owned or hereafter acquired, which is now or hereafter attached to, affixed to, installed at or under, and/or located at and used in connection with the operation and/or maintenance of, the Real Estate, Improvements, and/or Fixtures; including, without limitation, all machinery, all equipment, furniture, furnishings, floor coverings, decorations, supplies, utensils, appliances, vehicles, canopies, signage, and all other tangible personal property (other than Fixtures, Inventory, Consumer Goods and Farm Products); together with all tools, parts, accessories and supplies thereof, and all additions, accessions, increases, renewals, and replacements thereof and all articles given in substitution therefor, without limitation.

**Fixtures.** All "fixtures" (as defined in the UCC), including, without limitation, all plant

fixtures, trade fixtures, business fixtures, building fixtures and fittings, machinery, equipment and all other articles of personal property of any nature whatsoever which are now or at any time hereafter becomes permanently attached or affixed to, installed at, or incorporated into the Real Estate and/or Improvements as a permanent component thereof, and whether such property is now owned or hereafter acquired; including, but not limited to: (A) all lighting, heating, freezing, ventilation, security, air conditioning, communication and media, sprinkling, fire prevention, plumbing, pumping, irrigation, incineration, water, electric, gas and power equipment systems, engines and machinery; (B) all boilers, gas and electric fixtures, radiators, heaters, ranges, furnaces, oil burners or units thereof, elevators, motors, transformers, and generators; (C) all storm and screen windows, shutters, doors, awnings, shades, and blinds; all canopies, and signs; (D) all trees, shrubbery and other plantings on the realty; (E) all building materials, building machinery and building equipment delivered on site to the Real Estate and which become attached or incorporated into the Improvements during the course of, or in connection with any construction, reconstruction, rehabilitation, remodeling, or repair, of any Improvements from time to time; together with all tools, parts, accessories and supplies thereof, and all additions, attachments, accessions, increases, renewals, and replacements thereof and all articles given in substitution therefor, without limitation.

**General Construction Contract.** The general construction contract made with respect to the Project between Butternut Crossing Commercial Enterprises, LLC, as Owner, and Spoleta Construction, LLC, as Contractor, dated as of December \_\_, 2017, and all schedules and exhibits attached thereto and all amendments or modifications thereto and amendments thereto, and all change orders with respect thereto.

**Improvements/Project Improvements.** Without limitation, all existing and future construction, equipping, buildings, structures, infrastructures, facilities, utilities and utility systems, parking facilities and parking lots and areas, additions, replacements and construction installed on, erected on and/or permanently affixed to the Real Estate. "Improvements" or "Project Improvements" also includes all actions taken by Borrower and/or its Contractors with respect to the foregoing.

**Leases.** Without limitation, all leases (including, but not limited to, Oil and Gas Leases), subleases, tenancy agreements, licenses, rental agreements, occupancy agreements, use agreements, contract rights, options to purchase, rights of first refusal, parking agreements, operations agreements, vendor agreements, concession and concessionaire agreements, and all other contracts and agreements relating to the occupancy, possession, and/or use of the Property, or any portion thereof; whether written or oral, whether now existing or hereafter entered into, which affect or which hereafter affect the Property or any portion thereof; together with any and all guaranties, modifications, addenda, attachments, extensions, extension options, purchase options, and any other rights, and all extensions, modifications, replacements, restatements, successions, substitutions and/or renewals thereof, which now exist or may hereafter be made.

**Oil and Gas Leases.** Any and all leases, whether now owned or existing, or hereafter acquired or arising, for Oil and Gas Substances together with any amendments thereto, and any royalty or other interest arising from compulsory or voluntary integration and unitization or pooling.

**Oil and Gas Substances.** Collectively, without limitation, all rights, titles, interest and estates now owned or hereafter acquired by Borrower in and to all oil, gas, and other minerals and their liquid or gaseous constituents, whether hydrocarbon or non-hydrocarbon, underlying the Real Estate, and all other products refined therefrom. "Gas" includes but is not limited to coal stream gas, coalbed methane gas, gob gas, coalbed gas, methane gas, occluded methane/natural gas and all associated natural gas and all other commercial gas and all other hydrocarbons and non-hydrocarbons, contained in, associated with, emitting from, or produced/originating within any formation, gob area, coal seam, mined-out area, and all communicating zones.

**Permits.** Without limitation, all licenses, permits, consents, waivers, acknowledgments, authorizations, inspections, orders, certificates, approvals, and the like now and hereafter obtained from, and/or issued by any federal, state, and/or local agency, authority, department, commission, board, bureau, or instrumentality, any political subdivision thereof, or any other governmental authority, in connection with (a) any and all construction, design, development, engineering, work, equipping or installation of equipment (including, but not limited to, elevators and all equipment associated therewith) site planning, excavation, demolition, and all other improvement of the Real Estate; and (b) all management, operation, and/or tenanting of the Real Estate; specifically including as to the foregoing, but not limited to, all building/construction, occupancy, environmental, equipping, operating, community, cultural or historical impact permits or approvals.

**Personal Property** Collectively, without limitation, all Equipment, Fixtures, and other articles of personal property now or hereafter owned by Borrower and now hereafter attached or affixed to the Real Estate and/or Improvements and/or located at and used in the operation and/or maintenance of the Real Estate and/or Improvements; together with all accessions, parts and additions to, all replacements of, and all substitutions for, any such property; and together with all proceeds (including without limitation, all insurance proceeds and refunds of premiums) from any sale or other disposition of the Real Estate, Improvements and/or Personal Property, and including, without limitation, all Oil and Gas Substances or other minerals or similar substances produced and saved from or attributable to the Real Estate, whether in place, brought to the surface, or as extracted; all rents, royalties, issues, profits, proceeds, products, revenues and all other income attributable to Oil and Gas Substances or any Lease thereof together with all equipment, inventory, fixtures, and any and all personal property related to the exploration, extraction, transportation, or storage of Oil and Gas Substances, and any Accounts, contract rights, and General Intangibles related to any of the foregoing.

**Plans and Specifications.** All plans, specifications, blueprints, site plans, materials lists, and design, contract, detail or shop drawings (including but not limited to, those referenced in and/or attached to or lists of which are appended to the General Construction Contract), all quotations, proposals, studies and data, and all information regarding the same maintained in the form of computer software, microfiche, discs, or other electronic or optical media and the operational codes for the same, prepared in connection with the Project. The foregoing includes, but is not necessarily limited to, the plans and specifications produced by Architect dated January 23, 2017, Job Number 15035, together with all subsequent amendments, finalizations, or updates thereof, if any. The words "Plans and Specifications" also include any and all amendments, additions, changes, modifications, replacements, substitutions, restatements, supplements,

schedules, attachments, addenda, general and/or special conditions, and change orders now and hereafter executed relating thereto.

**Project.** Collectively, Borrower's and City of Syracuse Industrial Development Agency's acquisition of their respective interests in the Property, the development of the Real Estate and Borrower's causing the construction, rehabilitation, renovation, applicable internal demolition and equipping of new or existing Improvements on, and other improvement made to, the Real Estate, all as contemplated under the Project Documents necessary to make the Property usable and complete for the intended purposes as residential dwelling units for low-income persons, and, in part, commercial space.

**Project Documents.** Collectively, without limitation, the Contracts, construction budgets, the Plans and Specifications, the Permits, all other blueprints, materials lists, manuals, and design, contract, detail or shop drawings, maps, surveys, and all quotations, proposals and data produced with respect to the Project, contractor's bonds, and all information regarding the foregoing, maintained in the form of computer software, microfiche, discs, or other electronic or optical media and the operational codes for the same; and all replacements, successions, accessories, addenda, and parts thereof.

**Property.** Collectively, the Real Estate, Improvements and Personal Property

**Real Estate.** The following parcel of real property having the following street address located in the City of Syracuse, County of Onondaga, State of New York, and more particularly described by metes and bounds in the attached Schedule A:

Condominium Unit #1 at 618-620 N. Townsend Street

**Rents.** Without limitation, all credits, cash, receipts, deposits (whether for security or otherwise, to the extent permissible under applicable law), rents, advance rents, minimum rents, additional rents, issues, fees, common area charges, other charges, concession payments, profits, revenues, royalties, accounts receivable, all other benefits, and payments, income of every nature, and all other forms of consideration and/or obligations of tenants to landlords under the Leases, both monetary and non-monetary; all Proceeds of the Leases (including, without limitation, termination payments), all Proceeds of any and all rights forfeited by tenants; all Proceeds of all liquidated damages following an event of default; and all Proceeds payable under any policy of insurance covering loss of rents or other revenues or profits resulting from untenability due to destruction or damage to the Property or any part thereof, or due to any other event covered under such policy; together with the immediate and continuing right to collect and receive the foregoing; whether due, or hereafter becoming due; and together with all other rights and claims of any kind that the landlord may have under the Leases. Rents also specifically include, without limiting the foregoing or the generality thereof, all of the Borrower's present and future rights, title and interest in, to and under any and all present and future Oil and Gas Leases and/or oil, gas and mineral leases or amendments thereto, including, without limitation, all rents, revenue, income, issues, royalties, bonuses, account receivable, cash or security deposits, advance rentals, profits and proceeds derived from the production and sale of or otherwise attributable to Oil and Gas Substances, including any compulsory or voluntary integration and unitization or pooling

awards, produced and saved from or attributable to the Real Estate, and other payments and benefits derived or to be derived from such leases of every kind and nature, whether due now or later, including without limitation Borrower's right to enforce such leases and to receive and collect payment and proceeds thereunder.



**618-620 North Townsend Street: Tax Parcel Number 017.-08-22.1 (UNIT 1)**

The Unit designated as **Unit No. 1** in the Declaration comprising **BUTTERNUT CROSSING CONDOMINIUM** located in the City of Syracuse, County of Onondaga, New York, (hereinafter called the "**Property**"), made by Housing Visions Consultants, Inc. under the Condominium Act of the State of New York, as amended (Article 9-B of the Real Property Law of the State of New York), dated December 21st, 2017 and recorded in the office of the County Clerk of Onondaga County on the 22<sup>nd</sup> day of December, 2017 as Instrument Number 2017-00047870 (hereinafter called the "**Declaration**," ) which Unit is also designated as Unit 1, on page A1.1 of the Construction Drawings for **Butternut Crossing 618-620 N. Townsend Street, Syracuse** as certified and prepared by Holmes King Kallquist & Associates, Architects, and filed simultaneously with said Declaration in the Office of the County Clerk of Onondaga County (hereinafter called the "**Unit**"), together with others with the use of the Common Elements, as defined in said Declaration. The appurtenant interests of Unit 1 in the Common Elements is 29.5%. The land area of the Property is described as follows:

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Syracuse, County of Onondaga, State of New York being Lot 12 & part of Lot 11 of City Block 275D and being more particularly bounded and described as follows: Beginning at a point in the easterly line of North Townsend Street at the intersection of the southerly line of East Laurel Street thence North 59 deg. 25 min. 40 sec. East along the said southerly line of East Laurel Street, a distance of 79.50 feet to a point; thence South 30 deg. 32 min. 30 sec. East a distance of 50.00 feet to a point; thence North 59 deg. 25 min. 40 sec. East a distance of 36.00 feet to a point thence South 30 deg. 32 min. 30 sec. East a distance of 50.00 feet to a point; thence South 59 deg. 25 min. 40 sec. West a distance of 115.50 feet to a point in the said easterly line of North Townsend Street thence North 30 deg. 32 min. 30 sec. West along said easterly line of North Townsend Street, a distance of 100.00 feet to the point of beginning.

**22**

**SURVEY- on file with the Agency**

**ALTA/NSPS LAND TITLE SURVEY MAP**

For the Lands of

618-620 North Townsend Street

Prepared for Housing Visions

Lot 12 & Part of Lot 11 of City Block 275D/Lot 1

of the St. Joseph's Health Center Subdivision

City of Syracuse, County of Onondaga, New York

Prepared By: C.T. Male Associates

Dated: December 19, 2017

Drawing No. 17-0669

**23**

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

## Onondaga County Clerk Recording Cover Sheet

Received From :  
VANGUARD ABSTRACT  
COURTHOUSE  
SYRACUSE, NY 13202

Return To :  
BOUSQUET HOLSTEIN  
PICK UP BOX

Method Returned : MAIL

**First PARTY 1**

HOUSING VISIONS CONSULTANTS INC

**First PARTY 2**

HOUSING VISIONS CONSULTANTS INC

Index Type : Land Records

Instr Number : 2017-00047870

Book : Page :

Type of Instrument : Declaration

Type of Transaction : Declaration

Recording Fee: \$0.00

Recording Pages : 98

**Recorded Information**

State of New York

County of Onondaga

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

On (Recorded Date) : 12/22/2017

At (Recorded Time) : 1:12:27 PM



Doc ID - 0260486100098

*Lisa Dell*  
Lisa Dell, County Clerk



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

Entered By: RSWEENIE Printed On : 12/22/2017 At : 1:19:57PM

**DECLARATION**

Establishing a Plan for Condominium Ownership

of the Premises known as:

**Butternut Crossing Condominium**

Having street address of 618-620 North Townsend Street, Syracuse, New York

Pursuant to Article 9-B of the Real Property Law of the State of New York

Name:	A Condominium known as: Butternut Crossing Condominium
Declarant:	Housing Visions Consultants, Inc. Suite 26 1201 East Fayette Street Syracuse, New York 13202
Date of Declaration:	December <u>21</u> , 2017
Prepared by:	Bousquet Holstein PLLC One Lincoln Center – Suite 1000 110 West Fayette Street Syracuse, New York 13202 (315) 422-1391

The real property affected by and within this instrument lies in the City of Syracuse, New York.

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## EXHIBITS

EXHIBIT A	Definitions
EXHIBIT B	Description of the Land
EXHIBIT C	Description of Units
EXHIBIT D	Unit Power of Attorney
EXHIBIT E	By-Laws
EXHIBIT F	Floor Plans

**DECLARATION OF  
BUTTERNUT CROSSING CONDOMINIUM  
A CONDOMINIUM**

(Pursuant to Article 9-B of the Real Property Law of the State of New York)

**HOUSING VISIONS CONSULTANTS, INC.**, a not-for-profit corporation organized under the laws of New York, having offices at 1201 East Fayette Street, Suite 26, Syracuse, New York 13210 ("Declarant"), does hereby declare as follows:

**ARTICLE I  
DEFINITIONS**

All capitalized terms used in this Declaration that are not otherwise defined in the Articles hereof shall have the meanings set forth in **Exhibit A** attached hereto, unless the context in which they are used shall otherwise require. All capitalized terms used in this Declaration that are defined in any of the Articles hereof shall have the meanings ascribed to them in such Articles, unless the context in which the same are used shall otherwise require. Each of the said capitalized terms shall be applicable to singular and to plural nouns, as well as to verbs of any tense.

**ARTICLE II  
SUBMISSION OF THE PROPERTY**

Declarant hereby submits the Property to the provisions of the Condominium Act and, pursuant thereto, does hereby establish a regime for the condominium ownership of the Property as more particularly set forth herein and in the By-Laws.

### ARTICLE III

#### NAME OF THE CONDOMINIUM

The Condominium shall be known as Butternut Crossing Condominium

### ARTICLE IV

#### THE LAND

Included in the Property is the Land that is described more particularly in **Exhibit B** attached hereto.

### ARTICLE V

#### THE PROPERTY AND THE BUILDINGS

**5.1** Existing Buildings. There are no Existing Buildings or other structures located on the Land, except for vacant, dilapidated structures that will be demolished.

**5.2** New Construction.

(a) The following development and construction is contemplated to occur on the Land:

(i) A 3-story building will be constructed on the Land, at 618-620 North Townsend Street;

(ii) The first floor of the building will contain the commercial unit of the mixed-use condominium, and will contain approximately 3,820 square feet of commercial space; and

(iii) The second and third floors will contain the residential unit and will consist of 5 apartments on the second floor, and 5 apartments on the third floor, and related facilities and amenities.

(b) The following development and construction is contemplated to occur within the Common Areas: Construction of improvements, sidewalks, parking lot and landscape.

**5.3** Construction Easements. In connection with any construction work to be performed in the construction and/or redevelopment of the Condominium by any one or more Unit Owners, Declarant hereby grants temporary easements to each Unit Owner to use the Common Areas, together with others, for purposes of ingress and egress of construction vehicles and personnel and, to the extent necessary, for storage and staging of construction materials, and for incidental encroachments upon the other Unit which may occur as a result of construction, so long as (i) such incidental encroachments are kept within the reasonable requirements of construction work expeditiously pursued, and (ii) customary and reasonably satisfactory insurance is maintained protecting the Declarant and any Unit Owner encroached upon from the risks involved in such construction work.

## ARTICLE VI

### THE UNITS

**6.1** **Exhibit C** attached hereto provides a description of each Unit necessary for the proper identification thereof, including the Common Interests percentages appurtenant to each Unit. The precise location of each Unit is shown on the Floor Plans.

6.2 Each Unit shall have Appurtenant Interests in the Common Elements as set forth on Exhibit C.

6.3 Intentionally Omitted.

6.4 Unit 1, the Commercial Unit, includes, and the owner of Unit 1 shall be responsible for, all improvements that hereafter shall comprise and/or are a part of the Commercial Unit, including, without limitation the front entrance door and any other entrance doors to such Unit, the interior walls, partitions, floors and floor coverings and plastered ceilings affixed, attached or appurtenant to such Unit, smoke detectors, carbon monoxide detectors, window panes, all plumbing, gas and heating fixtures and equipment and appliances, heating, ventilating and air conditioning units (including the fans inside the air conditioning units), heating equipment, and other appliances, and all other Facilities as may be affixed, attached or appurtenant to such Unit and serving such Unit exclusively, such as window panes in any skylights. Plumbing, gas, and heating fixtures and equipment as used in the preceding sentence shall include exposed gas and water pipes from branch or fixture shut-off valves attached to fixtures, appliances and equipment and the fixtures, appliances and equipment to which they are attached, and any special pipes or equipment that a Unit Owner may install within a wall or ceiling, or under the floor, but shall not include gas, water or other pipes, conduits, wiring or ductwork within the walls, ceilings or floors. Unit 2, the Residential Unit, shall also include all lighting and electrical fixtures and appliances within the Unit and any special equipment, fixtures or Facilities affixed, attached or appurtenant to such Unit, to the extent located within such Unit from the panel and serving or benefiting only that Unit. Any Common Elements located within Units 1 or 2 shall not be considered a part of such Unit.

6.5 Notwithstanding anything contained in this Article to the contrary, each Unit Owner will have the right, exercisable at any time, to take any actions whatsoever with respect to such Unit Owner's Unit, provided, however, that such actions do not impair the rights of the other Unit Owner or violate Law.

6.6 As of the date of the filing of this Declaration with the County Clerk's Office, fee simple absolute title shall automatically vest in Declarant in all Units, individually and collectively, without the need to execute specific and particular deeds or indentures for each and every Unit.

## ARTICLE VII

### THE COMMON ELEMENTS

7.1 The Common Elements consist of so much of the Property that is either currently or hereafter existing for the common use of the Units or of the Unit Owners or necessary for, or convenient to, the existence, maintenance, management, operation, or safety of the Property, excepting therefrom in all events, any other improvements belonging exclusively to one, but not to all, of the Units. Without intending to limit the generality of the foregoing in any respect, the Common Elements include:

(a) The Land on which the Building will be constructed, landscaping, sidewalks, and all easements, rights, and privileges appurtenant to the Land, but excluding therefrom all improvements located in Unit 1, the Commercial Unit or Unit 2, the Residential Unit;

(b) All foundations, columns, beams, supports, girders, exterior walls, interior walls, partitions, floors, window systems other than the glass, roofs and ceilings in, on, or under

the Building, or separating a Unit located within the Building from a Common Element, from the midpoint of any such wall, partition, floor or ceiling to the boundary line of such Common Element, as the case may be, to the extent that the same are not expressly included as part of a Unit pursuant to the terms of Article 6 hereof;

(c) All concrete floor slabs and concrete ceilings, hallways, corridors, mechanical and electrical spaces, service entrances, stairways, vestibules, oil tank, storage spaces, and equipment rooms, the boiler room, the electric room, the gas meter room, the mechanical room, entrances to, and exits from the Building, except entrances and exits specifically intended to provide ingress and egress to Unit 1 and ingress and egress to Unit 2;

(d) All sidewalks, curbs, improvements, and spaces devoted to the use of persons or employed with the operation of the Property, to the extent that the same are not expressly included as part of a Unit pursuant to the terms of Article 6 hereof;

(e) All central and appurtenant installations and Facilities for services such as power, light, telephone, intercom, gas, sewer, plumbing, sprinkler, drainage, hot and cold water distribution, heat, garbage disposal, master and cable television and other mechanical and electrical systems, which simultaneously service more than one Unit, should such shared services exist, and/or which service some or all of the Common Elements to the extent that the same are not expressly included as a part of a Unit pursuant to the terms of Article 6 hereof.

7.2 The Common Elements shall remain undivided, and no Unit Owner or any other person shall bring, or shall have the right to bring, any action for partition or division thereof, except as is expressly permitted pursuant to the terms of Article XIV hereof and Section 5.5 of the By-Laws.

## **ARTICLE VIII**

### **MAINTENANCE OF COMMON ELEMENTS**

The responsibility for the costs and expenses of maintaining the Common Elements shall be apportioned by the Condominium Board as follows:

(a) Common Expenses will be allocated among all the Units on the basis of the approximate proportion that the floor area of each Unit bears to the aggregate floor area of all the Units of Butternut Crossing Condominium.

## **ARTICLE IX**

### **USE OF UNITS**

As more particularly set forth in and subject to the provisions of Law and Section 5.6 By-Laws, the Units may be used for any purpose permitted by law.

## **ARTICLE X**

### **EASEMENTS FOR THE USE AND ENJOYMENT OF THE COMMON ELEMENTS**

10.1 Subject to the terms of the By-Laws and the Rules and Regulations, Declarant, the Unit Owners, all other permitted tenants and occupants of the Units, the Managing Agent, if any, the Condominium Board, and all officers, partners, employees, agents, guests, invitees, and licensees of the foregoing shall have, in common with all of the others, an easement for ingress and egress through, as well as for the use and enjoyment of, all of the Common Elements, and the Common Elements shall be subject to such easement. Notwithstanding the foregoing, however, no person shall use or enjoy the Common Elements except in accordance with the reasonable purposes for which they are intended and without encroaching upon the rights of other persons to do so.



10.2 Declarant shall have the right, to the extent permitted by Law, to use one or more portions of the Common Elements (including, but not limited to, lobbies, hallways, and corridors), as designated by Declarant in its sole discretion, without being subject to any fee or charge, for all purposes and activities in connection with the operation of the condominium, which right shall include, without limitation, the right to place "for sale," "for rent," and other signs and promotional materials, of such size and content as Declarant shall determine, in, on, about, and adjacent to the exterior walls of the Buildings.

10.3 Declarant and the Owners of Units shall have an easement to erect, use, lease, maintain, repair, replace, and operate antennae, satellite dishes, and other communications equipment, as permitted by Law, on any part of the roof of Building and elsewhere on the Common Elements and to utilize any risers, conduits, piping, cables, ducts, and electrical panels and rooms, telephone/cable panels and rooms in connection therewith. Declarant and the Owners of Units shall be entitled to utilize such easement for their own account or the account of any of their tenants or licensees, as the case may be.

10.4 Subject to the terms of the By-Laws and the Rules and Regulations, Declarant and the Unit Owners, and all officers, partners, employees, agents, guests, invitees, and licensees of the foregoing shall have, in common with all of the others, an easement for the placement, maintenance, repair, and replacement of utilities within the Common Elements, and the Common Elements shall be subject to such easement. Notwithstanding the foregoing, however, the location and size of the easement and the placement of any such utilities within such an easement is subject to the prior approval of the Condominium Board, which approval may be granted in the Condominium Board's sole and absolute discretion.

**ARTICLE XI  
OTHER EASEMENTS**

11.1 Subject to the terms of the By-Laws and to the Rules and Regulations, each Unit Owner shall have an easement in common with all other Unit Owners to use, maintain, repair, alter, and replace all Common Elements that serve such Unit Owner's Unit. All easements and rights of access described in this section related to maintenance, repair, alteration or replacement of the Common Elements shall be exercised by the Condominium Board on behalf of all Unit Owners. The Condominium Board shall have an easement and a right of access to the Common Elements to inspect the same, to remove violations therefrom and to install, operate, maintain, repair, alter, rebuild, restore and replace any of the Common Elements located in, over, under, through, adjacent to, or upon the same, the Common Elements shall be subject to such easement and right of access. Such easements and rights of access shall be exercised by the Condominium Board in such a manner as will not unreasonably interfere with the use of the Units for their permitted purposes. Such entry shall be permitted on reasonable prior notice based on the nature of the repair or replacement but in no event on less than 2 days' notice, except that no notice will be necessary in the case of an "emergency" (i.e., a condition requiring repair or replacement immediately necessary for the preservation or safety of the Buildings or for the safety of occupants of the Buildings, or other persons, or required to avoid the suspension of any necessary service in the Buildings). All work is to be prosecuted diligently to completion. Notwithstanding any other provision of this Declaration, the By-Laws, or the Rules and Regulations, any alterations carried out in connection with the easements granted hereinabove shall be such that neither the configuration nor the usable area of the Common Elements shall be materially Adversely Affected.

11.2 The Condominium Board, on behalf of all Unit Owners, shall have the right to grant such additional electric, gas, steam, cable television, telephone, water, storm drainage, sewer and other utility easements in, or to relocate any existing utility easements to, any portion of the Property as the Condominium Board shall deem necessary or desirable for the proper operation and maintenance of the Building or any portion thereof, or for the general health or welfare of the owners, tenants and occupants of the appropriate Units, provided that the granting of such additional utility easements or the relocation of existing utilities will not prevent or unreasonably interfere with the use of the Units for their permitted purposes, and shall not result in the imposition of any mechanic's lien against any of the Units. Any utility company and its employees and agents shall have a commercially reasonable right of access to each Unit or the Common Elements in furtherance of such easement, provided such right of access shall be exercised in such manner as shall not unreasonably interfere with the use of the Units for their permitted purposes. Notwithstanding any other provision of this Declaration, the By-Laws, or the Rules and Regulations, any alterations carried out in connection with the easements granted hereinabove shall be such that neither the configuration nor the usable area of the affected Unit shall be materially Adversely Affected.

11.3 Each Unit and the Common Elements shall have easements of subjacent support and necessity, and the same shall be subject to such easements in favor of all of the other Units and the Common Elements.

11.4 If (a) any portion of the Common Elements encroaches upon any Unit or upon any other portion of the Common Elements, (b) any Unit encroaches upon any other Unit or upon any portion of the Common Elements, or (c) any such encroachment shall hereafter occur as a result of (i) the settling or shifting of the Buildings, (ii) any alteration, repair or restoration of

the Common Elements made by or with the consent (when required by the By-Laws) of the Condominium Board, or made by Declarant in accordance with this Declaration or the By-Laws, or (iii) any alteration, repair, or restoration of the Building (or any portion thereof) or of any Unit or Common Element after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all any portion of any Unit or the Common Elements, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same as long as the encroachment remains.

**11.5** In addition to the specific easements set forth in this Article XI, the Property and every portion thereof shall be subject to all easements made with the City of Syracuse or with any utility companies or other persons in effect prior to the recording of this Declaration.

## **ARTICLE XII**

### **ACQUISITION OF UNIT BY THE CONDOMINIUM BOARD**

If any Unit Owner surrenders its Unit, together with its Appurtenant Interests to the Condominium Board pursuant to the terms of the By-Laws or Section 339-x of the Condominium Act, or if the Condominium Board, pursuant to the By-Laws or otherwise, either acquires or leases a Unit, together with its Appurtenant Interests, or purchases a Unit, together with its Appurtenant Interests, at a foreclosure or other similar sale, then, in all such events, title to any such Unit and such Appurtenant Interests shall be held by the Condominium Board or its designee, corporate or otherwise, on behalf of all Unit Owners, in proportion to their respective Common Interests. Any lease or sublease of any Unit leased or subleased by the Condominium Board or its designee shall be held by the Condominium Board or its designee, corporate or otherwise, on behalf of all Unit Owners, in proportion to their respective Common Interests.

## ARTICLE XIII

### POWER OF ATTORNEY TO DECLARANT AND THE CONDOMINIUM BOARD

13.1 Each Unit Owner, by acceptance of a deed or otherwise succeeding to title to a Unit, shall be deemed to have irrevocably nominated, constituted and appointed as such Unit Owner's attorney-in-fact, coupled with an interest and with power of substitution, (i) the Condominium Board, to amend the Condominium Documents pursuant to the terms of Article XVIII hereof, and (ii) the Persons who shall from time to time constitute the Condominium Board, jointly, to:

(a) Employ counsel for purposes of protesting the real property tax assessments with the taxing authorities and instituting tax certiorari proceedings on behalf of the Unit Owners for the reduction of the assessed valuation of their Units, such Unit Owners agreeing not to protest said assessments and bring such tax certiorari proceedings at their own initiative and on their own behalf;

(b) Acquire or lease any Unit, together with its Appurtenant Interests whose owner desires to sell, convey, transfer, assign, lease, or surrender the same to the Condominium Board or its designees or acquire any Unit, together with its Appurtenant Interests that becomes the subject of a foreclosure or other similar sale, in the name of the Condominium Board or its designee, corporate or otherwise, on behalf of all Unit Owners;

(c) Convey, sell, lease, mortgage, or otherwise deal with (but not to vote the Common interest, appurtenant to) any Unit so acquired or to sublease any Unit so leased; and

(d) Execute, acknowledge and deliver (1) any declaration or other instrument affecting the Condominium that the Condominium Board deems necessary or appropriate to comply with any law applicable to the maintenance, demolition, construction, alteration, repair, or restoration of the Condominium, or (2) any consent, covenant, restriction, easement, or declaration, or any amendment thereto, affecting the Condominium or the Common Elements that the Condominium Board deems necessary or appropriate, or (3) any protests and tax certiorari proceeding affecting Units.

13.2 In confirmation of the foregoing power of attorney, each Unit Owner, upon the request of the Condominium Board, shall duly execute, acknowledge and deliver to the requesting party, for recording in the County Clerk's Office, a Unit Power of Attorney substantially in the form set forth as **Exhibit D** to this Declaration.

**ARTICLE XIV  
[RESERVED]**

**ARTICLE XV**

**TERMINATION OF CONDOMINIUM**

The Condominium shall continue and the Property shall not be subject to an action for partition (unless terminated by casualty loss, condemnation or eminent domain, as more particularly provided in the By-Laws) until such time as withdrawal of the Property from the provisions of the Condominium Act is authorized by a vote of 100% in number and in Common Interest of all Unit Owners. No such vote shall be effective, however, without the written consent (which consent shall not be unreasonably withheld, conditioned, or delayed) of the Permitted Mortgagee(s), if any. In the event said withdrawal is authorized as aforesaid, but only in such event, the Property shall be subject to an action for partition by any Unit Owner or lienor



as if owned in common, in which event the net proceeds of sale shall be divided among all Unit Owners in proportion to their respective Common Interests; provided, however, that no payment shall be made to a Unit Owner until there has first been paid from out of such Unit Owner's share of such net proceeds all liens on such Unit Owner's Unit(s) (other than mortgages which are not Permitted Mortgages), in the order of priority of such liens.

## **ARTICLE XVI**

### **COVENANT OF FURTHER ASSURANCES**

**16.1** Any person who is subject to the terms of this Declaration, whether such person is a Unit Owner, a lessee or sublessee of a Unit Owner, a commercial tenant of a Unit, a member or officer of the Condominium Board or otherwise, shall, upon prior reasonable written request at the expense of any such other person requesting the same, execute, acknowledge and deliver to such other person such instruments, in addition to those specifically provided for herein, and take such other action as such other person may reasonably request to effectuate the provisions of this Declaration or of any transaction contemplated herein or to confirm or perfect any right to be created or transferred hereunder or pursuant to any such transaction.

## **ARTICLE XVII**

### **COVENANTS RUNNING WITH THE LAND**

**17.1** All provisions of this Declaration, the By-Laws and the Rules and Regulations which are attached hereto and made a part hereof, including, without limitation, the provisions of this Article, shall to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, be perpetual and be construed to be covenants running with the Land and with every part thereof and interest therein, and all of the provisions hereof and thereof shall

be binding upon and inure to the benefit of the owner of all or any part thereof, or interest therein, and his heirs, executors, administrators, legal representatives, successors and assigns, but the same are not intended to create, nor shall they be construed as creating, any rights in or for the benefit of the general public. All present and future owners, tenants, subtenants, licensees, and other occupants of Units shall be subject to and shall comply with the provisions of this Declaration, the By-Laws and the Rules and Regulations, as they may be amended from time to time. The acceptance of a deed or conveyance or the entering into of a lease or the entering into occupancy of any Unit or part of a Unit shall constitute an agreement that the provisions of this Declaration, the By-Laws and the Rules and Regulations, as they may be amended from time to time, are accepted and ratified by such owner, tenant or occupant, and all of such provisions shall be deemed and taken to be covenants running with the Land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed or conveyance or lease or use and occupancy agreement thereof.

17.2 If any provision of this Declaration or the By-Laws is invalid under, or would cause this Declaration and the By-Laws to be insufficient to submit the Property to the provisions of the Condominium Act, such provision shall be deemed deleted from this Declaration or the By-Laws, as the case may be, for the purpose of submitting the Property to the provisions of the Condominium Act but shall nevertheless be valid and binding upon and inure to the benefit of the owners of the Property and their heirs, executors, administrators, legal representatives, successors and assigns, as covenants running with the Land and with every part thereof and interest therein under other applicable Law to the extent permitted under such applicable Law with the same force and effect as if, immediately after the recording of this Declaration and the By-Laws, all Unit Owners had signed and recorded an instrument agreeing



to each such provision as a covenant running with the Land. If any provision which is necessary to cause this Declaration and the By-Laws to be sufficient to submit the Property to the provisions of the Condominium Act is missing from this Declaration or the By-Laws, then such provision shall be deemed included as part of this Declaration or the By-Laws, as the case may be, for the purposes of submitting the Property to the provisions of the Condominium Act.

17.3 Subject to Section 17.2, if this Declaration and the By-Laws are insufficient to submit the Property to the provisions of the Condominium Act, the provisions of this Declaration and the By-Laws shall nevertheless be valid and binding upon and inure to the benefit of the owners of the Property, and their heirs, executors, administrators, legal representatives, successors and assigns, as covenants running with the Land and with every part thereof and interest therein under applicable Law to the extent permitted under such applicable Law with the same force and effect as if, immediately after the recording of this Declaration and the By-Laws, all Unit Owners had signed and recorded an instrument agreeing to each such provision as a covenant running with the Land.

## ARTICLE XVIII

### AMENDMENTS TO THIS DECLARATION

18.1 Subject to the provisions contained herein or in the By-Laws with respect to amendments, modifications, additions or deletions affecting Declarant, any provision of this Declaration may be added to, amended, modified or deleted by the vote of 100% in number and in Common Interest of all Unit Owners taken in accordance with the provisions of the By-Laws, and that the Common Interest appurtenant to each Unit as expressed in this Declaration shall not be altered without the written consent of all Unit Owners directly affected. Subject to the

provisions contained herein or in the By-Laws with respect to amendments, modifications, additions or deletions affecting Declarant, no amendment, modification, addition or deletion shall be effective without the written consent of the Mortgage Representatives (as defined in the By-Laws), if any, which consent shall not be unreasonably withheld or delayed. No such amendment, modification, addition or deletion shall be effective until recorded in the County Clerk's Office.

**18.2** Intentionally Omitted.

**18.3** Notwithstanding anything contained in the Condominium Documents to the contrary, but subject to any limitation imposed by the Condominium Act, no amendment to the Condominium Documents shall be adopted for so long as Declarant owns any Unit if the same would (i) unreasonably interfere with the sale, lease, or other disposition of a Unit owned by Declarant, (ii) abridge, modify, suspend, eliminate, or otherwise affect any right, power, easement, privilege, or benefit granted to Declarant, or (iii) impose any discriminatory charge or fee against Declarant.

**18.4** The provisions of this Article may not be modified, amended, added to or deleted, in whole or in part, without the consent of Declarant if the same relate to Declarant.

## **ARTICLE XIX**

### **CONSENTS AND RIGHTS BY DECLARANT**

When the consent, approval, satisfaction, or permission of Declarant is required under this Declaration or the By-Laws, such consent, approval, satisfaction, or permission shall not be required after the date Declarant first sells both Unit 1 and Unit 2. Notwithstanding any provisions to the contrary herein or in the Bylaws, Declarant's rights and any power of attorney

created under this Declaration or the Bylaws shall cease and be of no further force or effect after the date Declarant first sells both Unit 1 and Unit 2.

## ARTICLE XX

### PERSON TO RECEIVE SERVICE

The Secretary of State of the State of New York is hereby designated to receive service of process in any action which may be brought against the Condominium. The Secretary of State shall mail copies of any such process to Butternut Crossing Condominium, c/o Bousquet Holstein PLLC, 110 West Fayette Street, One Lincoln Center, Suite 1000, Syracuse, New York 13202, Attention: Paul M. Predmore, Esq.

## ARTICLE XXI

### INCORPORATION BY REFERENCE

The terms, covenants, conditions, descriptions and other information contained in (i) the table of definitions attached hereto as **Exhibit A**; (ii) the description of the Land attached hereto as **Exhibit B**; (iii) the description of the Units to be constructed on the Land as of the Effective Date attached hereto as **Exhibit C**; (iv) the Unit Power of Attorney attached hereto as **Exhibit D**; (v) the By-Laws attached hereto as **Exhibit E**; and (vi) the Floor Plans attached hereto as **Exhibit F** collectively are, by this reference, each incorporated herein and made a part of this Declaration as if set forth at length in the text hereof.

## ARTICLE XXII

### WAIVER

No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

## ARTICLE XXIII

### SEVERABILITY

Subject to the provisions of Section 17.2 and 17.3 of Article XVII hereof, if any provision of the Condominium Documents is invalid or unenforceable as against any Person or under certain circumstances, the remainder of the Condominium Documents, the applicability of such provision to other Persons or circumstances shall not be affected thereby. Each provision of the Condominium Documents shall, except as otherwise herein provided, be valid and enforced to the fullest extent permitted by Law. Any conflict between any provisions of the Condominium Documents and the Condominium Act, or any questions regarding the interpretation of any of the Condominium Documents, shall be governed by the Condominium Act.

## ARTICLE XXIV

### SUCCESSORS AND ASSIGNS

The rights and/or obligations of Declarant as set forth herein shall inure to the benefit of and be binding upon any successor or assign or designee of Declarant. Declarant shall have the right, at any time, in its sole discretion, to assign or otherwise transfer its interest therein, whether by merger, consolidation, lease, assignment, or otherwise.

## **ARTICLE XXV**

### **CAPTIONS**

The index hereof and the captions herein inserted are included only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Declaration or the intent of any provision hereof.

## **ARTICLE XXVI**

### **CERTAIN REFERENCES**

**26.1** A reference in this Declaration to any one gender, masculine, feminine or neuter, includes the other two, and the singular includes the plural and vice versa, unless the context otherwise requires.

**26.2** The terms "herein," "hereof" or "hereunder" or similar terms used in this Declaration refer to this entire Declaration and not to the particular provision in which the terms are used, unless the context otherwise requires.

**26.3** Unless otherwise stated, all references herein to Articles, Sections or other provisions are references to Articles, Sections or other provisions of this Declaration.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed as of

November 21, 2017.  
December

DECLARANT:

HOUSING VISIONS CONSULTANTS, INC.

By: [Signature]

Name: Benjamin Lockwood

Title: Vice President

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

On the 21st day of December, in the year 2017 before me, the undersigned, a notary public in and for said state, personally appeared Benjamin Lockwood 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/they executed the same in his/her/their capacity and that by his/her/their signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

[Signature]  
Notary Public

KATHLEEN ANN GIBNEY BROWN  
Notary Public, State of New York  
No. 01886921078  
Qualified in Onondaga County  
Commission Expires Dec. 6, 2021

**EXHIBIT A**  
**DEFINITIONS**

For convenience of presentation, general definitions of certain of the terms used in this Declaration are set forth below and are subject to the more particular definitions of such terms, if any, set forth in the By-Laws and the Condominium Act.

**“Adversely Affected”** means, with respect to any action or proposed change and with respect to any Unit Owner or Unit Owners, that such action or change could, if realized, (i) increase the Common Charges payable by such Unit Owner or Unit Owners by more than 25%, (ii) materially interfere with such Unit Owner’s access to his Unit, (iii) obstruct or degrade the view from the windows of such Unit Owner’s Unit, (iv) decrease the useable square footage of a Unit by 5% or more, or (v) otherwise materially diminish such Unit Owner’s use and enjoyment of his Unit.

**“Appurtenant Interests”** mean those interests in the Common Elements attributable to and inseparable from a particular Unit.

**“Building”** means that 3-story building to be constructed on the Land, at 618-620 North Townsend Street.

**“Building Department”** means the Department of Buildings & Regulatory Compliance of the City of Syracuse or any successor agency.

**“By-Laws”** means the By-Laws governing the operations of the Condominium, which are set forth as **Exhibit F** to this Declaration, as the same may be amended from time to time.

**“Closing of Title”** or **“Closing”** means the date upon which, among other things, a Unit and its Appurtenant Interests are conveyed to a Purchaser by the delivery by Declarant to a Purchaser of a deed upon payment by a Purchaser to Declarant of the balance of the purchase price for the Unit.



**“Common Charges”** means the charges allocated and assessed by the Condominium Board to the Unit Owners, pro-rata, in accordance with their respective Common Interests (except as otherwise provided in the Declaration or in the By-Laws or in the first year’s budget) to meet the Common Expenses.

**“Common Elements”** means those certain portions of the Property, other than the Units themselves, but including the Facilities therein, either existing for the common use of the Units or the Unit Owners or necessary for, or convenient to, the existence, maintenance, or safety of the Property, as more particularly described in this Declaration.

**“Common Expenses”** means all costs and expenses to be incurred generally by the Condominium pursuant to the Declaration and/or the By-Laws in connection with (i) the repair, maintenance, replacement, restoration and operation of, and any alteration, addition, or improvement to the Common Elements; (ii) the establishment and/or maintenance of a general operating reserve, or a reserve fund for working capital, for replacements with respect to the Common Elements, or to make up any deficit in the Common Charges for any prior year(s); and (iii) generally, the conduct of the affairs of the Condominium.

**“Common Interest”** means the proportionate undivided interest, expressed as a numerical percentage, in the Common Elements appurtenant to each Unit, as determined in accordance with this Declaration and the By-Laws, with 29.5% apportioned to the Unit 1 Owner and 70.5% to the Unit 2 Owner. The total of all Common Interest percentages appurtenant to all Units equals 100%.

**“Condominium”** means Butternut Crossing Condominium, a condominium established pursuant to the terms of this Declaration and governed pursuant to the terms of the By-Laws.



**“Condominium Act”** means the New York Condominium Act, as amended from time to time, and presently found in the New York Real Property Law, Article 9-B.

**“Condominium Board”** means the Condominium Board of the Condominium that will manage the affairs of the Condominium.

**“County Clerk’s Office”** means the Onondaga County Clerk’s Office in the State of New York.

**“Declarant”** means Housing Visions Consultants, Inc. and any of its designees, successors, assigns, officers, directors, shareholders, members, principals, or affiliates.

**“Declaration”** means the instrument creating the Condominium, as the same may be amended from time to time.

**“Effective Date”** means the date of recording of this Declaration with the County Clerk’s Office.

**“Existing Buildings”** means the buildings located on the Property as of the Effective Date, which buildings are described as follows: There are no existing buildings, except two (2) dilapidated and untenable structures to be demolished.

**“Facilities”** means all personal property and fixtures now or hereafter existing in, on, or under the Land or the Buildings and either existing for the common use of the Units or the Unit Owners or necessary or convenient for the existence, maintenance, or safety of the Property. For purposes of illustrating the broad scope of such term and without intention to limit the generality of the foregoing in any respect, the term “Facilities” shall include all systems, equipment, apparatus, convectors, radiators, heaters, converters, heat exchangers, mechanisms, devices, machinery, induction units, fan coil units, motors, pumps, controls, tanks, tank assemblies, installations, condensers, compressors, fans, dampers, blowers, thermostats, thermometers, coils,

vents, sensors, shut off valves, other valves, gongs, panels, receptacles, outlets, relays, alarms, sprinkler heads, electric distribution facilities, wiring, wireways, switches, switchboards, circuit breakers, transformers, fittings, siamese connections, hoses, plumbing fixtures, lighting fixtures, other fixtures, bulbs, signs, antennae, telephones, intercom equipment, playground equipment, meters, meter assemblies, scaffolding, piping, lines, ducts, conduits, cables, risers, mains, shafts, pits, flues, locks, hardware, racks, screens, strainers, traps, drains, catch basins, leaders, filters, incinerators, canopies, closets, cabinets, doors, railings, copings, steps, furniture, mirrors, furnishings, appurtenances, urns, baskets, mail chutes, mail boxes, carpeting, tiles, floor coverings, draperies, shades, window coverings, wallpaper, wall coverings, trees, shrubbery, flowers, plants, horticultural tubs, and horticultural boxes.

**“First Closing”** means the Closing of Title with respect to the Butternut Crossing Commercial Enterprises, LLC Unit.

**“Floor Plans”** means the floor plans of the Units certified by a professional engineer or licensed architect, filed in the County Clerk’s Office simultaneously with the recording of the Declaration, together with any supplemental floor plans thereto.

**“Force Majeure”** means delays caused by weather, casualty, labor difficulties, (including work stoppages and strikes), late delivery or inability to obtain materials, government restrictions or other events beyond Declarant’s reasonable control.

**“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.

**“Land”** means all the real property located in the City of Syracuse, County of Onondaga, State of New York, at 618-620 North Townsend Street, that is described more particularly in **Exhibit B** to this Declaration.

**“Law”** means the laws and ordinances of any or all of the Federal, New York State, City of Syracuse, and County of Onondaga governments, the rules, regulations, orders and directives of any or all departments, subdivisions, bureaus, agencies, or offices thereof or of any other governmental, public or quasi-public authorities having jurisdiction over the Property and/or the Condominium and/or the direction of any public officer pursuant to law.

**“Managing Agent”** means the managing agent or manager or any successor managing agent, if any, at the time in question.

**“Permitted Mortgage”** means a mortgage or mortgages as permitted to be placed upon a Unit pursuant to the provisions of the By-Laws, including those certain mortgages granted to KeyBank National Association.

**“Permitted Mortgagee”** means the holder of a Permitted Mortgage.

**“Plans and Specifications”** means the plans and specifications for the construction of the Building which (to the extent required by Law) have been or will be filed with the Building Department and which may from time to time be amended.

**“Property”** means the Land, the Buildings (and any structures attached thereto), all the improvements erected or to be erected on the Land, all easements, rights and appurtenances pertaining thereto and all other property, real, personal, or mixed, used or intended to be used in connection therewith.

**“Purchaser”** means a Purchaser of a Unit.

**“Rules and Regulations”** means the rules and regulations of the Condominium, which are attached as an addendum to the By-Laws, as any of the same may be amended, modified, added to, or deleted from time to time pursuant to the terms of the By-Laws, provided that they are not in conflict with the terms of the Condominium Act, this Declaration, or the By-Laws.

**“Butternut Crossing Commercial Enterprises, LLC Unit”** means Unit 1, located on the first floor of the building, together with its Appurtenant Interest in the Common Elements.

**“Unit”** means any space designated as a Unit or a Unit in this Declaration together with its Appurtenant Interests. All such Units, are collectively, referred to as the “Units.”

**“Unit Owner”** means any owner of a Unit. All such owners of Units are, collectively, referred to as “Unit Owners.”

**“Unit Power of Attorney”** means the form of Power of Attorney attached hereto and made part hereof as **Exhibit D**.

## EXHIBIT B

### DESCRIPTION OF THE LAND

#### 618-620 North Townsend Street: Tax Parcel Number 017.-08-22.1 (UNIT 1)

The Unit designated as **Unit No. 1** in the Declaration comprising **BUTTERNUT CROSSING CONDOMINIUM** located in the City of Syracuse, County of Onondaga, New York, (hereinafter called the "**Property**"), made by Housing Visions Consultants, Inc. under the Condominium Act of the State of New York, as amended (Article 9-B of the Real Property Law of the State of New York), dated December \_\_, 2017 and recorded in the office of the County Clerk of Onondaga County on the \_\_\_ day of December, 2017 in Liber \_\_\_\_ of Deeds at page \_\_\_\_ (hereinafter called the "**Declaration**," ) which Unit is also designated as Unit 1, on page A1.1 of the Construction Drawings for **Butternut Crossings 618-620 N. Townsend Street, Syracuse** as certified and prepared by Holmes King Kallquist & Associates, Architects, and filed simultaneously with said Declaration in the Office of the County Clerk of Onondaga County (hereinafter called the "**Unit**"), together with others with the use of the Common Elements, as defined in said Declaration. The appurtenant interests of Unit 1 in the Common Elements is 29.5%. The land area of the Property is described as follows:

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Syracuse, County of Onondaga, State of New York being Lot 12 & part of Lot 11 of City Block 275D and being more particularly bounded and described as follows: Beginning at a point in the easterly line of North Townsend Street at the intersection of the southerly line of East Laurel Street thence North 59 deg. 25 min. 40 sec. East along the said southerly line of East Laurel Street, a distance of 79.50 feet to a point; thence South 30 deg. 32 min. 30 sec. East a distance of 50.00 feet to a point; thence North 59 deg. 25 min. 40 sec. East a distance of 36.00 feet to a point thence South 30 deg. 32 min. 30 sec. East a distance of 50.00 feet to a point; thence South 59 deg. 25 min. 40 sec. West a distance of 115.50 feet to a point in the said easterly line of North Townsend Street thence North 30 deg. 32 min. 30 sec. West along said easterly line of North Townsend Street, a distance of 100.00 feet to the point of beginning.

#### 618-620 North Townsend Street: Tax Parcel Number 017.-08-22.1 (UNIT 2)

The Unit designated as **Unit No. 2** in the Declaration comprising **BUTTERNUT CROSSING CONDOMINIUM** located in the City of Syracuse, County of Onondaga, New York, (hereinafter called the "**Property**"), made by Housing Visions Consultants, Inc. under the Condominium Act of the State of New York, as amended (Article 9-B of the Real Property Law of the State of New York), dated December \_\_, 2017 and recorded in the office of the County Clerk of Onondaga County on the \_\_\_ day of December, 2017 in Liber \_\_\_\_ of Deeds at page \_\_\_\_ (hereinafter called the "**Declaration**," ) which Unit is also designated as Unit 2, on pages A1.2 and A1.3 of the Construction Drawings for **Butternut Crossings 618-620 N. Townsend Street, Syracuse** as certified and prepared by Holmes King Kallquist & Associates, Architects, and filed simultaneously with said Declaration in the Office of the County Clerk of Onondaga County (hereinafter called the "**Unit**"), together with others with the use of the Common Elements, as defined in said Declaration. The appurtenant interests of Unit 2 in the Common Elements is 70.5%. The land area of the Property is described as follows:

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Syracuse, County of Onondaga, State of New York being Lot 12 & part of Lot 11 of City Block 275D and being more particularly bounded and described as follows: Beginning at a point in the easterly line of North Townsend Street at the intersection of the southerly line of East Laurel Street thence North 59 deg. 25 min. 40 sec. East along the said southerly line of East Laurel Street, a distance of 79.50 feet to a point; thence South 30 deg. 32 min. 30 sec. East a distance of 50.00 feet to a point; thence North 59 deg. 25 min. 40 sec. East a distance of 36.00 feet to a point thence South 30 deg. 32 min. 30 sec. East a distance of 50.00 feet to a point; thence South 59 deg. 25 min. 40 sec. West a distance of 115.50 feet to a point in the said easterly line of North Townsend Street thence North 30 deg. 32 min. 30 sec. West along said easterly line of North Townsend Skeet, a distance of 100.00 feet to the point of beginning.



## EXHIBIT C

### DESCRIPTION OF THE UNITS

The Condominium is divided into the Units. The references below are to the area and/or Existing Buildings as they exist on the Property as of the date of this Declaration, and in some cases, identify areas where additional construction or modification of the Buildings and/or Property is planned.

**Unit 1** - Consists of the real property described more particularly on **Exhibit B** attached hereto, together with all improvements now or hereafter located thereon, and, together with others, the use of the Common Elements. The surface area comprising Unit 1 appears on the schematic attached hereto and made a part hereof as **Exhibit F**. Unit 1 sometimes is referred to in this Declaration as the Butternut Crossing Commercial Enterprises, LLC Unit. The Appurtenant Interests of Unit 1 in the Common Elements is 29.5%.

**Unit 2** - Consists of the real property described more particularly on **Exhibit B** attached hereto, together with all improvements now or hereafter located thereon, and, together with others, the use of the Common Elements, and consists of the second and third floors of the Building and the real property on which the Building is located, except for the Common Elements appurtenant to all Units. The surface area included in Unit 2 appears on the schematic attached hereto and made a part hereof as **Exhibit F**. The Appurtenant Interests of Unit 2 in the Common Elements is 70.5%.

**EXHIBIT D**

**FORM OF UNIT POWER OF ATTORNEY  
UNIT OWNER POWER OF ATTORNEY**

Terms used in this Unit Owner Power of Attorney which are used (a) in the declaration (the "**Declaration**") establishing a plan for condominium ownership of the premises known as Butternut Crossing Condominium ("**Condominium**") under Article 9-B of the Real Property Law of the State of New York, dated \_\_\_\_\_, 2017, and recorded in the County Clerk's Office of the County of Onondaga, State of New York on \_\_\_\_\_, 2017 in \_\_\_\_\_, or (b) in the By-Laws attached to, and recorded together with the Declaration shall have the same meanings in this Power of Attorney as in the Declaration or the By-Laws.

The undersigned, \_\_\_\_\_, having an office at \_\_\_\_\_, being the owner of Unit \_\_\_\_\_ (the "**Unit**") in the Condominium, which Unit is designated and described as Unit No. \_\_\_\_\_ in the Declaration and also designated as tax map number \_\_\_\_\_ on the Floor Plans, hereby nominates, constitutes and appoints the persons who may from time to time constitute the Condominium Board, true and lawful attorneys-in-fact for the undersigned, coupled with an interest, with power of substitution, in their own names, as members of the Condominium Board or in the name of their designee (corporate or otherwise), on behalf of all Unit Owners, in accordance with such Unit Owners' respective interests in the Common Elements, subject to the provisions of the By-Laws then in effect, (1) (a) following due authorization by a majority of Condominium Board Members, to acquire or lease any Unit, together with its Appurtenant Interests, from any Unit Owner desiring to sell, convey, transfer, assign, surrender or lease the same to the Condominium



Board, (b) to acquire any Unit, together with its Appurtenant Interests, from any Unit Owner who elects to surrender the same pursuant to the By-Laws, and (c) following due authorization by a majority of the Condominium Board Members, to acquire any Unit, together with its Appurtenant Interests, which becomes the subject of a foreclosure or other similar sale, all on such terms and at such price or rental, as the case may be, as said attorneys-in-fact shall deem proper, in the name of the Condominium Board or its designee, corporate or otherwise, on behalf of all Unit Owners, and, after any such acquisition or leasing, to convey, sell, lease, sublease, mortgage or otherwise deal with (but not vote the interest appurtenant thereto) any such Unit so acquired by them, or to sublease any Unit so leased by them without the necessity of authorization by the Unit Owners, on such terms as said attorneys-in-fact may determine, granting to said attorneys-in-fact the power to do all things in the said premises which the undersigned could do if the undersigned were personally present, (2) to commence, pursue, appeal, settle and/or terminate administrative and certiorari proceedings to obtain reduced real estate tax assessments with respect to Units, including retaining counsel and taking any other actions that the Condominium Board deems necessary or appropriate, and (3) to execute, acknowledge and deliver (a) any declaration or other instrument affecting the Property that the Condominium Board deems necessary or appropriate to comply with any law, ordinance, regulation, zoning resolution, or requirement of the Building Department or any other public authority, applicable to the maintenance, demolition, construction, alteration, repair, or restoration of the Property, or (b) any consent, covenant, restriction, easement or declaration, or any amendment thereto, affecting the Property or the Common Elements that the Condominium Board deems necessary or appropriate.

The acts of a majority of such persons constituting the Condominium Board shall constitute the acts of said attorneys-in-fact.

The undersigned hereby irrevocably nominates, constitutes and appoints Housing Visions Consultants, Inc. (hereinafter referred to as "**Declarant**") as attorney-in-fact for the undersigned, coupled with an interest, with power of substitution, to amend from time to time the Declaration, By-Laws and the Rules and Regulations of the Condominium, or any of said documents, when such amendment (1) shall be required to reflect any changes in Unsold Units and/or the reapportionment of the Common Interests of the affected Unsold Units resulting therefrom made by Declarant in accordance with the Declaration, or (2) shall be required by (a) an Institutional Lender designated by Declarant to make a mortgage loan secured by a mortgage on any Unit, (b) any governmental agency having regulatory jurisdiction over the Condominium, or (c) any title insurance company selected by Declarant to insure title to any Unit, provided, however, that any amendment made pursuant to the terms of subdivision (1) or (2) of this paragraph shall not (i) change the Common Interest of the undersigned's Unit, (ii) require a material, physical modification to the undersigned's Unit, or (iii) adversely affect the priority or validity of the lien of any mortgage held by an Institutional Lender covering the undersigned's Unit unless the undersigned (in the event described in subdivision (i) or (ii) of this paragraph) or the holder of such mortgage (in the event described in subdivision (iii) of this paragraph) shall consent thereto by joining in the execution of such amendment. The terms, covenants, and conditions contained in, and the powers granted pursuant to, this paragraph shall remain in full force and effect until such time as Declarant shall cease to own any Unit in the Condominium.

This Power of Attorney shall be irrevocable.

**IN WITNESS WHEREOF**, the undersigned has/have executed this Power of Attorney as of the \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Unit Owner

By: \_\_\_\_\_  
(Printed Name)

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

\_\_\_\_\_  
Signature

STATE OF NEW YORK        )  
  ) SS;  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 2017 before me, the undersigned, a notary public in and for said state, personally appeared \_\_\_\_\_ 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/they executed the same in his/her/their capacity and that by his/her/their signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

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

**EXHIBIT E**

**BY-LAWS**

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**BY-LAWS**

**OF**

**BUTTERNUT CROSSING CONDOMINIUM**

**a Condominium located at  
618-620 NORTH TOWNSEND STREET, SYRACUSE, NEW YORK**

**Prepared by:**

**BOUSQUET HOLSTEIN PLLC  
110 WEST FAYETTE STREET  
ONE LINCOLN CENTER, SUITE 1000  
SYRACUSE, NEW YORK 13202  
(315) 422-1391**

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## BY-LAWS

### ARTICLE I

#### GENERAL

**Section 1.1** Purpose. The purpose of these By-Laws is to set forth the rules and procedures concerning the conduct of the affairs of the Condominium. The Condominium covers the Property, which consists of: (i) the Land, which is more particularly described in **Exhibit B** to the Declaration; (ii) the Building, which includes, without limitation, the Units; (iii) the Common Elements, and all easements, rights, and appurtenances belonging thereto, and all other property, real, personal, or mixed, intended for use in connection therewith. The Property is submitted to the provisions of the Condominium Act by the recording of the Declaration in the County Clerk's Office, of which Declaration these By-Laws form a part. The purpose of the Condominium is to carry on the acquisition, construction, management, maintenance, and care of the Building, improvements, and Common Elements, and to perform related functions with respect to the other portions of the Property.

**Section 1.2** Definitions. All capitalized terms used in these By-Laws that are not otherwise defined in any of the Articles hereof shall have the meanings set forth in **Exhibit A** to the Declaration, unless the context in which the same are defined in any of the Articles hereof shall have the meanings ascribed to them in such Articles, unless the context in which the same are used shall otherwise require. Each of the afore-described capitalized terms shall be applicable to singular and to plural nouns, as well as to verbs of any tense.

**Section 1.3** Applicability of By-Laws. These By-Laws are applicable to the Property and to the use and occupancy thereof.

**Section 1.4** Application of By-Laws. All present and future Unit Owners, mortgagees, lessees, sublessees, occupants of Units, and employees and guests of Unit Owners, as well as all other Persons who may use the Property, are and shall be subject to the Declaration, these By-Laws, and the Rules and Regulations, as each of the same may be amended from time to time. The acceptance of a deed or other instrument of conveyance, or the succeeding to title to, or the execution of a lease or sublease for, or the act of occupancy of a Unit shall constitute an agreement that the provisions of the Declaration, these By-Laws, and the Rules and Regulations, as each of the same may be amended from time to time, are accepted, ratified, and will be complied with.

**Section 1.5** Principal Office of the Condominium. The principal office of the Condominium shall be located either at the Property or at such other place reasonably convenient thereto as may be designated from time to time by the Condominium Board.

## ARTICLE II

### CONDOMINIUM BOARD

**Section 2.1** General. As more particularly set forth in Sections 2.4, 2.5, and 2.6 hereof, the affairs of the Condominium shall be governed by the Condominium Board. In exercising its powers and performing its duties under the Declaration and these By-Laws, the Condominium Board shall act as, and shall be, the Agent of the Unit Owners, subject to, and in accordance with, the terms of the Declaration and these By-Laws.

**Section 2.2** Status of the Condominium Board. Unless and until the Condominium Board shall incorporate in accordance with the terms of Section 2.4 hereof, the Condominium

Board shall have, to the extent permitted by Law, the status conferred upon unincorporated associations under, or pursuant to, the terms of the General Association Law of the State of New York. If the Condominium Board shall incorporate in accordance with the terms of Section 2.4 hereof, the Condominium Board shall have, to the extent permitted by Law, the status conferred upon it under, or pursuant to, the terms of the applicable statutes of the State of New York. In either event, however, the Condominium Board shall also have the status conferred upon it under, or pursuant to, the terms of the Condominium Act.

**Section 2.3** Principal Office of the Condominium Board. The principal office of the Condominium Board shall be located either at the Property or at such other place reasonably convenient thereto as may be designated from time to time by the Condominium Board.

**Section 2.4** Powers and Duties of the Condominium Board. The Condominium Board shall have all of the powers and duties necessary for, or incidental to, the administration of the affairs of the Condominium; provided, however, that the Condominium Board shall not have such powers and duties that by Law, or pursuant to the terms of the Declaration and these By-Laws, may not be delegated to the Condominium Board by the Unit Owners.

(A) Without intention to limit the generality of the foregoing in any respect, the Condominium Board shall have the following specific powers and duties:

- (i) (a) to operate, maintain, repair, restore, add to, improve, alter, and replace the Common Elements, as the Condominium Board shall deem necessary or proper in connection therewith, the purchase and leasing of supplies, equipment, and material, and (b) the employment, compensation, and dismissal of personnel;



(ii) to acquire, in the name of the Condominium Board or its designee, corporate or otherwise, and on behalf of the Unit Owners, all right, title, and interest in real and personal property deemed necessary or proper by the Condominium Board for use in connection with the ownership and operation of the Property as a condominium;

(iii) to maintain complete and accurate books and records with respect to the finances and the operation of the Condominium, including, without limitation, (a) detailed accounts, in chronological order, of receipts and expenditures affecting the Property; (b) detailed books of account of the Condominium Board; (c) other financial records, as well as other books of account of the Condominium, as may be required to be kept pursuant to the terms of these By-Laws; and (d) minutes and other records of all meetings held pursuant to the terms of these By-Laws;

(iv) to timely adopt a budget for the Condominium for each fiscal year thereof, setting forth, without limitation, (a) a detailed accounting of the anticipated Common Expenses for the ensuing fiscal year, and (b) a detailed projection of all anticipated sources and amounts of inflows of cash from whatever source derived, and income necessary to discharge the same;

(v) to approve the amount and the means and methods of payment of, and collection of, the Common Charges and Special Assessments from the Unit Owners;

(vi) to borrow money on behalf of the Condominium in accordance with Section 339-jj of the Real Property Law when required in connection with the operation, maintenance, repair, restoration, improvement, alteration, and replacement of the Common Elements, provided, however, that (a) the affirmative consent of a majority

of the members of the Condominium Board shall be required for the borrowing of any sum in excess of \$15,000 in any one fiscal year (regardless of the balance of any loans outstanding from previous fiscal years); (b) with respect to the operation, maintenance, repair, restoration, improvement, alteration, and replacement of the Common Elements, the affirmative consent of 100% of all Unit Owners shall be required for the borrowing of any sum in excess of \$15,000 in any one fiscal year - (regardless of the balance of any loans outstanding from previous fiscal years); (c) no lien to secure repayment of any sum borrowed may be created on any Unit or its Appurtenant Interests without the consent of the owner of such Unit; and (d) the documentation executed in connection with any such borrowing shall provide that, if any sum borrowed by the Condominium Board pursuant to this subparagraph shall not be repaid by the Condominium Board, any Unit Owner who pays to the creditor thereunder such proportion of the then outstanding indebtedness represented or secured thereby as such Unit Owner's Common Interest bears to the aggregate Common Interests of all Unit Owners shall be entitled to obtain from the creditor a release of any judgment or other lien that the said creditor shall have filed, or shall have the right to file against such Unit Owner's Unit;

(vii) to open and maintain bank accounts on behalf of the Condominium to designate the signatories required therefor which shall at no time be less than two (2);

(viii) to use the Common Charges and Special Assessments collected from Unit Owners, as well as all other funds held by the Condominium Board or received in connection with the operation of the Property, for the administration of the Condominium, including, without limitation, (a) the payment of Common Expenses; and

(b) the making of restorations, additions, alterations, and improvements to the Common Elements;

(ix) to obtain insurance for the Property, including the Units, pursuant to the terms of Section 5.4 hereof.

(x) to adjust and settle claims related to the Common Elements under insurance policies obtained pursuant to the terms of Section 5.4 hereof, and to obtain and deliver releases upon such adjustment and settlement from (a) all Unit Owners (except as otherwise provided herein); (b) all holders of mortgages and other liens on Units; and (c) all holders of any other interest in the Property;

(xi) to make, or to contract with others for the making of, repairs, maintenance, additions, and improvements to, and alterations, restorations, and replacements of, the Property after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings, all in accordance with the terms of these By-Laws;

(xii) to obtain and keep in force fidelity bonds, in amounts deemed appropriate by the Condominium Board, but in no event less than \$10,000, for (a) all members of the Condominium Board; (b) all officers and employees of the Condominium; and (c) the Managing Agent, and the premiums on all such fidelity bonds shall constitute a part of the Common Expenses;

(xiii) to adopt and amend the Rules and Regulations and to levy and authorize collection of fines against Unit Owners for violations of the Rules and

Regulations and these By-Laws (any such fines and fees shall be deemed to constitute Common Charges payable by Unit Owners of the Unit against which they are levied);

(xiv) to enforce by legal means the terms, covenants, and conditions contained in the Condominium Documents and to bring or defend against any proceedings that may be instituted on behalf of, or against, the Unit Owners;

(xv) to incorporate, to the extent and in the manner provided in the Condominium Act, provided, however, that (a) the certificate of incorporation and By-Laws of any such resulting corporation shall conform as closely as practicable to the terms of the Declaration and these By-Laws, and (b) the terms of the Declaration and these By-Laws shall prevail in the event of any inconsistency or conflict between the terms thereof and the terms of such certificate of incorporation and By-Laws;

(xvi) to organize corporations or other legal entities to act as the designees of the Condominium Board in acquiring rights, titles, and interests in real and personal property for use in connection with the ownership and operation of the Property as a condominium;

(xvii) to execute, acknowledge, and deliver (a) any declaration (including a declaration of single zoning lot) or other instrument affecting the Common Elements that the Condominium Board deems necessary or appropriate to comply with any law applicable to the maintenance, demolition, construction, alteration, repair, or restoration of the Common Elements; and (b) any consent, covenant, restriction, easement, or declaration affecting the Common Elements that the Condominium Board deems necessary or appropriate;

(xviii) to prepare, execute, acknowledge, and institute on behalf of all Unit Owners, as their attorney-in-fact, coupled with an interest, protests of real property tax assessments and tax certiorari proceedings with respect to the Common Elements and to assess any costs incurred thereby as a Common Expense; and

(xix) to carry out any other duties imposed upon the Condominium Board pursuant to the Declaration and these By-Laws.

(B) The Condominium Board shall be responsible for carrying out the duties imposed upon it under the Condominium Documents regardless of whether a Unit is vacant or occupied by the owner thereof or by a permitted lessee or other permitted occupant.

**Section 2.5** Exercise and Delegation of Powers and Duties.

(A) Any act within the power of the Condominium Board to perform, or deemed necessary or desirable to be performed by the Condominium Board, shall be performed by the Condominium Board or shall be performed on its behalf and at its direction by the agents, employees, or designees of the Condominium Board.

(B) The Condominium Board may from time to time appoint, by duly adopted resolutions, such committees as the Condominium Board may deem appropriate to perform such duties and services as the Condominium Board shall direct, each of which committee shall have, and may exercise, all of the powers delegated to it in its enabling resolution, subject, however, to the exceptions and limitations contained in paragraph (D) of this Section 2.5. Each committee shall have one member selected by each Unit Owner.

(C) The Condominium Board may employ a Managing Agent (who may be an affiliate of Declarant) to serve at a compensation approved by the Condominium Board and to perform such duties and services as the Condominium Board shall direct. Subject to the exceptions and limitations contained in paragraph (D) of this Section 2.5, the Condominium Board may delegate to the Managing Agent any of the powers granted to the Condominium Board in these By-Laws.

(D) Notwithstanding anything to the contrary contained in this Section 2.5, the Managing Agent shall not have or be entitled to exercise, and the Condominium Board shall not delegate to either of them or to any other committee, the powers or duties described in subparagraphs (ii), (iv), (v), (vi), and (xiii) of paragraph (A) of Section 2.4 hereof. In addition, neither the Managing Agent nor any of the committees described in paragraph (B) of this Section 2.5 shall have, or be entitled to exercise, any of the powers of the Condominium Board, except to the extent permitted by Law.

**Section 2.6** Number, Election, and Qualification of Members. The Condominium Board shall consist of three (3) individuals - one (1) individual appointed by the Unit 1 Owner (the "**Unit 1 Individual**"), and two (2) individuals appointed by the Unit 2 Owner (the "**Unit 2 Individuals**").

**Section 2.7** Term of Office of Members. The term of office of each of the three (3) individuals designated shall be fixed at one (1) year. Notwithstanding anything to the contrary contained in this Section 2.7, however, each member of the Condominium Board shall serve until his successor shall be designated or until removed under the provisions of these By-Laws.

**Section 2.8** Removal and Resignation of Members.



(A) Any member of the Condominium Board who was designated by a Unit Owner (or as to the third individual) pursuant to the terms hereof, may be removed, with or without cause, only by such Unit Owner. If any member of the Condominium Board is removed, his successor shall also be designated by the respective Unit Owner. Any member of the Condominium Board whose proposed removal is to be acted upon at a meeting of the Unit Owners shall be given prior written notice thereof and an opportunity to be present and heard thereat.

(B) Any member of the Condominium Board may resign his membership at any time by giving written notice thereof to the Condominium Board and, with respect to members of the Condominium Board designated as such by Declarant, to Declarant.

**Section 2.9** Vacancies.

(A) Any vacancy on the Condominium Board that is caused by the removal, resignation, or death of a member who was designated as such or elected by a Unit Owner shall be filled by an individual designated by such Unit Owner.

(B) Each member of the Condominium Board who is appointed thereto or designated as such to fill a vacancy pursuant to the terms of paragraph (A) or (B), respectively, of this Section shall serve as a member of the Condominium Board for the remainder of the term of the member replaced and until his successor shall be selected and qualified at the appropriate annual meeting of the Unit Owners pursuant to the terms of Section 4.9 hereof.

**Section 2.10** Organizational Meeting of the Condominium Board. The first meeting of the Condominium Board following each annual meeting of the Unit Owners shall be held within ten (10) days of such annual meeting, at such time and place as shall be both fixed informally by

a majority of the members of the Condominium Board and designated by the Secretary in a written notice given to all members thereof by personal delivery, mail, or electronic mail not later than five (5) business days prior to such date, with copies to counsel to each Unit Owner who requests copies of such notices in writing. At such meeting, the officers of the Condominium Board shall be elected.

**Section 2.11** Regular Meetings of the Condominium Board. Regular meetings of the Condominium Board may be held at such time and place as shall be determined from time to time by a majority of the members thereof. Written notice of all regular meetings of the Condominium Board shall be given by the Secretary to each member thereof by personal delivery, mail, or electronic mail at least five (5) business days prior to the day named for such meeting.

**Section 2.12** Special Meetings of the Condominium Board. The President may call a special meeting of the Condominium Board whenever he or she deems the same necessary or desirable. However, the President shall call such a meeting upon the written request of two (2) or more members of the Condominium Board. Written notice of all special meetings shall be given by the Secretary to each member thereof by personal delivery, mail, or electronic mail at least one (1) business day prior to the day named for such meeting, which notice shall state the time, place, and purpose of the meeting.

**Section 2.13** Waiver of Notice of Meetings. Any member of the Condominium Board may waive, at any time, notice of any meeting thereof in writing, and such waiver shall be deemed equivalent to the giving of notice. Attendance by a member of the Condominium Board at any meeting thereof shall constitute a waiver by him of notice of the time and place thereof. If



all of the members of the Condominium Board are present at any meeting thereof, no notice of such meeting shall be required and any business may be transacted at such meeting.

**Section 2.14 Quorum of the Condominium Board.** A quorum of the Condominium Board is required to be present at a Condominium Board meeting in order to make any determination or to transact any business. For purposes of all meetings of the Condominium Board, all members must be present to constitute a quorum for the transaction of business. In connection therewith, one or more members of the Condominium Board may participate in any meeting thereof by means of a conference telephone or similar communications equipment permitting all individuals participating in the meeting to hear each other at the same time, and such participation shall constitute presence at such a meeting for all purposes. If, at any meeting of the Condominium Board, there shall be less than a quorum present, a majority of the members of the Condominium Board in attendance may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business that might have been transacted at the meeting originally called but for the lack of a quorum may be transacted without further notice.

**Section 2.15 Conduct of Meetings.** The President shall preside at all meetings of the Condominium Board, and the Secretary shall faithfully record the minutes thereof, which minutes shall include the full text of all resolutions duly adopted by the Condominium Board and a record of all transactions and proceedings occurring thereat. The then current edition of Robert's Rules of Order, or any other rules of procedure from time to time acceptable to a majority of the Condominium Board, shall govern the conduct of the meetings of the Condominium Board unless the same shall be in conflict with the terms of the Declaration, these By-Laws, or the Condominium Act.

**Section 2.16** Decisions by the Condominium Board. Except as otherwise provided in the Declaration or these By-Laws, the vote of a majority of those Board Members attending a duly constituted meeting of the Condominium Board at which a quorum is present shall decide all matters on behalf of the Condominium Board. Alternatively, any decision that is required or permitted to be made by the Condominium Board may be made without a meeting thereof if all of the members of the Condominium Board shall individually or collectively consent in writing to such decision, and all such written consents shall be duly filed by the Secretary of the Condominium in the minutes of the Condominium Board. Notwithstanding the foregoing, the following action of the Condominium Board shall require the unanimous consent of the Board Members: Election and removal of officers.

**Section 2.17** Compensation of Members. No member of the Condominium Board shall receive any compensation from the Condominium for acting as such.

**Section 2.18** Common or Interested Members of the Condominium Board. Each member of the Condominium Board shall perform his duties, and shall exercise his powers, as a fiduciary, in good faith and with a view to the interests of the Condominium. To the extent permitted by Law, no contract or other transaction between the Condominium Board and either (i) any of its members, or (ii) any corporation, partnership, fiduciary, firm, association, or other entity in which any of the members of the Condominium Board are officers, directors, employees, partners, fiduciaries, beneficiaries, or principals, or are otherwise interested, pecuniarily or otherwise, shall be deemed either void or voidable because either (a) any such member of the Condominium Board was present at the meeting or meetings of the Condominium Board during which such contract or transaction was discussed, authorized, approved, or ratified; or (b) the vote of any such member was counted for such purpose, provided, however, that either

(x) the fact thereof is disclosed to, or known by, the Condominium Board or a majority of the members thereof and noted in the minutes thereof, and the Condominium Board shall authorize, approve, or ratify such contract or transaction in good faith, or (y) the fact thereof is disclosed to, or known by, a majority of Unit Owners, and a majority of Unit Owners shall authorize, approve, or ratify such contract or transaction.

**Section 2.19 Indemnification.**

(A) Indemnification of Board Members and Officers.

(i) Any person made, or threatened to be made, a party to an action or proceeding (other than one by or in the right of the Condominium to procure a judgment in its favor), whether civil or criminal, including an action by or in the right of the Condominium, which any member of the Condominium Board or an officer of the Condominium served in any capacity at the request of the Condominium, by reason of the fact that he, his testator, or intestate, was a member of the Condominium Board or an officer of the Condominium, shall be indemnified by this Condominium against judgments, fines, amounts paid in settlement, and reasonable expenses, including attorneys' fees actually and necessarily incurred by him in defense of such action or as a result of such action or proceeding, or any appeal therein, except that no indemnification shall be made to or on behalf of any member of the Condominium Board or an officer if a judgment or other final adjudication adverse to the member of the Condominium Board or an officer establishes that his acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or that he personally gained in fact a financial profit or other advantage to which he was not legally entitled.

(ii) The termination of any such civil or criminal action or proceeding by judgment, settlement, conviction, or upon a plea of *nolo contendere*, or its equivalent, shall not in itself create a presumption that any such member of the Condominium Board or officer acted in bad faith or was the result of active and deliberate dishonesty and was material to the cause of action so adjudicated, or that he personally gained in fact a financial profit or other advantage to which he was not legally entitled.

(iii) The Condominium shall indemnify any person made, or threatened to be made, a party to an action by or in the right of the Condominium to procure a judgment in its favor by reason of the fact that he, his testator, or intestate is or was a member of the Condominium Board or officer of the Condominium, or is or was serving at the request of the Condominium as a member of the Condominium Board or officer against amounts paid in settlement and reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense or settlement of such action, or in connection with an appeal therein, if such member of the Condominium Board or officer acted, in good faith, for a purpose which he reasonably believed to be in the best interest of the Condominium, except that no indemnification shall be made to or on behalf of any member of the Condominium Board or officer if a judgment or other final adjudication adverse to the member of the Condominium Board or officer establishes that his acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or that he personally gained in fact a financial profit or other advantage to which he was not legally entitled.

(iv) Payment of any amount due an officer or member of the Condominium Board, former officer or member of the Condominium Board, or the beneficiaries of a deceased former officer or member of the Condominium Board pursuant to the indemnification created by paragraph (i), (ii) or (iii) above shall be authorized by:

(a) Court Order; or

(b) By the Condominium Board acting by a quorum finding that the member of the Condominium Board or officer has met the standard of conduct established pursuant to paragraph (i), (ii), or (iii).

(c) If a quorum under subparagraph (b) is not obtainable or, even if obtainable, a quorum of disinterested directors so directs; or where a person who has been successful, on the merits or otherwise, in the defense of a civil or criminal action or proceeding of the character described in Section 722 of the Business Corporation Law as authorized in such Section, (x) by the Condominium Board upon the opinion in writing of independent legal counsel that indemnification is proper in the circumstances because the applicable standard of conduct set forth in paragraph (i), (ii), or (iii) above has been met by such member of the Condominium Board or officer; or (y) by the Unit Owners of the Condominium upon a finding that the member of the Condominium Board or officer has met the applicable standard of conduct set forth in paragraph (i), (ii), or (iii).

(v) Expenses incurred in defending a civil or criminal action or proceeding may be paid by the Condominium in advance of the final disposition of such action or proceeding upon receipt of an undertaking by or on behalf of such member or officer to repay such amount if the person receiving such advancement or allowance is ultimately found, under the procedure set forth in this Section, not to be entitled to indemnification or, where indemnification is granted, to the extent the expenses so advanced by the Condominium or allowed by the court exceed the indemnification to which he is entitled.

(vi) No indemnification, advancement, or allowance shall be made under this Section in any circumstances where it appears that, if there has been a settlement approved by the court, the indemnification would be inconsistent with any condition with respect to indemnification expressly imposed by the court in approving the settlement.

(vii) If any expenses or other amounts are paid by way of indemnification, otherwise than by court order or action by the Unit Owners, the Condominium shall, not later than the next annual meeting of Unit Owners unless such meeting is held within three (3) months from the date of such payment, and, in any event, within fifteen (15) months from the date of such payment, mail to its Unit Owners of record at the time entitled to vote for the election of members of the Condominium Board a statement specifying the person(s) paid, the amount(s) paid, and the nature and status at the time of such payment of the litigation or threatened litigation.



(viii) The members of the Condominium Board shall have no personal liability with respect to any contract, act, or omission of the Condominium Board or of any Managing Agent or manager in connection with the affairs or operation of the Condominium (except in their capacities as Unit Owners) and the liability of any Unit Owner with respect thereto shall be limited as set forth in Section 4.13 hereof. Every contract made by the Condominium Board or by the Managing Agent shall state that it is made by the Condominium Board or the Managing Agent, only as agent for all Unit Owners and that the members of the Condominium Board or the Managing Agent shall have no personal liability thereon (except in their capacities as Unit Owners). Any such contract may also provide that it covers the assets, if any, of the Condominium Board. To the extent permitted by Law, the members of the Condominium Board shall have no liability to Unit Owners, except that a member of the Condominium Board shall be liable for his or her own bad faith or willful misconduct. All Unit Owners shall jointly and severally, to the extent of their respective interests in their Units and their appurtenant Common Interests, indemnify each member of the Condominium Board against any liability or claim except those arising out of such member's own bad faith or willful misconduct. The Condominium Board may contract or effect any other transaction with any member of the Condominium Board, any Unit Owner, Declarant, or affiliate of any of them without incurring any liability for self-dealing, except in cases of bad faith or willful misconduct

(ix) Neither the Condominium Board nor any member thereof shall be liable for either

- (a) any failure or interruption of any utility or other services to be obtained by, or on behalf of, the Condominium Board or to be paid for as a Common Expense except when any such failure or interruption is caused by the acts of bad faith or willful misconduct of the Condominium Board or any member thereof; or
- (b) any injury, loss or damage to any individual or property, occurring in or upon either a Unit or the Common Elements and either (x) caused by the elements, by any Unit Owner, or by any other Person; (y) resulting from electricity, water, snow, or ice that may leak or flow from a Unit or any portion of the Common Elements; or (z) arising out of theft or otherwise.

(B) Nothing contained in this Section 2.19 shall limit any right to indemnification to which any member or any officer may be entitled by contract or under any law now or hereinafter enacted.

### ARTICLE III OFFICERS

**Section 3.1** General. The principal officers of the Condominium shall be the President, the Secretary/Vice President, and the Treasurer. The Condominium Board may appoint an Assistant Treasurer, an Assistant Secretary, and such other officers as in its discretion may be necessary or desirable. All agreements, contracts, deeds, leases, checks, and other instruments of the Condominium shall be executed, upon the direction of the Condominium



Board, by any two officers of the Condominium or by such lesser number of officers, or by such other Person or Persons as may be designated from time to time by the Condominium Board.

**Section 3.2** President. The President shall be the chief executive officer of the Condominium and shall preside at all meetings of the Unit Owners and of the Condominium Board. The President shall have all of the general powers and duties that are incident to the office of president of a stock corporation organized under the Business Corporation Law of the State of New York (hereinafter referred to as the "BCL"), including, but not limited to, the power to appoint the members of all committees created by the Condominium Board from amongst the Unit Owners from time to time as he may decide, in his discretion, are appropriate to assist in the conduct of the affairs of the Condominium.

**Section 3.3** Vice President. The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If both the President and the Vice President are unable to act, the Condominium Board shall appoint some other member of the Condominium Board to act in the place of the President on an interim basis. The Vice President shall also perform such other duties as shall be imposed upon him from time to time by the Condominium Board or by the President.

**Section 3.4** Secretary. The Secretary shall keep the minutes of all meetings of the Unit Owners and of the Condominium Board. The Secretary shall have charge of such books and papers as the Condominium Board shall direct and, in general, shall perform all of the duties that are incident to the office of secretary of a stock corporation organized under the BCL. The Vice President and Secretary can be the same person.

**Section 3.5** Treasurer. The Treasurer shall have the care and custody of the funds and securities of the Condominium and shall be responsible for keeping full and accurate financial records and books of account thereof, showing all receipts and disbursements necessary for the preparation of all required financial data. The Treasurer shall be responsible for the deposit of all funds and other securities in the name of the Condominium Board or in the name of the Managing Agent in such depositories as may from time to time be designated by the Condominium Board and, in general, shall perform all of the duties incident to the office of treasurer of a stock corporation organized under the BCL.

**Section 3.6** Election, Term of Office and Qualification of Officers. Each of the officers of the Condominium shall be elected annually by a majority vote of the Condominium Board taken at the organizational meeting of each new Condominium Board, and shall serve at the pleasure of the Condominium Board. The President, Secretary/Vice President, and the Treasurer shall be elected from amongst the members of the Condominium Board. Such officers need not be Unit Owners and need not have any interest in the Condominium.

**Section 3.7** Removal and Resignation of Officers. Any officer of the Condominium Board may be removed from office, with or without cause, by an affirmative vote of a majority of the members of the Condominium Board. In addition, any officer may resign at any time by giving written notice to the Condominium Board. Finally, if the President, Secretary/Vice President, or the Treasurer of the Condominium shall cease to be or shall be suspended as a member of the Condominium Board during his term of office, such officer shall be deemed to have resigned his office effective upon the date upon which his membership shall cease.

**Section 3.8** Vacancies. Any vacancy in an office shall be filled by a majority vote of the Condominium Board at any regular meeting of the Condominium Board or at a special meeting thereof called for such purpose.

**Section 3.9** Compensation of Officers. No officer of the Condominium shall receive any compensation from the Condominium for acting as such.

**Section 3.10** Indemnification of Officers. Each officer shall be indemnified as set forth in Section 2.19.

#### ARTICLE IV

#### UNIT OWNERS

**Section 4.1** Annual Meetings of the Unit Owners. The first annual meeting of the Unit Owners shall be held within approximately thirty (30) days after the First Closing. At such meeting, a member of the Condominium Board shall be designated, as provided both in this Article IV and in Article II hereof. Thereafter, annual meetings of the Unit Owners shall be held on or about the anniversary date of the first annual meeting. At each such subsequent meeting, the Unit Owners (including Declarant) shall elect successors to the members of the Condominium Board whose term of office expires on the day of such meeting and shall transact such other business as may properly come before such meeting.

**Section 4.2** Special Meetings of the Unit Owners. The President shall call a special meeting of the Unit Owners whenever so directed by a duly adopted resolution of the Condominium Board or upon receipt by the Secretary of a petition calling for such a meeting signed by Unit Owners having, in the aggregate, not less than 33% of the Common Interests of

all Unit Owners. Each such resolution or petition shall set forth, in reasonable detail, the purposes for calling such a meeting, and no business shall be transacted at such special meeting except business reasonably related to such stated purposes.

**Section 4.3** Place of Meetings. Meetings of the Unit Owners shall be held at the principal office of the Condominium or at such other suitable and convenient place in the City in which the Property is located as may be designated by the Condominium Board.

**Section 4.4** Notice of Meetings.

(A) The Secretary of the Condominium shall give notice of each annual or special meeting of the Unit Owners to all Unit Owners then of record entitled to vote at such meeting, which notice shall set forth the purpose, time, and place of such meeting. Such notice may be given to any Unit Owner by personal delivery, mail, overnight mail, or electronic mail addressed to his address at the Property, not less than ten (10) nor more than thirty (30) days prior to the day fixed for the meeting. Any Unit Owner may designate an address for the giving of notice other than such Unit Owner's address at the Property, or request that copies of notices be given to such Unit Owner's counsel by giving written notice thereof to the Secretary of the Condominium not less than ten (10) days prior to the giving of notice of the applicable meeting.

(B) If the business to be conducted at any meeting of the Unit Owners shall include the consideration of a proposed amendment to the Declaration or to these By-Laws, the notice of such meeting shall be mailed to all Unit Owners at least thirty (30) days prior to the day fixed for such meeting and shall be accompanied by a copy of the text of such proposed amendment.

**Section 4.5** Quorum of the Unit Owners. Except as otherwise provided in these By-Laws, the presence, in person or by proxy, of Unit Owners owning Units to which 100% of the aggregate Common Interests appertain, shall constitute a quorum at all meetings of the Unit Owners.

**Section 4.6** Conduct of Meetings. The President shall preside at all meetings of the Unit Owners, and the Secretary shall faithfully record the minutes thereof, which minutes shall include the full text of all resolutions duly adopted by the Unit Owners and a record of all transactions and proceedings occurring thereat. The then current edition of Robert's Rules of Order, or any other rules of procedure acceptable to a majority of the Unit Owners present at any meeting, in person or by proxy, shall govern the conduct of the meetings of the Unit Owners, unless the same shall be in conflict with the terms of the Declaration, these By-Laws, or the Condominium Act. All votes of the Unit Owners shall be tallied by the persons appointed by the presiding officer of the meeting.

**Section 4.7** Order of Business. The order of business at all meetings of the Unit Owners shall be as follows:

- (A) Roll call;
- (B) Proof of notice of meeting;
- (C) Reading of the minutes of the preceding meeting (unless waived);
- (D) Reports of officers of the Condominium;
- (E) Reports of members of the Condominium Board;
- (F) Reports of committees;

- (G) Election of inspectors of election (when so required);
- (H) Election of members of the Condominium Board (when so required);
- (I) Unfinished business; and
- (J) New business.

The order of business at meetings of Unit Owners can be adjusted in the sole discretion of the Condominium Board.

**Section 4.8** Voting.

(A) The Unit 1 Owner shall be entitled to cast one (1) vote at all meetings of the Unit Owners, and the Unit 2 Owner shall be entitled to cast two (2) votes at all meetings of the Unit Owners.

(B) Notwithstanding anything to the contrary contained herein, or in the Declaration, the following actions shall require the unanimous consent of the Unit Owners:

- (i) Material modifications of the use restrictions applicable to the Units; or
- (ii) A change in the interest of the Common Elements.

(C) Notwithstanding the terms contained in paragraph (A) hereof, no Unit Owner may vote at any meeting of the Unit Owners if the Condominium Board has perfected a lien against such Unit Owner's Unit and the amount necessary to release such lien has not been paid at the time of such meeting. In addition, neither the Condominium Board nor any designee thereof shall be entitled to cast the vote appurtenant to any Unit owned by the Condominium Board or such designee.



(D) A fiduciary shall be the voting member with respect to a Unit owned in a fiduciary capacity. In addition, if two (2) or more Persons or an entity owns a Unit they shall designate one (1) Person amongst them to cast the vote appurtenant to their Unit in a writing given to the Secretary of the Condominium, and the vote of such designee shall be binding upon all of such Persons. Failing such a designation, all of such Persons shall mutually cast a vote under one (1) ballot without division, and the concurrence of all such Persons shall be conclusively presumed if any one of them purports to cast a vote without protest being contemporaneously made to the individual presiding over the meeting at which such vote is taken. If protest is made, the vote appurtenant to such Unit shall be counted solely for the purpose of determining whether a quorum is present for such voting.

(E) The owner(s) of any Unit may designate any Person to act as a proxy on his behalf. The designation of any such proxy shall be made in a written notice both signed and dated by the designator and delivered to the Secretary of the Condominium at or before the appointed time for the meeting(s) during which the same is to be effective. Any such designation shall be revocable at any time upon written notice given to the Secretary of the Condominium; however, no revocation of such designation shall be effective with respect to any votes cast by such proxy prior to the receipt of such revocation notice by the Secretary of the Condominium or, if such revocation is made at a meeting of the Unit Owners during which the Secretary of the Condominium is not in attendance, by the individual acting as the secretary of such meeting, except with respect to the designation of a Permitted Mortgagee to act as the proxy of its mortgagor(s), no designation to act as a proxy shall be effective for a period in excess of six (6) months after the date thereof.

**Section 4.9** Action Without a Meeting. Any action required or permitted to be taken by the Unit Owners at a duly constituted meeting may be taken without such a meeting if the number of Unit Owners sufficient (both in absolute number and in aggregate Common Interests whenever applicable) to approve such an action at a duly constituted meeting of the Unit Owners pursuant to the Declaration or to these By-Laws consent in writing to the adoption of a resolution approving such action. All written consents given by Unit Owners pursuant to this Section 4.9 shall be retained in the records of the Condominium, together with a true copy of the resolutions to which they relate.

**Section 4.10** Title to Units. Title to any Unit may be taken by any Person or by any two (2) or more Persons as joint tenants, tenants in common, or tenants by the entirety, as may be appropriate. The sale of a Unit to a corporation, partnership, limited partnership, trust or any other entity shall require the delivery to the Condominium Board or its managing agent of such documents as are reasonably requested by the Condominium Board.

**Section 4.11** Contractual Liability of Unit Owners. Every contract made by the Condominium Board, by any officer of the Condominium, or by any superintendent or Managing Agent of the Buildings shall state (if obtainable and in addition to the limitation of liability of the members of the Condominium Board and the officers of the Condominium pursuant to the terms of Sections 2.19 and 3.10 hereof, respectively) that the liability of any Unit Owner with respect thereto shall be limited to (i) such proportionate share of the total liability thereunder as the Common Interest of such Unit Owner bears to the aggregate Common Interests of all Unit Owners in the case of a contract relating to the Common Elements, and (ii) such Unit Owner's interest in his Unit and its Appurtenant Interests, unless otherwise provided by Law.



**ARTICLE V**  
**OPERATION OF THE PROPERTY**

**Section 5.1** Maintenance and Repairs.

(A) Except as otherwise provided in the Declaration or in these By-Laws, all painting, decorating, maintenance, repairs, and replacements, whether structural or non-structural, ordinary or extraordinary:

(i) in or to any Unit and all portions thereof shall be performed by the owner of such Unit at such Unit Owner's sole cost and expense; and

(ii) in or to the Common Elements shall be performed by the Condominium Board and the cost and expense thereof shall be charged to the Unit Owners as provided in these By-Laws and the Declaration as a Common Expense.

Promptly upon obtaining knowledge thereof, each Unit Owner shall report to the Condominium Board or to the Managing Agent any defect or need for repairs for which the Condominium Board is responsible pursuant to the terms hereof. All painting, decorating, maintenance, repairs, and replacements performed hereunder or otherwise, whether by or at the behest of a Unit Owner or the Condominium Board, shall be performed in such a manner as shall not unreasonably disturb or interfere with any Unit Owners or the tenants and occupants of any Units.

(B) Notwithstanding anything to the contrary provided in paragraph (A) of this Section 5.1, if any painting, decorating, maintenance, repairs, or replacements to the Property or any part thereof, whether structural or non-structural, ordinary or extraordinary, is necessitated

by the negligence, misuse, or abuse of (i) any Unit Owner, the entire cost and expense thereof shall be borne by such Unit Owner, or (ii) the Condominium Board, the entire cost and expense thereof shall be borne by the Condominium as a Common Expense attributable to all Unit Owners if relating to the Common Elements, except, in all events, to the extent that such cost and expense is covered by the proceeds of any insurance maintained pursuant to the terms of these By-Laws. Similarly, each Unit Owner shall be responsible for any and all damage to any Unit or to the Common Elements resulting from such Unit Owner's failure to maintain, repair, or replace his Unit or any portion thereof as required herein.

(C) Prior to completion of the development and construction contemplated in the Declaration, each Unit and all portions of the Common Elements shall be kept in compliance with all applicable codes and laws and in condition, order, and repair at least comparable to that in which they exist as of the Effective Date.

(D) Upon completion of the development and construction contemplated in the Declaration, each Unit and all portions of the Common Elements shall be kept in first-class condition, order, and repair (and free of snow, ice, and accumulation of water with respect to any roof, balcony, or terrace, or other part of the Property exposed to the elements) by the Unit Owner or the Condominium Board, whichever is responsible for the maintenance thereof as set forth herein, and such Unit Owner or the Condominium Board, as the case may be, shall promptly make or perform, or cause to be made or performed, all maintenance work (including, without limitation, painting, repairs, and replacements) that is necessary in connection therewith. In addition, the public areas of the Buildings and those areas exposed to public view shall be kept in good appearance, in conformity with the dignity and character of the Buildings, by (i) the

Condominium Board, with respect to such parts of Units required to be maintained by it, and (ii) by each Unit Owner, with respect to each such Unit Owner's Unit.

(E) In the event that any Unit Owner, after receipt of written notice from the Condominium Board, fails or neglects in any way to perform any of its obligations with respect to the painting, decorating, maintenance, repair, or replacement of its Unit as provided in this Section 5.1 or of any Common Elements for which such Unit Owner is responsible under the Declaration or these By-Laws, the Condominium Board may perform or cause to be performed such painting, decorating, maintenance, repair, or replacement unless such Unit Owner, within five (5) days after receiving notice of such default by the Condominium Board, cures such default, or in the case of a default not reasonably susceptible to cure within such period, commences and thereafter prosecutes to completion, with due diligence, the curing of such default. All sums expended and all costs and expenses incurred in connection with the making of any such painting, decorating, maintenance, repair, or replacement in such Unit Owner's Unit or to any such Common Element for which such Unit Owner is responsible, together with interest thereon at the rate of 2% per month (but in no event in excess of the maximum rate permitted by Law), shall be immediately payable by such Unit Owner to the Condominium Board and shall, for all purposes hereunder, constitute Common Charges payable by such Unit Owner.

**Section 5.2** Alterations, Additions, Improvements, or Repairs in and to Units.

(A) After completion of the contemplated development and construction of the Units, and subject to the terms of paragraph (B) of this Section 5.2, Unit Owners may make any alterations, improvements, or repairs to such Unit Owner's Unit that do not impair the structural integrity of any other Unit or unreasonably alter the exterior appearance of the Unit. The

Condominium Board may, at its sole option, require the Unit Owner to procure and agree to maintain during the course of such work such insurance as the Condominium Board may reasonably prescribe and to execute an agreement, in form and substance satisfactory to the Condominium Board, setting forth the terms and conditions under which such alteration, addition, or improvement may be made, including, without limitation, the indemnity referred to in paragraph (D) hereof and the days and hours during which any such work may be done.

(B) All alterations, additions, improvements, and repairs by Unit Owners shall be made in compliance with Law. In connection therewith, the Condominium Board shall execute applications to any departments of the City of Syracuse, or to any other governmental agencies having jurisdiction thereof, for any and all permits required in connection with the making of alterations, additions, improvements, or repairs in or to a Unit, provided that, with respect to all such work of a structural nature to a Unit (but other than that of the nature described in paragraph (B) hereof), the same was approved by the Condominium Board pursuant to the terms of paragraph (A) hereof.

(C) Neither the Condominium Board nor any Unit Owner (other than the Unit Owner(s) making any alterations, improvements, additions, or repairs, or causing any of the same to be made, in or to his or their Unit(s)) shall incur any liability, cost, or expense either (i) in connection with the preparation, execution, or submission of the applications referred to in paragraph (B) hereof; (ii) to any contractor, subcontractor, materialman, architect, or engineer on account of any alterations, improvements, additions, or repairs made or caused to be made by any Unit Owner; or (iii) to any Person asserting any claim for personal injury or property damage arising therefrom. Any Unit Owner(s) making any alterations, improvements, additions, or repairs, or causing any of the same to be made, in or to his or their Unit(s), shall agree (in a

writing executed and delivered to the Condominium Board, if the Condominium Board shall so request), and shall be deemed to agree (in the absence of such writing), to indemnify and hold the Condominium Board, the members of the Condominium Board, the officers of the Condominium, the Managing Agent, and all other Unit Owners harmless from and against any such liability, cost, and expense.

(D) In addition to the requirements set forth above in this Section 5.2, until a permanent certificate of occupancy is obtained for the Building, no Unit Owner shall make any alterations in or to its Unit not consistent with the Plans and Specifications or Floor Plans without first notifying Declarant in writing and complying with Declarant's reasonable requirements with respect to the alterations.

If any Unit Owner commences any such alterations in violation of the foregoing terms and conditions, or fails to comply with the reasonable requirements of the Condominium Board in connection with the alterations, the Condominium Board shall be entitled to cause such work by the Unit Owner to be halted, including, without limitation, to cause the Managing Agent to deny access to the Buildings to the Unit Owner's workers and suppliers, until the Unit Owner complies with the same. During the period until such Unit Owner is permitted hereunder to resume its work, the Condominium Board shall have the right to perform any and all work in and to such Unit Owner's Unit as shall be necessary, in the Condominium Board's sole judgment, in order to avoid any delay in obtaining a temporary or permanent certificate of occupancy for the Buildings (or any amendment to, or extension of, the certificate of occupancy if theretofore issued), whether or not such work shall be in compliance with the Plans and Specifications for the work theretofore performed by, or on behalf of, such Unit Owner. The cost and expense of any such work performed by the Condominium Board shall be borne by such Unit Owner and

shall be paid to the Condominium Board within fifteen (15) days of the Condominium Board's written demand therefor.

**Section 5.3** Alterations, Additions, or Improvements to the Common Elements.

Except as otherwise provided in the Declaration or in these By-Laws, all necessary or desirable alterations, additions, or improvements in or to any of the Common Elements shall be made by the Condominium Board, and the cost and expense thereof shall constitute a Common Expense attributable to all Unit Owners.

**Section 5.4** Insurance.

(A) If the same shall be obtainable, the Condominium Board shall obtain, and shall maintain in full force and effect, special multi-peril insurance policies, including fire with extended "all risk" coverage, replacement cost coverage, and agreed valuation, vandalism, and malicious mischief endorsements, insuring the Building, except the space defined by the dimensions of the Units and any appliances, fixtures, improvements, or any furniture, furnishings, decorations, belongings, or other personal property contained within the Units, together with all service machinery contained therein and covering the interests of the Condominium, the Condominium Board, all of the Unit Owners, and all Permitted Mortgagees, as their respective interest may appear. Each of the said policies shall contain:

- (i) waivers of (a) subrogation, (b) any defense based upon co-insurance or other insurance, (c) invalidity arising out of any acts of the insured, and (d) pro-rata reduction of liability;



(ii) a provision that any adjustment of loss will be made by the Condominium Board and that all proceeds thereof shall be paid to the Condominium Board;

(iii) a New York standard mortgagee clause in favor of each Permitted Mortgagee, which shall provide that the proceeds thereof shall be paid to such Permitted Mortgagee as its interest may appear, subject, however, to the loss payment provisions in favor of the Condominium Board set forth in subparagraph (ii) above and in Section 5.5 hereof;

(iv) a provision that such policy may not be either canceled or substantially modified except upon at least thirty (30) days' prior written notice to the Condominium Board and all insureds who may have requested such notice, including Permitted Mortgagees. Duplicate originals or certificates of insurance of all such policies and of all renewals thereof, together with proof of payment of premiums, shall be on file at the office of the Managing Agent. Copies thereof shall be delivered to any Unit Owner or Permitted Mortgagee on written request thereof;

(v) be written on ISO Special Form, equivalent or better with the following endorsements attached:

- (a) replacement cost value;
- (b) agreed value or coinsurance must be waived;
- (c) building ordinance coverage for undamaged portion

for full building limits;

(d) demolition and increased cost of construction equal to 10% of building limits each or 20% of building limits if combined;

(e) equipment breakdown (if not insured separately) and other coverage which may be considered common for similar property and as may be decided by the Condominium Board.

(vi) a provision that deductibles shall not exceed \$25,000 for all perils insured.

(B) The Condominium Board shall also obtain and maintain, to the extent it deems applicable and practicable:

(i) comprehensive general liability insurance, covering all claims for personal injury or property damage arising out of any occurrence on the Property and listing as co-insureds (a) the Condominium Board and each member thereof, (b) the Managing Agent or manager, if any, (c) each officer and employee of the Condominium and (d) each Unit Owner; except, however, that such insurance shall not cover any liability of a Unit Owner arising from occurrences within his own Unit, if any;

(ii) rent insurance;

(iii) worker's compensation and New York State disability benefits insurance;

(iv) boiler and machinery insurance;

(v) water damage insurance;

(vi) officers and directors liability insurance;



(vii) fidelity insurance and bonds covering all officers, directors, and employees of the Condominium and Managing Agent;

(viii) umbrella insurance; and

(ix) such other insurance as the Condominium Board shall from time to time determine.

Each of the aforementioned policies of insurance shall also cover cross-liability claims of one insured against another.

(C) All policies of insurance to be maintained by the Condominium Board shall contain such limits as the Condominium Board shall from time to time determine, provided, however, that:

(i) with respect to insurance policies maintained by the Condominium Board pursuant to paragraph (A) hereof, the coverage shall be in an amount equal to not less than 80% of the full replacement cost of the Building, exclusive of footings and foundations, without deduction for depreciation, as approved by a fire insurance company, a qualified insurance broker, or another qualified source;

(ii) with respect to insurance policies maintained by the Condominium Board pursuant to subparagraph (i) of paragraph (B) hereof, such policies shall contain the following limits: \$1,000,000 per occurrence, \$2,000,000 aggregate; \$1,000,000 Personal & Advertising Injury; \$2,000,000 Products/Completed Operations Aggregate; \$100,000 Fire Legal Liability; and \$10,000 Med Pay. The deductible for this coverage should not exceed \$1,000 per occurrence and shall include endorsements for the Unit

Owners to be additional insureds. Coverage shall extend to the Condominium as named insured and include members of the Condominium Board. The policy shall also include Non-Owned and Hired Auto liability coverage for \$1,000,000 limit, which policy shall have no exclusion for punitive damages, assault and battery. If pollution exclusion is attached, the policy must provide an exception for Hostile Fire and Building Heating/Cooling equipment.

(iii) with respect to insurance policies maintained by the Condominium Board pursuant to subparagraph (ii) of paragraph (B) hereof; the coverage shall be in an amount not less than the aggregate of all of the Unit Owners' Common Charges for one year.

(iv) with respect to the insurance policies maintained by the Condominium Board pursuant to subparagraph (viii) of paragraph B hereof, the coverage shall be in an amount of \$4,000,000.

Any insurance policies maintained by the Condominium Board may also provide for such deductible amounts as the Condominium Board shall determine. The Condominium Board shall review the limits of each insurance policy, as well as the amount of any deductible sum thereunder, at least once each year.

(D) The cost of all insurance maintained by the Condominium Board pursuant to this Section 5.4, shall be borne by the Unit Owners as a Common Expense.

(E) Unit Owners must carry other insurance for their own benefit insuring the contents of their Units and liability insurance with respect to acts occurring therein, and all such policies shall include the Condominium Board, the Condominium, the Managing Agent, if any,

the other Unit Owners, and such others as the Condominium Board may reasonably require, as additional insureds, and all such policies shall contain waivers of subrogation, and further provided that the liability of the carriers issuing the insurance maintained by the Condominium Board shall not be affected or diminished by reason of any such additional insurance carried by any Unit Owner.

(F) In the event of a conflict between the provisions the Declaration or these Bylaw conflict with the provisions of Exhibit L of that certain First Amended and Restated Operating Agreement of Butternut Crossing, LLC, the provisions of Exhibit L will control.

**Section 5.5** Casualty or Condemnation.

(A) In the event that the Common Elements, or any part thereof, is damaged or destroyed by fire or other casualty (“**Casualty Loss**”), or is taken in condemnation or by eminent domain (“**Taking**”), the net insurance proceeds payable under the insurance policies maintained by the Condominium Board pursuant to the terms of Section 5.4 hereof by reason of such Casualty Loss or the net condemnation awards receivable by reason of such Taking, as the case may be, shall be payable to the Condominium Board. All such moneys actually received (“**Trust Funds**”) shall be held in trust for the benefit of all Unit Owners, with respect to the portion thereof allocated to a Casualty Loss or to a Taking of the Common Elements and their Permitted Mortgagees and shall be disbursed pursuant to the terms of this Section 5.5. Furthermore, the terms and conditions set forth in this Section 5.5 are subject to the terms set forth in the Permitted Mortgages. Notwithstanding anything to the contrary contained either in this paragraph (A) or elsewhere in this Section 5.5, however, no Unit Owner whose Unit, or any portion thereof, is taken in condemnation or by eminent domain (whether or not all or a part of the Common Elements are contemporaneously taken) shall be deemed to have waived whatever

rights that he may have to pursue a separate claim against the condemning authority by reason thereof.

(B) The Condominium Board shall arrange for the prompt repair or restoration (“**Work**”) of (i) in the event of a Casualty Loss, the portion(s) of the Common Elements affected by such Casualty Loss, or (ii) in the event of a Taking, the portion(s) of the Common Elements affected by such Taking.

(C) In the event that Work shall be performed pursuant to the terms of paragraph (B) of this Section 5.5, the Condominium Board shall disburse the Trust Funds to the contractors engaged in the Work in appropriate progress payments. If the Trust Funds shall be less than sufficient to discharge the cost and expense of performing the Work, the Condominium Board shall levy a special assessment against all Unit Owners for the amount of such deficiency in proportion to their respective Common Interests, for Work to the Common Elements and against all Unit Owners, and all proceeds of such special assessment shall become part of the Trust Funds. If, conversely, the Trust Funds shall prove to be more than sufficient to discharge the cost and expense of performing the Work, such excess shall be paid to all Unit Owners in proportion to their respective Common Interests, with respect to Work to the Common Elements, except that no payment shall be made to a Unit Owner until there has first been paid, out of such Unit Owner’s share of such excess, such amounts as may be necessary to reduce unpaid liens on the Unit Owner’s Unit (other than mortgages that are not Permitted Mortgages) in the order of priority of such liens. Notwithstanding the foregoing, however, in the event that the Unit Owners are assessed pursuant to the terms of the second sentence of this paragraph (C) for any projected deficiency in the amount of the Trust Funds available to the Condominium Board and, after the payment of all costs and expenses incurred in connection with the Work, any portion of

the Trust Funds remaining unspent, such excess Trust Funds shall, to the extent of such special assessment, be deemed to be, and shall constitute, an unspent special assessment and shall be paid to the Unit Owners so assessed in proportion to their respective Common Interests, with respect to Work to the Common Elements, free of any claim of any lienor (including, without limitation, any Permitted Mortgagee).

(D) [Reserved]

(E) In the event that the damage resulting from a Casualty Loss shall (i) render one or more Units wholly or partially unusable for the purposes permitted herein and in the Declaration, or (ii) destroy the means of access to one or more Units, the installments of Common Charges otherwise payable by the owner of any Unit so affected thereby shall proportionately abate until such Unit shall again be rendered usable for such purposes and/or until the means of access thereto shall be restored, as the case may be.

(F) If a portion of any Unit shall be taken in condemnation or by eminent domain, the Common Interest appurtenant to such Unit shall be adjusted in the proportion that the total floor area of such Unit after such Taking bears to the total floor area of such Unit prior to such Taking. The Condominium Board shall promptly prepare and record an amendment to the Declaration reflecting the new Common Interest appurtenant to such Unit, which amendment shall be executed by the owner of such Unit together with the holders of record of any liens thereon (or, in lieu of execution by such Unit Owner and lienors, the same may execute a consent to such amendment in recordable form). Following the Taking of a portion of a Unit and the recording of the aforementioned amendment to the Declaration, the votes appurtenant to such Unit shall be based upon the new Common Interest of such Unit, and, in the event of a Taking of

an entire Unit, the right to vote appurtenant to such Unit shall wholly terminate. In either event, the Common Interests of the other or remaining Units shall be adjusted accordingly and reflected in an amendment to the Declaration duly executed and acknowledged by the Condominium Board and the owners of all of the other or remaining Units together with the holders of the Permitted Mortgages.

(G) As used in this Section 5.5, the terms:

**"prompt repair or restoration"** shall mean that the Work is to be commenced not more than sixty (60) days after the date upon which the Condominium Board notifies the Unit Owners that it has received the Trust Funds, whether or not the same are sufficient to discharge the cost and expense of the Work; and

**"promptly resolve"** shall mean that a resolution shall be duly made not more than sixty (60) days after the date upon which the Condominium Board notifies the Unit Owners that it has received the Trust Funds and that the same are or are not sufficient to discharge the estimated cost and expense of the Work, as the case may be.

**Section 5.6** Use of the Property

(A) No nuisance shall be allowed on the Property, nor shall any use or practice be allowed that either is a source of annoyance to its owners or interferes with the peaceful possession or proper use of the Property by its owners or occupants or which allows airborne pollutants into other Units. No immoral, improper, offensive, or unlawful use shall be made of the Property or any portion thereof, and all valid Laws relating to any portion of the Property shall be complied with at the sole cost and expense of the respective Unit Owners or the Condominium, whoever shall have the obligation to maintain or repair such part of the Property.



(B) Nothing shall be done or kept in any Unit or in any of the Common Elements that would unreasonably increase the rate of insurance for the Property, except upon the prior written consent of the Condominium Board. No Unit Owner shall permit anything to be done or kept in a Unit or in the Common Elements that will result in the cancellation of insurance on the Property or the contents thereof, or that would be in violation of any Law. No waste shall be committed in the Common Elements.

(C) Nothing shall be done in any Unit or in, on, or to the Common Elements that will impair the structural integrity of the Property or will structurally change the Building, except as is otherwise provided in the Declaration or in these By-Laws, without the prior written consent of the Condominium Board. In no event shall interior partitions contributing to the support of any Unit or the Common Elements be altered or removed.

**Section 5.7** Use of the Units.

(A) In order to provide for congenial occupancy of the Property and for the protection of the values of the Units, the use of Units shall be restricted to, and shall be in accordance with, the terms contained in the balance of this Section 5.7.

(B) The Units can be used for any purpose permitted by Law.

**Section 5.8** Use of the Common Elements. The Common Elements may be used only for the furnishing of the services and facilities, and for the other uses for which they are reasonably suited and capable. In addition, with respect to the Common Elements, no furniture, packages, or objects of any kind shall be placed in the lobbies, vestibules, public halls, stairways, public elevators, or any other part of the Common Elements without the prior written consent of the Owners of the Units. The lobbies, vestibules, public halls, stairways, and elevators that in

part comprise the Common Elements shall be used only for normal passage through them. Accordingly, the Owners of the Units shall require their tradesmen to utilize exclusively the elevator and entrance designated by the Condominium Board for transporting packages, merchandise, or other objects.

**Section 5.9** Intentionally Omitted.

**Section 5.10** Modification of the Rules and Regulations. The Rules and Regulations attached hereto are a part of these By-Laws. The Condominium Board shall have the right to amend, modify, add to, or delete any of the Rules and Regulations from time to time, provided, however, that any such amendment, modification, addition, or deletion may be overruled by a vote of 100% of all Unit Owners, in number and Common Interest. Copies of the text of any amendments, modifications, additions, or deletions to the Rules and Regulations shall be furnished to all Unit Owners not less than thirty (30) days prior to the effective date thereof. If any of the Rules and Regulations is inconsistent with other provisions of these By-Laws, the more restrictive provision shall control.

**Section 5.11** Real Estate Taxes. The Owner of each Unit shall directly pay to the City the taxes on its Unit or Units.

**Section 5.12** Fuel. Unless and until fuel is billed directly to Unit Owners by the supply company, the cost and expense of fuel (for heating and cooling) serving or benefiting any Unit and/or Common Element shall be (i) considered part of the expense of maintaining such Unit and/or Common Element, (ii) determined by the Condominium Board, (iii) paid by the Condominium Board, and (iv) charged to the respective Unit Owners as a Common Expense for such portion attributable to the Units, and all Unit Owners as a Common Expense for such



portion attributable to the Common Elements. In the event there is a particular or unique use being made of a Unit and/or Common Element, the Condominium Board shall cause a new survey to be made, the cost of which shall be borne by the Unit Owners as a Common Expense.

**Section 5.13 Water Charges and Sewer Repay.** Unless and until water is separately metered in a Unit and water charges and sewer rents are billed directly to a Unit Owner by the appropriate billing authority, the cost and expense of water serving or benefiting a Unit and/or Common Element shall be (i) considered part of the expense of maintaining such Unit and/or Common Element, (ii) determined by the Condominium Board, (iii) paid by the Condominium Board, and (iv) charged to the respective Unit Owners as a Common Expense for such portion attributable to their Unit, and all Unit Owners as a Common Expense for such portion attributable to the Common Elements. In the event there is a particular or unique use being made of a Unit, the Condominium Board shall cause a new survey to be made, the cost of which shall be borne by all the Unit Owners as a Common Expense.

**Section 5.14 Record and Audits.**

(A) The Treasurer of the Condominium, or the Managing Agent under the supervision of such Treasurer, shall keep full, detailed, and accurate records and books of account with respect to the financial affairs of the Condominium, which records and books of account shall include, without limitation, (i) a listing of all receipts of and expenditures by the Condominium Board and the Managing Agent, and (ii) a separate listing for each Unit, setting forth, among other things, the amount of each assessment of Common Charges and Special Assessments levied against such Unit, the date when due, the amounts paid thereon, and the balance, if any, remaining unpaid, as well as all Permitted Mortgages having an interest in such Unit.

(B) Within ninety (90) days after the end of each fiscal year of the Condominium, the Condominium Board shall submit to each Unit Owner, and, if so requested, to any Permitted Mortgagee, an annual report of the receipts and expenditures of the Condominium prepared and certified by an independent certified public accountant. The cost of preparing and distributing each such report shall be borne by the Condominium Board as a Common Expense. The fiscal year of the Condominium shall be a calendar year.

## ARTICLE VI

### COMMON CHARGES

#### **Section 6.1** Determination of Common Expenses and Fixing of Common Charges.

(A) From time to time, but not less frequently than once a year, the Condominium Board shall (i) prepare and adopt a budget for the Condominium, subject, in all respects, to the limitations set forth in Section 2.5 hereof; (ii) determine the aggregate amount of Common Charges necessary to be charged to the Unit Owners in order to meet the Common Expenses associated with the Common Elements; and (iii) allocate and assess such Common Charges amongst the Unit Owners in accordance with allocations set forth in the first year's budget. The Condominium Board shall advise all Unit Owners promptly thereafter in writing of the amount of Common Charges payable by each of them and, not later than ten (10) days prior to the date upon which the first installment of newly-determined Common Charges is due, shall furnish copies of the budget (in a reasonably itemized form) upon which such Common Charges are based to all Unit Owners and to their respective Permitted Mortgagees, if requested to do so in writing by such Permitted Mortgagees. The Condominium Board may, at its sole discretion, from time to time increase or decrease the amount of Common Charges allocated to the Units

and payable by the Unit Owners and may modify its prior determination of the Common Expenses for any fiscal year so as to increase or decrease the amount of Common Charges payable for such fiscal year or portion thereof; however, no such revised determination of Common Expenses shall have a retroactive effect on the amount of Common Charges payable by Unit Owners for any period prior to the date of such new determination. All Unit Owners will be given a copy of the proposed annual budget of the Condominium at least ten (10) days prior to the date set for adoption thereof by the Condominium Board.

(B) The failure or delay of the Condominium Board to prepare or adopt a budget or to determine the Common Expenses for any fiscal year or portion thereof shall not be deemed a waiver or modification in any respect of the covenants and provisions hereof or a release of any Unit Owner from the obligation to pay Common Charges. In such event, the Common Charges that were computed on the basis of the Common Expenses last determined for any fiscal year or portion thereof shall continue thereafter to be the Common Charges payable by the Unit Owners until a new determination of the Common Expenses shall be made.

(C) In addition to the foregoing duty to determine the amount of and assess Common Charges, the Condominium Board shall have the right, subject, in all respects, to the limitations contained in Section 2.5 hereof, to levy Special Assessments to meet the Common Expenses. All Special Assessments relative to the Common Elements shall be levied against all Unit Owners in proportion to their respective Common Interests, and Special Assessments may be payable either in one lump sum or in installments, as the Condominium Board shall determine, provided, however, that the Condominium Board shall give each Unit Owner not less than fifteen (15) days' written notice prior to the date upon which such Special Assessment, or the first installment thereof, shall be due and payable, which notice shall set forth, in reasonable

detail, the nature and purpose thereof. The Condominium Board shall have all rights and remedies for the collection of Special Assessments as are provided herein for the collection of Common Charges (including, without limitation, the provisions of Section 6.4 hereof).

(D) The excess of all rents, profits, and revenues derived from the rental or use of any space forming a part of, or included in, any Common Element remaining after deduction of all expenses incurred in connection with generating the same shall constitute income of the Unit Owners and shall be collected on behalf of the Unit Owners by the Condominium Board and applied against the Common Expenses attributable to the Common Elements for the fiscal year in which collected. In the event that such net rents, profits, and revenues, together with the Common Charges and any Special Assessments collected from the Unit Owners, for any year of operation shall exceed the Common Expenses for such year, then such excess shall be applied by the Condominium Board against the Common Expenses attributable to the Common Elements for the next succeeding year(s) of operation. No Unit Owner shall be entitled to a distribution of any portion of such excess unless the Condominium Board shall determine to distribute all or part of such excess to all Unit Owners pro-rata, in proportion to their respective Common Interest as appropriate, and any such distributions must be made out of the Common Charges collected from Unit Owners.

**Section 6.2** Payment of Common Charges.

(A) All Unit Owners (including Declarant with respect to Unsold Units for so long as the same are owned thereby) shall be obligated to pay Common Charges and Special Assessments assessed by the Condominium Board pursuant to the terms of Section 6.1 hereof at such time or times (but not less than annually) as the Condominium Board shall determine. Unless otherwise determined by the Condominium Board, Common Charges shall be payable in

installments on the first day of every month in advance. To the extent permitted by Law, the Condominium Board shall have a lien on each Unit, on behalf of all Unit Owners, for unpaid Common Charges and Special Assessments assessed against such Unit. Such lien, however, shall be subordinate, to the extent required by Law, to any liens for real estate taxes assessed against such Unit and any sums unpaid on a Permitted Mortgage recorded against the Unit.

(B) No Unit Owner shall be liable for the payment of any part of the Common Charges and any Special Assessments assessed against his Unit subsequent to a sale, transfer, or other conveyance by him of such Unit, together with its Appurtenant Interests, made in compliance with the terms of Article VII hereof. A Purchaser or other successor-in-title to the owner of a Unit shall be liable for the payment of all Common Charges and any Special Assessments accrued and unpaid against such Unit prior to his acquisition thereof; except that, to the extent permitted by Law, a Permitted Mortgagee acquiring title to a mortgaged Unit or a Purchaser at a mortgage foreclosure sale held with respect to a Permitted Mortgage shall not be liable, and such mortgaged Unit shall not be subject to a lien, for the payment of any Common Charges and Special Assessments assessed subsequent to the recording of such Permitted Mortgage and prior to the acquisition of title to such Unit by the Permitted Mortgagee or by such Purchaser. However, in the event of a foreclosure of a Permitted Mortgage (whether by sale, deed in lieu of foreclosure, or otherwise), the defaulting Unit Owner shall remain fully liable for the payment of all unpaid Common Charges and Special Assessments that accrued prior to such foreclosure or sale. Any excess proceeds from such foreclosure or sale shall be paid directly to the Condominium Board in payment of all unpaid Common Charges and Special Assessments. In the case of a Unit, any remaining unpaid Common Charges and Special Assessments that are



not collected from such foreclosure sale or from the defaulting Unit Owner shall be deemed a Common Expense, collectible from all those who are Unit Owners at the time the same is levied.

(C) Subject to the terms and conditions contained in these By-Laws, any Unit Owner may convey his Unit, together with its Appurtenant Interests, to the Condominium Board or to its designee, corporate or otherwise, on behalf of all Unit Owners, without being compensated therefor, and, in such event, be exempt from the payment of Common Charges and Special Assessments thereafter accruing, provided, however, that (i) all Common Charges and any Special Assessments then due and payable with respect to such Unit have been paid; (ii) such Unit is free and clear of all liens and encumbrances other than a Permitted Mortgage and the statutory lien for unpaid Common Charges and Special Assessments; and (iii) no violation of any provision of the Condominium Documents then exists with respect to such Unit. However, in no event shall Declarant be permitted to convey any Unsold Unit to the Condominium Board and thereby exempt itself from Common Charges and any Special Assessments attributable to such Unit thereafter accruing unless the aggregate Common Interests then appertaining to the Unsold Units constitute 15% or less of the total Common Interests then appertaining to all Units, at least five (5) years shall have elapsed from the date of the First Closing and, at the time of conveyance, Declarant shall pay to the Condominium Board an amount equal to the product of the then current monthly Common Charges for the Unsold Unit(s) being conveyed multiplied by twenty-four (24).

(D) No Unit Owner shall be exempted from liability for the payment of Common Charges or Special Assessments by waiving the use or enjoyment of any or all of the Common Elements or by abandoning his Unit (except with respect to a conveyance of the same

to the Condominium Board, without compensation, pursuant to the terms of paragraph (C) hereof), except as expressly provided to the contrary in paragraph (E) of Section 5.5.

**Rules and Regulations**  
**of**  
**Butternut Crossing Condominium**

Unit Owner agrees to comply with the following rules and regulations and with such reasonable modifications thereof and additions thereto as Condominium Board may hereafter from time to time make for the Building, and its Common Areas. Condominium Board shall not be responsible for the non-observance by any other Unit Owner of any of said rules and regulations:

- A. Unit Owner shall not exhibit, sell or offer for sale on the Property or in the Building any article or thing except those articles and things essentially connected with the stated use of the Property by the Unit Owner without the advance consent of Condominium Board.
- B. Unit Owner will not make or permit any use of the Property or any part for any use which would violate any agreements, terms, provisions and conditions of these rules and regulations or which directly or indirectly is forbidden by public law, ordinance or governmental regulation or which may be dangerous to life, limb, or property, or which may invalidate or increase the premium cost of any policy of insurance carried on the Building or covering its operations, or which will suffer or permit the Property or any part thereof to be used in any manner including storage therein which, in the judgment of Condominium Board, shall in any way impair or tend to impair the character, reputation or appearance of the Building as a high quality building, or which will impair or interfere with or tend to impair or interfere with any of the services performed by Condominium Board for the Building.
- C. Unit Owner shall not display, inscribe, print, paint, maintain or affix on any place in or about the Building any sign, notice, legend, direction, figure or advertisement, except at the doors of the Property and on the directory Board, and then only such name(s) and matter, and in such color, size, style, place and materials, as shall first have been approved by the Condominium Board. The listing of any name other than that of Unit Owner, whether at the doors of the Property, on the Building directory, or otherwise, shall not operate to vest any right or interest in the Property or be deemed to be the written consent of Condominium Board, it being expressly understood that any such listing is a privilege extended by Condominium Board.
- D. All persons entering or leaving the Commercial Unit of the Building between the hours of 6 p.m. and 8 a.m., Monday through Friday, or at any time on Saturdays, Sundays or

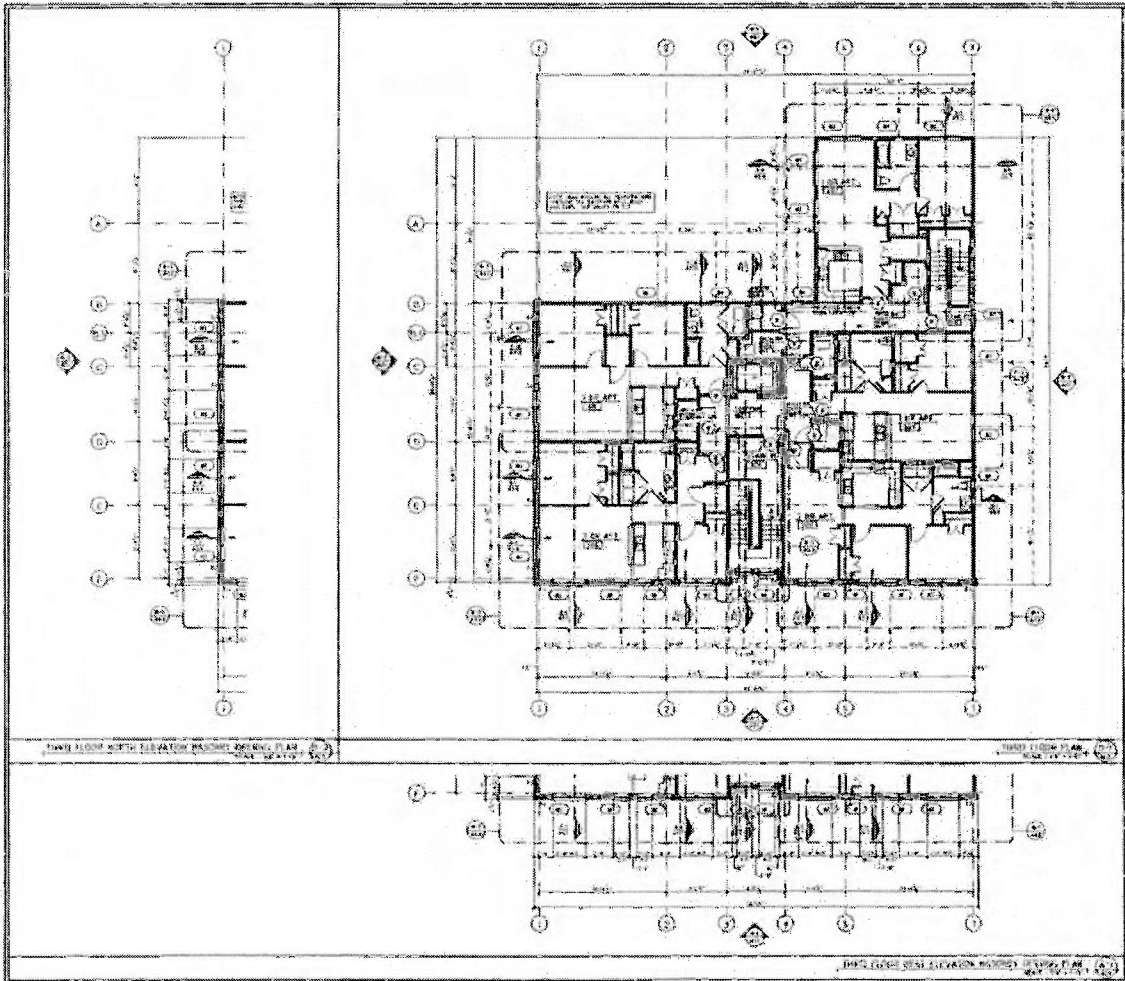


holidays, may be required to do so under such regulations as Condominium Board may impose. Condominium Board may exclude or expel any peddler.

- E. Unit Owner shall not overload any floor. Condominium Board may direct the time and manner of delivery, routing and removal of all items that are delivered to the Building for Unit Owner's use and may specify the location of safes and other heavy articles.
- F. Unless Condominium Board gives advance written consent, Unit Owner shall not use or be permitted to bring into the Building any illumination other than electric light, or use or permit to be brought into the Building any materials or other articles deemed extra-hazardous to life, limb or property except in a manner which would not violate any ordinance or regulation, or any condition imposed by the standard fire insurance policy issued for office buildings in the municipality where the Building is located. Unit Owner shall not use the Property for any illegal or immoral purpose.
- G. Unit Owner shall cooperate fully with Condominium Board to assure the effective operation of the Building's air-conditioning system, and if windows are operable to keep them closed when the air-conditioning system is in use. Unit Owner shall insure that all persons within the Unit Owner's Property comply with all rules and regulations regarding smoking. This shall include the prohibition of smoking if such smoking causes the effects of smoking to be distributed by the air-conditioning system to any non-smoking areas of the Building.
- H. Unit Owner shall not contract for any work or service which might involve the employment of labor incompatible with the Building employees or employees of contractors doing work or performing services by or on behalf of Condominium Board.
- I. The sidewalks, halls, passages, exits, entrances, elevators and stairways shall not be obstructed by Unit Owner or used for any purpose other than for ingress and egress from its Property. The halls, passages, exits, entrances, elevators, stairways and roof are not for the use of the general public and Condominium Board shall in all cases retain the right to control and prevent access thereto by all persons whose presence, in the judgment of Condominium Board, shall be prejudicial to the safety, character, reputation and interests of the Building and its Unit Owners, provided that nothing herein contained shall be construed to prevent such access to persons with whom Unit Owner normally deals in the ordinary course of Unit Owner's business unless such persons are engaged in illegal activities. No Unit Owner and no employees or invitees of any Unit Owner shall go up on the roof or into the mechanical rooms of the Building, except as otherwise provided in the By-Laws.
- J. Unit Owner shall not use, keep or permit to be used or kept any foul or noxious gas or substance in the Property, or permit or suffer the Property to be occupied or used in a manner offensive or objectionable to Condominium Board or other occupants of the Building, in their reasonable discretion, by reason of noise, odors and/or vibrations, or interfere in any way with other Unit Owners or those having business therein.

- K. With respect to the Property and the Building Common Areas, Unit Owner shall see that the doors and windows, if operable, are closed and secured before leaving the Building and must observe strict care and caution that all water faucets or water apparatus are entirely shut off before Unit Owner or Unit Owner's employees or invitees leave the Building.
- L. Unit Owner covenants and agrees, at its sole cost and expense, to comply with all present and future laws, orders, and regulations of all state, federal, municipal and local governments, departments, commissions, and boards regarding the collection, sorting, separation, and recycling of waste products, garbage, refuse, and trash. Unit Owner shall sort and separate such waste products, garbage, refuse, and trash into such categories as provided by law. Each separately sorted category of waste products, garbage, refuse, and trash shall be placed in separate receptacles.
- M. Condominium Board reserves the right to refuse to accept from Unit Owner any waste products, garbage, refuse, or trash that is not separated and sorted as required by law, and to require Unit Owner to arrange for such collection at Unit Owner's sole cost and expense, utilizing a contractor satisfactory to Condominium Board. Unit Owner shall pay all costs, expenses, fines, penalties, or damages that may be imposed on Condominium Board or Unit Owner by reason of Unit Owner's failure to comply with the provision of subparagraph (M), and, at Unit Owner's sole cost and expense, shall indemnify, defend, and hold Condominium Board harmless (including legal fees and expenses) from and any against any actions, claims, and suits arising from such noncompliance, utilizing counsel reasonably satisfactory to Condominium Board.
- N. Unit Owner shall comply with all further reasonable rules and regulations for the use and occupancy of the Building as Condominium Board from time to time promulgates for the best interests of the Building.

**EXHIBIT F**  
**FLOOR PLANS**



**GENERAL BUILDING CODE COMPLIANCE DATA**

PROJECT NO. 140-11 / 24-0001  
 SHEET NO. 140-11 / 24-0001  
 DATE 01/15/2014

**GENERAL UNIT DATA**

UNIT NO. 301  
 UNIT TYPE 1-BEDROOM  
 UNIT AREA 1,100 SQ. FT.

**3RD FLOOR UNIT DATA**

UNIT NO. 301  
 UNIT TYPE 1-BEDROOM  
 UNIT AREA 1,100 SQ. FT.

**3RD FLOOR COMMON DATA**

FLOOR AREA 10,000 SQ. FT.  
 STAIR AREA 1,000 SQ. FT.  
 ELEVATOR AREA 500 SQ. FT.



PERMIT SET

**FIRE PARTITION KEY**

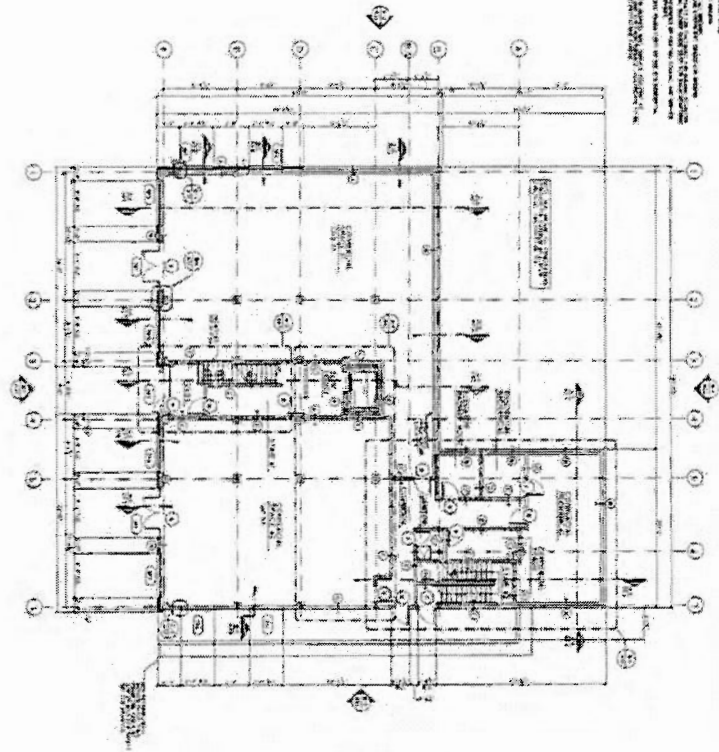
1. 1/2" Gypsum Board  
 2. 1/2" Gypsum Board  
 3. 1/2" Gypsum Board  
 4. 1/2" Gypsum Board

CONSTRUCTION SPECIFICATIONS FOR EXTERIOR CURTAIN WALL  
**618 N. TOWNSEND STREET**  
 HOLMES • KING • KALLOUST  
 ARCHITECTS, LLP  
 1000 N. TOWNSEND STREET, SUITE 100  
 CHICAGO, IL 60610  
 TEL: 312.467.1000 FAX: 312.467.1001  
 WWW.HOLMESKINGKALLOUST.COM

THIRD FLOOR PLAN

**A1.3**

GENERAL NOTES:  
 1. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES AND REGULATIONS.  
 2. ALL MATERIALS SHALL BE OF THE BEST QUALITY AND SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE AGENCIES.  
 3. ALL DIMENSIONS SHALL BE IN FEET AND INCHES UNLESS OTHERWISE SPECIFIED.  
 4. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED TIME FRAME.  
 5. ALL WORK SHALL BE SUBJECT TO THE SUPERVISION OF THE ARCHITECT.  
 6. ALL WORK SHALL BE SUBJECT TO THE INSPECTION AND APPROVAL OF THE AGENCIES.  
 7. ALL WORK SHALL BE SUBJECT TO THE INSPECTION AND APPROVAL OF THE AGENCIES.  
 8. ALL WORK SHALL BE SUBJECT TO THE INSPECTION AND APPROVAL OF THE AGENCIES.  
 9. ALL WORK SHALL BE SUBJECT TO THE INSPECTION AND APPROVAL OF THE AGENCIES.  
 10. ALL WORK SHALL BE SUBJECT TO THE INSPECTION AND APPROVAL OF THE AGENCIES.



1:1  
 1/8" = 1'-0"

GENERAL BUILDING CODE  
 CONSTRUCTION DRAWING

PROJECT NO. 100-1000  
 SHEET NO. 100-1000-01

GENERAL NOTES  
 1. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES AND REGULATIONS.

FIRST FLOOR COMMON DATA

PROJECT NO. 100-1000  
 SHEET NO. 100-1000-01

FIRST FLOOR COMMON DATA

KING PATRICK KELL  
 ARCHITECT  
 100-1000-01

CONSTRUCTION DRAWING FOR SUBMITTAL PURPOSES  
**618 N. TOWNSEND STREET**  
 STADIUM, NEW YORK  
**HOLMES • KING • KALLQUINT**  
 & Associates, Architects, LLP  
 200 West 30th Street • 4th Floor, NY 10018  
 Tel: (212) 675-6600 • Fax: (212) 675-6601  
 www.hkkallquint.com

FIRST FLOOR  
 PLAN

**A1.1**



PERMIT SET



**24**



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN  
ATTORNEY GENERAL

DIVISION OF ECONOMIC JUSTICE  
REAL ESTATE FINANCE BUREAU  
Writer's Direct Info:  
(212) 416-8128  
Tiffani.Simmons@ag.ny.gov

November 28, 2017

Paul M. Predmore, Esq.  
Bousquet Holstein PLLC  
110 West Fayette Street  
One Lincoln Center, Suite 1000  
Syracuse, NY 13202

Re: BUTTERNUT CROSSING  
File No.: NA17-0174  
Acceptance Date: 11/17/2017  
Filing Fee: \$225.00 Receipt Number:

Dear Paul Predmore:

The Department of Law has reviewed your application for a no-action letter concerning a transaction involving the above premises, submitted on 11/3/2017.

On the basis of the facts and circumstances stated in your letter and supporting documentation, the Department has determined that it will not take any enforcement action because the described transaction occurs without filing or registration pursuant to Section 352-e and Section 359-e of the General Business Law. We understand that it is your opinion as counsel that the transaction is not subject to those registration and filing requirements.

This position is based solely upon the limited information supplied and representations made in your letter and supporting documentation. Any different set of facts or circumstances might result in the Department taking a different position. In addition, this letter expresses the Department's position on enforcement action which could arise from this transaction only, occurring without filing or registration, and does not purport to express any legal conclusion on any subsequent transaction or offering.

The issuance of this letter shall not be construed to be a waiver of or limitation on the Attorney General's authority to take enforcement action for violations of Article 23-A of the General Business Law and other applicable provisions of law.

Very truly yours,

*Tiffani Simmons*

Tiffani Simmons  
Assistant Attorney General



**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 Project Agreement, the Company Lease, the Agency Lease, the Mortgage, the PILOT Agreement and any other document now or hereafter executed by the Agency (collectively, the "**Agency Documents**") with respect to a project (the "**Project**") undertaken at the request of Butternut Crossing Commercial Enterprises, LLC (the "**Company**") consisting of: (A)(i) the acquisition of an interest in all or a portion of an approximate .224 acre parcel of improved real property located at 618-620 North Townsend Street, in the City of Syracuse, New York (the "**Land**"); (ii) the construction of approximately 3,870 square feet of commercial space on the first floor (the 3,870 square feet of commercial space being referred to herein as the "**Commercial Space**" or the "**Facility**") which is part of a larger approximately 16,400 square foot building being constructed for use as an affordable housing complex, all located on the Land; (iii) the acquisition and installation in the Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

Capitalized terms used herein which are not otherwise defined herein and which are defined in the Agency Lease Agreement dated as of December 1, 2017 (the "**Agency Lease**"), between the Agency and the Company, and shall have the meanings ascribed to such terms in the Agency Lease except that, for purposes of this certificate: (A) all definitions with respect to any document shall be deemed to refer to such document only as it exists as of the date of this certificate and not as of any future date; and (B) all definitions with respect to any Person shall be deemed to refer to such Person only as it exists as of the date of this certificate and not as of any future date or to any successor or assign.

I, the undersigned Chairman of the Agency, Do Hereby Certify:

1. I am an officer of the Agency and am duly authorized to execute and deliver this certificate in the name of the Agency.

2. The Agency is an industrial development agency duly established under Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended (the "**Enabling Act**") and Chapter 641 of the Laws of 1979 of the State (said Chapter with the Enabling Act, the "**Act**") (a certified copy of Chapter 641 of the Laws of 1979 of the State is attached hereto as **Exhibit "A"**), and it is a corporate governmental agency constituting a public benefit corporation of the State.

3. The Act empowers the Agency, among other things, to acquire, construct reconstruct, lease, improve, maintain, equip, sell and dispose of land and any building or other improvement, and all real and personal property, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, recreation or industrial facilities, including industrial pollution control facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the City of Syracuse and the State and to improve their standard of living. The Act further authorizes the Agency to lease any and all of its facilities on such terms and conditions as it deems advisable, to acquire, construct, lease, improve, and equip one or more projects as defined in the Act, to mortgage any or all of its facilities and to pledge the revenues and receipts from the sale or transfer of its facilities.

4. The Agency has full legal power and authority to own its property, conduct its business and execute, deliver, and perform its obligations under the Agency Documents and has taken all actions and obtained all approvals required in connection therewith by the Act and any other applicable laws and regulations, and no legislation has been enacted affecting the powers or authority of the Agency to execute and deliver the Agency Documents, affecting the financing of the Project, or affecting the validity thereof or of the Agency Documents, or contesting the existence and powers of the Agency or the appointment of the members and officers of the Agency to their respective offices.

5. Pursuant to the Act, the governing body of the City of Syracuse, New York, for whose benefit the Agency was established, duly filed or caused to be filed within six (6) months after the effective date of Chapter 641 of the Laws of 1979 of the State in the office of the Secretary of State of the State the Certificate of Establishment of the Agency pursuant to Section 926 of the New York General Municipal Law. The Certificate of Establishment of the Agency described in the preceding sentence also named the members and officers of the Agency as appointed by the Mayor of the City of Syracuse. Attached hereto as **Exhibit "B"** are certified copies of said Certificates of Establishment and copies of the Certificates of Appointment relating to all of the current members of the Agency, who are:

William M. Ryan	Chairman
M. Catherine Richardson	Vice Chairman
Steven P. Thompson	Secretary
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 a commercial facility 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 October 20, 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 public hearing with respect to the Project, published November 5, 2015 as required pursuant to Section 859-a of the Act, as well as proof of notice regarding an adjournment of the public hearing, along with proof of mailing of the original notice thereof pursuant to Section 859-a of the Act, as well as proof of notice of the adjournment, each to the chief executive officers of the affected tax jurisdictions (as defined in Section 854(16) of the Act). The public hearing was held November 19, 2015.

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 November 19, 2015 and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the SEQRA Resolution is attached hereto at **Exhibit “F.”**

10. That a resolution approving the undertaking of the acquisition, construction and equipping of the Project, appointing the Company as agent of the Agency for the purpose of the acquisition, construction and equipping of the Project, and authorizing the execution and delivery of an agreement between the Agency and the Company (the “**Inducement Resolution**”) was adopted by the Agency on November 19, 2015 and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the Inducement Resolution is attached hereto at **Exhibit “G.”**

11. That a resolution approving a payment in lieu of tax schedule and authorizing the execution and delivery of certain documents by the Agency in connection with the Project was adopted by the Agency on November 19, 2015 (the “**PILOT Resolution**”) and remained in full force and effect and has not been rescinded, repealed or modified. A copy of the PILOT Inducement Resolution is attached hereto to **Exhibit “H”**.

12. That a resolution authorizing the execution and delivery of certain documents by the Agency in connection with the Project was adopted by the Agency on November 19, 2015 (the “**Final Approving Resolution**”) and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the Final Approving Resolution is attached hereto at **Exhibit “I”**.

13. That a resolution approving a retroactive extension of the Agency Agreement between the Agency and the Company until December 31, 2017 and making certain other findings was adopted by the Agency on October 17, 2017 (the “**Approving Resolution**”) and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the Approving Resolution is attached hereto at **Exhibit “J”**.

14. The execution, delivery and performance of all Agency Documents, certificates and documents required to be executed, delivered and performed by the Agency in order to carry out, give effect to and consummate the transactions contemplated by the Agency Documents have been duly authorized by all necessary action of the Agency, and the Agency Documents have been duly authorized, executed and delivered. The Agency Documents are in full force and effect on and as of the date hereof, and no authority or proceeding for the execution, delivery or performance of the Agency Documents has been materially amended, repealed, revoked or rescinded; and no event or circumstance has occurred or exists which constitutes, or with the giving of notice or the passage of time would constitute, a default on the part of the Agency under the Agency Documents.

15. The execution, delivery, and performance of the Agency Documents, the consummation of the transactions therein contemplated and compliance with the provisions of each do not and will not: (a) violate the Act or the by-laws of the Agency; (b) require consent (which has not heretofore been received) under or result in a breach or default of any credit agreement, purchase agreement, indenture, deed of trust, commitment, guaranty, lease, or other agreement or instrument to which the Agency is a party or by which the Agency may be bound or affected; or (c) conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction, or decree of any government, governmental instrumentality, or court, domestic or foreign, having jurisdiction over the Agency or any of its Property.

16. The Agency has not received written notice that any event of default has occurred and is continuing, or that any event has occurred which with the lapse of time or the giving of notice or both would constitute an event of default by any party to the Agency Documents.

17. There is no action, suit, proceeding or investigation at law or in equity, before or by any court, public board or body of the United States of America or the State of New York, pending or, to the best of my knowledge, threatened against or affecting the Agency (or to my knowledge any basis therefor): (a) wherein an unfavorable decision or finding would adversely affect (i) the Inducement Resolution, the Final Approving Resolution, the Company Lease, the Agency Lease or the other Agency Documents; or (ii) the existence or organization of the Agency; or (iii) restrain or enjoin the financing, acquisition or construction of the Project or the performance by the Agency of the Agency Documents; or (b) in any manner questioning the proceedings or authority of the financing of the Project, or affecting the validity thereof or of the Agency Documents, or contesting the existence and powers of the Agency or the appointment of the directors and officers of the Agency to their respective offices.

18. December 21, 2017 has been duly designated as the date for the Closing.

19. The Agency has complied with all agreements and satisfied all conditions on its part to be performed or satisfied at or prior to the Closing Date.

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

(a) to assist the Company's acquisition, construction, equipping and completion of the Project Facility;

(b) to grant the Financial Assistance to the Company;

(c) to designate the Company as the Agency's agent for the acquisition, construction, equipping and completion of the Project Facility and to authorize the Company to appoint additional agents;

(d) that the Project will promote employment opportunities and help prevent economic deterioration in the City by the preservation and/or the creation of both full and part-time jobs; and

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

21. That I did officially cause all certificates necessary for the financing and included in the official transcript of closing, to be executed, as required, in the name of the Agency by the signing of each of such certificates with the signature of the (Vice) Chairman of the Agency.

22. That I did officially cause the following Agency Documents to be executed in the name of the Agency by the signing of each of such Agency Documents with the signature of the William M. Ryan, Chairman of the Agency:

(a) a Project Agreement between the Agency and the Company;

(b) a Company Lease from the Company to the Agency pursuant to which the Company agrees to lease the Land and the Facility to the Agency;

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

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

23. No member, officer or employee of the Agency having power to: (i) negotiate, prepare, authorize or approve any of the Agency Documents; (ii) audit bills or claims under any of the Agency Documents; or (iii) appoint an officer or employee who has any of the powers or duties set forth in (i) or (ii):

(a) directly or indirectly owns any stock of the Company;

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

(c) is related to the Company within the meaning of Section 800.3(a) of the New York General Municipal Law.

No member, officer, or employee of the Agency has publicly disclosed, in a writing included as part of the official minutes of the Agency, any Interest (as defined in Section 800.3 of the New York General Municipal Law), direct or indirect, in the Developer.

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WITNESS, as of the 1<sup>st</sup> day of December, 2017.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
William M. Ryan, Chairman



**EXHIBIT "A"**

**CHAPTER 641 OF THE LAWS OF 1979  
OF THE STATE OF NEW YORK**

LAWS OF NEW YORK, 1979

CHAPTER 641

AN ACT to amend the general municipal law, in relation to creating and establishing for the city of Syracuse industrial development agency and, providing for its functions and duties

Became a law July 11, 1979, with the approval of the Governor. Passed on Home Rule request pursuant to Article IX, section 2 (b) (2) of the Constitution, by a majority vote, three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

Section 1. The general municipal law is amended by adding a new section nine hundred twenty-six to read as follows:

§ 926. *City of Syracuse industrial development agency. (a) For the benefit of the city of Syracuse and the inhabitants thereof, an industrial development agency, to be known as the CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY, is hereby established for the accomplishment of any or all of the purposes specified in title one of article eighteen-A of this chapter. It shall constitute a body corporate and politic, and be perpetual in duration. It shall consist of five members who shall be appointed by the mayor of the city of Syracuse and its chairman shall be designated by such mayor. It shall have the powers and duties now or hereafter conferred by title one of article eighteen-A of this chapter upon industrial development agencies. It shall organize in a manner prescribed by and be subject to the provisions of title one of article eighteen-A of this chapter. The agency, its members, officers and employees, and its operations and activities shall in all respects be governed by the provisions of title one of article eighteen-A of this chapter.*

*(b) The city shall have the power to make, or contract to make grants or loans, including but not limited to grants or loans of money, to the agency in such amounts, upon such terms and conditions and for such period or periods of time as in the judgment of the city and the agency are necessary or appropriate for the accomplishment of any of the purposes of the agency.*

§ 2. This act shall take effect immediately.

**EXHIBIT "B"**

**AGENCY'S CERTIFICATE OF ESTABLISHMENT  
AND  
CERTIFICATES OF APPOINTMENT OF CURRENT MEMBERS**

CERTIFICATE OF THE CITY OF SYRACUSE  
INDUSTRIAL DEVELOPMENT AGENCY

Pursuant to Article 18-A of the General Municipal Law, Lee Alexander, Mayor of the City of Syracuse, certifies as follows:

- 1) The name of the industrial development agency herein is the City of Syracuse Industrial Development Agency.
- 2) Chapter 641 of the Laws of 1979, the special act of the New York State Legislature establishing the City of Syracuse Industrial Development Agency, was adopted by the New York State Legislature on June 16, 1979 and signed by the Governor on July 11, 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.

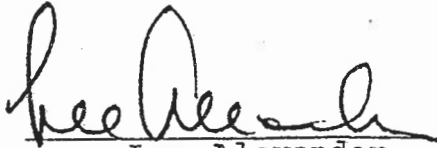
STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED JUL 20 1979

*Bill Peterson*

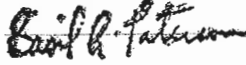
The Syracuse Industrial Development Agency, in combination with, and utilizing these and other resources, will greatly enhance the City's ability to compete for, and successfully attract the commercial and industrial enterprises necessary for continued economic health and growth.

July 20, 1979

  
Lee Alexander  
Mayor

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED JUL 20 1979

  
Secretary of State

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CITY OF SYRACUSE  
DEPARTMENT OF LAW



OFFICE OF THE MAYOR

Stephanie A. Miner, Mayor

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DEPARTMENT OF STATE

CERTIFICATE OF APPOINTMENT TO THE  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

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

Mr. William Ryan

- Member/Chairman

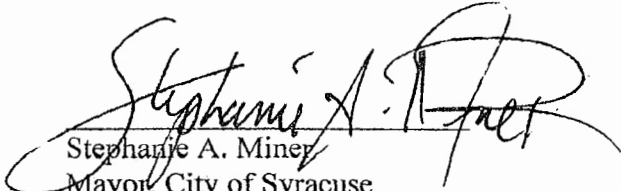
The following Member and Officer of the City of Syracuse Industrial Development Agency shall no longer serve as Member or Officer of said Agency:

Mr. Irwin Davis

-Member/Chairman

No Member or Officer of the City of Syracuse Industrial development Agency shall receive any compensation for the discharge of their duties as Member or Officer of the Agency, but shall be entitled to necessary expenses incurred in the discharge of their duties as such Member or Officer.

The appointment herein set forth shall be effective as of January 15, 2010.

  
Stephanie A. Miner  
Mayor, City of Syracuse



OFFICE OF THE MAYOR

Stephanie A. Miner

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DEPARTMENT OF STATE

CERTIFICATE OF APPOINTMENT TO THE  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

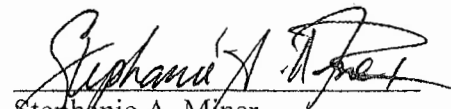
Pursuant to Article 18-A of the General Municipal Law of the State of New York, Stephanie A. Miner, Mayor of the City of Syracuse, hereby certifies the appointment of the following person as a ~~Member~~ <sup>AN OFFICER</sup> of the City of Syracuse Industrial Development Agency:

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. Steve Thompson

- Member/Secretary

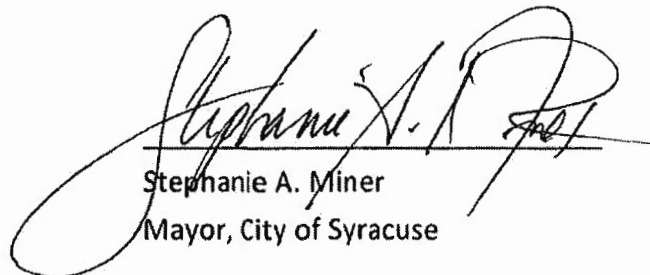
The following Member and Officer of the City of Syracuse Industrial Development Agency shall no longer serve as Member or Officer of said Agency:

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

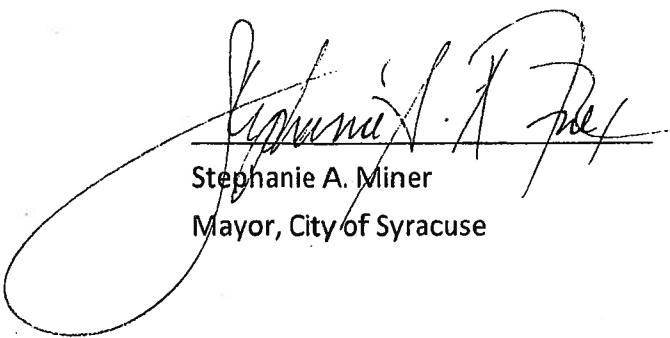
The following Member and Officer of the City of Syracuse Industrial Development Agency shall no longer serve as Member or Officer of said Agency:

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 October 20, 2015, at 8:30 o'clock a.m. in the Common Council Chambers, City Hall, 233 East Washington Street, Syracuse, New York.

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

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

**THE FOLLOWING PERSONS WERE ALSO PRESENT:** Staff Present: Ben Walsh, Judith DeLaney, Debra Ramsey-Burns, John Vavonese, Thomas Babilon, Esq., Susan Katzoff, Esq., Matthew Kerwin, Esq.; Others Present: Barry Lentz, Aggie Lane, Richard Sykes, Terri Roney, Michael Brady, David Bottar, Charlie Breuer, Brian Dionne, Anthony Rojas, Chris Trevasani, Ben Lockwood; Media: Rick Moriarty

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

**RESOLUTION DETERMINING THAT THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A COMMERCIAL FACILITY AT THE REQUEST OF THE COMPANY CONSTITUTES A PROJECT; DESCRIBING THE FINANCIAL ASSISTANCE IN CONNECTION THEREWITH; AND AUTHORIZING A PUBLIC HEARING**

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, for the purpose of promoting economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living; and

**WHEREAS**, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to grant "financial assistance" (as defined in the Act) in connection with the acquisition, reconstruction and equipping of one or more "projects" (as defined in the Act); and

**WHEREAS**, Butternut Crossing Commercial Enterprises, LLC, a New York limited

liability company or a similar entity to be formed (the “**Company**”), requested by application dated October 13, 2015 that the Agency undertake a project (the “**Project**”) consisting of: (A)(i) the acquisition of an interest in all or a portion of an approximate .224 acre parcel of improved real property located at 618-620 North Townsend Street, in the City of Syracuse, New York (the “**Land**”); (ii) the construction of approximately 5,800 square feet of commercial space on the first floor (the 5,800 square feet of commercial space being referred to herein as the “**Commercial Space**” or the “**Facility**”) which is part of a larger approximately 17,400 square foot building being constructed for use as an affordable housing complex, all located on the Land; (iii) the acquisition and installation in the Facility of furniture, fixtures and equipment (the “**Equipment**” and together with the Land and the Facility, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (the “**Financial Assistance**”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, the Company’s request to have the Agency acquire an interest in the improvements constructed on the Land and provide Financial Assistance is limited to the Commercial Space; 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 tax, real property tax 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	
Steven Thompson	X	
Donald Schoenwald, Esq.	X	
M. Catherine Richardson, Esq.	X	
Pamela Hunter	X	

The foregoing Resolution was thereupon declared duly adopted.

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

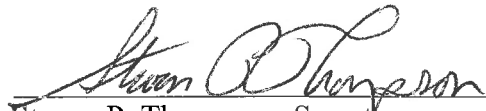
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “*Agency*”) held on October 20, 2015, with the original thereof on 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 5<sup>TH</sup> day of November, 2015.

City of Syracuse Industrial Development Agency

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

(S E A L)

**EXHIBIT "E"**

**NOTICE OF PUBLIC HEARING WITH EVIDENCE OF PUBLICATION AND COPIES  
OF LETTERS TO AFFECTED TAX JURISDICTIONS PURSUANT TO SECTIONS  
859-a OF THE ACT**

## NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Section 859-a of the New York General Municipal Law, will be held by the City of Syracuse Industrial Development Agency (the "Agency") on the 17<sup>th</sup> day of November, 2015, at 8:30 o'clock a.m., local time, at 233 East Washington Street, Common Council Chambers, City Hall, Syracuse, New York, in connection with the following matter:

Butternut Crossing Commercial Enterprises, LLC, a New York limited liability company or a similar 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 all or a portion of an approximate .224 acre parcel of improved real property located at 618-620 North Townsend Street, in the City of Syracuse, New York (the "Land"); (ii) the construction of approximately 5,800 square feet of commercial space on the first floor (the 5,800 square feet of commercial space being referred to herein as the "Commercial Space" or the "Facility") which is part of a larger approximately 17,400 square foot building being constructed for use as an affordable housing complex, all located on the Land; (iii) the acquisition and installation in the Facility of furniture, fixtures and equipment (the "Equipment" and together with the Land and the Facility, the "Project Facility"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (the "Financial Assistance"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Company shall be the initial owner or operator of the Project Facility.

The Agency will at the above-stated time and place hear all persons with views with respect to the proposed Financial Assistance to the Company, the proposed owner/operator, the location of the Project Facility and the nature of the Project.

A copy of the application filed by the Company with the Agency with respect to the Project, including an analysis of the costs and benefits of the Project, is available for public inspection during business hours at the office of the Agency located at 333 West Washington Street, Suite 130, Syracuse, New York.

Dated: November 2, 2015

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

# The Post-Standard

## LEGAL AFFIDAVIT

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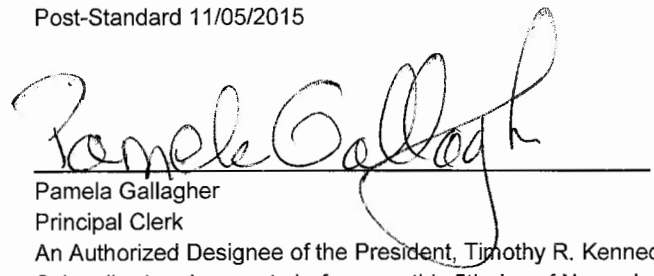
Name: BARCLAY DAMON LLP  
Account Number: 1056027  
INV#: 0007472081

Sales Rep: Pamela Gallagher

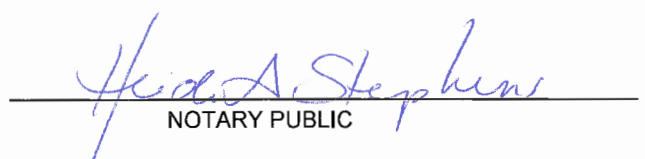
Date	Position	Description	P.O. Number	Ad Size
11/05/2015	Other Legals NY	NOTICE OF PUBLIC HEARING NOTICE IS HEREBY GIVEN that	Matter 3077413	1 x 125.00 CL

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 11/05/2015



Pamela Gallagher  
Principal Clerk  
An Authorized Designee of the President, Timothy R. Kennedy  
Subscribed and sworn to before me, this 5th day of November  
2015

  
NOTARY PUBLIC

FOR QUESTIONS CONCERNING THIS AFFIDAVIT,  
PLEASE CONTACT PAMELA GALLAGHER AT

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
11/05/2015	Other Legals NY	NOTICE OF PUBLIC HEARING NOTICE IS HEREBY GIVEN that a	Matter 3077413	1 x 125.00 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 17th day of November, 2015, at 8:30 o'clock a.m., local time, at 233 East Washington Street, Common Council Chambers, City Hall, Syracuse, New York, in connection with the following matter: Butter-nut Crossing Commercial Enterprises, LLC, a New York limited liability company or a similar 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 all or a portion of an approximate .224 acre parcel of improved real property located at 618-620 North Townsend Street, in the City of Syracuse, New York (the "Land"); (ii) the construction of approximately 5,800 square feet of commercial space on the first floor (the 5,800 square feet of commercial space being referred to herein as the "Commercial Space" or the "Facility") which is part of a larger approximately 17,400 square foot building being constructed for use as an affordable housing complex, all located on the Land; (iii) the acquisition and installation in the Facility of furniture, fixtures and equipment (the "Equipment" and together with the Land and the Facility, the "Project Facility"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and

local sales and use tax and mortgage recording tax (the "Financial Assistance"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement. The Company shall be the initial owner or operator of the Project Facility. The Agency will at the above-stated time and place hear all persons with views with respect to the proposed Financial Assistance to the Company, the proposed owner/operator, the location of the Project Facility and the nature of the Project. A copy of the application filed by the Company with the Agency with respect to the Project, including an analysis of the costs and benefits of the Project, is available for public inspection during business hours at the office of the Agency located at 333 West Washington Street, Suite 130, Syracuse, New York. Dated: November 2, 2015  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

BARCLAY DAMON<sup>LLP</sup>

Susan R. Katzoff  
Partner

November 2, 2015

VIA CERTIFIED MAIL  
7012 3050 0002 1297 2126

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

VIA CERTIFIED MAIL  
7012 3050 0002 1297 2133

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*")  
Butternut Crossing Commercial Enterprises, LLC (the "*Company*")  
Butternut Crossing 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 all or a portion of an approximate .224 acre parcel of improved real property located at 618-620 North Townsend Street, in the City of Syracuse, New York (the "*Land*"); (ii) the construction of approximately 5,800 square feet of commercial space on the first floor (the 5,800 square feet of commercial space being referred to herein as the "*Commercial Space*" or the "*Facility*") which is part of a larger approximately 17,400 square foot building being constructed for use as an affordable housing complex, all located on the Land; (iii) the acquisition and installation in the Facility of furniture, fixtures and equipment (the "*Equipment*" and together with the Land and the Facility, the "*Project Facility*"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (the "*Financial Assistance*"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from

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  
November 2, 2015  
Page 3

the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

General Municipal Law Section 859-a requires that notice of the Public Hearing be given to the chief executive officer of each affected tax jurisdiction in which the Project is located.

As stated in the notice, the public hearing is scheduled for **November 17, 2015** at 8:30 a.m. in the Common Council Chambers at City Hall.

Very truly yours,

  
Susan R. Katzoff

SRK/llm  
Enclosure

cc: Thomas Babilon, Esq., City of Syracuse, via email (w/Enclosure)  
Ben Walsh, City of Syracuse Industrial Development Agency, via email (w/Enclosure)  
Judy DeLaney, City of Syracuse Industrial Development Agency, via email (w/Enclosure)



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1. Article Addressed to:

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



9590 9403 0673 5196 5195 24

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1. Article Addressed to:

Honorable Joanne M. Mahoney  
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John Mulroy Civic Center, 14<sup>th</sup> Floor  
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Syracuse, New York 13202



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- Insured Mail Restricted Delivery (over \$500)
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- Signature Confirmation
- Signature Confirmation Restricted Delivery

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Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
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PS Form 3800, August 2006

PS Form 3800, August 2006

See Reverse for Instructions

See Reverse for Instructions

## NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Section 859-a of the New York General Municipal Law, will be held by the City of Syracuse Industrial Development Agency (the "Agency") on the 19<sup>th</sup> day of November, 2015, at 8:30 o'clock a.m., local time, at the City Economic Development Office, 333 West Washington Street, Suite 130, Syracuse, New York, in connection with the following matter:

Butternut Crossing Commercial Enterprises, LLC, a New York limited liability company or a similar 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 all or a portion of an approximate .224 acre parcel of improved real property located at 618-620 North Townsend Street, in the City of Syracuse, New York (the "Land"); (ii) the construction of approximately 5,800 square feet of commercial space on the first floor (the 5,800 square feet of commercial space being referred to herein as the "Commercial Space" or the "Facility") which is part of a larger approximately 17,400 square foot building being constructed for use as an affordable housing complex, all located on the Land; (iii) the acquisition and installation in the Facility of furniture, fixtures and equipment (the "Equipment" and together with the Land and the Facility, the "Project Facility"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (the "Financial Assistance"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Company shall be the initial owner or operator of the Project Facility.

The Agency will at the above-stated time and place hear all persons with views with respect to the proposed Financial Assistance to the Company, the proposed owner/operator, the location of the Project Facility and the nature of the Project.

A copy of the application filed by the Company with the Agency with respect to the Project, including an analysis of the costs and benefits of the Project, is available for public inspection during business hours at the office of the Agency located at 333 West Washington Street, Suite 130, Syracuse, New York.

Dated: November 13, 2015

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

BARCLAY DAMON <sup>LLP</sup>

Susan R. Katzoff  
Partner

November 13, 2015

VIA CERTIFIED MAIL

7015 0640 0003 3543 9752

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 9745

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

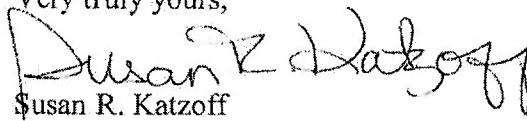
[REDACTED]  
Butternut Crossing Project  
[REDACTED]

Dear Mayor and County Executive:

Please be advised that the public hearings regarding the above-referenced matters originally scheduled for November 17, 2015 has been moved to November 19, 2015. Copies of the Notices of Public Hearing are enclosed.

Thank you.

Very truly yours,

  
Susan R. Katzoff

SRK/llm

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)

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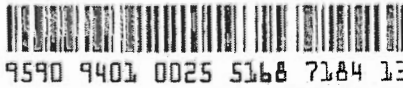
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Honorable Stephanie A. Miner  
 Mayor, City of Syracuse  
 233 East Washington Street  
 Syracuse, New York 13202



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 X *[Signature]*  Agent  Addressee

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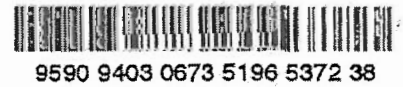
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1. Article Addressed to:

Honorable Joanne M. Mahoney  
 County Executive, Onondaga County  
 John Mulroy Civic Center, 14<sup>th</sup> Floor  
 421 Montgomery Street  
 Syracuse, New York 13202



2. Article Number (Transfer from service label)  
 7015 0640 0003 3543 9745

PS Form 3811, April 2015 PSN 7530-02-000-9053

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 X *[Signature]*  Agent  Addressee

B. Received by (Printed Name)  
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 If YES, enter delivery address below:

3. Service Type
- Adult Signature
  - Adult Signature Restricted Delivery
  - Certified Mail®
  - Certified Mail Restricted Delivery
  - Collect on Delivery
  - Collect on Delivery Restricted Delivery
  - Insured Mail
  - Insured Mail Restricted Delivery (over \$500)
- Priority Mail Express®
  - Registered Mail™
  - Registered Mail Restricted Delivery
  - Return Receipt for Merchandise
  - Signature Confirmation™
  - Signature Confirmation Restricted Delivery

Domestic Return Receipt

# The Post-Standard

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SYRACUSE, NY 13202

Name: BARCLAY DAMON LLP

Sales Rep: Pamela Gallagher

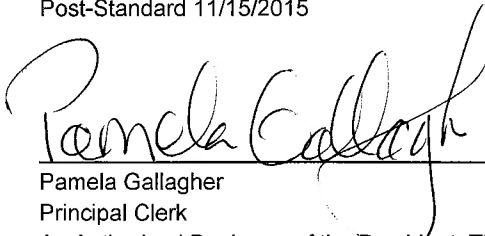
Account Number: 1056027

INV#: 0007484382

Date	Position	Description	P.O. Number	Ad Size
11/15/2015	Other Legals NY	NOTICE OF PUBLIC HEARING NOTICE IS HEREBY GIVEN that	matter #3077413	1 x 126.00 CL

State of New York, County of Onondaga ss. Pamela Gallagher, of the City of Syracuse, in said County, being duly sworn, doth depose and says: this person is the Principal Clerk in the office of THE POST-STANDARD, a public newspaper, published in the City of Syracuse, Onondaga County, New York and that the notice, is an accurate and true copy of the ad as printed in said newspaper, was printed and published in the regular edition and issue of said newspaper on the following days, viz.:

Post-Standard 11/15/2015




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Pamela Gallagher  
Principal Clerk

An Authorized Designee of the President, Timothy R. Kennedy  
Subscribed and sworn to before me, this 16th day of November  
2015




---

HEIDI A. STEPHENS  
NOTARY PUBLIC

FOR QUESTIONS CONCERNING THIS AFFIDAVIT,  
PLEASE CONTACT PAMELA GALLAGHER AT

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
11/15/2015	Other Legals NY	NOTICE OF PUBLIC HEARING NOTICE IS HEREBY GIVEN that a	matter #3077413	1 x 126.00 CL

**NOTICE OF PUBLIC HEARING** NOTICE IS HEREBY GIVEN that a public hearing pursuant to Section 859-a of the New York General Municipal Law, will be held by the City of Syracuse Industrial Development Agency (the "Agency") on the 19th day of November, 2015, at 8:30 o'clock a.m., local time, at the City Economic Development Office, 333 West Washington Street, Suite 130, Syracuse, New York, in connection with the following matter: Butternut Crossing Commercial Enterprises, LLC, a New York limited liability company or a similar 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 all or a portion of an approximate .224 acre parcel of improved real property located at 618-620 North Townsend Street, in the City of Syracuse, New York (the "Land"); (ii) the construction of approximately 5,800 square feet of commercial space on the first floor (the 5,800 square feet of commercial space being referred to herein as the "Commercial Space" or the "Facility") which is part of a larger approximately 17,400 square foot building being constructed for use as an affordable housing complex, all located on the Land; (iii) the acquisition and installation in the Facility of furniture, fixtures and equipment (the "Equipment" and together with the Land and the Facility, the "Project Facility"); (B) the granting of certain financial assistance in the form of exemptions from real

property tax, State and local sales and use tax and mortgage recording tax (the "Financial Assistance"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement. The Company shall be the initial owner or operator of the Project Facility. The Agency will at the above-stated time and place hear all persons with views with respect to the proposed Financial Assistance to the Company, the proposed owner/operator, the location of the Project Facility and the nature of the Project. A copy of the application filed by the Company with the Agency with respect to the Project, including an analysis of the costs and benefits of the Project, is available for public inspection during business hours at the office of the Agency located at 333 West Washington Street, Suite 130, Syracuse, New York. Dated: November 13, 2015  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

**EXHIBIT "F"**

**SEQRA RESOLUTION**

## SEQRA RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on November 19, 2015, at 8:30 o'clock a.m., local time, at the City Economic Development Office, 333 West Washington Street, Suite 130, 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 Present: Ben Walsh, Judith DeLaney, Debra Ramsey-Burns, John Vavonese, Thomas Babilon, Esq., Susan Katzoff, Esq.; Others Present: Barry Lentz, Christopher Trevisani, James Trasher, Chris Horstein, Tom Horstein, Mark Congel, Steve Hall, Rich Pascarella; Media: Rick Moriarty

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

**RESOLUTION CLASSIFYING A CERTAIN PROJECT AS AN UNLISTED ACTION PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT, DECLARING THE AGENCY LEAD AGENCY FOR PURPOSES OF AN UNCOORDINATED REVIEW THEREUNDER AND DETERMINING THAT THE ACTION WILL NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT**

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, for the purpose of promoting economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living; and

**WHEREAS**, Butternut Crossing Commercial Enterprises, LLC, or an entity to be formed (the "**Company**"), by application dated October 13, 2015 (the "**Application**"), requested that the Agency undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in all or a portion of an approximate .224 acre parcel of improved real property located at 618-620 North Townsend Street, in the City of Syracuse, New York (the "**Land**"); (ii) the construction of



approximately 5,800 square feet of commercial space on the first floor (the 5,800 square feet of commercial space being referred to herein as the "**Commercial Space**" or the "**Facility**") which is part of a larger approximately 17,400 square foot building being constructed for use as an affordable housing complex, all located on the Land; (iii) the acquisition and installation in the Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as "**SEQRA**"), the Agency is required to make a determination with respect to the environmental impact of any "action" (as 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 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 November 19, 2015, with the original thereof on file in my office, and that the same (including all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

**I FURTHER CERTIFY** that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

**I FURTHER CERTIFY** that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

**IN WITNESS WHEREOF**, I have set my hand and affixed the seal of the Agency this 20 day of November, 2015.

City of Syracuse Industrial Development Agency

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

(S E A L)

**EXHIBIT "A"**

617.20  
Appendix B  
Short Environmental Assessment Form

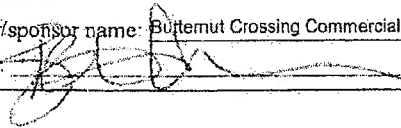
**Instructions for Completing**

**Part 1 - Project Information.** The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

<b>Part 1 - Project and Sponsor Information</b>			
Butternut Crossing Commercial Enterprises, LLC - to be formed			
Name of Action or Project: Butternut Crossing			
Project Location (describe, and attach a location map): 618-620 North Townsend Street, Syracuse, NY			
Brief Description of Proposed Action: Construction of one mixed-use building, with a total of 17,400 gross s.f., 5,800 gross s.f. of which will be commercial space on the first floor. This property is part of the Butternut Crossing project, a scattered-site, urban infill, mixed-use, high-quality affordable housing development.			
Name of Applicant or Sponsor: Butternut Crossing Commercial Enterprises, LLC		Telephone: 315-472-3820	
		E-Mail: ctrevlsanl@housingvisions.org	
Address: 1201 East Fayette Street			
City/PO: Syracuse		State: NY	Zip Code: 13210
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			NO <input type="checkbox"/>
			YES <input checked="" type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval: NYS HCR: Award of Low-Income Housing Tax Credits (LIHTC) and Housing Trust Fund (HTF)			NO <input type="checkbox"/>
			YES <input checked="" type="checkbox"/>
3.a. Total acreage of the site of the proposed action?		.224 acres	
b. Total acreage to be physically disturbed?		.224 acres	
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		.224 acres	
4. Check all land uses that occur on, adjoining and near the proposed action.			
<input checked="" type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input checked="" type="checkbox"/> Residential (suburban)			
<input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input checked="" type="checkbox"/> Other (specify): Hospital			
<input type="checkbox"/> Parkland			

	NO	YES	N/A
5. Is the proposed action, a. A permitted use under the zoning regulations?	<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?	<input type="checkbox"/>	<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: _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Are public transportation service(s) available at or near the site of the proposed action?	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____	<input type="checkbox"/>	<input checked="" 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: _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Is the proposed action located in an archeological sensitive area?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?	<input checked="" type="checkbox"/>	<input 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"/>
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?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16. Is the project site located in the 100 year flood plain?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties? <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES _____			

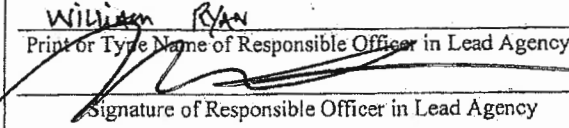
18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size: _____ _____	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
19. Has the site 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>Butternut Crossing Commercial Enterprises, LLC</u> Date: <u>October 13, 2015</u>		
Signature: 		

**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>11/19/15</u>
Name of Lead Agency	Date
<u>William Ryan</u>	<u>CHAIRMAN</u>
Print or Type Name of Responsible Officer in Lead Agency	Title of Responsible Officer
	Signature of Preparer (if different from Responsible Officer)
Signature of Responsible Officer in Lead Agency	

PRINT



**EXHIBIT "G"**

**INDUCEMENT RESOLUTION**

## INDUCEMENT RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on November 19, 2015 at 8:30 o'clock a.m., local time, at the City Economic Development Office, 333 West Washington Street, Suite 130, 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 Present: Ben Walsh, Judith DeLaney, Debra Ramsey-Burns, John Vavonese, Thomas Babilon, Esq., Susan Katzoff, Esq.; Others Present: Barry Lentz, Christopher Trevisani, James Trasher, Chris Horstein, Tom Horstein, Mark Congel, Steve Hall, Rich Pascarella; Media: Rick Moriarty

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

**RESOLUTION UNDERTAKING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A CERTAIN PROJECT; APPOINTING THE COMPANY AS AGENT OF THE AGENCY FOR THE PURPOSE OF THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PROJECT; AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT BETWEEN THE AGENCY AND THE COMPANY**

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**") to promote, develop, encourage and assist in the acquiring, constructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration; and

**WHEREAS**, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, lease, and sell real property and grant financial assistance in connection with one or more “projects” (as defined in the Act); and

**WHEREAS**, Butternut Crossing Commercial Enterprises, LLC, a New York limited liability company or a similar entity to be formed (the “**Company**”), by application dated October 13, 2015 (the “**Application**”), requested the Agency undertake a project (the “**Project**”) consisting of: (A)(i) the acquisition of an interest in all or a portion of an approximate .224 acre parcel of improved real property located at 618-620 North Townsend Street, in the City of Syracuse, New York (the “**Land**”); (ii) the construction of approximately 5,800 square feet of commercial space on the first floor (the 5,800 square feet of commercial space being referred to herein as the “**Commercial Space**” or the “**Facility**”) which is part of a larger approximately 17,400 square foot building being constructed for use as an affordable housing complex, all located on the Land; (iii) the acquisition and installation in the Facility of furniture, fixtures and equipment (the “**Equipment**” and together with the Land and the Facility, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (the “**Financial Assistance**”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, the Agency adopted a resolution on October 20, 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 November 19, 2015 pursuant to Section 859-a of the Act, notice of which was published on November 5, 2015 in the Post-Standard, a newspaper of general circulation in the City of Syracuse, New York and given to the chief executive officers of the affected tax jurisdictions by letter dated November 2, 2015; and

**WHEREAS**, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as “**SEQRA**”), the Agency is required to make a determination whether the “action” (as said quoted term is defined in SEQRA) to be taken by the Agency may have a “significant impact on the environment” (as said quoted term is utilized in SEQRA), and the preliminary agreement of the Agency to undertake of the Project constitutes such an action; and

**WHEREAS**, 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 November 19, 2015 (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 in the State.

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

**Section 1.** It is the policy of the State to promote the economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation and economically sound commerce and industry for the purpose of preventing unemployment and economic deterioration. It is among the purposes of the Agency to promote, develop, encourage and assist in the acquiring, constructing, improving, maintaining, equipping and furnishing of certain facilities, including commercial facilities, and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their recreation opportunities, prosperity and standard of living.

**Section 2.** Based upon the representations and projections made by the Company to the Agency, the Agency hereby and makes the following determinations:

(A) Ratifies the findings in its Public Hearing Resolution and SEQRA Resolution;

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

(C) The acquisition of a controlling interest in the Project Facility by the Agency and the designation of the Company as the Agency’s agent for completion of the Project will be an inducement to the Company to construct and equip the Project Facility in the City of Syracuse, and will serve the purposes of the Act by, among other things, advance job opportunities, the general prosperity and economic welfare of the inhabitants of the City of Syracuse;

(D) The Project will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act;

(E) The Project is not primarily used in making retail sales to customers who personally visit the Facility.

**Section 3.** Subject to the terms of this Resolution and the conditions set forth in Section 4.02 of the Agreement (hereinafter defined), the Agency will: (i) acquire an interest in the Land and Facility pursuant to a lease agreement (the “*Lease*”) to be entered into between the Company and the Agency; and accept an interest in the Equipment pursuant to a bill of sale from the Company (the “*Bill of Sale*”); (ii) sublease the Project Facility to the Company pursuant to a sublease agreement (the “*Sublease*” and with the Lease and the Bill of Sale, the “*Lease Documents*”) to be entered into between the Agency and the Company; (iii) grant the approved Financial Assistance; and (iv) provided that no default shall have occurred and be continuing under the Agreement (as defined herein) 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 \$32,972.

**Section 4.** The Company may utilize, and is hereby authorized to appoint<sup>[1]</sup>, a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (collectively, “*Additional Agents*”) to proceed with the construction and equipping of the Project, all with the same powers and the same validity as if the Agency were acting in its own behalf, provided the Company execute, deliver and comply with the Lease Documents. The Company shall provide, or cause its Additional Agents to provide, and the Agency shall maintain, records of the amount of State and local sales and use tax exemption benefits provided to the Project and the Company shall, and cause each Additional Agent, to make such records available to the State Commissioner of Taxation and Finance (the “*Commissioner*”) upon request. The Agency shall, within thirty (30) days of providing any State sales and use tax exemption benefits, report to the Commissioner the amount of such benefits for

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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.

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 herein and therein 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 Schoenwald	X	
Steven Thompson	X	

The foregoing Resolution was thereupon declared duly adopted.





## EXHIBIT "A"

### AGENCY/COMPANY AGREEMENT

**THIS AGREEMENT** is between **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY** (the "**Agency**"), with an office at 333 West Washington Street, Suite 130, Syracuse, New York 13202 and **BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC** (the "**Company**"), with a mailing address of 1201 East Fayette Street, Suite 26, Syracuse, New York 13210.

**Article 1. Preliminary Statement.** Among the matters of mutual inducement which have resulted in the execution of this agreement are the following:

1.01. The Agency is authorized and empowered by the provisions of Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, and Chapter 641 of the Laws of 1979 of the State (collectively, the "**Act**") to designate an agent for constructing 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. Butternut Crossing Commercial Enterprises, LLC, or an entity to be formed (the "**Company**"), by application dated October 13, 2015 (the "**Application**"), requested the Agency undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in all or a portion of an approximate .224 acre parcel of improved real property located at 618-620 North Townsend Street, in the City of Syracuse, New York (the "**Land**"); (ii) the construction of approximately 5,800 square feet of commercial space on the first floor (the 5,800 square feet of commercial space being referred to herein as the "**Commercial Space**" or the "**Facility**") which is part of a larger approximately 17,400 square foot building being constructed for use as an affordable housing complex, all located on the Land; (iii) the acquisition and installation in the Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease

agreement; and

1.03(a). All documents necessary to effectuate the Agency's undertaking of the Project and the granting of the Financial Assistance between the Agency and the Company, including but not limited to, a company lease, an agency lease, a bill of sale and an environmental compliance and indemnification agreement, shall be collectively referred to herein as the "***Lease Documents***".

1.04. The Company hereby represents to the Agency that undertaking the Project, the designation of the Company as the Agency's agent for the construction and equipping of the Project Facility, and the use and appointment, as necessary, by the Company of a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (collectively, "***Additional Agents***"): (i) will be an inducement to it to construct and equip the Project Facility in the City of Syracuse (the "***City***"); (ii) will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or of any other proposed occupant of the Project Facility from one area of the State to another or in the abandonment of one or more plants or facilities of the Company or of any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act; and (iii) undertaking the Project Facility will advance job opportunities in the State. The Company hereby further represents to the Agency that the Project Facility is not primarily used in making retail sales to customers who personally visit the Facility.

1.05. The Agency has determined that the acquisition of a controlling interest in, and the construction and equipping of the Project Facility and the subleasing of the same to the Company will promote and further the purposes of the Act.

1.06. On November 19, 2015, the Agency adopted a resolution (the "***Inducement Resolution***") agreeing, subject to the satisfaction of all conditions precedent set forth in such Resolution, to designate the Company as the Agency's agent for the acquisition, construction and equipping of the Project Facility and determining that the leasing of the same to the Company will promote further purposes of the Act. For purposes of that designation, the Agency authorized as part of the approved Financial Assistance, State and local sales and use tax exemption benefits in an amount not exceed **\$32,972**.

1.07. In the Resolution, subject to the execution of, and compliance with, this Agreement by the Company, and other conditions set forth in the Resolution and herein, the Agency appointed the Company as its agent for the purposes of construction and equipping the Project Facility, entering into contracts and doing all things requisite and proper for construction and equipping the Project Facility.

**Article 2. Undertakings on the Part of the Agency.** Based upon the statement, representations and undertakings of the Company and subject to the conditions set forth herein, the Agency agrees as follows:

2.01. The Agency confirms that it has authorized and designated, subject to the terms

hereof, the Company as the Agency's agent for constructing and equipping the Project Facility.

2.02. The Agency will adopt such proceedings and authorize the execution of such Agency documents as may be necessary or advisable for: (i) acquisition of a controlling interest in the Project Facility; (ii) designation by the Company of Additional Agents for construction and equipping of the Project Facility subject to the terms hereof; and (iii) the leasing or subleasing of the Project Facility to the Company, all as shall be authorized by law and be mutually satisfactory to the Agency and the Company.

2.03. Nothing contained in this Agreement shall require the Agency to apply its funds to Project costs.

2.04. After satisfying the conditions precedent set forth in the Sections 2.05, 3.06 and 4.02 hereof and in the Inducement Resolution, the Company may proceed with the construction and equipping of the Project Facility and the utilization of and, as necessary the appointment of, Additional Agents.

2.05. Subject to the execution of the Lease Documents and Section 4.02 hereof, the Company is appointed the true and lawful agent of the Agency: (i) for the construction and equipping of the Project Facility; and (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency, and in general to do all things which may be requisite or proper for the construction and equipping of the Project Facility, all with the same powers and the same validity as if the Agency were acting in its own behalf.

2.06. The Agency will take or cause to be taken such other acts and adopt such further proceedings as may be required to implement the aforesaid undertakings or as it may deem appropriate in pursuance thereof. The Agency may in accordance with Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as "*SEQRA*"), undertake supplemental review of the Project. Such review to be limited to specific significant adverse environmental impacts not addressed or inadequately addressed in the Agency's review under SEQRA that arise from changes in the proposed Project, newly discovered information or a change in the circumstances related to the Project.

**Article 3. Undertakings on the Part of the Company.** Based upon the statements, representations and undertakings of the Agency and subject to the conditions set forth herein the Company agrees as follows:

3.01. (a) The Company shall indemnify and hold the Agency harmless from all losses, expenses, claims, damages and liabilities arising out of or based on labor, services, materials and supplies, including equipment, ordered or used in connection with the acquisition of a controlling interest in, and construction and equipping of the Project Facility (including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a

result of any of the foregoing), whether such claims or liabilities arise as a result of the Company or Additional Agents acting as agent for the Agency pursuant to this Agreement or otherwise.

(b) The Company shall not permit to stand, and will, at its own expense, take all steps reasonably necessary to remove, any mechanics' or other liens against the Project Facility for labor or material furnished in connection with the acquisition, construction and equipping of the Project Facility.

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

(d) The Company shall defend, indemnify and hold the Agency harmless from all losses, expenses, claims, damages and liabilities arising out of or based on the non-disclosure of information, if any, requested by the Company in accordance with Section 4.05 hereof.

(e) The defense and indemnities provided for in this Article 3 shall survive expiration or termination of this Agreement and shall apply whether or not the claim, liability, cause of action or expense is caused or alleged to be caused, in whole or in part, by the activities, acts, fault or negligence of the Agency, its members, officers, employees and agents, anyone under the direction and control of any of them, or anyone for whose acts or omissions the Agency or any of them may be liable, and whether or not based upon the breach of a statutory duty or obligation or any theory or rule of comparative or apportioned liability, subject only to any specific prohibition relating to the scope of indemnities imposed by statutory law.

(f) The Company shall provide and carry: (i) worker's compensation and disability insurance as required by law; and (ii) comprehensive liability and property insurance with such coverages (including without limitation, owner's protective coverage for the benefit of the Agency, naming the Agency as an additional insured on all policies of coverage regarding the Project; providing the coverage with respect to the Agency be primary and non-contributory; and contractual coverage covering the indemnities herein provided for), with such limits and which such companies as may be approved by the Agency. Upon the request of the Agency, the Company shall provide certificates and/or policies of insurance in form satisfactory to the Agency evidencing such insurance.

(g) The Company shall apply and diligently pursue all approvals, permits and consents from the State of New York, the City, the City Planning Commission and any other governmental authority which approvals, permits and consents are required under applicable law for the development, construction and equipping of the Project and any related site improvements. The Company acknowledges and agrees that the Agency's findings and determinations under SEQRA do not and shall not in and of themselves (except as specifically set forth in SEQRA) satisfy or be deemed to satisfy applicable laws, regulations, rules and procedural requirements applicable to such approvals, permits and consents.

(h) The Company shall complete the Local Access Agreement contained at Appendix I of the City of Syracuse Industrial Development Agency Financial Assistance Application and agrees to utilize, and cause its Additional Agents to utilize, local contractors and suppliers for the construction and equipping of the Project unless a waiver is received from the Agency in writing. For purposes of this Agency Agreement, the term “*Local*” shall mean Onondaga, Oswego, Madison, Cayuga and Cortland Counties. The Company agrees that such Local contractors shall be provided the opportunity to bid on contracts related to the Project Facility.

3.02. The Company agrees that, as agent for the Agency or otherwise, it will comply at the Company’s sole cost and expense with all the requirements of all federal, state and local laws, rules and regulations of whatever kind and howsoever denominated applicable to the Agency and/or Company with respect to the Project Facility, the acquisition of a controlling interest therein, construction and equipping thereof, the operation and maintenance of the Project Facility, supplemental review of adverse environmental impacts in accordance with SEQRA and the financing of the Project. Every provision required by law to be inserted herein shall be deemed to be set forth herein as if set forth in full, including, but not limited to, Section 875 of the Act; and upon the request of either party, this Agreement shall be amended to specifically set forth any such provision or provisions.

3.03. The Company agrees that, as agent for the Agency or otherwise, to the extent that such provisions of law are in fact applicable (without creating an obligation by contract beyond that which is created by statute) it will comply with the requirements of Section 220 of the Labor Law of the State of New York, as amended.

3.04. The Company will take such further action and adopt such further proceedings as may be required to implement its aforesaid undertakings or as it may deem appropriate in pursuance thereof.

3.05. If it should be determined that any State or local sales or compensatory use taxes are payable with respect to the acquisition, purchase or rental or machinery or equipment, materials or supplies in connection with the Project Facility, or are in any manner otherwise payable directly or indirectly in connection with the Project Facility, the Company shall pay the same and defend and indemnify the Agency from and against any liability, expenses and penalties arising out of, directly or indirectly, the imposition of any such taxes.

3.06 The Company shall proceed with the acquisition, construction and equipping of the Project Facility and advance such funds as may be necessary to accomplish such purposes. The Company may utilize, and was authorized to appoint<sup>1</sup>, Additional Agents as agents of the

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<sup>1</sup> Additional Agents must be specifically appointed as an agent of the Agency in order to avail themselves of the Agency’s sales and use tax exemption for any and all purchases or rentals of construction materials, equipment, tools and supplies that do not become part of the Project Facility. Additional Agents who purchase construction materials, equipment and/or supplies that become part of the Project Facility need not, and will not, be specifically appointed as an agent of the Agency.

Agency, in furtherance thereof. Any appointment of an Additional Agent is conditioned upon the Company first obtaining and providing the Agency the following:

(1) A written, executed agreement, in form and substance acceptable to the Agency, from each appointed Additional Agent which provides for the assumption by the Additional Agent, for itself, certain of the obligations under this Agreement relative to the appointment, work and purchases done and made by each Additional Agent; (ii) a commitment to utilize local contractors and suppliers for the construction and equipping of the Project (“local” being defined in Section 3.01(h) hereof); (iii) an acknowledgement that the Additional Agent is obligated, to timely provide the Company with the necessary information to permit the Company, pursuant to General Municipal Law §874(8), to timely file an Annual Statement with the Agency and the New York State Department of Taxation and Finance on “Annual Report of Sales and Use Tax Exemptions” (Form ST-340) regarding the value of sales and use tax exemptions the Additional Agent claimed pursuant to the agency conferred on it by the Company with respect to this Project; (iv) an acknowledgment by the Additional Agent that the failure to comply with the foregoing will result in the loss of the exemption; and (v) such other terms and conditions as the Agency deems necessary; and

(2) A completed “IDA Appointment of Project Operator or Agent for Sales Tax Purposes” (Form ST-60) for each Additional Agent appointed within fifteen (15) days of the appointment of each Additional Agent such that the Agency can execute and deliver said form to the State Department of Taxation and Finance within thirty (30) days of appointment of each such Additional Agent.

Failure of the Company to comply with the foregoing shall nullify the appointment of any Additional Agent and may result in the loss of the Company’s exemption with respect to the Project at the sole discretion of the Agency.

The Company acknowledges that the assumption by the Additional Agent in accordance with Section 3.06(1) above, does not relieve the Company of its obligations under those provisions or any other provisions of this Agreement with respect to the Project.

3.07 The Company ratifies and confirms its obligations to pay an annual administrative reporting fee in accordance with the Agency’s fee schedule to cover administrative and reporting requirements to comply with New York State reporting regulations on Agency assisted projects.

#### Article 4. General Provisions.

4.01. This Agreement shall take effect on the date of the execution hereof by the Agency and the Company and, subject to Section 4.04 hereof, shall remain in effect until the Lease Documents become effective. It is the intent of the Agency and the Company that, except as to those provisions that survive, this Agreement be superseded in its entirety by the Lease Documents.

4.02. (a) It is understood and agreed by the Agency and the Company that the grant of Financial Assistance and the execution of the Lease Documents and related documents are

subject to: (i) payment by the Company of the Agency's fee and Agency's counsel fees; (ii) obtaining all necessary governmental approvals, permits and consents of any kind required in connection with the Project Facility; (iii) approval by the members of the Agency; (iv) approval by the Company; and (v) the condition that there are no changes in New York State Law, including regulations, which prohibit or limit the Agency from fulfilling its obligations hereunder; (b) the Company, by executing this agreement, acknowledges and agrees to make, or cause its Additional Agents, whether appointed as an agent of the Agency in accordance with Section 3.06 hereof or not, to make, all records and information regarding State and local sales and use tax exemption benefits given to the Project as part of the Financial Assistance available to the Agency upon request, including but not limited to the Form ST-340 for itself and each Additional Agent; (c) the Company, by executing this Agreement, acknowledges and agrees to the terms and conditions of Section 875(3) of the Act as if such section were fully set forth herein and further agrees to cause all of its Additional Agents to acknowledge, agree and consent to same. Without limiting the scope of the foregoing the Company acknowledges that pursuant to Section 875(3) of the Act and in accordance with the Agency's policy and/or position, the Agency shall recover, recapture, receive or otherwise obtain from the Company the portion of the Financial Assistance (the "**Recapture Amount**") consisting of: (1) (a) that portion of the State and local sales tax exemption to which the Company was not entitled, which is in excess of the amount of the State and local sales tax exemption authorized by the Agency or which is for property or services not authorized by the Agency; or (b) the full amount of such State and local sales tax exemption, if the Company fails to comply with a material term or condition regarding the use of the property or services as represented to the Agency in its Application or otherwise; and (2) any interest or penalties thereon imposed by the Agency or by operation of law or by judicial order or otherwise; and (d) The failure of the Company to promptly pay such Recapture Amount to the Agency will be grounds for the Commissioner to collect sales and use taxes from the Company under Article 28 of the State Tax Law, together with interest and penalties. In addition to the foregoing, the Company acknowledges and agrees that for purposes of exemption from New York State (the "**State**") sales and use taxation as part of the Financial Assistance requested, "sales and use taxation" shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the New York State tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight.

4.03. The Company agrees that it will, within thirty (30) days of a written request for same, regardless of whether or not this matter closes or the Project Facility is completed: (i) reimburse the Agency for all reasonable and necessary expenses, including without limitation the fees and expenses of counsel to the Agency arising from, out of or in connection with the Project, and/or any documents executed in connection therewith, including, but not limited to any claims or actions taken by the Agency against the Company, Additional Agents or third parties; and (ii) indemnify the Agency from all losses, claims, damages and liabilities, in each case which the Agency may incur as a consequence of executing this Agreement or performing its obligations hereunder, including but not limited to, any obligations related to Additional Agents.

4.04: If for any reason the Lease Documents are not executed and delivered by the Company and the Agency on or before **November 19, 2016**, the provisions of this Agreement



(other than the provisions of Articles 1.04, 2.02, 2.04, 3.01, 3.02, 3.03, 3.05, 3.06, 4.02, 4.03, 4.04, 4.05 and 4.06, which shall survive) shall unless extended by agreement of the Agency and the Company, terminate and be of no further force or effect, and following such termination neither party shall have any rights against the other party except:

(a) The Company shall pay the Agency for all expenses incurred by the Agency in connection with the acquisition, construction and equipping of the Project Facility;

(b) The Company shall assume and be responsible for any contracts for the construction or purchase of equipment entered into by the Agency at the request of or as agent for the Company in connection with the Project Facility; and

(c) The Company will pay the out-of-pocket expenses of members of the Agency and counsel for the Agency incurred in connection with the Project Facility and will pay the fees of counsel for the Agency for legal services relating to the Project Facility, Additional Agents or the proposed financing thereof.

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

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



**IN WITNESS WHEREOF**, the parties hereto have entered into this Agreement as of the 19<sup>th</sup> day of November, 2015.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

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

**BUTTERNUT CROSSING COMMERCIAL  
ENTERPRISES, LLC**

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

**EXHIBIT "H"**

**PILOT RESOLUTION**

## PILOT RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on November 19, 2015 at 8:30 o'clock a.m., local time, at the City Economic Development Office, 333 West Washington Street, Suite 130, Syracuse, New York.

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

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

**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: Barry Lentz, Christopher Trevisani, James Trasher, Chris Horstein, Tom Horstein, Mark Congel, Steve Hall, Rich Pascarella; Media: Rick Moriarty

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

**RESOLUTION APPROVING A PAYMENT IN LIEU OF  
TAX SCHEDULE AND AUTHORIZING THE EXECUTION  
AND DELIVERY OF CERTAIN DOCUMENTS BY THE  
AGENCY IN CONNECTION WITH A CERTAIN PROJECT  
UNDERTAKEN AT THE REQUEST OF THE COMPANY**

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "*Agency*") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "*State*"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "*Act*") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration; and

**WHEREAS**, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, lease and sell real property and grant financial assistance in connection with one or more "projects" (as defined in the Act); and

**WHEREAS**, Butternut Crossing Commercial Enterprises, 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 all or a portion of an approximate .224 acre parcel of improved real property located at 618-620 North Townsend Street, in the City of Syracuse, New York (the "**Land**"); (ii) the construction of approximately 5,800 square feet of commercial space on the first floor (the 5,800 square feet of commercial space being referred to herein as the "**Commercial Space**" or the "**Facility**") which is part of a larger approximately 17,400 square foot building being constructed for use as an affordable housing complex, all located on the Land; (iii) the acquisition and installation in the Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, to aid the Agency in determining whether the preliminary agreement of the Agency to undertake the Project may have a significant impact upon the environment, the Company has prepared and submitted to the Agency an Environmental Assessment Form (the "**EAF**"), a copy of which is on file at the office of the Agency; and

**WHEREAS**, on November 19, 2015 the Agency adopted a resolution classifying the Project as an "Unlisted Action", determining that the Project will not have a significant effect on the environment and preparation of an Environmental Impact Statement is not required, and authorizing the execution of a negative declaration (the "**SEQRA Resolution**") and a resolution taking official action toward the acquisition, construction and equipping of the Project (the "**Inducement Resolution**"); and

**WHEREAS**, as part of the Financial Assistance, the Company requested the Agency consider a payment in lieu of tax schedule, solely with respect to the Land and Commercial Space, (the "**PILOT**"), as more fully described on **Exhibit "A"** attached hereto, which schedule conforms with the Agency's Uniform Tax Exemption Policy ("**UTEP**") established pursuant to General Municipal Law Section 874(4); and

**WHEREAS**, the Agency has given due consideration to the Application and to representations by the Company that the proposed PILOT, as part of the Financial Assistance: (i) will induce the Company to develop the Project Facility in the City of Syracuse; and (ii) will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act; (iii) undertaking the Project will advance job opportunities in the State and promote the general prosperity and economic welfare of the inhabitants of the City of

Syracuse in furtherance of the purposes of the Act;

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

(1) Based upon the representations made by the Company to the Agency, and the reasons presented by the Company in support of its request for the PILOT schedule, the Agency hereby approves and the (Vice) Chairman and Secretary, acting individually, are each authorized to execute and deliver an amended and restated payment in lieu of tax agreement ("**PILOT Agreement**") providing for the payment schedule attached as **Exhibit "A"** hereto.

(2) The Agency will, subject to, and in accordance with all resolutions adopted by the Agency in conjunction with this Project, execute and deliver a PILOT Agreement all in such form and substance as shall be substantially the same as approved by the Agency for other similar transactions and consistent with this Resolution and as approved by the Chairman or Vice Chairman of the Agency upon the advice of counsel to the Agency.

(3) The Chairman, Vice Chairman and any authorized representative of the Agency, acting individually, are each hereby authorized and directed, for and in the name and on behalf of the Agency, to execute and deliver the documents and agreements identified herein and any such additional certificates, instruments, documents or affidavits, to pay any such other fees, charges and expenses, to make such other changes, omissions, insertions, revisions, or amendments to the documents referred to herein and to do and cause to be done any such other acts and things, as they determine, on advice of counsel to the Agency, may be necessary or desirable to consummate the transactions contemplated by this resolution.

(4) No covenant, stipulation, obligation or agreement contained in this resolution or any document referred to above shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

(5) The Secretary of the Agency is hereby authorized and directed to distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

(6) 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	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 November 19, 2015, with the original thereof on file in my office, and that the same (including any and all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

**I FURTHER CERTIFY** that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

**I FURTHER CERTIFY** that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

**IN WITNESS WHEREOF**, I have set my hand and affixed the seal of the Agency this 30 day of November, 2015.

City of Syracuse Industrial Development Agency

  
Steven P. Thompson, Secretary

(S E A L)

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



Butternut Crossing Commercial Enterprises, LLC PILOT Schedule		
Year	Assessment	Payment
1	$\$85,000 \times \text{tax rate}^*$	-
2	$\$85,000 \times \text{tax rate}$	-
3	$\$85,000 \times \text{tax rate}$	-
4	$\$85,000 \times \text{tax rate}$	-
5	$\$85,000 \times \text{tax rate}$	-
6	$\$85,000 \times \text{tax rate}$	-
7	$\$85,000 \times \text{tax rate}$	-
8	$[(\text{full assessment} - \$85,000) \times .25] + (\$85,000 \times \text{tax rate})$	-
9	$[(\text{full assessment} - \$85,000) \times .50] + (\$85,000 \times \text{tax rate})$	-
10	$[(\text{full assessment} - \$85,000) \times .75] + (\$85,000 \times \text{tax rate})$	-

\*tax rate = Combined Syracuse City, County, School District and Water District Real Property Tax Rate in effect for each year, or portion thereof, covered by the Agreement

**EXHIBIT "I"**

**FINAL APPROVING RESOLUTION**

## FINAL APPROVING RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on November 19, 2015, at 8:30 o'clock a.m., local time, at the City Economic Development Office, 333 West Washington Street, Suite 130, 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 Present: Ben Walsh, Judith DeLaney, Debra Ramsey-Burns, John Vavonese, Thomas Babilon, Esq., Susan Katzoff, Esq.; Others Present: Barry Lentz, Christopher Trevisani, James Trasher, Chris Horstein, Tom Horstein, Mark Congel, Steve Hall, Rich Pascarella; Media: Rick Moriarty

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 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**, Butternut Crossing Commercial Enterprises, LLC, or an entity to be formed (the "**Company**"), by application dated October 13, 2015 (the "**Application**"), requested that the Agency undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in all or a portion of an approximate .224 acre parcel of improved real property located at 618-620 North Townsend Street, in the City of Syracuse, New York (the "**Land**"); (ii) the construction of approximately 5,800 square feet of commercial space on the first floor (the 5,800 square feet of commercial space being referred to herein as the "**Commercial Space**" or the "**Facility**") which is part of a larger approximately 17,400 square foot building being constructed for use as an

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

**WHEREAS**, the Agency conducted a public hearing with respect to the Project and the proposed Financial Assistance on November 19, 2015 pursuant to Section 859-a of the Act, notice of which was originally published on November 5, 2015, with additional publication on November 15, 2015, each 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 November 2, 2015 and November 13, 2015; 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 November 19, 2015 (the “*SEQRA Resolution*”) entitled:

**RESOLUTION CLASSIFYING A CERTAIN PROJECT AS AN UNLISTED ACTION PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT, DECLARING THE AGENCY LEAD AGENCY FOR PURPOSES OF AN UNCOORDINATED REVIEW THEREUNDER AND DETERMINING THAT THE ACTION WILL NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT**

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

**WHEREAS**, the Agency adopted a resolution on November 19, 2015 (the “*Inducement Resolution*”) entitled:

**RESOLUTION UNDERTAKING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A CERTAIN PROJECT; APPOINTING THE COMPANY AS AGENT OF**

**THE AGENCY FOR THE PURPOSE OF THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PROJECT; AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT BETWEEN THE AGENCY AND THE COMPANY**

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

**WHEREAS**, the Agency adopted a resolution on November 19, 2015 (the “*PILOT Resolution*”) entitled:

**RESOLUTION APPROVING A PAYMENT IN LIEU OF TAX SCHEDULE AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS BY THE AGENCY IN CONNECTION WITH A CERTAIN PROJECT UNDERTAKEN AT THE REQUEST OF THE COMPANY**

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

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

**Section 1.** Based upon the representations made by the Company to the Agency and after consideration of the comments received at the public hearing, if any, the Agency hereby ratifies all of its prior resolutions adopted in conjunction with the Project, including but not limited to the SEQRA Resolution, the Inducement Resolution, the PILOT Resolution and all other action with respect to the Project and Financial Assistance taken by the Agency, and makes the following findings and determinations:

(a) The acquisition of a controlling interest in the Project Facility by the Agency, the granting of the Financial Assistance and the designation of the Company as the Agency’s agent for completion of the Project will be an inducement to, and permit, the Company to develop and operate the Project Facility in the City of Syracuse, thus serving the public purposes of Article 18-A of the General Municipal Law of New York State by promoting and preserving the job opportunities, general prosperity, health and economic welfare of the inhabitants of the City of Syracuse (the “*City*”) in furtherance of the purposes of the Act.

(b) The Project will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act.

(c) The commitment of the Agency to provide Financial Assistance to the Company will enable and induce the Company to construct and equip the Project Facility.

(d) The construction and equipping of the Project Facility and the attendant promotion of the local economy will advance the job opportunities, health, prosperity and economic welfare of the people of the City and the granting of the Financial Assistance is a necessary component to the financing of the Project.

(e) The Project Facility constitutes a “project” within the meaning of the Act.

(f) The Project is not primarily used in making retail sales to customers who personally visit the Facility; and

(g) The acquisition, construction and equipping of the Project Facility will promote employment opportunities and help prevent economic deterioration in the City.

(h) It is desirable and in the public interest for the Agency to grant Financial Assistance in connection with the Project.

**Section 2.** It is the policy of the State to promote the economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation and economically sound commerce and industry for the purpose of preventing unemployment and economic deterioration. The Project will serve the public purposes of Article 18-A of the General Municipal Law of the State of New York by 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), 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 Schoenwald	X	
Steven Thompson	X	

The foregoing Resolution was thereupon declared duly adopted.



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

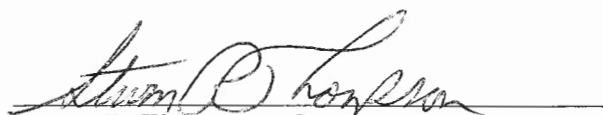
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “**Agency**”) held on November 19, 2015, with the original thereof on file in my office, and that the same (including all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

**I FURTHER CERTIFY** that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

**I FURTHER CERTIFY** that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

**IN WITNESS WHEREOF**, I have set my hand and affixed the seal of the Agency this 30 day of November, 2015.

City of Syracuse Industrial Development Agency

  
Steven P. Thompson, Secretary

(S E A L)

**EXHIBIT "J"**

**APPROVING RESOLUTION**

## APPROVING RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on October 17, 2017 at 8:30 o'clock a.m., in the Common Council Chambers, City Hall, 233 East Washington Street, Syracuse, New York.

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

**PRESENT:** William Ryan, M. Catherine Richardson, Esq., Steven Thompson, Kenneth Kinsey

**EXCUSED:** Donald Schoenwald, Esq.

**THE FOLLOWING PERSONS WERE ALSO PRESENT:** Staff Present: Honora Spillane, Susan Katzoff, Esq., Judith DeLaney, Debra Ramsey-Burns, John Vavonese, Meghan Ryan, Esq.; Others Present: Lauryn LaBourde, Aggie Lane, Lentz, Richard DeVito, Robert Doucette, Robb Bidwell, Jim Mason, Mitch Latimer, Paul Reichel, Donna Harris, Suzanne Slack, Joseph Bryant, Jr, Gail Montplaiser, Emanuel Henderson, Eli Smith, Kelly Besaw, Jeremy Davidneiser, Audrey Farwayir, Walt Dixie, Sharon Owens, Walter Sheperd, Andrew Maxwell, David Delvecchio, Eric Ennis; Media: Rick Moriarty

The following Resolution was offered by M. Catherine Richardson and seconded by Steven Thompson:

### **RESOLUTION APPROVING AN RETROACTIVE EXTENSION OF THE AGENCY AGREEMENT BETWEEN THE AGENCY AND THE COMPANY UNTIL DECEMBER 31, 2017, AND MAKING CERTAIN OTHER FINDINGS.**

**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 (the "**Enabling Act**"), together with Section 926 of the General Municipal Law, as amended (said Section and the Enabling Act, collectively referred to as, the "**Act**"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration; and

**WHEREAS**, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, lease, and sell real property and grant financial assistance in connection with one or more “projects” (as defined in the Act); and

**WHEREAS**, by resolution adopted November 19, 2015 (the “*Inducement Resolution*”), at the request of Butternut Crossing Commercial Enterprises, LLC, or an entity to be formed (the “*Company*”), the Agency induced and approved a (the “*Project*”) consisting of: (A)(i) the acquisition of an interest in all or a portion of an approximate .224 acre parcel of improved real property located at 618-620 North Townsend Street, in the City of Syracuse, New York (the “*Land*”); (ii) the construction of approximately 5,800 square feet of commercial space on the first floor (the 5,800 square feet of commercial space being referred to herein as the “*Commercial Space*” or the “*Facility*”) which is part of a larger approximately 17,400 square foot building being constructed for use as an affordable housing complex, all located on the Land; (iii) the acquisition and installation in the Facility of furniture, fixtures and equipment (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, pursuant to the Inducement Resolution, the Agency appointed the Company as its agent for purposes of completing the Project and the parties entered into an Agency Agreement, as set forth at Exhibit “A” to the Inducement Resolution (the “*Agency Agreement*”), which expired on November 19, 2016; and

**WHEREAS**, the Company advised that the closing scheduled was delayed due to efforts to obtain public financial participation. The Project originally anticipated the use of low income housing tax credits, however, as a result of the intervening presidential election and the corresponding impacts on the equity markets, financing for the Project was stalled and resulted in a funding gap. The Company rebid the Project and is now ready to proceed. As such, the Company is requesting that the Agency retroactively grant an extension of the Agency Agreement from the date of its original expiration to December 31, 2017 in order to allow the Company time to finalize the financing associated with the Project and close on the transaction with the Agency; and

**WHEREAS**, following the adoption of the Inducement Resolution, certain provisions of the Act were amended with respect to, among other things, the granting exemptions from mortgage recording tax and the form of the Agency’s application.

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

(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.

(2) Based upon the representations made by the Company to the Agency, the Agency hereby makes the following findings and determinations:

(a) Subject to the terms of this Resolution, the Agency authorizes the retroactive extension of the Agency Agreement from November 19, 2016 through and including December 31, 2017, subject to any modifications required to ensure compliance with the Act and certification by the Company that there is no event of default existing under the current Agency Agreement.

(b) 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 any and all amendments or other documents 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, if any, including but not limited to the execution and delivery of an amended Agency Agreement.

(3) As a condition precedent to the extension of the Agency Agreement, the Company shall execute and deliver a supplemental application, provided by the Agency, to satisfy the terms of the Act.

(4) 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.

(5) As a condition precedent to the extension of the Agency Agreement term, the Company shall be responsible for and tender all fees associated with the Project and the Agency Agreement and related extension, including but not limited to any Agency fee, administrative fees and/or legal fees, regardless of whether the lease transaction contemplated by the parties ever closes.

(6) The Secretary of the Agency is hereby authorized and directed to distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

(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	X	
Steven Thompson	X	
Kenneth Kinsey	X	

The foregoing resolution was thereupon declared duly adopted.

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

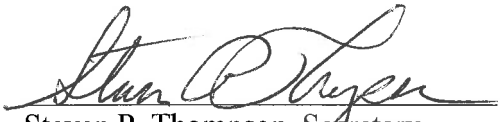
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the "**Agency**") held on October 17, 2017, with the original thereof 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 21st day of November, 2017.

**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

By:   
Steven P. Thompson, Secretary

**(S E A L)**

**26**





generally not required to pay taxes or assessments upon any property acquired by it or under its jurisdiction, control or supervision or upon its activities.

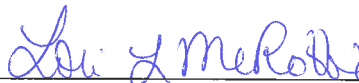
Deponent submits that no mortgage tax, other than as may be required in Section 874(1) of the Act and Section 252(2) of the Tax Law of the State of New York with respect to the portion of the tax allocable to the Central New York Regional Transportation District, should be imposed upon the Mortgages or the 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.

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**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
William M. Ryan, Chairman

Subscribed and sworn to before me  
this 20<sup>th</sup> day of December, 2017.

  
Notary Public

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

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

**618-620 North Townsend Street: Tax Parcel Number 017.-08-22.1 (UNIT 1)**

The Unit designated as **Unit No. 1** in the Declaration comprising **BUTTERNUT CROSSING CONDOMINIUM** located in the City of Syracuse, County of Onondaga, New York, (hereinafter called the "**Property**"), made by Housing Visions Consultants, Inc. under the Condominium Act of the State of New York, as amended (Article 9-B of the Real Property Law of the State of New York), dated December 21st, 2017 and recorded in the office of the County Clerk of Onondaga County on the 22<sup>nd</sup> day of December, 2017 as Instrument Number 2017-00047870 (hereinafter called the "**Declaration**,"), which Unit is also designated as Unit 1, on page A1.1 of the Construction Drawings for **Butternut Crossing 618-620 N. Townsend Street, Syracuse** as certified and prepared by Holmes King Kallquist & Associates, Architects, and filed simultaneously with said Declaration in the Office of the County Clerk of Onondaga County (hereinafter called the "**Unit**"), together with others with the use of the Common Elements, as defined in said Declaration. The appurtenant interests of Unit 1 in the Common Elements is 29.5%. The land area of the Property is described as follows:

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Syracuse, County of Onondaga, State of New York being Lot 12 & part of Lot 11 of City Block 275D and being more particularly bounded and described as follows: Beginning at a point in the easterly line of North Townsend Street at the intersection of the southerly line of East Laurel Street thence North 59 deg. 25 min. 40 sec. East along the said southerly line of East Laurel Street, a distance of 79.50 feet to a point; thence South 30 deg. 32 min. 30 sec. East a distance of 50.00 feet to a point; thence North 59 deg. 25 min. 40 sec. East a distance of 36.00 feet to a point thence South 30 deg. 32 min. 30 sec. East a distance of 50.00 feet to a point; thence South 59 deg. 25 min. 40 sec. West a distance of 115.50 feet to a point in the said easterly line of North Townsend Street thence North 30 deg. 32 min. 30 sec. West along said easterly line of North Townsend Street, a distance of 100.00 feet to the point of beginning.

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GENERAL CERTIFICATE OF  
BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC

This certificate is made in connection with the execution by **BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC**, a New York limited liability company (the "**Company**") of the Project Agreement, the Company Lease, the Agency Lease, the Mortgage, the PILOT Agreement, the Environmental Compliance and Indemnification Agreement and any other document now or hereafter executed by the Company in connection with the City of Syracuse Industrial Development Agency (the "**Agency**") agreeing, at the Company's request, to undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in all or a portion of an approximate .224 acre parcel of improved real property located at 618-620 North Townsend Street, in the City of Syracuse, New York (the "**Land**"); (ii) the construction of approximately 3,870 square feet of commercial space on the first floor (the 3,870 square feet of commercial space being referred to herein as the "**Commercial Space**" or the "**Facility**") which is part of a larger approximately 16,400 square foot building being constructed for use as an affordable housing complex, all located on the Land; (iii) the acquisition and installation in the Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Project Facility is owned by the Company. The Company will lease the Land and Facility to the Agency pursuant to a Company Lease Agreement dated as of December 1, 2017 (the "**Company Lease**") and transfer its interest in the Equipment to the Agency pursuant to a bill of sale dated as of December 1, 2017 (the "**Bill of Sale**") and the Agency will sublease the Project Facility back to the Company pursuant to an Agency Lease Agreement dated as of December 1, 2017 (the "**Agency Lease**").

Capitalized terms used herein which are not otherwise defined herein shall have the meanings ascribed to such terms in the Agency Lease, except that, for purposes of this certificate: (A) all definitions with respect to any document shall be deemed to refer to such document only as it exists as of the date of this Certificate and not as of any future date; and (B) all definitions with respect to any Person shall be deemed to refer to such Person only as it exists as of the date of this certificate and not as of any future date or to any successor or assign.

The undersigned does hereby certify as follows:

1. Attached hereto as **Exhibit "A"** is a true, correct and complete copy of the Articles of Organization of the Company and any amendments thereto filed with the New York State Secretary of State with proof of publication thereof attached thereto, which Articles (including any amendments) are in full force and effect on the date hereof.

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 New York State and authorized and licensed under the laws of New York State to transact business as a business corporation for the purpose of owning and operating the Project Facility in the State of New York. Attached hereto as **Exhibit “C”** is a true and correct copy of a Certificate of Good Standing of the Company issued by the New York State Secretary of State.

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

7. All consents, approvals, authorizations or orders of, notices to, or filings, registrations or declarations with, any court or governmental authority, board, agency, commission or body having jurisdiction which are required on behalf of the Company or for the execution and delivery by the Company of the Company Documents or the consummation on the part of the Company of the transactions contemplated thereby have been obtained.



8. After performing due diligence, there is no legal action, suit, proceeding, inquiry or investigation at law or in equity (before or by any court, agency, arbitrator, public board or body or other entity or person) pending or threatened against or affecting the Company or, to the knowledge of the Company, any basis therefor: (i) in any way affecting the organization, existence or good standing of the Company; (ii) contesting or materially affecting the validity or enforceability of the Company Documents; (iii) contesting the powers of the Company or its authority with respect to the Company Documents; (iv) contesting the authority of the Company to act on behalf of the Company or the authority of the representatives of the Company to act on behalf of the Company; (v) wherein an unfavorable decision, ruling or finding would have a material adverse effect on: (A) the financial condition or operations of the Company; or (B) the consummation on the part of the Company of the transactions contemplated by any Company Documents.

9. The execution and delivery by the Company of the Company Documents and the consummation by the Company of the transactions contemplated thereby are not prohibited by, do not violate any provision of, and will not result in a breach of or default under: (i) the organizational documents of the Company; (ii) any applicable law, rule, regulation, order, writ, injunction, judgment or decree of any court or governmental body or other requirement to which the Company is subject; or (iii) any contract, agreement, mortgage, lease, guaranty, commitment or other obligation or instrument to which the Company is a party or by which the Company or its properties is bound.

10. All information concerning the Project Facility and the Company submitted to the Agency and any Mortgagee by the Company is true and correct in all material respects and does not omit to state a material fact necessary to make the statements therein not misleading.

11. Assuming the valid authorization, execution and delivery of the Agency Lease and the other Company Documents by the other parties thereto, the Agency Lease and the other Company Documents are the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally or by the exercise of judicial discretion in accordance with general principles of equity. No default by the Company or, to the best of knowledge of the undersigned, no event of default on the part of any other party to the Company Documents has occurred or is continuing and no event has occurred which, with the giving of notice or passage of time or both, would be such an event of default. The Company has duly authorized the taking of and has taken all actions necessary to carry out and give effect to the transactions contemplated to be performed on its part by the Company Documents.

12. All permits (including building permits), licenses and authorizations necessary for the construction, ownership and operation of the Project in the manner contemplated by each of the Company Documents have been obtained or will be obtained, and said construction, ownership and operation will not, to the best knowledge of the Company, conflict with any zoning or similar ordinance applicable to the Project. To the best of the Company's knowledge, the Project conforms to all material environmental regulations.


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

14. The Project Agreement, the Company Lease, the Agency Lease, the Mortgage, the PILOT Agreement, the Environmental Compliance and Indemnification Agreement and the other Company Documents are in full force and effect and the Company has not assigned or pledged any of its rights under these documents.


15. The Company acknowledges and restates all of the obligations, representations and covenants in Sections 2.2, 8.12, 11.12 and 11.14 of the Agency Lease and incorporates same herein by reference as if fully set forth herein.

16. The Company further acknowledges its obligation under Section 8.5 of the Agency Lease to provide the additional information as set forth therein and agrees to same.

17. The authorized representatives of the Company who, pursuant to the Resolution, are authorized to execute the Company Documents and the office held by each person are as set forth below. The signature set opposite the name of such officer, if any, is a genuine specimen of such officer's signature:

<u>Name</u>	<u>Signature</u>	<u>Office/Title</u>
<u>Benjamin A. Lockwood</u>		Vice President of Housing Visions Consultants, Inc., Manager of HV Consultants Holding Co., LLC, Manager of Butternut Crossing Commercial Enterprises, LLC

IN WITNESS WHEREOF, I have set my hand and signature as officer of the Company as of December 1, 2017.

**BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC**  
By: HV Consultants Holding Co., LLC, Manager  
By: Housing Visions Consultants, Inc., Manager  
By:   
Benjamin A. Lockwood, Vice President

**EXHIBIT "A"**  
**ARTICLES OF ORGANIZATION**

ONLINE FILING RECEIPT

ENTITY NAME: BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC

DOCUMENT TYPE: ARTICLES OF ORGANIZATION (DOM. LLC)

COUNTY: ONON

FILED:09/25/2017 DURATION:\*\*\*\*\* CASH#:170925010364 FILE#:170925010364  
DOS ID:5207360

FILER:

EXIST DATE

MARJORIE PEPE  
BOUSQUET HOLSTEIN PLLC  
110 W FAYETTE ST, STE 1000  
SYRACUSE, NY 13202

09/25/2017

ADDRESS FOR PROCESS:

BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC  
1201 EAST FAYETTE STREET  
SYRACUSE, NY 13210

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: \*\* NO SERVICE COMPANY \*\*  
SERVICE CODE: 00

FEE:	210.00	PAYMENTS	210.00
FILING:	200.00	CHARGE	210.00
TAX:	0.00	DRAWDOWN	0.00
PLAIN COPY:	0.00		
CERT COPY:	10.00		
CERT OF EXIST:	0.00		

DOS-1025 (04/2007)

Authentication Number: 1709250373 To verify the authenticity of this document you may access the Division of Corporation's Document Authentication Website at <http://ecorp.dos.ny.gov>

**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 true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on September 25, 2017.

A handwritten signature in black ink, appearing to read "B. Fitzgerald", written over a horizontal line.

Brendan W. Fitzgerald  
Executive Deputy Secretary of State

**ARTICLES OF ORGANIZATION  
OF  
Butternut Crossing Commercial Enterprises, LLC**  
Under Section 203 of the Limited Liability Company Law

**FIRST:** The name of the limited liability company is:

**Butternut Crossing Commercial Enterprises, LLC**

**SECOND:** To engage in any lawful act or activity within the purposes for which limited liability companies may be organized pursuant to Limited Liability Company Law provided that the limited liability company is not formed to engage in any act or activity requiring the consent or approval of any state official, department, board, agency, or other body without such consent or approval first being obtained.

**THIRD:** The county, within this state, in which the 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 against the limited liability company served upon him or her is:

Butternut Crossing Commercial Enterprises, LLC  
1201 East Fayette Street  
Syracuse, NY 13210

**FIFTH:** The limited liability company is to be managed by: ONE OR MORE MANAGERS.

**SIXTH:** The limited liability company shall defend, indemnify and hold harmless all members, managers, and former members and managers of the limited liability company against expenses (including attorney's fees, judgments, fines, and amounts paid in settlement) incurred in connection with any claims, causes of action, demands, damages, liabilities of the limited liability company, and any pending or threatened action, suit, or proceeding. Such indemnification shall be made to the fullest extent permitted by the laws of the State of New York, provided that such acts or omissions which gives rise to the cause of action or proceedings occurred while the Member or Manager was in performance of his or her duties for the limited liability company and was not as a result of his or her fraud, gross negligence, willful misconduct or a wrongful taking. The indemnification provided herein shall inure to the benefit of successors, assigns, heirs, executors, and the administrators of any such person.

I certify that I have read the above statements, I am authorized to sign these Articles of Organization, that the above statements are true and correct to the best of my knowledge and belief and that my signature typed below constitutes my signature.

Natalie P. Hempson, Organizer (signature)

---

Natalie P. Hempson, Esq. , ORGANIZER  
Bousquet Holstein PLLC  
110 W Fayette St, Ste 1000  
Syracuse, NY 13202

**Filed by:**  
Marjorie Pepe  
Bousquet Holstein PLLC  
110 W Fayette St, Ste 1000  
Syracuse, NY 13202

**FILED WITH THE NYS DEPARTMENT OF STATE ON: 09/25/2017**  
**FILE NUMBER: 170925010364; DOS ID: 5207360**

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



**OPERATING AGREEMENT FOR**  
**BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC**  
A NEW YORK LIMITED LIABILITY COMPANY

HV CONSULTANTS HOLDING CO., LLC, the sole manager ("Manager") and sole member ("Member"), hereby declares the following to be the Operating Agreement of **BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC** effective the 25<sup>th</sup> day of September, 2017.

1. Name. The name of the limited liability company (the "LLC") is Butternut Crossing Commercial Enterprises, LLC.

2. Purpose and Powers; Filings.

(a) The purpose of the LLC is to engage in any activity for which limited liability companies may be organized in the State of New York. The LLC shall possess and may exercise all of the powers and privileges granted by the New York State Limited Liability Company Law, as that statute is amended from time to time (the "Act") or by any other law or by this Agreement, together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business purposes or activities of the LLC.

(b) The Manager shall cause to be done all such filing, recording, publishing, or other acts as may be necessary or appropriate from time to time to comply with the requirements of law for the formation and operation of a limited liability company in the State of New York and any such requirements in any other jurisdiction in which the LLC may do business. All costs incurred in connection with the foregoing, including, without limitation, legal fees in connection therewith, shall be expenses of the LLC and shall be reimbursed promptly by the LLC upon the completion of such action if paid by the Manager.

3. Designated Agent; Mailing Address. The Secretary of State is designated as agent of the Limited Liability Company upon whom process against it may be served. The post office address within or without the State to which the Secretary of State shall mail a copy of any process against the Limited Liability Company served upon him or her is 1201 East Fayette Street, Syracuse, New York 13210.

4. Admission of Member. HV Consultants Holding Co., LLC is admitted as the sole Member of the LLC.

5. Interest. "Interest" shall mean the membership interest of the Member in the LLC (as defined in the Act), including the rights and obligations of the Member under this Agreement.

6. Capital Contributions. The Member may contribute property, real, personal, tangible or intangible, to the Company from time to time as the Member may determine.

7. Tax Characterization and Returns. Until such time as the LLC has more than one Member, the LLC shall be a "disregarded entity" solely for the purposes of federal and state income tax reporting. All provisions of the LLC's Articles of Organization and this Agreement are to be construed so as to preserve that tax status under those circumstances. In the event one or more additional Members is admitted to the LLC, the LLC shall be treated as a partnership for federal and all relevant state tax purposes and shall make all available elections to be so treated.

8. Management.

(a) Manager. The management of the LLC shall be vested in a Manager selected by the Member. Unless the Member determines otherwise, the LLC shall have one Manager. The Member affirms the selection of HV Consultants Holding Co., LLC as the Manager of the LLC to serve until his successor is selected. A Manager shall remain in office until removed by a written instrument signed by the Member or until such Manager resigns in a written instrument delivered to the Member or such Manager dies or is unable to serve. In the event of any such vacancy, the Member or his personal representative may fill the vacancy. The Manager shall perform his duties in good faith, in a manner he reasonably believes to be in the best interests of the LLC, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. A person who so performs his duties shall not have any liability by reason of serving or having served as a Manager. A Manager shall not be liable under a judgment, decree or order of court, or in any other manner, for a debt, obligation or liability of the LLC. All powers to control and manage the business and affairs of the LLC shall be exclusively vested in the Manager, and the Manager may exercise all powers of the LLC and do all such lawful acts as are not by statute, the Articles of Organization or this Agreement directed or required to be exercised or done by the Member and in so doing shall have the right and authority to take all actions which the Manager deems necessary, useful or appropriate for the management and conduct of the business of the LLC; provided, however, that the Member may amend this Agreement at any time and thereby broaden or limit the Manager's power and authority.

(b) Officers. The LLC may have, but shall not be required to have, officers who are appointed by the Manager. The officers of the LLC may consist of a President, one or more Vice Presidents, a Secretary and a Treasurer. The powers and duties of each officer, if designated by the Manager, shall be as follows:

(1) The President. The President shall have, subject to the supervision, direction and control of the Manager, the general powers and duties of supervision, direction and management of the affairs and business of the LLC, including, without limitation, all powers necessary to direct and control the organizational and reporting relationships within the LLC.

(2) The Vice Presidents. Each Vice President shall have such powers and perform such duties as may from time to time be assigned to him or her by the Manager or the President.

(3) The Secretary. The Secretary shall have all such powers and duties as generally are incident to the position of a secretary or as may from time to time be assigned to him or her by the Manager or the President.

(4) The Treasurer. The Treasurer shall have custody of the LLC's funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the LLC and shall deposit or cause to be deposited moneys or other valuable effects in the name and to the credit of the LLC in such depositories as may be designated by the Manager. The Treasurer shall also maintain adequate records of all assets, liabilities, and transactions of the LLC and shall see that adequate review thereof are currently and regularly made. The Treasurer shall have such other powers and perform such other duties that generally are incident to the position of a treasurer or as may from time to time be assigned to him or her by the Manager or the President.

(c) Indemnification. The LLC hereby indemnifies and holds harmless the Member, Manager, Officers, and their successors, executors, and administrators against any loss or damage incurred by such Member, Manager, or Officer by reason of acts or omissions in good faith on behalf of the LLC and in a manner reasonably believed by the Member, Manager, or Officer to be within the scope of the authority granted by this Agreement. However, no indemnification may be made to or on behalf of any Member, Manager, or Officer if a judgment or other final adjudication adverse to such Member, Manager, or Officer established (1) that the Member's, Manager's, or Officer's acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated or (2) that the Member, Manager, or Officer personally gained in fact a financial profit or other advantage to which the Member, Manager, or Officer was not legally entitled.

(d) Rights and Powers of the Member. The Member shall not have any right or power to take part in the management or control of the LLC or its business and affairs or to act for or bind the LLC in any way. Notwithstanding the foregoing, the Member has all the rights and powers specifically set forth in this Agreement and, to the extent not inconsistent with this Agreement, in the Act. The Member has no voting rights except with respect to those matters specifically set forth in this Agreement and, to the extent not inconsistent herewith, as required in the Act. Notwithstanding any other provision of this Agreement, no action may be taken by the LLC (whether by the Manager or otherwise) in connection with any of the following matters without the written consent of the Member or his legal representative:

(1) the dissolution or liquidation, in whole or in part, of the LLC, or the institution of proceedings to have the LLC adjudicated bankrupt or insolvent;

(2) the admission of an additional member to the LLC;

(3) the filing of a petition seeking or consenting to reorganization or relief under any applicable federal or state bankruptcy law;

(4) consenting to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the LLC or a substantial part of its property;

(5) the merger of the LLC with any other entity;

(6) the sale of all or substantially all of the LLC's assets; or

(7) the amendment of this Agreement.

9. Distributions. The Manager may cause, in the Manager's sole and absolute discretion, the LLC to distribute to the Member, at any time, any cash held by the LLC which is neither reasonably necessary for the operation of the LLC nor in violation of the Act.

10. Assignments. A Member may assign all or any part of his, her or its Interest only with the permission of the Manager, which permission may be granted or denied in the absolute and sole discretion of the Manager (an assignee of such Interest is hereinafter referred to as a "Permitted Assignee"). A Permitted Assignee shall not be substituted as a member of the LLC for the Member unless and until the substitution is approved by the Manager, acting in his absolute and sole discretion.

11. Dissolution. The LLC shall dissolve, and its affairs shall be wound up, only upon the earlier to occur of (a) the decision of the Member acting with the approval of the Manager, or (b) in the event of a judicial dissolution of the LLC under the Act.

12. Distributions in Liquidation. Following dissolution of the LLC, the affairs of the LLC shall be forthwith wound-up and the proceeds from the liquidation of the property of the LLC shall be distributed in the following priority:

(a) First, to creditors of the LLC in satisfaction of liabilities of the LLC, whether by payment or by establishment of adequate reserves; and

(b) The balance, if any, is to be distributed to the Member.

In connection with any winding up and liquidation, the accountants for the LLC shall compile a balance sheet of the LLC as of the date of dissolution, and such balance sheet shall be furnished promptly to the Member.

13. Limited Liability. No Member, Manager, or Officer shall have any liability for the obligations of the LLC except to the minimum extent required by the Act.

14. Miscellaneous.

(a) Severability. Each provision hereof is intended to be severable, and the invalidity or illegality of any provision of this Agreement shall not affect the validity or legality of the remainder hereof.

(b) Captions. Paragraph captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision hereof.

(c) 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.

(d) Binding Agreement. Subject to the restrictions on assignment herein contained, the terms and provisions of this Agreement shall be binding upon, and inure to the benefit of the successors, assigns, personal representatives, estates, heirs, and legatees of the Member.

(e) Applicable Law. Notwithstanding the place where this Agreement may be executed by any of the parties hereto, the parties expressly agree that all the terms and provisions hereof shall be construed under the laws of New York and that the Act and other applicable laws of New York as now adopted or as hereafter amended shall govern this Agreement.

(f) Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto with respect to the matters set forth herein and supersedes any prior understanding or agreement, oral or written, with respect thereto.

(g) Qualification in Other States. In the event the business of the LLC is carried on or conducted in states in addition to New York, then this LLC shall exist under the laws of each state in which business is actually conducted by the LLC, and the Member and the Manager agree to execute such other and further documents as may be required or requested in order that the LLC may qualify in such states. An LLC office or principal place of business in any state may be designated from time to time by the Manager.


(h) 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.

(i) Amendment. This Agreement may be amended only in a writing signed by the Member and approved by the Manager.

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

HV CONSULTANTS HOLDING CO., LLC,  
Member

By: HOUSING VISIONS CONSULTANTS, INC.,  
Its Manager


By:   
\_\_\_\_\_  
Rebecca C. Newman, President and CEO

**MANAGER'S ACCEPTANCE**

The undersigned, appointed as the Manager appointed under the foregoing Agreement, hereby accepts appointment as Manager of the Company.

HV CONSULTANTS HOLDING CO., LLC,  
Manager

By: HOUSING VISIONS CONSULTANTS, INC.,  
Its Manager

By:   
\_\_\_\_\_  
Rebecca C. Newman, President and CEO

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**AMENDMENT NO. 1 TO THE  
OPERATING AGREEMENT  
OF BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC**

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**THIS AMENDMENT NO. 1** ("Amendment") is made this \_\_\_\_ day of December, 2017 to the **BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC** Operating Agreement dated September 25, 2017 executed by and entered into by **HV CONSULTANTS HOLDING CO., LLC**.

**RECITALS**

**WHEREAS**, Butternut Crossing Commercial Enterprises, LLC ("Company") was formed as of September 25, 2017, by the filing of the Company's Articles of Organization with the Secretary of State of the State of New York. The Company's initial operating agreement was entered into by the Company's sole member and manager, HV Consultants Holding Co., LLC ("Member"), on September 25, 2017 (hereinafter "Original Agreement"); and

**WHEREAS**, the Company has entered or will be entering into a certain loan facility with the New York State Housing Trust Fund Corporation, ("HTFC") pursuant to which the Company will borrow funds from the HTFC to be secured by a mortgage and a regulatory agreement encumbering a project comprised of all the real property assets of the Company; and

**WHEREAS**, HTFC is unwilling to enter into the loan facility with the Company unless the Company amends its Original Agreement to incorporate certain provisions; and

**WHEREAS**, the Member is willing to incorporate such provisions in consideration of the HTFC loan facility with the Company;

**NOW, THEREFORE**, pursuant to the terms and conditions of the Original Agreement, the parties agree as follows:

1. **Housing Trust Fund Corporation Provisions**. A new Section 15 shall be inserted into the Original Agreement and shall read as follows:

**SECTION 15. Housing Trust Fund Corporation Provisions**

(a) The Company is authorized to execute a note and mortgage in order to secure a loan to be made by the New York State Housing Trust Fund Corporation ("HTFC"), and to execute a regulatory agreement, and other documents required by the HTFC in connection with such loan.

(b) Any incoming member shall, as a condition of receiving an interest in the Company property agree to be bound by the note, mortgage and regulatory agreement and other

documents required in connection with the loan to the same extent and on the same terms as the other members.

(c) For so long as the HTFC is the holder of a mortgage on the project, any amendment to this Agreement without the prior written consent of the HTFC, shall be a default under the HTFC's regulatory agreement and mortgage and security agreement if it results in any of the following: 1) the amendment modifies the duration of this Agreement; 2) the amendment results in a new member; or 3) the amendment affects HTFC's mortgage or regulatory agreement.

(d) Notwithstanding any other provision of this Agreement, upon any dissolution, no title or right to possession and control of the project, and no right to collect the rents therefrom shall pass to any person who is not bound by the regulatory agreement in a manner satisfactory to HTFC.

(e) Notwithstanding any other provisions of this Agreement, in the event that any provision of this Agreement conflict with any provisions of the regulatory agreement, the provision of the regulatory agreement shall control.

(f) For so long as the HTFC, its successors or assigns, is the holder of a mortgage encumbering the project property, the Company shall not be voluntarily dissolved without the prior written approval of HTFC.

(g) For so long as the HTFC, its successors or assigns, is the holder of a mortgage encumbering the project property, the project is and shall remain the sole asset and business purpose of the Company.

2. **Removal of Manager.** As long as the Company has any outstanding obligation to HTFC, the Member's right to remove the Manager under Section 8 of the Original Agreement shall require the consent of HTFC.

3. **Effect of Amendment.** Failure of the Company to comply with any of the covenants contained in this Amendment shall not affect the status of the Company as a separate legal entity or the limited liability of the Members.

4. **Authorization.** Each party hereto hereby represents and warrants to the other parties that the person executing this Amendment on its behalf is duly elected and acting representative thereof and has been duly authorized by its respective governing body to execute and deliver this Amendment on its behalf.

5. **Unamended Terms.** All other provisions of the Original Agreement shall remain in full force and effect unchanged by the provisions of this Amendment except insofar as there is any conflict between the terms and provisions of the Original Agreement and this Amendment; in which case, the terms and conditions of this Amendment shall control.



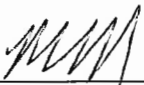
6. **Successors and Assigns; Governing Law.** This Amendment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. This Amendment shall be governed by, and construed in accordance with, the laws of the state of New York.

7. **Severability.** The invalidity or unenforceability of any provision of this Amendment in a particular respect shall not affect the validity and enforceability of any other provisions of this Amendment or of the same provision in any other respect.

**IN WITNESS WHEREOF**, this Amendment has been executed and delivered as of the day and year first above written.

**MEMBER:**

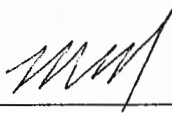
**HV CONSULTANTS HOLDING CO., LLC  
By: HOUSING VISIONS CONSULTANTS, INC.,  
Its Sole Manager**

By:   
\_\_\_\_\_  
Benjamin P. Lockwood, Vice President

**The foregoing Amendment is hereby approved by the Manager of the Company**

**MANAGER:**

**HV CONSULTANTS HOLDING CO., LLC  
By: HOUSING VISIONS CONSULTANTS, INC.,  
Its Sole Manager**

By:   
\_\_\_\_\_  
Benjamin P. Lockwood, Vice President

**EXHIBIT "C"**  
**GOOD STANDING CERTIFICATE**

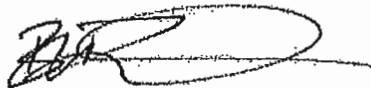
**State of New York  
Department of State } ss:**

I hereby certify, that BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC a NEW YORK Limited Liability Company filed Articles of Organization pursuant to the Limited Liability Company Law on 09/25/2017, and that the Limited Liability Company is existing so far as shown by the records of the Department.

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 04th day of December  
two thousand and seventeen.*



Brendan W. Fitzgerald  
Executive Deputy Secretary of State



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**EXHIBIT "D"**  
**RESOLUTION**

**RESOLUTIONS  
OF THE  
DIRECTORS  
OF  
BUTTERNUT CROSSING HOUSING DEVELOPMENT FUND CORPORATION**

The Board of Directors of **Butternut Crossing Housing Development Corporation**, a not-for-profit corporation duly organized and existing under the laws of the State of New York (the "**Company**"), hereby adopts the following resolutions at a meeting duly called and held for such purpose:

RESOLVED, that the Company is hereby authorized and empowered to acquire a nominal interest in sixteen (16) sites located on or about Butternut Street and N. Townsend Street in the City of Syracuse, County of Onondaga and State of New York (collectively, the "**Property**") for development of a mixed-use affordable housing project (the "**Project**") by an affiliate of the HDFC, Butternut Crossing, LLC, and to execute and deliver those certain documents, including but not limited to, any real estate conveyance documents, and any and all other related documents in connection with such acquisition (collectively, the "**Acquisition Documents**"), which Acquisition Documents may contain such terms, provisions, conditions, stipulations, and agreements as the Company may deem proper and advisable, and that Rebecca C. Newman, Benjamin A. Lockwood, or any other officer of the Company (each an "**Authorized Person**") is each authorized to act on behalf of the Company to execute and deliver such Acquisition Documents and such other documents as such person may deem proper and advisable in order to effectuate the foregoing transactions; and it is

FURTHER RESOLVED, that the Company is hereby authorized to execute and deliver a certain Declaration of Interest and Nominee Agreement (the "**Nominee Agreement**") with Butternut Crossing, LLC in connection with the Property, which Nominee Agreement may contain such terms, provisions, conditions, stipulations and agreements as the Company may deem proper and advisable, and that any Authorized Person is authorized to act on behalf of the Company to execute and deliver such Nominee Agreement and such other documents as such person may deem proper and advisable in order to effectuate the foregoing transactions; and it is

FURTHER RESOLVED, that the Company is hereby authorized to execute and deliver documents in support of an application for a No Action Letter to the New York Attorney General's Office with respect to the creation of a condominium regime for two of the sites in the Project, 618-620 N. Townsend Street and 700 N. Townsend Street, and that any Authorized Person is authorized to act on behalf of the Company to execute and deliver a Condominium Declaration and such other documents as such person may deem proper and advisable in order to create a residential condominium unit to be owned by the Company and Butternut Crossing, LLC and to otherwise effectuate the foregoing transactions, and it is further

FURTHER RESOLVED, the Company is hereby authorized and empowered to execute and deliver any and all documents required in connection with the development of the Project which may require the Company's approval as a nominal interest holder in the Property, including without limitation, agreements with architects, construction company(ies) and

contractors, engineers, environmental consultants, appraisers, and other professional individuals and/or companies (collectively, the "**Development Documents**"), which Development Documents may contain such terms, provisions, conditions, stipulations and agreements as the Company may deem proper and advisable, and that any Authorized Person is authorized to act on behalf of the Company to execute and deliver such Development Documents and other such documents as such person may deem proper and advisable in order to effectuate the foregoing transactions; and it is

FURTHER RESOLVED, that the Company is hereby authorized and empowered to execute and deliver to NBT Bank or its affiliates ("**NBT**") those certain documents which may require the Company's approval as a nominal interest holder in the Property, including, but not limited to, any construction loan agreement, building loan and project loan mortgage, promissory note, security agreement, payment guaranty, performance and completion guaranty, assignment of leases and rents, assignment of construction contracts and management agreement, assignment of development fee, collateral assignment of managing member interest and security agreement, environmental and hazardous substances indemnity agreement, assignment of capital contributions, borrower's certificate and any and all other guaranties and documents (collectively, the "**NBT Construction Loan Documents**") to be entered into with respect to certain construction loans to be made by NBT for the Project in the approximate principal amount of up to Four Million Five Hundred Twenty Thousand and 00/100 Dollars (\$4,520,000), inclusive, which NBT Construction Loan Documents may contain such terms, provisions, conditions, stipulations and agreements as the Company may deem proper and advisable, and that any Authorized Person is authorized to act on behalf of the Company to execute and deliver such NBT Construction Loan Documents and such other documents as such person may deem proper and advisable in order to effectuate the foregoing transactions; and it is

FURTHER RESOLVED, that the Company is hereby authorized and empowered to execute and deliver any and all documents which may require the Company's approval as a nominal interest holder in the Property, including, but not limited to, any subordinate mortgage on the Property (collectively, the "**City Loan Documents**") to be entered into with respect to a subordinate construction and/or permanent loan in the original principal amount of up to Five Hundred Fifty-Eight Thousand Nine Hundred Seventy-Five and 00/100 Dollars (\$558,975), inclusive, to be made by the City of Syracuse (the "**City**") for the benefit of the Project, which City Loan Documents may contain such terms, provisions, conditions, stipulations and agreements as the Company may deem proper and advisable, and that any Authorized Person is authorized to act on behalf of the Company to execute and deliver such City Loan Documents and such other documents as such Authorized Person may deem proper and advisable in order to effectuate the foregoing transactions; and it is

FURTHER RESOLVED, that the Company is hereby authorized and empowered to execute and deliver to New York State Housing Trust Fund Corporation ("**HTFC**") any and all documents which may require the Company's approval as a nominal interest holder in the Property (collectively, the "**HTFC Loan Documents**") to be entered into with respect to three distinct subordinate construction and/or permanent loans to be made by HTFC to the Company (collectively the "**HTF Loans**") as follows: (1) a HOME Program loan in the principal amount of up to Two Million Two Hundred Thousand and 00/100 Dollars (\$2,200,000), (2) a Middle

Income Housing Program loan in the principal amount of up to One Million Six Hundred Fourteen Thousand Five Hundred Seventeen and 00/100 Dollars (\$1,614,517), and (3) a Community Investment Fund loan in the principal amount of up to Five Hundred Eighty Thousand Five Hundred Fourteen and 00/100 Dollars (\$580,514), which HTFC Loans shall be secured by, among other things, a certain mortgage on interests of the Company in the Property, which HTFC Loan Documents may contain such terms, provisions, conditions, stipulations and agreements as the Company may deem proper and advisable, and that any Authorized Person is authorized to act on behalf of the Company to execute and deliver such HTFC Loan Documents and such other documents as such person may deem proper and advisable in order to effectuate the foregoing transactions; and it is

FURTHER RESOLVED, that the Company is hereby authorized and empowered to execute and deliver any and all documents which may require the Company's approval as a nominal interest holder in the Property (collectively, the "**Leviticus Loan Documents**") entered or to be entered into with respect to a predevelopment loan in the original principal amount of up to Four Hundred Thousand and 00/100 Dollars (\$400,000) to be made by Leviticus 25 :23 Alternative Fund, Inc. ("**Leviticus**") for the Project, which Leviticus Loan Documents may contain such terms, provisions, conditions, stipulations and agreements as the Company may deem proper and advisable, and that any Authorized Person is authorized to act on behalf of the Company to execute and deliver such Leviticus Loan Documents and such other documents as such Authorized Person may deem proper and advisable in order to effectuate the foregoing transactions; and it is

FURTHER RESOLVED, that the Company is hereby authorized and empowered to execute and deliver to New York State Homes and Community Renewal one or more regulatory agreements in connection with any federal low-income housing tax credits (collectively, the "**LIHC Regulatory Agreement**"), which LIHC Regulatory Agreement may contain such terms, provisions, conditions, stipulations and agreements as the Company may deem proper and advisable, and that any Authorized Person is authorized to act on behalf of the Company to execute and deliver such LIHC Regulatory Agreement and such other documents as such person may deem proper and advisable in order to effectuate the foregoing transactions; and it is

FURTHER RESOLVED, that the Company is hereby authorized and empowered to execute and deliver a certain payment in lieu of taxes agreement with the City and/or any other required municipality (the "**PILOT Agreement**") in connection with the Property, which PILOT Agreement may contain such terms, provisions, conditions, stipulations and agreements as the Company may deem proper and advisable, and that any Authorized Person is authorized to act on behalf of the Company to execute and deliver such PILOT Agreement and other such documents as such Authorized Person may deem proper and advisable in order to effectuate the foregoing transactions; and it is

FURTHER RESOLVED, that the Company is hereby authorized and empowered to enter into any additional subordinate financing with respect to the development of the Project, which additional subordinate financing may contain such terms, provisions, conditions, stipulations and agreements as the Company may deem proper and advisable, and that any Authorized Person is authorized to act on behalf of the Company to execute and deliver such additional subordinate

financing documents as such Authorized Person may deem proper and advisable in order to effectuate the foregoing transactions; and it is

FURTHER RESOLVED, that all action taken and all instruments executed by Authorized Persons on behalf of the Developer (on behalf of the Managing Member, the Company or on its own behalf, as applicable) prior to the adoption of these resolutions with respect to the transactions described above and all matters related thereto, are hereby ratified, confirmed and approved; and it is

FURTHER RESOLVED, that in addition to and without limiting the generality of the foregoing resolutions with respect to the aforesaid acquisition, financing, construction and other transactions, each Authorized Person is hereby authorized and directed to take such further action in connection with said transactions and to execute and deliver all such other agreements, instruments and documents as such person with advice of counsel may deem appropriate to carry out the foregoing Resolutions and the consummation of the transactions described therein.

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**CERTIFICATION**

The undersigned, being the duly elected Secretary of Butternut Crossing Housing Development Fund Corporation hereby certifies that annexed hereto is a true, correct and complete copy of certain resolutions duly adopted at a meeting of the board of directors of the Company held on November 28, 2017 at which a quorum was present, and such resolutions have not been modified, amended or repealed and are in full force and effect as of the date hereof.

Dated as of: November 28, 2017

  
\_\_\_\_\_  
Benjamin A. Lockwood, Secretary

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**EXHIBIT "E"**  
**LOCAL ACCESS AGREEMENT**

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

**Local Access Agreement**

Butternut Crossing Commercial Enterprises, 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		Butternut Crossing Commercial Enterprises, LLC				General Contractor		Spoleta Construction, LLC			
Representative for Contract Bids and Awards		Diana Jakimoski				Contact		Jon Fitzsimmons			
Address		1201 E. Fayette St				Address		7 Van Auker Street			
City	Syracuse	ST	NY	Zip	13210	City	Rochester	ST	NY	Zip	14608
Phone	315-472-3820		Fax	315-471-3921		Phone	585-436-2701		Fax	585-436-3436	
Email		djakimoski@housingvisions.org				Email		jfitsim@Spoleta.com			
Project Address		618-620 N. Townsend St.				Construction Start Date		December 28, 2017			
City	Syracuse	ST	NY	Zip	13203	Occupancy Date		September 1, 2019			

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

Item	Estimated Value	Bid Date	Contact
Site work/Demolition	\$46,898		Jon Fitzsimmons
Foundation and footings	\$36,720	TBD	Jon Fitzsimmons
Building	\$18,739	TBD	Jon Fitzsimmons
Masonry	\$55,114	TBD	Jon Fitzsimmons
Metals	\$62,950	TBD	Jon Fitzsimmons
Wood/casework	\$54,694	TBD	
Thermal/moisture proof	\$72,692	TBD	Jon Fitzsimmons
Doors, windows, glazing	\$24,890	TBD	Jon Fitzsimmons
Finishes	NA	NA	NA
Electrical	\$37,630	TBD	Jon Fitzsimmons
HVAC	\$39,843	TBD	Jon Fitzsimmons
Plumbing	\$46,484	TBD	Jon Fitzsimmons
Specialties	NA	NA	NA
Machinery & Equipment	NA	NA	NA
Furniture and Fixtures	NA	NA	NA
Utilities	\$18,000	TBD	Jon Fitzsimmons
Paving	\$5,898	TBD	Jon Fitzsimmons
Landscaping	\$2,000	TBD	Jon Fitzsimmons
Other (Fire Alarm)	\$7,483	TBD	Jon Fitzsimmons

Date: 12/21/17

Company: Butternut Crossing Commercial Enterprises, LLC

Signature: 

Name: Benjamin Lackwood

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December 21, 2017

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

Butternut Crossing Commercial Enterprises, LLC  
1201 East Fayette Street, Suite 26  
Syracuse, New York 13210

NBT Bank, National Association  
52 S. Broad Street  
Norwich, New York 13815

Re: City of Syracuse Industrial Development Agency  
Lease/Leaseback Transaction  
Butternut Crossing Commercial Enterprises, LLC  
Butternut Crossing Project

Ladies and Gentlemen:

We have acted as counsel to the City of Syracuse Industrial Development Agency (the “**Agency**”) in connection with a project (the “**Project**”) undertaken by the Agency at the request of Butternut Crossing Commercial Enterprises, LLC (the “**Company**”) consisting of: (A)(i) the acquisition of an interest in all or a portion of an approximate .224 acre parcel of improved real property located at 618-620 North Townsend Street, in the City of Syracuse, New York (the “**Land**”); (ii) the construction of approximately 3,870 square feet of commercial space on the first floor (the 3,870 square feet of commercial space being referred to herein as the “**Commercial Space**” or the “**Facility**”) which is part of a larger approximately 16,400 square foot building being constructed for use as an affordable housing complex, all located on the Land; (iii) the acquisition and installation in the Facility of furniture, fixtures and equipment (the “**Equipment**” and together with the Land and the Facility, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (the “**Financial Assistance**”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Company has also requested that the Agency grant the Financial Assistance to the Project. The Agency and the Company will enter into a Payment in Lieu of Taxes Agreement dated as of December 1, 2017 (the "**PILOT Agreement**") with respect to the Project. Capitalized terms used herein which are not otherwise defined shall have the meanings ascribed to them in the Agency Lease.

In furtherance of the Project, the Company has requested that the Agency execute and deliver the following documents, each dated as of December 21, 2017, and entered into for purposes of securing obligations of the Company relating to a certain loan in the principal amount of \$320,000.00 (the "**Loan**") made to the Company by NBT Bank, National Association (the "**Lender**"):

- (i) Construction Mortgage and Security Agreement, dated as of December 21, 2017 (the "**Mortgage**"), and
- (ii) Assignment of Leases and Rents, dated as of December 21, 2017 (the "**Assignment**", and collectively with the Mortgage, the "**Financing Documents**")

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 and equip the Project, to lease the Land and the Facility from the Company pursuant to the Company Lease; to accept an interest in the Equipment pursuant to the Bill of Sale; to sublease the Project Facility back to the Company pursuant to the Agency Lease, to enter into the Financing Documents and to appoint the Company as its agent for completion of the Project.
3. The Agency Documents and Financing 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.

December 21, 2017

Page 3

In rendering this opinion, we advise you of the following:

The enforceability of the Agency Documents and the Financing 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



**29**





# BOUSQUET HOLSTEIN PLLC

110 WEST FAYETTE STREET • ONE LINCOLN CENTER • SUITE 1000 • SYRACUSE, NEW YORK 13202 • PH: 315.422.1500 • FX: 315.422.3549\*

December 21, 2017

LAURENCE G. BOUSQUET  
PHILIP S. BOUSQUET  
CECELIA R. S. CANNON  
CHRISTINE WOODCOCK DETTOR  
AARON D. FRISHMAN \*  
DAVID A. HOLSTEIN †  
VIRGINIA A. HOVEMAN  
EMILEE K. LAWSON HATCH \*\*\*  
SHARON A. MCAULIFFE  
L. MICHA ORDWAY, JR.  
STEVEN A. PAQUETTE  
PAUL M. PREDMORE  
JAMES L. SONNEBORN  
THOMAS E. TAYLOR \*\*  
JOHN L. VALENTINO  
ROBERT K. WEILER  
JOSHUA S. WERBECK  
EVA K. WOJTALEWSKI \*\*\*\*

OF COUNSEL:

GARY J. LAVINE \*\*  
SIDNEY L. MANES  
JANA K. McDONALD †  
J.P. PARASCHOS  
ANNA V. PUTINTSEVA  
CATERINA A. RANIERI  
ANAS SALEH  
HARRISON V. WILLIAMS, JR.

ASSOCIATES:

CAMERON T. BERNARD ††  
REBECCA R. COHEN †††  
GEORGIA G. CRINNIN  
GREGORY D. ERIKSEN  
GWEN Z. GOU  
NATALIE P. HEMPSON-ELLIOTT  
KAVITHA JANARDHAN \*\*\*\*\*  
CASEY A. JOHNSON  
JULIA J. MARTIN  
AIDAN C. MITCHELL-EATON  
RYAN S. SUSER  
MICHAEL W. TYSZKO

ALSO ADMITTED TO CO BAR \*  
ALSO ADMITTED TO DC BAR \*\*  
ALSO ADMITTED TO MA & CO BAR \*\*\*  
ALSO ADMITTED TO CA BAR \*\*\*\*  
ALSO ADMITTED TO IL BAR \*\*\*\*\*  
ALSO ADMITTED TO FL & PA BAR †  
ALSO ADMITTED TO FL BAR ††  
ALSO ADMITTED TO MA BAR †††  
ALSO ADMITTED TO DC, FL & NJ BAR †  
NOT FOR SERVICE OF PROCESS ◆

Butternut Crossing Commercial Enterprises, LLC  
1201 East Fayette Street, Suite 26  
Syracuse, New York 13210

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

Re: City of Syracuse Industrial Development Agency  
Lease/Leaseback Transaction  
Butternut Crossing Commercial Enterprises, LLC  
Butternut Crossing Project

Ladies and Gentlemen:

We have acted as counsel to Butternut Crossing Commercial Enterprises, 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 all or a portion of an approximate .224 acre parcel of improved real property located at 618-620 North Townsend Street, in the City of Syracuse, New York (the "**Land**"); (ii) the construction of approximately 3,870 square feet of commercial space on the first floor (the 3,870 square feet of commercial space being referred to herein as the "**Commercial Space**" or the "**Facility**") which is part of a larger approximately 16,400 square foot building being constructed for use as an affordable housing complex, all located on the Land; (iii) the acquisition and installation in the Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.



The Agency has acquired an interest in the Project Facility pursuant to that certain Company Lease Agreement dated as of December 1, 2017 (the “*Company Lease*”) and an interest in the Equipment pursuant to a bill of sale dated as of December 1, 2017 (the “*Bill of Sale*”) and the Agency will sublease the Project Facility back to the Company pursuant to an Agency Lease Agreement dated as of December 1, 2017 (the “*Agency Lease*”). Capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Agency Lease.

The Company has also requested that the Agency grant the Financial Assistance to the Project. The Agency and the Company entered into a Payment in Lieu of Taxes Agreement dated December 1, 2017 (the “*PILOT Agreement*”) with respect to the Project.

In that regard, we have examined the Project Agreement, the Company Lease, the Agency Lease, the Bill of Sale, the Mortgage, the Environmental Compliance, the Indemnification Agreement, the PILOT Agreement and all other documents both identified in the Closing Memorandum, defined in the Agency Lease and to which the Company is a party in connection with the Project (collectively, the “*Company Documents*”).

We have also examined corporate documents and records of the Company and made such investigation of law and/or fact that we deem necessary or advisable in order to render this opinion. For purposes of such examination, we have assumed the genuineness of all certificates and the authenticity of all documents submitted to us as original counterparts or as certified or photostatic copies; the genuineness of all signatures of all parties to the Company Documents other than on behalf of the Company; and the due authorization, execution and delivery of the Company Documents by and the enforceability thereof against all parties thereto other than the Company.

As to questions of fact material to our opinion, we have relied upon the representations and warranties made by the Company in the Company Documents and upon one or more certificates of officers of the Company. Whenever the phrase “to the best of our knowledge” is used in this opinion, it refers to actual knowledge of members of this firm obtained from our representation of the Company and inquiries of responsible officers of the Company made in connection with this opinion, but no further investigation or review has been conducted.



Based upon the foregoing, it is our opinion that:

1. The Company is a validly existing New York limited liability company and possesses full corporate power and authority to own its property, to conduct its business, to execute and deliver the Company Documents, and to carry out and perform its obligations thereunder.

2. The execution, delivery and performance of the Company Documents have been duly authorized by the Company and the Company Documents have been duly executed and delivered by an Authorized Representative of the Company.

3. The Company Documents constitute the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as enforceability may be limited by applicable bankruptcy and insolvency laws and laws affecting creditors' rights generally and to the extent that the availability of the remedy of specific performance or injunctive relief or other equitable remedies is subject to the discretion of the court before which any proceeding therefor may be brought.

4. To the best of our knowledge, in reliance on the certificates and opinions specified herein, the execution and delivery by the Company of the Company Documents, the execution and compliance with the provisions of each and the consummation of the transactions contemplated therein do not and will not constitute a breach of, or default under the Company's Articles of Organization, Operating Agreement or any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Company or any of its Property may be bound, for which a valid consent has not been secured; nor is any approval or any action by any governmental authority required in connection with the execution, delivery and performance thereof by the Company.

5. To the best of our knowledge, in reliance on the certificates and opinions specified herein, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened against, or affecting the Company wherein an unfavorable decision, ruling or finding would in any way adversely affect in a material fashion the validity or enforceability of the Company Documents.

Our examination of law relevant to matters herein is limited to the laws of the State of New York and also the Federal law, where appropriate, and we express no opinion as to matters governed by the laws of any other state or jurisdiction.



Butternut Crossing Commercial Enterprises, LLC  
City of Syracuse Industrial Development Agency  
December 21, 2017  
Page 4

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,

BOUSQUET HOLSTEIN PLLC

Paul M. Predmore

Email: [ppredmore@BHLawPLLC.com](mailto:ppredmore@BHLawPLLC.com)\*

Direct Fax: (315) 423-2865\*

(\*not for service of process)

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## CLOSING MEMORANDUM

### CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

### BUTTERNUT CROSSING COMMERCIAL ENTERPRISES, LLC PROJECT

**DATE AND TIME OF CLOSING:** December 21, 2017

**PLACE OF CLOSING:** Barclay Damon LLP  
Barclay Damon Tower  
125 East Jefferson Street  
Syracuse, New York 13202

#### **I. Action Taken Prior to Closing**

At the request of Butternut Crossing Commercial Enterprises, 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 all or a portion of an approximate .224 acre parcel of improved real property located at 618-620 North Townsend Street, in the City of Syracuse, New York (the “*Land*”); (ii) the construction of approximately 3,870 square feet of commercial space on the first floor (the 3,870 square feet of commercial space being referred to herein as the “*Commercial Space*” or the “*Facility*”) which is part of a larger approximately 16,400 square foot building being constructed for use as an affordable housing complex, all located on the Land; (iii) the acquisition and installation in the Facility of furniture, fixtures and equipment (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (as limited by Section 874 of the General Municipal Law) (the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Company also requested that the Agency appoint the Company as its agent for purposes of completing the Project and the granting of certain Financial Assistance.

The Company is, or will be at the time of closing, the fee owner of the Project Facility.

The Agency will acquire a leasehold interest in the Land and Facility from the Company pursuant to a Company Lease Agreement dated as of December 1, 2017 (the “*Company Lease*”), between the Company, as landlord and the Agency, as tenant; and an interest in the Equipment pursuant to a bill of sale from the Company dated as of December 1, 2017 (the “*Bill of Sale*”). The Agency will sublease the Project Facility back to the Company, pursuant to an Agency Lease Agreement dated as of December 1, 2017 (the “*Agency Lease*”) between the Agency, as sublessor and the Company, as sublessee. Capitalized terms used herein and not otherwise defined shall have the meaning given to such terms in Exhibit “C” to the Agency Lease.

Among the actions taken by the Agency with respect to the Project prior to Closing were the following:

- |                   |   |
|-------------------|---|
| October 13, 2015  | The Company submitted an application for financial assistance for the project.  |
| October 20, 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 “ <i>Public Hearing Resolution</i> ”).   |
| November 2, 2015  | Notice of the Public Hearing was mailed to the chief executive officers of the affected tax jurisdictions pursuant to Section 859-a of the Act.   |
| November 15, 2015 | Notice of the Public Hearing was published in the <u>Post-Standard</u> pursuant to Section 859-a of the Act.  |
| November 19, 2015 | The Agency conducted the Public Hearing pursuant to Section 859-a of the Act.   |
| November 19, 2015 | A resolution classifying a certain project as an Unlisted Action pursuant to the State Environmental Quality Review Act, declaring the Agency lead agency for purposes of an uncoordinated review thereunder and determining that the Project will not have a significant effect on the environment.  |
| November 19, 2015 | A resolution authorizing the undertaking of the acquisition, construction and equipping of a certain project; appointing the Company agent of the Agency for the purpose of the acquisition, construction and equipping of the Project Facility and authorizing the execution and delivery of an agreement between the Agency and the Company (the “ <i>Inducement Resolution</i> ”). |

- November 19, 2015 A resolution approving a payment in lieu of tax schedule and authorizing the execution and delivery of certain documents by the Agency in connection with the Project (the “**PILOT Resolution**”).
- November 19, 2015 A resolution authorizing the execution and delivery of certain documents by the agency at the request of the Company (the “**Final Approving Resolution**”).
- October 17, 2017 A resolution approving a retroactive extension of the Agency Agreement between the Agency and the Company until December 31, 2017 and making certain other findings (“**Approving Resolution**”)



## II. Action To Be Taken At Closing

The following documents, or copies thereof, are to be delivered (except as indicated) to the Agency (A), Agency's Counsel (AC), the Company (C), Company's Counsel (CC), Lender's Counsel (LC) as follows:

<b>A.</b>	<b>Basic Documents</b>	<b>Responsible Party</b>	<b>Signatories</b>
1.	Project Agreement	AC	C, A
2.	Company Lease Agreement	AC	C, A
3.	Memorandum of Company Lease Agreement with TP-584	AC	C, A
4.	Bill of Sale		
5.	Agency Lease Agreement	AC	C, A
6.	Memorandum of Agency Lease Agreement with Form TP-584	AC	C, A
7.	Company Certification re: Local Labor Policy	AC	C
8.	Certificates of casualty, liability, workers' compensation and other required insurance	AC	
9.	Environmental Compliance and Indemnification Agreement	AC	C
10.	Closing Receipt	AC	C, A
11.	Sales Tax Exemption Letter	AC	A
12.	Form ST-60 indicating appointment of the Company to act as the agent of the Agency	AC	A
13.	PILOT Agreement	CC	A, C
14.	412 a	CC	A
15.	Retail Letter	AC	Mayor
16.	NBT Bank – Construction Mortgage and Security Agreement	LC	C, A
17.	NBT Bank -Assignment of Leases and Rents	LC	C, A

18.	HTFC –Mortgage and Security Agreement	LC	C, A
19.	Subordination and First Mortgage Waiver Agreement	LC	C, A
20.	Regulatory Agreement	LC	C, A
21.	UCC-1 Financing Statement(s)	LC	
22.	Survey	CC	
23.	Condominium Declaration	CC	
24.	NY GG No-Action Letter		

**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 Hearing with evidence of publication and copies of letters to affected tax jurisdictions	AC	
	Exhibit “F” - SEQRA Resolution	AC	
	Exhibit “G” - Inducement Resolution	AC	
	Exhibit “H” - PILOT Resolution		
	Exhibit “I” - Final Approving Resolution	AC	
	Exhibit “J” – Approving Resolution	AC	

2. Mortgage Recording Tax Affidavit AC A

**C. Items To Be Delivered By The Company**

1. General Certificate of the Company relating to capacity and signatures of officers, execution and delivery of the Documents to which it is a party, no litigation and approval, with the following items included as exhibits: AC C

Exhibit "A" - Articles of Organization C

Exhibit "B" - Operating Agreement C C

Exhibit "C" - Certificate of Good Standing C

Exhibit "D" - Company Resolution C

Exhibit "E" - Local Access Agreement C

**D. Opinions of Counsel C**

1. Opinion of Barclay Damon, LLP, counsel to the Agency, addressed to the Company and the Agency AC AC

2. Opinion of Bousquet Holstein, PLLC, counsel to the Company, addressed to the Agency and the Company. AC CC

**III. Action To Be Required Concurrently With Or After Closing**

Memorandum of Company Lease Agreement, Memorandum of Agency Lease Agreement, Mortgages and Assignment of Leases and Rents are to be filed with the Onondaga County Clerk and the UCC-1 Financing Statement(s) are to be filed as appropriate under the Uniform Commercial Code.

Application on Form 412A is to be filed with the applicable Tax Assessor.

**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:	Butternut Crossing Commercial Enterprises, LLC Rebecca Newman Benjamin A. Lockwood
Company Counsel:	Bousquet Holstein, PLLC Paul M. Predmore, Esq.
NBT Bank Counsel:	Mazzotta, Sherwood & Vagianelis, P.C. Stephen M. Minardi, Esq.
Housing Trust Fund Corporation Counsel	Sean P. Shea, Esq.
Agency's Counsel:	Barclay Damon LLP Susan R. Katzoff, Esq.