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**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

**ERIE WATER STREET ASSOCIATES, LLC**

**TRANSCRIPT OF PROCEEDINGS**

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**CLOSING DATE: DECEMBER 21, 2016**

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**ERIE WATER STREET ASSOCIATES, LLC PROJECT**

**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

**ERIE WATER STREET ASSOCIATES, LLC**

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21. Closing Memorandum

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## PROJECT AGREEMENT

**THIS PROJECT AGREEMENT** (the "*Project Agreement*"), made as of December 1, 2016, by and between the **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, with offices at 333 West Washington Street, Suite 130, Syracuse, New York 13202 (the "*Agency*"), **ERIE WATER STREET ASSOCIATES, 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 315 S. Franklin Street, Syracuse, New York 13202 (the "*Company*").

### WITNESSETH:

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

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

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

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

**WHEREAS**, the Company submitted an application (the "*Application*") to the Agency requesting the Agency's assistance with respect to a certain project (the "*Project*") consisting of: (A)(i) the acquisition of an interest in approximately 9,948 square feet of improved real property located at 219-225 West Fayette Street, in the City of Syracuse, New York (the "*Land*"); (ii) the reconstruction and renovation of an existing 3 story approximately 25,007 square foot building (the "*Facility*"), to include but not be limited to, a new store front on the West Fayette Street side of the building; the construction of a new first floor building lobby with elevator and stair tower; the redevelopment of the building's second and third levels to house approximately 16 market rate one-bedroom apartment units; and repairs to the building's Walton Street façade; all located on the Land; (iii) the acquisition and installation in and at the Land and Facility of furniture,

fixtures and equipment, including but not limited to new mechanical systems (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use taxes and mortgage recording tax (except as limited by Section 874 of the General Municipal Law) (collectively the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, by resolutions of its members adopted on December 20, 2016 (collectively the “*Resolution*”), the Agency agreed to confer on the Company, in connection with the Project, certain financial assistance consisting of: (a) an exemption from New York State and local sales and use taxes for purchases and rentals related to the Project with respect to the qualifying personal property included in or incorporated into the Project Facility or used in the acquisition, construction or equipping of the Project Facility; and (b) an exemption from mortgage recording tax; and (collectively, the sales and use tax exemption benefit and the mortgage recording tax benefit are hereinafter collectively referred to as the “*Financial Assistance*”); and

**WHEREAS**, it has been estimated and confirmed by the Company that the Company has included within its Application for Financial Assistance that: (i) the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes are estimated in an amount up to **\$1,300,000**; and therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed **\$104,000**, (ii) the mortgage recording tax exemption amount shall be approximately **\$23,490**. There is no real property tax abatement benefits to be provided to the Company; 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, 2016 (the “*Company Lease*”), by and between the Company and the Agency; and

**WHEREAS**, the Agency proposes to acquire an interest in the Equipment pursuant to a bill of sale from the Company; and

**WHEREAS**, the Agency proposes to 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, 2016 (the “*Agency Lease*”); and

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

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

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

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

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

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

## ARTICLE I

### PURPOSE OF PROJECT

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

**Section 1.02 Purpose of Project**. It is understood and agreed by the parties that the purpose of the Agency's provision of Financial Assistance with respect to the Project is to, and that the Agency is entering into the Company Lease, Agency Lease 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.** The Company is not receiving an exemption from real property taxes from the Agency; and notwithstanding the Agency's interest in the Project Facility, the Company shall pay real property taxes as if privately owned.

## ARTICLE III

### SALES AND USE TAX EXEMPTION

**Section 3.01. Scope of Agency.** The Company agrees to limit its activities as agents for the Agency under the authority of the Resolution and this Project Agreement to acquisition, reconstruction, installation and completion of the Project Facility. The right of the Company to act as agent of the Agency shall expire on December 31, 2017, unless extended by a resolution adopted by the members of the Agency, or unless terminated early in accordance with the terms of the Agency Lease. The value of the sales and use tax exemption benefits shall not exceed the amounts described in the Application and as set forth in Section 3.03(b) unless approved by a resolution adopted by the members of the Agency. All contracts entered into by the Company as agent for the Agency shall include the following language:

“This contract is being entered into by \_\_\_\_\_ (the “*Agent*”), as agent for and on behalf of the City of Syracuse Industrial Development Agency (the “*Agency*”), in connection with a certain project of the Agency for the benefit of the Agent consisting in part of the acquisition and installation of certain machinery, equipment and building materials, all for incorporation and installation in certain premises located at 219-225 West Fayette Street, in the City of Syracuse, New York, in the City of Syracuse, New York (the “*Premises*”). The machinery, equipment and building materials (collectively, the “*Equipment*”) to be incorporated and installed in the Premises shall be exempt from the sales and use taxes levied by the State of New York if the acquisition of the Equipment is effected in accordance with the terms and conditions set forth in the Project Agreement dated as of December 1, 2016 by and between the Agency and the Company (the “*Project Agreement*”); and the Agent represents that this contract is in compliance with the terms of the Project Agreement. This contract is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. By execution or acceptance of this contract, the vendor/contractor acknowledges and agrees to the terms and conditions set forth in this paragraph.”

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



each such Sub-Agent will be effective only upon: (1) the execution by the Sub-Agent and the Company of the Sub-Agent Appointment Agreement attached as **Exhibit F** to the Agency Lease, the terms and provisions of which are incorporated herein; and (2) the receipt by the Agency of a completed Form ST-60 in accordance with Section 3.03(e) below.

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

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

(b) The Company further covenants and agrees that the purchase of goods and services relating to the Project and subject to State and local sales and use taxes are estimated in the amount up to **\$1,300,000**, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed **\$104,000**.

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

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

(e) The Company further acknowledges and agrees that all purchases made in furtherance of the Project by the Company and any Sub-Agent shall be made using “IDA Agent or Project Operator Exempt Purchase Certificate” (Form ST-123, a copy of which is attached 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: ERIE WATER STREET ASSOCIATES, LLC PROJECT, 219-225 West Fayette Street, in the City of Syracuse, New York, in the City of Syracuse, New York; IDA Project No.: 31021609.

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

**Section 3.04. Hold Harmless Provisions.**

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

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

benefits laws or other employee benefit laws.

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

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

**Section 3.05. Insurance Required.**

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

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

**ARTICLE IV**

**COMMITMENTS AND REPORTING**

**Section 4.01. Compliance Commitments.** The Company agrees and covenants that it shall meet and maintain the 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 continuing for a five (5) year period following completion of the Project (the "*Term*").

(a) The total investment actually made with respect to the Project at the Project's completion date shall equal or exceed \$2,608,650 (which represents the product of 85% multiplied by \$3,069,000, being the total project cost as stated in the Company's Application for Financial Assistance (the "*Investment Commitment*").

(b) At least twenty (20) full time equivalent (“*FTE*”) employees were retained by the Project Facility as of the date of the Application for Financial Assistance (the “*Baseline FTE*”). The Company agrees to maintain, as of the first year in which Financial Assistance is claimed and/or provided seventeen (17) of the Baseline FTE (representing the FTE multiplied by 85%). The Company shall be required to meet and maintain the foregoing employment commitment 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 A** contains a form of annual certification that the Company must complete and submit to the Agency on an annual basis. The Agency reserves the right to modify such form to require additional information that the Agency must have in order to comply with its reporting requirements under the Act.

## 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 and this Project Agreement in order to provide Financial Assistance to the Company for the Project Facility and to accomplish the public purposes of the Act.

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

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

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

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

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

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

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

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

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

determine whether an Event of Default has occurred pursuant to any Project Document in accordance with the terms of the Project Document.

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

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

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

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

connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate affected tax jurisdictions, unless agreed to otherwise by any local taxing jurisdiction. The Company further understands and agrees that in the event that the Company fails to pay over such amounts to the Agency, the New York State Tax Commissioner may assess and determine the State sales and use tax due from the Company, together with any relevant penalties and interest due on such amounts.

## ARTICLE VI

### MISCELLANEOUS PROVISIONS

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

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

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

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

If to the Company: Erie Water Street Associates, LLC  
315 S. Franklin Street  
Syracuse, New York 13202  
Attn: Michael P. Wicker

With a copy to: Centolella Lynn D'Elia & Temes LLC  
100 Madison Street  
Tower I, Suite 1905  
Syracuse, New York 13202  
Attn: Anthony J. D'Elia, Esq.

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when

received or delivery of same is refused by the recipient or personally delivered in the manner provided in this Section.

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

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

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

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

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

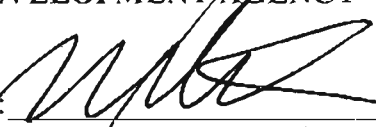
**Section 6.08. Section Headings.** The headings of the several Sections in this Project Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Project Agreement.

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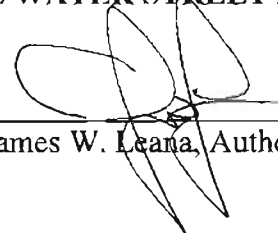


IN WITNESS WHEREOF, the parties hereto have executed this Project Agreement as of the day and year first above written.

**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

By:   
William M. Ryan, Chairman

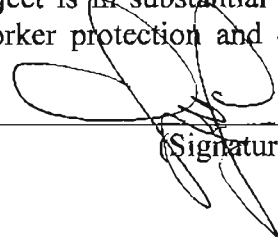
**ERIE WATER STREET ASSOCIATES, LLC**

By:   
James W. Leana, Authorized Member

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

**JAMES W. LEANA**, being first duly sworn, deposes and says:

1. That I am a Member of Erie Water Street Associates, 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<sup>st</sup> day of December, 2016.

  
(Notary Public)

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC505591  
Commission Expires on Feb. 12, 20 18

EXHIBIT A

FORM OF ANNUAL REPORTING QUESTIONNAIRE

EXHIBIT A

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

**ERIE WATER STREET ASSOCIATES, LLC**

**AND**

**CITY OF SYRACUSE  
INDUSTRIAL DEVELOPMENT AGENCY**

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**COMPANY LEASE AGREEMENT**

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**DATED AS OF DECEMBER 1, 2016**

## COMPANY LEASE AGREEMENT

**THIS COMPANY LEASE AGREEMENT** (the “*Company Lease*”), made and entered into as of December 1, 2016, by and between **ERIE WATER STREET ASSOCIATES, LLC** (the “*Company*”), a limited liability company organized under the laws of the State of New York with an office at 315 S. Franklin Street, Syracuse, New York 13202 and **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY** (the “*Agency*”), a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York, with an office at City Hall Commons, 7<sup>th</sup> Floor 201 East Washington Street, 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 December 20, 2016, agreed, at the request of the Company to undertake a project (the “*Project*”) consisting of: (A)(i) the acquisition of an interest in approximately 9,948 square feet of improved real property located at 219-225 West Fayette Street, in the City of Syracuse, New York (the “*Land*”); (ii) the reconstruction and renovation of an existing 3 story approximately 25,007 square foot building (the “*Facility*”), to include but not be limited to, a new store front on the West Fayette Street side of the building; the construction of a new first floor building lobby with elevator and stair tower; the redevelopment of the building’s second and third levels to house approximately 16 market rate one-bedroom apartment units; and repairs to the building’s Walton Street façade; all located on the Land; (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment, including but not limited to new mechanical systems (the “*Equipment*” and together



with the Land and the Facility, the "**Project Facility**"; (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use taxes and mortgage recording tax (except as limited by Section 874 of the General Municipal Law) (collectively the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

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

**WHEREAS**, the Agency proposes to assist the Company's acquisition, construction and equipping of the Project Facility, and grant the Financial Assistance to the Project by, among other things: (1) appointing the Company, or its designee, as its agent with respect to 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, 2016, and shall end on the expiration or earlier termination of the Agency Lease.

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

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

necessary to confirm the termination of the Agency's interest in the Project, all at the Company's sole cost and expense.

## 2.5 CONSIDERATION.

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

## 2.6 REPRESENTATIONS AND COVENANTS OF THE COMPANY.

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

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

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

(c) The Company has a valid and enforceable fee interest in the Land and the Facility and shall remain and retain such interests for the term of this Company Lease unless otherwise consented to in writing by the Agency.

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

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

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

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

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

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

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

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

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

## ARTICLE III

### DISPUTE RESOLUTION

#### 3.1 GOVERNING LAW.

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

#### 3.2 WAIVER OF TRIAL BY JURY.

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

## ARTICLE IV

### MISCELLANEOUS CLAUSES

#### 4.1 NOTICES.

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

(a) To the Agency:

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

With copies to:

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

(b) To the Company:

Erie Water Street Associates, LLC  
315 S. Franklin Street  
Syracuse, New York 13202  
Attn: Michael P. Wicker

With a copy to:

Centolella Lynn D'Elia & Temes LLC  
100 Madison Street  
Tower J, Suite 1905  
Syracuse, New York 13202  
Attn: Anthony J. D'Elia, 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.

#### **4.13 REMEDIES.**

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

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

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


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

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

**ERIE WATER STREET ASSOCIATES, LLC**

By:   
James W. Leana, Authorized Member

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
William M. Ryan, Chairman

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

On the 21<sup>st</sup> day of December, 2016, before me, the undersigned, personally appeared JAMES W. LEANA, 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, 20 15

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

On the 21<sup>st</sup> day of December, 2016, before me, the undersigned, personally appeared WILLIAM M. RYAN, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

*Lori L. McRobbie*  
\_\_\_\_\_  
Notary Public

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 20 15

## EXHIBIT "A"

### LEGAL DESCRIPTION

**ALL THAT TRACT OR PARCEL OF LAND**, situate in the City of Syracuse, County of Onondaga and State of New York, bounded and described as follows, viz: Part of Lots 2, 3, 31, 41 and 42, Block 105-D, City of Syracuse, NY, according to a map made by B.F. Green, filed in Onondaga County Clerk's Office October 11, 1850, bounded and described as follows, viz: Beginning at a point in the south line of West Fayette Street about 208.855 ft. west from the Northeast corner of said Block where the center line of the west wall of the so-called Tallman and Palmer Store, now known as #225 West Fayette Street, intersects the south line of West Fayette Street; thence southwardly along the center of said wall and the same conditioned about 115 ft. to a point in range with the north face of the north wall of the six-story brick building erected by E.F. Holden on Walton Street; thence westwardly along said range line about 27.00 ft. to the northeasterly corner of said six-story building, thence southwardly along the east face of the brick wall of said building about 90 ft. to a point in the north line of Walton Street 208.856 ft. from the southeast corner of said Block 105-D, thence eastwardly along the north line of Walton Street 48.22 ft. to the center of the west brick wall of the building owned and occupied by L.L. Thurwatcher; thence northwardly along the center of said wall about 205 ft. to the south line of West Fayette Street; thence westwardly along the south line of West Fayette Street 47.32 ft. to the place of beginning.

3

 **COPY**

**MEMORANDUM OF  
COMPANY LEASE AGREEMENT**

***NAME AND ADDRESS OF LESSOR:*** Erie Water Street Associates, LLC  
315 S. Franklin Street  
Syracuse, New York 13202

***NAME AND ADDRESS OF LESSEE:*** City of Syracuse Industrial Development Agency  
City Hall Commons, 7<sup>th</sup> Floor  
201 East Washington Street  
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, 2016.

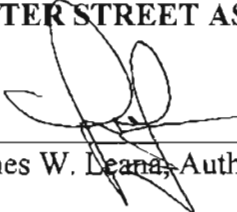
***TERM OF COMPANY LEASE AGREEMENT:***

The Project is leased for a term which shall commence as of December 1, 2016, and shall end on the expiration or earlier termination of the Agency Lease.

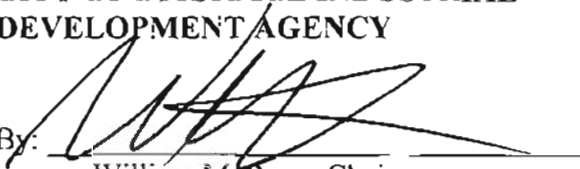
1445 10122116 4004816 DB 54067 602

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

**ERIE WATER STREET ASSOCIATES, LLC**

By:   
James W. Deana, Authorized Member

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
William M. Ryan, Chairman

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

On the 21<sup>st</sup> day of December, 2016, before me, the undersigned, personally appeared **James W. Leana**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

*Lori L. McRobbie*

Notary Public

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

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

On this 21<sup>st</sup> day of December, 2016, before me, the undersigned, personally appeared **William M. Ryan**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

*Lori L. McRobbie*

Notary Public

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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

COPY

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

Form with sections for Grantor/Transferor and Grantee/Transferee, including fields for Name, Mailing address, City, State, ZIP code, Federal EIN, and Social security number.

Location and description of property conveyed

Table with columns: Tax map designation - Section, block & lot, SWIS code, Street address, City, town, or village, County.

Type of property conveyed (check applicable box)

Form with checkboxes for property types (One- to three-family house, Residential cooperative, etc.) and date of conveyance (12/21/2016).

Condition of conveyance (check all that apply)

Form with multiple checkboxes for conditions of conveyance (a. Conveyance of fee interest, b. Acquisition of a controlling interest, etc.).

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

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

**Part I – Computation of tax due**

1 Enter amount of consideration for the conveyance (if you are claiming a total exemption from tax, check the exemption claimed box, enter consideration and proceed to Part III) <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 **NYS Department of Finance**. If a recording is not required, send this return and your check(s) made payable to the **NYS Department of Taxation and Finance**, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-5045.

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

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

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

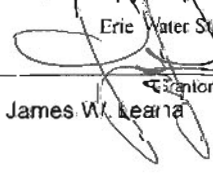
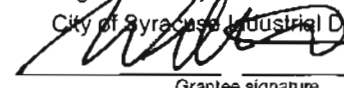
1.  The real property being sold or transferred is not subject to an outstanding credit line mortgage.
2.  The real property being sold or transferred is subject to an outstanding credit line mortgage. However, an exemption from the tax is claimed for the following reason:
  - The transfer of real property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

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

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

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

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

<p>Erie Water Street Associates, LLC</p>  <p>_____ Grantor signature</p> <p>James W. Kearna</p>	<p>Member</p> <p>_____ Title</p>	<p>City of Syracuse Industrial Development Agency</p>  <p>_____ Grantee signature</p> <p>William M. Ryan</p>	<p>Chairman</p> <p>_____ Title</p>
Grantor signature	Title	Grantee signature	Title

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

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

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

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

**Part I - New York State residents**

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

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

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

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

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

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

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

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

**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

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**BILL OF SALE TO AGENCY**

**ERIE WATER STREET ASSOCIATES, LLC**, a limited liability company organized under the laws of the State of New York with an office to conduct business at 315 S. Franklin Street, Syracuse, New York 13202 (the "**Company**"), for the consideration of One Dollar (\$1.00), cash in hand paid, and other good and valuable consideration received by the Company from the City of Syracuse Industrial Development Agency, a public benefit corporation organized and existing pursuant to the laws of the State of New York (the "**Agency**"), having its office at 333 West Washington Street, Suite 130, Syracuse, New York 13202, the receipt of which is hereby acknowledged by the Company, hereby sells, transfers, and delivers unto the Agency, its successors and assigns, all those materials, machinery, equipment, fixtures and furnishings now owned or hereafter acquired by the Company in connection with the Project Facility, as described in the Agency Lease entered between the Agency and the Company dated as of December 1, 2016 (the "**Agency Lease**"), and as listed on "**Exhibit A**" attached hereto.

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

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

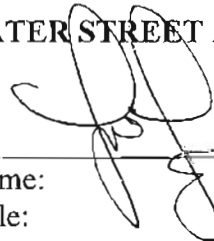
**IN WITNESS WHEREOF**, the Company has caused this instrument to be executed by its duly authorized representative on the date indicated beneath the signature of such representative and dated as of the 1<sup>st</sup> day of December, 2016.

**ERIE WATER STREET ASSOCIATES, LLC**

By:

Name:

Title:



## 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 **ERIE WATER STREET ASSOCIATES, LLC** (the "*Company*") and now or hereafter attached to, contained in or used or acquired in connection with the Project Facility (as defined in the Agency Lease) or placed on any part thereof, though not attached thereto, including, but not limited to, pipes, screens, fixtures, furniture, heating, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, call systems, stoves, rugs, movable partitions, cleaning equipment, maintenance equipment, shelving, racks, flagpoles, signs, waste containers, drapes, blinds and accessories, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery; and together with any and all products of any of the above, all substitutions, replacements, additions or accessions therefor, and any and all cash proceeds or non-cash proceeds realized from the sale, transfer or conversion of any of the above.

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**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

**AND**

**ERIE WATER STREET ASSOCIATES, LLC**

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**AGENCY LEASE AGREEMENT**

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**DATED AS OF DECEMBER 1, 2016**

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## AGENCY LEASE AGREEMENT

THIS AGENCY LEASE AGREEMENT, dated as of December 1, 2016 (the "*Agency Lease*"), by and between the CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY, a body corporate and politic and a public instrumentality of the State of New York, having its office at City Hall Commons, 7<sup>th</sup> Floor 201 East Washington Street, Syracuse, New York 13202 (the "*Agency*"), and ERIE WATER STREET ASSOCIATES, LLC a New York limited liability company having its office at 315 S. Franklin Street, Syracuse, New York 13202 (the "*Company*").

### WITNESSETH:

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

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

WHEREAS, the Agency, by resolution adopted on December 20, 2016, agreed, at the request of the Company to undertake a project (the "*Project*") consisting of: (A)(i) the acquisition of an interest in approximately 9,948 square feet of improved real property located at 219-225 West Fayette Street, in the City of Syracuse, New York (the "*Land*"); (ii) the reconstruction and renovation of an existing 3 story approximately 25,007 square foot building (the "*Facility*"), to include but not be limited to, a new store front on the West Fayette Street side of the building; the construction of a new first floor building lobby with elevator and stair tower; the redevelopment of the building's second and third levels to house approximately 16 market rate one-bedroom apartment units; and repairs to the building's Walton Street façade; all located on the Land; (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment, including but not limited to new mechanical systems (the "*Equipment*" and together with the Land and the Facility, the "*Project Facility*"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use taxes and

mortgage recording tax (except as limited by Section 874 of the General Municipal Law) (collectively the "*Financial Assistance*"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

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

**WHEREAS**, the Company is the current owner of the Land and the Facility and has leased the Land and the Facility to the Agency pursuant to the Company Lease Agreement dated as of December 1, 2016 (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, 2016 (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) This Project is not primarily used for retail as set forth in the Act.

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

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



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

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

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

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

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

(3) Will preserve the overall number of permanent, private sector jobs in the State and the City and advance prosperity and standard of living and help prevent economic deterioration.

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

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

(i) The Project will not have a significant effect on the environment" (within the meaning of such term as used in SEQRA) and the Company hereby covenants to comply with all mitigating measures, requirements and conditions, if any, enumerated in the SEQR Resolution under SEQRA applicable to the acquisition, construction and installation of the

Project Facility and in any other approvals issued by any other Governmental Authority with respect to the Project. No material changes with respect to any aspect of the Project Facility have arisen from the date of the issuance of such negative declaration which would cause the determination contained therein to be untrue.

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

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

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

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

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

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

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

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

contracts or agreements applicable to the Project, it will first consider persons eligible to participate in the Federal Job Training Partnership (P.L. No. 97-300) programs who shall be referred by administrative entities of service delivery areas created pursuant to such act or by the Community Services Division of the Department of Labor for such new employment opportunities.

(p) The Company shall provide to the Agency any and all documentation or information requested by the Agency so that the Agency can comply with all of its reporting requirements under the Act.

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

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

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

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

(r) The amount of State and local sales and use tax benefits comprising the Financial Assistance approved by the Agency shall not exceed **\$104,000**. 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

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

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

(a) The Company shall promptly construct, reconstruct, renovate, equip and complete the Project Facility, all in accordance with the Plans and Specifications. Unless a written waiver is first obtained from the Agency, in accordance with the Agency's Local Access Policy, the Company and its Additional Agents (as defined herein), shall utilize local labor, contractors and suppliers for the reconstruction, renovation and equipping of the Project Facility. For purposes of this Agency Lease, and in particular this Section 4.1, the term "*local*" shall mean Onondaga, Oswego, Madison, Cayuga and Cortland Counties. Failure to comply with the local labor requirements of this Section 4.1 (collectively, "*Local Labor Requirements*") may result in the revocation or recapture of all benefits provided/approved to the Project by the Agency. The Company further agrees to complete and supply the Agency, quarterly, starting the first quarter following the date hereof, the "Contract Status Report" the form of which is attached hereto at Exhibit "D". Failure to comply with any portion of Article 4 may result in the loss of all benefits provided to or for the benefit of the Project in the Agency's sole discretion.

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

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

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

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

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

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

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

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

#### 4.2 COMPLETION OF PROJECT FACILITY.

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

- (1) The date of such completion;
- (2) That all labor, services, materials, and supplies used therefor and all costs and expenses in connection therewith have been paid;
- (3) That the Company has good and valid title to all Property constituting the Project Facility subject to the interest of the Agency therein and to this Agency Lease, the Company Lease 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, reconstruction, renovation, equipping and completion of the Project Facility.

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

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

In the event of a default by any materialman or Additional Agent (as defined herein) under any contract made by them in connection with construction, reconstruction, renovation, equipping and completion of the Project Facility or in the event of a breach of

warranty or other liability with respect to any materials, workmanship, or performance guaranty, the Company shall proceed, either separately or in conjunction with others, to exhaust the remedies of the Company against the materialman or Additional Agent so in default and against each surety for the performance of such contract. The Company may prosecute or defend any action or proceeding or take any other action involving any such materialman or Additional Agent or surety which the Company deems reasonably necessary. The Company shall advise the Agency of any actions or proceedings taken hereunder. No such suit shall relieve the Company of any of its obligations under this Agency Lease and the other Company Documents.

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

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

(a) No Event of Default under this Agency Lease, the Company Lease 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.

### **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) **December 31, 2017**; or (2) the issuance of a certificate of occupancy by the City of Syracuse, New York, unless earlier terminated 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 and the Company Lease (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 and the Company Lease 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 and the Agency Lease, including, but not limited to, lease terminations and a bill of sale from the Agency with respect to its interest in the Equipment, without representation or warranty, subject to the following: (1) any Liens to which such Project Facility was subject when conveyed to the Agency, (2) any

Liens created at the request of the Company or to the creation of which the Company consented or in the creation of which the Company acquiesced, (3) any Permitted Encumbrances, and (4) any Liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Agency Lease.

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

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

(a) The Company shall pay basic rental payments for the Project Facility consisting of: (i) to the Agency in an amount sufficient to pay 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, reconstruction, renovation and equipping of the Project Facility, any defect in the title, design, operation, merchantability, fitness, or condition of the Project Facility, or any part thereof, or in the suitability of the Project Facility, or any part thereof, for the Company's purposes or needs, or failure of consideration for, destruction of or damage to, or Condemnation of title to, or the use of all or any part of the Project Facility, any change in the tax or other laws of the United States of America or of the State of New York, or any political subdivision thereof, or any failure of the Agency to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or in connection with this Agency Lease or the Company Lease.

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

### **ARTICLE VI**

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

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

The Company shall:

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

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

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

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

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

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

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

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

(4) All payments in lieu of taxes, if any, required to be made to the Agency under the terms of any agreement with respect thereto.

(b) Subject to the terms of any payment in lieu of taxes 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.

(c) Notwithstanding anything herein to the contrary, and notwithstanding the Agency's interest in the Project Facility, the Company shall pay taxes as if privately owned.

### **6.3 INSURANCE REQUIRED.**

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

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

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

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

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

All insurance required by Section 6.3 shall be with insurance companies of recognized financial standing selected by the Company and licensed to write such insurance in the State of New York. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other Persons engaged in businesses similar in size, character, and other respects to those in which the Company are engaged. All policies evidencing such insurance except the Workers' Compensation policy shall name the Company as insured and the Agency as an additional insured, as its interests may appear, and shall provide for coverage with respect to the Agency be primary and non-contributory and require at least thirty (30) days' prior written notice to the Agency of cancellation, reduction in policy limits, or material change in coverage thereof. Certificates satisfactory in form and substance evidencing all insurance required hereby shall be delivered to the Agency before the Closing Date. The Company shall deliver or cause to be delivered to the Agency on or before the first business day of each January thereafter a certificate dated not earlier than the immediately preceding January 1 reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance in the amounts and of the types required by Sections 6.3 and 6.4. The

Company shall furnish to the Agency evidence that the policy has been renewed or replaced or is no longer required by this Agency Lease each year throughout the term of this Agency Lease.

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

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

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

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

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

### **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 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 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 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 and the other Agency Documents, shall be applied to payment of all amounts due to the Agency under this Agency Lease, the Company Lease and other Agency Documents. If the Net Proceeds of any Condemnation award are less than the amount necessary to pay any and all amounts payable to the Agency, the Company shall pay the difference between such amounts and the Net Proceeds of such Condemnation award so that any and all amounts payable under this Agency Lease, the Company Lease and other Agency Documents to the Agency shall be paid in full. If all amounts due under this Agency Lease, the Company Lease, the Mortgage and the other Agency Documents have been paid in full, all such Net Proceeds or the balance thereof shall be paid to the Company for its purposes.

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

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

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



## ARTICLE VIII

### SPECIAL COVENANTS

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

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

#### 8.2 HOLD HARMLESS PROVISIONS.

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

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

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

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

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

(5) All causes of action and attorneys' fees and other expenses incurred in connection with any suits or actions which may arise as a result of any of the

foregoing, provided that any such losses, damages, liabilities, or expenses of the Agency are not incurred or do not result from the intentional wrongdoing of the Agency or any of its members, officers, agents or employees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Notwithstanding the provisions of subsection 8.7(a), the Company may, in good faith, actively contest the validity or the applicability of any requirement of the nature referred to in said subsection 8.7(a), provided that the Company shall have first notified the Agency of such contest, no Event of Default shall be continuing under this Agency Lease, or any of the other Company Documents; and such contest and failure to comply with such requirement shall not subject the Project Facility to loss or forfeiture. In such event, the Company may fail to comply with the requirement or requirements so contested during the period of such contest and

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

any appeal therefrom unless the Agency or its members, officers, agents, or employees may be liable for prosecution for failure to comply therewith, in which event the Company shall promptly take such action with respect thereto as shall be satisfactory to the Agency.

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

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

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

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

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

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

#### **8.11 EMPLOYMENT OPPORTUNITIES.**

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

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

(a) Pursuant to Section 874 of the Act, the parties understand that the Agency is exempt from certain State and local sales use taxes imposed by the State and local governments in the State, and that the Project may be exempted from those taxes due to the involvement of the Agency in the Project. The Agency makes no representations or warranties that any property is exempt from the payment of State or local sales or use taxes. Any exemption from the payment of State or local sales or use taxes resulting from the involvement of the Agency with the Project shall be subject to Section 875 of the Act and shall be limited to

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

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

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

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

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

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

(g) Pursuant to Section 875(3) of the Act, and in conjunction with Agency policy, the Agency shall, and in some circumstances may, recover, recapture, receive or otherwise obtain from the Company the portion of the Financial Assistance (the "*Recapture Amount*") consisting of State and local sales and use tax exemption in accordance with the Agency's Recapture Policy and the Project Agreement.

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

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

## **ARTICLE IX**

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

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

This Agency Lease may not be assigned by the Company, in whole or in part, nor all or any part of the Project Facility subleased, nor any part of the Project Facility sold, leased, transferred, conveyed or otherwise disposed of without the prior written consent of the Agency, which consent shall be in the Agency's sole and absolute discretion; provided however, that the Company 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.

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

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

## **10.3 REMEDIES CUMULATIVE.**

No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Agency Lease, the Company Lease and the other Company Documents or 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 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  
City Hall Commons, 7<sup>th</sup> Floor  
201 East Washington Street  
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:

Eric Water Street Associates, LLC  
315 S. Franklin Street  
Syracuse, New York 13202  
Attn: Michael P. Wicker

With a copy to:

Centolella Lynn D'Elia & Temes LLC  
100 Madison Street  
Tower I, Suite 1905  
Syracuse, New York 13202  
Attn: Anthony J. D'Elia, 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.**

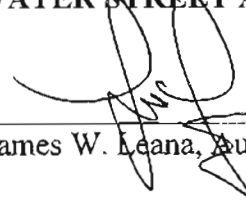
Section 875(7) of the New York General Municipal Law ("*GML*") requires that the Agency post on its website all resolutions and agreements relating to the Company's appointment as an agent of the Agency or otherwise related to the Project; and Article 6 of the New York Public Officers Law declares that 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.

**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

**ERIE WATER STREET ASSOCIATES, LLC**

By:   
\_\_\_\_\_  
James W. Leana, Authorized Member


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

On the 21<sup>st</sup> day of December in the year 2016 before me, the undersigned, personally appeared **William M. Ryan**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

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

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

On the 21<sup>st</sup> day of December in the year 2016 before me, the undersigned, personally appeared **James W. Leana**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

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



## EXHIBIT "A"

### LEGAL DESCRIPTION

**ALL THAT TRACT OR PARCEL OF LAND**, situate in the City of Syracuse, County of Onondaga and State of New York, bounded and described as follows, viz: Part of Lots 2, 3, 31, 41 and 42, Block 105-D, City of Syracuse, NY, according to a map made by B.F. Green, filed in Onondaga County Clerk's Office October 11, 1850, bounded and described as follows, viz: Beginning at a point in the south line of West Fayette Street about 208.855 ft. west from the Northeast corner of said Block where the center line of the west wall of the so-called Tallman and Palmer Store, now known as #225 West Fayette Street, intersects the south line of West Fayette Street; thence southwardly along the center of said wall and the same conditioned about 115 ft. to a point in range with the north face of the north wall of the six-story brick building erected by E.F. Holden on Walton Street; thence westwardly along said range line about 27.00 ft. to the northeasterly corner of said six-story building, thence southwardly along the east face of the brick wall of said building about 90 ft. to a point in the north line of Walton Street 208.856 ft. from the southeast corner of said Block 105-D, thence eastwardly along the north line of Walton Street 48.22 ft. to the center of the west brick wall of the building owned and occupied by L.L. Thurwatcher; thence northwardly along the center of said wall about 205 ft. to the south line of West Fayette Street; thence westwardly along the south line of West Fayette Street 47.32 ft. to the place of beginning.

## EXHIBIT "B"

### DESCRIPTION OF EQUIPMENT

All articles of personal property, all machinery, apparatus, equipment, appliances, floor coverings, furniture, furnishings, supplies, materials, fittings and fixtures of every kind and nature whatsoever and all appurtenances acquired by **Erie Water Street Associates, 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 Agency Lease, the Company Lease, the Mortgage 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, 2016, by and between the Agency and the Company, as the same may be amended or supplemented from time to time.

**Application:** means the application submitted by the Company to the Agency dated November 9, 2016, 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 Member or Managing Member or any officer designated in a certificate signed by an Authorized Representative of such Company and, for either the Agency or the Company, any additional persons designated to act on behalf of the Agency or the Company by written certificate furnished by the designating party containing the specimen signature of each designated person.

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

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

**Closing Date:** means December 21, 2016.

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

**Code:** means the Internal Revenue Code of 1986, as amended, and the regulations of the United States Treasury Department promulgated thereunder.

**Company:** means Erie Water Street Associates, LLC, a limited liability company, organized and existing under the laws of the State of New York having an address at 315 S. Franklin Street, Syracuse, New York 13202, and its permitted successors and assigns.

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

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

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

**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, 2016 by the Company to the Agency.

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

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

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

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

**Land:** means the improved real property located at 219-225 West Fayette Street in the City of Syracuse, County of Onondaga, State of New York (state), 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 (I) 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.

**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, reconstruction, renovation and equipping of the Project Facility; and any plans and specifications approved by the Mortgagee.

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

**Project 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 December 20, 2016 authorizing the undertaking of the Project and the execution and delivery of certain documents by the Agency in connection therewith.

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

**SEORA:** 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 CONTRACT STATUS REPORT

#### CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

#### Appendix II – Contract Status Report

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

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

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

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

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

Title: \_\_\_\_\_ Date: \_\_\_\_\_



EXHIBIT "E"

FORM OF ANNUAL REPORTING REQUIREMENTS

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

Date

COMPANY  
COMPANY ADDRESS

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

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

Sale - Leaseback Financing

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

Date of Financing:

Principal Amount Financed:

Maturity Date:

Original Interest Rate:

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

Name of Lender

Debt Retired in [year] Yes/No

Debt Refinanced in [year] Yes/No

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

Debt in Default as of [date] Yes/No

Current Interest Rate(s)

Rate range, if Variable

Principal balance outstanding as of [date]

Principal payments made during [year]

Payments in Lieu of Taxes (PILOT)

paid in [year]

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

New York State Sales Tax Exemptions Claimed [year]

New York Local Sales Tax Exemptions Claimed: [year]

New York State Mortgage Recording

Tax Exemption: [year]

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

From:

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

Re:

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

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

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

Comments:

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\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## EXHIBIT "F"

### FORM OF SUB-AGENT AGREEMENT

THIS SUB-AGENT APPOINTMENT AGREEMENT (the "*Agreement*"), dated as of \_\_\_\_\_, 20\_\_, is by and between ERIE WATER STREET ASSOCIATES, LLC, with a mailing address of 315 S. Franklin 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 December 20, 2016 (the "*Resolution*"), the Agency authorized the Company to act as its agent for the purposes of undertaking a project for the benefit of the Company (the "*Project*") consisting of: (A)(i) the acquisition of an interest in approximately 9,948 square feet of improved real property located at 219-225 West Fayette Street, in the City of Syracuse, New York (the "*Land*"); (ii) the reconstruction and renovation of an existing 3 story approximately 25,007 square foot building (the "*Facility*"), to include but not be limited to, a new store front on the West Fayette Street side of the building; the construction of a new first floor building lobby with elevator and stair tower; the redevelopment of the building's second and third levels to house approximately 16 market rate one-bedroom apartment units; and repairs to the building's Walton Street façade; all located on the Land; (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment, including but not limited to new mechanical systems (the "*Equipment*") and together with the Land and the Facility, the "*Project Facility*"; (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use taxes and mortgage recording tax (except as limited by Section 874 of the General Municipal Law) (collectively the "*Financial Assistance*"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

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

WHEREAS, the Company and the Agency entered into a Project Agreement by and between the Company and the Agency dated as of December 1, 2016 (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, the Agency Lease, the Project Agreement and Section 875(3) of the Act (as if such section were fully set forth herein) (collectively the "*Agency Documents*"). Without limiting the scope of the foregoing, the Sub-Agent acknowledges that pursuant to Section 875(3) of the Act (as if such section were fully set forth herein). The Sub-Agent acknowledges and agrees to be bound by the Agency's Recapture of Benefits Policy (the "*Recapture Policy*"), a copy of which is attached hereto at Schedule "A".

c. that all purchases made by the Sub-Agent in connection with the Project shall be made using Form ST-123 (IDA Agent or Project Operator Exempt Purchase Certificate), a copy of which is attached hereto as Schedule "B". It shall be the responsibility of the Sub-Agent (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.

d. that it shall identify the Project on each bill and invoice for such purchases and further indicate on such bills or invoices that the Sub-Agent is making purchases of tangible personal property or services for use in the Project as agent of the Agency. For purposes of indicating who the purchaser is, the Sub-Agent acknowledges and agrees that the bill of invoice should state, "I, [NAME OF SUB-AGENT], certify that I am a duly appointed agent of the City of Syracuse Industrial Development Agency and that I am purchasing the tangible personal property or services for use in the following Agency project and that such purchases qualify as

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

e. 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.

f. 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.

g. 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.

h. 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.

i. 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.

j. 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.

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

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

m. 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 and recapture of benefits 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.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]



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.

**ERIE WATER STREET ASSOCIATES, LLC**

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

[NAME OF SUB-AGENT]

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

**SCHEDULE "A"**  
**Agency's Recapture of Benefits Policy**

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

**FORM ST-123**



# IDA Agent or Project Operator Exempt Purchase Certificate

Effective for projects beginning on or after June 1, 2014

This certificate is for real property sales that 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 fuel for exempt fuel. See Form FT-120, IDA Agent or Project Operator Exempt Purchase Certificate for Fuel.

Buyer's name		Buyer's phone number	
Buyer's address		Buyer's address	
City, town or village	State	ZIP code	
Buyer's tax identification number		Buyer's tax identification number	

Mark an X in one:  Single purchase certificate  Blanket purchase certificate (to be filled in for the project after each bill)

### 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 agent or project operator of the IDA was the purchaser.

### Project information

Identify the IDA agent or project operator of the named IDA and their name purchasing the tangibles personal property and services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under the agreement with the IDA.

Name of IDA	
Name of project	DA/ID/IDP/IDP-2/IDP-3/IDP-4/IDP-5/IDP-6/IDP-7/IDP-8/IDP-9/IDP-10/IDP-11/IDP-12/IDP-13/IDP-14/IDP-15/IDP-16/IDP-17/IDP-18/IDP-19/IDP-20/IDP-21/IDP-22/IDP-23/IDP-24/IDP-25/IDP-26/IDP-27/IDP-28/IDP-29/IDP-30/IDP-31/IDP-32/IDP-33/IDP-34/IDP-35/IDP-36/IDP-37/IDP-38/IDP-39/IDP-40/IDP-41/IDP-42/IDP-43/IDP-44/IDP-45/IDP-46/IDP-47/IDP-48/IDP-49/IDP-50/IDP-51/IDP-52/IDP-53/IDP-54/IDP-55/IDP-56/IDP-57/IDP-58/IDP-59/IDP-60/IDP-61/IDP-62/IDP-63/IDP-64/IDP-65/IDP-66/IDP-67/IDP-68/IDP-69/IDP-70/IDP-71/IDP-72/IDP-73/IDP-74/IDP-75/IDP-76/IDP-77/IDP-78/IDP-79/IDP-80/IDP-81/IDP-82/IDP-83/IDP-84/IDP-85/IDP-86/IDP-87/IDP-88/IDP-89/IDP-90/IDP-91/IDP-92/IDP-93/IDP-94/IDP-95/IDP-96/IDP-97/IDP-98/IDP-99/IDP-100
Street address of project	
City, town or village	State ZIP code
Enter the date that you were added as agent or project operator (month / day / year)	Enter the date that agent or project operator status ends (month / day / year)

### Exempt purchases

Mark an X in boxes that apply.

- A. Tangible personal property or services other than utility services and internet services (tangible personal property, tangible personal property, used to complete the project, but not to complete the completed project)
- B. Certain utility services (gas, electric, water, sewer, telephone, cable, internet, etc.) used to complete the project, but not to complete the completed project
- C. Motor vehicle or tangible personal property (motor vehicle, motor vehicle, 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 a good faith purchaser of the goods or services described on this certificate is a transaction or transaction that is not intended to be used to complete the project, but not to complete the completed project. I understand that this document is required to be filed with and delivered to the vendor as agent for the Tax Department for the purposes of Tax Law section 1833 and is deemed a document required to be filed with the Tax Department for the purpose of prosecution of offenses. I also understand that the Tax Department is authorized to investigate the validity of this exemption certificate and the applicability of the information entered on this document.

Buyer's name, address and telephone number (include home number)	Date
Taxable items, taxes and additions that apply to this purchase	

## Instructions

### To the purchaser

You may use Form ST-223 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-223 as a single-purchase certificate or as a blanket certificate covering the first and subsequent purchases qualifying for the exemption.

**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.

This certificate is a contract agency and exemption (IDA) and public benefit corporation's law under General Municipal Law Article 18-A and the Public Authorities Law for the purpose of obtaining, extending, amending and assessing the acquisition, construction, reconstruction, modification, maintenance, equipping and furnishing of industrial manufacturing, water-using, commercial, research and recreation facilities in any tax state.

IDs are exempt from the payment of sales and use tax on their purchases in addition to other Tax Law sections 1115(a)(1), 1115(a)(2) and 1115(a)(3) for normal, trade and purchases for projects. Otherwise, IDs are not exempt from sales and use tax on purchases made by subcontractors as agents or project operators. 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 agent or project operator states that contractor may make all purchases of materials and equipment necessary for completion of the project as agent for the IDA. Contractor purchases a backhoe and a loader for site preparation purposes concrete and lumber to construct a building and purchases machinery to be installed in the building. All these purchases by contractor as agent of the IDA are exempt from tax.

**Example 2.** IDA agreement with agent or project operator states that contractor may make all purchases of materials and equipment to be incorporated into the project as agent for the IDA. Contractor purchases concrete and machinery to be incorporated into the project, contractor's materials, concrete forms, forms exempt from tax, however, rental of the concrete and equipment is not exempt since these transactions are normally taxable and the IDA agreement does not authorize contractor to make such rentals as agent of the IDA.

Agent or project operator not appointed as agent or project operator under IDA must present suppliers with Form ST-223. Contractor. **Example:** Purchaser used contractor after making purchases for core project, exemption tax in accordance with Tax Law sections 1115(a)(1), 1115(a)(2) and 1115(a)(3). For more information, see Form ST-223(2).

### Exempt purchases

To claim the purchases must be made with the authority granted by the IDA and used to complete the project or to operate the completed project.

- A** Mark box A if the date 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), exemption from tax.
- B** Mark box B if the date you are purchasing certain consumer utility services used in completing the project exemption from tax. This includes gas, electric, refrigeration and steam and gas, electric refrigeration and steam services.
- C** Mark box C if the date you are purchasing a motor vehicle or other tangible personal property, related to a qualifying motor vehicle exemption 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 10% of the tax due;
- A civil penalty for each fraudulent exemption certificate issued;
- Criminal felony prosecution, punishable by a state prison term and a possible jail sentence; and
- Rejection of your Certificate of Authority. If you are required to be registered as a vendor. See Tax Law Section 1119. Amendments that Encourage Compliance with the Tax Law and Strengthen the Tax Department's Enforcement Act (for more information).

### To the seller

When making purchases as agent or project operator under IDA, the purchaser must provide you with an exemption certificate with all entries completed to establish the right to the exemption. You must obtain the original exemption certificate for such purchases and the date of the bill of sale to be that the IDA agent or project operator of the IDA was the purchaser.

As a New York State registered vendor, you may accept an exemption certificate if you are 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;
- a copy possessed by you (in all cases of the transaction); and
- properly completed (all required entries were made).







An exemption certificate is accepted in good faith when you have and acknowledge that the exemption certificate is valid on its face and you exercise reasonable ordinary due care. If you do not receive a properly completed certificate within 90 days after the date of the project is sold, be sure to file it with the purchaser's duplicate copy of the bill of sale. Also attach it to the return filed.

You must also maintain a method of associating an invoice or other source document with an exemption certificate. 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 the sales 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 original purpose, and for which the information is to be collected, and where it will be maintained. To obtain this information, visit [www.foia.gov](http://www.foia.gov) or if you do not have internet access, call and request Publication 54. An appropriate form (see [www.foia.gov](http://www.foia.gov)) for the fax address and telephone number.

### Need help?

-  Visit our Web site at [www.tax.ny.gov](http://www.tax.ny.gov)
-  Get information and manage your taxes online
-  Call toll-free on the 800-455-6833 and features
-  Sales Tax Information Center (SIT) 845-485-2839
-  To order forms and publications (SIT) 845-457-5431
-  Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities) using a TTY (SIT) 845-485-6082

## SCHEDULE "C"

### Insurance Requirements

"All Risk" (excluding terrorism coverage if unavailable at commercially reasonable rates as determined by the Sub-Agent) builder's risk insurance, including collapse coverage and coverage for material in storage and while in transit, for one hundred percent (100%) of the insurable replacement value of the Project on a replacement cost basis on all materials, equipment and supplies which are to become a permanent part of the Project, while awaiting erection and until completion; (ii) worker's compensation insurance including employer's liability to provide statutory benefits as required by applicable Legal Requirements; (iii) commercial general liability insurance for hazard of operation, independent contractors, products and completed operations, such liability insurance to include broad form property damage and afford coverage for explosion, collapse and underground hazards and personal injury liability insurance, and contractual liability coverage for the Sub-Agent's indemnification obligations hereunder, all with limits of not less than One Million Dollars (\$1,000,000) per occurrence on an "occurrence" basis and Four Million Dollars (\$4,000,000) in the aggregate; and (iv) comprehensive automobile liability covering owned, non-owned and hired vehicles used in connection with the construction of the Project with limits of not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage. The Sub-Agent shall deliver to the Agency any policies (or certificates thereof) with respect to insurance required hereunder prior to the commencement of construction or related work on the Project, and shall deliver renewal policies (or certificates thereof) at least thirty (30) days before the expiration date of any policy maintained in connection with the Project. All policies evidencing such insurance except the Workers' Compensation policy shall name the Sub-Agent as insured and the Agency as an additional insured, as its interests may appear, and all policies shall provide that the coverage with respect to the Agency be primary and non-contributory and require at least thirty (30) days' prior written notice to the Agency of cancellation, reduction in policy limits, or material change in coverage thereof; and (B) to the extent that such provisions of law are in fact applicable (without creating an obligation by contract beyond that which is created by statute), it will comply with the requirements of Section 220 of the Labor Law of the State of New York, as amended.

6

MEMORANDUM OF  
AGENCY LEASE AGREEMENT

 COPY

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

***NAME AND ADDRESS OF LESSEE:*** Erie Water Street Associates, LLC  
315 S. Franklin Street  
Syracuse, New York 13202

***DESCRIPTION OF LEASED PREMISES:***

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

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

As of December 1, 2016

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

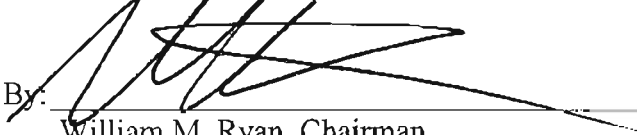
The Agency Lease Agreement shall be in effect for a term commencing as of December 1, 2016 and shall terminate on the earlier of (1) December 31, 2017; or (2) the issuance of a certificate of occupancy by the City of Syracuse, New York, unless earlier terminated as provided in the Agency Lease.

14.43 12'22"16 464616 DB-54062-51

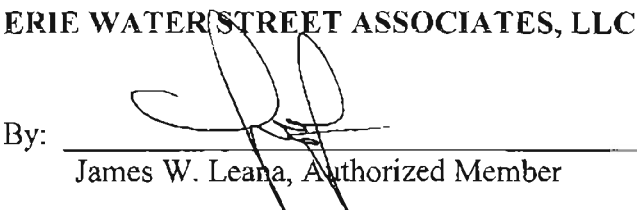


IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum as of the 1<sup>st</sup> day of December, 2016.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

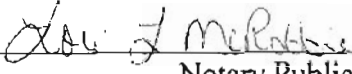
By:   
William M. Ryan, Chairman

**ERIE WATER STREET ASSOCIATES, LLC**

By:   
James W. Leana, Authorized Member


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

On this 21<sup>st</sup> day of December, 2016, before me, the undersigned, personally appeared, **William M. Ryan**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public  
LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01A-0055591  
Commission Expires on Feb. 12, 2018

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

On this 21<sup>st</sup> day of December, 2016, before me, the undersigned, personally appeared, **James W. Leana**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public  
LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01A-0055591  
Commission Expires on Feb. 12, 2018

## EXHIBIT "A"

### LEGAL DESCRIPTION

**ALL THAT TRACT OR PARCEL OF LAND**, situate in the City of Syracuse, County of Onondaga and State of New York, bounded and described as follows, viz: Part of Lots 2, 3, 31, 41 and 42, Block 105-D, City of Syracuse, NY, according to a map made by B.F. Green, filed in Onondaga County Clerk's Office October 11, 1850, bounded and described as follows, viz: Beginning at a point in the south line of West Fayette Street about 208.855 ft. west from the Northeast corner of said Block where the center line of the west wall of the so-called Tallman and Palmer Store, now known as #225 West Fayette Street, intersects the south line of West Fayette Street; thence southwardly along the center of said wall and the same conditioned about 115 ft. to a point in range with the north face of the north wall of the six-story brick building erected by E.F. Holden on Walton Street; thence westwardly along said range line about 27.00 ft. to the northeasterly corner of said six-story building, thence southwardly along the east face of the brick wall of said building about 90 ft. to a point in the north line of Walton Street 208.856 ft. from the southeast corner of said Block 105-D, thence eastwardly along the north line of Walton Street 48.22 ft. to the center of the west brick wall of the building owned and occupied by L.L. Thurwatcher; thence northwardly along the center of said wall about 205 ft. to the south line of West Fayette Street; thence westwardly along the south line of West Fayette Street 47.32 ft. to the place of beginning.



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

Recording office time stamp

**COPY**

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 )	Social security number
	City of Syracuse Industrial Development Agency	
	Mailing address	Social security number
	201 East Washington Street, 7th Floor	
	City State ZIP code	Federal EIN
	Syracuse NY 13204	52-1380308
	Single member's name if grantor is a single member LLC (see instructions)	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 grantees )	Social security number
	Erie Water Street Associates, LLC	
	Mailing address	Social security number
	315 South Franklin Street	
	City State ZIP code	Federal EIN
	Syracuse NY 13202	46-2501045
	Single member's name if grantee is a single member LLC (see instructions)	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
101.-04-04	311500	219-225 West Fayette Street	Syracuse	Onondaga

**Type of property conveyed (check applicable box)**

1 <input type="checkbox"/> One- to three-family house	5 <input checked="" type="checkbox"/> Commercial/Industrial	Date of conveyance	Percentage of real property conveyed which is residential real property <u>0</u> % <i>(see Instructions)</i>						
2 <input type="checkbox"/> Residential cooperative	6 <input type="checkbox"/> Apartment building								
3 <input type="checkbox"/> Residential condominium	7 <input type="checkbox"/> Office building	<table border="1"> <tr> <td>12</td> <td>21</td> <td>2016</td> </tr> <tr> <td align="center">month</td> <td align="center">day</td> <td align="center">year</td> </tr> </table>	12	21	2016	month	day	year	
12	21	2016							
month	day	year							
4 <input type="checkbox"/> Vacant land	8 <input type="checkbox"/> Other _____								

**Condition of conveyance (check all that apply)**

- |   |  |  |
|---|--|--|
| a. <input type="checkbox"/> Conveyance of fee interest  | 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) | l. <input type="checkbox"/> Option assignment or surrender   |
| b. <input type="checkbox"/> Acquisition of a controlling interest (state percentage acquired _____ %)   | g. <input type="checkbox"/> Conveyance for which credit for tax previously paid will be claimed (attach Form TP-584.1, Schedule G)                         | m. <input type="checkbox"/> Leasehold assignment or surrender  |
| c. <input type="checkbox"/> Transfer of a controlling interest (state percentage transferred _____ %)   | h. <input type="checkbox"/> Conveyance of cooperative apartment(s)   | n. <input checked="" type="checkbox"/> Leasehold grant   |
| d. <input type="checkbox"/> Conveyance to cooperative housing corporation   | i. <input type="checkbox"/> Syndication  | o. <input type="checkbox"/> Conveyance of an easement  |
| 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   | p. <input type="checkbox"/> Conveyance for which exemption from transfer tax claimed (complete Schedule B, Part III) |
|   | 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	Date received	Transaction number
	Schedule B., Part I \$ _____ Schedule B., Part II \$ _____		

LG-33045-01  
 DB-5406P-537  
 406419  
 0110121  
 4:43 12/22/16

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

**Part I – Computation of tax due**

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

1.	0	00
2.	0	00
3.	0	00
4.	0	00
5.	0	00
6.	0	00

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

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

1.		
2.		
3.		

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

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

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

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

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

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

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


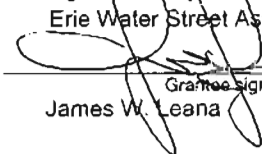
1.  The real property being sold or transferred is not subject to an outstanding credit line mortgage.
2.  The real property being sold or transferred is subject to an outstanding credit line mortgage. However, an exemption from the tax is claimed for the following reason:
  - The transfer of real property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

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

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

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

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

<p>City of Syracuse Industrial Development Agency</p>  <p>_____ Grantor signature William M. Ryan</p>	<p>Chairman Title</p>	<p>Erie Water Street Associates, LLC</p>  <p>_____ Grantee signature James W. Leana</p>	<p>Member Title</p>
Grantor signature	Title	Grantee signature	Title

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

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

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

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

**Part I - New York State residents**

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

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

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

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

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

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

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

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

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

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

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

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

## **SCHEDULE "A"**

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



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## CERTIFICATION

Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agency Lease Agreement by and between the parties dated as of December 1, 2016.

The undersigned, James W. Leana, Member, authorized signatory of Erie Water Street Associates, 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.

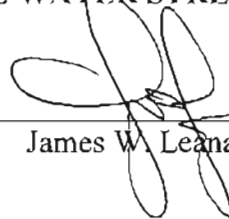
(2) that the Company has complied, and will, for so long as the Agency has an interest in the Project, continue to comply with, the Agency's Local Labor Policy.

Dated: December 21, 2016

**ERIE WATER STREET ASSOCIATES, LLC**

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

James W. Leana, Authorized Member



8



# CERTIFICATE OF LIABILITY INSURANCE

GRANG-1 OP ID: AM

DATE (MM/DD/YYYY)  
12/19/2016

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

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

PRODUCER C. H. Insurance Brokerage Services Co., Inc. 100 Madison St, Suite 100 Syracuse, NY 13202-2704 David J Wicker	CONTACT NAME: David J Wicker PHONE (A/C No, Ext): 315-234-7600 FAX (A/C, No): 315-234-7608 E-MAIL ADDRESS: dwicker@chinsurance.cc
	INSURER(S) AFFORDING COVERAGE INSURER A: Preferred Mutual INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:
INSURED Erie Water Street Associates LLC Jim Leana 315 S. Franklin Street Syracuse, NY 13202	

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER	X	BOP0100715835	11/13/2016	11/13/2017	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ee occurrence) \$ 50,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/PROP AGG \$ 2,000,000 \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000		UC0100607583	11/13/2016	11/13/2017	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000 \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/ MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N/A				<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Property		BOP0100715835	11/13/2016	11/13/2017	Building 2,856,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
 The Syracuse Industrial Development Agency is included as additional insured on a primary and non-contributory basis with respects to the General Liability. Syracuse Industrial Development Agency is included as an additional insured on a primary basis with respects to the Builders Risk policy. The Builders Risk policy is not contingent

CERTIFICATE HOLDER SIDASS1 SIDA Syracuse Industrial Development Agency City Hall Commons 7th floor 201 East Washington St Syracuse, NY 13202	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. AUTHORIZED REPRESENTATIVE <i>Joseph Conventer</i>
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# CERTIFICATE OF LIABILITY INSURANCE

GRANG-1 OP ID: AM

DATE (MM/DD/YYYY)

12/18/2018

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

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

<b>PRODUCER</b> C. H. Insurance Brokerage Services Co., Inc. 100 Madison St, Suite 100 Syracuse, NY 13202-2704 David J Wicker	<b>CONTACT NAME:</b> David J Wicker <b>PHONE (A/C No. Ext):</b> 315-234-7600 <b>FAX (A/C No.):</b> 315-234-7508 <b>E-MAIL ADDRESS:</b> dwicker@chinsurance.co													
	<table border="1"> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A: Preferred Mutual</td> <td>15024</td> </tr> <tr> <td>INSURER B:</td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></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> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Preferred Mutual	15024	INSURER B:		INSURER C:		INSURER D:		INSURER E:		INSURER F:
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INSURER F:														
<b>INSURED</b> Erie Water Street Associates LLC Jim Leana 315 S. Franklin Street Syracuse, NY 13202														

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

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER			BOP0100715835	11/13/2018	11/13/2017	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/PROP AGG \$ 2,000,000 \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			UC0100607563	11/13/2016	11/13/2017	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000 \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N N/A				<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Property			BOP0100715835	11/13/2016	11/13/2017	Building 2,855,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Certificate holder is listed at Mortgagee with regards to building located at 219-25 Fayette St.W, Syracuse, NY 13202

**CERTIFICATE HOLDER****CANCELLATION**

<b>NBT BAN</b>  NBT Bank NA Its Successors and/or Assigns 52 South Broad Street Norwich, NY 13815	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 <i>Joseph Conventio</i>
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## ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT

THIS ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT (the "*Agreement*") is made as of the 1<sup>st</sup> day of December, 2016, between ERIE WATER STREET ASSOCIATES, LLC (the "*Indemnitor*" or the "*Company*"), for the benefit of the CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY (the "*Agency*").

### RECITALS

WHEREAS, the Agency has undertaken at the request of the Indemnitor, a project (the "*Project*") consisting of: (A)(i) the acquisition of an interest in approximately 9,948 square feet of improved real property located at 219-225 West Fayette Street, in the City of Syracuse, New York, as more fully described on Schedule A attached hereto (the "*Land*"); (ii) the reconstruction and renovation of an existing 3 story approximately 25,007 square foot building (the "*Facility*"), to include but not be limited to, a new store front on the West Fayette Street side of the building; the construction of a new first floor building lobby with elevator and stair tower; the redevelopment of the building's second and third levels to house approximately 16 market rate one-bedroom apartment units; and repairs to the building's Walton Street façade; all located on the Land; (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment, including but not limited to new mechanical systems (the "*Equipment*" and together with the Land and the Facility, the "*Project Facility*"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use taxes and mortgage recording tax (except as limited by Section 874 of the General Municipal Law) (collectively the "*Financial Assistance*"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

NOW, THEREFORE, in consideration of the premises, Ten Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Indemnitor, intending to be legally bound, hereby agrees as follows:

1. **Recitals; Definitions.**

(a) The foregoing recitals are incorporated into this Agreement by this reference.

(b) Capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Schedule of Definitions attached to the Agency Lease as Exhibit "C."

2. **Representations and Warranties.**

(a) Except as disclosed in Schedule B annexed hereto, Indemnitor represents and warrants that it has no knowledge of any deposit, storage, disposal, burial, discharge, spillage, uncontrolled loss, seepage or filtration of oil, petroleum or chemical liquids or solids,

liquid or gaseous products or any hazardous wastes or hazardous substances (collectively, "**Hazardous Substances**"), as those terms are used in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or in any other federal, state or local law governing hazardous substances, as such laws may be amended from time to time (collectively, the "**Hazardous Waste Laws**"), at, upon, under or within the Project Facility or any contiguous real estate, and (ii) it has not caused or permitted to occur, and shall not permit to exist, any condition which may cause a discharge of any Hazardous Substances at, upon, under or within the Project Facility or on any contiguous real estate.

(b) Except as disclosed in the reports listed on Schedule B annexed hereto, Indemnitor further represents and warrants that (i) it has not been nor will be involved in operations at or near the Project Facility which operations could lead to (A) the imposition of liability on Indemnitor or on any 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  
City Hall Commons, 7<sup>th</sup> Floor  
201 East Washington Street  
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:

Erie Water Street Associates, LLC  
315 S. Franklin Street  
Syracuse, New York 13202  
Attn: Michael P. Wicker

With a copy to:

Centolella Lynn D'Elia & Temes LLC  
100 Madison Street  
Tower I, Suite 1905  
Syracuse, New York 13202  
Attn: Anthony J. D'Elia, 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]



## SCHEDULE "A"

### LEGAL DESCRIPTION

**ALL THAT TRACT OR PARCEL OF LAND**, situate in the City of Syracuse, County of Onondaga and State of New York, bounded and described as follows, viz: Part of Lots 2, 3, 31, 41 and 42, Block 105-D, City of Syracuse, NY, according to a map made by B.F. Green, filed in Onondaga County Clerk's Office October 11, 1850, bounded and described as follows, viz: Beginning at a point in the south line of West Fayette Street about 208.855 ft. west from the Northeast corner of said Block where the center line of the west wall of the so-called Tallman and Palmer Store, now known as #225 West Fayette Street, intersects the south line of West Fayette Street; thence southwardly along the center of said wall and the same conditioned about 115 ft. to a point in range with the north face of the north wall of the six-story brick building erected by E.F. Holden on Walton Street; thence westwardly along said range line about 27.00 ft. to the northeasterly corner of said six-story building, thence southwardly along the east face of the brick wall of said building about 90 ft. to a point in the north line of Walton Street 208.856 ft. from the southeast corner of said Block 105-D, thence eastwardly along the north line of Walton Street 48.22 ft. to the center of the west brick wall of the building owned and occupied by L.L. Thurwatcher; thence northwardly along the center of said wall about 205 ft. to the south line of West Fayette Street; thence westwardly along the south line of West Fayette Street 47.32 ft. to the place of beginning.

## **SCHEDULE "B"**

### **EXCEPTIONS**

**Copies of the following are on file with the Agency:**

Asbestos Survey/Lead Based Paint Inspection Report prepared by Qualcor, LLC 1890 Route 80, Tully, New York 13159, dated August 15, 2016.

ASTM E1528-14 Transaction Screen Environmental Site Assessment Report for the Property Identified as : Mixed-Use Building (Erie Water Street Associates LLC) 219-225 Fayette Street West (aka 116-118 Walton Street) Syracuse, New York 13204 (LCS Project No. 16S61700.24 NBT Log No. 1628, Prepared by LCS, Inc., dated November 2, 2016.

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## CLOSING RECEIPT

### CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY LEASE/SUBLEASE TRANSACTION ERIE WATER STREET ASSOCIATES, LLC

**CLOSING RECEIPT** executed December 21, 2016 by the City of Syracuse Industrial Development Agency (the "*Agency*") and **ERIE WATER STREET ASSOCIATES, LLC** (the "*Company*") in connection with a certain project (the "*Project*") consisting of: (A)(i) the acquisition of an interest in approximately 9,948 square feet of improved real property located at 219-225 West Fayette Street, in the City of Syracuse, New York (the "*Land*"); (ii) the reconstruction and renovation of an existing 3 story approximately 25,007 square foot building (the "*Facility*"), to include but not be limited to, a new store front on the West Fayette Street side of the building; the construction of a new first floor building lobby with elevator and stair tower; the redevelopment of the building's second and third levels to house approximately 16 market rate one-bedroom apartment units; and repairs to the building's Walton Street façade; all located on the Land; (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment, including but not limited to new mechanical systems (the "*Equipment*" and together with the Land and the Facility, the "*Project Facility*"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use taxes and mortgage recording tax (except as limited by Section 874 of the General Municipal Law) (collectively the "*Financial Assistance*"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

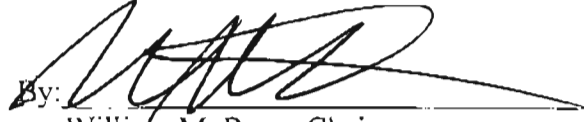
#### WITNESSETH:

(1) The Agency has executed, delivered, sealed and acknowledged, where appropriate, the documents to which it is a party, and acknowledges receipt from the Company of its administrative fee.

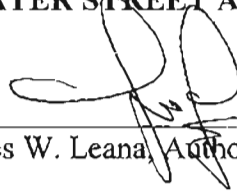
(2) The Company has executed, delivered, sealed and acknowledged, where appropriate, the documents to which it is a party.

(Signature page to Closing Receipt)

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
William M. Ryan, Chairman

**ERIE WATER STREET ASSOCIATES, LLC**

By:   
James W. Leana, Authorized Member

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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 1, 2016

Erie Water Street Associates, LLC  
315 S. Franklin Street  
Syracuse, New York 13202  
Attn: Michael P. Wicker

Re: City of Syracuse Industrial Development Agency  
Erie Water Street Associates, LLC  
Sales Tax Appointment Letter

Dear Mr. Wicker:

Pursuant to a resolution duly adopted on December 20, 2016, the City of Syracuse Industrial Development Agency (the "**Agency**") Erie Water Street Associates, LLC (the "**Company**") the true and lawful agent of the Agency to undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in approximately 9,948 square feet of improved real property located at 219-225 West Fayette Street, in the City of Syracuse, New York (the "**Land**"); (ii) the reconstruction and renovation of an existing 3 story approximately 25,007 square foot building (the "**Facility**"), to include but not be limited to, a new store front on the West Fayette Street side of the building; the construction of a new first floor building lobby with elevator and stair tower; the redevelopment of the building's second and third levels to house approximately 16 market rate one-bedroom apartment units; and repairs to the building's Walton Street façade; all located on the Land; (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment, including but not limited to new mechanical systems (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use taxes and mortgage recording tax (except as limited by Section 874 of the General Municipal Law) (collectively the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement. The amount of State and local sales and use tax exemption benefits comprising the Financial Assistance approved by the Agency for the benefit of the Project shall not exceed \$104,000.

This appointment includes, and this letter evidences, authority to purchase on behalf of the Agency all materials to be incorporated into and made an integral part of the Project Facility and the following activities as they relate to any renovation, improvement, equipping and completion of any of any buildings, whether or not any materials, equipment or supplies described below are incorporated into or become an integral part of such buildings: (1) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with renovation, improvement and equipping; (2) all purchases, rentals, uses or consumption of supplies, materials, utilities and services of every kind and description used in connection with renovation, improvement and equipping; and (3) all purchases, leases, rentals and uses of equipment, machinery and other tangible personal property (including installation costs), installed or placed in, upon or under such building or facility, including all repairs and replacements of such property, and with respect to such specific purchases or rentals, are exempt from any sales or use tax imposed by the State of New York or any governmental instrumentality located within the State of New York.

This agency appointment includes the power to delegate such agency, in whole or in part, to a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (collectively, "*Additional Agents*"). Additional Agents must be specifically appointed by the Company in accordance and compliance with the terms of the Agency Lease. The Company hereby agrees to complete "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (Form ST-60) for itself and each Additional Agent who provide materials, equipment, supplies or services to the Project Facility and deliver said form to the Agency within fifteen (15) days of appointment such that the Agency can execute and deliver said form to the State Department of Taxation and Finance within thirty (30) days of appointment. The Agency's obligation to execute any Form ST-60 relative to an Additional Agent is subject to the satisfaction of the conditions in the Agency Lease relative to such appointments.

The Company agrees, whenever requested by the Agency, to provide, or cause its Additional Agents whether appointed or not, to provide and certify, or cause to be certified, such information regarding use of local labor, job creation, exemptions from State and local sales and use tax, real property taxes and mortgage recording taxes and other topics as the Agency from time to time reasonably considers necessary or appropriate, including, but not limited to, such information as to enable the Agency to make any reports required by law or governmental regulation, including but not limited to those required by §875 of the Act.

The Company acknowledges and agrees that pursuant to Section 875(3) of the Act, and in conjunction with Agency policy, the Agency shall, and in some circumstances may, recover, recapture, receive or otherwise obtain from the Company the portion of the Financial Assistance (the "*Recapture Amount*") consisting of that portion of the State and local sales and use tax exemption in accordance with the Agency's Recapture Policy and the Project Agreement.

December 1, 2016

Page 3

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, 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.

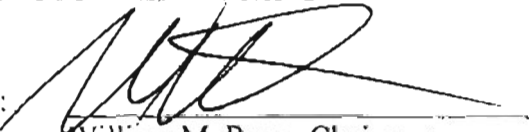
The agency created by this letter is limited to the Project Facility, and will expire on the earlier of: (i) **December 31, 2017**, (ii) the issuance of a certificate of occupancy by the City; or (iii) the termination of the Agency Lease. You may apply to extend this agency authority by showing good cause.

This letter is provided for the sole purpose of evidencing, in part, the exemption from New York State Sales and Use Taxes for this project only. No other principal/agent relationship is intended or may be implied or inferred by this letter.

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

Very truly yours

CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY

By:   
William M. Ryan, Chairman

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# IDA Appointment of Project Operator or Agent For Sales Tax Purposes

# ST-60

(4/13)

The industrial development agency or authority (IDA) must submit this form within 30 days of the appointment of a project operator or agent, whether appointed directly by the IDA or indirectly by the operator or another agent.

**For IDA use only**

Name of IDA City of Syracuse Industrial Development Agency		IDA project number (use OSC numbering system for projects after 1998) 31021609	
Street address 201 East Washington Street, 7th Floor		Telephone number (315) 473-3275	
City Syracuse		State NY	ZIP code 13202
Name of IDA project operator or agent Erie Water Street Associates, LLC	Mark an X in the box if directly appointed by the IDA: <input type="checkbox"/>	Employer identification or social security number 46-2501045	
Street address 315 South Franklin Street		Telephone number ( )	Primary operator or agent? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
City Syracuse		State NY	ZIP code 13202
Name of project Erie Water Street Associates, LLC Project		Purpose of project (see instructions) other - commercial	
Street address of project site 219-225 West Fayette 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) 12/01/16	Date project operator or agent status ends (mm/dd/yy) 12/31/17	Mark an X in the box if this is an extension to an original project: <input type="checkbox"/>
Estimated value of goods and services that will be exempt from New York State and local sales and use tax: \$1,300,000	Estimated value of New York State and local sales and use tax exemption provided: \$104,000	

**Certification:** I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.

Print name of officer or employee signing on behalf of the IDA William M. Ryan	Print title Chairman
Signature 	Date 12-21-16
	Telephone number (315) 473-3275

## Instructions

### Filing requirements

An IDA must file this form within 30 days of the date the IDA appoints any project operator or other person as agent of the IDA, for purposes of extending any sales and compensating use tax exemptions.

The IDA must file a separate form for each person it appoints as agent, whether directly or indirectly, and regardless of whether the person is the primary project operator or agent. If the IDA authorizes a project operator or agent to appoint other persons as agent of the IDA, the operator or agent making such an appointment must advise the IDA that it has done so, so that the IDA can file a form within 30 days of the date of the new agent's appointment. The IDA should not file this form for a person hired to work on an IDA project if that person is not appointed as agent of the IDA. The IDA need not file this form if the IDA does not extend any sales or use tax exemption benefits for the project.

If an IDA modifies a project, such as by extending it beyond its original completion date, or by increasing or decreasing the amount of sales and use tax exemption benefits authorized for the project, the IDA must, within 30 days of the change, file a new form with the new information.

If an IDA amends, revokes, or cancels the appointment of an agent, or if an agent's appointment becomes invalid for any reason, the IDA must, within 30 days, send a letter to the address below for filing this form, indicating that the appointment has been amended, revoked, or cancelled, or is no longer valid, and the effective date of the change. It should attach to the letter a copy of the form it originally filed. The IDA need not send a letter for a form that is not valid merely because the "Completion date of project" has passed.

### Purpose of project

For Purpose of project, enter one of the following:

- Services
- Agriculture, forestry, fishing
- Finance, insurance, real estate
- Transportation, communication, electric, gas, sanitary services
- Construction
- Wholesale trade
- Retail trade
- Manufacturing
- Other (specify)

### Mailing instructions

Mail completed form to:

**NYS TAX DEPARTMENT  
IDA UNIT  
W A HARRIMAN CAMPUS  
ALBANY NY 12227**

### Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 687, 1098, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

### Need help?

**Internet access: [www.tax.ny.gov](http://www.tax.ny.gov)**  
(for information, forms, and publications)

**Sales Tax Information Center:** (518) 485-2889  
To order forms and publications: (518) 457-5431

**Text Telephone (TTY) Hotline**  
(for persons with hearing and speech disabilities using a TTY): (518) 485-5082



BARCLAY DAMON<sup>LLP</sup>

Susan R. Katzoff  
Partner

December 22, 2016

**VIA CERTIFIED MAIL**

7016 1970 0000 3832 9897

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  
Erie Water Street Associates, LLC (Erie Water Street Associates, LLC Project)  
IDA Project No. 31021609

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 Erie Water Street Associates, LLC as its agent for sales tax purposes in connection with the IDA project identified therein.

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

Very truly yours,

COPY

Susan R. Katzoff

SRK:llm  
Enclosure

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

New York State Tax Department  
 TDA Unit  
 Building 8, Room 738  
 W.A. Harriman Campus  
 Albany, New York 12227



9590 9402 2129 6132 4538 88

2. Article Number (Transfer from service label)

7016 1970 0000 3832 9897

PS Form 3811, July 2015 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X

Agent

Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

NEW YORK STATE TAX DEPT.  
 ALBANY, NY 12227

DEC 8 7 2016

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery (over \$500)
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

Domestic Return Receipt

USPS TRACKING #



9590 9402 2129 6132 4538 88



First-Class Mail  
 Postage & Fees Paid  
 USPS  
 Permit No. G-10

United States  
 Postal Service

Please print your name, address, and ZIP+4® in this box®

Barclay Damon, LLP  
 Barclay Damon Tower  
 125 East Jefferson Street  
 Syracuse, New York 13202  
 Attn: Susan R. Katzoff, Esq.



3084161

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

**OFFICIAL USE**

Certified Mail Fee

\$

Extra Services & Fees (check box, add fee as appropriate)

- Return Receipt (hardcopy) \$ \_\_\_\_\_
- Return Receipt (electronic) \$ \_\_\_\_\_
- Certified Mail Restricted Delivery \$ \_\_\_\_\_
- Adult Signature Required \$ \_\_\_\_\_
- Adult Signature Restricted Delivery \$ \_\_\_\_\_

Postage

\$

Total Postage and Fees

\$

Sent To

Street and Apt. No., or PO Box No.

City, State, ZIP+4®

Postmark  
 Here

7016 1970 0000 3832 9897

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**BUILDING LOAN AND PERMANENT LOAN MORTGAGE AND  
SECURITY AGREEMENT**

**COPY**

**\$2,349,000.00**

**THIS MORTGAGE AND SECURITY AGREEMENT**, made the 21<sup>st</sup> day of December 2016, by **ERIE WATER STREET ASSOCIATES, LLC**, a New York limited liability company with a mailing address of 315 South Franklin Street, Syracuse, New York 13202 (the "**Mortgagor**") and **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, an industrial development agency, with a mailing address of City Hall Commons, 7<sup>th</sup> Floor 201 East Washington Street, Syracuse, New York, (the "**Agency**"), to **NBT BANK, NATIONAL ASSOCIATION**, a national banking association, with an office and place of business at 52 South Broad Street, Norwich, New York 13815, (the "**Mortgagee**").

**WITNESSETH**, that to secure the payment of an indebtedness evidenced by a certain note bearing even date herewith in the principal sum of *Two Million Three Hundred Forty Nine Thousand and 00/100 Dollars (\$2,349,000.00)* lawful money of the United States, as the same may be modified, renewed or extended (the "**Note**") which sum, with interest thereon is to be paid by Mortgagor to Mortgagee in accordance with the terms of said Note, and also to secure the payment by Mortgagor to Mortgagee of all sums expended or advanced by Mortgagee pursuant to any covenant, term or provision of this Mortgage or any other Loan Document (as that term is defined in the Note), and to secure the performance of each covenant, term and provision by Mortgagor to be performed pursuant to this Mortgage or any other Loan Document, Mortgagor and Agency hereby mortgage to Mortgagee, its successors and assigns, the following described property (the "**Mortgaged Property**") whether now owned or held or hereafter acquired, except for the Agency's "**Unassigned Rights**" as that term is defined in the Agency Lease (as defined herein):

**ALL THAT TRACT OR PARCEL OF LAND** situate in the County of Onondaga, State of New York known as 219-225 West Fayette Street, Syracuse, New York and being the same premises described in Schedule "A" hereto annexed and made a part hereof (the "**Premises**").

**ALL RIGHT, TITLE AND INTEREST** of Mortgagor and Agency in and to any and all buildings, structures and improvements, including without limitation, the foundations and footings thereof, now or at any time hereafter erected, constructed or situated upon the Premises or any part thereof (the "**Improvements**").

**TOGETHER** with all fixtures, chattels and articles of Personal Property (as hereinafter defined) now or hereafter attached to or used in connection with the Premises, together with any and all replacements thereof and additions thereto (the "**Chattels**"). "**Personal Property**" shall mean all equipment, fixtures, and other articles of personal property now or hereafter affixed to the Real Property; 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,

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all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property, including all Oil and Gas Substances (as defined in this Mortgage), produced and saved from or attributable to the real property described in attached Schedule A (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 the 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. This Mortgage shall be considered a financing statement pursuant to the provisions of the Uniform Commercial Code, covering fixtures which are affixed to the Premises. The types of collateral covered hereby are described in this paragraph. The debtor is **ERIE WATER STREET ASSOCIATES, LLC**. The secured party is **NBT BANK, NATIONAL ASSOCIATION**. Their addresses are set forth above.

TOGETHER with all right, title and interest, if any, of Mortgagor and Agency of, in and to the bed of any street, road or avenue, opened or proposed, in front of, adjoining or abutting upon the Premises to the center line thereof.

TOGETHER with all rights, titles, interests, and estates now owned or hereafter acquired by Mortgagor 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 below), and geothermal and similar matters, in, under, and/or below the surface and that may be produced from the Real Property described by attached Schedule A and as may or may not be covered by any oil and gas leases and/or oil, gas, and mineral leases, or any amendments thereto, and any royalty or other interest arising from compulsory or voluntary integration and unitization or pooling (such leases and interests being hereinafter collectively called ("Leases"), including Mortgagor's undivided interests in the 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 Leases, the Real Property covered thereby, and Mortgagor's 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 has entered or shall enter into with the consent of Lender. All of the rights, titles, interests and estates now owned or hereafter acquired by Mortgagor 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 the Leases and Oil and Gas Substances) which are in the possession of Mortgagor or to which Mortgagor is entitled to be in possession or have access. "Oil and Gas Substances" is defined as all rights, titles, interest and estates now owned or hereafter acquired by Mortgagor 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.

**TOGETHER** with any and all awards heretofore and hereafter made to the present and all subsequent owners of the Premises by any governmental or other lawful authorities for the taking by eminent domain of the whole or any part of the Premises, or any easement therein, including any awards for any changes of grade of streets, which said awards are hereby assigned to Mortgagee, who is hereby authorized to collect and receive the proceeds of any such awards from such authorities and to give proper receipts and acquittances therefor, and to apply the same toward the payment of the amount owing on account of this Mortgage and the Note, notwithstanding the fact that the amount owing thereon may not then be due and payable.

**TO HAVE AND TO HOLD** the Mortgaged Property unto the Mortgagee, its successors and assigns, **PROVIDED ALWAYS** that if Mortgagor shall pay or cause to be paid to Mortgagee, its successors and assigns, said principal sum of money and other charges mentioned and set forth in this Mortgage and in the Note, together with interest thereon, then and from thence forth, the Mortgaged Property and the estate hereby granted shall cease, determine and be void.

**AND** Mortgagor covenants with Mortgagee as follows:

1. **REPRESENTATIONS.** Mortgagor hereby represents and warrants to Mortgagee as follows:

(a) That the Loan Documents (as that term is defined in the Note) are in all respects valid and legally binding obligations, enforceable in accordance with their respective terms.

(b) That the execution and delivery of the Loan Documents by Mortgagor and any guarantor do not, and the performance and observance by Mortgagor and any guarantor of their obligations thereunder will not, contravene or result in a breach of (i) if Mortgagor or any guarantor purports to be a corporation, any provision of Mortgagor's or any guarantor's corporate charter or by-laws, or, if Mortgagor or any guarantor purports to be partnership, any provision of Mortgagor's or any guarantor's partnership agreement or certificate, or (ii) any governmental requirements, or (iii) any decree or judgement binding on Mortgagor or any guarantor, or (iv) any agreement or instrument binding on Mortgagor or any guarantor or any of their respective properties, nor will the same result in the creation of any lien or security interest under any such agreement or instrument.

(c) That there are no actions, suits, investigations or proceedings pending, or, to the knowledge of Mortgagor, threatened against or affecting Mortgagor (or any general partner of Mortgagor), any guarantor or the Mortgaged Property, or involving the validity or enforceability of any of the Loan Documents or the priority of the lien thereof, or which will affect Mortgagor's ability to repay the Note, at law or in equity or before or by any governmental authority.

(d) That Mortgagor has no knowledge of any violations or notices of violations of any requirements under applicable law.

(e) If Mortgagor (or any general partner of Mortgagor if Mortgagor is a partnership) or any guarantor purports to be a corporation, that (i) it is a corporation duly organized, validly existing and in good standing under the laws of the state in which it is incorporated, (ii) if required by the laws of the state in which the Premises is located, it is duly qualified to do business and is in good standing therein, (iii) it has the corporate power, authority and legal right to own and operate its properties and assets, carry on the business now being conducted and proposed to be conducted by it, and to engage in the transactions contemplated by the Loan Documents, and (iv) the execution and delivery of the Loan Documents to which it is a party and the performance and observance of the provisions thereof have been duly authorized by all necessary corporate actions.

If Mortgagor (or any general partner of Mortgagor if Mortgagor is a partnership) or any guarantor is a partnership, that (i) it is duly formed and validly existing under the laws of the state in which it is formed, (ii) if required by the laws of the state in which the Premises is located, it is fully qualified to do business therein, (iii) it has the power, authority and legal right to own and operate its properties and assets, to carry on the business conducted and proposed to be conducted by it, and to engage in the transactions contemplated by the Loan Documents, and (iv) the execution and delivery of the Loan Documents to which it is a party and the performance and observance of the provisions thereof have all been duly authorized by all necessary actions of its partners.

(f) That all utility services necessary and sufficient for the construction, development and operation of the Mortgaged Property for its intended purposes are presently available to the Premises (or the boundaries thereof if this Mortgage is executed in conjunction with a construction loan) through dedicated public rights of way or through perpetual private easements, approved by Mortgagee, with respect to which the Mortgage creates a valid, binding and enforceable second, including, but not limited to, water supply, storm and sanitary sewer, gas, electric and telephone facilities, and drainage.

(g) That neither the Mortgaged Property nor any portion thereof is now damaged or injured as result of any fire, explosion, accident, flood or other casualty or has been the subject of any taking, and to the knowledge of Mortgagor, no taking is pending or contemplated.

(h) That any brokerage commissions due in connection with the transactions contemplated hereby have been paid in full and that any such commissions coming due in the future will be promptly paid by Mortgagor. Mortgagor agrees to and shall indemnify Mortgagee from any liability, claims or losses arising by reason of any such brokerage commissions. This provision shall survive the repayment of the Note and shall continue in full force and effect so long as the possibility of such liability, claims or losses exists.

(i) That the financial statements of Mortgagor and any guarantor previously delivered to Mortgagee are true and correct in all material respects, have been prepared in

accordance with generally accepted accounting principles consistently applied, and fairly present the respective financial conditions of Mortgagor and any guarantor as of the respective dates thereof and the results of their operations for the periods covered thereby; that no adverse change has occurred in the assets, liabilities, or financial conditions reflected therein since the respective dates thereof; and that no additional borrowings have been made by Mortgagor or any guarantor since the date thereof other than the borrowing contemplated hereby.

(j) That all federal, state and other tax returns of Mortgagor and any guarantor required by law to be filed have been filed, that all federal, state and other taxes, assessments and other governmental charges upon Mortgagor and any guarantor or their respective properties which are due and payable have been paid, and that Mortgagor and any guarantor have set aside on their books provisions reasonably adequate for the payment of all taxes for periods subsequent to the periods for which such returns have been filed.

(k) That Mortgagor has made no contract or arrangement of any kind or type whatsoever (whether oral or written, formal or informal), the performance of which by the other party thereto could give rise to a lien or encumbrance on the Mortgaged Property, except for contracts (all of which have been disclosed in writing to Mortgagee) made by Mortgagor with parties who have executed and delivered lien waivers to Mortgagee, and which, in the opinion of Mortgagee's counsel, will not create rights in existing or future lien claimants which may be superior to the lien of the Mortgage.

(l) That the rights of way for all roads necessary for the full utilization of the Improvements for their intended purposes have either been acquired by the Mortgagor, the appropriate governmental authority or have been dedicated to public use and accepted by such governmental authority, and all such roads shall have been completed, or all necessary steps shall have been taken by Mortgagor and such governmental authority to assure the complete construction and installation thereof prior to the date upon which access to the Mortgaged Property via such roads will be necessary. All curb cuts, driveway permits and traffic signals necessary for access to the Mortgaged Property are existing or have been fully approved by the appropriate governmental authority.

(m) That no Event of Default (hereinbelow defined) exists and no event which but for the passage of time, the giving of notice or both would constitute an Event of Default has occurred.

2. **THE INDEBTEDNESS.** Mortgagor will pay the indebtedness as provided in the Note or in any modification, renewal or extension of the Note.

3. **INSURANCE.** At all times that the Note is outstanding, including without limitation during any construction period (a "Construction Period"), Mortgagor shall maintain insurance with respect to the Premises the Improvements and the Chattels against such risks and for such amounts as are customarily insured against by businesses of like size and type paying, as the same become due and payable, all premiums in respect thereto, including but not limited to:



(a) Prior to completion of construction of the Improvements, if the same have not been completed, builder's risk all risk (or equivalent coverage) insurance upon any work done or material furnished in connection with construction of the Improvements, issued to Mortgagor and Mortgagee and written in non-reporting completed form in the principal amount of the Note and with respect to the Improvements and at such time that builder's risk insurance shall not be available due to completion of the construction of the Improvements, or if all Improvements have been completed, insurance protecting the interests of the Mortgagor and Mortgagee as their interests may appear against loss or damage to the Improvements by fire, lightning, flood and other casualties normally insured against, with a uniform standard extended coverage endorsement, such insurance at all times to be in an amount of the Note or the total cash replacement value of the Improvements not covered by builder's risk insurance, as determined at least once every three years by a recognized appraiser or insurer selected by the Mortgagor and approved by the Mortgagee.

(b) Boiler and machinery insurance covering physical damage to the Improvements and to the major components of any central heating, air conditioning or ventilation systems and such other equipment as Mortgagee shall designate.

(c) Business interruption insurance sufficient to recover one (1) year's net income, including, without limitation, rental income (such rental income to be based upon the Mortgaged Property being occupied at a ninety five (95%) percent or more occupancy rate), plus the amount of real estate taxes assessed against the Mortgaged Property for the year prior to the issuance of the policy.

(d) Workers' compensation insurance, disability benefits insurance, and such other form of insurance which the Mortgagor is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of Mortgagor who are located at or assigned to the Premises or who are responsible for the construction of the Improvements.

(e) Insurance protecting Mortgagor and Mortgagee against loss or losses from liabilities imposed by law or assumed in any written contract and arising from personal injury and death or damage to the property of others caused by accident or occurrence, in such amounts as may be designated from time to time by Mortgagee, excluding liability imposed upon the Mortgagor by any applicable workers' compensation law, or such other amounts as may be required in writing by the Mortgagee; and a blanket excess liability policy in an amount reasonably satisfactory to the Mortgagee protecting Mortgagor and Mortgagee against any loss or liability or damage for personal injury or property damage.

4. **OTHER INSURANCE PROVISIONS.** All insurance required under this Mortgage shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Mortgagor and authorized to write such insurance in the State of New York and acceptable to the Mortgagee. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other entities engaged in businesses similar in size, character and other respects to those in which the Mortgagor is engaged. All policies evidencing such insurance shall provide for (i) payment of the losses to Mortgagor and Mortgagee as their respective interests may appear, and (ii) at least

thirty (30) days written notice to Mortgagor and Mortgagee prior to cancellation, reduction in policy limits or material change in coverage thereof. The insurance required by Section 3(a) shall contain a New York Standard mortgagee endorsement in favor of Mortgagee. All insurance required hereunder shall be in form, content and coverage satisfactory to the Mortgagee. The original policy, or a certificate thereof, for all insurance required hereby shall be delivered to Mortgagee at NBT Bank, N.A., ISOA, 52 South Broad Street, Norwich, New York 13815. The proceeds of any insurance which are paid to the Mortgagee may be applied by the Mortgagee toward the payment of any monies secured by this Mortgage, or, may be paid over, wholly or in part, to the Mortgagor for the repair of the Improvements or for any other purpose or object satisfactory to the Mortgagee. Mortgagor shall deliver to Mortgagee prior to the expiration date of any insurance coverages required hereunder, a certificate reciting that there is in full force and effect, with a term covering at least the next succeeding year, insurance in the amounts and of the types required hereunder.

5. **ALTERATIONS.** No Improvements shall be structurally altered, removed or demolished without the prior written consent of Mortgagee if the value of the Improvements would be diminished as a result thereof.

6. **APPOINTMENT OF RECEIVER.** Mortgagee in any action to foreclose this Mortgage shall be entitled, without notice and as a matter of right and without regard to the adequacy of any security of the indebtedness or the solvency of Mortgagor or Agency, upon application to any court having jurisdiction, to the appointment of a receiver of the rents, income and profits of the Mortgaged Property.

If an Event of Default (hereinbelow defined) occurs under this Mortgage, as a matter of right and without regard to the adequacy of any security for the Note, the Mortgagor, upon demand of the Mortgagee, shall surrender the possession of, and it shall be lawful for Mortgagee, by such officer or agent as it may appoint, to take possession, of all or any part of the Mortgaged Property together with the books, papers, and accounts of the Mortgagor pertaining thereto, and to hold, operate and manage the same, and from time to time to make all needed repairs and improvements as Mortgagee shall deem wise; and, if Mortgagee deems it necessary or desirable, to complete construction and equipping of any Improvements and in the course of such construction or equipping to make such changes to the same as it may deem desirable; and Mortgagee may sell the Mortgaged Property or any part thereof, or institute proceedings for the complete or partial foreclosure of the lien of this Mortgage on the Mortgaged Property, or lease the Premises or any part thereof in the name and for the account of the Mortgagor or Mortgagee and collect, receive and sequester the rents, revenues, earnings, income, products and profits therefrom, and out of the same and any other monies received hereunder pay or provide for the payment of, all proper costs and expenses of taking, holding, leasing, selling and managing the same, including reasonable compensation to Mortgagee, its agents and counsel, and any charges of Mortgagee hereunder, and any taxes and other charges prior to the lien of this Mortgage which Mortgagee may deem it wise to pay.

7. **PAYMENT OF MORTGAGE TAXES.** Mortgagor shall pay all taxes imposed pursuant to Article 11 of the Tax Law or any other statute, order or regulation, whether said tax is imposed at the time of recording or subsequent thereto. This obligation shall survive the

satisfaction or other termination of this Mortgage. Mortgagee shall pay the tax imposed by Section 253 1-a(a), if applicable, if the Mortgaged Property consists of real property principally improved or to be improved by one or more structures containing in the aggregate not more than six residential units, each dwelling unit having its own separate cooking facilities.

8. **STATEMENT OF AMOUNT DUE.** Mortgagor, within five (5) days upon request in person or within fifteen (15) days upon request by mail, will furnish a written statement duly acknowledged of the amount due on this Mortgage and whether any offsets or defenses exist against the said indebtedness.

9. **NOTICES.** 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 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, and in the case of appropriate mail or courier service, upon deposit with the U.S. Postal Service or delivery to the courier service.

10. **WARRANTY OF TITLE.** Mortgagor warrants the title to the Premises, Improvements and Chattels.

11. **SALE IN ONE PARCEL.** In case of a sale, the Premises may be sold in one parcel together with the Improvements and Chattels. Should the Premises consist of more than one parcel, in the event of a foreclosure of this Mortgage or any mortgage at any time consolidated with this Mortgage, Mortgagor and Agency agree that Mortgagee shall be entitled to a judgment directing the referee appointed in the foreclosure proceeding to sell all of the parcels constituting the Premises at one foreclosure sale, either as a group or separately and that the Mortgagor and Agency expressly waive any right that it may now have or hereafter acquire to (i) request or require that the parcels be sold separately or (ii) request, if Mortgagee has elected to sell parcels separately, that there be a determination of any deficiency amount after any such separate sale or otherwise require a calculation of whether said parcel or parcels separately sold were conveyed for their "fair market value".

12. **ASSIGNMENT OF RENTS AND LEASES.** The rents, income, security deposits and profits of the Premises and all leases at any time existing are hereby assigned to Mortgagee as further security for the payment of said indebtedness, excepting therefrom the Agency Lease and the Company Lease (as each are defined herein), and Mortgagor and Agency shall, on demand, surrender possession of the Premises and Improvements and Chattels to Mortgagee, and hereby consents that, at any time after such demand, Mortgagee may enter upon and take possession of the Premises and Improvements and Chattels and let the same and collect all rents, income and profits therefrom which are due or to become due and apply the same, after payment of all charges and expenses, on account of any part of said indebtedness, whether matured or not, but Mortgagee hereby waives the right to enter upon and take possession of the Premises and Improvements and Chattels for the purpose of collecting said rents, income and profits, and Mortgagor shall be entitled to collect and receive said rents, income and profits

(except as might be otherwise provided in any assignment of rents and leases executed in connection with this Mortgage), until the occurrence of an Event of Default. If an Event of Default occurs, Mortgagee, by virtue of such right to possession, or as the agent of Mortgagor and Agency may dispossess, by the usual summary proceedings, any tenant then or thereafter in default in the payment of any rent, and Mortgagor and Agency hereby irrevocably appoint Mortgagee the agent of Mortgagor and Agency for such purpose. In the event that Mortgagor or Agency is an occupant of the Premises or the Improvements, Mortgagor and Agency agree to surrender possession of the Premises or Improvements so occupied as Mortgagee and Agency may demand and in default of so doing, Mortgagor and Agency may also be dispossessed by the usual summary proceedings. Mortgagor and Agency make these covenants for the benefit of Mortgagee and any subsequent owner of the Mortgaged Property and these covenants shall become effective immediately after the happening of any Event of Default solely on the determination of Mortgagee, provided Mortgagee shall give notice of such determination to Mortgagor and Agency. In case of foreclosure and the appointment of a receiver of rents, the covenants herein contained shall inure to the benefit of such receiver.

13. **NEGATIVE COVENANTS.** Mortgagor will not (i) execute an assignment of the rents, income or profits, or any part thereof from the Mortgaged Property except to Mortgagee, or (ii) except where the tenant is in default thereunder, terminate or consent to the cancellation or surrender of any lease of the Premises or Improvements or of any part thereof, now existing or hereafter to be made, having an unexpired term of two (2) years or more, except that any lease may be canceled provided that promptly after the cancellation or surrender thereof a new lease is entered into with a new tenant having a credit standing, in the judgment of the Mortgagee, at least equivalent to that of the tenant whose lease was canceled, on substantially the same terms as the terminated or canceled lease, or modify any such lease so as to shorten the unexpired term thereof or so as to decrease the amount of the rents payable thereunder, or (iii) accept prepayments of any sums to become due under such leases, except prepayments of rent for more than one (1) month in advance or prepayments in the nature of security for the performance of the tenants thereunder, (iv) in any other manner impair the value of the Mortgaged Property or the security of this Mortgage or (v) further encumber, alienate, hypothecate, grant a security interest in or grant any other interest whatsoever in the Mortgaged Property. Restrictions (ii) and (iii) are made with reference to Section 291-f of the Real Property Law and actions in violation of those provisions shall be voidable at the option of the Mortgagee. No rent reserved under any lease of the Premises or Improvements has been assigned or anticipated, and no rent for any period subsequent to the date hereof has been collected in advance of the due date thereof. Mortgagor will not execute any lease of all or a substantial portion of the Premises or Improvements except for actual occupancy by the tenant thereunder, and will at all times promptly and faithfully perform, or cause to be performed, all of the covenants, conditions and agreements contained in all leases of the Premises or Improvements now or hereafter existing, on the part of the landlord thereunder to be kept and performed and will at all times do all things necessary to compel performance by the tenant under each lease of all obligations, covenants and agreements by such tenant to be performed thereunder. If any of such leases provide for the giving by the tenant of certificates with respect to the status of such leases, Mortgagor shall exercise its right to request such certificates within five (5) days of any demand therefor by Mortgagee. Mortgagor shall furnish to Mortgagee, upon request of Mortgagee to do so, a written statement containing the names of all tenants of the Premises or

Improvements, the terms of their respective leases, the space occupied and the rentals payable thereunder.

14. **BOOKS AND RECORDS.**

(a) In addition to any requirements elsewhere in the Loan Documents, Mortgagor shall keep and maintain at all times at Mortgagor's address stated in this Mortgage, or such other place as Mortgagee may approve in writing, complete and accurate books of accounts and records adequate to reflect correctly the results of the operation of the Mortgaged Property and copies of all written contracts, leases and other instruments which affect the Mortgaged Property. Such books, records, contracts, leases and other instruments shall be subject to examination and inspection at any reasonable time by Mortgagee.

(b) Upon request of Mortgagee in writing, Mortgagor shall promptly provide Mortgagee with all documents reasonably requested by Mortgagee prepared in the form and manner called for in such request and as may reasonably relate to the operation or condition thereof, or the financial condition of Mortgagor or any party obligated on the Note or under any guaranty, including, without limitation, all leases or leasehold interests granted to or by Mortgagor, rent rolls and tenant lists, and rent and damage deposit ledgers, together with operating statements, profit and loss statements and balance sheets, and financial statements of Mortgagor at such intervals as are required by the Loan Documents.

15. **FUTURE LAWS.** In the event of the passage after the date of this Mortgage of any federal, state or municipal law, deducting from the value of land for the purposes of taxation any lien thereon, or changing in any way, the laws for the taxation of mortgages or debts secured by mortgages, or the manner of collection of any such taxes, so as to affect Mortgagee, this Mortgage, or said indebtedness, Mortgagee shall have the right to give thirty (30) days' written notice to Mortgagor requiring the payment of said indebtedness. If such notice be given, said indebtedness shall become due, payable and collectible at the expiration of said thirty (30) days.

16. **PROVISIONS REGARDING USE OF MORTGAGED PROPERTY.** Mortgagor warrants and represents that:

(a) Mortgagor is not responsible for any action or omission, and does not know of any action or omission by any prior owner, that would cause the Mortgaged Property to be subject to forfeiture pursuant to any law, rule or regulation (a "Forfeiture").

(b) The Mortgaged Property has not been acquired with any proceeds from a transaction or an activity that would cause the Mortgaged Property to be subject to Forfeiture.

Mortgagor covenants that Mortgagor will not use, and will not permit any third party to use, the Mortgaged Property or any portion thereof or interest therein for any purpose or activity that would cause a Forfeiture thereof.

17. **ACTIONS AND PROCEEDINGS.** If any action or proceeding be commenced to which action or proceeding Mortgagee is made a party and in which it becomes necessary in the opinion of Mortgagee to defend or uphold the lien of this Mortgage, all sums paid by

Mortgagee for the expense of any litigation to prosecute and defend the rights and lien created by this Mortgage, including reasonable counsel fees, costs and allowances, shall, together with interest thereon be a lien on the Mortgaged Property and secured by this Mortgage and shall be collectible in like manner as said indebtedness and shall be paid by Mortgagor on demand.

18. **SECURITY INTEREST UNDER THE UNIFORM COMMERCIAL CODE.**

Mortgagee is authorized to sign as the agent of Mortgagor such agreement in addition to this Mortgage as Mortgagee at any time may deem necessary or proper or require to grant to Mortgagee a perfected security interest in the Chattels. Mortgagor hereby authorizes Mortgagee to file financing statements (as such term is defined in said Uniform Commercial Code) with respect to the Chattels, at any time, without the signature of Mortgagor. Mortgagor will, however, at any time upon request of Mortgagee, sign such financing statements. Mortgagor will pay all filing fees for the filing of such financing statements and for the refiling thereof at the times required, in the opinion of Mortgagee, by said Uniform Commercial Code. If the lien of this Mortgage be subject to any security agreement covering the Chattels, then in the event of any default under this Mortgage, all the right, title and interest of Mortgagor in and to any and all of the Chattels is hereby assigned to Mortgagee, together with the benefit of any deposits or payments now or hereafter made thereof by Mortgagor or the predecessors or successors in title of Mortgagor in the Mortgaged Property.

19. **CONDEMNATION.** Any and all awards heretofore and hereafter made to Mortgagor and Agency and all subsequent owners of the Mortgaged Property by any governmental or other lawful authorities for the taking by eminent domain of the whole or any part of the Mortgaged Property or any easement therein, including any awards for any changes of grade of streets, are hereby assigned to Mortgagee, who is hereby authorized to collect and receive the proceeds of any such awards from such authorities, to give proper receipts and acquittances therefor and to apply the same toward the payment of the amount owing on account of this Mortgage and said indebtedness, notwithstanding the fact that the amount owing thereon may not then be due and payable; and Mortgagor and Agency hereby covenant and agree, upon request, to make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning the aforesaid awards to Mortgagee free, clear and discharged of any and all encumbrances of any kind or nature whatsoever. Mortgagor shall continue to make all payments required by the Note until any such award shall have been actually received by Mortgagee and any reduction in said indebtedness resulting from the application by Mortgagee of such award shall be deemed to take effect only on the date of such receipt.

Notwithstanding the foregoing, if any one or more of the portions of the Mortgaged Property described in subparagraphs (a), (b) and (c) below shall be damaged or taken through condemnation, either temporarily or permanently, then the entire balance due under the Note and any other Loan Documents shall, at the option of Mortgagee, become immediately due and payable:

- (a) A substantial portion or portions of the Improvements or the support or foundation of any portion or portions of the Improvements; or
- (b) Fifty (50%) percent or more of any parking area; or

(c) Any portion or portions of the Premises which, when so damaged or taken, would result either in (i) an impairment of access to the Improvements from the publicly dedicated rights of way now adjoining the Premises, or (ii) the failure of the Improvements to comply with any building code, zoning or other governmental laws or regulations, lease or other agreement to which the Mortgaged Property is subject.

Following the occurrence of an Event of Default, Mortgagor authorizes Mortgagee, at Mortgagee's option, as attorney in fact for Mortgagor, to commence, appear in and prosecute in Mortgagor's or Mortgagee's name, any action or proceeding relating to any condemnation or other taking of the Mortgaged Property and to settle or compromise any claim in connection with such condemnation or other taking.

20. **TITLE TO MORTGAGED PROPERTY.** Mortgagor is now the owner of the Mortgaged Property upon which this Mortgage is a valid first lien for the amount above specified, with interest thereon at the rate set forth in the Note and there are no defenses or offsets to this Mortgage or to the said indebtedness.

21. **LEASES OF THE MORTGAGED PROPERTY.** Mortgagor will not lease all or any portion of the Mortgaged Property covering more than thirty percent (30%) of the gross leaseable area of the Mortgaged Property (excepting therefrom the Company Lease), will not terminate any now existing or future material lease of the Mortgaged Property, and will not amend or modify, in any material respect, any now existing or future material lease of the Mortgaged Property without the prior written consent of Mortgagee. Mortgagor, at Mortgagee's request, shall furnish Mortgagee with executed copies of all leases hereafter made of all or any part of the Mortgaged Property, and all leases now or hereafter entered into will be in form and substance subject to the approval of Mortgagee. Upon Mortgagee's request, Mortgagor shall make a separate and distinct assignment to Mortgagee, as additional security, of all leases hereafter made a part of the Mortgaged Property.

22. **TRANSFER OF MORTGAGED PROPERTY.** In the event of the sale, conveyance or transfer, by deed, any other voluntary or involuntary act or by operation of law or otherwise (including the entry into any land sale contract or other similar agreement) of any interest in any of the stock of Mortgagor, if Mortgagor be a corporation, or partnership interest, if Mortgagor be a partnership, or of the Mortgaged Property or a part thereof, while this Mortgage shall remain a lien thereon, the full balance of the indebtedness then remaining unpaid, with interest, shall, at the option of the Mortgagee, or its assigns, be immediately due and payable without notice or demand unless the prior written consent of the Mortgagee to such sale, conveyance, or transfer shall have been obtained. A mortgage of the Mortgaged Property to any mortgagee other than the Mortgagee shall be deemed a conveyance for the purpose of this Section.

23. **ACCESS.** Mortgagee, by its employees or agents, shall at all times on reasonable notice have the right to enter upon the Mortgaged Property during reasonable business hours for the purpose of examining and inspecting the same.

24. **REAL PROPERTY LAW.** All covenants hereof, which are in addition to those set forth in Sections 254 and 291-f of the Real Property Law, shall be construed as affording to Mortgagee rights additional to, and not exclusive of, the rights conferred under the provisions of said Sections 254 and 291-f.

25. **PERFORMANCE OF MORTGAGOR'S COVENANTS BY MORTGAGEE.** In the event of any default in the performance of any of the covenants, terms, or provisions of Mortgagor under this Mortgage, Mortgagee may, at the option of Mortgagee, perform the same and the cost thereof, with interest, shall immediately be due from Mortgagor to Mortgagee and secured by this Mortgage.

26. **REMEDIES NOT EXCLUSIVE.** Mortgagee shall have the right from time to time, to take action to recover any amounts of past due principal indebtedness and interest thereon, or any installment of either, or any other sums required to be paid under the covenants, terms and provisions of this Mortgage or the Note, as the same become due, whether or not the principal indebtedness secured, or any other sums secured by the Note or this Mortgage shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or any other action, for default or defaults by Mortgagor or Agency existing at the time such earlier action was commenced.

27. **ADDITIONAL ACTS AND DOCUMENTS.** Mortgagor covenants that it will do, execute, acknowledge, deliver, file and/or record, or cause to be recorded every and all such further acts, deeds, conveyances, advances, mortgages, transfers and assurances, in law as Mortgagee shall require for the better assuring, conveying, transferring, mortgaging, assigning and confirming unto Mortgagee all and singular the Mortgaged Property.

28. **REMEDIES CUMULATIVE.** The rights and remedies herein afforded to Mortgagee shall be cumulative and supplementary to and not exclusive of any other rights and remedies afforded the holder of this Mortgage and the Note.

29. **SUCCESSORS.** All of the provisions of this Mortgage shall inure to the benefit of Mortgagee and of any subsequent holder of this Mortgage and shall be binding upon Mortgagor, Agency and each subsequent owner of the Mortgaged Property.

30. **EFFECT OF RELEASES.** Mortgagee, without notice, may release any part of the security described herein, or any person or entity liable for any indebtedness secured hereby without in any way affecting the lien hereof upon any part of the security not expressly released, and may agree with any party obligated on said indebtedness or having any interest in the security described herein to extend the time for payment of any part or all of the indebtedness secured hereby. Such agreement shall not in any way release or impair the lien hereof, but shall extend the lien hereof as against the title of all parties having any interest in said security, which interest is subject to said lien, and no such release or agreement shall release any person or entity obligated to pay any indebtedness secured hereby.

31. **WAIVERS.** Any failure by Mortgagee to insist upon the strict performance by Mortgagor or Agency of any of the covenants, terms and provisions of this Mortgage shall not be



deemed to be a waiver of any of the covenants, terms and provisions of this Mortgage, and Mortgagee, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by Mortgagor or Agency of any and all of the covenants, terms and provisions of this Mortgage to be performed by Mortgagor or Agency, respectively. Neither Mortgagor nor any other person or entity now or hereafter obligated for the payment of the whole or any part of said indebtedness shall be relieved of such obligation by reason of (i) the failure of Mortgagee to comply with any request of Mortgagor, or of any other person or entity so obligated, (ii) the failure of Mortgagee to take action to foreclose this Mortgage or otherwise enforce any of the covenants, terms and provisions of this Mortgage or the Note, (iii) the release, regardless of consideration, of the whole or any part of the security held for payment of said indebtedness or (iv) any agreement or stipulation between any subsequent owner or owners of the Mortgaged Property and Mortgagee modifying the covenants, terms and provisions of this Mortgage or the Note without first having obtained the consent of Mortgagor or such other person or entity. In the last mentioned event, Mortgagor and all such other persons or entities shall continue liable to make such payments according to the terms and provisions of any such agreement or extension or modification unless expressly released and discharged in writing by Mortgagee. Mortgagee may release, regardless of consideration, any part of the security held for payment of said indebtedness without, as to the remainder of the security, in any way impairing or affecting the lien of this Mortgage or the priority of such lien over any subordinate lien. Mortgagee may resort for the payment of said indebtedness to any other security therefor held by Mortgagee in such order and manner as Mortgagee may elect.

32. **INTEREST ON ADVANCES.** Wherever, under the provisions of this Mortgage or by law, Mortgagee is entitled to interest on advances made or expenses incurred, such interest shall be computed at a rate per annum which shall be the interest rate payable under the Note.

33. **MORTGAGEE NOT OBLIGATED.** Nothing herein contained shall be construed as making the payment of any insurance premiums, taxes or assessments obligatory upon Mortgagee, although Mortgagee may pay same, or as making Mortgagee liable in any way for loss, damage or injury, resulting from the non-payment of any such insurance premiums, taxes or assessments.

34. **LIEN LAW.** Mortgagor will, in compliance with Section 13 of the Lien Law, receive the advances secured by this Mortgage and will hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

35. **ENVIRONMENTAL WARRANTIES AND COVENANTS.**

(a) Warranties. Mortgagor makes the following representations and warranties: Except as set forth in the Phase I environmental site assessment received by Mortgagee in connection with the Loan, (i) Mortgagor (or the present owner of the Mortgaged Property, if different) is in compliance in all material respects with all applicable federal, state and local laws and regulations, including, without limitation, those relating to toxic and hazardous substances and other environmental matters (the "Laws"), (ii) no portion of the

Mortgaged Property is being used or has been used at any previous time, for the disposal, storage, treatment, processing or other handling of any hazardous or toxic substances, in a manner not in compliance with the Laws, (iii) the soil and any surface water and ground water which are a part of the Mortgaged Property are free from any solid wastes, toxic or hazardous substance or contaminant and any discharge of sewage or effluent; and (iv) neither the federal government nor the State of New York Department of Environmental Conservation or any other governmental or quasi governmental entity has filed a lien on the Mortgaged Property, nor are there any governmental, judicial or administrative actions with respect to environmental matters pending, or to the best of the Mortgagor's knowledge, threatened, which involve the Mortgaged Property.

(b) **Inspection.** Mortgagor and Agency agree that Mortgagee or its agents or representatives may, at any reasonable time on reasonable notice and at Mortgagor's expense inspect Mortgagor's books and records and inspect and conduct any tests on the Mortgaged Property including taking soil samples in order to determine whether Mortgagor is in continuing compliance with the Laws, provided that Mortgagee shall not conduct any tests or take any soil samples unless Mortgagee reasonably believes that there has been a release or discharge of toxic or hazardous substances on the Mortgaged Property which is not being adequately addressed by Mortgagor.

(c) **Agreement to Comply.** If any environmental contamination is found on the Mortgaged Property for which any removal or remedial action is required pursuant to Law, ordinance, order, rule, regulation or governmental action, Mortgagor agrees that it will at its sole cost and expense, take such removal or remedial action promptly and to Mortgagee's satisfaction.

(d) **Indemnification.** Mortgagor agrees to defend, indemnify and hold harmless Mortgagee, its employees, agents, officers and directors from and against any claims, actions, demands, penalties, fines, liabilities, settlements, damages, costs or expenses (including, without limitation, attorney and consultant fees, investigations and laboratory fees, court costs and litigation expenses of whatever kind or nature known or unknown, contingent or otherwise) arising out of or in any way related to: (i) the past or present disposal, release or threatened release of any hazardous or toxic substances on the Mortgaged Property; (ii) any personal injury (including wrongful death or property damage, real or personal) arising out of or related to such hazardous or toxic substances; (iii) any lawsuit brought or threatened, settlement reached or government order given relating to such hazardous or toxic substances; and/or (iv) any violation of any law, order, regulation, requirement, or demand of any government authority, or any policies or requirements of Mortgagee, which are based upon or in any way related to such hazardous or toxic substances.

(e) **Other Sites.** Mortgagor knows of no on-site or off-site locations where hazardous or toxic substances from the operation of any Improvement or otherwise have been stored, treated, recycled or disposed of in violation of Laws.

(f) Leases. Mortgagor agrees not to lease or permit the sublease of the Mortgaged Property to a tenant or subtenant whose operations may result in contamination of the Mortgaged Property with hazardous or toxic substances.

(g) Non-Operation by Mortgagee. Mortgagor acknowledges that any action Mortgagee takes under this Mortgage shall be taken to protect Mortgagee's security interest only; Mortgagee does not hereby intend to be involved in the operations of the Mortgagor.

(h) Compliance Determinations. Mortgagor acknowledges that any determinations Mortgagee makes under this Section regarding compliance with environmental laws shall be made for Mortgagee's benefit only and are not intended to be relied upon by any other party.

(i) Survival of Conditions. The provisions of this Section shall be in addition to any other obligations and liabilities Mortgagor may have to Mortgagee at common law, and shall survive the transactions contemplated herein.

(j) Other Insurance. Mortgagee may, at its option, require Mortgagor to carry adequate insurance to fulfill Mortgagor's obligations under this Section.

(k) Definitions. The term "hazardous substance" shall include, without limit, any substance or material defined in 42 U.S.C. Section 9601 (as the same may be amended from time to time), the Hazardous Materials Transportation Act (as amended from time to time), and the New York Environmental Conservation Law or the Resource Conservation And Recovery Act (as each may be amended from time to time) and in any regulations adopted or publications promulgated pursuant to any of the foregoing.

36. **EVENTS OF DEFAULT.** The whole of the principal sum of the indebtedness secured hereby and interest thereon, and all other sums due and payable hereunder shall become due, at the option of Mortgagee, if one or more of the following events (an "Event of Default") shall happen:

(a) The occurrence of an "Event of Default" under the Note; or

(b) If Mortgagor defaults in the payment of any tax, water rate or sewer rent or payment under any Pilot Agreement against the Mortgaged Property for fifteen (15) days after the same become due and payable or fails to exhibit to Mortgagee, within fifteen (15) days after demand, receipts showing payment of all taxes, water rates or sewer rents; or

(c) The actual or threatened removal, demolition or structural alteration, in whole or material part, of any Improvement, without the prior written consent of Mortgagee; or the removal, demolition or destruction in whole or material part, of any Chattels without replacing the same with Chattels at least equal in quality and condition to those replaced, free from any security interest or other encumbrance thereon and free from any reservation of title thereto; or the commission of any waste in respect to the Mortgaged Property; or

(d) Failure of Mortgagor to pay within fifteen (15) days after notice and demand any installment of any assessment made against the Premises for local improvements, heretofore or hereafter made, which assessment is, or may become, a lien on the Premises prior to the lien of this Mortgage, notwithstanding the fact that such installment be not due and payable at the time of such notice and demand; or

(e) Failure of Mortgagor to pay the said indebtedness secured by this Mortgage within (30) days after notice and demand, in the event of the passage after the date of this Mortgage of any federal, state or municipal law deducting from the value of land for the purpose of taxation any lien thereon, or changing in any way the laws now in force for the taxation of mortgages, or of debts secured by mortgages, or the manner of collection of any such taxes, so as to affect Mortgagee, this Mortgage or the indebtedness which is secured, notwithstanding that Mortgagor, before or after such notice, may have the option to pay or contest the payment of such tax; or

(f) Failure of Mortgagor to maintain the Improvements on the Premises leased to Tenants in a rentable or tenantable state of repair to the satisfaction of Mortgagee, for thirty (30) days after notice of such failure has been given to Mortgagor, or to comply with any order or requirement of any municipal, state, federal or other governmental authority having jurisdiction of the Premises within thirty (30) days after such order or requirement shall have been issued by any such authority; or failure of Mortgagor or of any tenant holding under Mortgage, to comply in any material respect with any and all and singular the statutes, requirements, orders or decrees of any federal, state or municipal authority relating to the use of the Mortgaged Property, or of any part thereof; or failure of Mortgagor to observe and timely perform all of the material covenants, terms and provisions contained in any lease now or hereafter affecting the Premises or the Improvements or any portion thereof, on the part of the landlord to be observed and performed; or

(g) Failure of Mortgagor, in the event of the entry of a final judgment for the payment of money against Mortgagor, to discharge such judgment or to have it stayed pending appeal within thirty (30) days from the entry thereof, or if such judgment shall be affirmed on appeal, the failure to discharge such judgment within thirty (30) days from the entry of such affirmance; or

(h) Failure of Mortgagor to pay within fifteen (15) days after notice and demand any filing or refiling fees required hereunder; or

(i) Failure of Mortgagor or any occupant of the Mortgaged Property, to allow or permit Mortgagee, or its duly authorized agent, to inspect said Mortgaged Property at any time and from time to time during reasonable business hours on reasonable notice; or.

(j) Default for fifteen (15) days after notice and demand in the observance or performance of any other covenant or agreement under this Mortgage.

(k) The sale, transfer, assignment, conveyance, farm out, lease, sublease, mortgage, pledge, or otherwise disposal of oil, gas, other minerals, and/or Oil and Gas

Substances, in and under the Real Property subsequent to the execution of this Mortgage without the prior written consent of Lender.

Further, notwithstanding any provision to the contrary in any oil and gas lease, Mortgagor will be in default if Mortgagor: (i) 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 200 feet of any structure, residence, barn or water well located on Real Property; or (ii) consents to the placement of a pipeline, gathering line, service road, or right of way within 200 feet of any structure, residence, or barn located on Real Property; or (iii) consents to the storage of Oil or Gas Substances if an option of consent is contained in a lease, without the prior written consent of Lender which may be withheld in its sole discretion.

37. **INTEREST TO ACCRUE.** If the whole of the principal sum evidenced by the Note and interest, shall become due by exercise of the option of the Mortgagee after default by the Mortgagor under any of the terms, covenants and conditions of this Mortgage and/or the Note, or if the whole of said principal sum and interest shall mature and become due under the terms, covenants and conditions of this Mortgage and the Note regardless of default, if any, on the part of the Mortgagor, then interest on said principal sum shall continue to accrue at the rate provided for in the Note, and in this Mortgage, until said principal sum is fully paid.

38. **FLOOD INSURANCE.** In addition to the terms and provisions of this Mortgage with regard to insurance, in the event the Premises are determined to be in a special flood hazard area as determined by any governmental agency, Mortgagor further covenants and agrees to fully insure the Premises and Improvements against loss or damage by flood, with coverage as is therein provided for by fire and other specified perils to the same extent and effect as if such flood insurance was therein specifically set forth.

39. **COSTS, EXPENSES AND ATTORNEY'S FEES.** Should one or more Events of Default occur hereunder, and should an action be commenced for the foreclosure of this Mortgage, Mortgagee shall be entitled to recover all sums due hereunder, statutory costs, and any additional allowances made pursuant to Section 8303(a) of the Civil Practice Law and Rules of the State of New York, and in addition thereto, reasonable attorneys' fees in such proceeding and in all proceedings related thereto necessary to and related to the foreclosing proceeding, and such amount shall be added to the principal balance and interest then due and shall be a lien on the Mortgaged Property prior to any right or title to, interest in or claim upon the Mortgaged Property attaching and accruing subsequent to the lien of this Mortgage, and shall be deemed to be secured by this Mortgage and the indebtedness which it secures.

40. **INTERVENING LIENS.** Should any agreement be hereafter entered into modifying or changing the terms of this Mortgage or the Note secured hereby in any manner, the rights of the parties to such agreement shall be superior to the rights of the holder of any intervening lien.

41. **TERMS.** It is understood and agreed that the words, "Mortgagor" and "Mortgagee" herein shall include the respective heirs, successors and assigns of Mortgagor and Mortgagee.

42. **ENTIRE AGREEMENT.** This Mortgage and the other Loan Documents constitute the entire understanding between Mortgagor, any guarantors, and Mortgagee and to the extent that any writings not signed by Mortgagee or oral statements or conversations at any time made or had shall be inconsistent with the provisions of this Mortgage and the other Loan Documents, the same shall be null and void.

43. **GOVERNING LAW; SEVERABILITY.** This Mortgage shall be governed by federal law applicable to NBT Bank, National Association and, to the extent not preempted by federal law, the laws of the State of New York without regard to its conflicts of law provisions. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and to this end, the provisions of this Mortgage and the Note are declared to be severable.

44. **TIME OF THE ESSENCE.** Time is of the essence with respect to each and every covenant, agreement and obligation of Mortgagor under this Mortgage, the Note and any and all other Loan Documents.

45. **INDEMNIFICATION; SUBROGATION; WAIVER OF OFFSET.**

(a) Mortgagor shall indemnify, defend and hold Mortgagee harmless against: (i) any and all claims for brokerage, leasing, finders or similar fees which may be made relating to the Mortgaged Property or the loan which is the subject of the Note, and (ii) against any and all liability, obligations, losses, damages, penalties, claims, actions, suits, costs, and expenses (including its reasonable attorneys' fees, together with reasonable appellate counsel fees, if any) of whatever kind or nature which may be imposed on or incurred by Mortgagee at any time pursuant either to a judgment or decree or other order entered into by a court or administrative agency or to a settlement reasonably approved by Mortgagor, which judgment, decree, order or settlement relates in any way to or arises out of the offer, sale or lease of the Mortgaged Property and/or the ownership, use, occupation or operation of any portion of the Mortgaged Property.

(b) If Mortgagee is made a party defendant to any litigation concerning the loan which is the subject of the Note, this Mortgage, the Mortgaged Property, or any part thereof, or any interest therein, or the occupancy thereof, then Mortgagor shall indemnify, defend and hold Mortgagee harmless from all liability by reason of said litigation, including reasonable attorneys' fees (together with reasonable appellate counsel fees, if any) and expenses incurred by Mortgagee in any such litigation, whether or not any such litigation is prosecuted to judgment. If Mortgagee commences an action against Mortgagor to enforce any of the terms hereof or to prosecute any breach by Mortgagor of any of the terms hereof or to recover any sum secured hereby, Mortgagor shall pay to Mortgagee such reasonable attorneys' fees (together with reasonable appellate counsel fees, if any) and expenses. The right to such attorneys fees (together with reasonable appellate counsel fees, if any) and expenses shall be deemed to have accrued on the commencement of such action, and shall be enforceable whether or not such action is prosecuted to judgment. If Mortgagor breaches any term of this Mortgage, Mortgagee may employ an attorney or attorneys to protect its rights hereunder, and in the event of such employment following any breach by Mortgagor, Mortgagor shall pay Mortgagee reasonable

attorneys' fees (together with reasonable appellate counsel fees, if any) and expenses incurred by Mortgagee, whether or not an action is actually commenced against Mortgagor by reason of such breach.

(c) A waiver of subrogation shall be obtained by Mortgagor from its insurance carrier and, consequently, Mortgagor waives any and all right to claim or recover against Mortgagee, its officers, employees, agents and representatives, for loss of or damage to Mortgagor, the Mortgaged Property, Mortgagor's property or the property of others under Mortgagor's control from any cause insured against or required to be insured against by the provisions of this Mortgage.

(d) All sums payable by Mortgagor hereunder shall be paid without notice (except as may otherwise be provided herein), demand, counterclaim, set-off, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Mortgagor hereunder shall in no way be released, discharged or otherwise affected by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Mortgaged Property or any part thereof; (ii) any restriction or prevention of or interference with any use of the Mortgaged Property or any part thereof; (iii) any title defect or encumbrance or any eviction from the Premises or the Improvements or any part thereof by title superior or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation, or other like proceeding relating to Mortgagee, or any action taken with respect to this Mortgage by any trustee or receiver of Mortgagee, or by any court, in such proceeding; (v) any claim which Mortgagor has, or might have, against Mortgagee; (vi) any default or failure on the part of Mortgagee to perform or comply with any of the terms hereof or of any other agreement with Mortgagor; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Mortgagor shall have notice or knowledge of any of the foregoing. Mortgagor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution, or reduction of any sum secured hereby and payable by Mortgagor.

46. **WAIVER OF JURY TRIAL.** The Mortgagor and the Mortgagee hereby waive trial by jury in any litigation in any court with respect to, in connection with, or arising out of this Mortgage or any other Loan Document, or any instrument or document delivered in connection with the loan which is the subject of the Note, or the validity, protection, interpretation, collection or enforcement thereof, or the relationship between Mortgagor and Mortgagee as borrower and lender, or any other claim or dispute howsoever arising between the Mortgagor and Mortgagee.

47. **BUILDING LOAN AGREEMENT.** This Mortgage is executed in conjunction with a Building Loan Agreement which is intended to be filed on even date with the recording of this Mortgage and any breach, violation or default in the performance of any covenant required to be performed under the Building Loan Agreement shall be an Event of Default under this Mortgage.

48. **AGENCY EXECUTING AT THE DIRECTION OF MORTGAGOR.** The Mortgagor directs the Agency to execute and deliver this Mortgage to the Mortgagee, and further agrees to indemnify the Agency (and its members, officers, directors, agents, servants and

employees) for all claims arising from and 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.

49. **HOLD HARMLESS.** The Mortgagor acknowledges and reiterates the provisions and obligations of the Mortgagor pursuant to Sections 8.2 and 11.11 of the Agency Lease as if fully set forth herein and hereby agrees that such provisions shall be applicable to this Mortgage.

50. **MISCELLANEOUS PROVISION.** The Mortgagor and the Mortgagee by accepting this Agreement, 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 Mortgagee 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.

Definitions:

"Agency Lease" means the Agency Lease Agreement dated as of December 1, 2016 between the Agency and the Mortgagor, as the same may be amended or supplemented from time to time.

"Company Lease" means the Company Lease Agreement dated as of December 1, 2016 between the Mortgagor and the Agency, as the same may be amended or supplemented from time to time.

"Unassigned Rights" means the unassigned rights of the Agency under the Agency Lease.

51. **TAX LAW SECTION 253 STATEMENT.** Check one box only.

This Mortgage covers real property principally improved or to be improved by one or more structures containing in the aggregate not more than six residential dwelling units, each having their own separate cooking facilities.

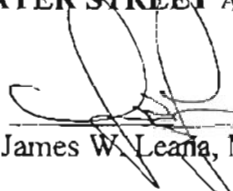
This Mortgage does not cover real property improved as described above.

Where used herein, the word, "Mortgagor" may be read "Mortgagors" where applicable.



IN WITNESS WHEREOF, this Mortgage has been duly executed by  
Mortgagor.

**ERIE WATER STREET ASSOCIATES, LLC**

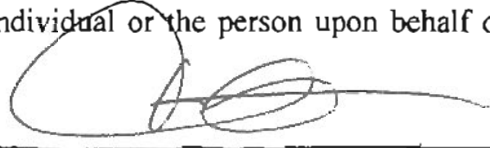
By:   
James W. Leana, Member

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
William M. Ryan, Chairman

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

On the 21<sup>st</sup> day of December, in the year 2016 before me, the undersigned, a notary public in and for said state, personally appeared **James W. Leana** 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  
*LORILL McROBBIE*  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 2018

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

On the 21<sup>st</sup> day of December, in the year 2016 before me, the undersigned, a notary public in and for said state, personally appeared **William M. Ryan** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

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

## SCHEDULE A

**ALL THAT TRACT OR PARCEL OF LAND**, situate in the City of Syracuse, County of Onondaga and State of New York, bounded and described as follows, viz: Part of Lots 2, 3, 31, 41 and 42, Block 105-D, City of Syracuse, NY, according to a map made by B.F. Green, filed in Onondaga County Clerk's Office October 11, 1850, bounded and described as follows, viz: Beginning at a point in the south line of West Fayette Street about 208.855 ft. west from the Northeast corner of said Block where the center line of the west wall of the so-called Tallman and Palmer Store, now known as #225 West Fayette Street, intersects the south line of West Fayette Street; thence southwardly along the center of said wall and the same conditioned about 115 ft. to a point in range with the north face of the north wall of the six-story brick building erected by E.F. Holden on Walton Street; thence westwardly along said range line about 27.00 ft. to the northeasterly corner of said six-story building, thence southwardly along the east face of the brick wall of said building about 90 ft. to a point in the north line of Walton Street 208.856 ft. from the southeast corner of said Block 105-D, thence eastwardly along the north line of Walton Street 48.22 ft. to the center of the west brick wall of the building owned and occupied by L.L. Thurwatcher; thence northwardly along the center of said wall about 205 ft. to the south line of West Fayette Street; thence westwardly along the south line of West Fayette Street 47.32 ft. to the place of beginning.

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Date + Time Stamp  
+ Return to

### UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional) <b>Christopher J. Centore - (315) 425-2756</b>
B. SEND ACKNOWLEDGMENT TO: (Name and Address)  <b>Barclay Damon, LLP</b> <b>Barclay Damon Tower</b> <b>125 East Jefferson Street</b> <b>Syracuse, NY 13202</b> <i>Attn: CJC</i>

**COPY**

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>ERIE WATER STREET ASSOCIATES, LLC</b>	OR			
1b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
1c. MAILING ADDRESS <b>315 South Franklin Street</b>	CITY <b>Syracuse</b>	STATE <b>NY</b>	POSTAL CODE <b>13202</b>	COUNTRY <b>USA</b>
1d. SEE INSTRUCTIONS	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION <b>limited liability co.</b>	1f. JURISDICTION OF ORGANIZATION <b>New York</b>	1g. ORGANIZATIONAL ID #, if any <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	OR			
2b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
2d. SEE INSTRUCTIONS	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID #, if any <input type="checkbox"/> NONE

3. SECURED PARTY'S NAME (or NAME OF TOTAL ASSIGNEE or 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 <b>52 South Broad Street</b>	CITY <b>Norwich</b>	STATE <b>NY</b>	POSTAL CODE <b>13815</b>	COUNTRY <b>USA</b>

4. This FINANCING STATEMENT covers the following collateral:

All assets and Debtor personal property (or specific collateral if applicable); whether any of the foregoing is owned now or acquired later; all accessions, additions, replacements, and substitutions relating to any of the foregoing; all records of any kind relating to any of the foregoing; all proceeds relating to any of the foregoing (including insurance, general intangibles, and other accounts proceeds). Together with Debtor's interest in all Oil and Gas Substances (as defined below), produced and saved from or attributable to the real property described in attached Schedule A (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 the 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. "Oil and Gas Substances" is defined as all rights, titles, interest and estates now owned or hereafter acquired by Grantor 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. All Debtor's rents, issues and profits accruing to Debtor from the Premises described in Schedule "A".

5. ALTERNATIVE DESIGNATION (if applicable):	<input type="checkbox"/> LESSOR/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. This FINANCING STATEMENT is to be filed (or recorded) in the REAL ESTATE RECORDS (Attach Affidavit if applicable)	7. Check to REQUEST SEARCH REPORT (S) on Debtor(s) (ADDITIONAL FEE) (optional)	All Debtors <input type="checkbox"/> Debtor 1 <input type="checkbox"/> Debtor 2 <input type="checkbox"/>				

8. OPTIONAL FILER REFERENCE DATA  
**3083522**

14-59 12123116 2016-01-05 15:45

# UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

## 9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

<input type="checkbox"/> 9a ORGANIZATION'S NAME <b>ERIE WATER STREET ASSOCIATES, LLC</b>		
<input type="checkbox"/> 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

<input type="checkbox"/> 11a ORGANIZATION'S NAME				
<input type="checkbox"/> OR 11b INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
11c MAILING ADDRESS		CITY	STATE	POSTAL CODE COUNTRY
11d <b>SEE INSTRUCTIONS</b>	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)

<input type="checkbox"/> 12a ORGANIZATION'S NAME				
<input type="checkbox"/> 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

**219-225 West Fayette Street, Syracuse, New York  
13202, as more particularly described on Schedule  
"A" attached hereto and made a part hereof.**

16. Additional collateral description:

17. Check only if applicable and check only one box.

Debtor is a  Trust or  Trustee acting with respect to property held in trust or  Decedent's Estate

18. Check only if applicable and check only one box

Debtor is a TRANSMITTING UTILITY

Filed in connection with a Manufactured-Home Transaction — effective 30 years

Filed in connection with a Public-Finance Transaction — effective 30 years

## SCHEDULE A

**ALL THAT TRACT OR PARCEL OF LAND**, situate in the City of Syracuse, County of Onondaga and State of New York, bounded and described as follows, viz: Part of Lots 2, 3, 31, 41 and 42, Block 105-D, City of Syracuse, NY, according to a map made by B.F. Green, filed in Onondaga County Clerk's Office October 11, 1850, bounded and described as follows, viz: Beginning at a point in the south line of West Fayette Street about 208.855 ft. west from the Northeast corner of said Block where the center line of the west wall of the so-called Tallman and Palmer Store, now known as #225 West Fayette Street, intersects the south line of West Fayette Street; thence southwardly along the center of said wall and the same conditioned about 115 ft. to a point in range with the north face of the north wall of the six-story brick building erected by E.F. Holden on Walton Street; thence westwardly along said range line about 27.00 ft. to the northeasterly corner of said six-story building, thence southwardly along the east face of the brick wall of said building about 90 ft. to a point in the north line of Walton Street 208.856 ft. from the southeast corner of said Block 105-D, thence eastwardly along the north line of Walton Street 48.22 ft. to the center of the west brick wall of the building owned and occupied by L.L. Thurwatcher; thence northwardly along the center of said wall about 205 ft. to the south line of West Fayette Street; thence westwardly along the south line of West Fayette Street 47.32 ft. to the place of beginning.

028409

2016 DEC 27 AM 9:00

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)  
**Christopher J. Centore - (315) 425-2756**

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

**Barclay Damon, LLP  
 Barclay Damon Tower  
 125 East Jefferson Street  
 Syracuse, NY 13202**

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  
**ERIE WATER STREET ASSOCIATES, LLC**

OR  
 1b INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

1c MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
**315 South Franklin Street Syracuse NY 13202 USA**

1d SEE INSTRUCTIONS ADD'L INFO RE ORGANIZATION DEBTOR 1e TYPE OF ORGANIZATION 1f JURISDICTION OF ORGANIZATION 1g ORGANIZATIONAL ID #, if any  
**limited liability co. New York**  NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a ORGANIZATION'S NAME

OR  
 2b INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

2d SEE INSTRUCTIONS ADD'L INFO RE ORGANIZATION DEBTOR 2e TYPE OF ORGANIZATION 2f JURISDICTION OF ORGANIZATION 2g ORGANIZATIONAL ID #, if any  
 NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a ORGANIZATION'S NAME  
**NBT BANK, National Association**

OR  
 3b INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
**52 South Broad Street Norwich NY 13815 USA**

4. This FINANCING STATEMENT covers the following collateral:

All assets and Debtor personal property (or specific collateral if applicable); whether any of the foregoing is owned now or acquired later; all accessions, additions, replacements, and substitutions relating to any of the foregoing; all records of any kind relating to any of the foregoing; all proceeds relating to any of the foregoing (including insurance, general intangibles, and other accounts proceeds). Together with Debtor's interest in all Oil and Gas Substances (as defined below), produced and saved from or attributable to the real property described in attached Schedule A (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 the 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. "Oil and Gas Substances" is defined as all rights, titles, interest and estates now owned or hereafter acquired by Grantor 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. All Debtor's rents, issues and profits accruing to Debtor from the Premises described in Schedule "A".

5 ALTERNATIVE DESIGNATION (if applicable):  LESSEE/LESSOR  CONSIGNEE/CONSIGNOR  BAILEE/BAILOB  SELLER/BUYER  AG. LIEN  NON-UCC FILING

6  This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable). 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (optional).  All Debtors  Debtor 1  Debtor 2

8. OPTIONAL FILER REFERENCE DATA  
**3083522**

FILING NUMBER: 201612270610516

028409

2016 DEC 27 AM 9:00

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		
ERIE WATER STREET ASSOCIATES, LLC		
OR	9b. INDIVIDUAL'S LAST NAME	FIRST NAME
		MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only org 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. SEE INSTRUCTIONS	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  ASSIGNOR S/P'S NAME - insert only org 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  number to be cut of  as extracted collateral, or is filed as a  fixture filing

14. Description of real estate.

219-225 West Fayette Street, Syracuse, New York 13202, as more particularly described on Schedule "A" attached hereto and made a part hereof.

16. Additional collateral description:

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

17. Check only if applicable and check only one box.

Debtor is a  Trust or  Trustee acting with respect to property held in trust or  Decedent's Estate

18. Check only if applicable and check only one box

Debtor is a TRANSMITTING UTILITY

Filed in connection with a Manufactured-Home Transaction — effective 30 years

Filed in connection with a Public-Finance Transaction — effective 30 years



**SCHEDULE A**

**ALL THAT TRACT OR PARCEL OF LAND**, situate in the City of Syracuse, County of Onondaga and State of New York, bounded and described as follows, viz: Part of Lots 2, 3, 31, 41 and 42, Block 105-D, City of Syracuse, NY, according to a map made by B.F. Green, filed in Onondaga County Clerk's Office October 11, 1850, bounded and described as follows, viz: Beginning at a point in the south line of West Fayette Street about 208.855 ft. west from the Northeast corner of said Block where the center line of the west wall of the so-called Tallman and Palmer Store, now known as #225 West Fayette Street, intersects the south line of West Fayette Street; thence southwardly along the center of said wall and the same conditioned about 115 ft. to a point in range with the north face of the north wall of the six-story brick building erected by E.F. Holden on Walton Street; thence westwardly along said range line about 27.00 ft. to the northeasterly corner of said six-story building, thence southwardly along the east face of the brick wall of said building about 90 ft. to a point in the north line of Walton Street 208.856 ft. from the southeast corner of said Block 105-D, thence eastwardly along the north line of Walton Street 48.22 ft. to the center of the west brick wall of the building owned and occupied by L.L. Thurwatcher; thence northwardly along the center of said wall about 205 ft. to the south line of West Fayette Street; thence westwardly along the south line of West Fayette Street 47.32 ft. to the place of beginning.

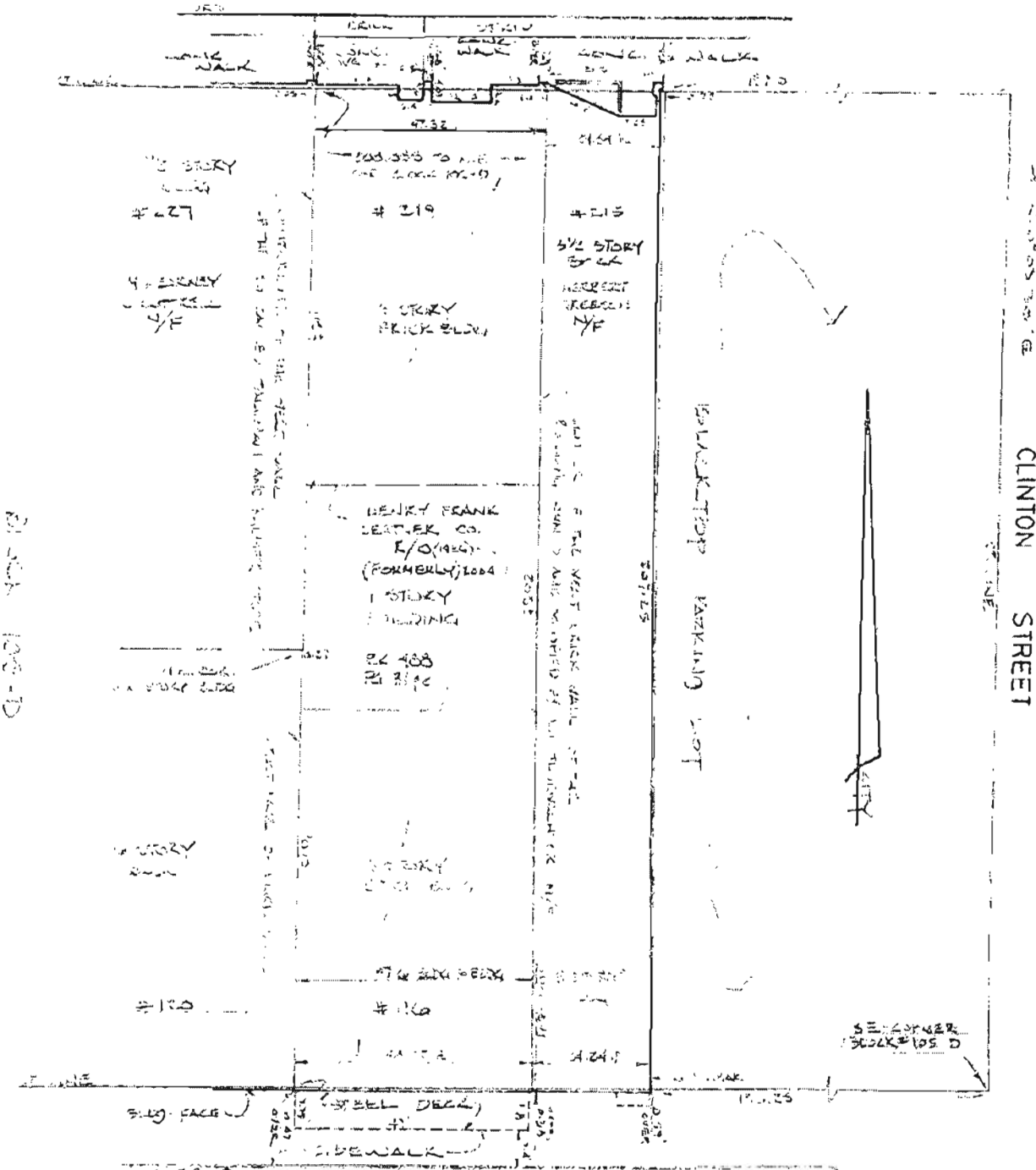
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2016 DEC 27 AM 9:00

15

# WEST FAYETTE STREET

189-41-00 E



# WALTON STREET

189-41-00 W

Revised: Jan. 01, 2016 / updated Nov. 11, 2016



Location survey of part of lots #2, 3, 31, 41 and #42, Block 105-D, of the City of Syracuse, known as #219 West Fayette Street, City of Syracuse, County of Onondaga, State of New York.

THE UNDERSIGNED SURVEYOR HEREBY CERTIFIES THAT THIS IS AN ACCURATE MAP OF AN ACTUAL SURVEY

**MARTIN E. DAVIS**

LICENSED LAND SURVEYOR SYRACUSE, NEW YORK

DRAWN BY:  
GAM

DATE:  
2/4/06

SCALE:  
1"=20'

REVISIONS:



16

**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 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 Erie Water Street Associates, LLC (the "*Company*") consisting of: A)(i) the acquisition of an interest in approximately 9,948 square feet of improved real property located at 219-225 West Fayette Street, in the City of Syracuse, New York (the "*Land*"); (ii) the reconstruction and renovation of an existing 3 story approximately 25,007 square foot building (the "*Facility*"), to include but not be limited to, a new store front on the West Fayette Street side of the building; the construction of a new first floor building lobby with elevator and stair tower; the redevelopment of the building's second and third levels to house approximately 16 market rate one-bedroom apartment units; and repairs to the building's Walton Street façade; all located on the Land; (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment, including but not limited to new mechanical systems (the "*Equipment*" and together with the Land and the Facility, the "*Project Facility*"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use taxes and mortgage recording tax (except as limited by Section 874 of the General Municipal Law) (collectively the "*Financial Assistance*"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

Capitalized terms used herein which are not otherwise defined herein and which are defined in the Agency Lease Agreement dated as of December 1, 2016 (the "*Agency Lease*"), between the Agency and the Company, and shall have the meanings ascribed to such terms in the Agency Lease except that, for purposes of this certificate, (A) all definitions with respect to any document shall be deemed to refer to such document only as it exists as of the date of this certificate and not as of any future date, and (B) all definitions with respect to any Person shall be deemed to refer to such Person only as it exists as of the date of this certificate and not as of any future date or to any successor or assign.

I, the undersigned Chairman of the Agency, Do Hereby Certify:

1. I am an officer of the Agency and am duly authorized to execute and deliver this certificate in the name of the Agency.

2. The Agency is an industrial development agency duly established under Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "*State*"), as amended (the "*Enabling Act*") and Chapter 641 of the Laws of 1979 of the State (said Chapter with the

Enabling Act, the “Act”) (a certified copy of Chapter 641 of the Laws of 1979 of the State is attached hereto as Exhibit “A”), and it is a corporate governmental agency constituting a public benefit corporation of the State.

3. The Act empowers the Agency, among other things, to acquire, construct reconstruct, lease, improve, maintain, equip, sell and dispose of land and any building or other improvement, and all real and personal property, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, recreation or industrial facilities, including industrial pollution control facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the City of Syracuse and the State and to improve their standard of living. The Act further authorizes the Agency to lease any and all of its facilities on such terms and conditions as it deems advisable, to acquire, construct, lease, improve, and equip one or more projects as defined in the Act, to mortgage any or all of its facilities and to pledge the revenues and receipts from the sale or transfer of its facilities.

4. The Agency has full legal power and authority to own its property, conduct its business and execute, deliver, and perform its obligations under the Agency Documents and has taken all actions and obtained all approvals required in connection therewith by the Act and any other applicable laws and regulations, and no legislation has been enacted affecting the powers or authority of the Agency to execute and deliver the Agency Documents, affecting the financing of the Project, or affecting the validity thereof or of the Agency Documents, or contesting the existence and powers of the Agency or the appointment of the members and officers of the Agency to their respective offices.

5. Pursuant to the Act, the governing body of the City of Syracuse, New York, for whose benefit the Agency was established, duly filed or caused to be filed within six (6) months after the effective date of Chapter 641 of the Laws of 1979 of the State in the office of the Secretary of State of the State the Certificate of Establishment of the Agency pursuant to Section 926 of the New York General Municipal Law. The Certificate of Establishment of the Agency described in the preceding sentence also named the members and officers of the Agency as appointed by the Mayor of the City of Syracuse. Attached hereto as Exhibit “B” are certified copies of said Certificates of Establishment and copies of the Certificates of Appointment relating to all of the current members of the Agency, who are:

William M. Ryan	Chairman
M. Catherine Richardson	Vice Chairman
Steven Thompson	Secretary
Donald Schoenwald	Treasurer
Kenneth Kinsey	Member

6. Attached hereto as Exhibit “C” is a true, correct, and complete copy of the by-laws of the Agency, together with all amendments thereto or modifications thereof; and said by-laws as so amended and modified are in full force and effect in accordance with their terms as of the date of this certificate.

7. That a resolution determining that the acquisition, construction and equipping of the Project constitutes a Project and describing the financial assistance in connection therewith and authorizing a public hearing (the "**Public Hearing Resolution**") was adopted by the Agency on November 15, 2016 and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the Public Hearing Resolution is attached hereto at **Exhibit "D."**

8. That a resolution classifying the Project as a Type 1 Action and declaring the intent of the Agency to be lead agency for purposes of a coordinated review pursuant to SEQRA, (the "**SEQRA Lead Agency Resolution**") was adopted by the Agency on November 15, 2016 and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the SEQRA Lead Agency Resolution is attached hereto at **Exhibit "E."**

9. Attached hereto as **Exhibit "F"** is proof of publication of a notice of the public hearing with respect to the Project (the "**Public Hearing Notice**"), required pursuant to Section 859-a of the Act and held on December 20, 2016, and proof of mailing of notice thereof pursuant to Section 859-a of the Act to the chief executive officers of the affected tax jurisdictions (as defined in Section 854(16) of the Act) on December 1, 2016.

10. That a resolution classifying the Project as a Type 1 Action pursuant to SEQRA, thereunder and determining that the Project will not have a significant effect on the environment (the "**SEQRA Resolution**") was adopted by the Agency on December 20, 2016 and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the SEQRA Resolution is attached hereto at **Exhibit "G."**

11. That a resolution approving the undertaking of the acquisition, reconstruction, renovation, equipping and completion of a Commercial Facility, appointing the Company as agent of the Agency for the purpose of the acquisition, reconstruction, renovation and equipping of the Project, and authorizing the execution and delivery of an agreement between the Agency and the Company (the "**Inducement Resolution**") was adopted by the Agency on December 20, 2016 and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the Inducement Resolution is attached hereto at **Exhibit "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 December 20, 2016 (the "**Final Approving Resolution**") and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the Final Approving Resolution is attached hereto at **Exhibit "I"**.

13. 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.

14. 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.

15. 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.

16. 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 the (i) Inducement Resolution, Final Approving Resolution, Company Lease, 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.

17. December 21, 2016 has been duly designated as the date for the Closing.

18. 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.

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

(a) to assist the Company's acquisition, reconstruction, renovation and equipping of the Project Facility;

(b) to grant the Financial Assistance to the Company;

(c) to designate the Company as the Agency's agent for the acquisition, reconstruction, renovation and equipping of the Project Facility and to authorize the Company to appoint additional agents; and



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

20. 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.

21. 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;

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

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

22. No member, officer or employee of the Agency having power to: (i) negotiate, prepare, authorize or approve any of the Agency Documents; (ii) audit bills or claims under any of the Agency Documents; or (iii) appoint an officer or employee who has any of the powers or duties set forth in (i) or (ii):

(a) directly or indirectly owns any stock of the Company;

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

(c) is related to the Company within the meaning of Section 800.3(a) of the New York General Municipal Law.

No member, officer, or employee of the Agency has publicly disclosed, in a writing included as part of the official minutes of the Agency, any Interest (as defined in Section 800.3 of the New York General Municipal Law), direct or indirect, in the Developer.

WITNESS, as of the 1<sup>st</sup> day of December, 2016.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

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

**EXHIBIT "A"**

**CHAPTER 641 OF THE LAWS OF 1979  
OF THE STATE OF NEW YORK**

LAWS OF NEW YORK, 1979

CHAPTER 641

AN ACT to amend the general municipal law, in relation to creating and establishing for the city of Syracuse industrial development agency and, providing for its functions and duties

Became a law July 11, 1979, with the approval of the Governor. Passed on Home Rule request pursuant to Article IX, section 2 (b) (2) of the Constitution, by a majority vote, three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

Section 1. The general municipal law is amended by adding a new section nine hundred twenty-six to read as follows:

§ 926. *City of Syracuse industrial development agency. (a) For the benefit of the city of Syracuse and the inhabitants thereof, an industrial development agency, to be known as the CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY, is hereby established for the accomplishment of any or all of the purposes specified in title one of article eighteen-A of this chapter. It shall constitute a body corporate and politic, and be perpetual in duration. It shall consist of five members who shall be appointed by the mayor of the city of Syracuse and its chairman shall be designated by such mayor. It shall have the powers and duties now or hereafter conferred by title one of article eighteen-A of this chapter upon industrial development agencies. It shall organize in a manner prescribed by and be subject to the provisions of title one of article eighteen-A of this chapter. The agency, its members, officers and employees, and its operations and activities shall in all respects be governed by the provisions of title one of article eighteen-A of this chapter.*

*(b) The city shall have the power to make, or contract to make grants or loans, including but not limited to grants or loans of money, to the agency in such amounts, upon such terms and conditions and for such period or periods of time as in the judgment of the city and the agency are necessary or appropriate for the accomplishment of any of the purposes of the agency.*

§ 2. This act shall take effect immediately.

**EXHIBIT "B"**

**AGENCY'S CERTIFICATE OF ESTABLISHMENT  
AND  
CERTIFICATES OF APPOINTMENT OF CURRENT MEMBERS**

CERTIFICATE OF THE CITY OF SYRACUSE  
INDUSTRIAL DEVELOPMENT AGENCY

Pursuant to Article 18-A of the General Municipal Law, Lee Alexander, Mayor of the City of Syracuse, certifies as follows:

1) The name of the industrial development agency herein is the City of Syracuse Industrial Development Agency.

2) Chapter 641 of the Laws of 1979, the special act of the New York State Legislature establishing the City of Syracuse Industrial Development Agency, was adopted by the New York State Legislature on June 16, 1979 and signed by the Governor on July 18, 1979.

3) The names of the Chairman and the Members, respectively, of the City of Syracuse Industrial Development Agency and their terms of office are as follows:

(a)	Frank L. Canino	Chairman
	David M. Garber	Member
	David S. Michel	Member
	Erwin G. Schultz	Member
	Irwin L. Davis	Member

(b) The term of office of the Chairman and of the Members of the City of Syracuse Industrial Development Agency is at the pleasure of the Mayor and continues until a successor is appointed and has qualified.

4) The facts establishing the need for the creation of a City of Syracuse Industrial Development Agency are as follows:

Expansion of its industrial-commercial base is essential to the City of Syracuse, especially in a time of mounting economic pressures. To achieve this goal of expansion, the City has designed a comprehensive economic development program, requiring an Industrial Development Agency.

The existing potential for economic development will be augmented by the financial incentives of an Industrial Development Agency. Various City agencies and departments, such as the Department of Community Development and the Office of Federal and State Aid Coordination will interface with the Syracuse Industrial Development Agency to strengthen the business and industrial climate of the community.

Access to the Department of Community Development will make available to the Syracuse Industrial Development Agency an array of staff assistance, technical expertise, and various other development services. The City's Office of Federal and State Aid Coordination will provide assistance to it in locating, analyzing, and obtaining various forms of federal and state assistance and participation.

STATE OF NEW YORK  
DEPARTMENT OF STATE


FILED JUL 20 1979

*Barbara Peterson*

Secretary of State

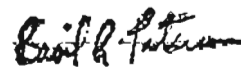
The Syracuse Industrial Development Agency, in combination with, and utilizing these and other resources, will greatly enhance the City's ability to compete for, and successfully attract, the commercial and industrial enterprises necessary for continued economic health and growth.

July 20, 1979

  
Lee Alexander  
Mayor

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED JUL 20 1979

  
Secretary of State

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CITY OF SYRACUSE  
DEPARTMENT OF LAW  
OFFICE OF THE MAYOR

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DEPARTMENT OF STATE

Stephanie A. Miner, Mayor

CERTIFICATE OF APPOINTMENT TO THE  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

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

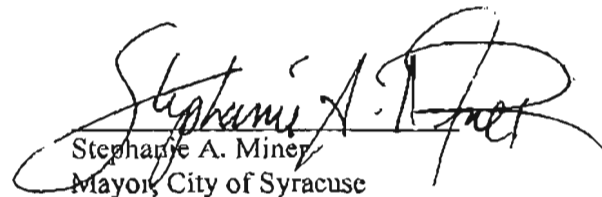
Mr. William Ryan - Member/Chairman

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

Mr. Irwin Davis -Member/Chairman

No Member or Officer of the City of Syracuse Industrial development Agency shall receive any compensation for the discharge of their duties as Member or Officer of the Agency, but shall be entitled to necessary expenses incurred in the discharge of their duties as such Member or Officer.

The appointment herein set forth shall be effective as of January 15, 2010.

  
Stephanie A. Miner  
Mayor, City of Syracuse





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DEPARTMENT OF STATE

OFFICE OF THE MAYOR

Stephanie A. Miner

CERTIFICATE OF APPOINTMENT TO THE  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

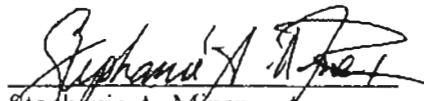
Pursuant to Article 18-A of the General Municipal Law of the State of New York,  
Stephanie A. Miner, Mayor of the City of Syracuse, hereby certifies the appointment of  
the following person as a ~~Member~~ <sup>AN OFFICER</sup> of the City of Syracuse Industrial Development  
Agency:

M. Catherine Richardson

- Member/Vice Chair

No Member or Officer of the City of Syracuse Industrial development Agency shall  
receive any compensation for the discharge of their duties as Member or Officer of the  
Agency, but shall be entitled to necessary expenses incurred in the discharge of their  
duties as such Member or Officer.

The appointment herein set forth shall be effective as of February 12, 2010.

  
Stephanie A. Miner  
Mayor, City of Syracuse



OFFICE OF THE MAYOR

Stephanie A. Miner, Mayor

CERTIFICATE OF APPOINTMENT TO THE  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

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

Mr. Donald Schoenwald

- Member

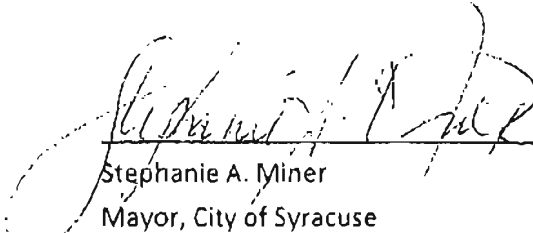
The following Member and Officer of the City of Syracuse Industrial Development Agency shall no longer serve as Member or Officer of said Agency:

Mr. Kenneth Mokrzycki

- Member

No Member or Officer of the City of Syracuse Industrial Development Agency shall receive any compensation for the discharge of their duties as Member or Officer of the Agency, but shall be entitled to necessary expenses incurred in the discharge of their duties as such Member or Officer.

The appointment herein set forth shall be effective as of March 1, 2011.

  
Stephanie A. Miner  
Mayor, City of Syracuse



**OFFICE OF THE MAYOR**

**Stephanie A. Miner, Mayor**

**CERTIFICATE OF APPOINTMENT TO THE  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

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

Mr. Steve Thompson

- Member/Secretary

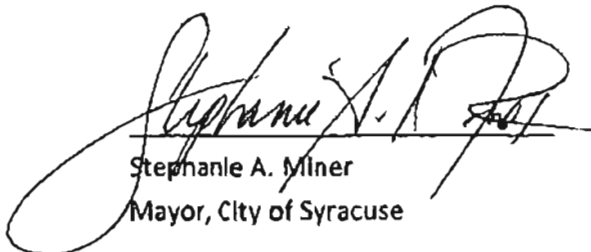
The following Member and Officer of the City of Syracuse Industrial Development Agency shall no longer serve as Member or Officer of said Agency:

Mr. John Gamage

- Member/Secretary

No Member or Officer of the City of Syracuse Industrial Development Agency shall receive any compensation for the discharge of their duties as Member or Officer of the Agency, but shall be entitled to necessary expenses incurred in the discharge of their duties as such Member or Officer.

The appointment herein set forth shall be effective as of January 6, 2014.



Stephanie A. Miner  
Mayor, City of Syracuse



**OFFICE OF THE MAYOR**

**Stephanie A. Miner, Mayor**

**CERTIFICATE OF APPOINTMENT TO THE  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

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

Mr. Kenneth Kinsey

- Member

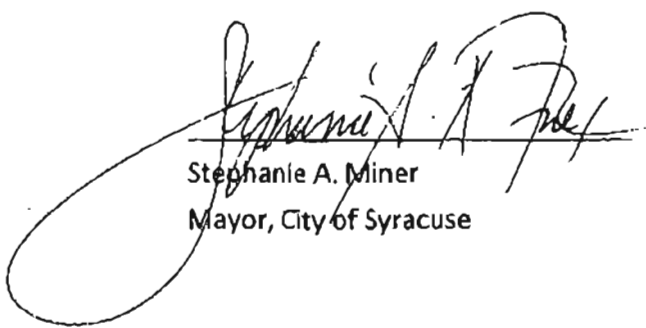
The following Member and Officer of the City of Syracuse Industrial Development Agency shall no longer serve as Member or Officer of said Agency:

Ms. Pamela Hunter

- Member

No Member or Officer of the City of Syracuse Industrial Development Agency shall receive any compensation for the discharge of their duties as Member or Officer of the Agency, but shall be entitled to necessary expenses incurred in the discharge of their duties as such Member or Officer.

The appointment herein set forth shall be effective as of January 13, 2016.



Stephanie A. Miner  
Mayor, City of Syracuse

**EXHIBIT "C"**

**AGENCY'S BY-LAWS**

**BY-LAWS OF  
THE CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY  
(as amended August 18, 2009)**

**Article I**

**THE AGENCY**

Section 1. Name

The name of the agency shall be "City of Syracuse Industrial Development Agency", and it shall be referred to in these by-laws as the Agency.

Section 2. Seal

The seal of the Agency shall be in such form as may be determined by the members of the Agency.

Section 3. Office

The principal office of the Agency shall be located in the City of Syracuse, New York, County of Onondaga, and State of New York. The Agency may have such other offices at such other places as the members of the Agency may, from time to time, designate by resolution.

**Article II**

**MEMBERS**

Section 1. Members

(a) There shall be five members of the Agency. All references in these by-laws to members shall be references to Members of the Agency. The persons designated in the certificates of appointment filed in the office of the Secretary of State as members of the Agency and their successors in office and such other persons as may, from time to time, be appointed as

Members of the Agency by the Mayor of the City of Syracuse, or by special act of the Legislature, shall constitute all the members.

(b) Members shall hold office at the pleasure of the Mayor and shall continue to hold office until his or her successor is appointed and has qualified. The Mayor may remove any Member at his discretion, with or without cause.

(c) Upon the resignation or removal of a Member, a successor shall be selected by the Mayor.

(d) Members may resign at any time by giving written notice to the Mayor and to the Chairman of the Agency. Unless otherwise specified in the notice the resignation shall take effect upon receipt of the notice by the Chairman or the Mayor. Acceptance of the resignation shall not be necessary to make it effective.

Section 2. Meeting of the Members

(a) The Annual Meeting of the members shall be held on such date or dates as shall be fixed, from time to time, by the Members of the Agency. The first Annual Meeting of Members shall be held on a date within twelve (12) months after the filing of the Certificate of the Agency with the Secretary of State as required by General Municipal Law §856 (l) (a). Each successive Annual Meeting of Members shall be held on a date not more than twelve (12) months following the preceding Annual Meeting of Members.

(b) Regular meetings of the Agency may be held at such time and place as, from time to time, may be determined by the Members.

(c) Upon the written request of the Mayor, the Chairman or two (2) Members of the Agency, the Chairman of the Agency shall call a special meeting of the Members. Special meetings may be held on such date or dates as may be fixed in the call for such special meetings.

The call for a special meeting may be personally delivered to each Member of the Agency or may be mailed to the business or home address of such Member. A waiver of notice may be signed by any Member failing to receive a proper notice.

Section 3. Procedure at Meetings of Members

(a) The Chairman shall preside over the meetings of the Agency. In the absence of the Chairman, the Vice-Chairman shall preside. In the absence of both the Chairman and Vice-Chairman, any Member directed by the Chairman may preside.

(b) At all meetings of Members, a majority of the Members of the Agency shall constitute a quorum for the purpose of transacting business. If less than a quorum is present for any meeting, the Members then present may adjourn the meeting to such other time or until a quorum is present. Except to the extent provided for by law, all actions shall be by a majority of the votes cast, provided that the majority of the votes cast shall be at least equal to a quorum.

(c) When determined by the Agency that a matter pending before it is confidential in nature, it may, upon motion, establish an executive session and exclude any non-member from such session.

(d) Order of business

At all meetings of the Agency, the following shall be the order of business:

- (1) Roll Call;
- (2) Proof of Notice of Meeting;
- (3) Reading and approval of the minutes of the previous meeting;
- (4) bills and communications;
- (5) Report of the Treasurer;
- (6) Reports of Committees;



- (7) Unfinished business;
- (8) New business;
- (9) Adjournment.

The order of business may be altered or suspended at any meeting by the Members of the Agency.

(e) All resolutions shall be in writing and shall be recorded in the journal of the proceedings of the Agency.

### Article III

#### OFFICERS AND PERSONNEL

##### Section 1. Officers

The officers of the Agency shall be Chairman or Co-Chairman, Vice-Chairman, Secretary and Treasurer and such other offices as may be prescribed, from time to time, by the Agency. The Chairman or Co-Chairman and other officers shall be appointed by the Mayor of the City of Syracuse and may be removed with or without cause at his discretion. Each officer shall be a Member of the Agency during his or her term of office.

##### Section 2. Chairman or Co-Chairmen

The Chairman shall be chief executive officer of the Agency, and shall serve as an ex officio member of all duly constituted committees, shall supervise the general management and the affairs of the Agency, and shall carry out the orders and resolutions of the Agency. Except as otherwise authorized by resolution of the Agency, the Chairman shall execute (manually and by facsimile signature) all agreements, contracts, deeds, bonds, notes or other evidence of indebtedness and any other instruments of the Agency on behalf of the Agency. The Mayor may from time to time appoint two Co-Chairmen in place of the Chairman. During their term of office the Co-

Chairmen shall share equally the duties, rights, powers and responsibilities of the Chairman. The action of either Co-Chairman or execution (manually or by facsimile signature) by either Co-Chairman of any agreement, contract, deed, bond, note or other evidence of indebtedness or any other instrument of the Agency on behalf of the Agency shall have the same force and effect as such action or execution by the Chairman.

### Section 3. Vice-Chairman

The Vice-Chairman shall have all the powers and functions of the Chairman or Co-Chairmen in the absence or disability of the Chairman or Co-Chairmen, as the case may be. The Vice-Chairman shall perform such other duties as the Members of the Agency shall prescribe or as delegated by the Chairman or Co-Chairmen.

### Section 4. Secretary

The Secretary shall keep the minutes of the Agency, shall have the custody of the seal of the Agency and shall affix and attest the same to documents when duly authorized by the Agency, shall attest to the giving or serving of all notices of the Agency, shall have charge of such books and papers as the Members of the Agency may order, shall attest to such correspondence as may be assigned, and shall perform all the duties incidental to his office.

### Section 5. Treasurer

The Treasurer shall have the care and custody of all the funds and securities of the Agency, shall deposit such funds in the name of the Agency, in such bank or trust company as the members of the Agency may elect, shall sign such instrument as may require the Treasurer's signature, but only with the approval of the Chairman or Co-Chairman, as the case may be, shall at all reasonable times exhibit the books and accounts of the Agency to the Mayor or any Member of

the Agency, and at the end of each fiscal year shall present an annual report setting forth in full the financial condition of the Agency.

Section 6. Additional Personnel

The Agency, with the consent of the Mayor, may appoint an Administrative or Executive Director to supervise the administration of the business and affairs of the Agency, subject to the direction of the Agency. The Agency may, from time to time, employ such other personnel as it deems necessary to execute its powers, duties and functions as prescribed by the New York State Industrial Development Agency Act (General Municipal Law, Article 18-A), as amended, and all other laws of the State of New York applicable thereto.

Section 7. Compensation of Chairman, Co-Chairmen, Members, Officers, and Other Personnel

The Chairman, Co-Chairmen, Members and Officers shall receive no compensation for their services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of their duties. The compensation of other personnel, including the Administrative Director, shall be determined by the Members of the Agency.

Article IV

AMENDMENTS

Section 1. Amendments to By-Laws

These by-laws may be amended or revised, from time to time, by a two-third (2/3) vote of the Agency, but no such amendment or revision shall be adopted unless written notice of the proposed action shall have been given by mail to each Member and the Mayor at least ten (10) days prior to the date of the meeting at which it is proposed that such action be taken; provided, however,

that this provision and other provisions relating to the appointment, renewal and terms of office of Members and officers may be amended only with the prior written approval of the Mayor.

## Article V

### MISCELLANEOUS

#### Section 1. Sureties and Bonds

In case the Agency shall so require, any officer, employee or agent of the Agency shall execute to the Agency a bond in such sum and with such surety or sureties as the Agency may direct, conditioned upon the faithful performance of his or her duties to the Agency and including responsibility for negligence and for the accounting for all property, funds or securities of the Agency which may come into the hands of the officer, employee or agent.

#### Section 2. Indemnification

(a) Upon compliance by a Member or Officer of the Agency (including a former Member or Officer, the estate of a Member or Officer or a judicially appointed personal representative thereof) (referred to in this Section 2 collectively as "Member") with the provisions of subdivision (i) of this Section 2, the Agency shall provide for the defense of the Member in any civil action or proceeding, state or federal, arising out of any alleged act or omission which occurred or allegedly occurred while the Member was acting within the scope of the public employment or duties of such Member. This duty to provide for a defense shall not arise where such civil action or proceeding is brought by or at the behest of the Agency.

(b) Subject to the conditions set forth in paragraph (a) of this subdivision, the Member shall be entitled to be represented by private counsel of the Member's choice in any civil action or proceeding whenever the chief legal officer of the Agency or other counsel designated by the

Agency determines that a conflict of interest exists, or whenever a court, upon appropriate motion or otherwise by a special proceeding, determines that a conflict of interest exists and that the Member is entitled to be represented by counsel of the Member's choice, provided, however, that the chief legal officer or other counsel designated by the Agency may require, as a condition to payment of the fees and expenses of such representation, that appropriate groups of such Members be represented by the same counsel. Reasonable attorneys' fees and litigation expenses shall be paid by the Agency to such private counsel from time to time during the pendency of the civil action or proceeding with the approval of a majority of the Members of the Agency eligible to vote thereon.

(c) Any dispute with respect to representation of multiple Members by a single counsel or the amount of litigation expenses or the reasonableness of attorneys' fees shall be resolved by the court upon motion or by way of a special proceeding.

(d) Where the Member delivers process and a written request for a defense to the Agency under subdivision (i) of this Section 2, the Agency shall take the necessary steps on behalf of the Member to avoid entry of a default judgment pending resolution of any question pertaining to the obligation to provide for a defense.

(e) The Agency shall indemnify and save harmless its Members in the amount of any judgment obtained against such Members in a State or Federal court, or in the amount of any settlement of a claim, provided that the act or omission from which such judgment or claim arose occurred while the Member was acting within the scope of the Member's public employment or duties; provided further that in the case of a settlement, the duty to indemnify and save harmless shall be conditioned upon the approval of the amount of settlement by a majority of the Members of the Agency eligible to vote thereon.

(f) Except as otherwise provided by law, the duty to indemnify and save harmless prescribed by this Section 2 shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the Member seeking indemnification.

(g) Nothing in this subdivision shall authorize the Agency to indemnify or save harmless any Member with respect to punitive or exemplary damages, fines or penalties; provided, however, that the Agency shall indemnify and save harmless its Members in the amount of any costs, attorneys' fees, damages, fines or penalties which may be imposed by reason of an adjudication that the Member, acting within the scope of the Member's public employment or duties, has, without willfulness or intent on the Member's part, violated a prior order, judgment, consent decree or stipulation of settlement entered in any court of the State or of the United States.

(h) Upon entry of a final judgment against the Member, or upon the settlement of the claim, the Member shall serve a copy of such judgment or settlement, personally or by certified or registered mail within thirty (30) days of the date of entry or settlement, upon the Chairman and the chief administrative officer of the Agency; and if not inconsistent with the provisions of this Section 2, the amount of such judgment or settlement shall be paid by the Agency.

(i) The duty to defend or indemnify and save harmless prescribed by this Section 2 shall be conditioned upon: (i) delivery by the Member to the Chairman of the Agency and the chief legal officer of the Agency or to its chief administrative officer of a written request to provide for such Member's defense together with the original or a copy of any summons, complaint, process, notice, demand or pleading within ten (10) days after the Member is served with such document, and (ii) the full cooperation of the Member in the defense of such action or

proceeding and in defense of any action or proceeding against the Agency based upon the same act or omission, and in the prosecution of any appeal.

(j) The benefits of this Section shall inure only to Members as defined in subdivision (a) of this Section 2 and shall not enlarge or diminish the rights of any other party.

(k) This Section 2 shall not in any way affect the obligation of any claimant to give notice to the Agency under Section 10 of the Court of Claims Act, Section 880 of the General Municipal Law, or any other provision of law.

(l) The Agency is hereby authorized and empowered to purchase insurance from any insurance company created by or under the laws of the State, or authorized by law to transact business in the State, against any liability imposed by the provisions of this Section 2, or to act as a self-insurer with respect thereto. The provisions of this Section 2 shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

(m) All payments made under the terms of this Section 2, whether for insurance or otherwise, shall be deemed to be for a public purpose and shall be audited and paid in the same manner as other public charges.

(n) Except as otherwise specifically provided in this Section 2, the provisions of this Section 2 shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity to liability available to or conferred upon any Member of the Agency by, in accordance with, or by reason of, any other provision of State or Federal statutory or common law. The benefits under this Section 2 shall supplement, and be available in addition to, defense or indemnification protection conferred by any law or enactment. This Section 2 is intended to confer upon Members of the Agency all of the benefits of Section 18 of the Public Officers Law

and to impose upon the Agency liability for costs incurred under the provisions hereof and thereof.

Section 3. Fiscal Year

The fiscal year of the Agency shall be fixed by the Members, subject to the applicable law.

Section 4. Powers of the Agency

The Agency shall have all the powers of an Industrial Development Agency authorized by Article 18-A of the General Municipal Law and shall have the power to do all things necessary or convenient to carry out its purposes and exercise the powers authorized herein.



**EXHIBIT "D"**

**PUBLIC HEARING RESOLUTION**

## RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on November 15, 2016, 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, Catherine Richardson, Esq., Donald Schoenwald, Esq., Steven Thompson Kenneth Kinsey

**THE FOLLOWING PERSONS WERE ALSO PRESENT:** Staff Present: Honora Spillane, Judith DeLaney, Meghan Ryan, Esq., Susan Katzoff, Esq., John Vavonese, Debra Ramsey-Burns, Meghan Ryan, Esq.; Others: Timothy Lynn, Esq., Barry Lentz, Aggie Lane, Michael Wicker, Dave Delvecchio, Suzanne Slack, Donna Harris, Lauryn LaBorde, Ted Trespasz, Esq., Jeff Githens, Mark Riley, Robert Smith, Esq.; Media Present: Rick Moriarty

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

**RESOLUTION DETERMINING THAT THE ACQUISITION, RENOVATION, EQUIPPING AND COMPLETION OF A COMMERCIAL FACILITY AT THE REQUEST OF THE COMPANY CONSTITUTES A PROJECT; DESCRIBING THE FINANCIAL ASSISTANCE IN CONNECTION THEREWITH; AND AUTHORIZING A PUBLIC HEARING**

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, for the purpose of promoting economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living; and

**WHEREAS**, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to grant "financial assistance" (as defined in the Act) in connection with the acquisition, reconstruction and equipping of one or more "projects" (as defined in the Act); and

**WHEREAS**, by application dated November 9, 2016 (the “*Application*”), Erie Water Street Associates, LLC, or an entity to be formed (the “*Company*”), requested the Agency undertake a project (the “*Project*”) consisting of: (A)(i) the acquisition of an interest in approximately 9,948 square feet of improved real property located at 219-225 West Fayette Street, in the City of Syracuse, New York (the “*Land*”); (ii) the reconstruction and renovation of an existing 3 story approximately 25,007 square foot building (the “*Facility*”), to include but not be limited to, a new store front on the West Fayette Street side of the building; the construction of a new first floor building lobby with elevator and stair tower; the redevelopment of the building’s second and third levels to house approximately 16 market rate one-bedroom apartment units; and repairs to the building’s Walton Street façade; all located on the Land; (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment, including but not limited to new mechanical systems (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use taxes and mortgage recording tax (except as limited by Section 874 of the General Municipal Law) (collectively the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, pursuant to 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 Project is located in a “Highly Distressed Area” as defined in Section 854(18) of the Act; 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 real property taxes, State and local sales and use taxation and mortgage recording tax.

(C) The Project will not be used primarily for retail; and

(2) The Agency hereby directs that pursuant to Section 859-a of the Act, a public hearing with respect to the Project and Financial Assistance shall be scheduled with notice thereof published, and such notice, as applicable, shall further be sent to affected tax jurisdictions within which the Project is located.

(3) The Secretary or the Executive Director of the Agency is hereby authorized to and may distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

(4) A copy of this Resolution shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

The question of the adoption of the foregoing resolution was duly put to vote on a roll call, which resulted as follows:

	<u>AYE</u>	<u>NAY</u>
William M. Ryan	X	
M. Catherine Richardson	X	
Donald Schoenwald	X	
Steven Thompson	X	
Kenneth Kinsey	X	

The foregoing Resolution was thereupon declared duly adopted.



**EXHIBIT "E"**

**SEQRA LEAD AGENCY RESOLUTION**

## RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on November 15, 2016, 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, Catherine Richardson, Esq., Donald Schoenwald, Esq., Steven Thompson Kenneth Kinsey

**THE FOLLOWING PERSONS WERE ALSO PRESENT:** Staff Present: Honora Spillane, Judith DeLaney, Meghan Ryan, Esq., Susan Katzoff, Esq., John Vavonese, Debra Ramsey-Burns, Meghan Ryan, Esq.; Others: Timothy Lynn, Esq., Barry Lentz, Aggie Lane, Michael Wicker, Dave Delvecchio, Suzanne Slack, Donna Harris, Lauryn LaBorde, Ted Trespasz, Esq., Jeff Githens, Mark Riley, Robert Smith, Esq.; Media Present: Rick Moriarty

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

### **RESOLUTION CLASSIFYING A CERTAIN PROJECT AS A TYPE I ACTION AND DECLARING THE INTENT OF THE CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY TO BE LEAD AGENCY FOR PURPOSES OF A COORDINATED REVIEW PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT**

**WHEREAS,** the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, for the purpose of promoting economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to grant “financial assistance” (as defined in the Act) in connection with the acquisition, reconstruction and equipping of one or more “projects” (as defined in the Act); and

WHEREAS, by application dated November 9, 2016 (the “*Application*”), Erie Water Street Associates, LLC, or an entity to be formed (the “*Company*”), requested the Agency undertake a project (the “*Project*”) consisting of: (A)(i) the acquisition of an interest in approximately 9,948 square feet of improved real property located at 219-225 West Fayette Street, in the City of Syracuse, New York (the “*Land*”); (ii) the reconstruction and renovation of an existing 3 story approximately 25,007 square foot building (the “*Facility*”), to include but not be limited to, a new store front on the West Fayette Street side of the building; the construction of a new first floor building lobby with elevator and stair tower; the redevelopment of the building’s second and third levels to house approximately 16 market rate one-bedroom apartment units; and repairs to the building’s Walton Street façade; all located on the Land; (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment, including but not limited to new mechanical systems (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use taxes and mortgage recording tax (except as limited by Section 874 of the General Municipal Law) (collectively the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as “*SEQRA*”), the Agency is required to make a determination whether the “action” (as said quoted term is defined in SEQRA) to be taken by the Agency may have a “significant impact on the environment” (as said quoted term is utilized in SEQRA) and the preliminary agreement of the Agency to undertake the Project constitutes such an action; and

WHEREAS, to aid the Agency in determining whether undertaking the Project may have a significant impact upon the environment, the Company has prepared and submitted to the Agency an Environmental Assessment Form (the “*EAF*”) with respect to the Project, a copy of which is attached here as Exhibit A, with a copy of the EAF on file at the office of the Agency; and

WHEREAS, the Agency has examined the EAF in order to classify the Project; and

WHEREAS, the Agency has not approved the Project or the grant of Financial Assistance to the Project; and



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

(1) Based upon an examination of the EAF prepared by the Company, the criteria contained in 6 NYCRR §617.7(c), and based further upon the Agency’s knowledge of the area surrounding the Project Facility, all the representations made by the Company in connection with the Project, and such further investigation of the Project and its environmental impacts as the Agency has deemed appropriate, the Agency makes the following findings and determinations with respect to the Project pursuant to SEQRA:

(A) The Project consists of the components described above in the third WHEREAS clause of this resolution; and

(B) The Project constitutes a “Type I Action” (as said quoted term is defined in SEQRA); and

(C) As a consequence of the foregoing, the Agency hereby declares its intent to act as “Lead Agency” (as said term is defined in SEQRA) with respect to a coordinated agency review of the Project pursuant to SEQRA; and

(D) The Agency’s counsel shall arrange for publication and distribution of its notice of intent to be “Lead Agency” and is hereby authorized to take such actions as are necessary and appropriate to assist the Agency in fulfilling the requirements under SEQRA for the Project and to work with the Company’s environmental consultant in connection therewith.

(2) A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

(3) This Resolution shall take effect immediately

The 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 M. Ryan	X	
M. Catherine Richardson	X	
Donald Schoenwald	X	
Steven Thompson	X	
Kenneth Kinsey	X	

The foregoing Resolution was thereupon declared duly adopted.

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

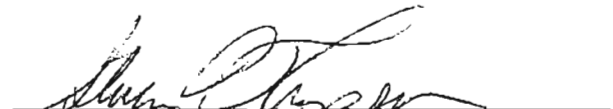
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “*Agency*”) held on November 15, 2016, with the original thereof on file in my office, and that the same (including all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

**I FURTHER CERTIFY** that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

**I FURTHER CERTIFY** that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

**IN WITNESS WHEREOF**, I have set my hand and affixed the seal of the Agency this 20<sup>th</sup> day of December, 2016.

City of Syracuse Industrial Development Agency

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

( S E A L )

**EXHIBIT A**

**ENVIRONMENTAL ASSESSMENT FORM**

**Full Environmental Assessment Form**  
**Part I - Project and Setting**

**Instructions for Completing Part I**

**Part I is to be completed by the applicant or project sponsor.** Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification.

Complete Part I based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information; indicate whether missing information does not exist, or is not reasonably available to the sponsor; and, when possible, generally describe work or studies which would be necessary to update or fully develop that information.

Applicants/sponsors must complete all items in Sections A & B. In Sections C, D & E, most items contain an initial question that must be answered either "Yes" or "No". If the answer to the initial question is "Yes", complete the sub-questions that follow. If the answer to the initial question is "No", proceed to the next question. Section F allows the project sponsor to identify and attach any additional information. Section G requires the name and signature of the project sponsor to verify that the information contained in Part I is accurate and complete.

**A. Project and Sponsor Information.**

Name of Action or Project: 219-225 West Fayette Street		
Project Location (describe, and attach a general location map): 219-225 West Fayette Street, Syracuse New York 13202		
Brief Description of Proposed Action (include purpose or need): Project is a renovation of the currently vacant upper two stories of an historic building where a restaurant currently occupies the ground floor. The restaurant will remain unchanged and the upper levels will be improved with 16 market rate one-bedroom apartments. There will be two new egress stairs constructed and one new passenger elevator added to the structure to support the proposed apartments. All new mechanical systems will be installed throughout the structure and the ground level will be reconfigured to accommodate a new residential entrance lobby. The two upper story building towers will be connected via new corridor.		
Name of Applicant/Sponsor: Erie Water Street Associates, LLC		Telephone: 315-471-8866 ext. 2 E-Mail: mike@wickerrealestate.com
Address: 315 So. Franklin Street		
City/PO: Syracuse	State: New York	Zip Code: 13202
Project Contact (if not same as sponsor; give name and title/role): Michael P. Wicker		Telephone: 315-471-8866 ext. 2 E-Mail: mike@wickerrealestate.com
Address: 315 So. Franklin Street		
City/PO: Syracuse	State: New York	Zip Code: 13202
Property Owner (if not same as sponsor): Erie Water Street Associates, LLC		Telephone: 315-471-8866 ext. 2 E-Mail: mike@wickerrealestate.com
Address: 315 So. Franklin Street		
City/PO: Syracuse	State: New York	Zip Code: 13202

**B. Government Approvals**

B. Government Approvals, Funding, or Sponsorship. ("Funding" includes grants, loans, tax relief, and any other forms of financial assistance.)		
Government Entity	If Yes: Identify Agency and Approval(s) Required	Application Date (Actual or projected)
a. City Council, Town Board, <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No or Village Board of Trustees		
b. City, Town or Village Planning Board or Commission <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Special Use Permit Change	Approved 10/11/16
c. City Council, Town or Village Zoning Board of Appeals <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Special Use Permit Change	Approved 10/11/16
d. Other local agencies <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Landmark Preservation Board- Historic Building Review	Approved 10/11/16
e. County agencies <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
f. Regional agencies <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
g. State agencies <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	SHIPO -Historic Preservation Tax Credits	
h. Federal agencies <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Department of Interior -Historic Preservation Tax Credits	
i. Coastal Resources.		
i. Is the project site within a Coastal Area, or the waterfront area of a Designated Inland Waterway?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
ii. Is the project site located in a community with an approved Local Waterfront Revitalization Program?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
iii. Is the project site within a Coastal Erosion Hazard Area?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

**C. Planning and Zoning**

<b>C.1. Planning and zoning actions.</b>	
Will administrative or legislative adoption, or amendment of a plan, local law, ordinance, rule or regulation be the only approval(s) which must be granted to enable the proposed action to proceed?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<ul style="list-style-type: none"> <li>If Yes, complete sections C, F and G.</li> <li>If No, proceed to question C.2 and complete all remaining sections and questions in Part I</li> </ul>	
<b>C.2. Adopted land use plans.</b>	
a. Do any municipally- adopted (city, town, village or county) comprehensive land use plan(s) include the site where the proposed action would be located?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If Yes, does the comprehensive plan include specific recommendations for the site where the proposed action would be located?	<input type="checkbox"/> Yes <input type="checkbox"/> No
b. Is the site of the proposed action within any local or regional special planning district (for example: Greenway Brownfield Opportunity Area (BOA); designated State or Federal heritage area; watershed management plan; or other?)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If Yes, identify the plan(s):	
_____	
_____	
c. Is the proposed action located wholly or partially within an area listed in an adopted municipal open space plan, or an adopted municipal farmland protection plan?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If Yes, identify the plan(s):	
_____	
_____	
_____	

**C.3. Zoning**

a. Is the site of the proposed action located in a municipality with an adopted zoning law or ordinance.  Yes  No  
 If Yes, what is the zoning classification(s) including any applicable overlay district?  
 CDB-GSA

b. Is the use permitted or allowed by a special or conditional use permit?  Yes  No

c. Is a zoning change requested as part of the proposed action?  Yes  No  
 If Yes,  
 i. What is the proposed new zoning for the site? \_\_\_\_\_

**C.4. Existing community services.**

a. In what school district is the project site located? City of Syracuse

b. What police or other public protection forces serve the project site?  
City of Syracuse

c. Which fire protection and emergency medical services serve the project site?  
City of Syracuse

d. What parks serve the project site?  
N/A

**D. Project Details**

**D.1. Proposed and Potential Development**

a. What is the general nature of the proposed action (e.g., residential, industrial, commercial, recreational); if mixed, include all components)? Mixed- Use

b. a. Total acreage of the site of the proposed action? \_\_\_\_\_ 22 acres  
 b. Total acreage to be physically disturbed? \_\_\_\_\_ 22 acres  
 c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? \_\_\_\_\_ 22 acres

c. Is the proposed action an expansion of an existing project or use?  Yes  No  
 i. If Yes, what is the approximate percentage of the proposed expansion and identify the units (e.g., acres, miles, housing units, square feet)? % \_\_\_\_\_ Units: \_\_\_\_\_

d. Is the proposed action a subdivision, or does it include a subdivision?  Yes  No  
 If Yes,  
 i. Purpose or type of subdivision? (e.g., residential, industrial, commercial; if mixed, specify types) \_\_\_\_\_  
 ii. Is a cluster/conservation layout proposed?  Yes  No  
 iii. Number of lots proposed? \_\_\_\_\_  
 iv. Minimum and maximum proposed lot sizes? Minimum \_\_\_\_\_ Maximum \_\_\_\_\_

e. Will proposed action be constructed in multiple phases?  Yes  No  
 i. If No, anticipated period of construction: \_\_\_\_\_ 8 months  
 ii. If Yes:  
 • Total number of phases anticipated \_\_\_\_\_  
 • Anticipated commencement date of phase I (including demolition) \_\_\_\_\_ month \_\_\_\_\_ year  
 • Anticipated completion date of final phase \_\_\_\_\_ month \_\_\_\_\_ year  
 • Generally describe connections or relationships among phases, including any contingencies where progress of one phase may determine timing or duration of future phases: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

f. Does the project include new residential uses?  Yes  No  
 If Yes, show numbers of units proposed.

	<u>One Family</u>	<u>Two Family</u>	<u>Three Family</u>	<u>Multiple Family (four or more)</u>
Initial Phase	_____	_____	_____	16
At completion of all phases	_____	_____	_____	16

g. Does the proposed action include new non-residential construction (including expansions)?  Yes  No  
 If Yes,  
 i. Total number of structures \_\_\_\_\_  
 ii. Dimensions (in feet) of largest proposed structure: \_\_\_\_\_ height; \_\_\_\_\_ width; and \_\_\_\_\_ length  
 iii. Approximate extent of building space to be heated or cooled: \_\_\_\_\_ square feet

h. Does the proposed action include construction or other activities that will result in the impoundment of any liquids, such as creation of a water supply, reservoir, pond, lake, waste lagoon or other storage?  Yes  No  
 If Yes,  
 i. Purpose of the impoundment: \_\_\_\_\_  
 ii. If a water impoundment, the principal source of the water:  Ground water  Surface water streams  Other specify: \_\_\_\_\_  
 iii. If other than water, identify the type of impounded/contained liquids and their source. \_\_\_\_\_  
 iv. Approximate size of the proposed impoundment. Volume: \_\_\_\_\_ million gallons; surface area: \_\_\_\_\_ acres  
 v. Dimensions of the proposed dam or impounding structure: \_\_\_\_\_ height; \_\_\_\_\_ length  
 vi. Construction method/materials for the proposed dam or impounding structure (e.g., earth fill, rock, wood, concrete): \_\_\_\_\_

**D.2. Project Operations**

a. Does the proposed action include any excavation, mining, or dredging, during construction, operations, or both?  Yes  No  
 (Not including general site preparation, grading or installation of utilities or foundations where all excavated materials will remain onsite)  
 If Yes:  
 i. What is the purpose of the excavation or dredging? \_\_\_\_\_  
 ii. How much material (including rock, earth, sediments, etc.) is proposed to be removed from the site?  
 • Volume (specify tons or cubic yards): \_\_\_\_\_  
 • Over what duration of time? \_\_\_\_\_  
 iii. Describe nature and characteristics of materials to be excavated or dredged, and plans to use, manage or dispose of them. \_\_\_\_\_  
 iv. Will there be onsite dewatering or processing of excavated materials?  Yes  No  
 If yes, describe. \_\_\_\_\_  
 v. What is the total area to be dredged or excavated? \_\_\_\_\_ acres  
 vi. What is the maximum area to be worked at any one time? \_\_\_\_\_ acres  
 vii. What would be the maximum depth of excavation or dredging? \_\_\_\_\_ feet  
 viii. Will the excavation require blasting?  Yes  No  
 ix. Summarize site reclamation goals and plan: \_\_\_\_\_

b. Would the proposed action cause or result in alteration of, increase or decrease in size of, or encroachment into any existing wetland, waterbody, shoreline, beach or adjacent area?  Yes  No  
 If Yes:  
 i. Identify the wetland or waterbody which would be affected (by name, water index number, wetland map number or geographic description): \_\_\_\_\_

ii. Describe how the proposed action would affect that waterbody or wetland, e.g. excavation, fill, placement of structures, or alteration of channels, banks and shorelines. Indicate extent of activities, alterations and additions in square feet or acres:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

iii. Will proposed action cause or result in disturbance to bottom sediments?  Yes  No  
 If Yes, describe: \_\_\_\_\_

iv. Will proposed action cause or result in the destruction or removal of aquatic vegetation?  Yes  No  
 If Yes:

- acres of aquatic vegetation proposed to be removed: \_\_\_\_\_
- expected acreage of aquatic vegetation remaining after project completion: \_\_\_\_\_
- purpose of proposed removal (e.g. beach clearing, invasive species control, boat access): \_\_\_\_\_
- proposed method of plant removal: \_\_\_\_\_
- if chemical/herbicide treatment will be used, specify product(s): \_\_\_\_\_

v. Describe any proposed reclamation/mitigation following disturbance: \_\_\_\_\_

c. Will the proposed action use, or create a new demand for water?  Yes  No  
 If Yes:

i. Total anticipated water usage/demand per day: \_\_\_\_\_ 1,280 gallons/day

ii. Will the proposed action obtain water from an existing public water supply?  Yes  No  
 If Yes:

- Name of district or service area: City of Syracuse
- Does the existing public water supply have capacity to serve the proposal?  Yes  No
- Is the project site in the existing district?  Yes  No
- Is expansion of the district needed?  Yes  No
- Do existing lines serve the project site?  Yes  No

iii. Will line extension within an existing district be necessary to supply the project?  Yes  No  
 If Yes:

- Describe extensions or capacity expansions proposed to serve this project: \_\_\_\_\_
- Source(s) of supply for the district: \_\_\_\_\_

iv. Is a new water supply district or service area proposed to be formed to serve the project site?  Yes  No  
 If, Yes:

- Applicant/sponsor for new district: \_\_\_\_\_
- Date application submitted or anticipated: \_\_\_\_\_
- Proposed source(s) of supply for new district: \_\_\_\_\_

v. If a public water supply will not be used, describe plans to provide water supply for the project: \_\_\_\_\_

vi. If water supply will be from wells (public or private), maximum pumping capacity: \_\_\_\_\_ gallons/minute.

d. Will the proposed action generate liquid wastes?  Yes  No  
 If Yes:

i. Total anticipated liquid waste generation per day: \_\_\_\_\_ 1,280 gallons/day

ii. Nature of liquid wastes to be generated (e.g., sanitary wastewater, industrial; if combination, describe all components and approximate volumes or proportions of each): \_\_\_\_\_  
 Sanitary Waste Water

iii. Will the proposed action use any existing public wastewater treatment facilities?  Yes  No  
 If Yes:

- Name of wastewater treatment plant to be used: N/A
- Name of district: City of Syracuse
- Does the existing wastewater treatment plant have capacity to serve the project?  Yes  No
- Is the project site in the existing district?  Yes  No
- Is expansion of the district needed?  Yes  No



• Do existing sewer lines serve the project site?  Yes  No  
 • Will line extension within an existing district be necessary to serve the project?  Yes  No  
 If Yes:  
 • Describe extensions or capacity expansions proposed to serve this project: \_\_\_\_\_  
 \_\_\_\_\_

iv. Will a new wastewater (sewage) treatment district be formed to serve the project site?  Yes  No  
 If Yes:  
 • Applicant/sponsor for new district: \_\_\_\_\_  
 • Date application submitted or anticipated: \_\_\_\_\_  
 • What is the receiving water for the wastewater discharge? \_\_\_\_\_

v. If public facilities will not be used, describe plans to provide wastewater treatment for the project, including specifying proposed receiving water (name and classification if surface discharge, or describe subsurface disposal plans):  
 \_\_\_\_\_  
 \_\_\_\_\_

vi. Describe any plans or designs to capture, recycle or reuse liquid waste: \_\_\_\_\_  
 \_\_\_\_\_

e. Will the proposed action disturb more than one acre and create stormwater runoff, either from new point sources (i.e. ditches, pipes, swales, curbs, gutters or other concentrated flows of stormwater) or non-point source (i.e. sheet flow) during construction or post construction?  Yes  No  
 If Yes:  
 i. How much impervious surface will the project create in relation to total size of project parcel?  
 \_\_\_\_\_ Square feet or \_\_\_\_\_ acres (impervious surface)  
 \_\_\_\_\_ Square feet or \_\_\_\_\_ acres (parcel size)  
 ii. Describe types of new point sources. \_\_\_\_\_  
 \_\_\_\_\_

iii. Where will the stormwater runoff be directed (i.e. on-site stormwater management facility/structures, adjacent properties, groundwater, on-site surface water or off-site surface waters)?  
 \_\_\_\_\_  
 \_\_\_\_\_

• If to surface waters, identify receiving water bodies or wetlands: \_\_\_\_\_  
 \_\_\_\_\_

• Will stormwater runoff flow to adjacent properties?  Yes  No

iv. Does proposed plan minimize impervious surfaces, use pervious materials or collect and re-use stormwater?  Yes  No

f. Does the proposed action include, or will it use on-site, one or more sources of air emissions, including fuel combustion, waste incineration, or other processes or operations?  Yes  No  
 If Yes, identify:  
 i. Mobile sources during project operations (e.g., heavy equipment, fleet or delivery vehicles)  
 \_\_\_\_\_  
 ii. Stationary sources during construction (e.g., power generation, structural heating, batch plant, crushers)  
 \_\_\_\_\_  
 iii. Stationary sources during operations (e.g., process emissions, large boilers, electric generation)  
 \_\_\_\_\_

g. Will any air emission sources named in D.2.f (above), require a NY State Air Registration, Air Facility Permit, or Federal Clean Air Act Title IV or Title V Permit?  Yes  No  
 If Yes:  
 i. Is the project site located in an Air quality non-attainment area? (Area routinely or periodically fails to meet ambient air quality standards for all or some parts of the year)  Yes  No  
 ii. In addition to emissions as calculated in the application, the project will generate:  
 • \_\_\_\_\_ Tons/year (short tons) of Carbon Dioxide (CO<sub>2</sub>)  
 • \_\_\_\_\_ Tons/year (short tons) of Nitrous Oxide (N<sub>2</sub>O)  
 • \_\_\_\_\_ Tons/year (short tons) of Perfluorocarbons (PFCs)  
 • \_\_\_\_\_ Tons/year (short tons) of Sulfur Hexafluoride (SF<sub>6</sub>)  
 • \_\_\_\_\_ Tons/year (short tons) of Carbon Dioxide equivalent of Hydrofluorocarbons (HFCs)  
 • \_\_\_\_\_ Tons/year (short tons) of Hazardous Air Pollutants (HAPs)

h. Will the proposed action generate or emit methane (including, but not limited to, sewage treatment plants, landfills, composting facilities)?  Yes  No

If Yes:

i. Estimate methane generation in tons/year (metric): \_\_\_\_\_

ii. Describe any methane capture, control or elimination measures included in project design (e.g., combustion to generate heat or electricity, flaring): \_\_\_\_\_

---

i. Will the proposed action result in the release of air pollutants from open-air operations or processes, such as quarry or landfill operations?  Yes  No

If Yes: Describe operations and nature of emissions (e.g., diesel exhaust, rock particulates/dust): \_\_\_\_\_

---

j. Will the proposed action result in a substantial increase in traffic above present levels or generate substantial new demand for transportation facilities or services?  Yes  No

If Yes:

i. When is the peak traffic expected (Check all that apply):  Morning  Evening  Weekend  
 Randomly between hours of \_\_\_\_\_ to \_\_\_\_\_.

ii. For commercial activities only, projected number of semi-trailer truck trips/day: \_\_\_\_\_

iii. Parking spaces: Existing \_\_\_\_\_ Proposed \_\_\_\_\_ Net increase/decrease \_\_\_\_\_

iv. Does the proposed action include any shared use parking?  Yes  No

v. If the proposed action includes any modification of existing roads, creation of new roads or change in existing access, describe: \_\_\_\_\_

---

vi. Are public/private transportation service(s) or facilities available within 1/2 mile of the proposed site?  Yes  No

vii. Will the proposed action include access to public transportation or accommodations for use of hybrid, electric or other alternative fueled vehicles?  Yes  No

viii. Will the proposed action include plans for pedestrian or bicycle accommodations for connections to existing pedestrian or bicycle routes?  Yes  No

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k. Will the proposed action (for commercial or industrial projects only) generate new or additional demand for energy?  Yes  No

If Yes:

i. Estimate annual electricity demand during operation of the proposed action: \_\_\_\_\_

ii. Anticipated sources/suppliers of electricity for the project (e.g., on-site combustion, on-site renewable, via grid/local utility, or other): \_\_\_\_\_

iii. Will the proposed action require a new, or an upgrade to, an existing substation?  Yes  No

---

l. Hours of operation. Answer all items which apply.

<p>i. During Construction:</p> <ul style="list-style-type: none"> <li>• Monday - Friday: _____</li> <li>• Saturday: _____</li> <li>• Sunday: _____</li> <li>• Holidays: _____</li> </ul>	<p>ii. During Operations:</p> <ul style="list-style-type: none"> <li>• Monday - Friday: _____</li> <li>• Saturday: _____</li> <li>• Sunday: _____</li> <li>• Holidays: _____</li> </ul>
--	---

m. Will the proposed action produce noise that will exceed existing ambient noise levels during construction, operation, or both?  Yes  No

If yes:

i. Provide details including sources, time of day and duration:

\_\_\_\_\_

\_\_\_\_\_

ii. Will proposed action remove existing natural barriers that could act as a noise barrier or screen?  Yes  No

Describe: \_\_\_\_\_

\_\_\_\_\_

n.. Will the proposed action have outdoor lighting?  Yes  No

If yes:

i. Describe source(s), location(s), height of fixture(s), direction/aim, and proximity to nearest occupied structures:

\_\_\_\_\_

\_\_\_\_\_

ii. Will proposed action remove existing natural barriers that could act as a light barrier or screen?  Yes  No

Describe: \_\_\_\_\_

\_\_\_\_\_

o. Does the proposed action have the potential to produce odors for more than one hour per day?  Yes  No

If Yes, describe possible sources, potential frequency and duration of odor emissions, and proximity to nearest occupied structures: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

p. Will the proposed action include any bulk storage of petroleum (combined capacity of over 1,100 gallons) or chemical products 185 gallons in above ground storage or any amount in underground storage?  Yes  No

If Yes:

i. Product(s) to be stored \_\_\_\_\_

ii. Volume(s) \_\_\_\_\_ per unit time \_\_\_\_\_ (e.g., month, year)

iii. Generally describe proposed storage facilities: \_\_\_\_\_

\_\_\_\_\_

q. Will the proposed action (commercial, industrial and recreational projects only) use pesticides (i.e., herbicides, insecticides) during construction or operation?  Yes  No

If Yes:

i. Describe proposed treatment(s):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

ii. Will the proposed action use Integrated Pest Management Practices?  Yes  No

r. Will the proposed action (commercial or industrial projects only) involve or require the management or disposal of solid waste (excluding hazardous materials)?  Yes  No

If Yes:

i. Describe any solid waste(s) to be generated during construction or operation of the facility:

- Construction: \_\_\_\_\_ tons per \_\_\_\_\_ (unit of time)
- Operation : \_\_\_\_\_ tons per \_\_\_\_\_ (unit of time)

ii. Describe any proposals for on-site minimization, recycling or reuse of materials to avoid disposal as solid waste:

- Construction: \_\_\_\_\_
- Operation: \_\_\_\_\_

iii. Proposed disposal methods/facilities for solid waste generated on-site:

- Construction: \_\_\_\_\_
- Operation: \_\_\_\_\_

s. Does the proposed action include construction or modification of a solid waste management facility?  Yes  No

If Yes:

i. Type of management or handling of waste proposed for the site (e.g., recycling or transfer station, composting, landfill, or other disposal activities): \_\_\_\_\_

ii. Anticipated rate of disposal/processing:

- \_\_\_\_\_ Tons/month, if transfer or other non-combustion/thermal treatment, or
- \_\_\_\_\_ Tons/hour, if combustion or thermal treatment

iii. If landfill, anticipated site life: \_\_\_\_\_ years

---

t. Will proposed action at the site involve the commercial generation, treatment, storage, or disposal of hazardous waste?  Yes  No

If Yes:

i. Name(s) of all hazardous wastes or constituents to be generated, handled or managed at facility: \_\_\_\_\_

ii. Generally describe processes or activities involving hazardous wastes or constituents: \_\_\_\_\_

iii. Specify amount to be handled or generated \_\_\_\_\_ tons/month

iv. Describe any proposals for on-site minimization, recycling or reuse of hazardous constituents: \_\_\_\_\_

v. Will any hazardous wastes be disposed at an existing offsite hazardous waste facility?  Yes  No

If Yes: provide name and location of facility: \_\_\_\_\_

If No: describe proposed management of any hazardous wastes which will not be sent to a hazardous waste facility: \_\_\_\_\_

**E. Site and Setting of Proposed Action**

**E.1. Land uses on and surrounding the project site**

a. Existing land uses.

i. Check all uses that occur on, adjoining and near the project site.

Urban  Industrial  Commercial  Residential (suburban)  Rural (non-farm)

Forest  Agriculture  Aquatic  Other (specify): Residential (urban)

ii. If mix of uses, generally describe: \_\_\_\_\_

---

b. Land uses and covertypes on the project site.

Land use or Covertype	Current Acreage	Acreage After Project Completion	Change (Acres +/-)
• Roads, buildings, and other paved or impervious surfaces	.22	.22	.22
• Forested			
• Meadows, grasslands or brushlands (non-agricultural, including abandoned agricultural)			
• Agricultural (includes active orchards, field, greenhouse etc.)			
• Surface water features (lakes, ponds, streams, rivers, etc.)			
• Wetlands (freshwater or tidal)			
• Non-vegetated (bare rock, earth or fill)			
• Other Describe: _____			

c. Is the project site presently used by members of the community for public recreation?  Yes  No  
i. If Yes: explain: \_\_\_\_\_

d. Are there any facilities serving children, the elderly, people with disabilities (e.g., schools, hospitals, licensed day care centers, or group homes) within 1500 feet of the project site?  Yes  No  
If Yes,  
i. Identify Facilities: \_\_\_\_\_

e. Does the project site contain an existing dam?  Yes  No  
If Yes:  
i. Dimensions of the dam and impoundment:  
• Dam height: \_\_\_\_\_ feet  
• Dam length: \_\_\_\_\_ feet  
• Surface area: \_\_\_\_\_ acres  
• Volume impounded: \_\_\_\_\_ gallons OR acre-feet  
ii. Dam's existing hazard classification: \_\_\_\_\_  
iii. Provide date and summarize results of last inspection: \_\_\_\_\_

f. Has the project site ever been used as a municipal, commercial or industrial solid waste management facility, or does the project site adjoin property which is now, or was at one time, used as a solid waste management facility?  Yes  No  
If Yes:  
i. Has the facility been formally closed?  Yes  No  
• If yes, cite sources/documentation: \_\_\_\_\_  
ii. Describe the location of the project site relative to the boundaries of the solid waste management facility: \_\_\_\_\_  
iii. Describe any development constraints due to the prior solid waste activities: \_\_\_\_\_

g. Have hazardous wastes been generated, treated and/or disposed of at the site, or does the project site adjoin property which is now or was at one time used to commercially treat, store and/or dispose of hazardous waste?  Yes  No  
If Yes:  
i. Describe waste(s) handled and waste management activities, including approximate time when activities occurred: \_\_\_\_\_

h. Potential contamination history. Has there been a reported spill at the proposed project site, or have any remedial actions been conducted at or adjacent to the proposed site?  Yes  No  
If Yes:  
i. Is any portion of the site listed on the NYSDEC Spills Incidents database or Environmental Site Remediation database? Check all that apply:  Yes  No  
 Yes Spills Incidents database Provide DEC ID number(s): \_\_\_\_\_  
 Yes – Environmental Site Remediation database Provide DEC ID number(s): \_\_\_\_\_  
 Neither database  
ii. If site has been subject of RCRA corrective activities, describe control measures: \_\_\_\_\_

iii. Is the project within 2000 feet of any site in the NYSDEC Environmental Site Remediation database?  Yes  No  
If yes, provide DEC ID number(s): \_\_\_\_\_  
iv. If yes to (i), (ii) or (iii) above, describe current status of site(s): \_\_\_\_\_

v. Is the project site subject to an institutional control limiting property uses?  Yes  No

- If yes, DEC site ID number: \_\_\_\_\_
- Describe the type of institutional control (e.g., deed restriction or easement): \_\_\_\_\_
- Describe any use limitations: \_\_\_\_\_
- Describe any engineering controls: \_\_\_\_\_
- Will the project affect the institutional or engineering controls in place?  Yes  No
- Explain: \_\_\_\_\_

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**E.2. Natural Resources On or Near Project Site**

a. What is the average depth to bedrock on the project site? \_\_\_\_\_ N/A feet

b. Are there bedrock outcroppings on the project site?  Yes  No  
 If Yes, what proportion of the site is comprised of bedrock outcroppings? \_\_\_\_\_ 0 %

c. Predominant soil type(s) present on project site: Urban Fill \_\_\_\_\_ 100 %  
 \_\_\_\_\_ %  
 \_\_\_\_\_ %

d. What is the average depth to the water table on the project site? Average: \_\_\_\_\_ 14 feet

e. Drainage status of project site soils:  Well Drained: \_\_\_\_\_ % of site  
 Moderately Well Drained: \_\_\_\_\_ 100 % of site  
 Poorly Drained \_\_\_\_\_ % of site

f. Approximate proportion of proposed action site with slopes:  0-10%: \_\_\_\_\_ 100 % of site  
 10-15%: \_\_\_\_\_ % of site  
 15% or greater: \_\_\_\_\_ % of site

g. Are there any unique geologic features on the project site?  Yes  No  
 If Yes, describe: \_\_\_\_\_

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h. Surface water features.

i. Does any portion of the project site contain wetlands or other waterbodies (including streams, rivers, ponds or lakes)?  Yes  No

ii. Do any wetlands or other waterbodies adjoin the project site?  Yes  No  
 If Yes to either i or ii, continue. If No, skip to E.2.i.

iii. Are any of the wetlands or waterbodies within or adjoining the project site regulated by any federal, state or local agency?  Yes  No

iv. For each identified regulated wetland and waterbody on the project site, provide the following information:

- Streams: Name \_\_\_\_\_ Classification \_\_\_\_\_
- Lakes or Ponds: Name \_\_\_\_\_ Classification \_\_\_\_\_
- Wetlands: Name \_\_\_\_\_ Approximate Size \_\_\_\_\_
- Wetland No. (if regulated by DEC) \_\_\_\_\_

v. Are any of the above water bodies listed in the most recent compilation of NYS water quality-impaired waterbodies?  Yes  No  
 If yes, name of impaired water body/bodies and basis for listing as impaired: \_\_\_\_\_

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i. Is the project site in a designated Floodway?  Yes  No

j. Is the project site in the 100 year Floodplain?  Yes  No

k. Is the project site in the 500 year Floodplain?  Yes  No

l. Is the project site located over, or immediately adjoining, a primary, principal or sole source aquifer?  Yes  No  
 If Yes:  
 i. Name of aquifer: \_\_\_\_\_

m. Identify the predominant wildlife species that occupy or use the project site: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

n. Does the project site contain a designated significant natural community?  Yes  No  
 If Yes:  
 i. Describe the habitat/community (composition, function, and basis for designation): \_\_\_\_\_  
 \_\_\_\_\_  
 ii. Source(s) of description or evaluation: \_\_\_\_\_  
 iii. Extent of community/habitat:  
 • Currently: \_\_\_\_\_ acres  
 • Following completion of project as proposed: \_\_\_\_\_ acres  
 • Gain or loss (indicate + or -): \_\_\_\_\_ acres

o. Does project site contain any species of plant or animal that is listed by the federal government or NYS as endangered or threatened, or does it contain any areas identified as habitat for an endangered or threatened species?  Yes  No

p. Does the project site contain any species of plant or animal that is listed by NYS as rare, or as a species of special concern?  Yes  No

q. Is the project site or adjoining area currently used for hunting, trapping, fishing or shell fishing?  Yes  No  
 If yes, give a brief description of how the proposed action may affect that use: \_\_\_\_\_  
 \_\_\_\_\_

**E.3. Designated Public Resources On or Near Project Site**

a. Is the project site, or any portion of it, located in a designated agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304?  Yes  No  
 If Yes, provide county plus district name/number: \_\_\_\_\_

b. Are agricultural lands consisting of highly productive soils present?  Yes  No  
 i. If Yes: acreage(s) on project site? \_\_\_\_\_  
 ii. Source(s) of soil rating(s): \_\_\_\_\_

c. Does the project site contain all or part of, or is it substantially contiguous to, a registered National Natural Landmark?  Yes  No  
 If Yes:  
 i. Nature of the natural landmark:  Biological Community  Geological Feature  
 ii. Provide brief description of landmark, including values behind designation and approximate size/extent: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

d. Is the project site located in or does it adjoin a state listed Critical Environmental Area?  Yes  No  
 If Yes:  
 i. CEA name: \_\_\_\_\_  
 ii. Basis for designation: \_\_\_\_\_  
 iii. Designating agency and date: \_\_\_\_\_

c. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on, or has been nominated by the NYS Board of Historic Preservation for inclusion on, the State or National Register of Historic Places?  Yes  No

If Yes:

i. Nature of historic/archaeological resource:  Archaeological Site  Historic Building or District

ii. Name: Armory Square Historic District

iii. Brief description of attributes on which listing is based: \_\_\_\_\_

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f. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?  Yes  No

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g. Have additional archaeological or historic site(s) or resources been identified on the project site?  Yes  No

If Yes:

i. Describe possible resource(s): \_\_\_\_\_

ii. Basis for identification: \_\_\_\_\_

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h. Is the project site within five miles of any officially designated and publicly accessible federal, state, or local scenic or aesthetic resource?  Yes  No

If Yes:

i. Identify resource: \_\_\_\_\_

ii. Nature of, or basis for, designation (e.g., established highway overlook, state or local park, state historic trail or scenic byway, etc.): \_\_\_\_\_

iii. Distance between project and resource: \_\_\_\_\_ miles.

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i. Is the project site located within a designated river corridor under the Wild, Scenic and Recreational Rivers Program 6 NYCRR 666?  Yes  No

If Yes:

i. Identify the name of the river and its designation: \_\_\_\_\_

ii. Is the activity consistent with development restrictions contained in 6NYCRR Part 666?  Yes  No

**F. Additional Information**

Attach any additional information which may be needed to clarify your project.

If you have identified any adverse impacts which could be associated with your proposal, please describe those impacts plus any measures which you propose to avoid or minimize them.

**G. Verification**

I certify that the information provided is true to the best of my knowledge.

Applicant/Sponsor Name Michael P. Wicker Date 11/09/16

Signature \_\_\_\_\_ Title Member

**PRINT FORM**



**Full Environmental Assessment Form**  
**Part 2 - Identification of Potential Project Impacts**

Agency Use Only (If applicable)

Project:	
Date:	

Part 2 is to be completed by the lead agency. Part 2 is designed to help the lead agency inventory all potential resources that could be affected by a proposed project or action. We recognize that the lead agency's reviewer(s) will not necessarily be environmental professionals. So, the questions are designed to walk a reviewer through the assessment process by providing a series of questions that can be answered using the information found in Part 1. To further assist the lead agency in completing Part 2, the form identifies the most relevant questions in Part 1 that will provide the information needed to answer the Part 2 question. When Part 2 is completed, the lead agency will have identified the relevant environmental areas that may be impacted by the proposed activity.

If the lead agency is a state agency and the action is in any Coastal Area, complete the Coastal Assessment Form before proceeding with this assessment.

**Tips for completing Part 2:**

- Review all of the information provided in Part 1.
- Review any application, maps, supporting materials and the Full EAF Workbook.
- Answer each of the 18 questions in Part 2.
- If you answer "Yes" to a numbered question, please complete all the questions that follow in that section.
- If you answer "No" to a numbered question, move on to the next numbered question.
- Check appropriate column to indicate the anticipated size of the impact.
- Proposed projects that would exceed a numeric threshold contained in a question should result in the reviewing agency checking the box "Moderate to large impact may occur."
- The reviewer is not expected to be an expert in environmental analysis.
- If you are not sure or undecided about the size of an impact, it may help to review the sub-questions for the general question and consult the workbook.
- When answering a question consider all components of the proposed activity, that is, the "whole action".
- Consider the possibility for long-term and cumulative impacts as well as direct impacts.
- Answer the question in a reasonable manner considering the scale and context of the project.

<b>1. Impact on Land</b> Proposed action may involve construction on, or physical alteration of, the land surface of the proposed site. (See Part 1. D.1) <i>If "Yes", answer questions a - j. If "No", move on to Section 2.</i>				<input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur		
a. The proposed action may involve construction on land where depth to water table is less than 3 feet.	E2d	<input type="checkbox"/>	<input type="checkbox"/>		
b. The proposed action may involve construction on slopes of 15% or greater.	E2f	<input type="checkbox"/>	<input type="checkbox"/>		
c. The proposed action may involve construction on land where bedrock is exposed, or generally within 5 feet of existing ground surface.	E2a	<input type="checkbox"/>	<input type="checkbox"/>		
d. The proposed action may involve the excavation and removal of more than 1,000 tons of natural material.	D2a	<input type="checkbox"/>	<input type="checkbox"/>		
e. The proposed action may involve construction that continues for more than one year or in multiple phases.	D1e	<input type="checkbox"/>	<input type="checkbox"/>		
f. The proposed action may result in increased erosion, whether from physical disturbance or vegetation removal (including from treatment by herbicides).	D2c, D2q	<input type="checkbox"/>	<input type="checkbox"/>		
g. The proposed action is, or may be, located within a Coastal Erosion hazard area.	B1j	<input type="checkbox"/>	<input type="checkbox"/>		
h. Other impacts: _____		<input type="checkbox"/>	<input type="checkbox"/>		

**2. Impact on Geological Features**

The proposed action may result in the modification or destruction of, or inhibit access to, any unique or unusual land forms on the site (e.g., cliffs, dunes, minerals, fossils, caves). (See Part 1. E.2.g)

NO

YES

*If "Yes", answer questions a - c. If "No", move on to Section 3.*

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. Identify the specific land form(s) attached: _____ _____	E2g	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may affect or is adjacent to a geological feature listed as a registered National Natural Landmark. Specific feature: _____	E3c	<input type="checkbox"/>	<input type="checkbox"/>
c. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>

**3. Impacts on Surface Water**

The proposed action may affect one or more wetlands or other surface water bodies (e.g., streams, rivers, ponds or lakes). (See Part 1. D.2, E.2.h)

NO

YES

*If "Yes", answer questions a - i. If "No", move on to Section 4.*

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may create a new water body.	D2b, D1h	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in an increase or decrease of over 10% or more than a 10 acre increase or decrease in the surface area of any body of water.	D2b	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may involve dredging more than 100 cubic yards of material from a wetland or water body.	D2a	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may involve construction within or adjoining a freshwater or tidal wetland, or in the bed or banks of any other water body.	E2h	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may create turbidity in a waterbody, either from upland erosion, runoff or by disturbing bottom sediments.	D2a, D2h	<input type="checkbox"/>	<input type="checkbox"/>
f. The proposed action may include construction of one or more intake(s) for withdrawal of water from surface water.	D2c	<input type="checkbox"/>	<input type="checkbox"/>
g. The proposed action may include construction of one or more outfall(s) for discharge of wastewater to surface water(s).	D2d	<input type="checkbox"/>	<input type="checkbox"/>
h. The proposed action may cause soil erosion, or otherwise create a source of stormwater discharge that may lead to siltation or other degradation of receiving water bodies.	D2e	<input type="checkbox"/>	<input type="checkbox"/>
i. The proposed action may affect the water quality of any water bodies within or downstream of the site of the proposed action.	E2h	<input type="checkbox"/>	<input type="checkbox"/>
j. The proposed action may involve the application of pesticides or herbicides in or around any water body.	D2q, E2h	<input type="checkbox"/>	<input type="checkbox"/>
k. The proposed action may require the construction of new, or expansion of existing, wastewater treatment facilities.	D1a, D2d	<input type="checkbox"/>	<input type="checkbox"/>

I. Other impacts: _____		<input type="checkbox"/>	<input type="checkbox"/>
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<b>4. Impact on groundwater</b> The proposed action may result in new or additional use of ground water, or may have the potential to introduce contaminants to ground water or an aquifer. (See Part 1. D.2.a, D.2.c, D.2.d, D.2.p, D.2.q, D.2.t) <i>If "Yes", answer questions a - h. If "No", move on to Section 5.</i>			
		<input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may require new water supply wells, or create additional demand on supplies from existing water supply wells.	D2c	<input type="checkbox"/>	<input type="checkbox"/>
b. Water supply demand from the proposed action may exceed safe and sustainable withdrawal capacity rate of the local supply or aquifer. Cite Source: _____	D2c	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may allow or result in residential uses in areas without water and sewer services.	D1a, D2c	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may include or require wastewater discharged to groundwater.	D2d, E2l	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may result in the construction of water supply wells in locations where groundwater is, or is suspected to be, contaminated.	D2c, E1f, E1g, E1h	<input type="checkbox"/>	<input type="checkbox"/>
f. The proposed action may require the bulk storage of petroleum or chemical products over ground water or an aquifer.	D2p, E2l	<input type="checkbox"/>	<input type="checkbox"/>
g. The proposed action may involve the commercial application of pesticides within 100 feet of potable drinking water or irrigation sources.	E2h, D2q, E2l, D2c	<input type="checkbox"/>	<input type="checkbox"/>
h. Other impacts: _____		<input type="checkbox"/>	<input type="checkbox"/>

<b>5. Impact on Flooding</b> The proposed action may result in development on lands subject to flooding. (See Part 1. E.2) <i>If "Yes", answer questions a - g. If "No", move on to Section 6.</i>			
		<input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may result in development in a designated floodway.	E2i	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in development within a 100 year floodplain.	E2j	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may result in development within a 500 year floodplain.	E2k	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may result in, or require, modification of existing drainage patterns.	D2b, D2e	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may change flood water flows that contribute to flooding.	D2b, E2i, E2j, E2k	<input type="checkbox"/>	<input type="checkbox"/>
f. If there is a dam located on the site of the proposed action, is the dam in need of repair, or upgrade?	E1e	<input type="checkbox"/>	<input type="checkbox"/>

g. Other impacts: _____		<input type="checkbox"/>	<input type="checkbox"/>
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**6. Impacts on Air**  
 The proposed action may include a state regulated air emission source.  NO  YES  
 (See Part I. D.2.f., D.2.h, D.2.g)  
 If "Yes", answer questions a - f. If "No", move on to Section 7.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. If the proposed action requires federal or state air emission permits, the action may also emit one or more greenhouse gases at or above the following levels: i. More than 1000 tons/year of carbon dioxide (CO <sub>2</sub> ) ii. More than 3.5 tons/year of nitrous oxide (N <sub>2</sub> O) iii. More than 1000 tons/year of carbon equivalent of perfluorocarbons (PFCs) iv. More than .045 tons/year of sulfur hexafluoride (SF <sub>6</sub> ) v. More than 1000 tons/year of carbon dioxide equivalent of hydrochloroflourocarbons (HFCs) emissions vi. 43 tons/year or more of methane	D2g D2g D2g D2g D2g D2h	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
b. The proposed action may generate 10 tons/year or more of any one designated hazardous air pollutant, or 25 tons/year or more of any combination of such hazardous air pollutants.	D2g	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may require a state air registration, or may produce an emissions rate of total contaminants that may exceed 5 lbs. per hour, or may include a heat source capable of producing more than 10 million BTU's per hour.	D2f, D2g	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may reach 50% of any of the thresholds in "a" through "c", above.	D2g	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may result in the combustion or thermal treatment of more than 1 ton of refuse per hour.	D2s	<input type="checkbox"/>	<input type="checkbox"/>
f. Other impacts: _____		<input type="checkbox"/>	<input type="checkbox"/>

**7. Impact on Plants and Animals**  
 The proposed action may result in a loss of flora or fauna. (See Part I. E.2. m.-q.)  NO  YES  
 If "Yes", answer questions a - j. If "No", move on to Section 8.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may cause reduction in population or loss of individuals of any threatened or endangered species, as listed by New York State or the Federal government, that use the site, or are found on, over, or near the site.	E2o	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in a reduction or degradation of any habitat used by any rare, threatened or endangered species, as listed by New York State or the federal government.	E2o	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may cause reduction in population, or loss of individuals, of any species of special concern or conservation need, as listed by New York State or the Federal government, that use the site, or are found on, over, or near the site.	E2p	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may result in a reduction or degradation of any habitat used by any species of special concern and conservation need, as listed by New York State or the Federal government.	E2p	<input type="checkbox"/>	<input type="checkbox"/>

e. The proposed action may diminish the capacity of a registered National Natural Landmark to support the biological community it was established to protect.	E3c	<input type="checkbox"/>	<input type="checkbox"/>
f. The proposed action may result in the removal of, or ground disturbance in, any portion of a designated significant natural community. Source: _____	E2n	<input type="checkbox"/>	<input type="checkbox"/>
g. The proposed action may substantially interfere with nesting/breeding, foraging, or over-wintering habitat for the predominant species that occupy or use the project site.	E2m	<input type="checkbox"/>	<input type="checkbox"/>
h. The proposed action requires the conversion of more than 10 acres of forest, grassland or any other regionally or locally important habitat. Habitat type & information source: _____	E1b	<input type="checkbox"/>	<input type="checkbox"/>
i. Proposed action (commercial, industrial or recreational projects, only) involves use of herbicides or pesticides.	D2q	<input type="checkbox"/>	<input type="checkbox"/>
j. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>

<b>8. Impact on Agricultural Resources</b>			
The proposed action may impact agricultural resources. (See Part 1. E.3.a. and b.)		<input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES
<i>If "Yes", answer questions a - h. If "No", move on to Section 9.</i>			
	<b>Relevant Part I Question(s)</b>	<b>No, or small impact may occur</b>	<b>Moderate to large impact may occur</b>
a. The proposed action may impact soil classified within soil group 1 through 4 of the NYS Land Classification System.	E2c, E3b	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may sever, cross or otherwise limit access to agricultural land (includes cropland, hayfields, pasture, vineyard, orchard, etc).	E1a, E1b	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may result in the excavation or compaction of the soil profile of active agricultural land.	E3b	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may irreversibly convert agricultural land to non-agricultural uses, either more than 2.5 acres if located in an Agricultural District, or more than 10 acres if not within an Agricultural District.	E1b, E3a	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may disrupt or prevent installation of an agricultural land management system.	E1 a, E1b	<input type="checkbox"/>	<input type="checkbox"/>
f. The proposed action may result, directly or indirectly, in increased development potential or pressure on farmland.	C2c, C3, D2c, D2d	<input type="checkbox"/>	<input type="checkbox"/>
g. The proposed project is not consistent with the adopted municipal Farmland Protection Plan.	C2c	<input type="checkbox"/>	<input type="checkbox"/>
h. Other impacts: _____		<input type="checkbox"/>	<input type="checkbox"/>

<b>9. Impact on Aesthetic Resources</b> The land use of the proposed action are obviously different from, or are in sharp contrast to, current land use patterns between the proposed project and a scenic or aesthetic resource. (Part 1. E.1.a, E.1.b, E.3.h.) <i>If "Yes", answer questions a - g. If "No", go to Section 10.</i>			
		<input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES
	<b>Relevant Part I Question(s)</b>	<b>No, or small impact may occur</b>	<b>Moderate to large impact may occur</b>
a. Proposed action may be visible from any officially designated federal, state, or local scenic or aesthetic resource.	E3h	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in the obstruction, elimination or significant screening of one or more officially designated scenic views.	E3h, C2b	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may be visible from publicly accessible vantage points: i. Seasonally (e.g., screened by summer foliage, but visible during other seasons) ii. Year round	E3h	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
d. The situation or activity in which viewers are engaged while viewing the proposed action is: i. Routine travel by residents, including travel to and from work ii. Recreational or tourism based activities	E3h E2q, E1c	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
e. The proposed action may cause a diminishment of the public enjoyment and appreciation of the designated aesthetic resource.	E3h	<input type="checkbox"/>	<input type="checkbox"/>
f. There are similar projects visible within the following distance of the proposed project: 0-1/2 mile 1/2 - 3 mile 3-5 mile 5+ mile	D1a, E1a, D1f, D1g	<input type="checkbox"/>	<input type="checkbox"/>
g. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>

<b>10. Impact on Historic and Archeological Resources</b> The proposed action may occur in or adjacent to a historic or archaeological resource. (Part 1. E.3.e, f. and g.) <i>If "Yes", answer questions a - e. If "No", go to Section 11.</i>			
		<input type="checkbox"/> NO	<input checked="" type="checkbox"/> YES
	<b>Relevant Part I Question(s)</b>	<b>No, or small impact may occur</b>	<b>Moderate to large impact may occur</b>
a. The proposed action may occur wholly or partially within, or substantially contiguous to, any buildings, archaeological site or district which is listed on or has been nominated by the NYS Board of Historic Preservation for inclusion on the State or National Register of Historic Places.	E3e	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may occur wholly or partially within, or substantially contiguous to, an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory.	E3f	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may occur wholly or partially within, or substantially contiguous to, an archaeological site not included on the NY SHPO inventory. Source: _____	E3g	<input checked="" type="checkbox"/>	<input type="checkbox"/>

d. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>
If any of the above (a-d) are answered "Moderate to large impact may occur", continue with the following questions to help support conclusions in Part 3:			
i. The proposed action may result in the destruction or alteration of all or part of the site or property.	E3e, E3g, E3f	<input type="checkbox"/>	<input type="checkbox"/>
ii. The proposed action may result in the alteration of the property's setting or integrity.	E3e, E3f, E3g, E1a, E1b	<input type="checkbox"/>	<input type="checkbox"/>
iii. The proposed action may result in the introduction of visual elements which are out of character with the site or property, or may alter its setting.	E3e, E3f, E3g, E3h, C2, C3	<input type="checkbox"/>	<input type="checkbox"/>

<b>11. Impact on Open Space and Recreation</b>			
The proposed action may result in a loss of recreational opportunities or a reduction of an open space resource as designated in any adopted municipal open space plan. (See Part 1. C.2.c, E.1.c., E.2.q.) <i>If "Yes", answer questions a - e. If "No", go to Section 12.</i>		<input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may result in an impairment of natural functions, or "ecosystem services", provided by an undeveloped area, including but not limited to stormwater storage, nutrient cycling, wildlife habitat.	D2e, E1b, E2h, E2m, E2o, E2n, E2p	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in the loss of a current or future recreational resource.	C2a, E1c, C2c, E2q	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may eliminate open space or recreational resource in an area with few such resources.	C2a, C2c, E1c, E2q	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may result in loss of an area now used informally by the community as an open space resource.	C2c, E1c	<input type="checkbox"/>	<input type="checkbox"/>
e. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>

<b>12. Impact on Critical Environmental Areas</b>			
The proposed action may be located within or adjacent to a critical environmental area (CEA). (See Part 1. E.3.d) <i>If "Yes", answer questions a - c. If "No", go to Section 13.</i>		<input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may result in a reduction in the quantity of the resource or characteristic which was the basis for designation of the CEA.	E3d	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in a reduction in the quality of the resource or characteristic which was the basis for designation of the CEA.	E3d	<input type="checkbox"/>	<input type="checkbox"/>
c. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>

**13. Impact on Transportation**  
 The proposed action may result in a change to existing transportation systems.  NO  YES  
 (See Part I. D.2.j)  
 If "Yes", answer questions a - f. If "No", go to Section 14.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. Projected traffic increase may exceed capacity of existing road network.	D2j	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in the construction of paved parking area for 500 or more vehicles.	D2j	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action will degrade existing transit access.	D2j	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action will degrade existing pedestrian or bicycle accommodations.	D2j	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may alter the present pattern of movement of people or goods.	D2j	<input type="checkbox"/>	<input type="checkbox"/>
f. Other impacts: _____		<input type="checkbox"/>	<input type="checkbox"/>

**14. Impact on Energy**  
 The proposed action may cause an increase in the use of any form of energy.  NO  YES  
 (See Part I. D.2.k)  
 If "Yes", answer questions a - e. If "No", go to Section 15.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action will require a new, or an upgrade to an existing, substation.	D2k	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action will require the creation or extension of an energy transmission or supply system to serve more than 50 single or two-family residences or to serve a commercial or industrial use.	D1f, D1q, D2k	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may utilize more than 2,500 MWhrs per year of electricity.	D2k	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may involve heating and/or cooling of more than 100,000 square feet of building area when completed.	D1g	<input type="checkbox"/>	<input type="checkbox"/>
e. Other Impacts: _____			

**15. Impact on Noise, Odor, and Light**  
 The proposed action may result in an increase in noise, odors, or outdoor lighting.  NO  YES  
 (See Part I. D.2.m., n., and o.)  
 If "Yes", answer questions a - f. If "No", go to Section 16.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may produce sound above noise levels established by local regulation.	D2m	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in blasting within 1,500 feet of any residence, hospital, school, licensed day care center, or nursing home.	D2m, E1d	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may result in routine odors for more than one hour per day.	D2o	<input type="checkbox"/>	<input type="checkbox"/>



d. The proposed action may result in light shining onto adjoining properties.	D2n	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may result in lighting creating sky-glow brighter than existing area conditions.	D2n, E1a	<input type="checkbox"/>	<input type="checkbox"/>
f. Other impacts: _____		<input type="checkbox"/>	<input type="checkbox"/>

**16. Impact on Human Health**

The proposed action may have an impact on human health from exposure to new or existing sources of contaminants. (See Part 1.D.2.q., E.1. d. f. g. and h.)  
*If "Yes", answer questions a - m. If "No", go to Section 17.*

NO

YES

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action is located within 1500 feet of a school, hospital, licensed day care center, group home, nursing home or retirement community.	E1d	<input type="checkbox"/>	<input type="checkbox"/>
b. The site of the proposed action is currently undergoing remediation.	E1g, E1h	<input type="checkbox"/>	<input type="checkbox"/>
c. There is a completed emergency spill remediation, or a completed environmental site remediation on, or adjacent to, the site of the proposed action.	E1g, E1h	<input type="checkbox"/>	<input type="checkbox"/>
d. The site of the action is subject to an institutional control limiting the use of the property (e.g., easement or deed restriction).	E1g, E1h	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may affect institutional control measures that were put in place to ensure that the site remains protective of the environment and human health.	E1g, E1h	<input type="checkbox"/>	<input type="checkbox"/>
f. The proposed action has adequate control measures in place to ensure that future generation, treatment and/or disposal of hazardous wastes will be protective of the environment and human health.	D2t	<input type="checkbox"/>	<input type="checkbox"/>
g. The proposed action involves construction or modification of a solid waste management facility.	D2q, E1f	<input type="checkbox"/>	<input type="checkbox"/>
h. The proposed action may result in the unearthing of solid or hazardous waste.	D2q, E1f	<input type="checkbox"/>	<input type="checkbox"/>
i. The proposed action may result in an increase in the rate of disposal, or processing, of solid waste.	D2r, D2s	<input type="checkbox"/>	<input type="checkbox"/>
j. The proposed action may result in excavation or other disturbance within 2000 feet of a site used for the disposal of solid or hazardous waste.	E1f, E1g, E1h	<input type="checkbox"/>	<input type="checkbox"/>
k. The proposed action may result in the migration of explosive gases from a landfill site to adjacent off site structures.	E1f, E1g	<input type="checkbox"/>	<input type="checkbox"/>
l. The proposed action may result in the release of contaminated leachate from the project site.	D2s, E1f, D2r	<input type="checkbox"/>	<input type="checkbox"/>
m. Other impacts: _____			

**17. Consistency with Community Plans**  
 The proposed action is not consistent with adopted land use plans.  NO  YES  
 (See Part 1. C.1, C.2. and C.3.)  
 If "Yes", answer questions a - h. If "No", go to Section 18.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action's land use components may be different from, or in sharp contrast to, current surrounding land use pattern(s).	C2, C3, D1a E1a, E1b	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action will cause the permanent population of the city, town or village in which the project is located to grow by more than 5%.	C2	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action is inconsistent with local land use plans or zoning regulations.	C2, C2, C3	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action is inconsistent with any County plans, or other regional land use plans.	C2, C2	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may cause a change in the density of development that is not supported by existing infrastructure or is distant from existing infrastructure.	C3, D1c, D1d, D1f, D1d, E1b	<input type="checkbox"/>	<input type="checkbox"/>
f. The proposed action is located in an area characterized by low density development that will require new or expanded public infrastructure.	C4, D2c, D2d D2j	<input type="checkbox"/>	<input type="checkbox"/>
g. The proposed action may induce secondary development impacts (e.g., residential or commercial development not included in the proposed action)	C2a	<input type="checkbox"/>	<input type="checkbox"/>
h. Other: _____		<input type="checkbox"/>	<input type="checkbox"/>

**18. Consistency with Community Character**  
 The proposed project is inconsistent with the existing community character.  NO  YES  
 (See Part 1. C.2, C.3, D.2, E.3)  
 If "Yes", answer questions a - g. If "No", proceed to Part 3.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may replace or eliminate existing facilities, structures, or areas of historic importance to the community.	E3e, E3f, E3g	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may create a demand for additional community services (e.g. schools, police and fire)	C4	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may displace affordable or low-income housing in an area where there is a shortage of such housing.	C2, C3, D1f D1g, E1a	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may interfere with the use or enjoyment of officially recognized or designated public resources.	C2, E3	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action is inconsistent with the predominant architectural scale and character.	C2, C3	<input type="checkbox"/>	<input type="checkbox"/>
f. Proposed action is inconsistent with the character of the existing natural landscape.	C2, C3 E1a, E1b E2g, E2h	<input type="checkbox"/>	<input type="checkbox"/>
g. Other impacts: _____		<input type="checkbox"/>	<input type="checkbox"/>

**PRINT FULL FORM**

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

Date : \_\_\_\_\_

**Full Environmental Assessment Form**  
**Part 3 - Evaluation of the Magnitude and Importance of Project Impacts**  
**and**  
**Determination of Significance**

Part 3 provides the reasons in support of the determination of significance. The lead agency must complete Part 3 for every question in Part 2 where the impact has been identified as potentially moderate to large or where there is a need to explain why a particular element of the proposed action will not, or may, result in a significant adverse environmental impact.

Based on the analysis in Part 3, the lead agency must decide whether to require an environmental impact statement to further assess the proposed action or whether available information is sufficient for the lead agency to conclude that the proposed action will not have a significant adverse environmental impact. By completing the certification on the next page, the lead agency can complete its determination of significance.

**Reasons Supporting This Determination:**

To complete this section:

- Identify the impact based on the Part 2 responses and describe its magnitude. Magnitude considers factors such as severity, size or extent of an impact.
- Assess the importance of the impact. Importance relates to the geographic scope, duration, probability of the impact occurring, number of people affected by the impact and any additional environmental consequences if the impact were to occur.
- The assessment should take into consideration any design element or project changes.
- Repeat this process for each Part 2 question where the impact has been identified as potentially moderate to large or where there is a need to explain why a particular element of the proposed action will not, or may, result in a significant adverse environmental impact.
- Provide the reason(s) why the impact may, or will not, result in a significant adverse environmental impact
- For Conditional Negative Declarations identify the specific condition(s) imposed that will modify the proposed action so that no significant adverse environmental impacts will result.
- Attach additional sheets, as needed.

See attached.

**Determination of Significance - Type 1 and Unlisted Actions**

SEQR Status:  Type 1  Unlisted

Identify portions of EAF completed for this Project:  Part 1  Part 2  Part 3

Upon review of the information recorded on this EAF, as noted, plus this additional support information related project materials

and considering both the magnitude and importance of each identified potential impact, it is the conclusion of the Syracuse Industrial Development Agency \_\_\_\_\_ as lead agency that:

A. This project will result in no significant adverse impacts on the environment, and, therefore, an environmental impact statement need not be prepared. Accordingly, this negative declaration is issued.

B. Although this project could have a significant adverse impact on the environment, that impact will be avoided or substantially mitigated because of the following conditions which will be required by the lead agency:

There will, therefore, be no significant adverse impacts from the project as conditioned, and, therefore, this conditioned negative declaration is issued. A conditioned negative declaration may be used only for UNLISTED actions (see 6 NYCRR 617.d).

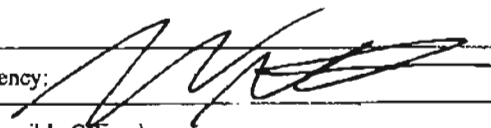
C. This Project may result in one or more significant adverse impacts on the environment, and an environmental impact statement must be prepared to further assess the impact(s) and possible mitigation and to explore alternatives to avoid or reduce those impacts. Accordingly, this positive declaration is issued.

Name of Action: Erie Water Street Associates, LLC Project

Name of Lead Agency: Syracuse Industrial Development Agency

Name of Responsible Officer in Lead Agency: William Ryan

Title of Responsible Officer: Chairman

Signature of Responsible Officer in Lead Agency: 

Date: 11-15-16

Signature of Preparer (if different from Responsible Officer)

Date:

**For Further Information:**

Contact Person: Honora Spillane, Deputy Commissioner - Dept. of Neighborhood and Business Development

Address: City Hall Commons - 7th Fl., 201 E Washington Street, Syracuse, NY 13202

Telephone Number: 315-473-3275

E-mail:

**For Type I Actions and Conditioned Negative Declarations, a copy of this Notice is sent to:**

Chief Executive Officer of the political subdivision in which the action will be principally located (e.g., Town / City / Village of)

Other involved agencies (if any)

Applicant (if any)

Environmental Notice Bulletin: <http://www.dec.ny.gov/enb/enb.html>

PRINT FULL FORM

**EXHIBIT "F"**

**NOTICE OF PUBLIC HEARING WITH EVIDENCE OF PUBLICATION AND COPIES  
OF LETTERS TO AFFECTED TAX JURISDICTIONS PURSUANT TO SECTIONS  
859-a OF THE ACT**

## NOTICE OF PUBLIC HEARING

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 20<sup>th</sup> day of December, 2016, at 8:30 o'clock a.m., local time, at 233 East Washington Street, Common Council Chambers, City Hall, Syracuse, New York, in connection with the following matter:

Erie Water Street Associates, LLC, or an entity to be formed (the "Company"), has requested the Agency undertake a project (the "Project") consisting of: (A)(i) the acquisition of an interest in approximately 9,948 square feet of improved real property located at 219-225 West Fayette Street, in the City of Syracuse, New York (the "Land"); (ii) the reconstruction and renovation of an existing 3 story approximately 25,007 square foot building (the "Facility"), to include but not be limited to, a new store front on the West Fayette Street side of the building; the construction of a new first floor building lobby with elevator and stair tower; the redevelopment of the building's second and third levels to house approximately 16 market rate one-bedroom apartment units; and repairs to the building's Walton Street façade; all located on the Land; (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment, including but not limited to new mechanical systems (the "Equipment" and together with the Land and the Facility, the "Project Facility"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use taxes and mortgage recording tax (except as limited by Section 874 of the General Municipal Law) (collectively the "Financial Assistance"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Company 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 City Hall Commons, 7<sup>th</sup> Floor, 201 East Washington Street, Syracuse, New York.

Dated: December 1, 2016

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

# The Post-Standard

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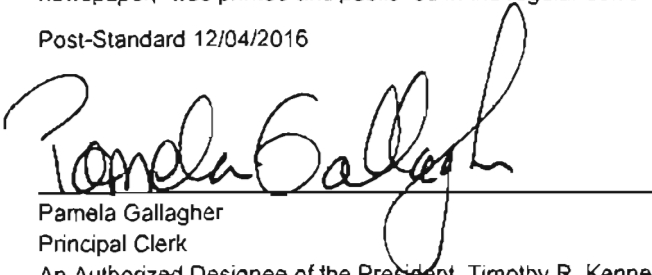
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Date	Position	Description	P.O. Number	Ad Size
12/04/2016	Other Legals NY	NOTICE OF PUBLIC HEARING NOTICE IS HEREBY GIVEN that	matter #3084161	1 x 137.00 CL

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 12/04/2016



Pamela Gallagher  
Principal Clerk

An Authorized Designee of the President, Timothy R. Kennedy  
Subscribed and sworn to before me, this 5th day of December  
2016



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
12/04/2016	Other Legals NY	NOTICE OF PUBLIC HEARING NOTICE IS HEREBY GIVEN that a	matter #3084161	1 x 137.00 CL

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gether with the Land and the Facility, the "Project Facility"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use taxes and mortgage recording tax (except as limited by Section 874 of the General Municipal Law) (collectively the "Financial Assistance"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency, and the sublease of the Project Facility back to the Company pursuant to a sublease agreement. The Company 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 City Hall Commons, 7th Floor, 201 East Washington Street, Syracuse, New York. Dated: December 1, 2016 CITY OF SYRACUSE INDUS-

TRIAL DEVELOPMENT  
AGENCY



BARCLAY DAMON <sup>LLP</sup>

Susan R. Katzoff  
Partner

December 1, 2016

VIA CERTIFIED MAIL  
7016 1970 0000 3832 9835

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

VIA CERTIFIED MAIL  
7016 1970 0000 3832 9828

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*”)  
Erie Water Street Associates, LLC (the “*Company*”)  
Erie Water Street Associates, LLC Project

Dear Mayor and County Executive:

Enclosed herewith please find a Notice of Public Hearing in relation to the above-referenced project. The proposed project (the “*Project*”) consists of: (A)(i) the acquisition of an interest in approximately 9,948 square feet of improved real property located at 219-225 West Fayette Street, in the City of Syracuse, New York (the “*Land*”); (ii) the reconstruction and renovation of an existing 3 story approximately 25,007 square foot building (the “*Facility*”), to include but not be limited to, a new store front on the West Fayette Street side of the building; the construction of a new first floor building lobby with elevator and stair tower; the redevelopment of the building’s second and third levels to house approximately 16 market rate one-bedroom apartment units; and repairs to the building’s Walton Street façade; all located on the Land; (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment, including but not limited to new mechanical systems (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use taxes and mortgage recording tax (except as limited by Section 874 of the General Municipal Law) (collectively the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping

December 1, 2016

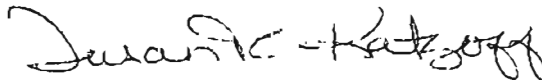
Page 2

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

General Municipal Law Section 859-a requires that notice of the Public Hearing be given to the chief executive officer of each affected tax jurisdiction in which the Project is located.

As stated in the notice, the public hearing is scheduled for **December 20, 2016** at 8:30 a.m. in the Common Council Chambers at City Hall.

Very truly yours,



Susan R. Katzoff

SRK/ltm  
Enclosure

cc: Meghan Ryan, Esq., City of Syracuse, via email (w/Enclosure)  
Honora Spillane, City of Syracuse Industrial Development Agency, via email (w/Enclosure)  
Judy DeLaney, City of Syracuse Industrial Development Agency, via email (w/Enclosure)

## NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Section 859-a of the New York General Municipal Law, will be held by the City of Syracuse Industrial Development Agency (the "Agency") on the 20<sup>th</sup> day of December, 2016, at 8:30 o'clock a.m., local time, at 233 East Washington Street, Common Council Chambers, City Hall, Syracuse, New York, in connection with the following matter:

Erie Water Street Associates, LLC, or an entity to be formed (the "Company"), has requested the Agency undertake a project (the "Project") consisting of: (A)(i) the acquisition of an interest in approximately 9,948 square feet of improved real property located at 219-225 West Fayette Street, in the City of Syracuse, New York (the "Land"); (ii) the reconstruction and renovation of an existing 3 story approximately 25,007 square foot building (the "Facility"), to include but not be limited to, a new store front on the West Fayette Street side of the building; the construction of a new first floor building lobby with elevator and stair tower; the redevelopment of the building's second and third levels to house approximately 16 market rate one-bedroom apartment units; and repairs to the building's Walton Street façade; all located on the Land; (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment, including but not limited to new mechanical systems (the "Equipment" and together with the Land and the Facility, the "Project Facility"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use taxes and mortgage recording tax (except as limited by Section 874 of the General Municipal Law) (collectively the "Financial Assistance"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

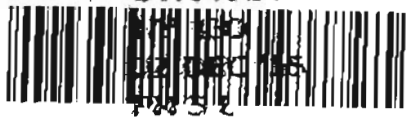
The Company shall be the initial owner or operator of the Project Facility.

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 City Hall Commons, 7<sup>th</sup> Floor, 201 East Washington Street, Syracuse, New York.

Dated: December 1, 2016

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY



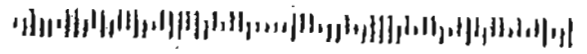
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Barclay Damon Tower  
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Syracuse, NY 13202

Attn: Susan Katzoff, Esq.



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1. Article Addressed to:

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



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2. Article Number (Transfer from service label)

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 Agent  
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Honorable ~~John~~ <sup>Joanne</sup> M. Mahoney  
 County Executive, Onondaga County  
 John Mulroy Civic Center, 14<sup>th</sup> Floor  
 421 Montgomery Street  
 Syracuse, New York 13202



9590 9402 2129 6132 4538 33

2. Article Number *(Manufacturer)*  
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PS Form 3811, July 2015 PSN 7630-02-000-8053

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*Dana Pompa*  Agent  
 Addressee

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| <input type="checkbox"/> Collect on Delivery Restricted Delivery       | <input type="checkbox"/> Signature Confirmation Restricted Delivery |
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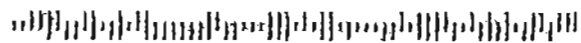
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 Attn: Susan R. Katzoff, Esq.



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**EXHIBIT "G"**

**SEQRA RESOLUTION**

## SEQRA RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on December 20, 2016, 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, Donald Schoenwald, Esq., Steven Thompson, Kenneth Kinsey

**EXCUSED:** Catherine Richardson, Esq.

**THE FOLLOWING PERSONS WERE ALSO PRESENT:** Staff Present: Honora Spillane, Judith DeLaney, Meghan Ryan, Esq., Susan Katzoff, Esq., John Vavonese, Meghan Ryan, Esq.; Others: Barry Lentz, Paul Curtin, Carol Zenzel, Esq., Timothy Lynn, Esq., Donna Harris, Leann West, Aggie Lane, Michael Wicker, James Trasher, Mark Riley, Rich Punchanski, David Delvecchio, Ed Riley, Richard Engel, Esq., Alex Marion; Media Present: Rick Moriarty

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

### RESOLUTION DETERMINING THAT THE ACQUISITION, CONSTRUCTION, RECONSTRUCTION, RENOVATION AND EQUIPPING OF A CERTAIN PROJECT AT THE REQUEST OF ERIE WATER STREET ASSOCIATES, LLC 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**, by application dated November 9, 2016 (the "*Application*"), Erie Water Street Associates, LLC, or an entity to be formed (the "*Company*"), requested the Agency undertake a project (the "*Project*") consisting of: (A)(i) the acquisition of an interest in approximately 9,948 square feet of improved real property located at 219-225 West Fayette

Street, in the City of Syracuse, New York (the “*Land*”); (ii) the reconstruction and renovation of an existing 3 story approximately 25,007 square foot building (the “*Facility*”), to include but not be limited to, a new store front on the West Fayette Street side of the building; the construction of a new first floor building lobby with elevator and stair tower; the redevelopment of the building’s second and third levels to house approximately 16 market rate one-bedroom apartment units; and repairs to the building’s Walton Street façade; all located on the Land; (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment, including but not limited to new mechanical systems (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use taxes and mortgage recording tax (except as limited by Section 874 of the General Municipal Law) (collectively the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, pursuant to State Environmental Quality Review Act (“*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**, to aid the Agency in determining whether the acquisition, construction, and equipping of the Project may have a significant effect upon the environment, the Company has prepared and submitted to the Agency an Environmental Assessment Form (the “*EAF*”), and copies of said EAF are on file in the office of the Agency and are readily accessible to the public; and

**WHEREAS**, by resolution adopted November 15, 2016 (the “*Lead Agency Resolution*”), the Agency appointed itself “lead agency” for purposes of a conducting a coordinated environmental review under SEQRA; and

**WHEREAS**, as a result of its careful review and examination of the Project and correspondence from other involved agencies, the Agency finds that, on balance, and after careful consideration of all relevant Project documentation, it has more than adequate information to evaluate all of the relevant benefits and potential impacts; and

**WHEREAS**, the Agency has prepared a negative declaration that summarizes its consideration of various factors in accordance with SEQRA; and

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

(1) Based upon an examination of the EAF prepared by the Company, the criteria contained in 6 NYCRR §617.7(c), and based further upon the Agency’s knowledge of the area surrounding the Project Facility, all the representations made by the Company in connection with



the Project, and such further investigation of the Project and its environmental effects as the Agency has deemed appropriate, the Agency makes the following findings and determinations with respect to the Project pursuant to SEQRA:

(a) The Project consists of the components described above in the second WHEREAS clause of this resolution and constitutes a “project” as such term is defined in the Act;

(b) The Project constitutes a “Type 1 Action” (as said quoted term is defined in SEQRA);

(c) The Agency declared itself “Lead Agency” (as said quoted term is defined in SEQRA) with respect to a coordinated review of the Project pursuant to SEQRA;

(d) The Project will not have a significant effect on the environment, and the Agency will not require the preparation of an Environmental Impact Statement with respect to the Project; and

(e) As a consequence of the foregoing, the Agency has prepared a Negative Declaration with respect to the Project, a copy of which is 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) The Secretary of the Agency is hereby authorized and directed to distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

The question of the adoption of the foregoing resolution was duly put to vote on a roll call, which resulted as follows:

	<u>AYE</u>	<u>NAY</u>
William Ryan	X	
Donald Schoenwald, Esq.	X	
Steven Thompson	X	
Kenneth Kinsey	X	

The foregoing resolution was thereupon declared duly adopted.

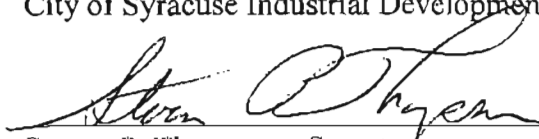
STATE OF NEW YORK            )  
  ) SS.:  
COUNTY OF ONONDAGA        )

I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the "*Agency*") held on December 20, 2016, with the original thereof on file in my office, and that the same (including all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

**I FURTHER CERTIFY** that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

**I FURTHER CERTIFY** that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the seal of the Agency this 20<sup>th</sup> day of December 20, 2016.

City of Syracuse Industrial Development Agency  
  
\_\_\_\_\_  
Steven P. Thompson, Secretary

( S E A L )

**EXHIBIT "A"**

**NEGATIVE DECLARATION**

**NEGATIVE DECLARATION**

**NOTICE OF DETERMINATION  
OF NO SIGNIFICANT EFFECT  
ON THE ENVIRONMENT**

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In accordance with Article 8 (State Environmental Quality Review a/k/a SEQR) of the Environmental Conservation Law (the "Act"), and the statewide regulations under the Act (6 NYCRR Part 617) (the "Regulations"), the City of Syracuse Industrial Development Agency ("Agency") has considered the proposed Erie Water Street Associates, LLC Project, which is more accurately described below. The Agency has determined: (i) that the proposed project is a Type I Action pursuant to the Regulations; (ii) that the Agency has engaged in an environmental review of the Project; (iii) that upon conducting said review, the Agency has determined that the Project will result in no major environmental impacts and therefore will not have a significant effect on the environment; and (iv) therefore that an environmental impact statement is not required to be prepared with respect to said Project. THIS NOTICE IS A NEGATIVE DECLARATION FOR THE PURPOSES OF THE ACT.

1. Agency:

The Agency is the City of Syracuse Industrial Development Agency, Syracuse, New York.

2. Contact for Further Information:

Contact Person:  
Ms. Honora Spillane, Deputy Commissioner

Address:  
City of Syracuse Dept. of Neighborhood and Business Development  
333 W. Washington St., Suite 130  
Syracuse, NY 13202

Telephone Number: (315) 473-3275

3. Project Description:

Erie Water Street Associates, LLC, or an entity to be formed (the "*Company*"), has requested the Agency undertake a project (the "*Project*") consisting of: (A)(i) the acquisition of an interest in approximately 9,948 square feet of improved real property located at 219-225 West Fayette Street, in the City of Syracuse, New York (the "*Land*"); (ii) the reconstruction and renovation of an

existing 3 story approximately 25,007 square foot building (the "Facility"), to include but not be limited to, a new store front on the West Fayette Street side of the building; the construction of a new first floor building lobby with elevator and stair tower; the redevelopment of the building's second and third levels to house approximately 16 market rate one-bedroom apartment units; and repairs to the building's Walton Street façade; all located on the Land; (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment, including but not limited to new mechanical systems (the "Equipment" and together with the Land and the Facility, the "Project Facility"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use taxes and mortgage recording tax (except as limited by Section 874 of the General Municipal Law) (collectively the "Financial Assistance"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

4. Project Location:

The Project involves property located at 219-225 West Fayette Street in the City of Syracuse.

5. Reasons for Determination of Non-Significance:

See Exhibit "A" attached hereto.

DATED: December 20, 2016

CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY

By: 

William M. Ryan, Chairman

## Negative Declaration Exhibit A

### Criteria for Determining Significance

As proposed, the reasonably anticipated environmental effects of the aforementioned Erie Water Street Associates, LLC project will not be significant. This conclusion results from the thorough evaluation of the Project's attributes and their environmental effects against the criteria provided in NYSDEC regulations at 6 NYCRR §617 et. seq. A summary of this evaluation follows.

#### Determination of Environmental Significance

To determine whether the Project may have a significant effect on the environment, the impacts that may be reasonably expected to result from the proposed Project must be compared to criteria specified in NYSDEC regulations. (6 NYCRR §617.7). These criteria are considered indicators of significant effects on the environment.

#### Criterion 1

**A substantial adverse change in existing a) air quality; b) ground or surface water quality or quantity; c) traffic levels; d) noise levels; e) a substantial increase in solid waste production; f) a substantial increase in potential for erosion, flooding, leaching or drainage problems.**

##### a) Air quality

The Project primarily involves the acquisition, renovation, reconstruction and equipping of the Facility and will result in physical improvements to the Facility. The Project may involve the potential for minor, temporary changes in air quality in the area immediately surrounding the site during the period of renovation and construction. Any potentially hazardous materials located on-site, such as lead-based materials, will be removed from the Facility prior to the renovation and disposed of in accordance with all local, state and federal laws, thereby reducing the potential for such materials to become airborne and migrate off-site. Further, the Company and its contractors will take all necessary measures to mitigate any short-term renovation and construction-related impacts (i.e., keeping windows closed as much as possible during renovation and reconstruction activities, using proper ventilation equipment, limiting the use of dumpsters and dump trucks for construction debris, watering construction debris to reduce dust and prevent airborne migration, etc.).

##### b) Ground or surface water quality or quantity

The Project is located in an urban area and involves the renovation of existing improvements. As such, the Project is not expected to result in an adverse change in ground or surface water quality or quantity.

c) Traffic levels

The Project is intended to attract new businesses and visitors to the Project Facility. The levels of service at surrounding intersections are not expected to change. The Project is not anticipated to adversely impact existing parking capacity in the downtown area as employees and patrons of the Project Facility will be able to utilize the 840 car on-site parking garage. In addition, on-street parking and surface parking lots are located in the immediate vicinity of the Project Facility.

d) Noise levels

The Project may involve the potential for minor, temporary changes in noise quality due to typical construction-related activities. However, any such impacts to noise quality will be mitigated to the extent possible by using appropriate mufflers on heavy equipment and restricting construction hours (*e.g.*, 7:00 a.m. to 5:00 p.m. from Monday through Friday). Accordingly, the Agency determines that any noise-related impacts associated with the Project will be insignificant.

e) Substantial increase in solid waste production

The Project will result in the generation of solid waste, but such waste will be disposed of by a licensed contractor at an existing solid waste facility in accordance with applicable laws and regulations. As such, the Agency does not anticipate any adverse impacts associated with solid waste production.

f) Substantial increase in potential for erosion, flooding, leaching or drainage problems

The Project is located in an urban area and involves the renovation of existing improvements. As such, the Project is not expected to result in an increase in the potential for erosion, flooding, leaching or drainage problems.

**Criterion 2**

**The removal or destruction of large quantities of vegetation or fauna; substantial interference with the movement of any resident or migratory fish or wildlife species; impacts on a significant habitat area; substantial adverse effects on a threatened or endangered species of animal or plant, or the habitat of such a species; or other significant adverse effects to natural resources.**

As noted above, the Project site consists of improved parcels in an urban setting, and the Project will result in physical improvements to the Project Facility. Therefore, the Project will not have any impact on vegetation or fauna, the movement of any fish or wildlife species, or other natural resources. No known significant habitat areas have been identified, and there are no known threatened or endangered species of plants or animals in the immediate vicinity of the Project area.

### Criterion 3

**The encouraging or attracting of a large number of people to a place or places for more than a few days, compared to the number of people who would come to such place absent the action.**

The Project is intended to attract tenants to the downtown area. It is anticipated that a portion of the individuals that the Project attracts to the site will be current City residents. As such, the City's population is not expected to increase significantly, nor will the Project create significant increases in traffic volumes in the surrounding area, as noted above.

### Criterion 4

**The creation of a material conflict with a community's current plans or goals as officially approved or adopted.**

The Project is consistent with the Agency's goal of effectuating financial assistance for specific projects located within the City of Syracuse, as well as the City's desire to revitalize the downtown area.

### Criterion 5

**The impairment of the character or quality of important historical, archaeological, architectural or aesthetic resources or of existing community or neighborhood character.**

The Project Facility is located within the Armory Square Historic District. The Project involves both exterior and interior renovations to the Project Facility, which are intended to revitalize the Facility and attract new tenants by taking advantage of the ongoing development in the downtown area. The Project will improve the character and quality of the Facility and therefore is not expected to adversely impact existing resources in the area, many of which have undergone similar renovation efforts in the recent past.

### Criterion 6

**A major change in the use of either the quantity or type of energy.**

The Project is not anticipated to result in a major change in the quantity or type of energy used so as to require extraordinary services or actions on the part of energy providers.

### Criterion 7

**The creation of a hazard to human health.**

The Agency does not expect the Project to create any human health hazards. All demolition and construction materials will be disposed of off-site in accordance with local, state, and federal regulations. The Company will contract with properly licensed private haulers for



the transport and disposal of these materials from the Project area. Where necessary, hazardous materials or substances will be characterized prior to disposal and proper records (*e.g.*, bill of lading or waste manifests) will be maintained, and the Company will consult with representatives of the City regarding any such materials to ensure their proper removal and disposal. In addition, the Company will provide and/or complete a pre-demolition asbestos-containing material/lead-based paint survey(s) prior to any demolition, renovation or construction activities. The Company will engage properly licensed contractors to remove any such materials from the Project area.

#### **Criterion 8**

**A substantial change in the use, or intensity of use, of land including agricultural, open space or recreational resources, or in its capacity to support existing uses.**

The Project will result in some physical changes to the Project Facility so as to facilitate its renovation. The Project does not constitute a substantial change that is unable to be supported by current land use patterns. Further, the Project is consistent with the City's land use plan, will enhance the central downtown area, and will compliment similar revitalization efforts in the City (*i.e.*, Armory Square, Hanover Square, Clinton Square and Montgomery Street).

#### **Criterion 9**

**The creation of material demand for other actions which would result in one of the above consequences.**

The Project itself is not expected to create any demand for other actions (*e.g.*, additional public services) that would result in significant adverse consequences described by the above criteria.

#### **Criterion 10**

**Changes in two or more elements of the environment, no one of which has a significant effect on the environment, but when considered together result in a substantial adverse impact on the environment.**

The Project will not effect multiple changes to the environment which, when considered together, would be considered significant.

#### **Criterion 11**

**Two or more related actions undertaken, funded or approved by an agency, none of which has or would have a significant effect on the environment, but when considered cumulatively would meet one or more of the criteria in this section.**

This criterion deals with the issue of cumulative impacts of multiple actions under SEQRA. No cumulative impacts have been identified and none are expected.

**EXHIBIT "H"**

**INDUCEMENT RESOLUTION**

## INDUCEMENT RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on December 20, 2016 at 8:30 o'clock a.m., local time, in the Common Council Chambers, City Hall, 233 East Washington Street, Syracuse, New York.

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

**PRESENT:** William Ryan, Donald Schoenwald, Esq., Steven Thompson, Kenneth Kinsey

**EXCUSED:** Catherine Richardson, Esq.

**THE FOLLOWING PERSONS WERE ALSO PRESENT:** Staff Present: Honora Spillane, Judith DeLaney, Meghan Ryan, Esq., Susan Katzoff, Esq., John Vavonese, Meghan Ryan, Esq.; Others: Barry Lentz, Paul Curtin, Carol Zenzel, Esq., Timothy Lynn, Esq., Donna Harris, Leann West, Aggie Lane, Michael Wicker, James Trasher, Mark Riley, Rich Punchanski, David Delvecchio, Ed Riley, Richard Engel, Esq., Alex Marion; Media Present: Rick Moriarty

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

**RESOLUTION AUTHORIZING THE UNDERTAKING  
THE ACQUISITION, CONSTRUCTION,  
RECONSTRUCTION, RENOVATION, EQUIPPING AND  
COMPLETION OF A COMMERCIAL FACILITY;  
APPOINTING THE COMPANY AS AGENT OF THE  
AGENCY FOR THE PURPOSE OF THE ACQUISITION,  
CONSTRUCTION, RECONSTRUCTION, RENOVATION,  
EQUIPPING AND COMPLETION 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

recreation 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**, Erie Water Street Associates, LLC, or an entity to be formed (the “**Company**”), by application dated November 9, 2016 (the “**Application**”), requested the Agency undertake a project (the “**Project**”) consisting of: (A)(i) the acquisition of an interest in approximately 9,948 square feet of improved real property located at 219-225 West Fayette Street, in the City of Syracuse, New York (the “**Land**”); (ii) the reconstruction and renovation of an existing 3 story approximately 25,007 square foot building (the “**Facility**”), to include but not be limited to, a new store front on the West Fayette Street side of the building; the construction of a new first floor building lobby with elevator and stair tower; the redevelopment of the building’s second and third levels to house approximately 16 market rate one-bedroom apartment units; and repairs to the building’s Walton Street façade; all located on the Land; (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment, including but not limited to new mechanical systems (the “**Equipment**” and together with the Land and the Facility, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use taxes and mortgage recording tax (except as limited by Section 874 of the General Municipal Law) (collectively the “**Financial Assistance**”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, the Agency adopted a resolution on November 15, 2016, 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 December 20, 2016 pursuant to Section 859-a of the Act, notice of which was originally published on December 4, 2016, in the Post-Standard, a newspaper of general circulation in the City of Syracuse, New York and given to the chief executive officers of the affected tax jurisdictions by letters dated December 1, 2016; and

**WHEREAS**, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as

“*SEQRA*”), the Agency is required to make a determination whether the “action” (as said quoted term is defined in *SEQRA*) to be taken by the Agency may have a “significant impact on the environment” (as said quoted term is utilized in *SEQRA*), and the preliminary agreement of the Agency to undertake the Project constitutes such an action; and

**WHEREAS**, by resolution adopted December 20, 2016 (the “*SEQRA Resolution*”), the Agency determined that the Project will not have a significant effect on the environment; and

**WHEREAS**, the Agency has considered the policy, purposes and requirements of the Act in making its determinations with respect to taking official action regarding the Project; and

**WHEREAS**, the Agency has given due consideration to the Application and to representations by the Company that the provision of Financial Assistance: (i) will induce the Company to develop the Project Facility in the City of Syracuse (the “*City*”); (ii) will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act; and (iii) the Project will serve the purposes of the Act by advancing job opportunities and the economic welfare of the people of the State and the City and improve their standard of living.

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

**Section 1.** It is the policy of the State to promote the economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation and economically sound commerce and industry for the purpose of preventing unemployment and economic deterioration. It is among the purposes of the Agency to promote, develop, encourage and assist in the acquiring, constructing, improving, maintaining, equipping and furnishing of certain facilities, including commercial facilities, and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their recreation opportunities, prosperity and standard of living.

**Section 2.** Based upon the representations and projections made by the Company to the Agency, the Agency hereby and makes the following determinations:

(A) Ratifies the findings in its 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 acquire, construct, reconstruct, renovate, equip and complete the Project Facility in the City, and will serve the purposes of the Act by, among other

things, advancing job opportunities, the standard of living and economic welfare of the inhabitants of the City;

(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;

**Section 3.** 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 4.** Subject to the terms of this Resolution and the conditions set forth in the Agreement, the Agency will: (i) acquire an interest in the Land and Facility pursuant to a lease agreement (the "**Lease**") to be entered into between the Company and the Agency; accept an interest in the Equipment pursuant to a bill of sale from the Company (the "**Bill of Sale**"); (ii) sublease the Project Facility to the Company pursuant to a sublease agreement (the "**Sublease**" and with the Lease and the Bill of Sale, 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.

**Section 5.** 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 reconstruction, renovation, equipping and completion of the Project, all with the same powers and the same validity as if the Agency were acting in its own behalf. The appointment made by this Section 5, and the conference of any approved Financial Assistance, shall not be effective until the Company and the Agency have executed and delivered a project agreement in substantially the same form used by the Agency in similar transactions (the "**Project Agreement**"). The amount of State and local sales and use tax exemption benefits comprising the Financial Assistance approved herein shall not exceed

\$104,000.

**Section 6.** The terms and conditions of subdivision 3 of Section 875 of the Act are herein incorporated by reference and the Company shall agree to such terms as a condition precedent to receiving or benefiting from an exemption from State and local sales and use tax exemptions benefits.

**Section 7.** The Company may utilize, and is hereby authorized to appoint, a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (collectively, "***Additional Agents***") to proceed with the reconstruction, renovation, equipping and completion of the Project, all with the same powers and the same validity as if the Agency were acting in its own behalf, provided the Company execute, deliver and comply with the Agreement. The Company shall provide, or cause its Additional Agents to provide, and the Agency shall maintain, records of the amount of State and local sales and use tax exemption benefits provided to the Project and the Company shall, and cause each Additional Agent, to make such records available to the State Commissioner of Taxation and Finance (the "***Commissioner***") upon request. The Agency shall, within thirty (30) days of providing any State sales and use tax exemption benefits, report to the Commissioner the amount of such benefits for the Project, identifying the Project, along with any such other information and specificity as the Commissioner may prescribe. As a condition precedent to the Company or Project's receipt of, or benefit from, any State or local sales and use tax exemptions, the Company must acknowledge and agree to make, or cause its Additional Agents to make, all records and information regarding State and local sales and use tax exemption benefits realized by the Project available to the Agency or its designee upon request. for purposes of exemption from New York State (the "***State***") sales and use taxation as part of the Financial Assistance requested, "sales and use taxation" shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the New York State tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight.

**Section 8.** 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 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, the Agreement, the Project Agreement and 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 and/or the Executive Director of the Agency are hereby authorized and may distribute copies of this Resolution and do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

**Section 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	
Donald Schoenwald, Esq.	X	
Steven Thompson	X	
Kenneth Kinsey	X	

The foregoing Resolution was thereupon declared duly adopted.



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

I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “Agency”) held on December 20, 2016, with the original thereof on file in my office, and that the same (including all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

**I FURTHER CERTIFY** that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

**I FURTHER CERTIFY** that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

**IN WITNESS WHEREOF**, I have set my hand and affixed the seal of the Agency this 20<sup>th</sup> day of December, 2016.

City of Syracuse Industrial Development Agency

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

(S E A L)

## EXHIBIT "A"

### AGENCY/COMPANY AGREEMENT

**THIS AGREEMENT** is between **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY** (the "*Agency*"), with an office at 201 East Washington Street, 7<sup>th</sup> Floor, Syracuse, New York 13202 and **Erie Water Street Associates, LLC**, with a mailing address of 315 South Franklin Street, New York 13202 (the "*Company*").

**Article 1. Preliminary Statement.** Among the matters of mutual inducement which have resulted in the execution of this agreement are the following:

1.01. The Agency is authorized and empowered by the provisions of Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "*State*"), as amended, and Chapter 641 of the Laws of 1979 of the State (collectively, the "*Act*") to designate an agent for constructing, renovating and equipping "projects" (as defined in the Act).

1.02. The purposes of the Act are to promote, attract, encourage and develop recreation and economically sound commerce and industry in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration. The Act vests the Agency with all powers necessary to enable it to accomplish such purposes, including the power to acquire and dispose of interests in real property and to appoint agents for the purpose of completion of projects undertaken by the Agency.

1.03. The Company, by application dated November 9, 2016 (the "*Application*"), requested the Agency undertake a project (the "*Project*") consisting of: (A)(i) the acquisition of an interest in approximately 9,948 square feet of improved real property located at 219-225 West Fayette Street, in the City of Syracuse, New York (the "*Land*"); (ii) the reconstruction and renovation of an existing 3 story approximately 25,007 square foot building (the "*Facility*"), to include but not be limited to, a new store front on the West Fayette Street side of the building; the construction of a new first floor building lobby with elevator and stair tower; the redevelopment of the building's second and third levels to house approximately 16 market rate one-bedroom apartment units; and repairs to the building's Walton Street façade; all located on the Land; (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment, including but not limited to new mechanical systems (the "*Equipment*" and together with the Land and the Facility, the "*Project Facility*"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use taxes and

mortgage recording tax (except as limited by Section 874 of the General Municipal Law) (collectively the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

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 project agreement, a company lease, an agency lease, a bill of sale and an environmental compliance and indemnification agreement, shall be collectively referred to herein as the "**Lease Documents**".

1.04. The Company hereby represents to the Agency that undertaking the Project, the designation of the Company as the Agency's agent for the reconstruction, renovation, equipping and completion of the Project Facility, and the use and appointment, as necessary, by the Company of a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (collectively, "**Additional Agents**"): (i) will be an inducement to it to construct, renovate and equip the Project Facility in the City of Syracuse (the "**City**"); (ii) will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or of any other proposed occupant of the Project Facility from one area of the State to another or in the abandonment of one or more plants or facilities of the Company or of any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act; and (iii) undertaking the Project Facility will promote, create and/or preserve private sector jobs in the State. The Company hereby further represents to the Agency that the Project Facility is not primarily used in making retail sales to customers who personally visit the Facility.

1.05. The Agency has determined that the acquisition of a controlling interest in, and the reconstruction, renovation and equipping of the Project Facility and the subleasing of the same to the Company will promote and further the purposes of the Act.

1.06. On December 20, 2016, the Agency adopted a resolution (the "**Inducement Resolution**") agreeing, subject to the satisfaction of all conditions precedent set forth in such Resolution, to designate the Company as the Agency's agent for the acquisition, reconstruction, renovation and equipping of the Project Facility and determining that the leasing of the same to the Company will promote further purposes of the Act. For purposes of that designation, the Agency authorized as part of the approved Financial Assistance, State and local sales and use tax exemption benefits in an amount not exceed **\$104,000**.

1.07. In the Resolution, subject to the execution of, and compliance with, this Agreement by the Company, the execution and delivery of a project agreement by the Company, and other conditions set forth in the Resolution and herein, the Agency appointed the Company

as its agent for the purposes of reconstruction, renovation and equipping the Project Facility, entering into contracts and doing all things requisite and proper for reconstruction, renovation and equipping the Project Facility.

**Article 2. Undertakings on the Part of the Agency.** Based upon the statement, representations and undertakings of the Company and subject to the conditions set forth herein, the Agency agrees as follows:

2.01. The Agency confirms that it has authorized and designated, pursuant to the terms hereof, the Company as the Agency's agent for renovating and equipping the Project Facility.

2.02. The Agency will adopt such proceedings and authorize the execution of such Agency documents as may be necessary or advisable for: (i) acquisition of a controlling interest in the Project Facility; (ii) designation by the Company of Additional Agents for reconstruction, renovation and equipping of the Project Facility subject to the terms hereof; and (iii) the leasing or subleasing of the Project Facility to the Company, all as shall be authorized by law and be mutually satisfactory to the Agency and the Company.

2.03. Nothing contained in this Agreement shall require the Agency to apply its funds to Project costs.

2.04. After satisfying the conditions precedent set forth in the Sections 2.05, 3.06 and 4.02 hereof and in the Inducement Resolution, the Company may proceed with the reconstruction, renovation and equipping of the Project Facility and the utilization of and, as necessary the appointment of, Additional Agents.

2.05. Subject to the execution of the Lease Documents and Section 4.02 hereof, the Company is appointed the true and lawful agent of the Agency: (i) for the reconstruction, renovation and equipping of the Project Facility; and (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency, and in general to do all things which may be requisite or proper for the reconstruction, renovation and equipping of the Project Facility, all with the same powers and the same validity as if the Agency were acting in its own behalf.

2.06. The Agency will take or cause to be taken such other acts and adopt such further proceedings as may be required to implement the aforesaid undertakings or as it may deem appropriate in pursuance thereof. The Agency may in accordance with Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as "**SEQRA**"), undertake supplemental review of the Project. Such review to be limited to specific significant adverse environmental impacts not addressed or inadequately addressed in the Agency's review under SEQRA that arise from changes in the proposed Project, newly discovered information or a change in the circumstances related to the Project.

**Article 3. Undertakings on the Part of the Company.** Based upon the statements, representations and undertakings of the Agency and subject to the conditions set forth herein the Company agrees as follows:

3.01. (a) The Company shall indemnify and hold the Agency harmless from all losses, expenses, claims, damages and liabilities arising out of or based on labor, services, materials and supplies, including equipment, ordered or used in connection with the acquisition of a controlling interest in, and reconstruction, renovation and equipping of the Project Facility (including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of any of the foregoing), whether such claims or liabilities arise as a result of the Company or Additional Agents acting as agent for the Agency pursuant to this Agreement or otherwise.

(b) The Company shall not permit to stand, and will, at its own expense, take all steps reasonably necessary to remove, any mechanics' or other liens against the Project Facility for labor or material furnished in connection with the acquisition, reconstruction, renovation and equipping of the Project Facility.

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

(d) The Company shall defend, indemnify and hold the Agency harmless from all losses, expenses, claims, damages and liabilities arising out of or based on the non-disclosure of information, if any, requested by the Company in accordance with Section 4.05 hereof.

(e) The defense and indemnities provided for in this Article 3 shall survive expiration or termination of this Agreement and shall apply whether or not the claim, liability, cause of action or expense is caused or alleged to be caused, in whole or in part, by the activities, acts, fault or negligence of the Agency, its members, officers, employees and agents, anyone under the direction and control of any of them, or anyone for whose acts or omissions the Agency or any of them may be liable, and whether or not based upon the breach of a statutory duty or obligation or any theory or rule of comparative or apportioned liability, subject only to any specific prohibition relating to the scope of indemnities imposed by statutory law.

(f) The Company shall provide and carry: (i) worker's compensation and disability insurance as required by law; and (ii) comprehensive liability and property insurance with such coverages (including without limitation, owner's protective coverage for the benefit of the Agency, naming the Agency as an additional insured on all policies of coverage regarding the Project; providing the coverage with respect to the Agency be primary and non-contributory; and

contractual coverage covering the indemnities herein provided for), with such limits and which such companies as may be approved by the Agency. Upon the request of the Agency, the Company shall provide certificates and/or policies of insurance in form satisfactory to the Agency evidencing such insurance.

(g) The Company shall apply and diligently pursue all approvals, permits and consents from the State of New York, the City, the City Planning Commission and any other governmental authority which approvals, permits and consents are required under applicable law for the development, reconstruction, renovation and equipping of the Project and any related site improvements. The Company acknowledges and agrees that the Agency's findings and determinations under SEQRA do not and shall not in and of themselves (except as specifically set forth in SEQRA) satisfy or be deemed to satisfy applicable laws, regulations, rules and procedural requirements applicable to such approvals, permits and consents.

(h) The Company shall complete a Contractor Status Report to be obtained from the City of Syracuse Industrial Development Agency and agrees to utilize, and cause its Additional Agents to utilize, local contractors and suppliers for the reconstruction, renovation, equipping and completion of the Project unless a waiver is received from the Agency in writing. For purposes of this Agency Agreement, the term "**Local**" shall mean Onondaga, Oswego, Oneida, Madison, Cayuga and Cortland Counties. The Company agrees that such Local contractors shall be provided the opportunity to bid on contracts related to the Project Facility.

3.02. The Company agrees that, as agent for the Agency or otherwise, it will comply at the Company's sole cost and expense with all the requirements of all federal, state and local laws, rules and regulations of whatever kind and howsoever denominated applicable to the Agency and/or Company with respect to the Project Facility, the acquisition of a controlling interest therein, reconstruction, renovation and equipping thereof, the operation and maintenance of the Project Facility, supplemental review of adverse environmental impacts in accordance with SEQRA and the financing of the Project. Every provision required by law to be inserted herein shall be deemed to be set forth herein as if set forth in full, including, but not limited to, Section 875 of the Act; and upon the request of either party, this Agreement shall be amended to specifically set forth any such provision or provisions.

3.03. The Company agrees that, as agent for the Agency or otherwise, to the extent that such provisions of law are in fact applicable (without creating an obligation by contract beyond that which is created by statute) it will comply with the requirements of Section 220 of the Labor Law of the State of New York, as amended.

3.04. The Company will take such further action and adopt such further proceedings as may be required to implement its aforesaid undertakings or as it may deem appropriate in pursuance thereof.

3.05. If it should be determined that any State or local sales or compensatory use taxes are payable with respect to the acquisition, purchase or rental of machinery or equipment,

materials or supplies in connection with the Project Facility, or are in any manner otherwise payable directly or indirectly in connection with the Project Facility, the Company shall pay the same and defend and indemnify the Agency from and against any liability, expenses and penalties arising out of, directly or indirectly, the imposition of any such taxes.

3.06 The Company shall proceed with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility and advance such funds as may be necessary to accomplish such purposes. The Company may appoint Additional Agents as agents of the Agency, in furtherance thereof. Any appointment of an Additional Agent is conditioned upon the Company first obtaining and providing the Agency the following:

(1) A written, executed agreement, in form and substance acceptable to the Agency, from each appointed Additional Agent which provides for the assumption by the Additional Agent, for itself, certain of the obligations under this Agreement relative to the appointment, work and purchases done and made by each Additional Agent; (ii) a commitment to utilize local contractors and suppliers for the reconstruction, renovation and equipping of the Project ("local" being defined in Section 3.01(h) hereof); (iii) an acknowledgement that the Additional Agent is obligated, to timely provide the Company with the necessary information to permit the Company, pursuant to General Municipal Law §874(8), to timely file an Annual Statement with the Agency and the New York State Department of Taxation and Finance on "Annual Report of Sales and Use Tax Exemptions" (Form ST-340) regarding the value of sales and use tax exemptions the Additional Agent claimed pursuant to the agency conferred on it by the Company with respect to this Project; (iv) an acknowledgment by the Additional Agent that the failure to comply with the foregoing will result in the loss of the exemption; and (v) such other terms and conditions as the Agency deems necessary; and

(2) A completed "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (Form ST-60) for each Additional Agent appointed within fifteen (15) days of the appointment of each Additional Agent such that the Agency can execute and deliver said form to the State Department of Taxation and Finance within thirty (30) days of appointment of each such Additional Agent.

Failure of the Company to comply with the foregoing shall nullify the appointment of any Additional Agent and may result in the loss of the Company's exemption with respect to the Project at the sole discretion of the Agency.

The Company acknowledges that the assumption by the Additional Agent in accordance with Section 3.06(1) above, does not relieve the Company of its obligations under those provisions or any other provisions of this Agreement with respect to the Project.

3.07 The Company ratifies and confirms its obligations to pay an annual administrative reporting fee in accordance with the Agency's fee schedule to cover administrative and reporting requirements to comply with New York State reporting regulations on Agency assisted projects.

#### Article 4. General Provisions.

4.01. This Agreement shall take effect on the date of the execution hereof by the Agency and the Company and, subject to Section 4.04 hereof, shall remain in effect until the Lease Documents become effective. It is the intent of the Agency and the Company that, except as to those provisions that survive, this Agreement be superseded in its entirety by the Lease Documents.

4.02. (a) It is understood and agreed by the Agency and the Company that the grant of Financial Assistance and the execution of the Lease Documents and related documents are subject to: (i) payment by the Company of the Agency's fee and Agency's counsel fees; (ii) obtaining all necessary governmental approvals, permits and consents of any kind required in connection with the Project Facility; (iii) approval by the members of the Agency; (iv) approval by the Company; and (v) the condition that there are no changes in New York State Law, including regulations, which prohibit or limit the Agency from fulfilling its obligations hereunder; (b) the Company, by executing this agreement, acknowledges and agrees to make, or cause its Additional Agents, whether appointed as an agent of the Agency in accordance with Section 3.06 hereof or not, to make, all records and information regarding State and local sales and use tax exemption benefits given to the Project as part of the Financial Assistance available to the Agency upon request, including but not limited to the Form ST-340 for itself and each Additional Agent; (c) the Company, by executing this Agreement, acknowledges and agrees to the terms and conditions of Section 875(3) of the Act as if such section were fully set forth herein and further agrees to cause all of its Additional Agents to acknowledge, agree and consent to same. Without limiting the scope of the foregoing the Company acknowledges that pursuant to Section 875(3) of the Act and in accordance with the Agency's Recapture Policy, the Agency shall, and in some instances may, recover, recapture, receive or otherwise obtain from the Company the portion of the Financial Assistance (the "**Recapture Amount**") consisting of: (1) (a) that portion of the State and local sales and use tax exemption to which the Company was not entitled, which is in excess of the amount of the State and local sales and use tax exemption authorized by the Agency or which is for property or services not authorized by the Agency; or (b) the full amount of such State and local sales and use tax exemption, if the Company fails to comply with a material term or condition regarding the use of the property or services as represented to the Agency in its Application or otherwise; or (c) the full amount of such State and local sales and use tax exemption in the event the Company fails to execute and deliver the Lease Documents in accordance herewith or fails to complete the Project; and (2) any interest or penalties thereon imposed by the Agency or by operation of law or by judicial order or otherwise; and (d) the failure of the Company to promptly pay such Recapture Amount to the Agency will be grounds for the Commissioner to collect sales and use taxes from the Company under Article 28 of the State Tax Law, together with interest and penalties. In addition to the foregoing, the Company acknowledges and agrees that for purposes of exemption from New York State (the "**State**") sales and use taxation as part of the Financial Assistance requested, "sales and use taxation" shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the New York State tax law but excluding such taxes imposed in a city



by section eleven hundred seven or eleven hundred eight of such article twenty-eight. In addition to the foregoing, the Agency may recapture other benefits comprising the Financial Assistance in accordance with the Agency's Recapture Policy (a copy of which is on the Agency's website).

4.03. The Company agrees that it will, within thirty (30) days of a written request for same, regardless of whether or not this matter closes or the Project Facility is completed: (i) reimburse the Agency for all reasonable and necessary expenses, including without limitation the fees and expenses of counsel to the Agency arising from, out of or in connection with the Project, and/or any documents executed in connection therewith, including, but not limited to any claims or actions taken by the Agency against the Company, Additional Agents or third parties; and (ii) indemnify the Agency from all losses, claims, damages and liabilities, in each case which the Agency may incur as a consequence of executing this Agreement or performing its obligations hereunder, including but not limited to, any obligations related to Additional Agents.

4.04. If for any reason the Lease Documents are not executed and delivered by the Company and the Agency on or before **December 20, 2017**, the provisions of this Agreement (other than the provisions of Articles 1.04, 2.02, 2.04, 3.01, 3.02, 3.03, 3.05, 3.06, 4.02, 4.03, 4.04, 4.05 and 4.06, which shall survive) shall unless extended by agreement of the Agency and the Company, terminate and be of no further force or effect, and following such termination neither party shall have any rights against the other party except:

(a) The Company shall pay the Agency for all expenses incurred by the Agency in connection with the acquisition, reconstruction, renovation and equipping of the Project Facility;

(b) The Company shall assume and be responsible for any contracts for the reconstruction 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.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the 20<sup>th</sup> day December, 2016.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

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

**ERIE WATER STREET ASSOCIATES, LLC**

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

**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 December 20, 2016 at 8:30 o'clock a.m., local time, in the Common Council Chambers, City Hall, 233 East Washington Street, Syracuse, New York.

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

**PRESENT:** William Ryan, Donald Schoenwald, Esq., Steven Thompson, Kenneth Kinsey

**EXCUSED:** Catherine Richardson, Esq.

**THE FOLLOWING PERSONS WERE ALSO PRESENT:** Staff Present: Honora Spillane, Judith DeLaney, Meghan Ryan, Esq., Susan Katzoff, Esq., John Vavonese, Meghan Ryan, Esq.; Others: Barry Lentz, Paul Curtin, Carol Zenzel, Esq., Timothy Lynn, Esq., Donna Harris, Leann West, Aggie Lane, Michael Wicker, James Trasher, Mark Riley, Rich Punchanski, David Delvecchio, Ed Riley, Richard Engel, Esq., Alex Marion; Media Present: Rick Moriarty

The following resolution was offered by Donald Schoenwald and seconded by Kenneth Kinsey:

### RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS BY THE AGENCY IN CONNECTION WITH A COMMERCIAL PROJECT UNDERTAKEN AT THE REQUEST OF THE COMPANY

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, for the purpose of promoting economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living; and

**WHEREAS**, Erie Water Street Associates, LLC, or an entity to be formed (the "**Company**"), by application dated November 9, 2016 (the "**Application**"), requested that the Agency undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in approximately 9,948 square feet of improved real property located at 219-225 West Fayette Street, in the City of Syracuse, New York (the "**Land**"); (ii) the reconstruction and renovation of an existing 3 story approximately 25,007 square foot building (the "**Facility**"), to include but not

be limited to, a new store front on the West Fayette Street side of the building; the construction of a new first floor building lobby with elevator and stair tower; the redevelopment of the building's second and third levels to house approximately 16 market rate one-bedroom apartment units; and repairs to the building's Walton Street façade; all located on the Land; (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment, including but not limited to new mechanical systems (the "**Equipment**") and together with the Land and the Facility, the "**Project Facility**"; (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use taxes and mortgage recording tax (except as limited by Section 874 of the General Municipal Law) (collectively the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, the Agency conducted a public hearing with respect to the Project and the proposed Financial Assistance on December 20, 2016 pursuant to Section 859-a of the Act, notice of which was originally published on December 4, 2016, in the Post-Standard, a newspaper of general circulation in the City of Syracuse, New York and given to the chief executive officers of the affected tax jurisdictions by letters dated December 1, 2016; and

**WHEREAS**, pursuant to Article 8 of the State Environmental Conservation Law, as amended and the regulations promulgated thereunder (collectively "**SEQRA**"), the Agency is required to make a determination with respect to the environmental impact of any "action" (as defined by SEQRA) to be taken by the Agency and the approval of the Project and grant of Financial Assistance constitute such an action; and

**WHEREAS**, the Agency adopted a resolution on November 15, 2016 (the "**SEQRA Lead Agency Resolution**") entitled:

**RESOLUTION CLASSIFYING A CERTAIN PROJECT AS A  
TYPE I ACTION AND DECLARING THE INTENT OF THE  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT  
AGENCY TO BE LEAD AGENCY FOR PURPOSES OF A  
COORDINATED REVIEW PURSUANT TO THE STATE  
ENVIRONMENTAL QUALITY REVIEW ACT**

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

**WHEREAS**, the Agency adopted a resolution on December 20, 2016 (the "**SEQRA Resolution**") entitled:

**RESOLUTION DETERMINING THAT THE ACQUISITION, CONSTRUCTION, RECONSTRUCTION, RENOVATION AND EQUIPPING OF A CERTAIN PROJECT AT THE REQUEST OF ERIE WATER STREET ASSOCIATES, LLC WILL NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT**

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

**WHEREAS**, the Agency adopted a resolution on December 20, 2016 (the "**Inducement Resolution**") entitled:

**RESOLUTION UNDERTAKING THE ACQUISITION, CONSTRUCTION, RECONSTRUCTION, RENOVATION, EQUIPPING AND COMPLETION OF A COMMERCIAL FACILITY; APPOINTING THE COMPANY AS AGENT OF THE AGENCY FOR THE PURPOSE OF THE ACQUISITION, CONSTRUCTION, RECONSTRUCTION, RENOVATION, EQUIPPING AND COMPLETION OF THE PROJECT; AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT BETWEEN THE AGENCY AND THE COMPANY**

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

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

**Section 1.** Based upon the representations made by the Company to the Agency and after consideration of the comments received at the public hearing, if any, the Agency hereby ratifies all of its prior resolutions adopted in conjunction with the Project, including but not limited to the SEQRA Lead Agency Resolution, the SEQRA Resolution, the Inducement Resolution and all other action with respect to the Project and Financial Assistance taken by the Agency, and makes the following findings and determinations:

(a) The acquisition of a controlling interest in the Project Facility by the Agency, the granting of the Financial Assistance and the designation of the Company as the Agency's agent for completion of the Project will be an inducement to, and permit, the Company to develop and operate the Project Facility in the City of Syracuse, thus serving the public purposes of Article 18-A of the General Municipal Law of New York State by promoting and preserving the job opportunities, general prosperity, health and economic welfare of the inhabitants of the City of Syracuse (the "**City**") in furtherance of the purposes of the Act.

(b) The Project will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act.

(c) The commitment of the Agency to provide Financial Assistance to the Company will enable and induce the Company to construct, reconstruct, renovate, equip and complete the Project Facility.

(d) The acquisition, construction, reconstruction, renovation, equipping and completion of the Project Facility and the attendant promotion of the local economy will advance the job opportunities, health, prosperity and economic welfare of the people of the City and the granting of the Financial Assistance is a necessary component to the financing of the Project.

(e) The Project Facility constitutes a “project” within the meaning of the Act.

(f) It is desirable and in the public interest for the Agency to grant Financial Assistance in connection with the Project.

**Section 2.** It is the policy of the State to promote the economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation and economically sound commerce and industry for the purpose of preventing unemployment and economic deterioration. The Project will serve the public purposes of Article 18-A of the General Municipal Law of the State of New York by advancing job opportunities and promoting economic development.

**Section 3.** It is among the purposes of the Agency to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of certain facilities, including commercial facilities, and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their recreation opportunities, prosperity and standard of living.

**Section 4.** Subject to the conditions set forth in this and prior resolutions adopted by the Agency, the Project Agreement, and the Agreement (each as defined in the Inducement Resolution), the Agency will: (A) acquire a controlling interest in the Project Facility; (B) lease 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); (D) provide the approved Financial Assistance; and (E) execute and deliver any other



documents necessary to effectuate the actions contemplated by and consistent with this Resolution upon the advice of counsel to the Agency.

**Section 5.** The 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 and/or Executive Director of the Agency is hereby authorized to distribute copies of this Resolution and do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

**Section 11.** 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	
Donald Schoenwald, Esq.	X	
Steven Thompson	X	
Kenneth Kinsey	X	

The foregoing Resolution was thereupon declared duly adopted.

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

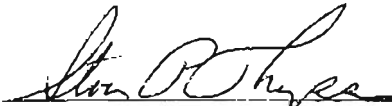
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “*Agency*”) held on December 20, 2016, with the original thereof on file in my office, and that the same (including all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

**I FURTHER CERTIFY** that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

**I FURTHER CERTIFY** that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

**IN WITNESS WHEREOF**, I have set my hand and affixed the seal of the Agency this 26<sup>th</sup> day of December, 2016.

City of Syracuse Industrial Development Agency

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

(S E A L)

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AFFIDAVIT RE: MORTGAGE TAX EXEMPTION

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

COPY

WILLIAM M. RYAN, being duly sworn, deposes and says:

He is Chairman of the City of Syracuse Industrial Development Agency (the "Agency").

The Agency is an industrial development agency duly established under Title I of Article 18-A of the General Municipal Law of the State of New York (the "State"), as amended, and Chapter 641 of the Laws of 1979 of the State (collectively, the "Act"), and it is a corporate governmental agency constituting a public benefit corporation of the State.

On or about December 20, 2016 the Agency adopted a resolution at the request of Erie Water Street Associates, LLC (the "Applicant" and/or "Company") agreeing to undertake a project (the "Project") consisting of: (A)(i) the acquisition of an interest in approximately 9,948 square feet of improved real property located at 219-225 West Fayette Street, in the City of Syracuse, New York (the "Land"); (ii) the reconstruction and renovation of an existing 3 story approximately 25,007 square foot building (the "Facility"), to include but not be limited to, a new store front on the West Fayette Street side of the building; the construction of a new first floor building lobby with elevator and stair tower; the redevelopment of the building's second and third levels to house approximately 16 market rate one-bedroom apartment units; and repairs to the building's Walton Street façade; all located on the Land; (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment, including but not limited to new mechanical systems (the "Equipment" and together with the Land and the Facility, the "Project Facility"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use taxes and mortgage recording tax (except as limited by Section 874 of the General Municipal Law) (collectively the "Financial Assistance"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Company and the Agency are mortgaging their respective interests in the improved real property described on Exhibit "A" to NBT Bank, National Association (the "Mortgagee"), pursuant to a certain Building Loan and Permanent Loan Mortgage and Security Agreement dated December 21, 2016 in the amount of \$2,349,000 (the "Mortgage"). The Mortgage is pledged to secure a note given by the Company to the Mortgagee.

Pursuant to Article 18-A of the New York General Municipal Law, as amended from time to time (the "Act"), the Agency is regarded as performing a governmental function and is

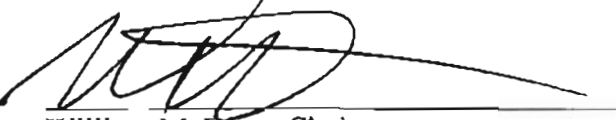
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generally not required to pay taxes or assessments upon any property acquired by it or under its jurisdiction, control or supervision or upon its activities.


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 Mortgage and the Assignment of Rents, inasmuch as the Mortgage and the Assignment of Rents are being executed and delivered under the State authority creating the Agency, inasmuch 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 inasmuch as both the New York State Department of Taxation and Finance and Counsel to the New York State Department of Taxation and Finance have expressed their opinion that the recording of similar documents by similar agencies organized under Article 18-A of the New York General Municipal Law are operations of said agencies entitled to exemption from the mortgage recording tax.

[Remainder of page intentionally left blank]

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
William M. Ryan, Chairman

Subscribed and sworn to before me  
this 21<sup>st</sup> day of December, 2016.

  
Notary Public

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC505591  
Commission Expires on Feb. 12, 20 18

## EXHIBIT "A"

### LEGAL DESCRIPTION

**ALL THAT TRACT OR PARCEL OF LAND**, situate in the City of Syracuse, County of Onondaga and State of New York, bounded and described as follows, viz: Part of Lots 2, 3, 31, 41 and 42, Block 105-D, City of Syracuse, NY, according to a map made by B.F. Green, filed in Onondaga County Clerk's Office October 11, 1850, bounded and described as follows, viz: Beginning at a point in the south line of West Fayette Street about 208.855 ft. west from the Northeast corner of said Block where the center line of the west wall of the so-called Tallman and Palmer Store, now known as #225 West Fayette Street, intersects the south line of West Fayette Street; thence southwardly along the center of said wall and the same conditioned about 115 ft. to a point in range with the north face of the north wall of the six-story brick building erected by E.F. Holden on Walton Street; thence westwardly along said range line about 27.00 ft. to the northeasterly corner of said six-story building, thence southwardly along the east face of the brick wall of said building about 90 ft. to a point in the north line of Walton Street 208.856 ft. from the southeast corner of said Block 105-D, thence eastwardly along the north line of Walton Street 48.22 ft. to the center of the west brick wall of the building owned and occupied by L.L. Thurwatcher; thence northwardly along the center of said wall about 205 ft. to the south line of West Fayette Street; thence westwardly along the south line of West Fayette Street 47.32 ft. to the place of beginning.



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**GENERAL CERTIFICATE OF  
ERIE WATER STREET ASSOCIATES, LLC**

This certificate is made in connection with the execution by **ERIE WATER STREET ASSOCIATES, LLC**, a New York State limited liability company (the "**Company**") of the Project Agreement, the Company Lease, the Agency Lease, the Mortgage, the Environmental Compliance and Indemnification Agreement and any other document now or hereafter executed by the Company in connection with the City of Syracuse Industrial Development Agency (the "**Agency**") agreeing, at the Company's request, to undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in approximately 9,948 square feet of improved real property located at 219-225 West Fayette Street, in the City of Syracuse, New York (the "**Land**"); (ii) the reconstruction and renovation of an existing 3 story approximately 25,007 square foot building (the "**Facility**"), to include but not be limited to, a new store front on the West Fayette Street side of the building; the construction of a new first floor building lobby with elevator and stair tower; the redevelopment of the building's second and third levels to house approximately 16 market rate one-bedroom apartment units; and repairs to the building's Walton Street façade; all located on the Land; (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment, including but not limited to new mechanical systems (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use taxes and mortgage recording tax (except as limited by Section 874 of the General Municipal Law) (collectively the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Project Facility is owned by the Company. The Company will lease the Land and Facility to the Agency pursuant to a Company Lease Agreement dated as of December 1, 2016 (the "**Company Lease**") and transfer its interest in the Equipment to the Agency pursuant to a bill of sale dated as of December 1, 2016 (the "**Bill of Sale**") and the Agency will sublease the Project Facility back to the Company pursuant to an Agency Lease Agreement dated as of December 1, 2016 (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 New York State. 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 Managing Member on behalf of the Company and are in full force and effect as of the date hereof. Attached hereto as Exhibit "D" is a true, correct and complete copy of the authorizing resolution of the Managing Member of the Company (the "*Resolution*") in respect of the execution, delivery and performance of the Company Documents.

5. The Company understands and agrees that, unless a written waiver is first obtained from the Agency, the Company and its Additional Agents shall utilize local labor, contractors and suppliers for the construction, renovation, reconstruction and equipping of the Project Facility. The term "*local*" shall mean Onondaga, Oswego, Madison, Cayuga, Oneida and Cortland Counties. The Company further understands and agrees that failure to comply with these local labor requirements may result in the revocation or recapture of benefits provided/approved to the Project by the Agency. In furtherance thereof, Appendix I to the Agency's Application entitled "Local Access Agreement" has been completed and is attached hereto as Exhibit "E".

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

7. All consents, approvals, authorizations or orders of, notices to, or filings, registrations or declarations with, any court or governmental authority, board, agency, commission or body having jurisdiction which are required on behalf of the Company or for the execution and delivery by the Company of the Company Documents or the consummation on the part of the Company of the transactions contemplated thereby have been obtained.

8. After performing due diligence, there is no legal action, suit, proceeding, inquiry or investigation at law or in equity (before or by any court, agency, arbitrator, public board or body or other entity or person) pending or threatened against or affecting the Company or, to the knowledge of the Company, any basis therefor: (i) in any way affecting the organization, existence or good standing of the Company; (ii) contesting or materially affecting the validity or enforceability of the Company Documents; (iii) contesting the powers of the Company or its authority with respect to the Company Documents; (iv) contesting the authority of the Company to act on behalf of the Company or the authority of the representatives of the Company to act on behalf of the Company; (v) wherein an unfavorable decision, ruling or finding would have a material adverse effect on: (A) the financial condition or operations of the Company; or (B) the consummation on the part of the Company of the transactions contemplated by any Company Documents.

9. The execution and delivery by the Company of the Company Documents and the consummation by the Company of the transactions contemplated thereby are not prohibited by, do not violate any provision of, and will not result in a breach of or default under: (i) the organizational documents of the Company; (ii) any applicable law, rule, regulation, order, writ, injunction, judgment or decree of any court or governmental body or other requirement to which the Company is subject; or (iii) any contract, agreement, mortgage, lease, guaranty, commitment or other obligation or instrument to which the Company is a party or by which the Company or its properties is bound.

10. All information concerning the Project Facility and the Company submitted to the Agency and any Mortgagee by the Company is true and correct in all material respects and does not omit to state a material fact necessary to make the statements therein not misleading.

11. Assuming the valid authorization, execution and delivery of the Agency Lease and the other Company Documents by the other parties thereto, the Agency Lease and the other Company Documents are the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally or by the exercise of judicial discretion in accordance with general principles of equity. No default by the Company or, to the best of knowledge of the undersigned, no event of default on the part of any other party to the Company Documents has occurred or is continuing and no event has occurred which, with the giving of notice or passage of time or both, would be such an event of default. The Company has duly authorized the taking of and has taken all actions necessary to carry out and give effect to the transactions contemplated to be performed on its part by the Company Documents.

12. All permits (including building permits), licenses and authorizations necessary for the construction, ownership and operation of the Project in the manner contemplated by each of the Company Documents have been obtained or will be obtained, and said construction, ownership and operation will not, to the best knowledge of the Company, conflict with any zoning or similar ordinance applicable to the Project. To the best of the Company's knowledge, the Project conforms to all material environmental regulations.


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

14. The Company Lease, the Agency Lease, the Mortgage, the 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.

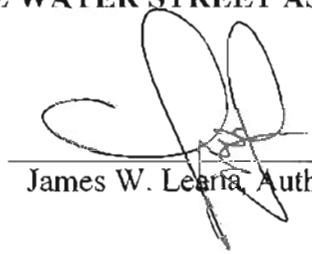
17. The authorized representatives of the Company who, pursuant to the Resolution, are authorized to execute the Company Documents and the office held by each person are as set forth below. The signature set opposite the name of such officer, if any, is a genuine specimen of such officer's signature:

<u>Name</u>	<u>Signature</u>	<u>Office/Title</u>
James W. Leana		Member

18. The Company represents and warrants that it has no employees and therefore is not now required to carry worker's compensation insurance. The Company represents and acknowledges that in the event it hires any employees in the future, it has an obligation pursuant to the Agency Lease, dated as of December 1, 2016 by and between the Company and the Agency, to obtain worker's compensation insurance and provide proof of same to the Agency.

IN WITNESS WHEREOF, I have set my hand and signature as officer of the Company as of December 1, 2016.

ERIE WATER STREET ASSOCIATES, LLC

By:   
James W. Leana, Authorized Member

**EXHIBIT "A"**  
**ARTICLES OF ORGANIZATION**

13040300.0 536

CSC 45  
Drawdown

ARTICLES OF ORGANIZATION  
OF

ERIE WATER STREET ASSOCIATES, LLC

Under Section 203 of the Limited Liability Company Law

Filer:  
Peter A. Baum Law Office  
2nd Floor  
282 Genessee Street  
Chittenango, NY 13037

Cust Ref# 585832KXX

DRAWDOWN

STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED APR 03 2013  
TAXS  
BR

FILED  
2013 APR -3 PM 2:51

RECEIVED  
2013 APR -3 AM 10:10

582

CSC 45

Drawdown

ARTICLES OF ORGANIZATION  
OF

130403000 536

ERIE WATER STREET ASSOCIATES, LLC

Under Section 203 of the Limited Liability Company Law

FIRST: The name of the limited liability company is

ERIE WATER STREET ASSOCIATES, LLC

SECOND: The county within this state in which the office of the limited liability company is to be located is Onondaga.

THIRD: 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 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 315 S FRANKLIN STREET, SYRACUSE, NY 13202.

/s/ JAMES W LEANA

(signature)

JAMES W LEANA, Organizer  
(name and title)



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

**OPERATING AGREEMENT - of - ERIE WATER STREET ASSOCIATES, LLC**

This Agreement, dated so as to be effective as of the 15<sup>th</sup> day of May, 2013, is among the Members and all others who are listed as members on annexed Exhibit A (the "Members").

RECITALS

A. The parties have formed a limited liability company known as ERIE WATER STREET ASSOCIATES, LLC pursuant to the New York Limited Liability Company Law.

B. The parties desire to establish their respective rights and obligations pursuant to the New York Limited Liability Company Law in connection with the formation of the Company.

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

ARTICLE I  
Definitions

In this Agreement, the following terms shall have the meanings set forth below:

1.1. "Affiliate" means, with respect to any Member, any Person: (i) which owns more than 50 percent of the voting interests in the Member; or (ii) in which the Member owns more than 50 percent of the voting interests; or (iii) in which more than 50 percent of the voting interests are owned by a Person who has a relationship with the Member described in clause (i) or (ii) above or who otherwise controls, is controlled by, or under common control with, another person.

1.2. "Capital Account" as of any date means the same capital account of each Member heretofore held as a partnership interest in the Partnership, as adjusted pursuant to this Agreement.

1.3. "Capital Contribution" means any contribution by a Member to the capital of the Company in cash, property or services rendered or a promissory note or other obligation to contribute cash or property or to render services.

1.4. "Code" means the Internal Revenue Code of 1986, as amended, or any superseding federal revenue statute.

1.5. "Company" means ERIE WATER STREET ASSOCIATES, LLC.

1.6. "Distribution" means any cash and other property paid to a Member by the Company from the operations of the Company.

1.7. "Fiscal Year" means the fiscal year of the Company, which shall be the period ending December 31.

1.8. "Membership Interests" means, with the respect to the Company and with respect to any Member, the Membership Interest set forth after the Member's name on Exhibit "A" to this Agreement, as such Membership Interests shall be adjusted from time to time to reflect additional Capital Contributions or withdrawals from the Company.

1.9. "Member" means each Person who executes a counterpart of this Agreement as a Member and each Person who may hereafter become a party to this Agreement.

1.10. "Net Losses" means an amount equal to the Company's taxable loss for such year or period, determined in accordance with Code Section 703(a).

1.11. "Net Profits" means an amount equal to the Company's taxable income for such year or period, determined in accordance with Code Section 703(a).

1.12. "New York Act" means the New York Limited Liability Company Act.

1.13. "Person" means any corporation, governmental authority, limited liability company, partnership, trust, unincorporated association or other entity.

1.14. "Treasury Regulations" means all proposed, temporary and final regulations promulgated under the Code as from time to time in effect.

## ARTICLE II Organization

2.1 Formation. One or more Persons have acted or will act as an organizer or organizers to form the Company by preparing, executing and filing with the New York Secretary of State the Articles of Organization pursuant to the New York Act. The LLC was in fact formed on April 3, 2013.

2.2 Name. The name of the Company is ERIE WATER STREET ASSOCIATES, LLC

2.3 Principal Place of Business. The principal place of business of the Company shall be the County of Onondaga, State of New York. The Company may establish any other places of business as the Members may from time to time deem advisable.

2.4 Registered Agent. The Secretary of State of the State of New York is designated as the agent of the Company upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against it served upon him is 317 South Franklin Street, Syracuse, New York 13202.

2.5 Term. The Company shall continue in existence following the date of filing of the Articles of Organization with the New York Secretary of State, until the Company is dissolved pursuant to this Agreement or the New York Act.

2.6 Purposes. The Company is formed for any lawful business purpose or purposes.

## ARTICLE III Members

3.1 Identity of Members. The names of the Members are as set forth in Exhibit "A" to this Agreement.

3.2 Additional Members. A Person may be admitted as a member after the date of this Agreement upon the unanimous vote or written consent of the Members.

3.3 Books and Records. The Company shall keep books and records of accounts and minutes of all meetings of the Members. Except as modified or amended by the Members, such books and records shall be maintained on a cash basis in accordance with this Agreement.

3.4 Information. Each Member may inspect during ordinary business hours and at the principal place of business of the Company the Articles of Organization, the Operating Agreement, the minutes of any meeting of the Members and any tax returns of the Company.

3.5 Limitation of Liability. Each Member's liability shall be limited to the greatest extent permitted under the New York Act. A Member shall not be personally liable for any indebtedness, liability or obligation of the Company, except that such Member shall remain personally liable for the payment of his Capital Contribution.

3.6 Priority and Return of Capital. No Member shall have priority over any other Member, whether for the return of a Capital Contribution or for Net Profits, Net Losses or a Distribution; provided, however, that this Section shall not apply to contractual obligations owed to a Member by the Company or to loans or other indebtedness (as distinguished from a Capital Contribution) made by a Member to the Company.

3.7 Liability of a Member to the Company. A Member who rightfully receives the return of any portion of a Capital Contribution is liable to the Company only to the extent now or hereafter provided by the New York Act. A Member who receives a Distribution made by the Company in violation of this Agreement or made when the Company's liabilities exceed its assets (after giving effect to such Distribution) shall be liable to the Company for the amount of such Distribution.

3.8 Financial Adjustments. No Members admitted after the date of this Agreement shall be entitled to any retroactive allocation of losses, income or expense deductions incurred by the Company. The Members may, at the discretion of the Members, at the time a Member is admitted, close the books and records of the Company (as though the Fiscal Year had ended) or make pro rata allocations of loss, income and expense deductions to such Member for that portion of the Fiscal Year in which such Member was admitted in accordance with the Code.

#### ARTICLE IV Management

4.1 Management. The Company shall be managed by the Members. Except as otherwise provided in this Agreement, each Member shall have the right to act for and bind the Company in the ordinary course of its business.

#### 4.2 Meetings of and Voting by Members.

4.2.1 A meeting of the Members may be called at any time by any Member. Meetings of Members shall be held at the Company's principal place of business or at any other place in Syracuse, New York designated by the Person calling the meeting. Not less than ten (10) nor more than fifty (50) days before each meeting, the Person calling the meeting shall give written notice of the meeting to each Member entitled to vote at the meeting. The notice shall state the place, date, hour and purpose of the meeting. Notwithstanding the foregoing provisions, each Member who is entitled to notice may waive notice if either before or after the meeting the Member signs a waiver of the notice which is filed with the records of Members' meetings, or is present at the meeting in person or by proxy without objecting to the lack of notice. Unless this Agreement provides otherwise, at a meeting of Members, the presence in person or by proxy of Members holding at least seventy percent (70%) of Membership Interests then held by Members constitutes a quorum. A Member may vote either in person or by written proxy signed by the Member or by the Member's duly authorized attorney in fact.

4.2.2 The affirmative vote of Members holding at least a majority (over 50 percent) of the Membership Interests then held by Members, a quorum being present, shall be required to approve any matter coming before the Members.

4.2.3 In lieu of holding a meeting, the Members may vote or otherwise take action by a written instrument indicating the consent of Members then holding such Membership Interests as would be required for Members to take action under this Operating Agreement. No written consent shall be effective to take such action unless within sixty (60) days of the earliest dated consent delivered in accordance with the Law, signed consents sufficient to take such action have been likewise delivered. If such consent is not unanimous, prompt notice shall be given to those Members who have not consented in writing but who would have been entitled to vote thereon had such action been taken at a meeting.

4.3 Personal Service. No Member shall be required to perform services for the Company solely by virtue of being a Member. Unless approved by the Members, no Member shall be entitled to compensation for services performed for the Company. However, upon substantiation of the amount and purpose thereof, the Members shall be entitled to reimbursement for expenses reasonably incurred in connection with the activities of the Company.

#### 4.4 Duties of Parties.

4.4.1 The Members shall devote such time to the business and affairs of the Company as is necessary to carry out the Members' duties set forth in this Agreement.

4.4.2 Except as otherwise expressly provided in Section 4.4.3, nothing in this Agreement shall be deemed to restrict in any way the rights of any Member, or of any Affiliate of any Member, to conduct any other business or activity whatsoever, and no Member shall be accountable to the Company or to any other Member with respect to that business or activity even if the business or activity competes with the Company's business. The organization of the Company shall be without prejudice to the Members' respective rights (or the rights of their respective Affiliates) to maintain, expand or diversify such other interests and activities and to receive and enjoy profits or compensation therefrom. Each Member waives any rights the Member might otherwise have to share or participate in such other interests or activities of any other Member or the Member's Affiliates.

4.4.3 Each Member understands and acknowledges that the conduct of the Company's business may involve business dealings and undertakings with Members and their Affiliates. In any of those cases, those dealings and undertakings shall be at arm's length and on commercially reasonable terms.

#### 4.5 Liability and Indemnification.

4.5.1 A Member shall not be liable, responsible or accountable, in damages or otherwise, to any other Member or to the Company for any act performed by the Member with respect to Company matters, except for fraud, bad faith, gross negligence, or an intentional breach of this Agreement.

4.5.2 The Company shall indemnify each Member for any act performed by the Member with respect to Company matters, except for fraud, bad faith, gross negligence, or an intentional breach of this Agreement.

### ARTICLE V Capital Contributions

5.1 Capital Contributions. Each Member shall contribute the amount set forth in Exhibit "A" to this Agreement as the Capital Contribution to be made by him.

5.2 Capital Accounts. A Capital Account shall be maintained for each Member. Each Member's Capital Account shall be increased by the value of each Capital Contribution made by the Member, allocations to such Member of the Net Profits and any other allocations to such Member of income pursuant to the Code. Each Member's Capital Account will be decreased by the value of each Distribution made to the Member by the Company, allocations to such Member of Net Losses and other allocations to such Member pursuant to the Code.

5.3 Transfers. Upon a permitted sale or other transfer of a Membership Interest in the Company, the Capital Account of the Member transferring his Membership Interest shall become the Capital Account of the Person to whom such Membership Interest is sold or transferred in accordance with the Treasury Regulations.

5.4 Modifications. The manner in which Capital Accounts are to be maintained pursuant to this Section is intended to comply with the requirements of Section 704(6) of the Code and the Treasury Regulation thereunder. If, in the opinion of the Members, the manner in which Capital Accounts are to be maintained pursuant to this Agreement should be modified to comply with Section 704(b) of the Code, then the method in which Capital Accounts are maintained shall be so modified; provided, however, that any change in the manner of maintaining Capital Accounts shall not materially alter the economic agreement between or among the Members.

5.5 Deficit Capital Account. Except as otherwise required in the New York Act or this Agreement, no Member shall have any liability to restore all or any portion of a deficit balance in a Capital Account, unless such deficit balance is the result of a disproportionate Distribution in violation of §6.2 of this Agreement.

5.6 Withdrawal or Reduction of Capital Contributions. A Member shall not receive from the Company any portion of a Capital Contribution until all indebtedness, liabilities of the Company, except any indebtedness, liabilities and obligations to Members on account of their Capital Contributions, have been paid or there remains property of the Company, in the sole discretion of the Members, sufficient to pay them. A Member, irrespective of the nature of the Capital Contribution of such Member, has only the right to demand and receive cash in return for such Capital Contribution.

## ARTICLE VI Allocations and Distributions

### 6.1 Allocations of Profits and Losses.

6.1.1 Allocations. The Net Profits and the Net Losses for each Fiscal Year shall be allocated to each Member pro rata in accordance with his Membership Interest.

6.1.2 Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (d)(5) or (d)(6), items of Company Profit shall be specifically allocated to each such Member sufficient to eliminate, to the extent required by the Regulations, the Capital Account deficit of such Member as quickly as possible, provided that an allocation pursuant to this Section 6.1(b) shall be made only if and to the extent that such Member would have a Capital Account Deficit after all other allocations provided for in this Section 6.1(b) have been tentatively made as if this Section 6.1(b) were not in the Agreement.

6.1.3 Curative Allocations. The allocations set forth in Section 6.1(b) hereof (the "Regulatory Allocations") are intended to comply with certain requirements of Treasury Regulation

Section 1.704-1(b). Notwithstanding any other provision of this Section 6.1 (other than the Regulatory Allocations), the Regulatory Allocations shall be taken into account in allocating other Profits, Losses, and items of income, gain, loss and deduction among the Members so that, to the extent possible, the net amount of such allocations of other Profits, Losses, and other items and the Regulatory Allocations to the Members shall be equal to the net amount that would have been allocated to the Members if the Regulatory Allocations had not occurred.

6.1.4 Limitation on Allocation of Losses. Any Losses allocated pursuant to Section 6.1(a) that would cause any Member to have a Capital Account Deficit at the end of any Fiscal Year in excess of the amount such Member is obligated to restore (as required by law or otherwise) shall be allocated to Members with positive Capital Account Balances.

6.1.5 Code Section 704(c). In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss; and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its fair market value at the time of contribution. Any elections or other decisions relating to such allocations shall be made by the Members in any manner that reasonably reflects the purpose and intention of this Agreement.

6.1.6 Other Allocation Rules. For purposes of determining the Profits, Losses, or any other items allocable to any period, Profits, Losses, and any such other items shall be determined on a daily, monthly, or other basis, as determined by the Members using any permissible method under Code Section 706 and the Regulations thereunder.

6.2 Distributions. The Company may from time to time, in the discretion and upon the vote of the Members, make Distributions to the Members. Except as otherwise provided herein (and specifically referencing repayment of debt owing a non-Defaulting Member created under §5.2 hereof), all Distributions shall be made to the Members pro rata in proportion to their Membership Interests as of the record date set for such Distribution.

6.3 Offset. The Company may offset all amounts owing to the Company by a Member against any Distribution to be made to such Member.

6.4 Limitation upon Distributions. No Distribution shall be declared and paid unless, after such Distribution is made, the assets of the Company are in excess of all liabilities of the Company.

6.5 Interest on and Return of Capital Contributions. No Member shall be entitled to interest on his Capital Contribution or to a return of his Capital Contribution, except as specifically set forth in this Agreement.

## ARTICLE VII

### Taxes

7.1 Tax Returns. The Company shall cause to be prepared and filed all its necessary federal and state income tax returns. Each Member shall furnish to the Company all pertinent information in his possession relating to Company operations that is necessary to enable the Company's income tax returns to be prepared and filed.

7.2 Tax Elections. The Company shall make the following elections on the appropriate tax returns:

7.2.1 To adopt the calendar year as the Fiscal Year;

7.2.2 Adopt the cash method of accounting and keep the Company's books and records on that income tax method; and

7.2.3 If a Distribution as described in Section 734 of the Code occurs or if a transfer of a Membership Interest described in Section 743 of the Code occurs, upon the written request of any Member, to elect to adjust the basis of the property of the Company pursuant to Section 754 of the Code.

#### ARTICLE VIII Transferability

8.1 General. Except as set forth in this Agreement, that certain Redemption, Cross Purchase and Restrictive Sale Agreement, or any separate other Agreement among the Members respecting their respective membership interests, no Member shall gift, sell, pledge, hypothecate, exchange or otherwise transfer or dispose of to another Person, or otherwise encumber, all or any portion of his Membership Interest without the consent of Members holding a majority in interest of the Membership Interests.

8.2 Transferee Not a Member. No Person acquiring a Membership Interest pursuant to this Agreement other than another Member shall become a Member unless such Person is approved pursuant to the terms of this Agreement. If no such approval is obtained, such Person's Membership Interest shall only entitle such Person to receive the distributions and allocations of profits and losses to which the Member from whom such Person received such Membership Interest would be entitled. Any such approval may be subject to any terms and conditions imposed by the Members.

8.3 Effective Date. Any sale of a Membership Interest or admission of a Member pursuant to this Article shall be deemed effective as of the last day of the calendar month in which such sale or admission occurs.

#### ARTICLE IX Dissolution

9.1 Dissolution. The Company shall be dissolved and its affairs shall be wound up upon the first to occur of the following:

9.1.1 The latest date on which the Company is to dissolve, if any, as set forth in its Articles of Organization;

9.1.2 The affirmative vote of all Members, a quorum being present; or

9.1.3 The bankruptcy, death, dissolution, expulsion, incapacity or withdrawal of any Member or the occurrence of any other event that terminates the continued membership of any Member, unless within one hundred eighty (180) days after such event, the Company is continued by the affirmative vote of Members, a quorum being present.

9.2 Winding Up. Upon the dissolution of the Company, the Members, or a Member

designated by Members holding a majority in interest of the Membership Interests, may, in the name of and for and on behalf of the Company, prosecute and defend suits, whether civil, criminal or administrative, sell and close the Company's business, dispose of and convey the Company's property, discharge the Company's liabilities and distribute to the Members any remaining assets of



the Company, all without affecting the liability of Members. Upon winding up of the Company, the assets shall be distributed as follows:

9.2.1 To creditors, including any Member who is a creditor, to the extent permitted by law, in satisfaction of liabilities of the Company, whether by payment or by establishment of adequate reserves, other than liabilities for distributions to Members under Section 507 or Section 509 of the New York Act;

9.2.2 To Members and former Members in satisfaction of liabilities for Distributions under Section 507 or Section 509 of the New York Act; and

9.2.3 To Members first for the return of their Capital Contributions, to the extent not previously returned, and second respecting their Membership Interests, in the proportions in which the Members share in Distributions in accordance with this Agreement.

9.3 Articles of Dissolution. Within ninety (90) days following the dissolution and the commencement of winding up of the Company, or at any other time there are no Members, Articles of Dissolution shall be filed with the New York Secretary of State pursuant to the New York Act.

9.4 Deficit Capital Account. Upon a liquidation of the Company within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations, if any Member has a Deficit Capital Account (after giving effect to all contributions, distributions, allocations and other adjustments for all Fiscal Years, including the Fiscal Year in which such liquidation occurs), the Member shall have no obligation to make any Capital Contribution, and the negative balance of any Capital Account shall not be considered a debt owed by the Member to the Company or to any other Person for any purpose, unless such deficit balance is the result of a disproportionate Distribution in violation of §6.2 of this Agreement.

9.5 Nonrecourse to Other Members. Except as provided by applicable law or as expressly provided in this Agreement, upon dissolution, each Member shall receive a return of his Capital Contribution solely from the assets of the Company. If the assets of the Company remaining after the payment or discharge of the debts and liabilities of the Company are insufficient to return any Capital Contribution of any Member, such Member shall have no recourse against any other Member.

9.6 Termination. Upon completion of the dissolution, winding up, liquidation, and distribution of the assets of the Company, the Company shall be deemed terminated.

## ARTICLE X General Provisions

10.1 Notices. Any notice, demand or other communication required or permitted to be given pursuant to this Agreement shall have been sufficiently given for all purposes if (a) delivered personally to the party to whom such notice, demand or other communication is directed, or (b) sent by registered or certified mail, postage prepaid, addressed to the Member at his address set forth in this Agreement. Except as otherwise provided in this Agreement, any such notice shall be deemed to be given three (3) business days after the date on which it was deposited in a regularly maintained receptacle for the deposit of United States mail, addressed and sent as set forth in this Section.

10.2 Entire Agreement. This Agreement contains the entire agreement among the Members with respect to the subject matter of this Agreement, and supersedes each course of conduct previously pursued or acquiesced in, and each oral agreement and representation previously made, by the

Members, whether or not relied or acted upon. No course of performance or other conduct subsequently pursued or acquiesced in, and no oral agreement or representation subsequently made, by the Members, whether or not relied or acted upon, and no usage of trade, whether or not relied or acted upon, shall amend this Agreement or impair or otherwise affect any Member's obligations pursuant to this Agreement or any rights and remedies of a Member pursuant to this Agreement.

10.3 Amendments. No amendment to this Agreement shall be effective unless made in a writing duly executed by all Members.

10.4 Construction. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

10.5 Headings. The headings in this Agreement are for convenience only and shall not be used to interpret or construe any provision of this Agreement.

10.6 Waiver. No failure of a Member to exercise, and no delay by a Member in exercising, any right or remedy under this Agreement shall constitute a waiver of such right or remedy. No waiver by a Member of any such right or remedy under this Agreement shall be effective unless made in a writing duly executed by all Members and specifically referring to each such right or remedy being waived.

10.7 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. However, if any provision of this Agreement shall be prohibited by or invalid under such law, it shall be deemed modified to conform to the minimum requirements of such law or, if for any reason it is not deemed so modified, it shall be prohibited or invalid only to the extent of such prohibition or invalidity without the remainder thereof or any other such provision being prohibited or invalid.

10.8 Binding Effect. This Agreement shall be binding upon and inure to the benefit of all Members, and each of the successors and assignees of the Members, except that no right or obligation of a Member under this Agreement may be assigned by such Member to another Person without first obtaining the written consent of a majority in interest of the Members.

10.9 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

10.10 Governing Law. This Agreement shall be governed by, and interpreted and construed in accordance with, the laws of the State of New York, without regard to principles of conflict of laws. Venue and jurisdiction is hereby conferred upon the Supreme Court, County of Onondaga, State of New York with regard to any dispute as may arise hereunder.

10.11 Further Assurance. The parties shall execute and deliver all documents, provide all information and take, or forebear from, all or any action as may be necessary or appropriate to achieve the purposes of this Operating Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement so as to be effective the day and year first above written.

A handwritten signature in black ink, appearing to be 'James W. Deana', written over a horizontal line.

James W. Deana

A handwritten signature in black ink, appearing to be 'Donald J. McMasters', written over a horizontal line.

Donald J. McMasters

A handwritten signature in black ink, appearing to be 'Michael P. Wicker', written over a horizontal line.

Michael P. Wicker

EXHIBIT "A"  
MEMBERS AND MEMBERSHIP INTERESTS

<u>Name of Member</u>	<u>Member Interest</u>
James W. Leana	70%
Donald J. McMasters	20%
Michael P. Wicker	10%

EXHIBIT "B"  
MEMBERS INITIAL CAPITAL CONTRIBUTIONS

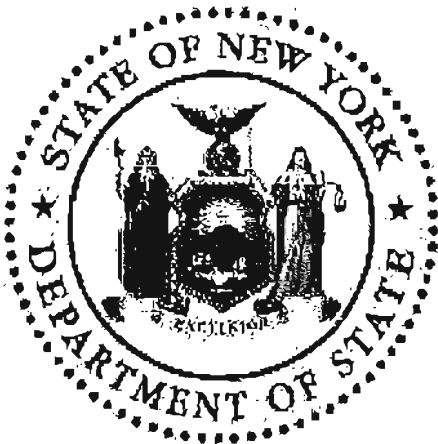
<u>Name of Member</u>	<u>Member Contribution</u>
James W. Leana	Note 1
Donald J. McMasters	Note 1
Michael P. Wicker	Note 1

Note 1 – Initial Capital Contribution shall be determined upon completion of development and establishment of bank financing. Individual initial contributions shall be the cost of the acquisition and improvements less the proceeds of financing multiplied by the Member Interest indicated in Exhibit "A" herein.

**EXHIBIT "C"**  
**GOOD STANDING CERTIFICATE**

**STATE OF NEW YORK**  
**DEPARTMENT OF STATE**

I hereby certify that the annexed copy for ERIE WATER STREET ASSOCIATES, LLC, File Number 130403000536 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  
June 29, 2016.

A handwritten signature in cursive script that reads "Anthony Giardina".

Anthony Giardina  
Executive Deputy Secretary of State

Rev. 06/07

**Authentication Number: 1606291009** To verify the authenticity of this document you may access the  
Division of Corporations' Document Authentication Website at <http://ecorp.dos.ny.gov>

**State of New York  
Department of State } ss:**

I hereby certify, that ERIE WATER STREET ASSOCIATES, LLC a NEW YORK Limited Liability Company filed Articles of Organization pursuant to the Limited Liability Company Law on 04/03/2013, and that the Limited Liability Company is existing so far as shown by the records of the Department. I further certify the following:

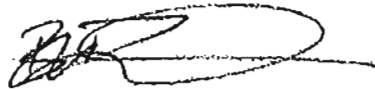
A Certificate of Publication of ERIE WATER STREET ASSOCIATES, LLC was filed on 08/06/2013.

A Biennial Statement was filed 06/30/2016.

I further certify, that no other documents have been filed by such Limited Liability Company.

\*\*\*

*Witness my hand and the official seal  
of the Department of State at the City  
of Albany, this 29th day of November  
two thousand and sixteen.*



Brendan W. Fitzgerald  
Executive Deputy Secretary of State





**EXHIBIT "D"**  
**RESOLUTION**

**UNANIMOUS WRITTEN CONSENT**  
**of The MEMBERS AND MANAGER OF**  
**ERIE WATER STREET ASSOCIATES, LLC**

---

The undersigned, being all the Members of Erie Water Street Associates, LLC ("Company") hereby unanimously consent to the adoption of the following resolutions:

RESOLVED that the Company is authorized and directed to do the following with respect to a project (the "Project") (i) the acquisition of an interest in approximately 9,948 square feet of improved real property located at 219-225 West Fayette Street, in the City of Syracuse, New York (the "Land"); (ii) the reconstruction and renovation of an existing 3 story approximately 25,007 square foot building (the "Facility"), to include but not be limited to, a new store front on the West Fayette Street side of the building; the construction of a new first floor building lobby with elevator and stair tower; the redevelopment of the building's second and third levels to house approximately 16 market rate one-bedroom apartment units; and repairs to the building's Walton Street façade; all located on the Land; (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment, including but not limited to new mechanical systems (the "Equipment" and together with the Land and the Facility, the "Project Facility"); and it is further

RESOLVED that the Company is authorized and directed to enter into a transaction with the City of Syracuse Industrial Development Agency ("IDA" or "Agency") whereby the Company shall be appointed as the agent of the IDA in connection with the acquisition, renovation, reconstruction, equipping and completing the Project Facility; the Company shall cooperate with the granting by the IDA of certain financial assistance in the form of exemptions from State and local sales and use taxation and mortgage recording tax (the "Financial Assistance"); and shall enter into certain lease with the IDA whereby the Company shall lease the Land and Facility to the Agency; the Company shall execute and deliver a bill of sale for the Equipment to the Agency; and the Company shall sublease the Project Facility back from the Agency pursuant to a certain lease agreement, all in accordance with and as more fully set forth and particularized in a resolution of the IDA adopted on December 20, 2016 ("IDA Resolution"), and the Company shall also execute and deliver an environmental compliance and indemnification agreement in favor of the IDA; and it is further

RESOLVED that James W. Leana, be and hereby is authorized on behalf of the Company to execute and deliver any and all other documents or instruments as are necessary and appropriate to carry out the intent and purpose of these resolutions, the IDA Resolution and/or as may be reasonably required by the IDA or its counsel; and it if further

RESOLVED that James W. Leana may take any action deemed necessary and proper in furtherance of the IDA Resolution and the intent of these resolutions, and that the IDA, its successors, assigns, attorneys or agents may rely upon such actions as being the actions and consent of the Company, and it is further

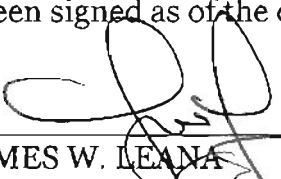
RESOLVED, that the IDA, its successors, assigns, attorneys or agents may rely upon the acts of James W. Leana and any action taken by him shall be deemed an action of and binding upon the Company; and it is further

RESOLVED that that the foregoing Resolutions are made and entered into in full compliance with the Operating Agreement of the Company and this Resolution shall constitute any required authority and/or approval as may be required thereunder; and shall remain in full force and effect and may be relied upon by the IDA, its successor, assigns, attorneys or agents notwithstanding the dissolution or termination of the existence of the Company or any change in the identity of, or any modification or termination of any authority of, any authorized person or Company until a copy of a subsequent Resolution revoking or amending same shall be actually received by the IDA, its successors, attorneys, agents or assigns; and any action taken by any of the foregoing prior to such actual receipt shall be binding upon the Company irrespective of when such Resolutions may have been adopted.

**Signatures on the following page.**

**IN WITNESS WHEREOF**, the resolutions of the Company on unanimous written consent of all members has been signed as of the date set forth below.

Dated: 12-19-16

  
\_\_\_\_\_  
JAMES W. LEANA

Dated: 12/19/16

  
\_\_\_\_\_  
DONALD J. MCMASTERS

Dated: 12/19/16

  
\_\_\_\_\_  
MICHAEL P. WICKER

**EXHIBIT "E"**  
**LOCAL ACCESS AGREEMENT**

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

**Local Access Agreement**

\_\_\_\_\_ Erie Water Street Associates, LLC \_\_\_\_\_ (the Company) understands and agrees that local labor, contractors and suppliers will be used for the construction, renovation, reconstruction and equipping of the Project unless a written waiver is first received from the Agency, and agrees to provide the information requested below as a way to provide access for local participation.

<b>Company</b>	Erie Water Street Assoc. LLC				<b>General Contractor</b>	TBD					
<b>Representative for Contract Bids and Awards</b>	James W. Leana				<b>Contact</b>						
<b>Address</b>	315 So. Franklin Street				<b>Address</b>						
<b>City</b>	Syracuse	ST	NY	<b>Zip</b>	13202	<b>City</b>		ST		<b>Zip</b>	
<b>Phone</b>	315-478-9746		<b>Fax</b>	315-471-8866		<b>Phone</b>			<b>Fax</b>		
<b>Email</b>	jleana@slcontracting.com				<b>Email</b>						
<b>Project Address</b>	219-225 West Fayette St.				<b>Construction Start Date</b>	February 2017 - EST.					
<b>City</b>	Syracuse	ST	NY	<b>Zip</b>	13202	<b>Occupancy Date</b>	September 2017 - EST.				

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

Item	Estimated Value	Bid Date	Contact
Site work/Demolition		TBD	
Foundation and footings		N/A	
Building		TBD	
Masonry		TBD	
Metals		TBD	
Wood/casework		TBD	
Thermal/moisture proof		TBD	
Doors, windows, glazing		TBD	
Finishes		TBD	
Electrical		TBD	
HVAC		TBD	
Plumbing		TBD	
Specialties		TBD	
Machinery & Equipment		TBD	
Furniture and Fixtures		N/A	
Utilities		TBE	
Paving		N/A	
Landscaping		N/A	
Other (identify)		TBD	

Date: \_\_\_\_\_

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

Company: Erie Water St. Assoc. LLC

Name: James W Leana

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BARCLAY DAMON<sup>LLP</sup>

December 21, 2016

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

Erie Water Street Associates, LLC  
315 S. Franklin Street  
Syracuse, New York 13202

Re: City of Syracuse Industrial Development Agency  
Lease/Leaseback Transaction  
Erie Water Street Associates, LLC Project

Ladies and Gentlemen:

We have acted as counsel to the City of Syracuse Industrial Development Agency (the "**Agency**") in connection with a project (the "**Project**") undertaken by the Agency at the request of Erie Water Street Associates, LLC (the "**Company**") consisting of: (A)(i) the acquisition of an interest in approximately 9,948 square feet of improved real property located at 219-225 West Fayette Street, in the City of Syracuse, New York (the "**Land**"); (ii) the reconstruction and renovation of an existing 3 story approximately 25,007 square foot building (the "**Facility**"), to include but not be limited to, a new store front on the West Fayette Street side of the building; the construction of a new first floor building lobby with elevator and stair tower; the redevelopment of the building's second and third levels to house approximately 16 market rate one-bedroom apartment units; and repairs to the building's Walton Street façade; all located on the Land; (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment, including but not limited to new mechanical systems (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use taxes and mortgage recording tax (except as limited by Section 874 of the General Municipal Law) (collectively the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.



The Company has also requested that the Agency grant the Financial Assistance to the Project. Capitalized terms used herein which are not otherwise defined shall have the meanings ascribed to them in the Agency Lease.

As counsel to the Agency, we have examined originals or copies, certified or otherwise identified to our satisfaction, of such instruments, certificates, and documents as we have deemed necessary or appropriate for the purposes of the opinion expressed below. In such examination, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to the original documents of all documents submitted to us as copies, and have assumed the accuracy and truthfulness of the factual information, expectations, conclusions, representations, warranties, covenants and opinions of the Company and its counsel and representatives as set forth in the various documents executed and delivered by them or any of them and identified in the Closing Memorandum in connection with the Project.

We are of the opinion that:

1. The Agency is a duly organized and existing corporate governmental agency constituting a public benefit corporation of the State of New York.
2. The Agency is duly authorized and empowered by law to acquire, construct, reconstruct, renovate and equip the Project, to lease the Land and the Facility from the Company pursuant to the Company Lease; to accept an interest in the Equipment pursuant to the Bill of Sale; to sublease the Project Facility back to the Company pursuant to the Agency Lease and to appoint the Company as its agent for completion of the Project.
3. The Agency Documents have been authorized by and lawfully executed and delivered by the Agency and (assuming the authorization, execution, and delivery by the other respective parties thereto) are valid and legally binding obligations enforceable against the Agency in accordance with their respective terms.

In rendering this opinion, we advise you of the following:

The enforceability of the Agency Documents may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium, or similar law or enactment now or hereafter enacted by the State of New York or the Federal government affecting the enforcement of creditors' rights generally and the general principles of equity, including limitations on the availability of the remedy of specific performance which is subject to discretion of the court.

This opinion is rendered to the addressees named above and their successors and/or assigns, and may not be relied upon by any other person without our prior, express written consent.

December 21, 2016  
Page 3

Very truly yours,

BARCLAY DAMON, LLP

*Barclay Damon, LLP*

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100 Madison Street  
Tower 1, Suite 1905  
Syracuse, New York 13202  
Tel: (315) 476-1010  
Fax: (315) 476-1134  
www.CentolellaLaw.com

December 21, 2016

Erie Water Street Associates, LLC  
315 S. Franklin Street  
Syracuse, New York 13202

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

Re: City of Syracuse Industrial Development Agency  
Lease/Leaseback Transaction  
Erie Water Street Associates, LLC Project

Ladies and Gentlemen:

We have acted as counsel to Erie Water Street Associates, LLC (the "**Company**") in connection with a certain project (the "**Project**") undertaken by the City of Syracuse Industrial Development Agency (the "**Agency**") at the Company's request. The Project consists of: (A)(i) the acquisition of an interest in approximately 9,948 square feet of improved real property located at 219-225 West Fayette Street, in the City of Syracuse, New York (the "**Land**"); (ii) the reconstruction and renovation of an existing 3 story approximately 25,007 square foot building (the "**Facility**"), to include but not be limited to, a new store front on the West Fayette Street side of the building; the construction of a new first floor building lobby with elevator and stair tower; the redevelopment of the building's second and third levels to house approximately 16 market rate one-bedroom apartment units; and repairs to the building's Walton Street façade; all located on the Land; (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment, including but not limited to new mechanical systems (the "**Equipment**") and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use taxes and mortgage recording tax (except as limited by Section 874 of the General Municipal Law) (collectively the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Agency has acquired an interest in the Project Facility pursuant to that certain Company Lease Agreement dated as of December 1, 2016 (the "*Company Lease*") and transfer its interest in the Equipment to the Agency pursuant to a bill of sale dated as of December 1, 2016 (the "*Bill of Sale*") and the Agency will sublease the Project Facility back to the Company pursuant to an Agency Lease Agreement dated as of December 1, 2016 (the "*Agency Lease*"). Capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Agency Lease.

In that regard, we have examined the Project Agreement, the Company Lease, the Agency Lease, the Bill of Sale, the Mortgage, the Environmental Compliance and Indemnification Agreement and the other documents identified in the Closing Memorandum and defined in the Agency Lease to which the Company is a party (collectively, the "*Company Documents*").

We have also examined 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 obligation of the Company, enforceable against the Company in accordance with their terms, except as

enforceability may be limited by applicable bankruptcy and insolvency laws and laws affecting creditors' rights generally and to the extent that the availability of the remedy of specific performance or injunctive relief or other equitable remedies is subject to the discretion of the court before which any proceeding therefor may be brought.

4. To the best of our knowledge, in reliance on the certificates and opinions specified herein, the execution and delivery by the Company of the Company Documents, the execution and compliance with the provisions of each and the consummation of the transactions contemplated therein do not and will not constitute a breach of, or default under the Company's Articles of Organization, Operating Agreement or any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Company or any of its Property may be bound, for which a valid consent has not been secured; nor is any approval or any action by any governmental authority required in connection with the execution, delivery and performance thereof by the Company.

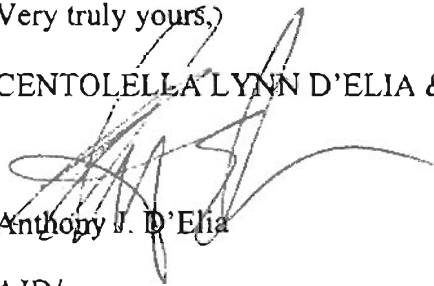
5. To the best of our knowledge, in reliance on the certificates and opinions specified herein, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened against, or affecting the Company wherein an unfavorable decision, ruling or finding would in any way adversely affect in a material fashion the validity or enforceability of the Company Documents.

Our examination of law relevant to matters herein is limited to the laws of the State of New York and also the Federal law, where appropriate, and we express no opinion as to matters governed by the laws of any other state or jurisdiction.

This opinion is only for the benefit of and may be relied upon only by the Agency, its successors and assigns. The opinions set forth in this letter are limited to those expressly stated and no other opinion may be inferred nor is any implied. No other use of this opinion may be made without prior written consent. This opinion is given as of the date hereof and we undertake no obligation, and hereby disclaim any obligation, to update or supplement this opinion in response to a subsequent change in the law or future events affecting the documents identified in this letter.

Very truly yours,

CENTOLELLA LYNN D'ELIA & TEMES LLC

  
Anthony J. D'Elia

AJD/

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## CLOSING MEMORANDUM

### CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

#### ERIE WATER STREET ASSOCIATES, LLC PROJECT

**DATE AND TIME OF CLOSING:** December 21, 2016  
1:00 p.m.

**PLACE OF CLOSING:** Barclay Damon, LLP  
One Park Place  
300 South State Street  
Syracuse, New York 13202

#### **I. Action Taken Prior to Closing**

At the request of Erie Water Street Associates, LLC (the "**Company**"), the City of Syracuse Industrial Development Agency (the "**Agency**"), a public benefit corporation organized under the laws of the State of New York, has undertaken a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in approximately 9,948 square feet of improved real property located at 219-225 West Fayette Street, in the City of Syracuse, New York (the "**Land**"); (ii) the reconstruction and renovation of an existing 3 story approximately 25,007 square foot building (the "**Facility**"), to include but not be limited to, a new store front on the West Fayette Street side of the building; the construction of a new first floor building lobby with elevator and stair tower; the redevelopment of the building's second and third levels to house approximately 16 market rate one-bedroom apartment units; and repairs to the building's Walton Street façade; all located on the Land; (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment, including but not limited to new mechanical systems (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use taxes and mortgage recording tax (except as limited by Section 874 of the General Municipal Law) (collectively the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.



The Company also requested that the Agency appoint the Company as its agent for purposes of completing the Project and the granting of certain Financial Assistance.

The Company is, or will be at the time of closing, the owner of the Project Facility.

The Agency will acquire a leasehold interest in the Land and Facility from the Company pursuant to a Company Lease Agreement dated as of December 1, 2016 (the "*Company Lease*"), between the Company, as landlord and the Agency, as tenant; and an interest in the Equipment pursuant to a bill of sale from the Company dated as of December 1, 2016 (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, 2016 (the "*Agency Lease*") between the Agency, as lessor and the Company, as lessee. 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:

- |                   |   |
|-------------------|---|
| November 9, 2016  | The Company submitted an application for financial assistance for the project.  |
| November 15, 2016 | A resolution determining that the acquisition, renovation and equipping of a commercial facility constitutes a project; describing the financial assistance in connection therewith; and authorizing a public hearing (the " <i>Public Hearing Resolution</i> "). |
| November 15, 2016 | A resolution classifying a certain project as a Type I Action and declaring the intent of the Agency to be Lead Agency for purposes of a coordinated review pursuant to SEQRA (the " <i>Lead Agency Resolution</i> ").  |
| December 1, 2016  | Notice of the Public Hearing was mailed to the chief executive officers of the affected tax jurisdictions pursuant to Section 859-a of the Act.   |
| December 4, 2016  | Notice of the Public Hearing was published in the <u>Post-Standard</u> pursuant to Section 859-a of the Act.  |
| December 20, 2016 | The Agency conducted the Public Hearing pursuant to Section 859-a of the Act.   |
| December 20, 2016 | A resolution determining that the acquisition, construction and equipping of a certain project at the request of Erie Water Street Associates, LLC will not have a significant effect on the environment (the " <i>SEQRA Resolution</i> ").                       |

December 20, 2016

A resolution authorizing the undertaking of the acquisition, reconstruction, renovation, equipping and completion of a commercial facility; appointing the Company agent of the Agency for the purpose of the acquisition, reconstruction, renovation and equipping of the Project and authorizing the execution and delivery of an agreement between the Agency and the Company (the "*Inducement Resolution*").

December 20, 2016

A resolution authorizing the execution and delivery of certain documents by the agency at the request of the Company (the "*Final 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) and Lenders Counsel (LC) as follows:

<b>A. 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. Mortgage	LC	C, A
14. UCC-1 Financing Statement(s)	LC	

15. Survey CC

**B. Items To Be Delivered By The Agency**

1. General Certificate of the Agency relating to incumbency and signatures of officers, execution and delivery of Agency Documents to which it is a party, no litigation and continued existence, with the following items included as exhibits: AC A

Exhibit "A" - Chapter 641 of the Laws of 1979 of the State of New York, as amended A

Exhibit "B" - Certificate of Establishment of the Agency and Certificates of appointment of current members A

Exhibit "C" - By-laws A

Exhibit "D" - Public Hearing Resolution AC

Exhibit "E" - SEQRA Lead Agency Resolution AC

Exhibit "F" – Notice of Public Hearing with evidence of publication and copies of letters to affected tax jurisdictions AC

Exhibit "G" – SEQRA Resolution AC

Exhibit "H" - Inducement Resolution AC

Exhibit "I" - Final 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**

- |  |    |    |
|--|----|----|
| 1. Opinion of Barclay Damon, LLP, counsel to the Agency, addressed to the Company and the Agency                   | AC | AC |
| 2. Opinion of Centolella Lynn D'Elia & Temes LLC, counsel to the Company, addressed to the Agency and the Company. | AC | CC |

**III. Action To Be Required Concurrently With Or After Closing**

Memorandum of Company Lease Agreement, Memorandum of Agency Lease Agreement, Mortgage [and Assignment of Leases and Rents] are to be filed with the Onondaga County Clerk and the UCC-1 Financing Statement(s) are to be filed as appropriate under the Uniform Commercial Code.

**IV. Post-Closing**

Scan copy of Local Access Agreement to SIDA.

**SCHEDULE "A"**

**PERSONS APPEARING**

For the Agency:	City of Syracuse Industrial Development Agency William M. Ryan, Chairman
For the Company:	Erie Water Street Associates, LLC Michael P. Wicker
Company Counsel:	Centolella Lynn D'Elia & Temes LLC Anthony J. D'Elia, Esq.
For the Lender:	NBT Bank, N.A.
Lender's counsel:	Barclay Damon, LLP Christopher Centore, Esq.
Agency's Counsel:	Barclay Damon, LLP Susan R. Katzoff, Esq.