
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

MORGAN POND STREET LLC PROJECT

Transcript of Proceedings

CLOSING DATE: SEPTEMBER 21, 2012

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

MORGAN POND STREET LLC PROJECT

INDEX OF CLOSING DOCUMENTS

TAB	DOCUMENT
1	Bargain and Sale Deed
2	Ground Lease between Tops and Morgan Pond
3	Company Lease Agreement
4	Memorandum of Company Lease Agreement with TP-584
5	Agency Lease Agreement
6	Memorandum of Agency Lease Agreement with Form TP-584
7	Required Insurance
8	Pledge and Assignment
9	Environmental Compliance and Indemnification Agreement
10	Closing Receipt
11	PILOT Agreement
12	Form 412A
13	Ordinance No. 515 of 2012 approving PILOT schedule
14	Bill of Sale
15	Mortgage
16	Assignment of Leases and Rents
17	UCC-1 Financing Statements
18	Survey

- 19 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:
- Exhibit "A" - Chapter 641 of the Laws of 1979 of the State of New York, as amended
- Exhibit "B" - Certificate of Establishment of the Agency and Certificates of appointment of current members
- Exhibit "C" - By-laws
- Exhibit "D" - Notice of Public Hearing with evidence of publication and copies of letters to affected tax jurisdictions
- Exhibit "E" - Public Hearing Resolution
- Exhibit "F" – Inducement Resolution
- Exhibit "G" – PILOT Resolution
- Exhibit "H" – Final Approving Resolution
- 20 Mortgage Recording Tax Affidavit
- 21 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:
- Exhibit "A" – Articles of Organization
- Exhibit "B" - Operating Agreement
- Exhibit "C" Good Standing Certificate
- Exhibit "D" Approving Resolution
- Exhibit "E" Local Access Agreement
- 22 Opinion of Hiscock & Barclay, LLP, counsel to the Agency, addressed to the Company and the Agency
- 23 Opinion of Stephen E. Hall, Esq., counsel to the Company, addressed to the Agency and the Company
- 24 Closing Memorandum

COPY

Record & Return To:
Stephen E. Hall, Esq.,
36 W. Main Street, Suite 400
Rochester, New York 14614

BARGAIN AND SALE DEED

THIS INDENTURE is made this 13th day of September, 2012 between **WEGMANS FOOD MARKETS, INC.**, a New York corporation having an office at 1500 Brooks Avenue, P.O. Box 30844, Rochester, New York 14603-0844 ("Grantor"), and **MORGAN POND STREET, LLC**, a New York limited liability company with offices located at 1170 Pittsford Victor Road, Pittsford, New York 14534 ("Grantee").

WITNESSETH, that the Grantor, in consideration of One and 00/100 Dollar (\$1.00) paid by the Grantee, hereby grants and releases unto the Grantee, the distributees, successors and assigns of the Grantee forever,

ALL THAT TRACT OR PARCEL OF LAND described in Exhibit A attached hereto and made a part hereof (the "Premises").

TAX ACCOUNT NO.: 006-12-54.0

PREMISES: 700 First North Street, Syracuse, NY

THIS CONVEYANCE is made and accepted subject to covenants, easements and restrictions of record, if any, affecting the above described Premises.

THIS CONVEYANCE is made in the regular course of business and does not constitute a sale of all or substantially all of Grantor's assets.

TOGETHER with the appurtenances and all the estate and rights of the Grantor in and to the Premises.

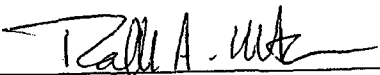
TO HAVE AND TO HOLD the Premises herein granted unto the Grantee, the heirs or successors and assigns of the Grantee forever.

THE GRANTOR covenants that the Grantor has not done or suffered anything whereby the Premises have been encumbered in any way whatever, except as aforesaid.

THE GRANTOR, in compliance with Section 13 of the Lien Law, covenants that Grantor will receive the consideration for this conveyance and will hold the right to receive such consideration 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.

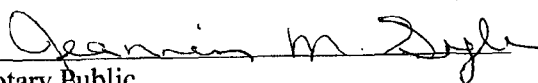
IN WITNESS WHEREOF, the Grantor has executed this Deed the day and year first above written.

WEGMANS FOOD MARKETS, INC.

BY: 
NAME: Ralph A. Uttaro
TITLE: Senior Vice President,
Real Estate/Development

STATE OF NEW YORK)
COUNTY OF MONROE) ss:

On this 17th day of September, 2012 before me, the undersigned, a notary public in and for the State of New York, personally appeared Ralph A. Uttaro, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.


Notary Public

JEANNIN M. SIGLER
Notary Public, State of New York
Qualified in Monroe County
Reg. No. 01SI6059360
Commission Expires April 22, 2014

SCHEDULE A

All that tract or parcel of land situate in the City of Syracuse, County of Onondaga, and State of New York, being part of Block 105, bounded and described as follows: Beginning at the southeast corner of said block, being the intersection of the westerly line of Pond Street with the northerly line of First North Street; thence N. $61^{\circ} 42' 30''$ W. (N. $61^{\circ} 31' 08''$ W. per current survey) along the northerly line of First North Street 234.17 feet to a point in the southeasterly corner of the DeLong Tract, according to a map of said tract filed in the Onondaga County Clerk's Office on December 14, 1888, as Map No. 526; thence N. $28^{\circ} 12' 30''$ E. (in the Onondaga County Clerk's Office on December 14, 1888, as Map No. 526; thence N. $28^{\circ} 12' 30''$ E. (N. $28^{\circ} 23' 52''$ E. per current survey) along the easterly line of said DeLong Tract 605.0 feet to a point; thence S. $61^{\circ} 42' 30''$ E. (S. $61^{\circ} 31' 08''$ E. per current survey) 234.40 feet to a point in the westerly line of Pond Street; thence S. $28^{\circ} 13' 50''$ W. (S. $28^{\circ} 25' 12''$ W. per current survey) along said westerly street line 605.0 feet to the point and place of beginning.

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, that **WEGMANS FOOD MARKETS, INC.**, a New York corporation having an office at 1500 Brooks Avenue, P.O. Box 30844, Rochester, New York 14603-0844 ("Grantor"), for and in consideration of the sum of Ninety Thousand and 00/100 Dollars (\$90,000.00) lawful money of the United States paid by **MORGAN POND STREET LLC**, a New York limited liability company with an office at 1170 Pittsford Victor Road, Pittsford, New York 14534 ("Grantee"), the receipt whereof is hereby acknowledged, has bargained and sold, and by these presents does grant and convey unto the Grantee, the successors and assigns of the Grantee, the following items of personal property located at 700 First North Street, Syracuse, New York (the "Premises") in "AS IS" condition,


All personal property, furniture, fixtures and equipment owned by Grantor and located at the Premises as shown on Schedule A attached hereto.

To have and to hold the same unto the Grantee, the successors and assigns of the Grantee forever. And the Grantor does covenant and agree to and with the Grantee, to warrant and defend the sale of the goods and chattels hereby sold unto the Grantee, the successors and assigns of the Grantee, against all and every person and persons.

Whenever the text hereof requires, the singular number used herein shall include the plural and all genders.

IN WITNESS WHEREOF, the Grantor has duly executed this Bill of Sale on the 14th day of September, 2012.

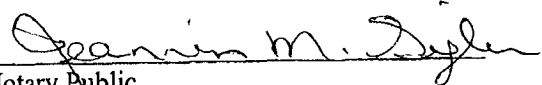
WEGMANS FOOD MARKETS, INC.

BY: 
NAME: Ralph A. Uttaro
TITLE: Senior Vice President,
Real Estate Development

STATE OF NEW YORK)
COUNTY OF MONROE) ss:

On this 17th day of September, 2012 before me, the undersigned, a notary public in and for the State of New York, personally appeared Ralph A. Uttaro, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

JEANNIN M. SIGLER
Notary Public, State of New York
Qualified in Monroe County
Reg. No 01SI5059360
Commission Expires April 22, 2014


Notary Public

SCHEDULE "A"

	90314 VENDOR DOCK
	60139 Pond St case remodel
	60140 Pond street case remodel
COOLERS	87918 DAIRY COOLER
INSTALL	75953 install freezer
STORE	98369 PHARMACY AC
STORE	90116 COMPRESSORS ON AC #2
	54318 BATHROOM REMODEL
NON-STORE	77278 SYSTEM UPGRADES
	54041 Bathroom Remodel
	53622 REMODEL EXISTING BATHROOMS
MISC MEAT	72626 MEAT CASE (DISPLAY)
GEN'L	14254 DEPT ADDITION
	14253 MGRS OFFICE RENOVATIONS
	14386 DEPT CONSTRUCTION
MISC RETAI	87058 AIR DOOR GATES
	14939 RENOVATE MGRS OFFICE
COOLERS	75486 3-DR. ROLL-IN FREEZER
MISC RETAI	83631 CCTV EQUIPMENT
MISC RETAI	87262 RACKING SYS FROZEN WEG/PASTA
	14900 PHARMACY REMODEL
MISC RETAI	89729 TABLET COUNTER
	53300 ATHROOM REMODEL
ELECTRIC	75952 elec install freezer
	8035 NEW FLOOR DUE TO NEW REG
GEN'L	14566 DEPT INSTALLATION
STORE	81908 cpc anti sweat heater control
CASES	73347 DELI CASE
	14106 DEPT ADDITION
	21244 INSTALL EMERGENCY LIGHTIN
	14238 SIGN-STOREFRNT
MISC RETAI	91624 SECURE BACKROOM RECORDS CAGE
COMPUTER	88394 POS CONTROLLERS REFRESH
	11974 REMODEL SERVICE DESK
	14899 INST. PHARMACY FLOOR TILE
	4248 RE-BASE UNDER PRO F BOX
COMPUTER	88526 JETSCAN 4068
	14105 MGRS OFFICE & CONF RM REN

SCANNER SC ✓ 67258 AUTO/MANUAL SLICER

CASES ✓ 67171 16' PRODUCE CASE

✓ 14940 ADDITION

✓ 4550 SECURITY LIGHTS

INSTALL ✓ 67196 INSTALL DAIRY CASE

COOLERS ✓ 67695 36X84X26 FROZEN CASE

MISC RETAI ✓ 19344 SECURITY SYSTEM-CAMERAS

MISC RETAI ✓ 21960 ENERGY EFFICIENT LIGHTING

STORE ✓ 18293 REBUILD A/C AIR HANDLER

MISC RETAI ✓ 15254 HORTON AUTOMATIC DOOR

✓ 15 70-71

COMMUNICAT ✓ 61816 ULTRA PHONE SYSTEM

OFFICE ✓ 14 1968-1979

OFFICE ✓ 16

1980

OFFICE ✓ 17

1981

OFFICE ✓ 225

1982

OFFICE ✓ 1531 1987 ADDITIONS

OFFICE ✓ 2373 TIME CLOCK INSTLLTN

OFFICE ✓ 7104 TERMINAL & COMPUTER SUPP.

STORE ✓ 23279 A/C IN PHONE ROOM

STORE ✓ 49406 ECONO DEPOSITOR, CREAM COVER

STORE ✓ 49578 COMPRESSOR ROOM REBUILD

STORE ✓ 61717 ROOFTOP A/C UNIT

STORE ✓ 61785 INSTALL A/C UNIT

STORE ✓ 62376 INSTALL A/C UNIT

CASES ✓ 55965 UPRIGHT REFRIG DISPLAY CASE

CASES ✓ 63491 CASES

CASES ✓ 65320 16' PRODUCE CONVENIENCE CASE

ELECTRIC ✓ 54319 REMOD
INSTALL ✓ 23495 PHONE UPGRADE
INSTALL ✓ 23636 RETROFIT LAMPS/BALLASTS
INSTALL ✓ 23665 ELEC NEW PHONE ROOM
INSTALL ✓ 23821 PREMISE WIRING FOR PHONES
INSTALL ✓ 40217 INSTALL STEEL DOOR
INSTALL ✓ 51350 INSTALL SUB PANEL
INSTALL ✓ 64960 DELI CASE RESET

MISC RETAI ✓ 391 1983 ADDITIONS
MISC RETAI ✓ 612 1984 ADDITIONS
MISC RETAI ✓ 1094 1985 ADDITIONS
MISC RETAI ✓ 1510 1986 ADDITIONS
MISC RETAI ✓ 1696 1987 ADDITIONS

MISC RETAI ✓ 4199 2EA M3185S-2X-001 RDRS

MISC RETAI ✓ 10887 DSD INSTALLATION
MISC RETAI ✓ 11761 VULCAN E-36 RANGE
MISC RETAI ✓ 23170 PHONE SYSTEM

MISC RETAI ✓ 40407 WINDOW TINTING
MISC RETAI ✓ 52155 METRO MAX SHELVING
MISC RETAI ✓ 54320 MISC EQ-BATHROOM REMODEL
MISC RETAI ✓ 55744 CAMERA SYSTEM
MISC RETAI ✓ 55948 ALARM SYSTEM UPGRADE
MISC RETAI ✓ 56029 PWR SUP,LIEB UPSTN GXT UPS SYS
MISC RETAI ✓ 60358 CC TV,RT130C CAMERA,VARIFOCL L

MISC RETAI ✓ 4338 BAKERY RENOVATN-HOOK-UP
MISC RETAI ✓ 4554 INSTALL BAKERY OVEN

COOLERS ✓ 60431 Case Shelving
INSTALL ✓ 34774 PWR FOR REFRIG CASE
MISC RETAI ✓ 60120 CYLINDER
MISC RETAI ✓ 60332 DAIRY REMODEL WIRING/PIPING
MISC RETAI ✓ 60528 ALARM WORK DISCONNECT OLD FROZ

OFFICE ✓ 373 1983 ADDITIONS
OFFICE ✓ 6886 GONDOLLA RUN/UPPER SHEL
CASES ✓ 13109 INSTALL CASE

INSTALL ✓ 12750 INSTALL BEER COOLER
INSTALL ✓ 12872 INSTALL BEER CASE

✓ 306 PANEL MEAT RM. WALLS

✓ 307 PANEL MEAT RM. WALLS

MISC RETAI ✓ 10619 RECONDITION & INSTALL602

INSTALL ✓ 13955 INSTALL CASE

INSTALL ✓ 13986 POWER FOR CHEESE CASE

INSTALL ✓ 65095 INSTALL DELI CASES

MISC RETAI ✓ 5800 HOOK-UP YOGURT MACHINE

STORE ✓ 49577 INSTALL A/C IN RX

COMPUTER ✓ 2652 RX TERMINAL

INSTALL ✓ 14895 PWR/CABLING FOR PHARMACY

MISC RETAI ✓ 60364 PHARMACY GATE

✓ 809 PC-1 OPERATING SYSTEM

✓ 2146 5601/061 AJX ADDNL LIC.

COOLERS ✓ 60703 Coolers

OFFICE ✓ 1141 PENCO WIDESPAN

CASES ✓ 60101 ELECTRIC WORK-FROZEN FD CASES

COOLERS ✓ 15754 JUST HELP YOURSELF FRZR

COOLERS ✓ 60141 Coolers

COOLERS ✓ 60404 Coolers

INSTALL ✓ 16153 WIRE HELP YOURSELF FRZR

INSTALL ✓ 59828 Install cases

INSTALL ✓ 60702 Install freezer cases

MISC RETAI ✓ 333 FROZEN CASE LINE-UP

MISC RETAI ✓ 60119 CYLINDERS

MISC RETAI ✓ 60529 PIPE WORK AND PREP FOR FROZEN

✓ 962 ADDN CK-OUT LANES

OFFICE ✓ 7482 10 FRONT END CKOUT LITES
COMPUTER ✓ 9973 2 SOFTWARE UPGRADES-4680
COMPUTER ✓ 12120 LABOR SCHEDULING SYSTEM
COMPUTER ✓ 12367 HDISK
COMPUTER ✓ 13121 DIAL MODEM
COMPUTER ✓ 24826 3EA CNTRLR/19EA TERMLS.

INSTALL ✓ 31282 WAN NETWORK CABLING

MISC RETAI ✓ 6713 INSTL FE DESK

MISC RETAI ✓ 7454 INSTAL ICOT

MISC RETAI ✓ 8183 INSTALL 4680 SCAN SYSTEM
MISC RETAI ✓ 9385 IBM3151 CRT W/FEATURE ECA

OFFICE ✓ 366 8 RUBBAIR DOORS
STORE ✓ 1027 BOTTLE-DUMPSTER PAD
✓ 28068 RECEIVERS A/C

MISC RETAI ✓ 1490 CNTRL BX HDTS30 86-3228

MISC RETAI ✓ 66021 CARDBOARD BALER
INSTALL ✓ 37326 INSTALL OFFICE A/C UNITS
INSTALL ✓ 37646 OFFICE A/C

Total

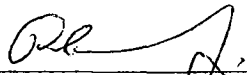
INCUMBENCY CERTIFICATE

The undersigned certifies that he is the Vice Chairman, General Counsel and Secretary of Wegmans Food Markets, Inc. (the "Entity") and that, in such capacity, the undersigned is authorized to execute and deliver this certificate in the name and on behalf of the Entity. The undersigned further certifies that:

- (i) the following individual is a duly elected and qualified officer or authorized representative of the Entity as of the date hereof;
- (ii) the title of such individual is correctly stated;
- (iii) such individual is authorized to sign any and all contracts and other instruments and documents on behalf of the Entity, and deliver the same to Stephen E. Hall, Esq., attorney for Morgan Pond Street, LLC, purchaser of 700 First North Street, Syracuse, New York from the Entity;
- (iv) the signature appearing below is a true specimen of the signature of the person whose signature it purports to be; and
- (v) no other or further action by or on behalf of the Entity or its shareholders, members or partners is necessary or appropriate to authorize the execution, delivery and performance of the agreements and documents required to be executed and delivered by the Entity, Wegmans Food Markets, Inc.

<u>NAME</u>	<u>TITLE/CAPACITY</u>	<u>SIGNATURE</u>
Ralph A. Uttaro	Senior Vice President Real Estate Development	

DATED: September 14, 2012


Name: Paul S. Speranza, Jr., Esq.
Title: Vice Chairman, General Counsel and Secretary

CERTIFICATION OF NON-FOREIGN STATUS

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by transferor, WEGMANS FOOD MARKETS, INC., the undersigned hereby certifies on behalf of transferor the following:

1. Transferor is not a "foreign person" as that term is defined in said Section 1445 of the Internal Revenue Code;
2. Transferor's U.S. employer identification number is
16-1309424
3. Transferor's office address is:

1500 Brooks Avenue
P.O. Box 30844
Rochester, New York 14603-0844
4. Transferor understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punishable by fine or imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of transferor.

Executed as of the 13th day of September 2012 at Rochester, New York.

WEGMANS FOOD MARKETS, INC.

By: 

Name: Ralph A. Uttaro

Title: Senior Vice President,
Real Estate/Development

SURVEY AFFIDAVIT

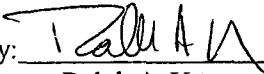
PREMISES: 700 First North Street, Syracuse, NY
BUYER: Morgan Pond Street, LLC
SELLER: Wegmans Food Markets, Inc.

State of New York:
County of Monroe:

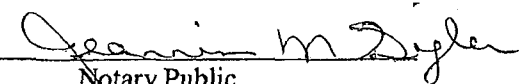
Ralph A. Uttaro, as Senior Vice President of Wegmans Food Markets, Inc., Seller of the Premises, being duly sworn, deposes and says:

1. I have inspected the above described Premises and am familiar with the improvements thereon.
2. I have examined a survey of the Premises made by Costich Engineering dated August 15, 2012.
3. The survey shows an irregular fence on the westerly lot line. The referenced fence belongs to Seller, was installed and is maintained by Seller. To the best of my knowledge there has been no claim of adverse possession or easement by prescription to the land lying between the lot line and the fence as shown on the survey and no demand has been made to remove said fence.
4. This Affidavit is made to induce the sale of or placing of a title policy on the referenced property with the knowledge that the purchaser and/or title company will rely on the truth of it.

Wegmans Food Markets, Inc.

By: 
Ralph A. Uttaro
Senior Vice President
Real Estate/Development

Sworn to before me on this 17th day
of September, 2012.


Notary Public

JEANNIN M. SIGLER
Notary Public, State of New York
Qualified in Monroe County
Reg. No. 01S18059360
Commission Expires April 22, 2014

September 13, 2012

Morgan Pond Street LLC
1170 Pittsford Victor Road
Pittsford, New York 14534

First American Title Insurance Company
16 West Main Street
Rochester, New York 14614

Stephen E. Hall, Esq.
Suite 400
36 West Main Street
Rochester, New York 14614

Tops Markets, LLC
P.O. Box 1027
Buffalo, New York 14240

Stewart Title Insurance Company
630 Pearl Street
Buffalo, New York 14202

Re: Property: 700 First North Street, Syracuse, Onondaga County New York ("Property")
Tax Map. No. 006-12-54.0
Wegmans Food Markets, Inc. ("Seller") to Morgan Pond Street LLC ("Purchaser")


To Whom It May Concern:

Please be advised of the following:

1. Wegmans Food Markets, Inc. guarantees that all franchise taxes and/or license fees for Wegmans Food Markets, Inc. are or will be paid.
2. Wegmans Food Markets, Inc. guarantees the payment of all water bills, if any, applicable to the Property.
3. Wegmans Food Markets, Inc. represents that to its knowledge, without any investigation of any kind whatsoever, all personal property to be conveyed to Purchaser as listed on Schedule A hereto is free and clear of any security interest ("Security Interest"), and is property of Wegmans Food Markets, Inc. and not subject to any lease with a third party ("Lease"). In the event that any item of such personal property is found to be subject to a Security Interest or Lease, Seller guarantees that it will promptly cause such Security Interest to be terminated, or such Lease to be terminated and title to such item of personal property to revert solely to Purchaser; such guaranty will survive the Closing and transfer of title, and with such guaranty to also extend to Purchaser's successors and assigns, or any subsequent purchaser of such personal property from Purchaser, including Tops Markets, LLC.

4. Wegmans Food Markets, Inc. represents and warrants that, to its knowledge, there are no parties in possession of the Property not shown of record.

Wegmans Food Markets, Inc.

BY: 

NAME: Ralph A. Uttaro

TITLE: Senior Vice President
Real Estate/Development

SCHEDULE "A"

	90314 VENDOR DOCK
	60139 Pond St case remodel
	60140 Pond street case remodel
COOLERS	87918 DAIRY COOLER
INSTALL	75953 install freezer
STORE	98369 PHARMACY AC
STORE	90116 COMPRESSORS ON AC #2
	54318 BATHROOM REMODEL
NON-STORE	77278 SYSTEM UPGRADES
	54041 Bathroom Remodel
	53622 REMODEL EXISTING BATHROOMS
MISC MEAT	72626 MEAT CASE (DISPLAY)
GEN'L	14254 DEPT ADDITION
	14253 MGRS OFFICE RENOVATIONS
	14386 DEPT CONSTRUCTION
MISC RETAI	87058 AIR DOOR GATES
	14939 RENOVATE MGRS OFFICE
COOLERS	75486 3-DR. ROLL-IN FREEZER
MISC RETAI	83631 CCTV EQUIPMENT
MISC RETAI	87262 RACKING SYS FROZEN WEG/PASTA
	14900 PHARMACY REMODEL
MISC RETAI	89729 TABLET COUNTER
	53300 ATHROOM REMODEL
ELECTRIC	75952 elec install freezer
	8035 NEW FLOOR DUE TO NEW REG
GEN'L	14566 DEPT INSTALLATION
STORE	81908 cpc anti sweat heater control
CASES	73347 DELI CASE
	14106 DEPT ADDITION
	21244 INSTALL EMERGENCY LIGHTIN
	14238 SIGN-STOREFRNT
MISC RETAI	91624 SECURE BACKROOM RECORDS CAGE
COMPUTER	88394 POS CONTROLLERS REFRESH
	11974 REMODEL SERVICE DESK
	14899 INST. PHARMACY FLOOR TILE
	4248 RE-BASE UNDER PRO F BOX
COMPUTER	88526 JETSCAN 4068
	14105 MGRS OFFICE & CONF RM REN

SCANNER SC ✓ 67258 AUTO/MANUAL SLICER

CASES ✓ 67171 16' PRODUCE CASE

✓ 14940 ADDITION

✓ 4550 SECURITY LIGHTS

INSTALL ✓ 67196 INSTALL DAIRY CASE

COOLERS ✓ 67695 36X84X26 FROZEN CASE

MISC RETAI ✓ 19344 SECURITY SYSTEM-CAMERAS

MISC RETAI ✓ 21960 ENERGY EFFICIENT LIGHTING

STORE ✓ 18293 REBUILD A/C AIR HANDLER

MISC RETAI ✓ 15254 HORTON AUTOMATIC DOOR

✓ 15 70-71

COMMUNICAT ✓ 61816 ULTRA PHONE SYSTEM

OFFICE ✓ 14 1968-1979

OFFICE ✓ 16

1980

OFFICE ✓ 17

1981

OFFICE ✓ 225

1982

OFFICE ✓ 1531 1987 ADDITIONS

OFFICE ✓ 2373 TIME CLOCK INSTLLTN

OFFICE ✓ 7104 TERMINAL & COMPUTER SUPP.

STORE ✓ 23279 A/C IN PHONE ROOM

STORE ✓ 49406 ECONO DEPOSITOR, CREAM COVER

STORE ✓ 49578 COMPRESSOR ROOM REBUILD

STORE ✓ 61717 ROOFTOP A/C UNIT

STORE ✓ 61785 INSTALL A/C UNIT

STORE ✓ 62376 INSTALL A/C UNIT

CASES ✓ 55965 UPRIGHT REFRIG DISPLAY CASE

CASES ✓ 63491 CASES

CASES ✓ 65320 16' PRODUCE CONVENIENCE CASE

ELECTRIC ✓ 54319 REMOD
INSTALL ✓ 23495 PHONE UPGRADE
INSTALL ✓ 23636 RETROFIT LAMPS/BALLASTS
INSTALL ✓ 23665 ELEC NEW PHONE ROOM
INSTALL ✓ 23821 PREMISE WIRING FOR PHONES
INSTALL ✓ 40217 INSTALL STEEL DOOR
INSTALL ✓ 51350 INSTALL SUB PANEL
INSTALL ✓ 64960 DELI CASE RESET

MISC RETAI ✓ 391 1983 ADDITIONS
MISC RETAI ✓ 612 1984 ADDITIONS
MISC RETAI ✓ 1094 1985 ADDITIONS
MISC RETAI ✓ 1510 1986 ADDITIONS
MISC RETAI ✓ 1696 1987 ADDITIONS

MISC RETAI ✓ 4199 2EA M3185S-2X-001 RDRS

MISC RETAI ✓ 10887 DSD INSTALLATION
MISC RETAI ✓ 11761 VULCAN E-36 RANGE
MISC RETAI ✓ 23170 PHONE SYSTEM

MISC RETAI ✓ 40407 WINDOW TINTING
MISC RETAI ✓ 52155 METRO MAX SHELVING
MISC RETAI ✓ 54320 MISC EQ-BATHROOM REMODEL
MISC RETAI ✓ 55744 CAMERA SYSTEM
MISC RETAI ✓ 55948 ALARM SYSTEM UPGRADE
MISC RETAI ✓ 56029 PWR SUP,LIEB UPSTN GXT UPS SYS
MISC RETAI ✓ 60358 CC TV,RT130C CAMERA,VARIFOCL L

MISC RETAI ✓ 4338 BAKERY RENOVATN-HOOK-UP
MISC RETAI ✓ 4554 INSTALL BAKERY OVEN

COOLERS ✓ 60431 Case Shelving
INSTALL ✓ 34774 PWR FOR REFRIG CASE
MISC RETAI ✓ 60120 CYLINDER
MISC RETAI ✓ 60332 DAIRY REMODEL WIRING/PIPING
MISC RETAI ✓ 60528 ALARM WORK DISCONNECT OLD FROZ

OFFICE ✓ 373 1983 ADDITIONS
OFFICE ✓ 6886 GONDOLLA RUN/UPPER SHEL
CASES ✓ 13109 INSTALL CASE

INSTALL ✓ 12750 INSTALL BEER COOLER
INSTALL ✓ 12872 INSTALL BEER CASE

✓ 306 PANEL MEAT RM. WALLS

✓ 307 PANEL MEAT RM. WALLS

MISC RETAI ✓ 10619 RECONDITION & INSTALL602

INSTALL ✓ 13955 INSTALL CASE

INSTALL ✓ 13986 POWER FOR CHEESE CASE

INSTALL ✓ 65095 INSTALL DELI CASES

MISC RETAI ✓ 5800 HOOK-UP YOGURT MACHINE

STORE ✓ 49577 INSTALL A/C IN RX

COMPUTER ✓ 2652 RX TERMINAL

INSTALL ✓ 14895 PWR/CABLING FOR PHARMACY

MISC RETAI ✓ 60364 PHARMACY GATE

✓ 809 PC-1 OPERATING SYSTEM

✓ 2146 5601/061 AJX ADDNL LIC.

COOLERS ✓ 60703 Coolers

OFFICE ✓ 1141 PENCO WIDESPAN

CASES ✓ 60101 ELECTRIC WORK-FROZEN FD CASES

COOLERS ✓ 15754 JUST HELP YOURSELF FRZR

COOLERS ✓ 60141 Coolers

COOLERS ✓ 60404 Coolers

INSTALL ✓ 16153 WIRE HELP YOURSELF FRZR

INSTALL ✓ 59828 Install cases

INSTALL ✓ 60702 Install freezer cases

MISC RETAI ✓ 333 FROZEN CASE LINE-UP

MISC RETAI ✓ 60119 CYLINDERS

MISC RETAI ✓ 60529 PIPE WORK AND PREP FOR FROZEN

✓ 962 ADDN CK-OUT LANES

OFFICE ✓ 7482 10 FRONT END CKOUT LITES
COMPUTER ✓ 9973 2 SOFTWARE UPGRADES-4680
COMPUTER ✓ 12120 LABOR SCHEDULING SYSTEM
COMPUTER ✓ 12367 HDISK
COMPUTER ✓ 13121 DIAL MODEM
COMPUTER ✓ 24826 3EA CNTRLR/19EA TERMLS.

INSTALL ✓ 31282 WAN NETWORK CABLING

MISC RETAI ✓ 6713 INSTL FE DESK

MISC RETAI ✓ 7454 INSTAL ICOT

MISC RETAI ✓ 8183 INSTALL 4680 SCAN SYSTEM
MISC RETAI ✓ 9385 IBM3151 CRT W/FEATURE ECA

OFFICE ✓ 366 8 RUBBAIR DOORS
STORE ✓ 1027 BOTTLE-DUMPSTER PAD
STORE ✓ 28068 RECEIVERS A/C

MISC RETAI ✓ 1490 CNTRL BX HDTS30 86-3228

MISC RETAI ✓ 66021 CARDBOARD BALER
INSTALL ✓ 37326 INSTALL OFFICE A/C UNITS
INSTALL ✓ 37646 OFFICE A/C

Total

LEASE AGREEMENT

DATE: SEPTEMBER 10, 2012

LANDLORD: MORGAN POND STREET LLC, A NEW YORK
LIMITED LIABILITY COMPANY

TENANT: TOPS MARKETS, LLC, A NEW YORK LIMITED
LIABILITY COMPANY

STORE NUMBER: _____

SITE: 700 FIRST NORTH STREET
SYRACUSE, NEW YORK 13208

TABLE OF CONTENTS

<u>ARTICLE</u>	<u>DESCRIPTION</u>	<u>PAGE NO.</u>
1.	DEFINITIONS.....	1
2.	LEASE OF PREMISES.....	2
3.	TERM.....	2
4.	OPTION TO EXTEND TERM.....	2
5.	FIXED RENT; PERCENTAGE RENT.....	2
6.	INTENTIONALLY OMITTED.....	3
7.	ALTERATIONS.....	3
8.	REPAIRS.....	4
9.	MECHANIC'S AND MATERIALMEN'S LIENS.....	4
10.	UTILITIES.....	5
11.	FIRE AND OTHER CASUALTY.....	5
12.	INSURANCE.....	6
13.	WAIVER OF SUBROGATION.....	7
14.	MUTUAL INDEMNIFICATION.....	7
15.	USE.....	8
16.	OUT BUILDING AND ADJACENT PROPERTY RESTRICTIONS.....	10
17.	INTENTIONALLY OMITTED.....	11
18.	TAXES.....	11
19.	SIGNS.....	12
20.	DEFAULT BY TENANT.....	12
21.	DEFAULT BY LANDLORD.....	14
22.	EMINENT DOMAIN.....	15
23.	TITLE; ENVIRONMENTAL.....	15
24.	COVENANT OF QUIET ENJOYMENT.....	17
25.	OPERATION.....	17
26.	SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT.....	18
27.	ESTOPPEL CERTIFICATE.....	18
28.	TRADE FIXTURES.....	18
29.	ASSIGNMENT AND SUBLETTING; MORTGAGES.....	18
30.	FORCE MAJEURE.....	19
31.	NON-WAIVER.....	19
32.	EXPENSES.....	20
33.	NOTICES AND PAYMENTS.....	20
34.	BROKER'S COMMISSION.....	20
35.	SURRENDER OF PREMISES; HOLDING OVER.....	21
36.	ADDITIONAL COVENANTS.....	21
37.	MISCELLANEOUS.....	22
38.	INTENTIONALLY OMITTED.....	23
39.	FUEL FACILITY.....	23

EXHIBITS

EXHIBIT "A"	PREMISES LEGAL DESCRIPTION
EXHIBIT "B"	SITE PLAN
EXHIBIT "C"	PYLON SIGN
EXHIBIT "D"	RENT COMMENCEMENT DATE AGREEMENT
EXHIBIT "E"	PERMITTED TITLE EXCEPTIONS
EXHIBIT "F"	EXISTING ENVIRONMENTAL CONDITIONS
EXHIBIT "G"	MEMORANDUM OF LEASE
EXHIBIT "H"	SNDA
EXHIBIT "I"	ESTOPPEL CERTIFICATE

LEASE AGREEMENT

THIS LEASE AGREEMENT (hereinafter referred to as the "Lease") is made and entered into as of the 10th day of September, 2012 (the "Effective Date"), by and between:

Morgan Pond Street LLC, a New York limited liability company, (hereinafter referred to as the "Landlord"); and,

Tops Markets, LLC, a New York limited liability company, (hereinafter referred to as the "Tenant").

In consideration of the covenants and agreements in this Lease, Landlord and Tenant hereby agree as follows:

1. DEFINITIONS

In addition to other terms which are defined in subsequent articles of this Lease, the following terms shall have the meanings set forth in this Article except as otherwise expressly provided herein:

1.01 Effective Date. The Effective Date shall be the Effective Date as set forth above.

1.02 Lease Year. The first Lease Year shall begin on the Commencement Date and end on the last day of the twelfth (12th) full calendar month after the Commencement Date. Thereafter, a Lease Year shall consist of each successive twelve (12) calendar month period after the first Lease Year. If the Commencement Date occurs on the first day of a calendar month, the month in which such Commencement Date occurs shall be considered a full calendar month for purposes of the first sentence of this Paragraph 1.03.

1.03 Premises. The premises consists of the property commonly known as 700 First North Street, Syracuse, New York 13208 (SBL No. 6-12-54) as more particularly described on Exhibit "A" attached hereto and the building and related improvements thereon including that certain building consisting of approximately 32,800 square feet of space (the "Building"), and the non-exclusive use of the adjacent parking area, the utility easements and the rights of ingress and egress appurtenant to such property (collectively, the "Premises"), but excluding the Outparcel (defined hereinafter). Notwithstanding the forgoing, until Landlord commences construction of the pad in the Outparcel, the area of land within the Outparcel will be included as part of the Premises.

Landlord and Tenant shall execute such easements, including utility easements as may be reasonably necessary for Tenant's use of the Premises and Landlord's development of the Outparcel provided that Tenant shall not be required to execute any easement for the Outparcel that materially interferes with Tenant's use and enjoyment of the Premises. The parties acknowledge that Tenant's use and enjoyment of the Premises is primary to Landlord's development of the Outparcel.

1.04 Rent Commencement Date/Commencement Date. The Commencement Date of this Lease shall be the date upon which Landlord and Tenant have fully executed this Lease. The Rent Commencement Date shall be the date which is one hundred (100) days after the later of: (i) the date that Tenant either satisfies or waives its contingencies set forth in Section 36 hereof or (ii) the date that title to the Premises is transferred to the Landlord. Upon request, Landlord and Tenant shall enter into an agreement substantially in the form attached here to as Exhibit "D" confirming, among other items, the date on which the Rent Commencement Date occurred.

1.05 Site Plan. That certain Site Plan entitled "Site Plan", dated August 24, 2012 prepared by Costich Engineering which is attached hereto as Exhibit "B" and incorporated herein. Subject to Article 22, Landlord shall not change the layout, configuration or any other matter relating to the Premises as shown on the Site Plan at any time during the Term except with Tenant's consent, which shall not be unreasonably withheld. Notwithstanding the foregoing, Landlord shall have the right to create the Outparcel (hereinafter defined) pursuant to the terms of Section 7.04 hereof and as depicted on Exhibit "B" attached hereto.

1.06 Miscellaneous Definitions. "Include," "includes" and "including" mean considered as part of a larger group, and not limited to the items recited. "Shall" means "is obligated to" and "may" means "is permitted to."

2. LEASE OF PREMISES

2.01 Lease of Premises. Landlord hereby leases to Tenant the Premises, together with the rights and privileges created in this Lease in favor of Tenant, and together with a non-exclusive right and easement to use all of the parking area, the utility easements and the easements and appurtenances contained within or benefitting the Premises.

3. TERM

3.01 Term. The original term of this Lease (the "Initial Term") shall begin on the Commencement Date and end twenty (20) Lease Years after the Commencement Date (unless extended pursuant to Article 4). The term of this Lease shall continue for any extensions thereof pursuant to this Lease unless terminated earlier in accordance with this Lease. As used in this Lease, the "Term" shall mean the original term as the same may have been extended pursuant to Article 4.

4. OPTION TO EXTEND TERM

4.01 Number and Length. Tenant has the right to extend the Term for five (5) successive periods of five (5) years each followed by one successive period of four (4) years, each an "Extension Term". To exercise an option to extend the Term of the Lease, Tenant must notify Landlord in writing no later than six (6) months prior to the end of the then current Term (the "Last Notice Date"). If by the Last Notice Date Tenant fails to give Landlord the notice provided for in the preceding sentence, Landlord shall give Tenant a written reminder of that fact not less than thirty (30) days after the Last Notice Date. Notwithstanding the foregoing provisions of this Paragraph 4.01, Tenant shall have the right to exercise its option to extend this Lease by giving written notice to Landlord not later than the thirtieth (30th) day following Tenant's actual receipt of Landlord's reminder notice under this paragraph.

5. FIXED RENT; PERCENTAGE RENT

5.01 Fixed Rent. Commencing on the Rent Commencement Date, Tenant shall pay to Landlord, in monthly installments and at the address specified in Paragraph 3.01, "Fixed Rent" as set forth on the schedule below. The first such payment shall be due on the first day of the calendar month after the Rent Commencement Date. Fixed Rent for any period less than a full calendar month shall be calculated on a per diem basis. Any per diem Fixed Rent due for the period between the Rent Commencement Date and the first day of the calendar month after the Rent Commencement Date shall be due together with the first installment of Fixed Rent on the first day of the calendar month after the Rent Commencement Date.

<u>Lease Year(s)</u>	<u>Rent Per Square Foot Of Leasable Floor Area</u>	<u>Annual Fixed Minimum Rent</u>	<u>Monthly Fixed Minimum Rent</u>
1-5	\$9.75	\$319,800	\$26,650
6-10	\$10.25	\$336,200	\$28,017
11-15	\$11.00	\$360,800	\$30,067
16-20	\$11.50	\$377,200	\$31,433

During any extended term or terms this Lease shall be upon the same terms and provisions as set forth in this Lease except that Fixed Rent shall be as follows:

<u>Lease Year(s)</u>	<u>Rent Per Square Foot Of Leasable Floor Area</u>	<u>Annual Fixed Minimum Rent</u>	<u>Monthly Fixed Minimum Rent</u>
21-25	\$12.00	\$393,600	\$32,800
26-30	\$12.50	\$410,000	\$34,167
31-35	\$13.00	\$426,400	\$35,533
36-40	\$13.50	\$442,800	\$36,900
41-45	\$14.00	\$459,200	\$38,267
46-49	\$14.50	\$475,600	\$39,633

6. INTENTIONALLY OMITTED

7. ALTERATIONS

7.01 Alterations. Subject to compliance with any and all municipal requirements and so long as any proposed alterations do not reduce the square footage of the Building, Tenant may, at its sole cost and expense and without Landlord's consent, make such interior and/or exterior, structural and/or nonstructural installations, changes, modifications and alterations in, on or to such parts of the Building and the Premises (including, without limitation, the loading docks and the facade of the Building) as Tenant shall deem expedient or desirable so long as, upon completion, such installations, changes, modifications or alterations do not adversely affect the structural safety of the Building. Upon request by Tenant, Landlord shall execute all instruments necessary and otherwise cooperate with Tenant at no expense to Landlord to obtain from the applicable governmental authorities licenses and permits to make any installations, changes, modifications or alterations that Tenant wishes to make.

7.02 Communications Equipment. Tenant shall have the right, subject to all applicable governmental regulations, to place, maintain, repair and replace on the roof of the Premises (or on the roof of the building of which the Premises are a part) a satellite dish, antenna and other telecommunications equipment (collectively, the "Communications Equipment"), and all other related materials, equipment or components thereof, including cables from the exterior of the Premises to equipment inside the Premises necessary for the operation of the Communications Equipment and to have reasonable access to said roof at all times. Tenant shall repair all damage to the Premises (including, without limitation, to said roof) resulting from Tenant's installation and/or use of the Communications Equipment. Tenant shall be responsible for repair and maintenance of the Communications Equipment during the term hereof, at Tenant's sole cost and expense, and upon termination or expiration of this Lease Tenant shall remove the Communications Equipment and repair damage to the roof caused principally as a result of such removal. The parties agree that the Communications Equipment is, and shall remain, the property of Tenant and that the Communications Equipment is not, and the installation of the Communications Equipment shall not cause the Communications Equipment to become, a fixture pursuant to this Lease or by operation of law. Tenant shall have no obligation to make payment of any rent, license fee or other consideration because of the rights granted to Tenant pursuant to this Paragraph 7.02. Landlord shall not permit any other entity to install, anywhere in the Premises or Outparcel, any telecommunication or other equipment which interferes with the proper function of the Communications Equipment. Landlord shall cooperate with Tenant, at no cost to Landlord, in connection with Tenant's obtaining any required municipal approvals relating to the Communications Equipment.

7.03 Landlord shall have the right to create an up to 3,000 square foot pad site within the Premises for a separate tenant, the location of which is depicted on Exhibit "B" attached hereto (the "Outparcel"). As part of the creation of the Outparcel, Landlord shall subdivide the Outparcel as its own separate tax parcel, for which Tenant would have no obligations to pay tax on, and provide separately metered utilities and water to the Outparcel. Tenant, at no cost to Tenant, agrees to assist Landlord in subdividing the Outparcel, including but not limited to executing such easements as reasonably required by such municipality including reasonable parking and utility easements, provided that such easements do not materially interfere with Tenant's use and enjoyment of the Premises. The parties acknowledge that Tenant's use and enjoyment of the Premises is primary to Landlord's development of the Outparcel. If Landlord creates the Outparcel, any and all obligations of Tenant pursuant to the terms of this Lease as

such obligations relate to the portion of the Premises that comprises the Outparcel shall be void and deemed no longer in effect from the date that Landlord provides notice to Tenant of its intent to create the Outparcel. If Landlord's intended development of the Outparcel requires the shared use or shared rights to that portion of the Premises outside the Outparcel, Landlord and Tenant agree to use their best efforts to negotiate a mutually agreeable agreement addressing such rights and/or easements and such other rights and obligations including, but not limited to, any insurance requirements to be maintained by Landlord and/or the Outparcel Tenant and any reimbursement by the Landlord or Outparcel Tenant to Tenant for costs associated with Landlord's creation of the Outparcel, for ongoing maintenance charges for the repair, replacement and maintenance of any common elements, including parking area costs or any other charges to be shared by the parties.

8. REPAIRS

8.01 Tenant Repairs. Tenant shall keep the interior of the Building, the parking lot, any sidewalks or other improvements at the Premises, Tenant's signage and Tenant's sign panel installed on any pylon sign and the pylon sign on the Premises in good condition and repair (subject, however, to reasonable wear and tear), except to the extent any condition requiring repair or replacement is caused by or results from: (i) any act, negligence or default under this Lease of Landlord, its employees, agents, or contractors; (ii) eminent domain or if covered by insurance procured by Landlord; or (iii) settling of the Building or any other improvements which are a part of the Premises. Tenant shall be responsible for maintaining and replacing, if necessary, the HVAC system, and shall enter into an appropriate maintenance contract for such purposes.

8.02 Landlord Repairs. Landlord, at its sole cost and expense, shall keep the roof, roof drainage, foundations, sub-flooring and floor slab, and structure of the Building, in good condition and repair in a manner which is consistent with the custom and practice employed in first class shopping centers by the shopping center industry in the area in which the Premises is located, except to the extent (i) Tenant is required to perform such repair pursuant to the terms and provisions of Paragraph 8.01, or (ii) any condition requiring repair or replacement is caused by or results from any act, negligence or default under this Lease of Tenant, its employees, agents, or contractors. Tenant shall provide Landlord with reasonable access to the roof for the purposes of this Subsection. Any maintenance or repairs to be effected by Landlord shall, to the extent possible, be performed when the Premises are not open for business to the general public (or if Tenant is open on a 24/7 basis, Landlord and Tenant shall cooperate to determine a time reasonably acceptable to both parties based on the proposed activity to occur) and otherwise shall be conducted so as to minimize interference with Tenant's normal business operations in the Premises.

8.03 Government Mandated Repairs or Alterations. Tenant shall also make all alterations and improvements required by any building code, law, ordinance, rule or regulation promulgated after the Effective Date by any governmental authority unless such alteration or improvement is made necessary as a result of improvements constructed or installed by Landlord, or as a result of Landlord's development, use or operations of the Outparcel, in which case Landlord shall be responsible for such alterations or improvements.

8.04 Capital Repairs. If Tenant shall make any repairs which constitute capital improvements during the five (5) year period immediately preceding the expiration or earlier termination of this Lease and Landlord has approved of such improvement, then the cost of any such capital improvement shall be deemed amortized over the useful life of the improvements commencing upon the date of installation or completion thereof, as the case may be, and Landlord shall promptly reimburse Tenant for the unamortized cost thereof as of the date of expiration or earlier termination of this Lease, it being understood and agreed that Landlord's payment obligation hereunder shall survive the expiration or termination of this Lease.

9. MECHANIC'S AND MATERIALMEN'S LIENS

9.01 Tenant's Obligation. If any mechanic's, materialmen's, or other similar lien is filed against the Building or the Premises as a result of any work performed by Tenant, Tenant shall discharge, bond or otherwise remove such mechanic's, materialmen's, or other lien within thirty (30) days after receipt of notice thereof from Landlord; provided, however, Tenant

reserves the right to contest any such lien by the institution of appropriate legal proceedings or otherwise, as long as Landlord's interest in the Building or the Premises is not threatened.

9.02 Landlord's Obligation. If any mechanic's, materialmen's, or other similar lien is filed against the Building or the Premises as a result of any work performed by Landlord, Landlord shall discharge, bond or otherwise remove any mechanic's, materialmen's, or other such lien within thirty (30) days after receipt of notice thereof from Tenant; provided, however, Landlord reserves the right to contest any such lien by the institution of appropriate legal proceedings or otherwise, as long as Tenant's interest in the Building and the Premises is not threatened.

10. UTILITIES

10.01 Payment. Beginning on the date that Tenant takes possession of the Premises and continuing throughout the Term, Tenant shall pay the cost and expense of, and as necessary, shall contract for, in its own name, all utility services rendered or furnished exclusively to the Premises, including water, sewer, gas, electric current, and telephone.

10.02 Interruption. Landlord shall not take, or grant any permission or consent for any person or entity to take, any action which may interrupt or interfere with any utility service to the Premises except as may occur in connection with bona fide emergencies.

10.03 Utilities. Landlord agrees to provide throughout the Term connections for water, sewer (sanitary and storm), gas, electric current, telephone, and any other utilities used by Tenant in sufficient capacity to serve Tenant's intended use of the Premises. In the event any utility service is available from more than one utility provider, Tenant shall have the right to select the utility provider who will provide such utility service to the Premises. In the event that Tenant desires to alter the configuration of the utilities, Tenant shall be responsible for the cost of such alteration, except that Tenant shall not be responsible for costs associated with alterations necessary for Landlord's development or use of the Outparcel.

11. FIRE AND OTHER CASUALTY

11.01 Damage or Destruction to the Building or the Premises.

(a) In the event the Building or the Premises are damaged or destroyed as a result of fire or other casualty including, without limitation, natural disaster or if any of the other improvements at the Premises which, in Tenant's reasonable discretion negatively impacts Tenant's operations, are damaged or destroyed as a result of fire or other casualty including, without limitation, natural disaster, Tenant shall promptly restore the Premises, the Building or such other improvements, as the case may be, to the condition that existed immediately prior to such fire or other casualty; provided that Tenant may make changes to the Building or the Premises in connection with the restoration, but any increased costs as a result thereof will be borne by Tenant and the time periods specified in the next sentence shall be extended by the period of any delays caused by such changes. Tenant shall commence restoration within ninety (90) days after the date of such damage or destruction and complete such restoration within nine (9) months after the date of such damage or destruction, subject to Force Majeure and if Tenant either does not commence or complete such restoration within such time periods or Landlord believes, in its reasonable discretion, that Tenant cannot either commence or complete restoration of the Premises within the time periods set forth herein, Landlord may: (i) require Tenant to assign all insurance proceeds to Landlord for purposes of restoring the Building, Premises or other improvements; (ii) restore the Building, Premises or so much of the Premises and such other improvements as Tenant may deem reasonably necessary to conduct its normal business operations in the Building, which costs Tenant shall pay to Landlord during the course of such repairs or restoration within thirty (30) days of receipt of properly documented invoices from Landlord; or (iii) seek to obtain specific performance of Tenant's restoration obligation; or (iv) terminate this Lease by written notice to Tenant without waiving any of Landlord's rights under this Lease or at law or in equity.

11.02 Abatement of Rent. If the Building or the Premises are damaged or destroyed, unless Tenant has elected to require Landlord to maintain the property damage insurance on the Building and the Premises pursuant to Paragraph 12.01(c), there shall be, to the extent Tenant has business interruption insurance, no abatement of Fixed Rent or any other amount due and

payable hereunder by Tenant to Landlord. If the Building or the Premises are damaged or destroyed and Tenant either does not have business interruption insurance or has elected under Paragraph 12.01(c) to require Landlord to maintain the property damage insurance on the Building or the Premises, or if any other improvements required to be restored in accordance with this Article 11 shall be damaged or destroyed, and if Tenant is unable to reasonably operate its business in any portion of the Building or the Premises substantially the same as Tenant was operating prior to such casualty, then Fixed Rent and any other amount due and payable hereunder by Tenant to Landlord shall be suspended or fairly and justly apportioned (if Tenant is so operating its business in only a portion of the Building or the Premises). Any such abatement shall be effective as of the date of such damage or destruction and shall continue until the earlier of ninety (90) days after completion of restoration in accordance with this Article 11 or the date that Tenant reopens the Building (or the portion thereof in which Tenant was previously unable to operate its business) for business; provided, however, if such date falls within a Blackout Period, then the abatement shall continue to the first business day following the end of the Blackout Period unless Tenant opens the Building (or the portion thereof in which Tenant was previously unable to operate its business) for business during the Blackout Period, in which case the abatement shall end on such date of opening. The "Blackout Period" shall be (i) the period beginning on November 1st and ending the following January 31st or (ii) the period beginning on the second Saturday prior to Easter Sunday and ending on the second Saturday following such Easter Sunday.

11.03 Option to Terminate. If the Building is damaged or destroyed during the last two (2) years of the Term to the extent that the cost of repair or restoration amounts to more than one-third (1/3) of the replacement cost of the Building, either Landlord or Tenant shall have the right to terminate this Lease as of the date of such damage or destruction by giving written notice to the other of such election within thirty (30) days following the date of such fire or other casualty. Unless such damage or destruction occurs during the last two (2) years of the last extension period under Article 4, if Landlord elects to terminate this Lease, Tenant may render Landlord's termination election null and void by notifying Landlord in writing within thirty (30) days after receipt by Tenant of Landlord's termination notice that Tenant will not exercise its rights under Article 4 to elect not to extend the term for the next available extension option.

12. INSURANCE

12.01 Tenant's Insurance.

(a) From and after the Commencement Date, Tenant shall maintain during the Term, in the name of Tenant as the named insured, and the Landlord and Landlord's mortgagee as additional insured parties as their interests may appear, commercial general liability insurance (including contractual liability insurance coverage) against claims for injuries to persons or property occurring in or upon the Premises by reason of Tenant's use, occupancy or operation in the Building or the Premises. Such insurance at all times shall provide coverage in an amount not less than Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate with a deductible as established from time to time pursuant to Tenant's program of insurance. The policy or policies of Tenant's liability insurance shall provide that an insured loss will be paid notwithstanding any act or negligence of Landlord or Tenant and for payment of claims on an occurrence basis. Such insurance shall be issued for periods of not less than one (1) year by companies that are authorized to issue such insurance in the state in which the Premises is located. Tenant may, in its sole discretion, carry at its expense property damage insurance for all of its equipment. Upon request by Landlord, Tenant shall deliver to Landlord copies of certificates evidencing the policies required under this Paragraph 12.01(a). The certificates of insurance shall provide that (i) prior to the cancellation of the policy, the insurer will provide advice of cancellation to the Landlord as soon as reasonably practicable. The amount of insurance required by this Paragraph 12.01(a) shall increase in accordance with good shopping center practices in the greater metropolitan area where the Premises is located on each ten (10) year anniversary of the Commencement Date if requested by written notice from Landlord to Tenant; provided that in no event shall the amount of insurance increase by more than twenty-five percent (25%) of the amount of insurance then required to be in effect.

12.02 Tenant's Property Insurance.

(a) Property Damage Insurance. Tenant shall, at all times during the Term, carry all-risk property damage insurance on the buildings and improvements in the Premises; including the Building, for the full replacement cost of such buildings and improvements. Furthermore, Tenant shall, at all times during the Term, carry Special Form (formerly "all risk") property damage insurance on the Premises (including the Building) for the full replacement cost of the Premises (including loss of rents for a minimum period of one year) and, unless waived in writing by Landlord, coverages for flood, windstorm, and increased cost of construction, at sublimits reasonably acceptable to Landlord and Tenant. Such insurance shall be issued for periods of not less than one (1) year by companies having an AM Best rating of A or better (or equivalent) and authorized to issue such insurance in the state in which the Premises is located. The policy or policies shall provide that any loss will be paid notwithstanding any act or negligence of Landlord or Tenant. Upon request Tenant shall deliver to Landlord copies of certificates evidencing the policies required under this Paragraph 12.02(b). The certificates of insurance shall provide that no lapse, cancellation or material modification of the policy shall be effective until at least thirty (30) days after mailing of written notice thereof to Landlord. All loss proceeds payable under any insurance required of Tenant under this Paragraph 12.02(b) shall be disbursed and utilized solely for the purpose of repairing and restoring the buildings and improvements in accordance with Article 11, including the Building. Unless the insurance proceeds are paid to a savings or commercial bank, insurance company or similar, publicly regulated lender holding a first mortgage encumbering the Premises, such insurance proceeds shall be paid to a trustee reasonably acceptable to Tenant and Landlord as escrow agent. Upon written approval by Landlord, such funds shall be paid over to Tenant in installments as restoration work required of Tenant under Article 11 progresses. If Tenant fails to complete the restoration work required of Tenant under Article 11, and if Landlord elects to complete any of such repair or restoration work, the insurance proceeds shall be made available to Landlord as such restoration work progresses.

13. WAIVER OF SUBROGATION

13.01 Waiver of Subrogation. Landlord and Tenant each waive any claim it may have against the other for any loss or damage to its property, whether caused by the negligence or fault of the other party, to the extent of any insurance which the waiving party is required to obtain hereunder.

14. MUTUAL INDEMNIFICATION

14.01 By Tenant. Subject to the terms and provisions of Article 13, beginning with the Commencement Date, Tenant shall indemnify, defend and save Landlord harmless from and against all bodily and personal injury, loss, claims or damage to any person or property while in the Premises (unless occasioned by the act or negligence of Landlord, its employees, agents, licensees or contractors or by a default in the proper performance of Landlord's obligations under this Lease); and, from and after the Effective Date, Tenant shall indemnify, defend and save Landlord harmless from and against all bodily or personal injury, loss, claims or damage to any person or property anywhere on the Premises, caused by or resulting from any act or negligence of Tenant, its employees, agents, licensees (other than customers) or contractors. Such indemnification shall include the actual loss to Landlord for any chargeback imposed as a result of Tenant's failure to comply with Tenant-approved compliance obligations imposed by SIDA with respect to Financial Incentives obtained by Landlord (as such terms are defined in Paragraph 18.05 hereof). The terms and provisions of this Paragraph 14.01 shall survive the expiration or earlier termination of this Lease with respect to any occurrence which occurs prior to the expiration of the Term.

14.02 By Landlord. Subject to the terms and provisions of Article 13, beginning with the Effective Date and until the Commencement Date, Landlord shall indemnify, defend and save Tenant harmless from and against all bodily and personal injury, loss, claims or damage to any person or property while on or about any portion of the Premises (unless occasioned by the act or negligence of Tenant, its employees, agents, licensees (other than customers) or contractors, or by a default in the proper performance of Tenant's obligations under this Lease); and, from and after the Commencement Date, Landlord shall indemnify, defend and save Tenant harmless from and against all bodily and personal injury, loss, claims or damage to any person or property anywhere in the Premises, caused by or resulting from any act or negligence of

Landlord, or any of its employees, agents, licensees or contractors, unless occasioned by the act or negligence of Tenant, its employees, agents, licensees (other than customers) or contractors. Such indemnification shall include the actual loss to Tenant for any chargeback imposed as a result of Landlord's failure to comply with Landlord-approved compliance obligations imposed by SIDA with respect to Financial Incentives obtained by Tenant (as such terms are defined in Paragraph 18.05 hereof). The terms and provisions of this Paragraph 14.02 shall survive the expiration or earlier termination of this Lease with respect to any occurrence which occurs prior to the expiration of the Term.

15. USE

15.01 Permitted Uses. Subject to the provisions of Paragraph 15.03 of this Lease, Tenant shall have the right to use and occupy the Premises for any lawful use or purposes, including, without limitation, for the sale of food, food products, general merchandise, and/or such other goods and services as it desires in such manner as Tenant may now or in the future choose to operate any of its stores.

15.02 Exclusive Uses.

(a) Tenant's Exclusive Uses. Landlord covenants and agrees that during the Term Tenant shall have the exclusive right within the Premises (and the Outparcel, if created) and on any other property (a "Landlord Other Property") within a radius of five (5) miles from the perimeter of the Premises which is now or hereafter owned, leased, occupied, or controlled, directly or indirectly, by Landlord, any party directly or indirectly comprising Landlord, or any party directly or indirectly related to or affiliated with Landlord, to (i) operate a grocery store or supermarket; (ii) engage in the sale of gasoline and related products (items (i) and (ii) being referred to herein as the "Tenants Exclusive Uses"). For purposes of the definitions in this Paragraph 15.02(a), "indirect" ownership or control by Landlord shall include (but shall not be limited to) direct or indirect ownership or control, leasing or occupation by a person or legal entity holding a controlling interest (or more) in Landlord's or any other entity owning or controlling or owned or controlled by Landlord, or in the Premises or Outparcel. Landlord hereby represents and warrants to Tenant that no lease of space within any Landlord Other Property in existence as of the Effective Date contains any provisions, or grants to such other tenant, any rights which will prohibit Tenant from conducting any of Tenants Exclusive Uses or from otherwise conducting any retail operations. Landlord covenants and agrees not to allow or suffer any use or occupancy within the Outparcel or any Landlord Other Property in violation of Tenant's Exclusive Uses.

(b) Exceptions to Tenant's Exclusive Uses. Notwithstanding Tenant's Exclusives Uses set forth in Paragraph 15.02(a), the following shall be permitted in the Outparcel, on any Landlord Related Property (as defined in Paragraph 15.04) and on any Landlord Other Property:

(i) department stores, junior department stores, variety stores, and other similar business operations including, but not limited to, so called dollar stores (such as Dollar General and the like) which as an incidental part of their business may sell food items for off-premises consumption provided that no more than ten percent (10%) of floor space in any such business shall be used for the sale (including display) and storage of food items, but no such dollar store shall sell dairy products, produce, meat, seafood or chicken for off premises consumption. No national or regional discount store, such as Kmart or Wal-Mart shall be permitted whose floor area is dedicated to the sale, storage and display of food items and related products exceed ten percent (10%) of its sale floor area; and

(ii) liquor store which may sell alcoholic beverages for off-premises consumption only, and, as an ancillary part of its business, may sell cocktail ingredients and related accessories, such as syrups and carbonated beverages, cups and ice, and cocktail snacks, such as pretzels, potato chips and nuts, for off-premises consumption only (provided, however, that a liquor store business may not be operated in the Outparcel, on a Landlord Related Property, or on any Landlord Other Property if such operations preclude or at any time would preclude Tenant from obtaining a license to sell beer or beer and wine in the Premises); and

(iii) an ice cream store which may sell ice cream, yogurt and ice cream and/or yogurt products for on or off-premises consumption; and

(iv) a pet shop or other store may devote not more than 500 square feet of space for the sale and display of pet food; and

(v) restaurants offering items for consumption either on or off the premises (including through drive through facilities) provided that no more than three thousand (3,000) square feet of leasable floor area may be used for any single restaurant user (provided, however, that the following type of restaurant uses shall not be allowed: (a) a restaurant that sells fried chicken for off-premises consumption, or (b) banquet halls or catering facilities or (c) a restaurant whose sale of alcoholic beverages for on-premises consumption exceeds forty percent (40%) of the gross revenues of such business; and

(vi) a specialty bakery selling only bagels, donuts, muffins, cookies or a particular type of baked product, as well as coffee or other non-alcoholic beverages; and

(vii) professional services including law and accounting.

15.03 Prohibited Uses.

(a) Unlawful or Nuisance. Tenant covenants and agrees that it will not use the Premises for any unlawful purpose, or in any way which would constitute a legal nuisance to adjoining property owners. Landlord covenants and agrees that it will not use, and will not permit others to use, any portion of the Outparcel for any unlawful purpose, or in any way which would constitute a legal nuisance to Tenant or to adjoining property owners.

(b) Specific Prohibited Uses for Outparcel. Landlord and Tenant covenant and agree that neither the Outparcel or any Landlord Other Property shall be used for the following "prohibited uses":

adult or sexually explicit or oriented stores, including bookstores, production facilities or video stores or any business featuring the display of male and/or female dancers or so-called "strip tease" or "adult entertainment establishment"; massage parlors; any business involving the sale, leasing, storage, servicing, repair, fueling (other than the Fuel Facility), or washing of automobiles, trucks, boats, recreational vehicles and/or mobile homes; lounges, bars, taverns, nightclubs, discos, banquet halls and other establishments of like type; theatres; churches; bingo parlors; bowling alleys; skating rinks; game or video/arcade rooms or amusement center, except as incidental to a restaurant; cafeterias; schools; health spas, fitness centers, karate, gymnasium, exercise studio, or similar business unless located at least two hundred eighty feet (280') from the main entrance to the Premises; any carnivals, amusement park or circus; meeting halls or other places of public assembly and/or worship; auditoriums; dance halls (but not including dance studios for the teaching of dance); billiard or pool halls, lotto or off-track betting businesses; outdoor plant nurseries other than seasonal sales by Tenant; auction house or flea markets; businesses whose customers generally remain for more than sixty (60) minutes at a time (except permitted restaurants); animal or veterinary clinic or boarding facility; so called "head shops" or businesses which sells or exhibits drug related paraphernalia; hotel, motel, tourist court, or sleeping apartment/lodging rooms or living quarters; any Laundromat, dry cleaning business, mortuary, crematory or funeral parlor; skating rink; any pawn shop, gun shop or tattoo parlor for the conduct of a business operation which regularly or with significant frequency sells merchandise of the types or qualities now commonly known as "odd lot", "close out", "clearance", "discontinued", "cancellation", "second", "factory reject", "sample", "floor model", "demonstrator", "obsolescent", "over-stock", "distressed", "bankruptcy", "fire sale" or "damaged" (unless pursuant to a court order); for any purpose or business which is noxious or unreasonably offensive because of the emission of noise, smoke, dust or odors; for any purpose other than the conduct of a "retail business", so-called, which term shall mean and include as permitted uses mail-order catalog store operations, banks, finance company businesses, shoe repair shops, barber shops, beauty shops, medical clinics, doctor's offices and real estate brokerage, stock brokerage and insurance brokerage businesses as well as ordinary retail businesses selling merchandise; for any storage operations except

storage operations which are a part of the conduct of a retail business in the Outparcel or a restaurant that sells fried chicken.

(c) Prohibited Uses not applicable to the Premises. Landlord and Tenant covenant and agree that no portion of the Outparcel or any Landlord Other Property (with the exception of the Premises) shall be used for the following "prohibited uses":

beer sales for off premises consumption, prescription medications and other products required by law to be dispensed by a licensed pharmacist, greeting cards and related products customarily sold at a greeting card store such as a Hallmark Card Store and health, nutrition and beauty products except within a pharmacy existing and open for business on the Effective Date and any replacement pharmacy tenant in the same location; retail sale of spirituous liquors (including wine) except in the liquor store existing and open for business on the Effective Date and any replacement liquor store in the same location; flowers, plants or other horticultural products; bakery, delicatessen, fish market, produce market or fish store, a restaurant that sells fried chicken.

15.04 Protected Area. Landlord covenants and agrees that during the Term no property (a "Landlord Related Property") within a radius of five (5) miles distance from the perimeter of the Premises (the "Protected Area") which is now or hereafter owned, leased, occupied or controlled, directly or indirectly, by Landlord, any party directly or indirectly comprising Landlord, or any party directly or indirectly related to or affiliated with Landlord, shall be used as a grocery store or, supermarket. Tenant agrees that the uses described in Paragraph 15.02(b) shall be permitted within the Protected Area and shall not violate the preceding sentence. Landlord hereby represents and warrants to Tenant that no lease of space within any Landlord Related Property within the Protected Area in existence as of the Effective Date contains any provisions, or grants to such other tenant, any rights which will prohibit Tenant from conducting any of Tenant's Exclusive Uses or from otherwise conducting any retail operations.

15.05 Enforcement. Landlord acknowledges that if there is a violation of this Article 15, Tenant does not have an adequate remedy at law and, therefore, Landlord agrees that, in addition to any other remedies which Tenant may have under this Lease, Tenant shall have the right to bring an action or proceeding seeking equitable relief (including, without limitation, an injunction) for a breach of this Article 15.

15.06 Lender Protection. The provisions of this Article 15 shall not apply to premises outside the Premises or the Outparcel which are owned or controlled by any institutional holder of a first mortgage on the Premises at any time when such holder may be considered the "Landlord" under this Lease, whether for the reason that such holder is in possession of the Premises, or has the benefit of a collateral or contingent or other assignment of the lessor interest in this Lease, or otherwise; but any such holder which has taken possession of the Premises (whether by foreclosure, by transfer in lieu thereof, or otherwise) shall be bound by all of the provisions of this Article 15 other than the provisions which relate to a Landlord Other Property or Landlord Related Property. Any person or legal entity claiming under any such holder (except another institutional holder entitled to the benefit of the foregoing exceptions) shall be bound by all of the provisions of this Article 15 without exception.

16. OUT BUILDING AND ADJACENT PROPERTY RESTRICTIONS

16.01 Outparcel Restrictions. Landlord covenants and agrees that the building labeled as the "Outparcel" on the Site Plan and any replacements thereof shall be subject to the following restrictions: (i) if created by Landlord, the Outparcel shall accommodate only one (1) business operation therein; (ii) no portion of the Outparcel shall exceed one (1) story and twenty four (24) feet in height, including architectural features; (iii) the gross floor area of the Outparcel shall not exceed the lesser of 3,000 square feet or the maximum gross floor area which can be built in compliance with applicable rules, regulations, ordinances and laws after taking into consideration the parking required hereunder to be maintained within the boundaries of the Premises and (iv) the design of the Outparcel shall be architecturally compatible with the Premises with no metal or unfinished block or concrete exteriors other than metal roofs, canopies, trim or details. For any improvements to be constructed within the Premises which are not shown on the Site Plan, no such improvements (including, without limitation, any buildings) shall be constructed unless Tenant has approved in writing (a) a plan for the proposed development of the building or improvement to the Premises and (b) the design, colors and

materials for any buildings or improvements (items (a) and (b), as approved, being referred to herein collectively as an "Plan"). Once Tenant has given its approval to a Plan, the development of any building or improvement shall be in accordance with the Plan, unless the applicable municipal board shall require further changes to the Plan. In such an event, the Landlord shall promptly notify Tenant and Tenant shall have the right to approve such changes, such changes not to be unreasonably withheld, conditioned or delayed.

16.02 Adjacent Property Restrictions. In the case of any Landlord Related Property adjoining or adjacent to the Premises, Landlord covenants and agrees that not only shall such adjoining or adjacent parcel be subject to the provisions of Article 15, but, in addition, (i) any buildings or other improvements (including pylon or monument signs) subsequently constructed on such adjacent property shall not materially interfere with or alter the visibility or public access to the Building or the visibility of the Premises pylon or monument signage; and (ii) any building subsequently constructed on outparcels located on such adjacent property shall comply with the restrictions set forth in Paragraph 16.01.

17. INTENTIONALLY OMITTED

18. TAXES.

18.01 Taxes. The term "Taxes" shall mean and be limited to ad valorem taxes and general (but not special) assessments levied against the Premises during the Term. If any taxes may be paid in installments, Landlord shall elect to pay such Taxes in installments to the fullest extent allowed by law. Notwithstanding the foregoing, Tenant shall have no obligation to pay any increase in Taxes arising as a result of a conveyance of the Premises or any portion thereof to any person or entity other than in connection with a bona fide arms-length transaction with an unrelated third party. Tenant shall not be obligated to pay any portion of any penalty or interest for delinquent payment by Landlord of any Taxes nor any portion of any Taxes, penalty, or interest attributable to Landlord's failure to take advantage of any and all available discounts, abatements, or credits for early payment.

18.02 Payment and Reimbursement of Tenant's Taxes. Tenant agrees to pay all Taxes levied against the Premises before the same become delinquent directly to the applicable taxing authority and to take advantage of any and all available discounts, abatement, or credits for early payment of same.

18.03 Appeal. Tenant may contest by appropriate proceedings the amount of any Taxes or seek to obtain a reduction in the assessed valuation of the Premises. Landlord agrees to join with Tenant at Tenant's expense in said proceedings and Landlord agrees to sign and deliver such papers and instruments as may be necessary to prosecute such proceedings. Landlord agrees to notify Tenant in writing of all changes in the assessed valuation of the Premises by providing Tenant with a copy of any assessment notification or notification of an increase in Taxes received by Landlord from governmental authorities at least thirty (30) days before the expiration of the time period to appeal any such change in the assessed valuation of the Premises or increase in the Taxes levied against the Premises, or within five (5) days of receipt of such notice if Landlord receives such notice less than thirty (30) days before the expiration of the time period to appeal any such change in the assessed valuation of the Premises or increase in the Taxes levied against the Premises. Should Landlord fail to give Tenant such notice of any such increase in real estate assessment and/or Taxes as aforesaid, Tenant shall not be obligated to reimburse Landlord for any such increase. If Landlord or Tenant shall obtain a remission, refund or other return or credit of all or part of the Taxes for any tax year for which the Tenant's Taxes has been paid or is payable, Landlord shall promptly refund to Tenant (or credit Tenant with) its proportionate share thereof. If Tenant contests the amount of any Taxes or otherwise obtains a reduction in the assessed valuation of the Premises which results in a remission, refund or other return or credit of all or part of the Taxes for any tax year, within fifteen (15) days after written demand therefore Landlord shall reimburse Tenant for Tenant's costs incurred in pursuing such contest or reduction provided that the amount Landlord shall be obligated to reimburse Tenant shall not exceed the amount of the remission, refund, or other return or credit.

18.04 Rent Tax Levied on Tenant. If a tax is levied on Tenant based in whole or in part upon the rent or other charges payable by Tenant hereunder, any and all sums payable by Tenant to Landlord pursuant to Paragraph 18.02 shall be reduced on an annual non-cumulative basis by such amount payable by Tenant.

18.05 Tax Incentive/Benefit Applications. Landlord and Tenant have agreed to apply for tax incentives, benefits and/or abatements (the "Financial Incentives") from the Syracuse Industrial Development Agency (the "SIDA") to benefit the Premises. The parties shall use their best efforts to obtain such Financial Incentives.

19. SIGNS

19.01 Tenant Signage. It shall be a condition to Tenant's obligations under this Lease that, as of the Commencement Date, Tenant shall have the right to maintain, erect and replace on the exterior of the Premises typical signage and entrance design elements utilized by Tenant in the operation of its stores, including but not limited to, banners (temporary and permanent), awnings and flags of such size, design and color as Tenant, from time to time may erect, subject to compliance with any applicable governmental regulations and Landlord's approval, which shall not be unreasonably withheld. Thereafter, Landlord hereby agrees that Tenant may erect and maintain on the exterior of the Premises such signage as Tenant may elect, provided that such signage is in compliance with all applicable rules, regulations, ordinances, and laws and subject to Landlord's approval, which shall not be unreasonably withheld.

19.02 Pylon and Traffic Signs. Tenant agrees to obtain all governmental permits and approvals for, and to erect, at its cost and expense, at the location designated on the Site Plan, an internally illuminated double-faced pylon sign with a sign panel meeting Tenant's requirements and with Tenant's name, logo and such other information as may be directed by Tenant and as may be approved under applicable governmental regulations on both sides of any such pylon sign(s) in the highest position or such other position as may be approved in writing by Tenant together with, under Tenant's name and logo, panels for Tenant's Fuel Facility, if applicable. Any such pylon sign(s) shall be kept in good order and repair by Tenant. Neither Landlord, Tenant nor any other occupant of the Premises or Outparcel shall cause, permit or suffer to be erected any free standing sign in the Premise or Outparcel other than any pylon sign(s) shown on the Site Plan without Tenant's prior written consent, such consent to not be unreasonably withheld, conditioned or delayed except that Landlord may erect a pylon or monument sign for the Outparcel provided that Tenant previously approves the location and appearance of such improvement on the Premises. It shall not be unreasonable for Tenant to withhold its consent should the proposed sign, in Tenant's sole discretion, negatively impact visibility of the Building or the Premises. Tenant may install, at its cost and expense, traffic directional signs with Tenant's logo as set forth on the Site Plan. Tenant shall, at its own expense, maintain all of its exterior signs, advertising or display matter in good condition and repair. All signs shall comply with all Applicable Laws and the determination of such requirements and the prompt compliance therewith shall be the responsibility of Tenant. Upon request by Tenant, Landlord shall execute all instruments necessary and other wise cooperate with Tenant at no expense to Landlord to obtain from the applicable governmental authorities licenses and permits to make any installations, changes, modifications or alterations that Tenant wishes to make to the pylon sign.

20. DEFAULT BY TENANT

20.01 Events of Default. The following events shall each constitute an event of default by Tenant:

(a) Monetary Default. The failure of Tenant to pay Fixed Rent or any other amounts due and payable hereunder within fifteen (15) days after receipt of written notice of such failure from Landlord which notice shall specify the exact nature of the alleged failure.

(b) Non-Monetary Default. The failure of Tenant to perform its duties and obligations (other than a Monetary Default) within thirty (30) days after receipt of written notice from Landlord of such failure which notice shall specify the exact nature of the alleged failure; provided, however, if such failure is not reasonably capable of being cured within said thirty (30) day period, such failure shall not constitute an event of default so long as Tenant undertakes affirmative acts to cure such failure within said thirty (30) day period and thereafter diligently prosecutes the same to completion.

20.02 Remedies. Upon the occurrence of an event of default by Tenant, Landlord shall have the following remedies; provided, however, Landlord shall not have any right to accelerate the Fixed Rent or other amounts due hereunder, or to otherwise require payment of such amounts prior to the date on which such amounts would otherwise become due hereunder had such event

of default not occurred; and provided further that Landlord's rights and remedies shall be subject to and conditioned upon Landlord using good faith efforts to mitigate its damages:

(a) Judicial Proceeding. Landlord may bring suit to collect Fixed Rent or any other amounts due from Tenant or for the specific performance of Tenant's duties and obligations under this Lease.

(b) Termination and Reletting the Premises. Landlord may, upon at least five (5) days prior written notice to Tenant, elect to terminate this Lease and reenter and relet the Premises. All rentals received by Landlord from such reletting shall be applied: (i) first to the payment of the reasonable and customary expenses of such reletting; (ii) second to the payment of Fixed Rent and any other amounts due hereunder; and (iii) last, the residue, if any, shall be held by Landlord and applied in payment of Fixed Rent and any other amounts which may thereafter become due hereunder. Tenant agrees to pay to Landlord on demand any deficiency between the amount received by Landlord from such reletting and the amount of Fixed Rent and any other amounts due hereunder; provided, however, such deficiency shall be paid by Tenant in monthly installments which shall not exceed the amount of Fixed Rent and any other amounts due hereunder as if such event of default had not occurred.

(c) Self Help. Landlord may, at any time after an event of default, give reasonable notice of its intention to avail itself of its rights under this Paragraph 20.02(c), and then proceed to cure such default and Tenant agrees to reimburse Landlord for any reasonable third party out-of-pocket amount actually paid or incurred by Landlord in so doing.

(d) Availability of Remedies. Landlord's remedies for any event of default by Tenant under this Lease shall be limited to the rights and remedies set forth in this Paragraph 20.02 and such prohibiting injunctive relief as a court of competent jurisdiction may determine. Without limiting the foregoing, in no event shall Tenant ever have any liability or responsibility whatever for any consequential or indirect damages, whether proximately or remotely related to a default or an event of default by Tenant. Except as provided in Paragraph 28.01, Landlord hereby waives all rights of distraint and distress and all other rights, title and interest in and restrictions and encumbrances on all Tenant's personal property and improvements, including without limitation alterations, fixtures, signs, and all other property of Tenant.

(e) Limitation on Termination. Notwithstanding anything in this Lease to the contrary, if Tenant is in good faith contesting an alleged default, Landlord shall not have the right to terminate this Lease unless and until a court of competent jurisdiction renders a final judgment determining that Tenant was in fact in default and Tenant thereafter fails to cure any such monetary default within fifteen (15) days after such judgment is rendered or Tenant otherwise fails to cure a non-monetary default within thirty (30) days after such judgment is rendered; provided however, if such non-monetary default is not reasonably capable of being cured within said thirty (30) day period, Landlord shall not have the right to terminate this Lease so long as Tenant undertakes affirmative acts to cure such non-monetary default within said thirty (30) day period and thereafter diligently prosecutes the same to completion. For purposes of this paragraph 20.02(e), a "final judgment" will not be deemed to have been rendered if a judgment is rendered against Tenant and Tenant thereafter appeals such judgment within the time period permitted to appeal the judgment within the particular jurisdiction. The foregoing limitation shall not apply to a default in the payment of Fixed Rent unless Tenant, in good faith, is availing itself of any set-off or deduction rights pursuant to the terms of this Lease and the unpaid amount is equal to the amount of the set-off or reduction.

20.03 Tenant Mortgagee Notice and Opportunity to Cure.

(a) Notice and Opportunity to Cure. Landlord agrees to simultaneously send a copy of any default notice given to Tenant to any mortgagee of Tenant of which Landlord has been giving prior written notice. Any such mortgagee shall have the same period of time that Tenant is given to cure such default.

(b) Emergency Action. Nothing contained in this Article 20 shall be construed to limit or alter the right of Landlord to make emergency repairs or to exercise so called "self-help" remedies which are available under Paragraph 20.02(c).

21. **DEFAULT BY LANDLORD**

21.01 **Events of Default.** The following events shall each constitute an event of default by Landlord:

(a) **Monetary Default.** The failure of Landlord to pay any interest, principal or other charges payable in connection with a mortgage, deed of trust or deed to secure debt encumbering the Premises which is superior to this Lease (unless the mortgagee has entered into a Subordination, Non-Disturbance and Attornment Agreement satisfactory to Tenant), or to pay when due any amounts owed by Landlord to Tenant within fifteen (15) days after receipt of written notice of such failure.

(b) **Non-Monetary Default.** The failure by Landlord to perform its duties or obligations (other than a Monetary Default) within thirty (30) days after receipt of written notice from Tenant of such failure; provided, however if such failure is not reasonably capable of being cured within such thirty (30) day period, such failure shall not constitute an event of default so long as Landlord undertakes affirmative acts to cure such failure within said thirty (30) day period and thereafter diligently prosecutes the same to completion.

21.02 **Remedies.** Upon the occurrence of an event of default by Landlord, Tenant shall have the following remedies:

(a) **Judicial Proceeding.** Tenant may bring suit to collect any amounts due from Landlord or for the specific performance of Landlord's duties and obligations under this Lease.

(b) **Self Help.** Tenant may, at any time after an event of default, give reasonable notice of its intention to avail itself of its rights under this Paragraph 21.02(b), and then to proceed to cure such default and Landlord agrees to reimburse Tenant on demand for any amount paid or incurred by Tenant in so doing. If within fifteen (15) days after receipt of written demand therefore accompanied by bills or other reasonable supporting information, Landlord fails to reimburse Tenant for any reasonable amount so incurred, said amount and any interest due thereon may be deducted by Tenant from the next or any succeeding installment payments of Fixed Rent or any other amounts due from Tenant hereunder.

(c) **Termination.** Tenant may terminate this Lease, without waiving its rights to damages for Landlord's Default, provided that: (1) Landlord's Default materially interferes with the normal conduct of any business operations in the Premises, (2) Landlord's Default is not reasonably capable of being cured by Tenant, and (3) Tenant gives notice of Landlord's Default to any Mortgagee of whom Landlord shall have previously given Tenant notice (including its address), and such Mortgagee shall not have cured Landlord's Default within thirty (30) days after such notice is given (or, if such default cannot reasonably be cured within thirty (30) days, such Mortgagee fails to promptly commence and diligently prosecute said cure to completion).

(d) **Other Remedies.** Such other remedies as are specifically permitted under the terms and provisions of this Lease or available at law or in equity. Notwithstanding the foregoing, if, in Tenant's reasonable judgment, a condition posing imminent risk of liability or material harm to persons or property or material disruption to the normal conduct of any business operations in the Premises shall exist, Tenant may, at its election, and without prior notice to Landlord, exercise any or all of the remedies set forth above.

21.03 **Landlord Mortgagee Notice and Opportunity to Cure.**

(a) **Notice and Opportunity to Cure.** Tenant agrees to simultaneously send a copy of any default notice given to Landlord to any mortgagee of Landlord of which Tenant has been given prior written notice. Any such mortgagee shall have the same period of time that Landlord is given to cure such default.

(b) **Emergency Action.** Nothing contained in this Article 21 shall be construed to limit or alter the right of Tenant to make emergency repairs or to exercise so called "self-help" remedies which are available under Paragraph 21.02(b).

22. EMINENT DOMAIN

22.01 Termination Upon Taking. In the event of any condemnation or conveyance in lieu thereof, if as a consequence thereof, (i) more than twenty percent (20%) of the square footage of any part of the Building, or (ii) twenty percent (20%) or more of the parking area for the Premises shall be taken; or (iii) any curb cut or means of access (including, without limitation, the loss of any traffic control devices or the restriction of vehicular or truck access) between the Premises and any public right-of-way shall be lost or impaired which has a material adverse impact on Tenant's business; or (iv) Tenant determines in its reasonable discretion that such condemnation or conveyance will have a material adverse impact on visibility of the Building or the Premises or the ability of Tenant to conduct its normal business operations from the Building or the Premises; then, within thirty (30) days after the date on which Tenant receives written notice of such condemnation or conveyance, Tenant may terminate this Lease by written notice to Landlord which termination shall be effective as of the date the condemning authority takes actual possession of such portion of the Premises so condemned or conveyed. If Tenant terminates this Lease, Landlord shall promptly refund to Tenant all unearned Fixed Rent and other amounts paid in advance by Tenant.

22.02 Obligation to Restore; Abatement of Rent. If a condemnation or conveyance in lieu thereof does not result in a termination of this Lease, Landlord shall restore the Building and/or the Premises, as the case may be, to a condition similar in physical appearance to that which existed immediately prior to the taking to the extent possible pursuant to plans and specifications approved by Tenant such that Tenant can conduct its normal business operations. Landlord shall commence such restoration within ninety (90) days after the occurrence of the taking and shall complete such restoration within nine (9) months after the occurrence of the taking, subject to Force Majeure. If restoration is not begun (or completed) by such time periods, Tenant may terminate this Lease by written notice to the Landlord. Until the earlier of ninety (90) days after the Building and/or Premises are restored as required herein or Tenant reopens for business, all rental and other charges shall abate unless Tenant shall remain open for business during the restoration period, in which case rental and other charges shall be fairly and justly apportioned; provided, however, if such date ninety (90) days after completion of restoration falls within a Blackout Period then the abatement shall continue to the first business day following the end of the Blackout Period unless Tenant opens the Building and/or the Premises (or the portion thereof in which Tenant was previously unable to operate its business) for business during the Blackout Period in which case the abatement shall end on such date of opening. The "Black Out Period" shall be (i) the period beginning on November 1st and ending the following January 31st or (ii) the period beginning on the second Saturday prior to Easter Sunday and ending on the second Saturday following such Easter Sunday.

22.03 Condemnation Award. Tenant shall be entitled to pursue its own award in any condemnation proceeding. If Tenant is precluded from pursuing its own award, Tenant and Landlord shall jointly participate in the condemnation proceeding, and Landlord shall not settle or finalize any claim in any such joint condemnation proceeding without Tenant's prior written approval. If this Lease is terminated under this Article 22, unless Tenant is otherwise reimbursed in such condemnation proceeding; Landlord shall, if the award contains reimbursement for Tenant's interest in the Premises and Tenant's leasehold improvements, trade fixtures, equipment, signs, inventory, and other personal property located thereon or therein, pay Tenant out of the award such amount included in the award for Tenant's interest in the Premises and Tenant's leasehold improvements, trade fixtures, equipment, signs, inventory, and other personal property located thereon or therein. Further, if this Lease is not terminated pursuant to this Article 22, unless Tenant is otherwise reimbursed in such condemnation proceeding, Landlord shall, if the award contains reimbursement for Tenant's interest in the Premises and Tenant's leasehold improvements, trade fixtures, equipment, signs, inventory, and other personal property located thereon or therein, pay Tenant out of such award such amount included in the award for Tenant's interest in the Premises and Tenant's leasehold improvements, trade fixtures, equipment, signs, inventory, and other personal property located thereon or therein which do not remain or are not restored after such taking.

23. TITLE; ENVIRONMENTAL

23.01 Warranty of Title. Landlord covenants and warrants that it is the owner of the Premises or will be the owner of the Premises within fifteen (15) business days hereof and that

title to such land and to the easements and appurtenances benefiting such land is subject only to the matters to be listed on Exhibit "E" (the "Permitted Title Exceptions"). Landlord further covenants that there are no restrictive covenants, zoning ordinances, other regulations or other matters, including, without limitation, matters of survey or rights of approval which will prevent Tenant from conducting its usual business in the Premises. Landlord further covenants that the Premises, has not and will not be financed by or be subject to any so-called economic or industrial development bonds or similar debt instruments as described in Section 103(b)(2) of the Internal Revenue Code (or any successor provision thereof), nor any security interest given in connection therewith, which may, pursuant to any governmental law, ordinance or regulation, require or impose (i) any restriction, condition or limitation whatsoever upon or with respect to any capital expenditures which may be made by Tenant and/or any parent, subsidiary, affiliate or related party (as defined in the Internal Revenue Code) of Tenant, or (ii) any obligation to file any report or returns with respect thereto, or (iii) could result in the allocation of any so-called tax exempt financing to Tenant as a result of which Tenant could be considered a "test period beneficiary" with respect to the Premises pursuant to Section 103(b)(15) of the Internal Revenue Code (or any successor provision thereto).

23.02 Landlord's Compliance with Environmental Laws. Landlord covenants and warrants that as of the Effective Date there are no Hazardous Materials (as defined in Paragraph 23.04) on, in, under, affecting or emanating from the Premises, except as disclosed in Exhibit "F". Landlord covenants and agrees that it shall be solely responsible for remediating any and all Hazardous Materials existing as of the Effective Date of this Lease (the "Pre-Existing Conditions") including, but not limited to any recognized environmental concerns set forth in any Phase I Environmental Report delivered to Tenant pursuant to Section 36.01 or exceeding any baseline standard established pursuant to any testing conducted by Landlord or tenant prior to the Commencement Date including that certain Phase I Environmental Site Assessment prepared by Leader Professional Services, Inc. dated July, 2012, as amended. Landlord shall not (and it shall not allow any other party to) use, generate, store, dispose, permit, produce, introduce or maintain any Hazardous Materials in or about any portion of the Premises except in full compliance with all applicable laws. Landlord further covenants and agrees to indemnify, defend and hold harmless Tenant, any mortgagee of Tenant, any guarantor of all or any portion of Tenant's obligations under this Lease, and the officers, agents or employees of any of the foregoing, and their respective successors and assigns from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, proceedings or expenses including construction premiums of any kind or of any nature whatsoever (including reasonable attorneys' and experts' fees and disbursements) arising from or out of any Hazardous Materials on, in, under, affecting or emanating from all or any portion of the Premises (except as provided in Section 23.03 below or 23.06). Landlord shall deliver to Tenant copies of any correspondence received from any governmental authorities relating to Hazardous Materials. Notwithstanding anything set forth in this Lease, no bioremediated soils shall be used in or around the Fuel Facility.

23.03 Tenant's Compliance with Environmental Laws. Tenant covenants and agrees not to use, generate, store, dispose, permit, produce, introduce or maintain any Hazardous Materials in or about any portion of the Premises except in full compliance with all applicable laws. Tenant further covenants and agrees to indemnify, defend and hold harmless Landlord, any mortgagee of Landlord and their respective successors and assigns from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, proceedings, or expenses of any kind or of any nature whatsoever (including reasonable attorneys' and experts' fees and disbursements) arising out of a breach of the preceding sentence.

23.04 Hazardous Materials. The term "Hazardous Materials" as used in this Article 23 shall mean and refer to asbestos, asbestos containing materials, polychlorinated biphenyls, radioactive materials, pollutants, contaminants, petroleum products or any other hazardous or toxic materials, waste and substances which are defined, determined or identified as such in, or the removal of which is required, or the use, handling, removal, deposit or storage of which is restricted, prohibited, regulated or penalized under, any federal, state or local laws, rules, codes, ordinances or regulations (whether now or hereafter existing) or any judicial or administrative interpretation of any thereof, including any judicial or administrative orders or judgments.

23.05 Removal and Repair by Landlord. In addition to Landlord's obligations under Paragraph 23.02, Landlord agrees that in the event any Hazardous Materials shall be found in

violation of applicable law within, under or upon the Premises, unless Tenant introduced such Hazardous Materials, Landlord shall, forthwith upon receipt of written notice from Tenant, initiate and thereafter diligently prosecute to completion all actions necessary to remove all such Hazardous Materials. All such work hereunder shall be performed at Landlord's sole cost and expense in a first class workmanlike manner and in accordance with all requirements of any federal, state or municipal governmental authorities having jurisdiction. In addition, prior to commencing any work of removal, repair, restoration or any other construction work in connection therewith, Landlord shall submit to Tenant detailed working drawings showing all such work (and including a schedule indicating the dates on which the various phases of all such work will be commenced and completed) for Tenant's prior approval.

23.06 Removal and Repair by Tenant. In addition to Tenant's obligations under Paragraph 23.03, Tenant agrees that in the event any Hazardous Materials shall be found in violation of applicable law within, under or upon the Premises which were introduced by Tenant, Tenant shall, forthwith upon receipt of written notice from Landlord, initiate and thereafter diligently prosecute to completion all actions necessary to remove all such Hazardous Materials. All such work hereunder shall be performed at Tenant's sole cost and expense in a first-class workmanlike manner and in accordance with all requirements of any federal, state or municipal governmental authorities having jurisdiction. In addition, prior to commencing any work of removal, repair, restoration or any other construction work in connection therewith, Tenant shall submit to Landlord detailed working drawings showing all such work (and including a schedule indicating the dates on which the various phases of all such work will be commenced and completed) for Landlord's prior approval.

23.07 Abatement. In the event Tenant shall determine in its sole discretion that Tenant is unable to conduct its normal business operations within any portion of the Premises as a result of the presence of any Hazardous Materials in, on, under, affecting or emanating from, the Premises (including as a result of any remediation work in connection therewith) then, unless Tenant introduced such Hazardous Materials, all Fixed Rent and other amounts payable under this Lease by Tenant shall abate unless Tenant elects to remain open for business in a portion of the Premises, in which case the Fixed Rent and other amounts payable under this Lease by Tenant shall be fairly and justly apportioned. Any such abatement shall continue during such time as any such interference remains in effect, and Landlord shall refund to Tenant all unearned. Fixed Rent and other amounts paid in advance by Tenant. If such interference continues for a period of one hundred twenty (120) days, unless Tenant introduced such Hazardous Materials, Tenant shall have the right to terminate this Lease by written notice sent to Landlord at any time after the expiration of such one hundred twenty (120) day period, but before the interference is ended.

24. COVENANT OF QUIET ENJOYMENT

24.01 Covenant of Quiet Employment. Provided Tenant is not in default of any material duty or obligation hereunder beyond any applicable cure period, Landlord covenants that Tenant shall peaceably and quietly have, hold, occupy and enjoy possession of the Premises, together with the rights, privileges, easements, and appurtenances herein demised without hindrance, interference or molestation of any kind.

25. OPERATION

25.01 Operation. Any provision of this Lease to the contrary notwithstanding, Tenant shall be required to open for business for one (1) day following the Rent Commencement Date. Should Tenant fail to open for business for one (1) day, Landlord shall have the right to give Tenant ninety (90) days written notice to open (the "Opening Notice Period"). In the event Tenant fails to open for business for one (1) day within the Opening Notice Period, Landlord shall have the right, as and for its sole remedy, to terminate this Lease after which neither party shall have any further rights or obligations hereunder. Without limiting the foregoing, if Tenant elects to open for business in the Premises, Tenant, in its sole discretion, may at any time thereafter, and from time to time, elect to cease to conduct its operations in any part of the Premises, subject to the other terms of this paragraph. In addition, nothing in this Lease shall be deemed to restrict Tenant's business operations or activities outside the Premises in any manner.

26. SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT

26.01 Subordination, Non-Disturbance and Attornment. Upon written request of Landlord or any mortgagee of Landlord, Tenant agrees to enter into a Subordination, Non-Disturbance and Attornment Agreement in form attached hereto as Exhibit "H".

27. ESTOPPEL CERTIFICATE

27.01 Estoppel Certificate. Within twenty (20) days after receipt of written request from Landlord, Tenant agrees to execute and deliver an Estoppel Certificate in such form attached hereto as Exhibit "I", subject to such provisions as are necessary to reflect a true and accurate statement of facts at the time the Estoppel Certificate is being given. Tenant may charge as a condition of issuing an Estoppel Certificate an administration fee of two hundred fifty dollars (\$250.00); provided that Tenant will issue one Estoppel Certificate per Lease Year without any such charge. Within twenty (20) days after receipt of written request from Tenant, Landlord agrees to execute and deliver to Tenant a written Estoppel Certificate to acknowledge the then current state and condition of the various terms of this Lease, including, without limitation, the status of the rent, term and extensions, and the non-existence of any event of default (or specifying the nature of such event of default, if applicable).

28. TRADE FIXTURES

28.01 Ownership, Removal, and Waiver of Lien. All trade fixtures, equipment, signs, inventory, and property which is installed or placed in or upon the Premises by Tenant shall remain the property of Tenant. Tenant shall have the right, at any time during the Term, and up to thirty (30) days after the expiration or earlier termination of this Lease, to remove such trade fixtures, equipment, signs, inventory, and property from the Premises. Tenant shall promptly repair any material damage to the roof, walls or structure caused by such removal. To the extent Landlord may have a statutory or common law lien on or security interest in the trade fixtures, equipment, signs, inventory, or other personal property of Tenant, Landlord hereby waives and agrees not to assert such lien or security interest, provided that all such items are promptly removed as provided herein. If Tenant fails to remove any trade fixtures, equipment, signs, inventory, and property from the Premises within thirty (30) days after the expiration or earlier termination of this Lease, such items shall be deemed abandoned and shall become the property of Landlord, and Landlord shall not be liable to any Tenant or any loss or damage resulting from such abandonment. Landlord agrees to provide Tenant, within ten (10) days of request therefor, a written waiver in form reasonably satisfactory to Tenant and any lender of Tenant confirming and evidencing Landlord's waiver of any rights it has or may have in Tenant's trade fixtures, equipment, signs, inventory, and other property provided that Landlord's failure to execute any such waiver shall not affect or diminish Landlord's waiver as set forth in the immediately preceding sentence.

29. ASSIGNMENT AND SUBLETTING; MORTGAGES

29.01 Assignment and Subletting. Tenant may assign all or any portion of its interest in this Lease, or sublet all or any portion of the Premises, or grant occupancy rights therein, without Landlord's consent, provided that the use to be made of the Premises as a result of such assignment or subletting does not violate the provisions of 15.03 herein (except with Landlord approval) any applicable governmental regulation or any restrictive covenant or exclusivity agreement that has been incorporated into a written lease agreement between Landlord and any other person of which Tenant has previously been provided notice who occupies the Outparcel and was in occupancy and open for business prior to the Tenant's assignment or subleasing of the Premises. Any such assignment or subletting shall not relieve Tenant of any obligations under this Lease unless Landlord so agrees in writing.

29.02 Subleases; Nondisturbance. Landlord shall, within ten (10) days after receipt of Tenant's written request therefore (which request shall include a copy of the sublease), execute and deliver to any subtenant a written agreement (a "Nondisturbance Agreement") in form reasonably satisfactory to Landlord and suitable for recording to the effect that, so long as any such subtenant shall not be in default under its sublease beyond any applicable notice and cure period set forth therein, and provided such subtenant agrees to be bound to Landlord under all the terms, covenants and conditions contained in any such sublease, and agrees to attorn to Landlord and recognize Landlord under such sublease, then, if this Lease is terminated for any

reason whatsoever, Landlord covenants and agrees that such termination of this Lease shall not result in a termination of the sublease, and that such sublease shall continue automatically for the duration of its term and all extensions thereof (provided that the same do not extend beyond the Term, as may be extended, of this Lease) as a direct lease between Landlord hereunder and such subtenant, with the same force and effect as if Landlord hereunder had originally entered into such sublease as Landlord thereunder.

29.03 Right to Enter New Lease.

(a) If Tenant assigns this Lease, and if after the effective date of such assignment, (i) this Lease is terminated or canceled for any reason, including, without limitation the default of such assignee or any future assignee, or (ii) this Lease shall be rejected by such assignee or any future assignee under any applicable federal or state bankruptcy or reorganization statute, Landlord shall promptly give written notice thereof to Tops Markets, LLC (hereafter referred to as the "Original Tenant"), together with a statement of any and all sums which at the time of such notice would be due under this Lease but for such termination or rejection, and of all other defaults, if any, under this Lease then known to Landlord. The Original Tenant shall have the option, to be exercised by written notice to Landlord within sixty (60) days after receipt of such notice, to require Landlord to enter into a new lease (the "New Lease") of the Premises with the Original Tenant or its designee (which shall be an affiliate of the Original Tenant). If the Original Tenant notifies Landlord of the exercise of its option to enter into a New Lease hereunder, and if this Lease has not yet been terminated as a result of such default or rejection, Landlord agrees to terminate this Lease.

(b) If the Original Tenant notifies Landlord of the exercise of its option to enter into a New Lease hereunder, Landlord shall, as promptly as possible after receipt of Original Tenant's notice exercising such option, enter into such New Lease with Original Tenant or its designee. Such New Lease shall be effective on the date of termination of this Lease and shall be for the remainder of the Term of this Lease, at the rent and upon all agreements, terms, covenants and conditions of this Lease, including any applicable rights of renewal. Upon the effective date of such New Lease, the Original Tenant or its designee shall undertake to cure all unfulfilled Monetary Defaults and all Non-Monetary Defaults of the defaulting tenant which are susceptible of being performed by the Original Tenant or such designee.

29.04 Mortgages. Tenant may, with Landlord's consent, which shall not be unreasonably withheld, mortgage its interest in the Premises (which may include, without limitation, a leasehold mortgage and/or an assignment of this Lease) in favor of any lender providing financing to Tenant, provided that such mortgage does not constitute an event of default under any mortgage Landlord has entered into in connection with the Premises.

30. FORCE MAJEURE

30.01 Force Majeure. Except as otherwise expressly set forth in this Lease, in the event either party hereto shall be delayed or hindered in, or prevented from, the performance of any act (other than the payment of money) required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, riots, insurrection, war or other reasons of a like nature not the fault of the party delayed in performing work or doing acts required under this Lease (all of such reasons or causes referred to in this Lease as "force majeure"), then performance of such acts shall be excused for the period of the delay, and the period within which the performance of such act may be required hereunder shall be extended by a period equal to the period of such delay provided.

31. NON-WAIVER

31.01 Non-Waiver. The failure of Landlord or Tenant to enforce against the other any provision, covenant or condition herein, by reason of either of them committing any breach or default under this Lease shall not be deemed a waiver thereof, nor void or affect the right of the aggrieved party to enforce the same covenant or condition upon the occurrence of any subsequent breach or default; nor shall the failure of either party to exercise any consent, approval, or right in this Lease upon any occasion arising therefore be deemed or construed to be a waiver of the right to exercise that same kind of consent, approval or right upon any subsequent such occasion.

32. EXPENSES

32.01 Expenses: Include Shall, May. Wherever in this Lease provision is made for the doing of any act by any person, it is understood and agreed that such act shall be done by such person at its own cost and expense unless a contrary intent is expressed.

33. NOTICES AND PAYMENTS.

33.01 Notices and Payments. All payments of Fixed Rent or other amounts payable hereunder shall be delivered to the party entitled thereto at the addresses hereinafter set forth. All notices shall be in writing and shall be sent or given by U. S. Postal Service, postage prepaid, hand delivery, certified or registered mail, return receipt requested, or by a nationally recognized overnight courier service that obtains a receipt upon delivery. Notice may also be given and received by receipted facsimile if followed by one of the methods listed in the preceding sentence. All notices hereunder shall be deemed to have been received on the delivery date endorsed by the Postal Service on the return receipt or as shown on the records of such courier service, except that any notice which is (according to the terms of this Paragraph 33.01) correctly addressed for delivery but which is returned by the Postal Service or such courier service as undeliverable, shall be deemed to have been received on the earliest date on which the Postal Service or such courier service attempted delivery, as indicated by the Postal Service endorsement on the return receipt form or as indicated by such courier service's records. All payments and notices required or permitted in this Lease shall be delivered to the party entitled thereto at the following addresses:

Landlord:

Morgan Pond Street LLC
1170 Pittsford Victor Road (Rt. 96)
Pittsford, New York 14534
Attention: Robert Morgan
Fax No.: (585) 419-9636

Tenant:

Tops Markets, LLC
P.O. Box 124
Buffalo, New York 14240-1027
Attention: Law Department
Fax No.: (716) 635-5922

And its counsel

Evans & Fox LLP
95 Allens Creek Road #300
Rochester, New York 14618
Attention: Donald Fox, Esq.
Fax No.: (585) 241-5989

With overnight deliveries to Tenant to:

Tops Markets, LLC
124 Taylor Road
Depew, New York 14043
Attention: Law Department
Fax No.: (716) 635-5922

The foregoing addresses may be changed or added to by delivery of written notice of such change or addition to the party entitled thereto, which written notice shall be delivered and deemed effective as set forth herein. Notwithstanding any assignment or subletting, copies of any notice to the holder of the Tenant's interest hereunder alleging default shall always be sent to the Original Tenant named herein, and Landlord shall always accept payment or performance from the Original Tenant named herein. Each party agrees that notices to such party ("Receiving Party") may be given to the Receiving Party by the attorney for the other party ("Sending Party") acting on behalf of the Sending Party.

34. BROKER'S COMMISSION

34.01 Broker's Commission. Landlord and Tenant each hereby represent and warrant to the other that except for FSB Realty Services, LLC ("Broker") they have not employed the services of a real estate agent or broker in respect to this Lease. Broker has represented Landlord (and not Tenant) in this Lease. Landlord shall pay Broker a commission pursuant to a separate commission agreement. Landlord hereby indemnifies Tenant against, and agrees to defend and hold Tenant harmless from, any and all claims for any real estate commissions or similar fees arising out of or in any way connected with any claimed agency relationship with Landlord relating to this Lease, including, without limitation, the Broker. Tenant hereby indemnifies Landlord against, and agrees to defend and hold Landlord harmless from, any and all claims for any real estate commissions or similar fees arising out of or in any way connected with any claimed agency relationship with Tenant relating to this Lease, excluding the Broker.

35. SURRENDER OF PREMISES; HOLDING OVER

35.01 Surrender of Premises. Subject to the provisions of Paragraph 28, upon the expiration or earlier termination of the Term, Tenant shall surrender to Landlord possession of the Premises and all changes, alterations, additions, and improvements thereto (subject, however, to Tenant's right to remove the same as otherwise provided in this Lease) in good condition provided that Tenant shall not be required to correct any condition caused by or resulting from: (i) any act, negligence or default under this Lease of Landlord, its employees, agents, or contractors; (ii) casualty, to the extent either party is required to maintain insurance covering such loss, or eminent domain; (iii) settling of the Premises or any other improvements which are a part of the Premises; or (iv) reasonable wear and tear or any causes beyond Tenant's control.

35.02 Holding Over. If Tenant shall remain in possession of the Premises or any part thereof after the expiration or termination of the Term without any agreement in writing between Landlord and Tenant with respect thereto, then Tenant shall be deemed a tenant from month to month, at the monthly rental payable during the last Lease Year subject to the provisions of this Lease insofar as the same may be made applicable to a tenancy from month to month. This Paragraph 35.02 shall not apply for a period of up to one hundred twenty days after termination if Tenant is removing its trade fixtures, equipment, signs, inventory or other property installed or placed in or upon the Premises by Tenant pursuant to Paragraph 28.01.

36. ADDITIONAL COVENANTS

36.01 Covenants. Landlord further covenants and agrees as follows:

(a) Subordination, Non-Disturbance and Attornment Agreements. Within thirty (30) days after the Effective Date, Landlord and all mortgagees whose rights are superior to this Lease shall execute and deliver to Tenant in recordable form a Subordination, Non-Disturbance and Attornment Agreement substantially in the form annexed hereto as Exhibit H.

(b) Memorandum of Lease. Not later than ten (10) days after the Effective Date, Landlord and Tenant shall execute a memorandum of lease (the "Memorandum of Lease") in the form attached hereto as Exhibit "G" (subject, however, to the inclusion of such additional information as may be reasonably appropriate), and the Landlord or the Tenant may record, or the Tenant may require Landlord to record, the Memorandum of Lease in the real property records maintained by the county or municipality in which the Premises is located. Under no circumstances shall this Lease be recorded.

(c) Title Certification. Within five (5) days after the execution of this Lease, Landlord, at its expense, shall deliver to Tenant an abstract of title dated no earlier than the date of execution of this Lease prepared by a title insurance company acceptable to Tenant and complete and legible copies of all exception documents referenced therein (the "Title Abstract") together with a survey certified to Tenant and dated no more than ninety (90) days prior to the Effective Date (the "Survey"). Collectively, the Title Abstract and the Survey are referred to as the "Title Documents". Tenant shall notify Landlord in writing that it has disapproved any title exceptions or survey matters set forth on the Title Documents and shall notify Landlord of any such disapproved title exceptions ("**Disapproved Encumbrances**") within fifteen (15) days after receipt of the Title Documents. If within fifteen (15) days after receipt of notice of the Disapproved Encumbrances, Landlord is unable to cure or cause the removal (at Landlord's sole cost and expense) of the Disapproved Encumbrances, then Tenant will have the option to either: (i) waive the Disapproved Encumbrances and proceed with its obligations under this Lease or (ii) terminate this Lease by notice to Landlord in which event neither party shall have any further rights or obligations hereunder. Any title exceptions referenced in the Title Documents and not objected to shall be deemed to be Permitted Exceptions. Landlord will not create or allow any new matters affecting title to the Premises between the effective date of the Title Abstract delivered to Tenant under this Paragraph 36.01(c) and the Effective Date of Lease.

(d) Environmental and Soils Reports. Prior to execution of this Lease, Landlord delivered to Tenant a Phase I environmental report prepared pursuant to ASTM 1527-05 standards or any replacement equivalent for the land described on Exhibit "A", which report is being amended per Tenant's request.

(e) Bill of Sale. Upon (i) Landlord's purchase of the Premises from Wegman's, (ii) Tenant's confirmation of receipt of its SIDA tax benefits or incentives, and (iii) the satisfaction or waiver of the remaining contingencies set forth in this Section 36, Landlord shall provide, or shall cause to be provided, a bill of sale for the contents of the Building free and clear of any liens or interests (or otherwise as acceptable to Tenant). If Tenant terminates this Lease pursuant to Section 36.02 hereof, Tenant shall assign its interest received in the bill of sale to Landlord, free and clear of liens created after receipt by Tenant, provided that Tenant is not required to pay sales tax with regard to that assignment.

(f) Governmental and Municipal Approvals. This Lease is contingent upon receipt by Tenant of all necessary governmental and municipal permits and approvals, including, but not limited to, zoning, site plan and signage approvals (the "Approvals"). Landlord and Tenant will use their best efforts in obtaining the Approvals. If the Approvals have not been obtained within ninety (90) days from the full execution of this Lease by all parties, Tenant may terminate this Lease.

36.02 Failure to Fulfill Covenants. Without waiving any other rights or remedies that may be available to Tenant, if any of the covenants in Paragraph 36.01 is not satisfied, or otherwise waived in writing by Tenant, at Tenant's option, Tenant may terminate this Lease by written notice to Landlord within ninety (90) days after the date that both parties have fully executed and delivered signatures for this Lease in which event this Lease shall terminate and be null and void and of no force or effect whatsoever except with respect to obligations which have accrued as of such date of termination.

37. MISCELLANEOUS

37.01 Suspension of Business. If Tenant is prohibited from conducting its normal business operations in the Premises (i) by any governmental authority having jurisdiction, (ii) because of any act or default of the Landlord, or (iii) because of any event or any condition of or in the Premises or any part thereof, including interruption of utilities, which is not the result of Tenant's act, negligence or default under this Lease, the Fixed Rent and other amounts otherwise due under this Lease from Tenant to Landlord shall be wholly abated while such prohibition remains in effect, and Landlord shall forthwith refund to Tenant all unearned Fixed Rent and other amounts paid in advance by Tenant. If such prohibition shall continue in effect for a period of six (6) months, Tenant shall have the right to terminate this Lease by written notice sent to Landlord at any time after the expiration of such six (6) month period, but before the prohibition is ended. Landlord shall promptly initiate and diligently prosecute to completion any action which may be necessary to abate the condition(s) which gave rise to the prohibition.

37.02 Lease Interpretation; Prior Representations; Prior and Preliminary Agreements. The parties acknowledge that each has been represented by legal counsel in negotiating this Lease, or has had the opportunity to be so represented, and that they intend that the provisions of this Lease not be interpreted or construed against either party due to the fact that such party may have been responsible for the drafting of this Lease. The parties acknowledge that in the course of negotiating this Lease their respective representatives have gradually reached preliminary agreement on the several terms set forth in this instrument. The parties acknowledge and agree that at all times they have intended that none of such preliminary agreements (either singly or in combination) shall be binding on either party, and that they shall be bound to each other by a single, formal, comprehensive document containing this Paragraph and all of the agreements of the parties, in final form, which has been executed by a duly authorized officer of Tenant and by Landlord or a duly authorized representative of Landlord. The parties acknowledge that none of the prior oral and written agreements between them (and none of the representations on which either of them has relied) relating to the subject matter of this Lease shall have any force or effect whatever, except as and to the extent that such agreements and representations have been incorporated in this Lease.

37.03 Headings. The Article and Paragraph headings in this Lease are used only for convenience and are not to be taken as part of this Lease or to be used in determining the intent of the parties.

37.04 Waiver of Trial by Jury. To the extent allowed by applicable law, Landlord and Tenant hereby waive all right to a trial by jury in any dispute between Landlord and Tenant related to this Lease.

37.05 Authority. The person(s) executing this Lease on behalf of Landlord do hereby represent and warrant that Landlord is a duly authorized and validity existing New York limited liability company, that Landlord is authorized to do business in the state where the Premises is located, that Landlord has full rights, power and authority to enter into this Lease and that each person signing on behalf of Landlord is authorized to do so. The person(s) executing this Lease on behalf of Tenant do hereby represent and warrant that Tenant is a duly authorized and validity existing New York limited liability company, that Tenant is authorized to do business in the state where the Premises is located, that Tenant has full rights, power and authority to enter into this Lease and that each person signing on behalf of Tenant is authorized to do so.

37.06 Successors. It is agreed that the respective rights and obligations hereunder shall inure to, and be binding upon Landlord and Tenant and their respective successors and assigns.

37.07 Entire Agreement. This Lease embodies the entire agreement of the parties hereto, and this Lease shall not be altered, changed, or modified in any respect, except by a written instrument executed by the duly authorized officers or representatives of the party to be bound by such alteration, change or modification.

37.08 Severability. If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

37.09 Rights Cumulative. Unless expressly provided to the contrary in this Lease, each and every one of the rights, remedies, and benefits provided by this Lease shall be cumulative and shall not be exclusive of any other such rights, remedies, and benefits allowed at law or in equity.

37.10 Governing Law. This Lease shall be governed by, construed and enforced in accordance with the laws of the state in which the Premises is located.

37.11 Interest. Any amount due from Landlord or Tenant to the other shall bear interest from the date such amount became due at the lesser of (i) the prime rate as stated in the Money Rates Table of the *Wall Street Journal* on the date(s) such amount(s) became due plus two percent (2%) or (ii) the maximum amount allowed by applicable law. If the prime rate is no longer published in the Money Rates Table of the *Wall Street Journal* as of the time for which the foregoing interest rate is to be calculated, then a comparable publication as reasonably selected by the party to whom payment is due shall be utilized to determine the prime rate.

37.12 Exhibits. The Exhibits referenced herein are hereby incorporated into and made a part of this Lease.

38. INTENTIONALLY OMITTED

39. FUEL FACILITY. Tenant may, at its option and at its sole cost and expense, construct a Fuel Facility (inclusive of tanks, pumps, dispensing equipment, kiosks and canopies) consisting of **three (3) fuel pumps and a kiosk** within the Premises at the location identified as "Fuel Facility" on the Site Plan. The term "Fuel Facility" shall become part of the Premises and shall include the right to sell gasoline, motor fuels, natural or propane gas, electric recharging and any technological evolution, replacements, or supplements thereto, and other related and ancillary products. The following provisions shall be applicable to the Fuel Facility:

(a) in the event Tenant constructs a Fuel Facility, it will be constructed and operated in accordance with Tenant's obligations under the Lease and in compliance with all applicable governmental laws, rules and regulations (including but not limited to all testing and monitoring procedures, building, zoning and/or environmental laws, rules and regulations pertaining thereto);

(b) the Tenant shall, with Landlord's cooperation, but at Tenant's sole cost and expense, apply for and use its best efforts to obtain all necessary permits and approvals prior to the Approval Date. Landlord shall join in any necessary applications and documents relating thereto;

(c) Tenant shall not be obligated to pay any additional rent (even when such Fuel Facility opens for business to the public);

(d) Tenant shall be obligated to pay any real estate taxes attributable to the improvements;

(e) Prior to installation of any fuel tanks and throughout the term of this Lease, Tenant, at its sole cost and expense, shall supply to Landlord proof of storage tank pollution liability insurance with a minimum limit of \$5,000,000.00. Said insurance shall include, but not be limited to, coverage for first and third party liability for on-site and off-site bodily injury and property damage, on-site and off-site cleanup expense caused by Tenant's use operation or construction of the Fuel Facility, defense costs, and must continually be in compliance with any Federal or State mandated requirements. If said insurance is underwritten on a "claims made" basis, then the policy must include an extended reporting period of at least one (1) year. Tenant shall also provide Landlord with satisfactory proof of "Pollution Legal Liability Insurance" with a limit of not less than \$5,000,000.00. Said insurance should be in addition to storage tank liability coverage and provide protection against other potential pollution conditions caused by Tenant which may occur due to the Tenant's operation of the Fuel Facility. Coverage shall include, but not be limited to, loading and unloading of petroleum products by a supplier, runoff of petroleum products or motor oils from customers' vehicles and from pumping stations and improper disposal of waste generated from or by Tenant's use, operation or construction of the Fuel Facility. This coverage shall apply to first and third party liability for on-site and off-site bodily injury and property damage and defense costs. Notwithstanding the expiration or earlier termination of this Lease, this insurance will remain in effect until Tenant has supplied to Landlord an independent report from a party reasonably acceptable to Landlord that the Fuel Facility has not been polluted or otherwise contaminated by Tenant, its agents, employees, suppliers, and/or customers, or is compliant with the provisions of Paragraph 39 (h) below. The above referenced policies of insurance shall include Landlord as an additional insured as its interest may appear and be written with companies reasonably acceptable to Landlord. Tenant shall be responsible for payment of all deductibles on such insurance policies. If at any time during this Lease Tenant fails to provide said insurance within thirty (30) days after Tenant's receipt of written notice of such failure from Landlord, Landlord may purchase the insurance for the sole benefit of Landlord and Tenant shall forthwith reimburse Landlord the cost of such insurance as additional rent;

(f) Tenant shall be permitted to make changes to the Fuel Facility from time to time following the original construction thereof provided Tenant complies with all applicable governmental laws, rules and regulations pertaining thereto;

(g) the Tenant shall at its sole cost and expense, remediate, remove, correct, and/or abate any spillage, discharge, or release of any Hazardous Material in relation to the use, operation or construction of the Fuel Facility (with the exception of any Pre-Existing Environmental Conditions, which shall be the responsibility of the Landlord), whether located on-site or off-site, as may be required by any applicable federal, state or local laws, rules, regulations and/or policies or as may be compelled or required by a third party with relevant jurisdiction (which shall include, but not be limited to, a governmental or regulatory authority), and shall indemnify Landlord from and against any claims which may be asserted against Landlord and Landlord's mortgagee arising out of a release of any Hazardous Materials resulting from the use, operation or construction of Tenant's Fuel Facility;

(h) in the event Tenant is required to remediate, remove, correct, or abate the release, spillage, or discharge of any Hazardous Material in relation to the use, operation or construction of the Fuel Facility, Tenant shall deliver to Landlord a letter or certification from said third party with relevant jurisdiction (which shall include, but not be limited to, a governmental or regulatory authority) that all removal or remediation efforts have been either completed in accordance with all-requisite laws, rules, regulations, and/or policies or that the site is closed or that such remediation effort has been completed to the satisfaction of the applicable government authority and, if available, a statement from the applicable government authority that no further removal or remediation actions are required by said applicable government authority. In the event that soil removal is required, Tenant agrees to replace such contaminated soil with clean, uncontaminated soil fill pursuant to good construction practices and all governmental regulations;

(i) Tenant will deliver to Landlord and Landlord's mortgagee without request or demand, promptly upon becoming aware of any presence, spillage, release, discharge, or disposal of a Hazardous Material that is reportable under any applicable statute or regulation at, upon, under, within or about, or alleged or threatened presence, spillage, release, discharge, or disposal of a Hazardous Material that is reportable under any applicable statute or regulation at, upon, under, within or about, the Fuel Facility and promptly upon becoming aware that any regulatory agency, governmental body or third party has made any claim or taken or threatened to take any action relating to Hazardous Materials on or emanating from the Fuel Facility or any property adjacent to or abutting the Fuel Facility, and promptly upon receipt of any notice from any regulatory agency or governmental body or from any tenant or other occupant or from any third party with respect to any such alleged spillage, release, discharge, or disposal of a Hazardous Material, a notice specifying the facts relating thereto, the claim made or action taken or threatened and what action Tenant is taking or causing to be taken or proposed to take or cause to be taken with respect thereto;

(j) Tenant will permit Landlord and Landlord's mortgagee and any representatives designated by Landlord or Landlord's mortgagee to visit and inspect the Fuel Facility or any part thereof, and to sample and monitor soils and groundwater and to inspect for Hazardous Materials on or emanating from the Fuel Facility at all such reasonable times and intervals as from time to time may be requested, provided that any such test and inspections shall be conducted so as not to unreasonably interfere with the operations of Tenant's business, and provided further that any damage to the Premises resulting therefrom shall be repaired by Landlord or Landlord's mortgagee. Neither Landlord (unless caused or resulting from a Pre-Existing Environmental Condition) or Landlord's mortgagee shall have any duty to make any such inspection nor shall incur any liability or obligation for not making any such inspection, or once having undertaken any such inspection for not completing the same; nor shall the fact that such inspection may not have been made by Landlord or Landlord's mortgagee relieve Tenant of any obligations that it may otherwise have under this Lease;

(k) Notwithstanding any provision in the Lease to the contrary, (with the exception of Landlord's obligations in Sections 23.02 and 23.05 above). Tenant will protect, indemnify, save harmless and defend Landlord and Landlord's mortgagee from and against any and all claims, demands, fines, suits, actions, proceedings, orders, decrees, judgments, and liabilities arising out of the use, generation, storage, spillage, release, discharge, emission, or disposal of any Hazardous Materials resulting from the use, operation or construction of the Fuel Facility, including, but not limited to all environmental clean-up or response costs, fines, penalties, or damages for personal injury, property damage, damages to the environment, and related costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) (collectively, the "Claims") which are (i) caused or created by Tenant's use, operation or construction of the Fuel Facility, (ii) asserted by a third party with relevant jurisdiction (which shall include, but not be limited to, a governmental or regulatory authority), and (iii) actually imposed upon, suffered or incurred by Landlord or Landlord's mortgagee. In each such case, Landlord shall have the right to participate in the defense of such claim and in the determination of commercial reasonableness. With the exception of Landlord's obligations in Sections 23.02 and 23.05 above Tenant shall further protect, indemnify and save harmless and defend Landlord and Landlord's Mortgagee from and against all liabilities, obligations, claims, losses, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorney fees and expenses) imposed upon, suffered, or incurred by Landlord or Landlord's mortgagee by reason of the failure of Tenant to comply with any environmental legal requirement associated with Tenant's use, operation or construction of the Fuel Facility; and

(l) On or prior to the last day of the term of the Lease, Tenant shall be obligated to remove the Fuel Facility (including, without limitation, all underground tanks, piping and appurtenances whether above or below ground) and shall remediate, remove and correct and abate the release of any Hazardous Materials caused by or resulting from Tenant's use or operation of the Fuel Facility in a manner that is required by, or if not required by then consistent with Subparagraph 38(h) above. Tenant shall backfill the area with clean, uncontaminated soil pursuant to good construction practices, shall restore the Fuel Facility premises to the condition that existed just prior to its installation, and shall obtain certification of compliance with all applicable governmental regulations relating to the closure and removal of the Fuel Facility from the appropriate governmental agency;

(m) The obligations of Tenant under this Section 39 shall survive the expiration or sooner termination of this Lease.

BALANCE OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, Landlord and Tenant have set their hands and seals hereto, as of the day and year first above written.

LANDLORD

[Signature]
Witness

Street
MORGAN POND, LLC, a New York limited liability company

Initial
RO LL
FE T

[Signature]
Witness

By: [Signature]
Name: Robert Morgan
Title: mmh manager

Attest: [Signature]
Name: Kevin Morgan
Title: Vice President

[CORPORATE SEAL]

TOPS MARKETS, LLC, a New York limited liability company

[Signature]
Witness

By: [Signature]
FRANK LURCI, its President: CEO

[Signature]
Witness

By: [Signature]
Name: Thomas M. Fitzgerald
Title: Vice President - Corporate Development

Attest: [Signature]
Name: Mark Stanko
Title: Director of Construction

EXHIBIT A
PREMISES LEGAL DESCRIPTION

All that tract or parcel of land situate in the City of Syracuse, County of Onondaga, and State of New York, being part of Block 105, bounded and described as follows: Beginning at the southeast corner of said block, being the intersection of the westerly line of Pond Street with the northerly line of First North Street; thence N. 61° 42' 30" W. (N. 61° 31' 08" W. per current survey) along the northerly line of First North Street 234.17 feet to a point in the southeasterly corner of the DeLong Tract, according to a map of said tract filed in the Onondaga County Clerk's Office on December 14, 1888, as Map No. 526; thence N. 28° 12' 30" E. (in the Onondaga County Clerk's Office on December 14, 1888, as Map No. 526; thence N. 28° 12' 30" E. (N. 28° 23' 52" E. per current survey) along the easterly line of said DeLong Tract 605.0 feet to a point; thence S. 61° 42' 30" E. (S. 61° 31' 08" E. per current survey) 234.40 feet to a point in the westerly line of Pond Street; thence S. 28° 13' 50" W. (S. 28° 25' 12" W. per current survey) along said westerly street line 605.0 feet to the point and place of beginning.

EXHIBIT B
SITE PLAN

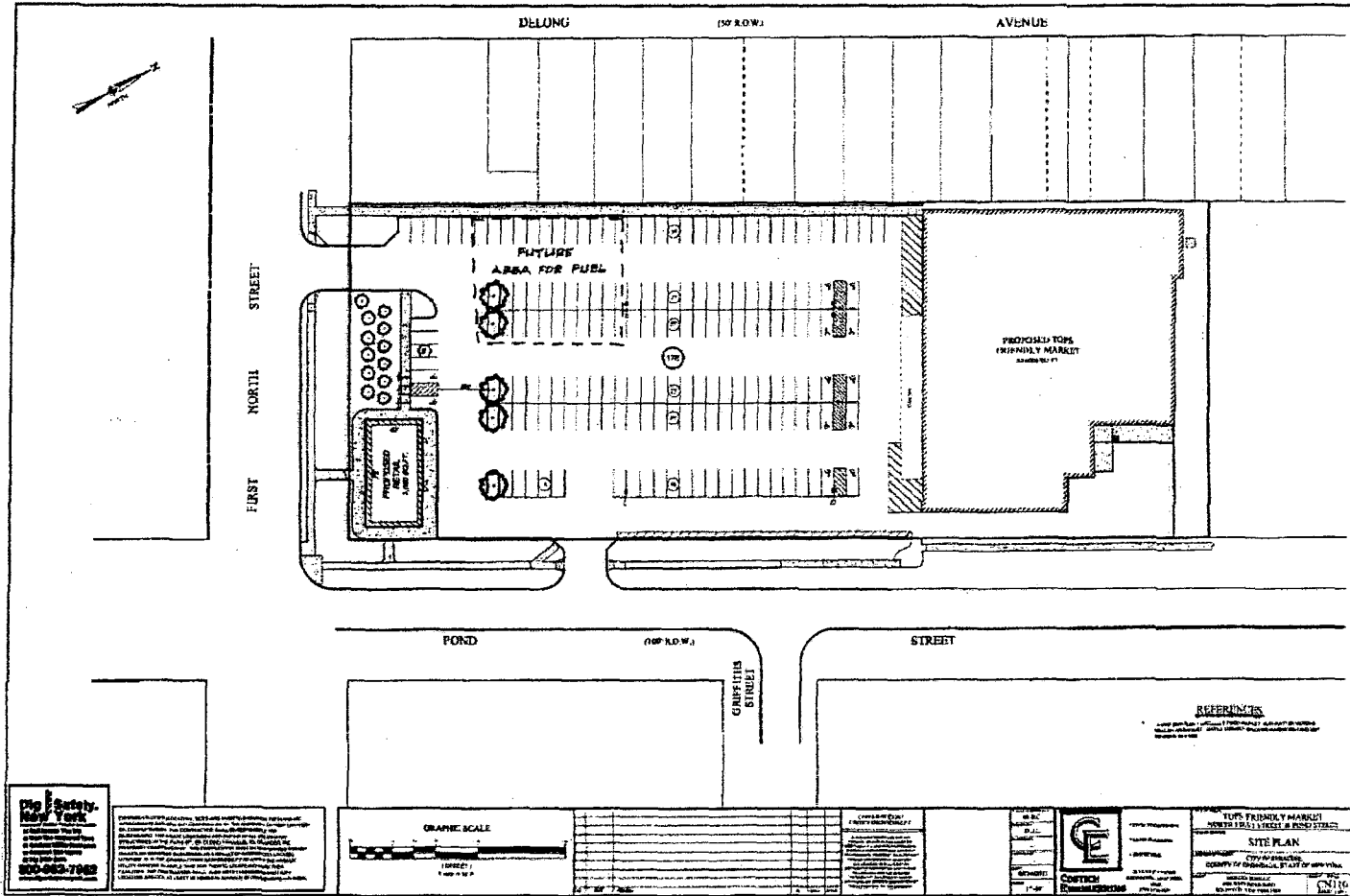
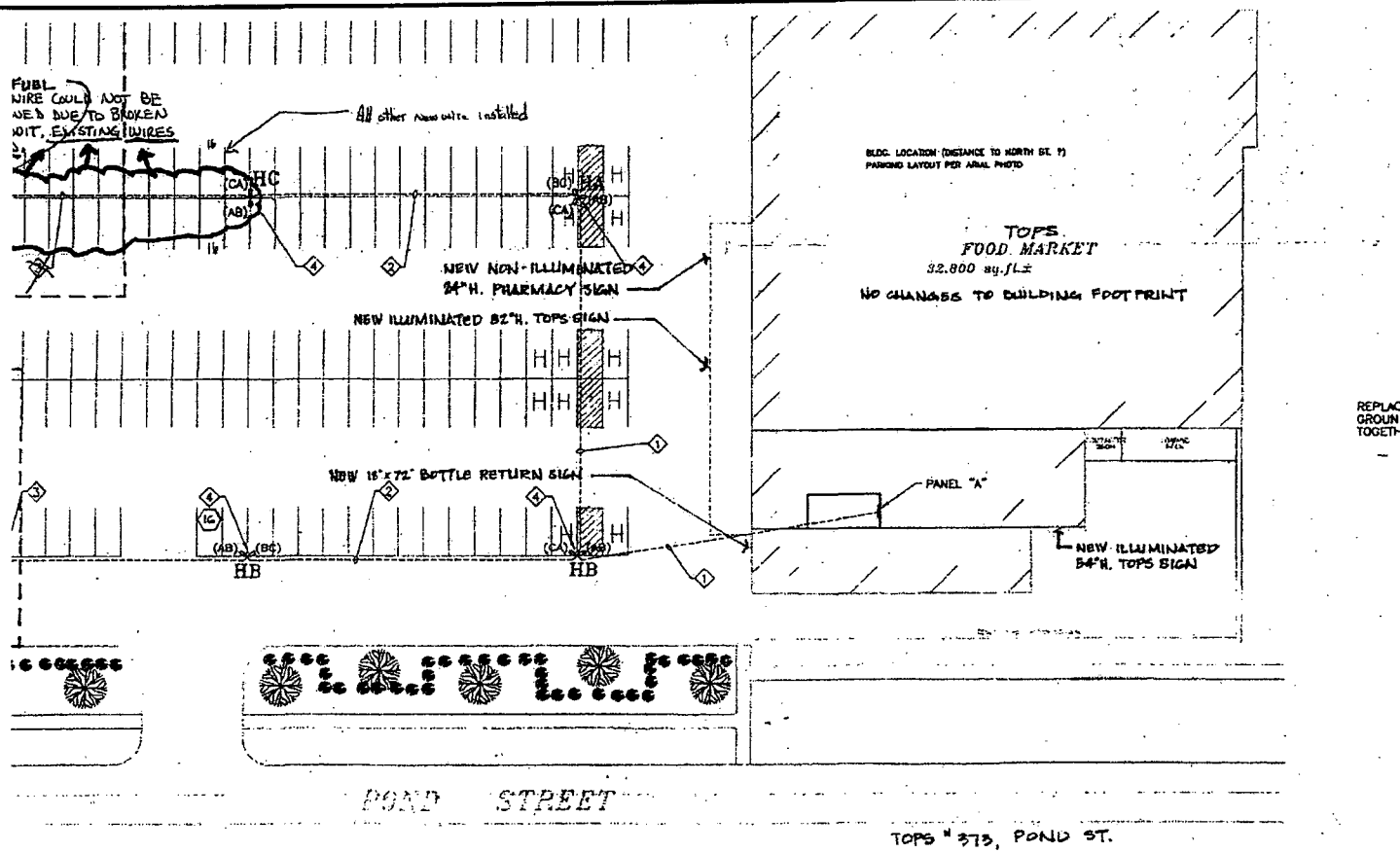
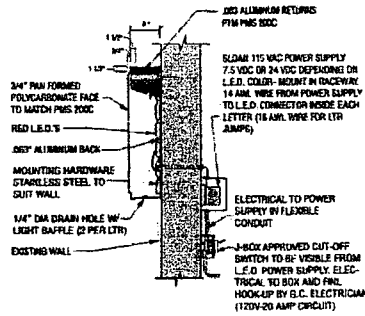


EXHIBIT C
PYLON SIGN



(A) PROPOSED SITE LIGHTING PLAN
SCALE: 1"=30'

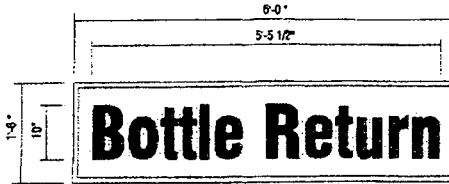
EXHIBIT C
 PYLON SIGN
 (cont.)



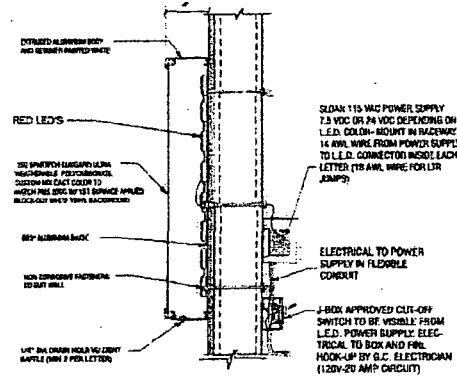
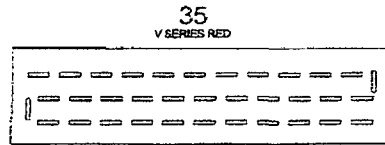
SECTION @ L.E.D. LTR
 SCALE: 1/2" = 1'-0"

	RECOMMENDATIONS	PROJECT #:	2041	DESIGNED BY:	APPROVED AS SHOWN	DATE:	03/13/79	REV. 0:	00/00/00	REVISION NOTES:	SCALE:	As Noted	
	ADDRESS:	CITY/STATE:	ZIP:	SECTION #:	FILE #/REV: Design: LTR'S FRIENDLY MARKETS/8442041/0001-0001 TOPS FAMILY OF SIGNS 3-15-10	DATE:	03/08/79 03/08/79 03/08/79 03/08/79 03/08/79	REV. 1:	03/08/79 03/08/79 03/08/79 03/08/79 03/08/79	REV. 2:	03/08/79 03/08/79 03/08/79 03/08/79 03/08/79	DESIGNED BY:	BJS
												PAGE #	4

EXHIBIT C
PYLON SIGN
(cont.)



TOPS-1BWS INT. ILLUM. WALL SIGN
SCALE: 3/4" = 1'-0"



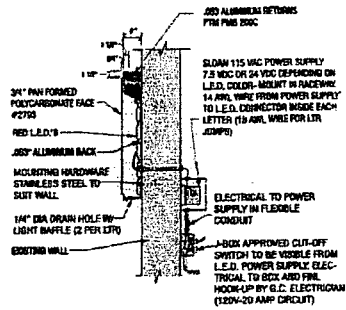
TYP SECTION @ S/F ILLUMINATED CABINET
SCALE: 1/4" = 1'-0"

	RECOMMENDATIONS		PROJECT #:	3341	DATE:	02/18/18	REV. 0:	06/06/00	REVISION NOTES:	SCALE:	As Noted																																				
	ADDRESS:	CITY/STATE:	ZIP:	LOCATION #:	DATE:	12/07/11	REV. 1:	06/06/00	REV. 2:	06/06/00	REV. 3:		06/06/00	REV. 4:	06/06/00	REV. 5:	06/06/00	REV. 6:	06/06/00	REV. 7:	06/06/00	REV. 8:	06/06/00	REV. 9:	06/06/00	REV. 10:	06/06/00	REV. 11:	06/06/00																		
APPROVED AS NOTED <input type="checkbox"/>			APPROVED AS PRESENT <input checked="" type="checkbox"/>			DESIGN/TOPS FRIENDLY MARKETS/STANDARD/ALUMINUM TOPS FAMILY OF SIGNS 5-15-10			DRAWN BY:			DATE:			REV. 1:			REV. 2:			REV. 3:			REV. 4:			REV. 5:			REV. 6:			REV. 7:			REV. 8:			REV. 9:			REV. 10:			REV. 11:		

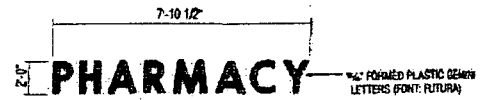
EXHIBIT C
 PYLON SIGN
 (cont.)



1 TOPS-54CL CHANNEL LETTER LAYOUT
 77.82 SQ. FT. SCALE: 3/8" = 1'-0"



SECTION @ L.E.D. LTR
 SCALE: 1" = 1'-0"



15.75 SQ. FT.

EXHIBIT D
RENT COMMENCEMENT DATE AGREEMENT

EXHIBIT E
PERMITTED TITLE EXCEPTIONS

To be confirmed upon Tenant's completion of its review of title.

EXHIBIT F
EXISTING ENVIRONMENTAL CONDITIONS

Those certain conditions set forth in that certain Phase I Environmental Site Assessment prepared by Leader Professional Services, Inc. dated July, 2012, as amended.

EXHIBIT G
MEMORANDUM OF LEASE

EXHIBIT H
SNDA

EXHIBIT I
ESTOPPEL CERTIFICATE

[Pond Street]

MEMORANDUM OF LEASE

NAME AND ADDRESS OF LANDLORD:
Morgan Pond, LLC

NAME AND ADDRESS OF TENANT:
Tops Markets, LLC
6363 Main Street
Williamsville, New York 14221

DATE OF EXECUTION OF LEASE:
September __, 2012

DESCRIPTION OF DEMISED PREMISES IN THE FORM CONTAINED IN THE LEASE:
The property commonly known as 700 First North Street, Syracuse, New York.

DATE OF COMMENCEMENT OF LEASE TERM:
The original term of the Lease shall commence on _____, 2012.

DATE OF TERMINATION OF LEASE TERM:
The original term of the Lease shall terminate 20 years following the Commencement Date.

RENEWAL TERMS:
Five periods of five years each, followed by one successive period of four years.

IN WITNESS WHEREOF, the parties hereto have respectively executed this Memorandum of Lease as of this ____ day of _____, 2012.

MORGAN POND, LLC

By: _____

Name: *Robert Murg*

Title: *member*

TOPS MARKETS, LLC

By: _____

Name: *FRANK CUGLI*

Title: *Pres. dent & CED*

EXHIBIT D

RENT COMMENCEMENT DATE AGREEMENT

THIS RENT COMMENCEMENT DATE AGREEMENT, dated _____, 2012, between **MORGAN POND, LLC**, a New York limited liability company ("Landlord") and **TOPS MARKETS, LLC**, a New York limited liability company ("Tenant").

Background:

A. Landlord and Tenant entered into a Lease Agreement ("Lease") dated _____, 2012 regarding the Premises (as defined in the Lease) located in the City of Syracuse, County of Onondaga and State of New York.

B. A Memorandum of Lease with respect to the Lease has been recorded in the _____ Land Records in Volume __ at Page __.

C. Pursuant to Paragraph 1.04 of the Lease, Landlord and Tenant wish to confirm the Rent Commencement Date of the Lease.

NOW, THEREFORE, intending to be legally bound, Landlord and Tenant agree as follows:

1. Rent Commencement Date. The Rent Commencement Date of the Lease is _____, 20__, and the expiration date is _____, 20__, subject to Tenant's options to renew the Term as set forth in the Lease.

2. Ratification. Each and every provision of the Lease is hereby ratified and remains in full force and effect.

Witness the due execution hereof as of the date first above written:

LANDLORD:

MORGAN POND, LLC,

a _____

Witness

Witness

By: _____

Name: _____

Title: _____

Attest:

Name: _____

Title: _____

[CORPORATE SEAL]

TENANT:

TOPS MARKETS, LLC

Witness

Witness

By: _____

Name: _____

Title: _____

Attest:

Name: _____

Title: _____

(CORPORATE SEAL)

BFLO:563614

ESTOPPEL CERTIFICATE

_____ and _____, 20__

[LANDLORD'S MORTGAGEE]

Re: (Property Address)

Dear Sir or Madam:

Reference is made herein to a certain Lease Agreement dated _____, 200__ entered into by and between _____ as "Landlord" and Tops Markets, LLC, as "Tenant", as amended and supplemented by those instruments set forth on Schedule A attached hereto and incorporated herein (hereinafter sometimes collectively referred to as the "Lease"), regarding the leasing of the Premises located in a shopping center located at _____ (the "Shopping Center").

Tenant hereby advises you as follows (capitalized terms in this letter shall have the meaning ascribed to them in the Lease):

1. The Effective Date of the Lease occurred on _____, 20__. Delivery of Possession occurred on _____, 20__. The Rent Commencement Date of the Lease occurred on _____, 20__, and the current term of the Lease will continue through _____, 20__. Tenant has options to extend the term of the Lease for seven (7) successive periods of five (5) years each and one (1) final period of four (4) years.
2. Tenant is currently in possession of the Premises [containing approximately 4,950 square feet of leaseable area] in accordance with its rights under the Lease.
3. Fixed Minimum Rent has been paid through _____, 20__ and is payable annually in the amount of \$ _____ (monthly installments of \$ _____), subject to change as provided in Paragraph 5.01 of the Lease].
4. Except as set forth on Schedule A, the Premises have not been sublet, nor has the Lease been assigned, modified, supplemented, or amended.
5. As of the date hereof, except as otherwise set forth on Schedule B, attached hereto and incorporated herein, to the best of the knowledge and belief of the Tenant, the Landlord is not currently in default under the Lease, and the Tenant has no current set-offs against the Landlord.
6. The Tenant has/does not have a right of first refusal to purchase the Shopping Center as provided in the Lease.

7. There are no rent concessions, tenant allowances or other benefits due the Tenant which are not expressed in the Lease.
8. As of the date hereof, the Tenant has not received any notice from the Landlord that it is currently in default under the Lease.

Sincerely,

TOPS MARKETS, LLC.

By: _____
Name:
Title:

SCHEDULE A

SCHEDULE OF LEASE DOCUMENTS

005204.00000 Business 2688439V1

SCHEDULE B

SCHEDULE OF LANDLORD DEFAULTS

005204.00000 Business 2688438v1

--	--	--	--

**SUBORDINATION, NON-DISTURBANCE AND
ATTORNMEN T AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN T AGREEMENT, made this ____ day of September, 2012, between _____, a _____ having an office at _____, (herein referred to as "Mortgagee") and **TOPS MARKETS, LLC**, a New York limited liability company, having an office at PO Box 1027, Williamsville, New York 14240-1027 (herein referred to as "Tenant").

RECITALS

A. Tenant entered into a certain Lease Agreement dated September ____, 2012 (herein the "Lease") with _____, a _____ having an office at _____ (herein referred to as "Landlord"), demising to Tenant certain premises (herein the "Premises") situated at Fulton and East Genesee Streets, Auburn, New York, as more particularly described on Schedule A attached hereto and made a part hereof [(herein said shopping center is referred to as the "Shopping Center")], [a Memorandum of which Lease was recorded in the _____ Land Records on _____, 20__ in Volume _____ at Page _____];

B. Mortgagee is the holder of a certain Mortgage dated _____ covering the Premises and recorded in the _____ Land Records in Volume _____ at Page _____ and related Assignment of Leases and Rents dated _____ and recorded in the _____ in _____ (the "Mortgage"); and

C. Mortgagee desires that Tenant subordinate the lien of the Lease to the lien of the Mortgage, and Tenant is willing to do so provided Tenant is assured of the continued use and occupancy of the Premises under the terms of the Lease.

TERMS OF AGREEMENT:

In consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereto hereby covenant and agree as follows:

1. Mortgagee hereby consents to Mortgagee's entry into the Lease, and covenants and agrees that the exercise by Tenant of any of the rights, remedies and options therein contained shall not constitute a default under the Mortgage.
2. Tenant agrees that, subject to and conditioned upon the provisions of Section 3 below, the leasehold estate created by the Lease shall be subject and subordinate in priority to the lien of the Mortgage, provided that said Mortgage and any and all renewals, modifications and extensions thereof shall nevertheless be subject to the terms of this Agreement.
3. Mortgagee agrees that so long as Tenant shall not be in default under the terms of the Lease (beyond any applicable notice and cure period set forth therein):
 - (a) Tenant shall not be named or joined as a party defendant or otherwise in any suit, action or proceeding for the foreclosure of the Mortgage or to enforce any rights under the Mortgage or the bond or note or other obligation secured thereby; subject to clause (b) below, Tenant may be named or joined to the extent necessary to foreclose the Mortgage; and
 - (b) Tenant's tenancy and its rights under the Lease (including, without limitation, its rights to use and occupy the Premises in accordance with the Lease and its rights in and to the Common Areas, if any, and any options to extend the Lease and the term thereof), shall not be terminated, disturbed, diminished, impaired, interfered with or in any way affected by (i) any suit, action or proceeding upon the Mortgage, or the bond or note or obligation secured thereby, or for the foreclosure of the Mortgage, or the enforcement of any rights under the Mortgage or any other documents held by the Mortgagee, or by any judicial sale or execution or other sale of the Property, or any deed given in lieu of foreclosure, or by the exercise of any

other rights given to the Mortgagee under the Mortgage or under any other documents as a matter of law, or (ii) any default under the Mortgage or the bond or note or other obligation secured thereby, provided, however, that Mortgagee shall not be:

(i) bound by any material amendment or modification of the Lease made without its consent, which would (a) reduce annual fixed rent, or (b) reduce any other monetary obligation of Tenant under the Lease, or (c) reduce the term of the Lease as represented by the Initial Term; or

(ii) bound by any Offset Right that Tenant may have against Landlord or any successor thereto relating to any event or occurrence before acquisition of title or possession to the Premises by Mortgagee (the "Acquisition"), including any claim for damages of any kind whatsoever as the result of any breach by such Landlord that occurred before the date of Acquisition, except as to continuing defaults. The foregoing shall not limit either (a) Tenant's right to exercise against Mortgagee any Offset Right otherwise available to Tenant because of events occurring after the Acquisition or with respect to continuing defaults, or (b) Mortgagee's obligation to correct any conditions that existed as of the date of Acquisition and violate Mortgagee's obligations as landlord under the Lease. Notwithstanding the foregoing, Tenant shall have the Offset Right to set-off its out-of-pocket costs and expenses in effectuating a cure for any breach by Landlord that occurred before the date of Acquisition. An "Offset Right" means any right or alleged right of Tenant to any offset, defense, claim, counterclaim, reduction, deduction, or abatement against Tenant's payment of Rent or performance of Tenant's other obligations under the Lease, arising (whether under the Lease or other applicable law) from Landlord's breach or default under the Lease; or

(iii) bound by any base rent, percentage rent or any other payments which Tenant might have paid for more than the current month to any prior lessor under the Lease (except for payments of additional rent which have been paid in advance as required by the Lease); or

(iv) bound by any consensual or negotiated surrender, cancellation, or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant, unless effected unilaterally by Tenant pursuant to the express terms of the Lease.

4. If the Mortgagee shall become the fee owner of the Premises by reason of foreclosure of the Mortgage or by reason of a transfer of title by a deed given in lieu of foreclosure, or if Mortgagee shall take possession of the Premises as a mortgagee-in-possession without acquiring title thereto, the Lease shall continue in full force and effect, without necessity for executing any new lease, as a direct lease between Tenant, as tenant, and Mortgagee, as landlord, upon all of the same terms, covenants and provisions contained in the Lease, and in such event:

(a) Tenant shall be bound to Mortgagee under all of the terms, covenants and provisions of the Lease and Tenant hereby agrees to attorn to Mortgagee and to recognize such Mortgagee as "landlord" under the Lease; and

(b) Provided no defaults by Tenant under the Lease then exist beyond any applicable notice and cure period set forth in the Lease, Mortgagee shall accept Tenant's attornment and be bound to Tenant under the Lease pursuant to all of the terms, covenants and provisions of the Lease, and Mortgagee and Tenant shall, from and after the date Mortgagee succeeds to the interest of Landlord under the Lease, have the same remedies against each for the breach of any covenants contained in the Lease that Landlord and Tenant might have had under the Lease against each other if Mortgagee had not succeeded to the interest of Landlord.

5. Mortgagee agrees that (a) if the Premises or any part thereof is damaged or destroyed by fire or other casualty or taken by the exercise of any right of eminent domain or any condemnation, so long as Tenant is not in default in the Lease, all insurance proceeds and condemnation awards therefor shall be made available and disbursed in accordance with the Lease, and (b) all amounts paid to Mortgagee in escrow or otherwise on account of real estate taxes upon the Premises, shall be received and held by the Mortgagee in trust and shall be applied to the payment of real estate taxes, notwithstanding any default by Landlord under the terms of the Mortgage with Mortgagee, or otherwise.

6. Neither the Mortgage nor any other instrument executed in connection therewith shall cover or be construed as subjecting in any manner to the lien thereof, any fixtures or personal property at any time furnished or installed by Tenant or its subtenants or licensees on the Premises regardless of the manner or mode of attachment thereof ("Tenant's Property"). Although the provisions of this Section 6 shall be self-operative without any further action by Mortgagee or Tenant, Mortgagee agrees that if any lender to which Tenant shall grant a security interest in Tenant's Property or any lessor who shall lease Tenant's Property to Tenant shall request that Mortgagee confirm that it has waived any lien which Mortgagee may have thereupon pursuant to the Mortgage, by operation of law or otherwise, Mortgagee shall promptly execute and deliver to Tenant an instrument so requested of it in form reasonably satisfactory to such lender or lessor and to Mortgagee. Mortgagee agrees that any lender to whom Tenant shall grant a security interest in any portion of Tenant's Property, as aforesaid, constituting personal property or fixtures or any lessor of Tenant's Property, constituting personal property or fixtures shall have the right to enter upon the Premises for the purposes of removing Tenant's Property, and that Mortgagee shall not hinder or delay such removal, provided that such lender or lessor shall (a) repair any damage to the Premises caused by such removal, (b) indemnify Mortgagee and hold Mortgagee harmless from and against all claims for personal injury or property damage caused by the negligence or willful misconduct of such lessor or lender or its employees, agents, contractors, servants or representatives and (c) otherwise comply with the terms of the Lease in connection with such removal.

7. Tenant covenants that, subject to Landlord's consent as indicated herein, upon receipt from Mortgagee of a written notice that Landlord has defaulted under the Mortgage (or the bond, note or other obligation it secures) and has failed to cure the default within any applicable grace or cure period set forth in the Mortgage, Tenant shall, if requested by Mortgagee in such notice, pay to Mortgagee Fixed [Minimum] Rent and other charges then due or thereafter becoming due to Landlord under the Lease.

8. Tenant, as lessee under the Lease, hereby covenants and agrees to give the Mortgagee written notice properly specifying wherein the Landlord has failed to perform any of the covenants or obligations of the Landlord under the Lease, simultaneously with the giving of any notice of such default to the Landlord under the provisions of the Lease. Tenant agrees that the Mortgagee shall have the right, but not the obligation, within the same time allotted Landlord under the Lease to correct or remedy, or cause to be corrected or remedied, each such default before Tenant may take any action under the Lease by reason of such default. Such notices to the Mortgagee shall be delivered to _____ Attention _____, or to such other address as the Mortgagee shall have designated to Tenant by given such written notice to Tenant at the address for Tenant set forth in the Lease, or such other address as may be designated by written notice from the Tenant to the Mortgagee.

9. The terms of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto. As used herein the terms "foreclosure" and "foreclosure sale" shall be deemed to include the acquisition of Landlord's estate in the [Premises][Shopping Center] by voluntary deed (assignment) in lieu of foreclosure, and the term "Mortgagee" shall include the Mortgagee herein specifically named and any of its successors and assigns, including anyone who shall succeed to Landlord's interest in the [Premises][Shopping Center] by, through or under foreclosure of the Mortgage, including, without limitation, any purchaser at a foreclosure sale.

10. No modification, amendment, waiver or release of any provision of this Agreement or of any right, obligation, claim or cause of action arising hereunder, shall be valid or binding for any purpose whatsoever, unless in writing and duly executed by the party against whom the same is sought to be asserted.

11. The provisions of this Agreement shall be construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as a sealed instrument as of the date and year first above written.

MORTGAGEE:

Witness

a _____

Witness

By: _____

Name: _____

Title: _____

TENANT:

TOPS MARKETS, LLC

Witness

By: _____

Name: _____

Title: _____

LANDLORD'S CONSENT AND RECOGNITION OF
SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

Landlord acknowledges and consents to the terms and conditions of the within Subordination, Non-Disturbance and Attornment Agreement, including, without limitation, the provisions of Section 7 thereof, and agrees that Tenant, upon receipt from Mortgagee of notice that Landlord has defaulted under the Mortgage (or the bond, note or other obligation it secures) and has failed to cure the default within any applicable grace period set forth in the Mortgage, shall pay to Mortgagee directly all Fixed [Minimum] Rent and other charges due under the Lease regardless of whether such notice is consented to or contested by Landlord; and Landlord hereby waives any right to demand from Tenant payment of such Fixed [Minimum] Rent and other amounts which may become due under the Lease after Mortgagee has given such notice to Tenant. Landlord further agrees that Tenant shall have the absolute right and obligation, following demand by Mortgagee (a) to pay Fixed [Minimum] Rent and other charges due under the Lease to Mortgagee and (b) rely upon the genuineness and accuracy of any such demand received from Mortgagee, and that Tenant shall incur absolutely no liability to Landlord in so doing. Without limiting the foregoing, the payment by Tenant to Mortgagee of the Fixed [Minimum] Rent and other charges due under the Lease shall not be, or be deemed to be, a release or waiver of the due and timely observance and performance by Landlord of all of the obligations to be performed and observed by Landlord under the Lease.

WITNESSES:

LANDLORD:

Name:

a _____

Name:

By: _____
Name: _____
Title: _____

STATE OF)
)
:ss.
COUNTY OF)

On the ____ day of _____, in the year _____, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

STATE OF)
)
:ss.
COUNTY OF)

On the ____ day of _____, in the year _____, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

STATE OF)
)
:ss.
COUNTY OF)

On the ____ day of _____, in the year _____, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

morganpond.003(b)(clean)

MORGAN POND STREET LLC

AND

**CITY OF SYRACUSE
INDUSTRIAL DEVELOPMENT AGENCY**

COMPANY LEASE AGREEMENT

DATED AS OF SEPTEMBER 1, 2012

COMPANY LEASE AGREEMENT

THIS COMPANY LEASE AGREEMENT (the "**Company Lease**"), made and entered into as of September 1, 2012, by and between **MORGAN POND STREET LLC** (the "**Company**"), a limited liability company organized under the laws of the State of New York with an office at 1170 Pittsford-Victor Road, Suite 100, Pittsford, New York 14534, and **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY** (the "**Agency**"), a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York, with an office at 333 West Washington Street, Suite 130, Syracuse, New York 13202.

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 September 6, 2012, agreed, at the request of the Company to undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of a leasehold interest in approximately 3.25 acres of improved real property located at 700 First North Street and Pond Street in the City of Syracuse, New York (the "**Land**"); (ii) acquisition of an interest in and the renovation of an approximate 32,800 square foot building for use as a commercial facility (the "**Facility**"); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the "**Equipment**", and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and sales and use taxation (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the

Agency in connection with the acquisition, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment by 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, renovation, reconstruction and equipping of the Project Facility, and grant the Financial Assistance to the Company and the Project by, among other things, (1) appointing the Company 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; (3) obtaining an ownership interest in the Equipment pursuant to a Bill of Sale; and (4) 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

DEFINITIONS

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 September 1, 2012, 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, and the Agency shall confirm in writing the termination of its interest in the Project Facility under this Company Lease and the Agency Lease. 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 bills 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 Facility.

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 is the present owner of the Project Facility.

(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, 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 restates and affirms the representations, warranties and covenants set forth in Section 2.2 of the Agency Lease.

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, demands or communications given under this Company Lease shall be sent to the parties at the addresses set forth below or at such other addresses as the parties may designate by written notice and shall be by prepaid registered or certified mail, return receipt request, and shall be deemed given on the date two (2) days after the date mailed:

(a) To the Agency:

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

With copies to:

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

(b) To the Company:

Morgan Pond Street LLC
1170 Pittsford-Victor Road, Suite 100
Pittsford, New York 14534
Attn: Kevin Morgan

With copies to:

Stephen E. Hall, Esq.
36 West Main Street, Suite 400
Rochester, New York 14614

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 (other than the Company) 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 (other than the Company) 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 Mortgage and shall be automatic without the execution of any further subordination agreement by the Company or the Agency.

4.8 HOLD HARMLESS PROVISIONS.

(a) The Company hereby releases the Agency and its members, officers, agents (other than the Company), 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 (other than the Company), 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 an 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 apportional 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 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 (other than the Company), or employee of the Agency in his individual capacity; and the members, officers, agents (other than the Company), 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 fifteen (15) 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 fifteen (15) 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 (other than the Company), 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.

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

MORGAN POND STREET LLC

By: 

Robert C. Morgan, Manager

**CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____


William M. Ryan, Chairman

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

MORGAN POND STREET LLC

By: _____
Robert C. Morgan, Manager

**CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY**

By:  _____
William M. Ryan, Chairman

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

On the 21st day of September, 2012, before me, the undersigned, personally appeared **ROBERT C. MORGAN**, 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

STEPHEN E. HALL
Notary Public, State of New York
Qualified in Monroe County
My Commission Expires Nov. 30, 2/1/14

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

On the _____ day of September, 2012, before me, the undersigned, personally appeared **WILLIAM M. RYAN**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Notary Public


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

On the _____ day of September, 2012, before me, the undersigned, personally appeared **ROBERT C. MORGAN**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

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

On the 20th day of September, 2012, before me, the undersigned, personally appeared **WILLIAM M. RYAN**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.



Notary Public
LORI L. McROBBIE
Notary Public, State of New York
Qualified in Onondaga Co. No. 01MC5055591
Commission Expires on Feb. 12, 20 14

EXHIBIT "A"

REAL PROPERTY DESCRIPTION

All that tract or parcel of land situate in the City of Syracuse, County of Onondaga, and State of New York, being part of Block 105, bounded and described as follows: Beginning at the southeast corner of said block, being the intersection of the westerly line of Pond Street with the northerly line of First North Street; thence N. $61^{\circ} 42' 30''$ W. (N. $61^{\circ} 31' 08''$ W. per current survey) along the northerly line of First North Street 234.17 feet to a point in the southeasterly corner of the DeLong Tract, according to a map of said tract filed in the Onondaga County Clerk's Office on December 14, 1888, as Map No. 526; thence N. $28^{\circ} 12' 30''$ E. (in the Onondaga County Clerk's Office on December 14, 1888, as Map No. 526; thence N. $28^{\circ} 12' 30''$ E. (N. $28^{\circ} 23' 52''$ E. per current survey) along the easterly line of said DeLong Tract 605.0 feet to a point; thence S. $61^{\circ} 42' 30''$ E. (S. $61^{\circ} 31' 08''$ E. per current survey) 234.40 feet to a point in the westerly line of Pond Street; thence S. $28^{\circ} 13' 50''$ W. (S. $28^{\circ} 25' 12''$ W. per current survey) along said westerly street line 605.0 feet to the point and place of beginning.

**MEMORANDUM OF
COMPANY LEASE AGREEMENT**

NAME AND ADDRESS OF LESSOR: Morgan Pond Street LLC
1170 Pittsford-Victor Road, Suite 100
Pittsford, New York 14534
Attn: Kevin Morgan

NAME AND ADDRESS OF LESSEE: City of Syracuse Industrial Development Agency
333 West Washington Street, Suite 130
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 September 1, 2012

TERM OF COMPANY LEASE AGREEMENT:

The Project is leased for a term which shall commence as of September 1, 2012, and shall end on the expiration or earlier termination of the Agency Lease.

08/25

2

5
4

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum as of the 1st day of September, 2012.

MORGAN POND STREET LLC

By: _____

Robert C. Morgan, Manager

**CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____


William M. Ryan, Chairman

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum as of the 1st day of September, 2012.

MORGAN POND STREET LLC

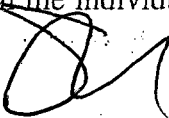
By: _____
Robert C. Morgan, Manager

**CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY**

By:  _____
William M. Ryan, Chairman

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

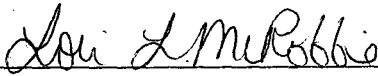
On the 21st day of September, 2012, before me, the undersigned, personally appeared **ROBERT C. MORGAN**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same 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 *Stephen Hall*
STEPHEN E. HALL
Notary Public, State of New York
Qualified in Monroe County
My Commission Expires Nov. 30, 2/4/14

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

On this 20th day of September, 2012, 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, 2014

EXHIBIT A

SAL ME
All that tract or parcel of land situate in the City of Syracuse, County of Onondaga, and State of New York, being part of Block 105, bounded and described as follows:

Beginning at the southeast corner of said block, being the intersection of the westerly line of Pond Street with the northerly line of First North Street; thence N. $61^{\circ} 42' 30''$ W. (N. $61^{\circ} 31' 08''$ W. per current survey) along the northerly line of First North Street 234.17 feet to a point in the southeasterly corner of the DeLong Tract, according to a map of said tract filed in the Onondaga County Clerk's Office on December 14, 1888, as Map No. 526; thence N. $28^{\circ} 12' 30''$ E. (in the Onondaga County Clerk's Office on December 14, 1888, as Map No. 526; thence N. $28^{\circ} 12' 30''$ E. (N. $28^{\circ} 23' 52''$ E. per current survey) along the easterly line of said DeLong Tract 605.0 feet to a point; thence S. $61^{\circ} 42' 30''$ E. (S. $61^{\circ} 31' 08''$ E. per current survey) 234.40 feet to a point in the westerly line of Pond Street; thence S. $28^{\circ} 13' 50''$ W. (S. $28^{\circ} 25' 12''$ W. per current survey) along said westerly street line 605.0 feet to the point and place of beginning.



New York State Department of Taxation and Finance

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

Effective September 1, 2003, use this 7/03 version of Form TP-584; previous versions may no longer be used.

See instructions (TP-584-I) before completing this form. Please 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 checked="" type="checkbox"/> Other	Name (if individual; last, first, middle initial) Morgan Pond Street LLC			Social security number	
	Mailing address 1170 Pittsford-Victor Road, Suite 100			Social security number	
	City Pittsford	State NY	ZIP code 14534	Federal employer ident. number 46 1004776	
	Name (if individual; last, first, middle initial) City of Syracuse Industrial Development Agency			Social security number	
Grantee/Transferee <input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Estate/Trust <input checked="" type="checkbox"/> Other	Mailing address 333 West Washington Street, Suite 130			Social security number	
	City Syracuse	State New York	ZIP code 13202	Federal employer ident. number 52 1380308	

Location and description of property conveyed

Tax map designation			Address	City/village	Town	County
Section	Block	Lot				
006	12	54.0	700 First North Street and Pond 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 |
| 2 <input type="checkbox"/> Residential cooperative | 6 <input type="checkbox"/> Apartment building |
| 3 <input type="checkbox"/> Residential condominium | 7 <input type="checkbox"/> Office building |
| 4 <input type="checkbox"/> Vacant land | 8 <input type="checkbox"/> Other |

Date of conveyance

09	21	2012
month	day	year

Percentage of real property conveyed which is residential real property _____%
(see instructions)

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) | i. <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 is 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"/> Other (describe) _____ |

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

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

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 (see instructions and attach Form TP-584.1, Schedule G)
- 6 Total tax due* (subtract line 5 from line 4)

1.	\$	00
2.		
3.		
4.	\$	00
5.		
6.	\$	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% (0.1))

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 section 1401(e) of Article 31 of the Tax Law (attach documents supporting such claim) k
- l. Other (attach explanation) Leasehold grant with term of less than 49 years l

*Please make check(s) payable to the county clerk where the recording is to take place. If the recording is to take place in New York City, 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 **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 (Article 11 of the Tax Law)

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 creditline 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, 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.

Morgan Pond Street LLC

City of Syracuse Industrial Development Agency

Grantee signature
Robert C. Morgan

Manager
Title

Chairman
Title

Grantee signature
William M. Ryan

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 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 New York City, 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 C – Credit Line Mortgage Certificate (Article 11 of the Tax Law)

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 creditline 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, 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.

Morgan Pond Street LLC

Grantee signature
Robert C. Morgan

Manager
Title

Title

City of Syracuse Industrial
Development Agency

Chairman
Title

Grantee signature
William M. Ryan

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 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 New York City, 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 (Article 22, Tax Law section 663)

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

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 property 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, 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 property.

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 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 tax because one of the exemptions below applies under section 663(d) of the Tax Law, 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 section 663 of the Tax Law. **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 use Form IT-2663, *Application for Certification for Recording of Deed and Nonresident Estimated Income Tax Payment Voucher*.

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

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

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

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

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

AND

MORGAN POND STREET LLC

AGENCY LEASE AGREEMENT

DATED AS OF SEPTEMBER 1, 2012

TABLE OF CONTENTS

	Page
TABLE OF CONTENTS	i
ARTICLE I	
DEFINITIONS.....	2
1.1 DEFINITIONS.....	2
1.2 INTERPRETATION.....	2
ARTICLE II	
REPRESENTATIONS AND COVENANTS.....	3
2.1 REPRESENTATIONS OF THE AGENCY.....	3
2.2 REPRESENTATIONS AND COVENANTS OF THE COMPANY.....	4
ARTICLE III	
CONVEYANCE OF LEASEHOLD INTEREST IN PROJECT FACILITY	6
3.1 AGREEMENT TO CONVEY LEASEHOLD INTEREST TO COMPANY.....	6
3.2 USE OF PROJECT FACILITY.....	6
ARTICLE IV	
CONSTRUCTION AND EQUIPPING OF THE PROJECT.....	7
4.1 CONSTRUCTION, AND EQUIPPING OF THE PROJECT FACILITY	7
4.2 COMPLETION OF PROJECT FACILITY.....	8
4.3 COSTS OF COMPLETION PAID BY COMPANY	8
4.4 REMEDIES TO BE PURSUED AGAINST CONTRACTORS, SUBCONTRACTORS, MATERIALMEN, AND THEIR SURETIES.....	9
4.5 COOPERATION IN EXECUTION OF ADDITIONAL MORTGAGES AND MODIFICATIONS OF MORTGAGES.	9
ARTICLE V	
AGREEMENT TO LEASE PROJECT FACILITY; RENTAL PAYMENTS.....	10
5.1 AGREEMENT TO LEASE PROJECT FACILITY.....	10
5.2 TERM OF LEASE; EARLY TERMINATION; SURVIVAL	11
5.3 RENTAL PAYMENTS AND OTHER AMOUNTS PAYABLE.....	12
5.4 NATURE OF OBLIGATIONS OF COMPANY HEREUNDER	12
ARTICLE VI	
MAINTENANCE, MODIFICATIONS, TAXES, AND INSURANCE	13
6.1 MAINTENANCE AND MODIFICATIONS OF PROJECT FACILITY	13
6.2 TAXES, ASSESSMENTS, AND UTILITY CHARGES.....	13
6.3 INSURANCE REQUIRED	14
6.4 ADDITIONAL PROVISIONS RESPECTING INSURANCE.....	14
6.5 APPLICATION OF NET PROCEEDS OF INSURANCE.....	15

	6.6	PAYMENTS IN LIEU OF REAL ESTATE TAXES	15
ARTICLE VII		DAMAGE, DESTRUCTION, AND CONDEMNATION.....	15
	7.1	DAMAGE OR DESTRUCTION.....	15
	7.2	CONDEMNATION.....	17
	7.3	ADDITIONS TO PROJECT FACILITY	18
ARTICLE VIII		SPECIAL COVENANTS.....	18
	8.1	NO WARRANTY OF CONDITION OR SUITABILITY BY THE AGENCY; ACCEPTANCE "AS IS"	18
	8.2	HOLD HARMLESS PROVISIONS	18
	8.3	RIGHT OF ACCESS TO PROJECT FACILITY.....	20
	8.4	MAINTENANCE OF EXISTENCE	20
	8.5	AGREEMENT TO PROVIDE INFORMATION	20
	8.6	BOOKS OF RECORD AND ACCOUNT; FINANCIAL STATEMENTS.....	20
	8.7	COMPLIANCE WITH ORDERS, ORDINANCES, ETC.....	20
	8.8	DISCHARGE OF LIENS AND ENCUMBRANCES.....	21
	8.9	PERFORMANCE BY AGENCY OF COMPANY'S OBLIGATIONS.....	21
ARTICLE IX		ASSIGNMENTS; MERGER OF AGENCY	21
	9.1	ASSIGNMENT OF AGENCY LEASE.....	21
	9.2	MERGER OF AGENCY	22
ARTICLE X		EVENTS OF DEFAULT AND REMEDIES	22
	10.1	EVENTS OF DEFAULT DEFINED.....	22
	10.2	REMEDIES ON DEFAULT.....	23
	10.3	REMEDIES CUMULATIVE	24
	10.4	AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES.....	24
	10.5	NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER.....	24
ARTICLE XI		MISCELLANEOUS	24
	11.1	NOTICES.....	24
	11.2	BINDING EFFECT	25
	11.3	SEVERABILITY	25
	11.4	AMENDMENTS, CHANGES, AND MODIFICATIONS	26
	11.5	EXECUTION OF COUNTERPARTS	26
	11.6	APPLICABLE LAW	26
	11.7	WAIVER OF TRIAL BY JURY	26
	11.8	SUBORDINATION	26
	11.9	SURVIVAL OF OBLIGATIONS	26
	11.10	TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING.....	27
	11.11	NO RECOURSE; SPECIAL OBLIGATION.....	27

EXHIBIT "A"	REAL PROPERTY DESCRIPTION
EXHIBIT "B"	DESCRIPTION OF EQUIPMENT
EXHIBIT "C"	TABLE OF DEFINITIONS
EXHIBIT "D"	FORM OF ANNUAL REPORTING REQUIREMENTS

AGENCY LEASE AGREEMENT

THIS AGENCY LEASE AGREEMENT, dated as of September 1, 2012 (the "**Agency Lease**"), by and between the **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, a body corporate and politic and a public instrumentality of the State of New York, having its office at 333 West Washington Street, Suite 130 Syracuse, New York (the "**Agency**"), and **MORGAN POND STREET LLC**, a New York limited liability company having its office at 1170 Pittsford-Victor Road, Suite 100, Pittsford, New York 14534 (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 September 6, 2012, agreed, at the request of the Company to undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of a leasehold interest in approximately 3.25 acres of improved real property located at 700 First North Street and Pond Street in the City of Syracuse, New York (the "**Land**"); (ii) acquisition of an interest in and the renovation of an approximate 32,800 square foot building for use as a commercial facility (the "**Facility**"); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the "**Equipment**", and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and sales and use taxation (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment by 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, renovation and equipping of the Project Facility and grant the Financial Assistance to the Company and the Project by, among other things, (1) accepting a leasehold interest in the Land and Facility from the Company and an ownership interest in the Equipment, and (2) subleasing the Project Facility back to the Company pursuant to this Agency Lease; and

WHEREAS, the Company has leased the Land and the Facility to the Agency pursuant to the Company Lease Agreement dated as of September 1, 2012 (the "**Company Lease**"); and

WHEREAS, the Company has conveyed title to the Equipment to the Agency pursuant to the Bill of Sale; and

WHEREAS, the Agency now proposes to sublease the Project Facility back 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

DEFINITIONS

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) The Agency examined the Environmental Assessment Form in order to classify the Project and determined that the Project constitutes an "Unlisted Action" as defined under 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) and determined that undertaking the Project and granting Financial Assistance would not have a "significant impact" on the environment within the meaning of such quoted term under SEQRA.

(d) The acquisition of a leasehold interest in the Project Facility by the Agency and the designation of the Company as the Agency's agent will be an inducement to the Company to acquire, construct and equip the Project Facility in the City of Syracuse, thereby promoting and preserving the job opportunities, general prosperity and economic welfare of the inhabitants of the City of Syracuse in furtherance of the purposes of the Act.

(e) 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.

(f) The Agency, to the extent of its interest therein, shall not sell, assign, transfer, encumber or pledge as security the Project Facility or any part thereof except as contemplated or allowed by the terms of this Agency Lease and the Pledge and Assignment.

(g) Undertaking the Project will serve the public purposes of the Act by advancing the job opportunities, health, general prosperity and economic welfare of the people of the City of Syracuse and improving their standard of living.

2.2 REPRESENTATIONS AND COVENANTS OF THE COMPANY.

The Company 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 owner of the Land and upon construction will be of the Facility and the Equipment.

(d) The Company has or will within ten (10) days of closing, enter into the Ground Lease.

(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 Company and the Project by the Agency:

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

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

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

(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 acquisition, 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 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. The Company hereby covenants to comply with all mitigating measures, requirements, and conditions, if any, enumerated with respect to the Project Facility in any other approvals issued by any other Governmental Authority.

(j) The Company has, or will have as of the first date of construction and equipping, all permits, licenses, and governmental approvals and consents for the construction and equipping of the Project Facility.

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

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

(m) 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, the Mortgage 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.

(n) 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.

(o) The Company agrees to provide all necessary information and reports required by Section 8.5 hereof.

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 the Facility, as more fully described in **Exhibit "A"** attached hereto, and an ownership 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 leasehold interest in the Project Facility subject to Permitted Encumbrances.

3.2 USE OF PROJECT FACILITY.

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

ARTICLE IV

CONSTRUCTION AND EQUIPPING OF THE PROJECT

4.1 CONSTRUCTION AND EQUIPPING OF THE PROJECT FACILITY.

(a) The Company shall promptly construct and equip the Project Facility, all in accordance with the Plans and Specifications; and to the extent practicable, utilize local contractors and suppliers for the construction and equipping of the Project Facility. For purposes of this Agency Lease, the term "*Local*" shall mean Onondaga, Oswego, Madison, Cayuga and Oneida Counties. The Company agrees that such Local contractors shall be provided the opportunity to bid on contracts placed for bid on and after the date of this Agency Lease related to the Project Facility.

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

(1) to construct and equip the Project Facility, in one or more phases, and to acquire the Equipment;

(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 and equipping 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 and equipping of the Project Facility from funds made available therefor 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 and equipping 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 (other than the Company), 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.

4.2 COMPLETION OF PROJECT FACILITY.

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

- (1) the date of such completion;
- (2) that all labor, services, materials, and supplies used therefor and all costs and expenses in connection therewith have been paid;
- (3) that the Company has good and valid title to all Property constituting the Land and Facility subject to the interest of the Agency therein and to this Agency Lease and the Company Lease; 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 and the Mortgagee 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 and equipping 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 contractor, subcontractor, or materialman under any contract made by them in connection with construction and equipping 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 contractor, subcontractor, or materialman 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 contractor, subcontractor, materialman, 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 such instruments and documents as shall be approved by counsel to the Agency and as may be required in connection with the Company's financing or refinancing of the costs of construction and equipping of the Project Facility, provided that:

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

(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;

(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 provisions similar to those 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 Property pursuant to the Company Lease, and its acquisition and holding of said leasehold interest 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 Property 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 Property (except for the Unassigned Rights), and will have all the equitable and beneficial ownership and other interest in the Project Facility (except for the Unassigned Rights), such that the Company, and not the Agency, shall have an:

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

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

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

5.2 TERM OF LEASE; EARLY TERMINATION; SURVIVAL.

(a) The term of this Agency Lease shall commence on the date hereof and continue in full force and effect until June 30, 2023, unless earlier terminated as provided herein.

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

(c) 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 PILOT Agreement (including, but not limited to those in connection with the early termination of this Agency Lease); and

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

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

(e) Contemporaneously with the termination of this Agency Lease in accordance with Sections 5.1 or 5.2 hereof, the Company Lease and the PILOT Agreement shall terminate. The Agency shall, upon payment by the Company of the amounts pursuant to Section 5.2(c) above, deliver to the Company all documents furnished to the Agency by the Company and reasonably necessary to evidence termination of the Company Lease and Agency Lease, 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.

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 Commissioner of Finance of the City on behalf of the Agency in an amount sufficient to pay the sums due under the PILOT Agreement at the times and in the manner provided under the PILOT Agreement, and (ii) to the Mortgagee an amount equal to the debt service and other amounts becoming due and payable under the Mortgage, if any, 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, the sum of the reasonable 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. Any sums not received by the Agency on the due date therefor shall accrue interest at the annual rate set forth in the last sentence of Section 6.4.

(c) 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, or terminate this Agency Lease at any time prior to termination or expiration of the PILOT Agreement for any cause whatsoever, including, without limiting the generality of the foregoing, failure to complete the construction and equipping of the Project Facility, any defect in the title, design, operation, merchantability, fitness, or condition of the Project Facility, or any part thereof, or in the suitability of the Project Facility, or any part thereof, for the Company's purposes or needs, or failure of consideration for, destruction of or damage to, or Condemnation of title to, or the use of all or any part of the Project Facility, any change in the tax or other laws of the United States of America or of the State of New York, or any political subdivision thereof, or any failure of the Agency to perform and observe any

agreement, whether express or implied, or any duty, liability or obligation arising out of or in connection with this Agency Lease or the Company Lease.

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

ARTICLE VI

MAINTENANCE, MODIFICATIONS, TAXES, AND INSURANCE

6.1 MAINTENANCE AND MODIFICATIONS OF PROJECT FACILITY.

The Company shall:

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

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

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

6.2 TAXES, ASSESSMENTS, AND UTILITY CHARGES.

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

(1) 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 of taxes or payments in lieu of taxes required to be made to the Agency under the terms of the PILOT Agreement or any other agreement with respect thereto.

(b) 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 and the Mortgagee, if any, 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 satisfaction of the Agency and certifies to the Agency by delivery of a written certificate, that the non-payment of any such items will not endanger any part of the Project Facility or subject the Project Facility, or any part thereof, to loss or forfeiture, the Company may permit the taxes, assessments, and other charges so contested to remain unpaid during the period of such contest and any appeal therefrom. Otherwise, such taxes, assessments, or charges shall be paid promptly by the Company or secured by the Company's posting a bond in form and substance satisfactory to the Agency.

6.3 INSURANCE REQUIRED.

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

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

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

(c) A policy of commercial general liability insurance with a \$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 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 last business day of each December thereafter a certificate dated not earlier than the immediately preceding December 1 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 by Section 6.3. The Company shall furnish to the Agency evidence that the policy has been renewed or replaced or is no longer required by this Agency Lease each year throughout the term of this Agency Lease.

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

6.5 APPLICATION OF NET PROCEEDS OF INSURANCE.

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

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

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

6.6 PAYMENTS IN LIEU OF REAL ESTATE TAXES.

The Company, the City and the Agency have entered into a PILOT Agreement with respect to payments in lieu of real estate taxes. The Company shall pay taxes, and/or payments in lieu thereof, pursuant to the terms of the PILOT.

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 Documents, shall be applied to the repayment of all amounts due to the Agency under this Agency Lease, the Company Lease, the PILOT Agreement and other Agency Documents. If the Net Proceeds collected under any and all policies of insurance are less than the amount necessary to repay any and all amounts payable to the Agency, the Company shall pay the difference between such amounts and the Net Proceeds of all such insurance settlements so that any and all amounts payable under this Agency Lease, the PILOT Agreement, 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 Mortgage, the PILOT Agreement, the Company Lease 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, conditioned or delayed.

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 Net Proceeds, the Company shall promptly restore the Project Facility (excluding any part of the Project Facility taken by Condemnation) to substantially the condition and value as an operating entity as existed prior to such Condemnation; and the Company shall nonetheless complete such restoration and shall pay from its own moneys that portion of the costs thereof in excess of such Net Proceeds.

(b) If the Mortgage shall not be in effect and the Mortgagee shall have no interest in the Project Facility and if title to, or the use of, less than substantially all of the Project Facility shall be taken by Condemnation, then notwithstanding anything to the contrary contained in subsection 7.2(a), the Company shall not be obligated to restore the Project Facility, and the Net Proceeds of any Condemnation award shall not be applied as provided in subsection 7.2(a) if the Company shall notify the Agency that, in the Company's sole judgment, the Company does not deem it practical or desirable to restore the Project Facility. In such event, the lesser of (1) the Net Proceeds of any Condemnation award, or (2) the amount necessary to pay the Agency pursuant to this Agency Lease, the Company Lease, the PILOT Agreement and the other Agency Documents, shall be applied to payment of all amounts due to the Agency under this Agency Lease, the Company Lease, the PILOT Agreement and other Agency Documents. If the Net Proceeds of any Condemnation award are less than the amount necessary to pay any and all amounts payable to the Agency, the Company shall pay the difference between such amounts and the Net Proceeds of such Condemnation award so that any and all amounts payable under this Agency Lease, the Company Lease, the PILOT Agreement and other Agency Documents to the Agency shall be paid in full. If all amounts due under this Agency Lease, the Company Lease, the Mortgage, the PILOT Agreement 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, conditioned or delayed), 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 (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 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 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 of the authority conferred upon it and performance of the obligations assumed under Section 4.1 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 (other than the Company) 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 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 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 Company, its finances, job creation and other topics as the Agency from time to time reasonably considers necessary or appropriate including, but not limited to those reports, in substantially the form as set forth in **Exhibit "D"** attached hereto, and such other information necessary as to enable the Agency to make any reports required by law or governmental regulation.

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 and the Mortgagee, if any, 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 as such requirement shall not subject the Project Facility to loss or forfeiture. In such event, the Company may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom unless the Agency or its members, officers, agents (other than the Company), 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, except for Permitted Encumbrances, on the Project Facility, or any part thereof. 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 less.

ARTICLE IX

ASSIGNMENTS; 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 not be unreasonably withheld. Any assignment of this Agency Lease shall not effect a release of the Company from its obligations hereunder or under the PILOT Agreement. Any assignment of this Agency Lease or sublease of the Project Facility shall be subject to this Agency Lease. The prior consent of the Agency shall not be required for any sublease of the office space or any residential dwelling units in the Project Facility in the ordinary course of the Company's business, provided such lease or other occupancy agreement is subject to the Agency Lease and the use thereof will not cause the Project to fail to constitute a "project" under the Act.

The Agency hereby consents to the Ground Lease.

9.2 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

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

(e) 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 sixty (60) days from the date thereof; or

(f) 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

(g) 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.

10.2 REMEDIES ON DEFAULT.

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

- (1) Terminate this Agency Lease;
- (2) Terminate the Company Lease;
- (3) Terminate the PILOT; or

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

under the PILOT Agreement or the Company Lease and to enforce the Agency's right to terminate this Agency Lease, the Company Lease and the PILOT Agreement.

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

10.3 REMEDIES CUMULATIVE.

No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Agency Lease or the PILOT Agreement, 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, the PILOT Agreement and the Company Lease. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency to exercise any remedy reserved to it in this Article 10, it shall not be necessary to give any notice, other than such notice as may be herein expressly required in this Agency Lease.

10.4 AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES.

In the event the Company should Default under any of the provisions of this Agency Lease and the Agency should employ attorneys or incur other expenses 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 of such attorneys and such other expenses so incurred.

10.5 NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER.

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

ARTICLE XI

MISCELLANEOUS

11.1 NOTICES.

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

by the affidavit of the Person who attempted to effect such delivery. The addresses to which notices, certificates, and other communications hereunder shall be delivered are as follows:

(a) If to the Agency, to:

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

With a copy to:

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

(b) If to the Company, to:

Morgan Pond Street LLC
1170 Pittsford-Victor Road, Suite 100
Pittsford, New York 14534
Attn: Kevin Morgan, Manager

With copies to:

Stephen E. Hall, Esq.
36 West Main Street, Suite 400
Rochester, New York 14614

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 in all respects and shall be automatic without the execution of any further subordination agreement by the Company or the Agency.

11.9 SURVIVAL OF OBLIGATIONS.

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

(b) The obligations of the Company to provide the indemnity required by Section 8.2 shall survive 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.

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 (other than the Company) or employee of the Agency in his individual capacity; and the members, officers, agents (other than the Company) 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 fifteen (15) 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 fifteen (15) 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 11.11 shall not alter the full force and effect of any Event of Default under this Agency Lease.

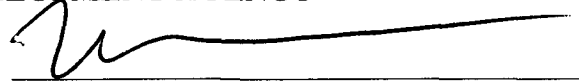
(d) For purposes of this Section 11.11, the Company shall not be deemed to constitute an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

[signature page follows]

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.

**CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____



William M. Ryan, Chairman

MORGAN POND STREET LLC

By: _____

Robert C. Morgan, Manager

IN WITNESS WHEREOF, the Agency and the Company have caused this Agency Lease to be executed in their respective names by their duly authorized representatives.

**CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____

William M. Ryan, Chairman

MORGAN POND STREET LLC

By: _____

Robert C. Morgan, Manager

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

On the 20th day of September in the year 2012 before me, the undersigned, personally appeared **WILLIAM M. RYAN**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Lori L. McRobbie

Notary Public
LORI L. McROBBIE
Notary Public, State of New York
Qualified in Onondaga Co. No. 01MC5055591
Commission Expires on Feb. 12, 20 14

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

On the ___ day of September in the year 2012 before me, the undersigned, personally appeared **ROBERT C. MORGAN**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

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

On the _____ day of September in the year 2012 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

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

On the 21st day of September in the year 2012 before me, the undersigned, personally appeared **ROBERT C. MORGAN**, 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

STEPHEN E. HALL
Notary Public, State of New York
Qualified in Monroe County
My Commission Expires Nov 30, 2/4/14

EXHIBIT "A"

REAL PROPERTY DESCRIPTION

All that tract or parcel of land situate in the City of Syracuse, County of Onondaga, and State of New York, being part of Block 105, bounded and described as follows: Beginning at the southeast corner of said block, being the intersection of the westerly line of Pond Street with the northerly line of First North Street; thence N. 61° 42' 30" W. (N. 61° 31' 08" W. per current survey) along the northerly line of First North Street 234.17 feet to a point in the southeasterly corner of the DeLong Tract, according to a map of said tract filed in the Onondaga County Clerk's Office on December 14, 1888, as Map No. 526; thence N. 28° 12' 30" E. (in the Onondaga County Clerk's Office on December 14, 1888, as Map No. 526; thence N. 28° 12' 30" E. (N. 28° 23' 52" E. per current survey) along the easterly line of said DeLong Tract 605.0 feet to a point; thence S. 61° 42' 30" E. (S. 61° 31' 08" E. per current survey) 234.40 feet to a point in the westerly line of Pond Street; thence S. 28° 13' 50" W. (S. 28° 25' 12" W. per current survey) along said westerly street line 605.0 feet to the point and place of beginning.

EXHIBIT "B"

DESCRIPTION OF EQUIPMENT

All articles of personal property, all machinery, apparatus, equipment, appliances, floor coverings, furniture, furnishings, supplies, materials, fittings and fixtures of every kind and nature whatsoever and all appurtenances acquired by Morgan Pond Street LLC (the "*Company*") now or hereafter attached to, contained in or used or acquired in connection with the Land (as defined in the Agency Lease) and/or 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, heating, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, call systems, stoves, ranges, refrigerators, refrigeration units, freezers, rugs, movable partitions, cleaning equipment, maintenance equipment, shelving, 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.

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

Agency Documents: means the Agency Lease, the Company Lease, the PILOT Agreement, Mortgage, the Assignment of Rents 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 September 1, 2012, by and between the Agency and the Company, as the same may be amended or supplemented from time to time.

Assignment of Leases and Rents or Assignment of Rents: means the General Assignment of Rents dated September 21, 2012 from the Company and the Agency to the Mortgagee.

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

Bill of Sale: means that certain Bill of Sale from the Company to the Agency dated as of September 1, 2012 in connection with the Equipment.

City: means the City of Syracuse.

Closing Date: means September 21, 2012.

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

Company: means Morgan Pond Street LLC, a limited liability company, organized and existing under the laws of the State of New York having an address at 1170 Pittsford-Victor Road, Suite 100, Pittsford, New York 14534, and its permitted successors and assigns.

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

Company Lease: means the Company Lease Agreement dated as of September 1, 2012 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 Agreement: means the Environmental Compliance and Indemnification Agreement dated as of September 1, 2012 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.

Financing Documents: means the Promissory Note, the Mortgage, the Assignment of Leases and Rents, the Building Loan Contract and other documents relating to the loan given to the Company by the Mortgagee to finance costs of the Project.

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

Ground Lease: means the lease dated September 10, 2012 by and between the Company, as lessor, and Tops Markets, as lessee, with a term through and including June 30, 2023 for at least 32,800 square feet of leaseable area of the Project Facility for use as a full service grocery store.

Land: means the improved real property located at 300-335 West Fayette Street, in the City of Syracuse, County of Onondaga, New York, more particularly described on Exhibit "A" attached to the Agency Lease.

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

Mortgage: means the mortgage dated September 21, 2012 from the Agency and the Company to the Mortgagee and to be recorded in the Onondaga County Clerk's office simultaneously with the Memorandum of Agency Lease, covering the Project Facility and securing the Promissory Note.

Mortgagee: means Perticone Holdings LLC, a New York limited liability company located at 45 San Gabriel Drive, Rochester, New York 14610, and its successors and assigns.

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.

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, (C) Liens for taxes (1) to the extent permitted by the Agency Lease or (2) at the time not delinquent, (D) any Lien on the Project Facility obtained through any Agency Document or Company Document or any Financing Document, (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.

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

PILOT Agreement: means the Payment in Lieu of Taxes Agreement dated as of September 1, 2012 among the City, the Agency and the Company, as amended or supplemented from time to time.

Plans and Specifications: means the plans and specifications approved by the Mortgagee relating to the construction and equipping of the Project Facility.

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

Promissory Note: means the note in the maximum principal amount of \$1,900,000 given by the Company to the Mortgagee.

Property or Properties: 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 September 6, 2012 authorizing (i) the undertaking of the Project and the execution and delivery of certain documents in connection therewith; (ii) authorizing the payment in lieu of taxes schedule; and (iii) authorizing the execution and delivery of certain documents by the Agency.

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

State: means the State of New York.

Unassigned Rights: means:

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

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

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

(iv) the right of the Agency to require 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(g), 2.2(l), 4.1, 5.2, 5.3(a)(i) (with respect to amounts due under the PILOT Agreement), 5.3(b), 5.4, 6.2, 6.3, 6.4, 6.5, 7.1, 7.2, 8.2, 8.3, 8.5, 8.7, 8.8, 8.9, 10.2, 10.3, 10.4, and 11.11 of the Agency Lease and Sections 4.8 and 4.9 of the Company Lease; and

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

Notwithstanding the foregoing, to the extent the obligations of the Company under Sections of the Agency Lease listed in (i) through (vi) above do not relate to the payment of moneys to the Agency for its own account or to the members, officers, agents and employees of the Agency for their own accounts, such obligations, shall be deemed to and shall constitute obligations of the Company to the Agency and the Mortgagee, jointly and severally.

EXHIBIT "D"

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]

New York State/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:

Signature

Print Name

Title

Date

MEMORANDUM OF
AGENCY LEASE AGREEMENT

CITY OF SYRACUSE
3115

NAME AND ADDRESS OF LESSOR:

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

NAME AND ADDRESS OF LESSEE:

Morgan Pond Street LLC
1170 Pittsford-Victor Road, Suite 100
Pittsford, New York 14534
Attn: Kevin Morgan

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 September 1, 2012

TERM OF AGENCY LEASE AGREEMENT:

The Agency Lease Agreement shall be in effect for a term, commencing as of September 1, 2012 and terminating in accordance with Section 5.2 of the Agency Lease Agreement, unless sooner terminated as provided therein.

14:47 09/21/12 3960512 MM DB-5213P-856


08125

5

6

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum as of the 1st day of September, 2012.

**CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY**

By: 

William M. Ryan, Chairman

MORGAN POND STREET LLC

By: _____
Robert C. Morgan, Manager

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum as of the 1st day of September, 2012.

**CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY**

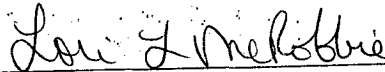
By: _____
William M. Ryan, Chairman

MORGAN POND STREET LLC

By: _____
Robert C. Morgan, Manager

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

On this 26th day of September, 2012, 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 14

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

On this 21st day of September, 2012, before me, the undersigned, personally appeared, **ROBERT C. MORGAN**, 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

STEPHEN E. HALL
Notary Public, State of New York
Qualified in Monroe County
My Commission Expires New 30 2/4/14

Stephen Hall

EXHIBIT A

All that tract or parcel of land situate in the City of Syracuse, County of Onondaga, and State of New York, being part of Block 105, bounded and described as follows:

Beginning at the southeast corner of said block, being the intersection of the westerly line of Pond Street with the northerly line of First North Street; thence N. $61^{\circ} 42' 30''$ W. (N. $61^{\circ} 31' 08''$ W. per current survey) along the northerly line of First North Street 234.17 feet to a point in the southeasterly corner of the DeLong Tract, according to a map of said tract filed in the Onondaga County Clerk's Office on December 14, 1888, as Map No. 526; thence N. $28^{\circ} 12' 30''$ E. (in the Onondaga County Clerk's Office on December 14, 1888, as Map No. 526; thence N. $28^{\circ} 12' 30''$ E. (N. $28^{\circ} 23' 52''$ E. per current survey) along the easterly line of said DeLong Tract 605.0 feet to a point; thence S. $61^{\circ} 42' 30''$ E. (S. $61^{\circ} 31' 08''$ E. per current survey) 234.40 feet to a point in the westerly line of Pond Street; thence S. $28^{\circ} 13' 50''$ W. (S. $28^{\circ} 25' 12''$ W. per current survey) along said westerly street line 605.0 feet to the point and place of beginning.

SAL
NE



New York State Department of Taxation and Finance

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

Effective September 1, 2003, use this 7/03 version of Form TP-584; previous versions may no longer be used.

See instructions (TP-584-1) before completing this form. Please 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 checked="" type="checkbox"/> Other	Name (if individual; last, first, middle initial) City of Syracuse Industrial Development Agency Mailing address 333 West Washington Street, Suite 130 City: Syracuse State: New York ZIP code: 13202	Social security number Social security number Federal employer ident. number 52 1380308
Grantee/Transferee <input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Estate/Trust <input checked="" type="checkbox"/> Other	Name (if individual; last, first, middle initial) Morgan Pond Street LLC Mailing address: 1170 Pittsford-Victor Road, Suite 100 City: Pittsford State: NY ZIP code: 14534	Social security number Social security number Federal employer ident. number 46 1004776

Location and description of property conveyed

Tax map designation			Address	City/village	Town	County
Section	Block	Lot				
0006	12	54.0	700 First North Street and Pond Street	Syracuse		Onondaga

Type of property conveyed (check applicable box)

1 <input type="checkbox"/> one- to three-family house 2 <input type="checkbox"/> Residential cooperative 3 <input type="checkbox"/> Residential condominium 4 <input type="checkbox"/> Vacant land	5 <input checked="" type="checkbox"/> Commercial/Industrial 6 <input type="checkbox"/> Apartment building 7 <input type="checkbox"/> Office building 8 <input type="checkbox"/> Other	Date of conveyance <table border="1" style="display: inline-table; text-align: center;"> <tr> <td style="width: 20px;">09</td> <td style="width: 20px;">21</td> <td style="width: 20px;">2012</td> </tr> <tr> <td style="font-size: 8px;">month</td> <td style="font-size: 8px;">day</td> <td style="font-size: 8px;">year</td> </tr> </table>	09	21	2012	month	day	year	Percentage of real property conveyed which is residential real property _____% <i>(see instructions)</i>
09	21	2012							
month	day	year							

Condition of conveyance (check all that apply)

- | | | |
|---|--|--|
| a. <input type="checkbox"/> Conveyance of fee interest

b. <input type="checkbox"/> Acquisition of a controlling interest (state percentage acquired _____%)

c. <input type="checkbox"/> Transfer of a controlling interest (state percentage transferred) _____%)

d. <input type="checkbox"/> Conveyance to cooperative housing corporation

e. <input type="checkbox"/> Conveyance pursuant to or in lieu of foreclosure or enforcement of security interest (attach Form TP-584.1, Schedule E) | f. <input type="checkbox"/> Conveyance which consists of a mere change of identity or form of ownership or organization (attach Form TP-584.1, Schedule F)

g. <input type="checkbox"/> Conveyance for which credit for tax previously paid will be claimed (attach Form TP-584.1, Schedule G)

h. <input type="checkbox"/> Conveyance of cooperative apartment(s)
i. <input type="checkbox"/> Syndication
j. <input type="checkbox"/> Conveyance of air rights or development rights
k. <input type="checkbox"/> Contract assignment | l. <input type="checkbox"/> Option assignment or surrender
m. <input type="checkbox"/> Leasehold assignment or surrender
n. <input checked="" type="checkbox"/> Leasehold grant
o. <input type="checkbox"/> Conveyance of an easement
p. <input type="checkbox"/> Conveyance for which exemption from transfer tax is claimed (complete Schedule B, Part III)
q. <input type="checkbox"/> Conveyance of property partly within and partly outside the state
r. <input type="checkbox"/> Other (describe) _____ |
|---|--|--|

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

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

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 (see instructions and attach Form TP-584.1, Schedule G)
- 6 Total tax due* (subtract line 5 from line 4)

1.	\$	00
2.		
3.		
4.	\$	00
5.		
6.	\$	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% (0.1))

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 section 1401(e) of Article 31 of the Tax Law (attach documents supporting such claim) k
- l. Other (attach explanation) Leasehold interest of less than 49 years l

*Please make check(s) payable to the county clerk where the recording is to take place. If the recording is to take place in New York City, 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 **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 (Article 11 of the Tax Law)

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, 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.

City of Syracuse Industrial
Development Agency

Morgan Pond Street LLC

Chairman
Title

Manager
Title

Grantor signature
William M. Ryan

Grantee signature
Robert C. Morgan

Grantee signature

Grantor signature

Title

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 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 New York City, 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 C – Credit Line Mortgage Certificate (Article 11 of the Tax Law)

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, 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.

City of Syracuse Industrial
Development Agency

Morgan Pond Street LLC

Grantor signature
William M. Ryan

Chairman
Title

Grantee signature
Robert C. Morgan

Manager
Title

Grantor signature

Title

Grantee signature

Title

Reminder: Did you complete all of the required information in Schedules A, B, and C? Are you required to complete Schedule D? If you checked e, f, or g in Schedule A, did you complete 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 New York City, 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 (Article 22, Tax Law section 663)

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

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 property 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, 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 property.

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 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 tax because one of the exemptions below applies under section 663(d) of the Tax Law, 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 section 663 of the Tax Law. **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 use Form IT-2663, *Application for Certification for Recording of Deed and Nonresident Estimated Income Tax Payment Voucher*.

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

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

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

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



CERTIFICATE OF LIABILITY INSURANCE

IDEAL-4

OP ID: BA

DATE (MM/DD/YYYY)
09/20/12

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 Gundermann & Gundermann Inc. 175 West Carver St. Huntington, NY 11743 Joseph A. Gundermann III	631-271-0600	CONTACT NAME:	
	631-271-0610	PHONE (A/C, No, Ext):	FAX (A/C, No):
		E-MAIL ADDRESS:	
		INSURER(S) AFFORDING COVERAGE	
		INSURER A : Hermitage Insurance Co.	
		INSURER B :	
		INSURER C :	
		INSURER D :	
		INSURER E :	
		INSURER F :	

INSURED
Morgan Pond Street LLC
Angelo Ingrassia
1170 Pittsford Victor Rd, S100
Pittsford, NY 14534

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 INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY	X		UNASSIGNED	09/20/12	09/20/13	EACH OCCURRENCE \$ 1,000,000
	<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						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ Included
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB						EACH OCCURRENCE \$
	EXCESS LIAB						AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						WC STATUTORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
The Certificate Holder is included as an Additional Insured with respect to General Liability as required by written contract.

CERTIFICATE HOLDER**CANCELLATION**

City of Syracuse Industrial
Development Agency
Chairman
333 West Washington St.
Syracuse, NY 13202

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

© 1988-2010 ACORD CORPORATION. All rights reserved.

Katzoff, Susan R.

From: Stephen Hall [stephenhall@stephen-hall.net]
Sent: Thursday, September 20, 2012 5:06 PM
To: Katzoff, Susan R.
Subject: RE: Tops Pond Street Lease Documentation

Yes, they carry liability only, as the tenant procures and pays for the property insurance.

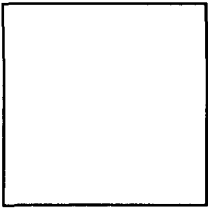
Steve

From: Katzoff, Susan R. [mailto:SKatzoff@hblaw.com]
Sent: Thursday, September 20, 2012 4:57 PM
To: Stephen Hall
Subject: RE: Tops Pond Street Lease Documentation

Stephen

Are you saying the fee owner does not carry any property insurance ?

Susan R. Katzoff
Partner



One Park Place • 300 South State Street • Syracuse, NY 13202
D: (315) 425-2880 • F: (315) 425-8597 • E: SKatzoff@hblaw.com

www.hblaw.com • [vCard](#) • [Profile](#)

Federal Tax Disclosure and Confidentiality Notice:

In accordance with IRS requirements, we inform you that any Federal tax advice contained in this communication is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

This electronic mail transmission is intended only for the use of the individual or entity to which it is addressed and may contain confidential information belonging to the sender which is protected by the attorney-client privilege. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please notify the sender immediately by e-mail and delete the original message.

From: Stephen Hall [mailto:stephenhall@stephen-hall.net]
Sent: Thursday, September 20, 2012 3:53 PM

To: Katzoff, Susan R.
Cc: Michael J. Biehler Esq. (mbiehler@topsmarkets.com); Elizabeth Holden (eholden@hodgsonruss.com); stierney@woodsoviatt.com
Subject: RE: Tops Pond Street Lease Documentation

Susan:

The property insurance, per the Lease, is procured and paid for by the Tenant, per separate e-mail following. Mike and Beth, can you also produce evidence of Top's workers comp insurance as would cover operations at this site?

Steve Hall

From: Holden, Elizabeth [<mailto:EHolden@hodgsonruss.com>]
Sent: Thursday, September 20, 2012 1:26 PM
To: Stephen Hall; Tierney, W. Stephen
Cc: Michael J. Biehler Esq. (mbiehler@topsmarkets.com)
Subject: Tops Pond Street Lease Documentation

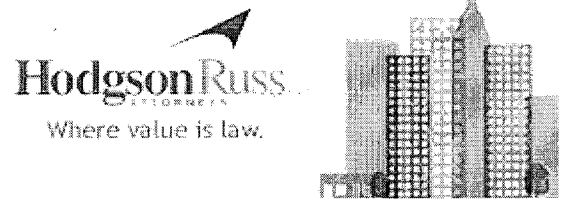
Steve and Steve,

Attached are the insurance certificates. Please review and let me know if you have any comments.

Thanks,
Beth

Elizabeth A. Holden
Senior Associate
Hodgson Russ LLP
tel: 716.848.1692 | fax: 716.819.4727
eholden@hodgsonruss.com

vCard | Biography | hodgsonruss.com



The Guaranty Building, 140 Pearl Street, Suite 100, Buffalo, New York 14202

In accordance with Internal Revenue Service Circular 230, we advise you that unless otherwise expressly stated, any discussion of a federal tax issue in this communication or in any attachment is not intended to be used, and cannot be used, for the purpose of avoiding federal tax penalties.
This message may contain confidential information that is protected by the attorney-client privilege or otherwise. If you are not the intended recipient, you are notified that any disclosure, copying, or use of the contents of this message is strictly prohibited. If this message has been received by you in error, please notify the sender immediately by e-mail and delete the original message. Thank you.

PLEDGE AND ASSIGNMENT

This Pledge and Assignment (the "*Assignment*"), dated as of September 1, 2012, is from the City of Syracuse Industrial Development Agency, a public benefit corporation duly organized and existing under the laws of the State of New York, having its principal office at 333 West Washington Street, Suite 130, Syracuse, New York 13202 (the "*Agency*") Perticone Holdings LLC, a New York limited liability company (together with its successors and assigns, the "*Mortgagee*"), having a mailing address of 45 San Gabriel Drive, Rochester, New York 14610, as the beneficiary of a mortgage dated September 21, 2012 (the "*Mortgage*") from Morgan Pond Street LLC (the "*Company*") and the Agency to the Mortgagee to secure the Mortgagee's loan of \$1,900,000 (the "*Loan*") to the Company.

For value received, the receipt of which is hereby acknowledged, the Agency hereby pledges, assigns, transfers and sets over to the Mortgagee a security interest in its right to receive any and all moneys due or to become due and any and all other rights and remedies of the Agency under or arising out of the Agency Lease Agreement dated as of September 1, 2012 (the "*Agency Lease*"), by and between the Agency and the Company (except for the rights of the Agency, and moneys payable, pursuant to the Unassigned Rights, as defined in the Agency Lease) covering the improved real property, more fully described on **Exhibit "A"** attached hereto and the Equipment installed therein; provided, however, that the assignment made hereby shall not permit the amendment of the Agency Lease without the consent of the Agency, which consent shall not be unreasonably withheld.

The Mortgagee shall have no obligation, duty or liability under the Agency Lease, nor shall the Mortgagee be required or obligated in any manner to fulfill or perform any obligation, covenant, term or condition of the Agency thereunder or to take any other action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled hereunder at any time or times.

The Agency hereby irrevocably constitutes and appoints the Mortgagee its true and lawful attorney, with power of substitution for the Agency and in the name of the Agency or in the name of the Mortgagee or otherwise, for the use and benefit of the Mortgagee as holder of the Mortgage, the Loan, and all other Loan documents, to ask, demand, require, receive, collect, compound and give discharges and releases of all claims for any and all moneys due or to become due under or arising out of the Agency Lease (except for moneys due or to become due pursuant to the Unassigned Rights) and to endorse any checks and other instruments or orders in connection therewith.

The Agency further agrees that at any time and from time to time, upon the written request of the Mortgagee, the Agency will promptly and duly execute and deliver any and all such further instruments and documents as the Mortgagee may deem desirable in order to obtain the full benefits of this Assignment and all rights and powers herein granted.

The Agency hereby ratifies and confirms the Agency Lease and does hereby warrant and represent (a) that the Agency Lease is in full force and effect, (b) that the Agency is not in default under the Agency Lease, and (c) that the Agency has not assigned or pledged, and hereby covenants that it will not assign or pledge, so long as this Assignment shall remain in effect, the whole or any part of the moneys, rights or remedies hereby assigned to anyone other than the Mortgagee.

All moneys due and to become due under the Mortgage to the Mortgagee under or pursuant to the Agency Lease in accordance with this Assignment shall be paid directly to the Mortgagee at 45 San Gabriel Drive, Rochester, New York 14610 or at such other address as the Mortgagee may designate to the Company in writing from time to time.

If the Company shall pay or cause to be paid, or there shall be paid, to the Mortgagee or its successors and assigns, the outstanding principal balance and all amounts secured by the Mortgage, including any applicable prepayment premiums, and all other sums due or to become due pursuant to the Agency Lease, the Mortgage, or this Assignment, then this Assignment and the estate and rights created hereby shall cease, terminate and be void, and thereupon the Mortgagee shall cancel and discharge the lien of this Assignment and execute and deliver to the Agency, and record or file, if necessary, such instruments in writing as shall be requisite to release the lien hereof, and shall reconvey, release, assign and deliver unto the Agency the estate, right, title and interest in and to any and all property conveyed, sold, transferred, assigned or pledged to the Mortgagee, or otherwise subject to the lien of this Assignment.

This Assignment shall be binding upon the Agency and its successors and assigns and shall inure to the benefit of the Mortgagee and its successors and assigns.

All covenants, stipulations, promises, agreements and obligations (collectively, the "**Obligations**") of the Agency contained in this Assignment, in the Mortgage, in the Agency Lease and in any other Agency Documents shall be deemed to be the Obligations of the Agency and not of any member, officer, servant or employee of the Agency (collectively, the "**Employee of the Agency**") in his individual capacity, and no recourse under or upon any Obligation contained therein or otherwise based upon or in respect to this Assignment or the Agency Lease, or for any claim based thereon or otherwise in respect hereof or thereof, shall be had against any past, present or future Employee of the Agency, as such, or of any successor public benefit corporation or political subdivision or any person executing any of the Agency Documents on behalf of the Agency either directly through the Agency or successor public benefit corporation or political subdivision or any person so executing any of such Agency Documents, it being expressly understood that the Agency Documents, are solely corporate obligations, and that no such personal liability whatsoever shall attach to, or is or shall be incurred by any such Employee of the Agency or of any successor public benefit corporation or political subdivision or any person so executing the Agency Documents because of the creation of the indebtedness thereby authorized, or under or by reason of the Obligations, contained in the Agency Documents or implied therefrom; and that any and all such personal liability of, and any and all such rights and claims against, every Employee of the Agency because of the creation of the

indebtedness thereby authorized by the Agency Documents, or under or by reason of the Obligations contained in any of the Agency Documents or implied therefrom, are to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of the Agency Documents.

The Obligations and agreements of the Agency contained therein shall not constitute or give rise to an obligation of the State of New York or the City of Syracuse, New York, and neither the State of New York nor the City of Syracuse, New York shall be liable thereon, and further such Obligations 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 sublease of the Project Facility (except for revenues derived by the Agency with respect to the Unassigned Rights).

Notwithstanding any provision of this Assignment to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (a) the Agency shall have been requested to do so in writing by the Company or the Mortgagee and (b) if compliance with such request is reasonably expected to result in the incurrence by the Agency (or any member, officer, agent, servant or employee of the Agency) of any liability, fees, expenses or other costs, the Agency shall have received from the party making such request security or indemnity satisfactory to the Agency for protection against all such liability and for the reimbursements of all such fees, expenses and other costs.


No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (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, (B) if the Agency refused to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses, and (C) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company) or employees shall be subject to potential liability, the party seeking such order or decree shall (1) agree to indemnify and hold harmless and defend the Agency and its members, officers, agents and employees against such 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.

All capitalized terms used herein which are not otherwise defined herein and which are defined in the Table of Definitions attached to the Agency Lease as Exhibit "C" shall have the meanings ascribed to them therein.

[Reminder of page intentionally left blank]

IN WITNESS WHEREOF, the Agency has duly executed this Assignment as of September 1, 2012.

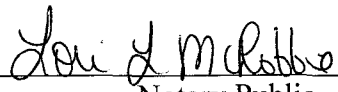
**CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY**

By: 

William M. Ryan, Chairman

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

On the 20th day of September, in the year 2012, 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 14

ACCEPTANCE

PETRICONE HOLDINGS LLC (the "Mortgagee"), having an office located at 45 San Gabriel Drive, Rochester, New York 14610, hereby accepts the foregoing Pledge and Assignment.

IN WITNESS WHEREOF, the Mortgagee has duly executed this Acceptance on as of September 1, 2012.

PETRICONE HOLDINGS LLC

By: Francie Petrone
Name:
Title: Member

STATE OF NEW YORK)
COUNTY OF Monroe) SS:

On the 20 day of September, in the year 2012, before me, the undersigned, personally appeared Francie Petrone 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.

W. STEPHEN TIERNEY
Notary Public, State of New York
Qualified in Monroe County
Reg. No. 02T16222097
Commission Expires May 17, 2014

[Signature]
Notary Public

**ACKNOWLEDGEMENT BY MORGAN POND STREET LLC
OF THE PLEDGE AND ASSIGNMENT OF CITY OF SYRACUSE
INDUSTRIAL DEVELOPMENT AGENCY'S
RIGHTS UNDER THE AGENCY LEASE**

Morgan Pond Street LLC (the "**Company**") hereby acknowledges receipt of notice of the assignment by the City of Syracuse Industrial Development Agency (the "**Agency**") of certain of its rights and remedies under that certain Agency Lease Agreement dated as of September 1, 2012 (the "**Agency Lease**"), by and between the Agency as sublessor, and the Company, as subtenant, including the right to collect and receive all amounts payable by the Company thereunder, except certain moneys payable for the account of the Agency pursuant to the Unassigned Rights as defined in the Agency Lease. The Company, intending to be legally bound, hereby agrees with the Mortgagee (as defined in the Assignment) to (1) pay directly to the Mortgagee all sums due and to become due to the Mortgagee from the Company under the Mortgage, except certain moneys payable for the account of the Agency pursuant to the Unassigned Rights, and (2) perform for the benefit of the Mortgagee all of the duties and undertakings of the Company under the Agency Lease, except moneys payable for the account of the Agency pursuant to the Unassigned Rights; provided that the Mortgagee shall not be obligated to perform, or be responsible for the performance of, any of the duties, undertakings, or obligations of the Agency under the Agency Lease.

The Company hereby consents to and approves of the provisions contained in the Agency Lease and, in particular, acknowledges the restrictions imposed on the Agency prohibiting, among other things, sale, transfer, or assignment by the Agency of any interest in the Project Facility, or any part thereof.

IN WITNESS WHEREOF, the Company has caused this Acknowledgement to be executed in its name by its duly authorized representative, dated as of September 1, 2012.

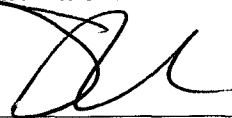
MORGAN POND STREET LLC

By: 

Robert C. Morgan, Manager

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

On the 21ST day of September, in the year 2012, before me, the undersigned, personally appeared **ROBERT C. MORGAN**, 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

STEPHEN E. HALL
Notary Public, State of New York
Qualified in Monroe County
My Commission Expires Nov. 30, 2/4/14

EXHIBIT A

All that tract or parcel of land situate in the City of Syracuse, County of Onondaga, and State of New York, being part of Block 105, bounded and described as follows:

Beginning at the southeast corner of said block, being the intersection of the westerly line of Pond Street with the northerly line of First North Street; thence N. $61^{\circ} 42' 30''$ W. (N. $61^{\circ} 31' 08''$ W. per current survey) along the northerly line of First North Street 234.17 feet to a point in the southeasterly corner of the DeLong Tract, according to a map of said tract filed in the Onondaga County Clerk's Office on December 14, 1888, as Map No. 526; thence N. $28^{\circ} 12' 30''$ E. (in the Onondaga County Clerk's Office on December 14, 1888, as Map No. 526; thence N. $28^{\circ} 12' 30''$ E. (N. $28^{\circ} 23' 52''$ E. per current survey) along the easterly line of said DeLong Tract 605.0 feet to a point; thence S. $61^{\circ} 42' 30''$ E. (S. $61^{\circ} 31' 08''$ E. per current survey) 234.40 feet to a point in the westerly line of Pond Street; thence S. $28^{\circ} 13' 50''$ W. (S. $28^{\circ} 25' 12''$ W. per current survey) along said westerly street line 605.0 feet to the point and place of beginning.

ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT

THIS ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT (the "*Agreement*") is made as of the September 1, 2012, between **MORGAN POND STREET LLC** (the "*Indemnitor*"), 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 a leasehold interest in approximately 3.25 acres of improved real property located at 700 First North Street and Pond Street in the City of Syracuse, New York, as more fully described on Schedule A annexed hereto (the "*Land*"); (ii) acquisition of an interest in and the renovation of an approximate 32,800 square foot building for use as a commercial facility (the "*Facility*"); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the "*Equipment*", and together with the Land and the Facility, the "*Project Facility*"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and sales and use taxation (collectively, the "*Financial Assistance*"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment by 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

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 (except to the extent caused by the gross negligence or willful misconduct of the Agency), including the assertion of any lien thereunder, with respect to:

(1) any discharge of Hazardous Substances, the threat of a discharge of any Hazardous Substances, or the presence of any Hazardous Substances affecting the Project Facility whether or not the same originates or emanates from the Project Facility or any contiguous real estate including any loss of value of the Project Facility as a result of any of the foregoing;

(2) any costs of removal or remedial action incurred by the United States Government or any costs incurred by any other person or damages from injury to,

destruction of, or loss of natural resources, including reasonable costs of assessing such injury, destruction or loss incurred pursuant to any Hazardous Waste Laws;

(3) liability for personal injury or property damage arising under any statutory or common law tort theory, including, without limitation, damages assessed for the maintenance of a public or private nuisance or for the carrying on of an abnormally dangerous activity at or near the Project Facility; and/or

(4) any other environmental matter affecting the Project Facility within the jurisdiction of the Environmental Protection Agency, any other federal agency, or any state or local agency.

The obligations of Indemnitor under this Agreement shall arise whether or not the Environmental Protection Agency, any other federal agency or any state or local agency has taken or threatened any action in connection with the presence of any Hazardous Substances.

(b) In the event of any discharge of Hazardous Substances, the threat of a discharge of any Hazardous Substances, or the presence of any Hazardous Substances affecting the Project Facility, whether or not the same originates or emanates from the Project Facility or any contiguous real estate, and/or if Indemnitor shall fail to comply with any of the requirements of the Hazardous Waste Laws or related regulations or any other environmental law or regulation, Agency may at its election, but without the obligation so to do, give such notices and/or cause such work to be performed at the Project Facility and/or take any and all other actions as Agency shall deem necessary or advisable in order to abate the discharge of any Hazardous Substance, remove the Hazardous Substance or cure the noncompliance of Indemnitor.

(c) Indemnitor acknowledges that Agency has relied upon the representations, warranties, covenants and indemnities of Indemnitor in this Agreement. All of the representations, warranties, covenants and indemnities of this Agreement shall survive the repayment of Indemnitor's obligations under the Agency Lease or other Company Documents.

5. **Attorney's Fees.** If Agency retains the services of any attorney in connection with the subject of the indemnity herein, Indemnitor shall pay Agency's costs and reasonable attorneys' fees thereby incurred. Agency may employ an attorney of its own choice.

6. **Interest.** In the event that Agency incurs any obligations, costs or expenses under this Agreement, Indemnitor shall pay such Person immediately on demand, and if such payment is not received within ten (10) days, interest on such amount shall, after the expiration of the ten-day period, accrue at the interest rate set forth in the Agency Lease until such amount, plus interest, is paid in full.

7. **No Waiver.** Notwithstanding any terms of the Company Documents to the contrary, the liability of Indemnitor under this Agreement shall in no way be limited or impaired by: (i) any extensions of time for performance required by any of the Company Documents; (ii) any sale, assignment or foreclosure of the Agency Lease or any sale or transfer of all or part of the Project Facility; (iii) the accuracy or inaccuracy of the representations and warranties made by Indemnitor under any of the Company Documents; or (iv) the release of Indemnitor or any other person from performance or observance of any of the agreements, covenants, terms or

conditions contained in the Company Documents by operation of law, Agency's voluntary act, or otherwise; and, in any such case, whether with or without notice to Indemnitor and with or without consideration.

8. **Waiver by Indemnitor.** Indemnitor waives any right or claim of right to cause a marshalling of Indemnitor's assets or to cause Agency to proceed against any of the security for the Agency Lease before proceeding under this Agreement against Indemnitor or to proceed against Indemnitor in any particular order; Indemnitor agrees that any payments required to be made hereunder shall become due on demand; Indemnitor expressly waives and relinquishes all rights and remedies (including any rights of subrogation) accorded by applicable law to indemnitors or guarantors.

9. **Releases.** Any one or more of Indemnitor and any other party liable upon or in respect of this Agreement or the Agency Lease may be released without affecting the liability of any party not so released.

10. **Amendments.** No provision of this Agreement may be changed, waived, discharged or terminated orally, by telephone or by any other means except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

11. **Joint and Several Liability.** In the event that this Agreement is executed by more than one party as Indemnitor, the liability of such parties is joint and several. A separate action or actions may be brought and prosecuted against each Indemnitor, whether or not an action is brought against any other person or whether or not any other person is joined in such action or actions.

12. **Consent to Jurisdiction.** Indemnitor consents to the exercise of personal jurisdiction over Indemnitor by any federal or state court in the State of New York and consent to the laying of venue in any jurisdiction or locality in the City of Syracuse. Service shall be effected by any means permitted by the court in which any action is filed.

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

(a) If to the Agency, to:

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

With a copy to:

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

(b) If to the Company, to:

Morgan Pond Street LLC
1170 Pittsford-Victor Road, Suite 100
Pittsford, New York 14534
Attn: Kevin Morgan

With copies to:

Stephen E. Hall, Esq.
36 West Main Street, Suite 400
Rochester, New York 14614

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.

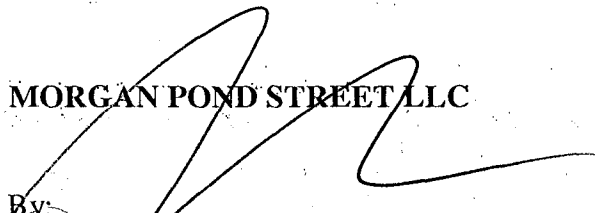
16. **Inconsistencies Among the Company Documents.** Nothing contained herein is intended to modify in any way the obligations of Indemnitor under the Agency Lease or any other Company Document. Any inconsistencies among the Company Documents shall be construed, interpreted and resolved so as to benefit 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.

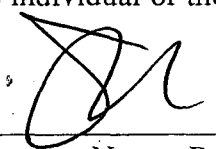
IN WITNESS WHEREOF, Indemnitor has executed this Agreement as of the date first
above written.

MORGAN POND STREET LLC

By: 
Robert C. Morgan, Manager

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

On the 21st day of September, in the year 2012 before me, the undersigned, a notary public in and for said state, personally appeared **ROBERT C. MORGAN**, 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

STEPHEN E. HALL
Notary Public, State of New York
Qualified in Monroe County
My Commission Expires Nov. 30, 2/4/19

SCHEDULE A

All that tract or parcel of land situate in the City of Syracuse, County of Onondaga, and State of New York, being part of Block 105, bounded and described as follows: Beginning at the southeast corner of said block, being the intersection of the westerly line of Pond Street with the northerly line of First North Street; thence N. $61^{\circ} 42' 30''$ W. (N. $61^{\circ} 31' 08''$ W. per current survey) along the northerly line of First North Street 234.17 feet to a point in the southeasterly corner of the DeLong Tract, according to a map of said tract filed in the Onondaga County Clerk's Office on December 14, 1888, as Map No. 526; thence N. $28^{\circ} 12' 30''$ E. (in the Onondaga County Clerk's Office on December 14, 1888, as Map No. 526; thence N. $28^{\circ} 12' 30''$ E. (N. $28^{\circ} 23' 52''$ E. per current survey) along the easterly line of said DeLong Tract 605.0 feet to a point; thence S. $61^{\circ} 42' 30''$ E. (S. $61^{\circ} 31' 08''$ E. per current survey) 234.40 feet to a point in the westerly line of Pond Street; thence S. $28^{\circ} 13' 50''$ W. (S. $28^{\circ} 25' 12''$ W. per current survey) along said westerly street line 605.0 feet to the point and place of beginning.

SCHEDULE "B"

EXCEPTIONS

Subject to any and all information contained in that certain Phase I Environmental Site Assessment of Commercial Property located 700 First North Street, Syracuse New York , dated September 2012, prepared by Leader Professional Services, Inc., a copy of which is on file with the Agency.

CLOSING RECEIPT

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY LEASE/SUBLEASE TRANSACTION MORGAN POND STREET LLC PROJECT

CLOSING RECEIPT executed September 21, 2012 by the City of Syracuse Industrial Development Agency (the "**Agency**") and Morgan Pond Street LLC (the "**Company**") in connection with a certain project (the "**Project**") consisting of: (A)(i) the acquisition of a leasehold interest in approximately 3.25 acres of improved real property located at 700 First North Street and Pond Street in the City of Syracuse, New York (the "**Land**"); (ii) acquisition of an interest in and the renovation of an approximate 32,800 square foot building for use as a commercial facility (the "**Facility**"); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the "**Equipment**", and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and sales and use taxation (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment by 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.

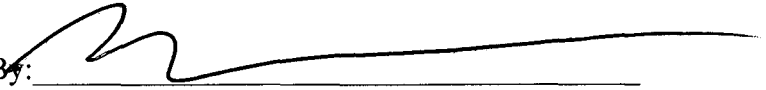
WITNESSETH:

(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

MORGAN POND STREET LLC

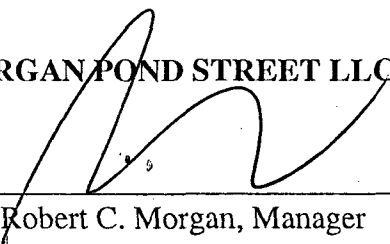
By: _____
Robert C. Morgan, Manager

(Signature page to Closing Receipt)

**CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
William M. Ryan, Chairman

MORGAN POND STREET LLC

By:  _____
Robert C. Morgan, Manager

CITY OF SYRACUSE

and

**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT
AGENCY**

and

MORGAN POND STREET, LLC

PAYMENT IN LIEU OF TAX AGREEMENT

Dated as of: September 1, 2012

MORGAN POND STREET, LLC

Federal Tax ID #:

46-1004776

THIS PAYMENT IN LIEU OF TAX AGREEMENT, (this "*Agreement*") dated as of September 1, 2012, by and among the **CITY OF SYRACUSE**, a municipal corporation of the State of New York, having an office at City Hall, Syracuse, New York 13202 (hereinafter referred to as the "*Municipality*"), the **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation organized and existing under the laws of the State of New York (hereinafter referred to as the "*Agency*"), having an office at Washington Station, 333 West Washington Street, Suite 130, Syracuse, New York 13202, and **MORGAN POND STREET, LLC**, a New York limited liability company, whose address is, 1170 Pittsford-Victor Road, Suite 100, Pittsford, New York 14534 (hereinafter referred to as the "*Company*").

WITNESSETH:

WHEREAS, the New York State Industrial Development Agency Act, being Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of the State of New York, as amended (hereinafter referred to as the "*Enabling Act*") authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish real and personal property, whether or not now in existence or under construction, which shall be suitable for, among others, manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their recreation opportunities, prosperity and standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease and to sell its projects, to charge and collect rent therefor, to issue its bonds or notes for the purpose of carrying out any of its corporate purposes and, as security for the payment of the principal and redemption price of, and interest on, any such bonds or notes, to mortgage any or all of its facilities and to pledge the revenues and receipts therefrom to the payment of such bonds or notes; and

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act,

Chapter 641 of the 1979 Laws of the State of New York, as amended (said chapter and the Enabling Act being hereinafter collectively referred to as the "*Act*") created the Agency for the benefit of the Municipality and the inhabitants thereof; and

WHEREAS, the Agency, by Resolution adopted on September 6, 2012, (the "*Resolution*"), resolved to undertake the "*Project*" (as hereinafter defined); and

WHEREAS, the Project will consist of: (A)(i) the Agency's acquisition of a leasehold interest in approximately 3.25 acres of improved real property located at 700 First North Street and Pond Street in the City of Syracuse, New York (the "**Land**"); (ii) acquisition of an interest in and the renovation of an approximate 32,800 square foot building for use as a commercial facility (the "**Facility**"); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the "**Equipment**", and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and sales and use taxation (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with acquisition, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment by 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 will lease the Project Facility from the Company pursuant to that certain Company Lease Agreement dated as of September 1, 2012, (the "*Company Lease Agreement*"), between the Company and the Agency, and sublease the Project Facility back to the Company pursuant to that certain Agency Lease Agreement dated as of September 1, 2012, (the "*Agency Lease Agreement*"), between the Agency and the Company (collectively the Company Lease Agreement and the Agency Lease Agreement are hereinafter referred to as the "*Lease Agreement*"); and

WHEREAS, under the present provisions of the Act and Section 412-a of the Real Property Tax Law of the State of New York, the Agency is required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or supervision or control; and

WHEREAS, the Company, to further induce the Agency to assist with the Project, has agreed with the Municipality and the Agency to enter into this Agreement; the Municipality's participation in this Agreement has been duly authorized by Ordinance No. 515 of 2012, adopted by the Municipality's Common Council on September 10, 2012, and approved by Mayor Stephanie A. Miner on September 11, 2012.

NOW, THEREFORE, in consideration of the matters above recited, the parties hereto formally covenant, agree and bind themselves as follows, to wit:

ARTICLE I

REPRESENTATIONS AND WARRANTIES

Section 1.01. Representations and Warranties by Municipality

The Municipality does hereby represent, warrant and covenant as follows:

(a) Authorization. The Municipality has secured all approvals of appropriate officers, boards and bodies of the Municipality necessary to duly authorize the execution, delivery and performance of this Agreement by the Municipality and the performance by the Municipality of its obligations hereunder.

(b) Validity. The Municipality is not prohibited from entering into this Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement by the terms, conditions or provisions of any law, any order of any court or other agency or authority of government, or any agreement or instrument to which the Municipality is a party or by which the Municipality is bound, and this Agreement is a legal, valid and binding obligation of the Municipality enforceable in accordance with its terms.

Section 1.02. Representations and Warranties by Agency

The Agency does hereby represent and warrant as follows:

(a) Existence and Power. The Agency has been duly established under the provisions of the Act and has the power to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder.

(b) Intentions. The Agency intends to acquire a leasehold interest in the Project Facility

from the Company and to sublease the Project Facility back to the Company, all pursuant to the provisions of the Lease Agreement.

(c) Authorization. The Agency is authorized and has the corporate power under the Act, its by-laws and the laws of the State of New York to enter into this Agreement and the transactions contemplated hereby and to perform and carry out all the covenants and obligations on its part to be performed under and pursuant to this Agreement. By proper corporate action on the part of its members, the Agency has duly authorized the execution, delivery and performance of this Agreement and the consummation of the transactions herein contemplated.

(d) Validity. The Agency is not prohibited from entering into this Agreement and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement by the terms, conditions or provisions of the Act, any other law, any order of any court or other agency or authority of government, or any agreement or instrument to which the Agency is a party or by which the Agency is bound, and this Agreement is a legal, valid and binding obligation of the Agency enforceable in accordance with its terms.

Section 1.03. Representations and Warranties by Company

The Company does hereby represent and warrant as follows:

(a) Existence. The Company is a company duly organized and validly existing as a business corporation under the laws of the State of New York.

(b) Authorization. The Company is authorized and has the power under the laws of the State of New York to enter into this Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement. The Company has duly authorized the execution, delivery and performance of this Agreement and the consummation of the transactions herein contemplated. The Company is not prohibited from entering into this Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement by (and the execution, delivery and performance of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Agreement will not conflict with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its

Articles of Organization, Operating Agreement or any other restriction or any law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Company is a party or by which it or any of its property is bound, and the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement will neither be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any of the foregoing, nor result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any of the foregoing, and this Agreement is a legal, valid and binding obligation of the Company enforceable in accordance with its terms.

(c) Governmental Consent. No further consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Company is required as a condition to the execution, delivery or performance of this Agreement by the Company or as a condition to the validity of this Agreement.

ARTICLE II

COVENANTS AND AGREEMENTS

Section 2.01. Tax-Exempt Status of the Project Facility

(a) Assessment of the Project Facility. Pursuant to the Act and Section 412-a of the Real Property Tax Law, the parties hereto understand that, upon acquisition of ownership or control of the Project Facility by the Agency, and for so long thereafter as the Agency shall own or control the Project Facility, the Project Facility shall be entitled to an exemption upon the first available assessment roll of the Municipality prepared subsequent to the acquisition by the Agency of ownership or control of the Project Facility. The time of commencement of the Agency's exemption shall be controlled by the Municipality's taxable status date, in conformity with Section 412-a of the Real Property Tax Law. The Company will be required to pay to the Municipality all taxes and assessments lawfully levied and/or assessed against the Project Facility, in spite of the Agency's actual ownership or control of the Project Facility, until the Project Facility shall be entitled to exempt status on the tax roll of the Municipality.

(b) Special Assessments. The parties hereto understand that the tax exemption extended to the Agency by the Act and Section 412-a of the Real Property Tax Law does not entitle the Agency to exemption from special assessments and special ad valorem levies. The Company will be required to pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Project Facility.

Section 2.02. Payments in Lieu of Taxes

(a) Agreement to Make Payments. The Company agrees that it shall make periodic payments in lieu of real property taxes in the amounts hereinafter provided. The said payments due to the Agency hereunder shall be paid by the Company, to the Municipality, by check made payable to "*Commissioner of Finance*". Upon receipt of the Company's payment, it shall be the Municipality's obligation to appropriately disburse any portion of the said payment to the County of Onondaga, or such other taxing jurisdiction, pursuant to the Act. This Company obligation shall exist for so long as the Agency retains an interest in the Project Facility. Notwithstanding the appearance of the Agency's exemption on the Municipality's tax roll for the 2013/2014 City and School portion of the real property tax due on the Land and Facility, the year 1 payment due for the City and School portion of the year 1 payment under Exhibit "A" shall commence on July 1, 2013. The year 1 payment due for the County and Water District portion of the year 1 payment under Exhibit "A" shall commence on January 1, 2014. Without regard to the Agency exemption, the Company shall continue paying real property tax through June 30, 2013 with respect to the City and School portion of the real property tax and through December 31, 2013 with respect to the County and Water District portion of the real property tax, based upon the assessment and the combined real property tax rate in effect for that period as if the Project Facility were privately owned and the Agency had no interest in the same.

(b) Amount of Payments in Lieu of Taxes. Unless otherwise stated, the Company's agreed upon annual payment in lieu of tax hereunder shall be an amount determined by reference to Exhibit "A", attached hereto and made a part hereof. The payments in lieu of tax due, as set forth in Exhibit "A", include any real property tax exemptions that might be afforded to the Company if the Project Facility were owned by the Company and not the Agency. In consideration of this

Agreement, Company waives any right to challenge or contest, by any administrative or applicable judicial means, the assessment placed upon the Project Facility and/or Additional Property by the Municipality. It shall be an event of default under Article IV of this Agreement should the Company bring such a challenge or contest to the assessment on the Project Facility and/or Additional Property.

(c) Additional Amounts in Lieu of Taxes. Commencing on the first tax year following the date on which any structural addition shall be made to the Facilities, or any new or additional building shall be constructed on the real property described in Exhibit "B" that is in addition to the Facilities (such structural additions and additional buildings being hereinafter referred to as "*Additional Property*"), the Company agrees to make additional periodic payments in lieu of real property taxes (such additional payments being hereinafter collectively referred to as "*Additional Payments*") to the Municipality with respect to such Additional Property. Such Additional Payments shall be computed as follows:

By multiplying (1) the value placed on such Additional Property, as value is determined by the Municipality's Assessor by (2) the tax rate or rates of the Municipality that would be applicable to such Additional Property if such Additional Property were owned or controlled by the Company and not the Agency, and (3) then reducing the amount so determined by the amounts of any properly acquired tax exemptions that would be afforded to the Company by the Municipality for such Additional Property as if it was owned or controlled by the Company and not the Agency.

(d) Revaluation. In the event of a real property assessment revaluation by the Municipality, the Company shall continue to make its payments in accordance with this Agreement; however, in the event that Exhibit "A" is no longer in effect, but payments are still being made hereunder for any reason, (including, but not limited to, the Agency still having an interest in the Project Facility), and would be effected by revaluation, each year's payments subsequent to such revaluation shall be adjusted to properly reflect the revaluation, it being the intent of the parties that the level of payments following revaluation shall be equal to those payments contemplated by this Agreement.

(e) Damage or Destruction. In the event that all or substantially all of the Project Facility is damaged or destroyed, the Company shall continue to make the payments required by this Agreement for as long as the Agency shall own or control the Project Facility, without regard to such damage or destruction.

(f) Time of Payments. The Company agrees to pay the amounts due the Agency hereunder to the Municipality for each year of this Agreement, within the period that the Municipality allows payment of taxes levied in such calendar year without penalty. The Company shall be entitled to receive receipts from the Municipality for such payments.

(g) Method of Payment. All payments by the Company hereunder shall be paid to the Municipality in lawful money of the United States of America, cash, money order or check.

Section 2.03. Obligation of Municipality

The Municipality shall submit to the Company written semi-annual statements specifying the amount and due date or dates of any payments due to the Agency hereunder. Each said semi-annual statement shall be submitted to the Company at the same time that tax bills are mailed by the Municipality to the owners of privately owned property.

Section 2.04. Obligations of Agency

(a) Requirement that any Project Facility Agreements Require Payments in Lieu of Taxes. So long as the Project Facility shall be entitled to exemption from real property taxes as provided in Section 2.01(a) hereof, the Agency agrees, to the extent permitted by law, that it shall not make any agreement regarding the leasing or sale of the Project Facility which does not require that payments in lieu of taxes shall be paid to the Municipality in at least the amounts set forth in Article II hereof.

(b) Requirement that Mortgagees Subordinate to Payments. The Agency and the Company agree that any mortgages on the Project Facility, given by either of them, shall provide that the rights of the mortgagees thereunder shall be subordinate to this Agreement and to the right of the Municipality to receive payments in lieu of taxes pursuant to Article II hereof.

Section 2.05. Company to Furnish Information

The Company agrees to promptly comply with the reporting and information requirements

of the Agency and the Act, and to immediately furnish the applicable information required or requested by the Agency and/or the State of New York. The Company further agrees to assist the Agency with the preparation of any reports, or answer any inquiries, required by the State of New York in connection with the Act or the Agency's participation in the Project.

Section 2.06. Interest

If the Company shall fail to make any payment required by this Agreement when due, its obligation to make the payment so in default shall continue as an obligation of the Company until such payment in default shall have been made in full, and the Company shall pay the same together with interest thereon, to the extent permitted by law, at the greater of **(i) eighteen per cent (18%) per annum, or (ii) the rate per annum which would be payable if such amounts were delinquent taxes, until so paid in full.**

ARTICLE III

LIMITED OBLIGATION OF THE AGENCY

Section 3.01. No Recourse; Limited Obligation of the Agency

(a) No Recourse. All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency and not of any member, director, officer, agent, servant or employee of the Agency in his individual capacity, and no recourse under or upon any obligation, covenant or agreement contained in this Agreement, or otherwise based on or in respect of this Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, director, officer, agent, servant or employee, as such, of the Agency or any successor public benefit corporation or political subdivision or any person executing this Agreement on behalf of the Agency, either directly or through the Agency or any successor public benefit corporation or political subdivision or any person so executing this Agreement. It is expressly understood that this Agreement is a corporate obligation, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any such member, director, officer, agent, servant or employee of the Agency or of any successor public benefit

corporation or political subdivision or any person so executing this Agreement under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom. Any and all such personal liability of, and any and all such rights and claims against, every such member, director, officer, agent, servant or employee under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

(b) Limited Obligation. The obligations and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State of New York or the Municipality, and neither the State of New York nor the Municipality shall be liable thereon. Furthermore, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project.

(c) Further Limitation. Notwithstanding any provision of this Agreement to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (i) the Agency shall have been requested to do so in writing by the Company and (ii) if compliance with such request is expected to result in the incurrence by the Agency (or any of its members, directors, officers, agents, servants or employees) of any liability, fees, expenses or other costs, the Agency shall have received from the Company security or indemnity satisfactory to the Agency for protection against all such liability, however remote, and for the reimbursement of all such fees, expenses and other costs.

ARTICLE IV

EVENTS OF DEFAULT

Section 4.01. Events of Default

Any one or more of the following events shall constitute an event of default under this Agreement, and the terms "*Event of Default*" or "*Default*" shall mean, whenever they are used in

this Agreement, any one or more of the following events:

(a) Failure of the Company to pay any amount due and payable by it pursuant to this Agreement or the Lease Agreement.

(b) Failure of the Company to observe and perform any other covenant, condition or agreement on its part to be observed and performed under this Agreement (other than as referred to in paragraph (a) above) or the Lease Agreement, and continuance of such failure for a period of thirty (30) days after written notice to the Company specifying the nature of such failure and requesting that it be remedied.

(c) Any warranty, representation or other statement by or on behalf of the Company contained in this Agreement or the Lease Agreement shall prove to have been false or incorrect in any material respect on the date when made or on the effective date of this Agreement or the Lease Agreement.

(d) The Company violates any federal, state or local environmental law or allows or causes any Hazardous Materials (as Hazardous Materials is defined and described in any federal, state or local law) to be released at, on, to, into or from the Project Facility, except as permitted by the Lease Agreement or within the terms and conditions of a permit, certificate, license or other written approval of an authorized governmental body, and fails to remedy such violation within thirty (30) days; or if such failure cannot be cured within thirty (30) days, fails to commence a cure within thirty (30) days and thereafter diligently prosecute the cure thereof.

(e) The occurrence of any Event of Default or Default under this Agreement, the Lease Agreement or any other Project documents.

(f) Failure of the Company to enter into financing for the Project and commence construction of the Project Facility within six months of the date of this Agreement.

The payment schedule contained in Exhibit "A" is for the benefit of the Company and its Project Facility. In the event that the Company defaults hereunder, and the Lease Agreement cannot be terminated, and/or the Agency's participation in the Project and this Agreement is not or cannot be terminated, the Company, or any assignee, or successor shall no longer be entitled to make payments under this Agreement pursuant to Exhibit "A". In such an event, payments shall be made

hereunder, for any remaining term of the Project, as if the Project Facility was privately owned and assessed and without any further regard to Exhibit "A".

Section 4.02. Remedies on Company Default

Whenever any Event of Default under Sections 4.01(a), 4.01(b), 4.01(c), 4.01(d), 4.01(e) or 4.01 (f) shall have occurred and be continuing with respect to this Agreement, and/or the Company shall be in default under the Lease Agreement, the Municipality or the Agency may take whatever action at law or in equity, following applicable notice, as may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations, agreements and covenants of the Company under this Agreement and/or the Lease Agreement.

Section 4.03. Recording of Lease Terminations and Other Documents

Whenever any Event of Default under Sections 4.01(a), 4.01(b), 4.01(c), 4.01(d), 4.01(e) or 4.01 (f), shall have occurred and be continuing with respect to this Agreement or the Lease Agreement, the Agency may, upon notice to the Company provided for in this Agreement or the Lease Agreement, terminate the Lease Agreement and record such termination or other necessary documents in the Onondaga County Clerk's Office, terminating the Agency's interest in the Project Facility and terminating this Agreement.

The recording of such a termination and any other documentation shall constitute delivery to, and acceptance of such, by the Company. In order to facilitate such a termination, the Company hereby appoints the Chairman or the Vice Chairman of the Agency as its agent for the purpose of executing and delivering all documents necessary to allow such termination by the Agency.

In the event that the Lease Agreement, for any reason, is extended by its terms, or for any reason this Agreement expires or terminates, but the Agency retains an interest or remains in title to the Project Facility, the Company shall continue to make payments in lieu of taxes to the Municipality for as long as the Agency retains an interest in, or remains in title to, the Project Facility. Those payments shall be the equivalent of the real property taxes that would be due on the Project Facility if it were owned by the Company and not the Agency. It is the intention of the parties hereto, that for so long as the Agency shall possess title to, or an interest in, the Property, the Company, or any permitted successors or assigns, shall make payments in lieu of taxes to the

Municipality that are either based upon Exhibit "A", or if Exhibit "A" is no longer applicable for any reason, are the equivalent of the real property taxes that would be due and owing if the Project Facility were privately owned.

Section 4.04. Payment of Attorney's Fees and Expenses

If the Company should default in performing any of its obligations, covenants and agreements under this Agreement and the Agency or the Municipality should employ attorneys (whether in-house or outside counsel) or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, pay to the Agency and/or the Municipality the reasonable fees and disbursements of such attorneys and such other reasonable expenses so incurred.

Furthermore, should the Company bring a challenge or contest to the assessment on the Project Facility and/or Additional Property during the term of this Agreement, and the Agency and/or the Municipality waives its right to declare a default under this Agreement in regards to such challenge or contest, or such challenge or contest is determined not to be a default of this Agreement by any Court of competent jurisdiction, the Company agrees that in the event that the Company is unsuccessful in its challenge or contest to the assessment, it will, on demand, pay to the Agency and/or the Municipality the reasonable fees and disbursements of any attorneys employed (whether in-house or outside counsel) for the defense of such action as well as such other reasonable expenses so incurred.

Section 4.05. Remedies; Waiver and Notice

(a) No Remedy Exclusive. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute.

(b) Delay. No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time

and as often as may be deemed expedient.

(c) Notice Not Required. In order to entitle the Agency or the Municipality to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Agreement.

(d) No Waiver. In the event any provision contained in this Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Agreement shall be established by conduct, custom or course of dealing.

ARTICLE V

MISCELLANEOUS

Section 5.01. Term of Agreement

(a) General. This Agreement shall become effective and the obligations of the Municipality, the Agency and the Company shall arise absolutely and unconditionally upon the execution and delivery of this Agreement. This Agreement shall terminate on the earliest to occur of (i) the same date that the Lease Agreement terminates; (ii) on any earlier date permitted under the Lease Agreement; or (iii) upon the expiration on June 30, 2023, of the PILOT Schedule set forth in Exhibit "A" hereto. In the event of a termination of the Agency's interest in the Project Facility, the Company's payments due hereunder shall be pro-rated to the extent necessary to allow the Municipality to issue a supplemental tax bill based upon the Agency's transfer of ownership or control of the Project Facility to the Company, and the loss of the Agency's tax exemption on the said Project Facility.

(b) Conflict. In the event of a conflict between this Agreement or any of its terms on the one hand, and the Lease Agreement or any other Project documents on the other hand, the provisions most favorable to the Agency shall govern. The Agency and the Company agree that the Agency's participation in the Project is for the benefit of the Company and that the Municipality must receive payments from the Company hereunder, during the entire term of this Agreement

and/or the Agency's ownership or control of the Project Facility.

Section 5.02. Company Acts

Where the Company is required to do or accomplish any act or thing hereunder, the Company may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Company.

Section 5.03. Amendment of Agreement

This Agreement may not be amended, changed, modified or altered unless such amendment, change, modification or alteration is in writing and signed by the Municipality, the Agency, and the Company.

Section 5.04. Notices

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

- (a) To the Municipality:
City of Syracuse
City Hall, Room 300
233 East Washington Street
Syracuse, New York 13202
Attention: Mayor
Attention: Corporation Counsel

- (b) To the Agency:
City of Syracuse Industrial Development Agency
City Hall, Room 300
233 East Washington Street
Syracuse, New York 13202
Attention: Chairman
Attention: Corporation Counsel

(c) To the Company:
Morgan Pond Street, LLC
1170 Pittsford-Victor Road
Suite 100
Pittsford, New York 14534

With copies to:

Evans & Fox LLP
95 Allens Creek Road Suite 300
Rochester, New York 14618
Attention: Mr. Don Fox, Esq.

With copies to:

Mr. Stephen E. Hall, Esq
Suite 400
36 West Main Street
Rochester, New York 14614

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

Section 5.05. Binding Effect

This Agreement shall inure to the benefit of, and shall be binding upon the Municipality, Agency, and Company, and their respective successors and assigns.

Section 5.06. Severability

If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

Section 5.07. Counterparts

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

Section 5.08. Applicable Law


This Agreement shall be governed by and construed in accordance with the laws of the State of New York. Venue of any action or proceeding brought hereunder shall be in the State or Federal Courts located in Onondaga County, New York.

Section 5.09. Assignment

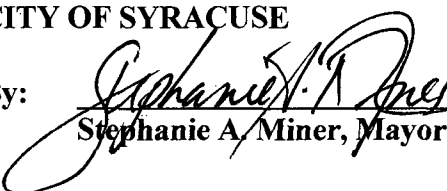
This Agreement may not be assigned by the Company without the prior written consent of the Municipality and Agency.

IN WITNESS WHEREOF, the Municipality, Agency, and Company have caused this Agreement to be executed in their respective names on the date first above written.

Attest

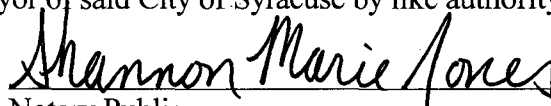
By: 
John P. Copanas, City Clerk

CITY OF SYRACUSE

By: 
Stephanie A. Miner, Mayor

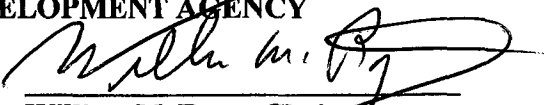
STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss.:

On this 18th day of September, 2012, before me personally came Stephanie A. Miner, Mayor of the City of Syracuse, with whom I am personally acquainted, who, being by me duly sworn, did depose and say: that she resides in the City of Syracuse, New York; that she is Mayor of the City of Syracuse, the corporation described in and which executed the within instrument; that she knows the corporate seal of said City of Syracuse and it was so affixed pursuant to the Charter of the City and that she signed said instrument as Mayor of said City of Syracuse by like authority.


Notary Public

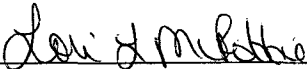
Shannon Marie Jones
Notary Public State of New York
Qualified in Onondaga County
No. 02J06228469
My Commission Expires 09/20/2014

**CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
William M. Ryan, Chairman

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss:

On the 20th day of September, 2012, before me the undersigned, a Notary Public in and for said state, personally appeared William M. Ryan, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or he person upon behalf of which the individual acted, executed the instrument.

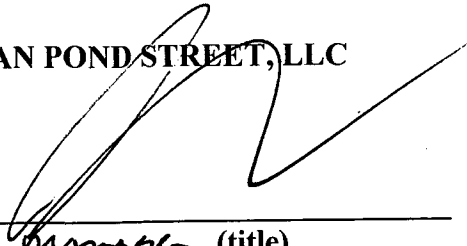


Notary Public

LORI L. McROBBIE
Notary Public, State of New York
Qualified in Onondaga Co. No. 01MC5055591
Commission Expires on Feb. 12, 2014

MORGAN POND STREET, LLC

By:

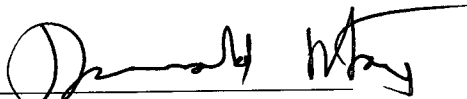


Manager, (title)

STATE OF NEW YORK)
COUNTY OF ~~ONONDAGA~~) ss:
Monroe

On the 18 day of September, in the year 2012, before me the undersigned, a notary public in and for said state, personally appeared Robert Morgan, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or he person upon behalf of which the individual acted, executed the instrument.

DONALD R. FOX
Notary Public, State of New York
Wayne County, Reg.#02F04607664
My Comm. Expires June 30, 20 13



Notary Public

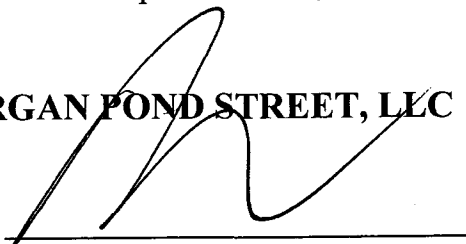
ACKNOWLEDGEMENT BY

MORGAN POND STREET, LLC

MORGAN POND STREET, LLC (the "Company") hereby acknowledges receipt and review of this Agreement, and consents to, and approves of, the terms and provisions contained herein.

IN WITNESS WHEREOF, the Company has caused this Acknowledgment to be executed in its name by its duly authorized representative, dated as of September 18, 2012.

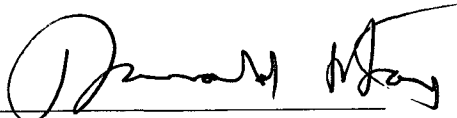
MORGAN POND STREET, LLC

By: 
Manager, (title)

STATE OF NEW YORK)
COUNTY OF ~~ONONDAGA~~) ss:
monet

On the 18 day of September, in the year 2012, before me the undersigned, a notary public in and for said state, personally appeared Robert Meyer personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or he person upon behalf of which the individual acted, executed the instrument.

DONALD R. FOX
Notary Public, State of New York
Wayne County, Reg.#02F04697664
My Comm. Expires June 30, 20 15



Notary Public

EXHIBIT "A"

PILOT SCHEDULE

Morgan Pond Street, LLC PILOT Schedule		
Year	Assessment	Payment
1	$\$1,352,000 \times \text{tax rate}^*$	-
2	$\$1,352,000 \times \text{tax rate}$	-
3	$\$1,352,000 \times \text{tax rate}$	-
4	$\$1,352,000 \times \text{tax rate}$	-
5	$\$1,352,000 \times \text{tax rate}$	-
6	$\$1,352,000 \times \text{tax rate}$	-
7	$\$1,352,000 \times \text{tax rate}$	-
8	$[(\text{full assessment} - \$1,352,000) \times .25] + (\$1,352,000 \times \text{tax rate})$	-
9	$[(\text{full assessment} - \$1,352,000) \times .50] + (\$1,352,000 \times \text{tax rate})$	-
10	$[(\text{full assessment} - \$1,352,000) \times .75] + (\$1,352,000 \times \text{tax rate})$	-

*tax rate = Combined Syracuse City, County, School District and Water District Real Property Tax Rate in effect for each year, or portion thereof, covered by the Agreement

EXHIBIT "B"

DESCRIPTION OF LAND

ALL THAT TRACT OR PARCEL OF LAND, situated in the City of Syracuse, County of Onondaga and State of New York, being part of Block 105, bounded and described as follows: Beginning at the southeast corner of said block, being the intersection of the westerly line of Pond Street with the northerly line of First North Street; thence N. $61^{\circ} 42' 30''$ W. (N. $61^{\circ} 31' 08''$ W. per current survey) along the northerly line of First North Street 234.17 feet to a point in the southeasterly corner of the DeLong Tract, according to a map of said tract filed in the Onondaga County Clerk's Office on December 14, 1888, as Map No. 526; thence N. $28^{\circ} 12' 30''$ E. (in the Onondaga County Clerk's Office on December 14, 1888, as Map No. 526; thence N. $28^{\circ} 12' 30''$ E. (N. $28^{\circ} 23' 52''$ E. per current survey) along the easterly line of said DeLong Tract 605.0 feet to a point; thence S. $61^{\circ} 42' 30''$ E. (S. $61^{\circ} 31' 08''$ E. per current survey) 234.40 feet to a point in the westerly line of Pond Street; thence S. $28^{\circ} 13' 50''$ W. (S. $28^{\circ} 25' 12''$ W. per current survey) along said westerly street line 605.0 feet to the point and place of beginning.



NYS DEPARTMENT OF TAXATION & FINANCE
OFFICE OF REAL PROPERTY TAX SERVICES

RP-412-a (1/95)

INDUSTRIAL DEVELOPMENT AGENCIES
APPLICATION FOR REAL PROPERTY TAX EXEMPTION
(Real Property Tax Law, Section 412-a and General Municipal Law, Section 874)

1. INDUSTRIAL DEVELOPMENT AGENCY (IDA)

Name City of Syracuse Industrial Development Agenc:
Street 333 West Washington Street
City Syracuse
Telephone no. Day (315) 473-3275
Evening () _____
Contact _____
Title _____

2. OCCUPANT (IF OTHER THAN IDA)

(If more than one occupant attach separate listing)

Name Morgan Pond Street LLC
Street 1170 Pittsford-Victor Road, Suite 100
City Pittsford
Telephone no. Day () 585-419-9630
Evening () _____
Contact Kevin Morgan
Title Manager

3. DESCRIPTION OF PARCEL

- a. Assessment roll description (tax map no./roll year) 006-12-54.0
b. Street address 700 First North Street & Pond Street
c. City, Town or Village Syracuse
d. School District City of Syracuse
e. County Onondaga
f. Current assessment Lease
g. ~~Lease~~ to IDA (date recorded; liber and page) 9/21/12; Book 5213, Page 850

4. GENERAL DESCRIPTION OF PROPERTY (if necessary, attach plans or specifications)

- a. Brief description (include property use) renovation of approximately 32,000 sq.ft. of commerical retail space - grocery store
b. Type of construction bricks, sticks and steel
c. Square footage 32,800
d. Total cost \$1,700,000
e. Date construction commenced approx. 9/1/12
f. Projected expiration of exemption (i.e. date when property is no longer possessed, controlled, supervised or under the jurisdiction of IDA) June 30, 2023

5. SUMMARIZE AGREEMENT (IF ANY) AND METHOD TO BE USED FOR PAYMENTS TO BE MADE TO MUNICIPALITY REGARDLESS OF STATUTORY EXEMPTION

(Attach copy of the agreement or extract of the terms relating to the project).

- a. Formula for payment see schedule B to attached Payment in Lieu of Tax Agreement

b. Projected expiration date of agreement June 30, 2023

c. Municipal corporations to which payments will be made

	Yes	No
County _____	✓	
Town/City _____	✓	
Village _____		✓
School District _____		✓

d. Person or entity responsible for payment

Name Morgan Pond Street LLC
 Title _____
 Address 1170 Pittsford-Victor Road
Suite 100, Pittsford, NY 14534

e. Is the IDA the owner of the property? Yes No (check one)

If "No" identify owner and explain IDA rights or interest Telephone _____
 in an attached statement. IDA has leasehold interest. Owner is occupant.

6. Is the property receiving or has the property ever received any other exemption from real property taxation? (check one) Yes No

If yes, list the statutory exemption reference and assessment roll year on which granted:
 exemption _____ assessment roll year _____

7. A copy of this application, including all attachments, has been mailed or delivered on 12/27/12 (date) to the chief executive official of each municipality within which the project is located as indicated in Item 3.

CERTIFICATION

I, William M. Ryan, Chairman _____ of _____

Name _____ Title _____
City of Syracuse Industrial Development Agency hereby certify that the information
 Organization _____

on this application and accompanying papers constitutes a true statement of facts.

11-6-12
Date


Signature

FOR USE BY ASSESSOR

1. Date application filed _____

2. Applicable taxable status date _____

3a. Agreement (or extract) date _____

3b. Projected exemption expiration (year) _____

4. Assessed valuation of parcel in first year of exemption \$ _____

5. Special assessments and special as valorem levies for which the parcel is liable:

Date

Assessor's signature

City of Syracuse

CITY CLERK'S OFFICE

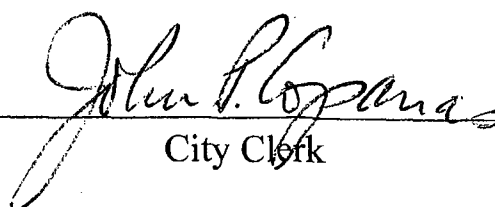
I, JOHN P. COPANAS, City Clerk of the City of Syracuse, New York do hereby certify that the attached is a true copy of an ORDINANCE:

Adopted by the Common Council on

September 10, 2012

Approved by the Mayor on

September 11, 2012


City Clerk

TO:

Mayor
Assessment Commissioner
Aviation Commissioner
Board of Elections
Bureau of Accounts
Citizen Review Board
City Auditor
City School District
Code Enforcement
Neighborhood and Business Development
Finance Commissioner
Corporation Counsel
United States Congressperson
Governor of New York State
New York State Senate
New York State Assembly
New York State Senator
Onondaga County Legislature

Management & Budget Director
Parks & Recreation Commissioner
Personnel & Labor Relations Dir.
Police Chief
Public Works Commissioner
Public Works/Bookkeeper
Purchase Department
Real Estate Division
Research Director
Water Department
Zoning Administration
United States Senator
Department of Engineering
Finance/Treasury
Finance (Water Bureau)
Fire Chief
Grants Management Director
Board of Education

**ORDINANCE AUTHORIZING AN
AGREEMENT BETWEEN THE CITY OF
SYRACUSE, THE CITY OF SYRACUSE
INDUSTRIAL DEVELOPMENT AGENCY,
AND MORGAN POND STREET, LLC FOR
ANNUAL PAYMENTS IN LIEU OF TAXES
WITH RESPECT TO THE PROPERTY
LOCATED AT 700 FIRST NORTH STREET
AND POND STREET, SYRACUSE, NEW
YORK**

BE IT ORDAINED, that the Mayor, on behalf of the City of Syracuse, be and she is hereby authorized to enter into a Payment in Lieu of Tax Agreement (the "Agreement") with the City of Syracuse Industrial Development Agency ("SIDA") and Morgan Pond Street, LLC (the "Company"), covering the property located at 700 First North Street and Pond Street, Syracuse, New York; at which the Company proposes to renovate an approximately 32,800 square foot former grocery store for a new Tops Friendly Market; with payments in lieu of taxes under the Agreement to be calculated pursuant to the PILOT schedule attached as Exhibit "A",

BE IT FURTHER ORDAINED, that such agreement shall contain those terms and conditions that shall be determined by the Corporation Counsel to be in the best interest of the City of Syracuse and that payments made thereunder will be shared with Onondaga County in the same proportion that present real property tax revenues are shared.

EXHIBIT "A"

Morgan Pond Street, LLC PILOT Schedule		
Year	Assessment	Payment
1	$\$1,352,000 \times \text{tax rate}^*$	-
2	$\$1,352,000 \times \text{tax rate}$	-
3	$\$1,352,000 \times \text{tax rate}$	-
4	$\$1,352,000 \times \text{tax rate}$	-
5	$\$1,352,000 \times \text{tax rate}$	-
6	$\$1,352,000 \times \text{tax rate}$	-
7	$\$1,352,000 \times \text{tax rate}$	-
8	$[(\text{full assessment} - \$1,352,000) \times .25] + (\$1,352,000 \times \text{tax rate})$	-
9	$[(\text{full assessment} - \$1,352,000) \times .50] + (\$1,352,000 \times \text{tax rate})$	-
10	$[(\text{full assessment} - \$1,352,000) \times .75] + (\$1,352,000 \times \text{tax rate})$	-

*tax rate = Combined Syracuse City, County, School District and Water District Real Property Tax Rate in effect for each year, or portion thereof, covered by the Agreement

BILL OF SALE TO AGENCY

MORGAN POND STREET LLC, a New York State limited liability company, with an address at 1170 Pittsford-Victor Road, Pittsford, New York 14534 (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 September 1, 2012 (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 this ____ day of September, 2012.

MORGAN POND STREET LLC

By: _____

Robert C. Morgan, Manager

EXHIBIT "A"

DESCRIPTION OF THE EQUIPMENT

All articles of personal property, all machinery, apparatus, equipment, appliances, floor coverings, furniture, furnishings, supplies, materials, fittings and fixtures of every kind and nature whatsoever and all appurtenances acquired by Morgan Pond Street LLC (the "*Company*") now or hereafter attached to, contained in or used or acquired in connection with the Land (as defined in the Agency Lease) and/or 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, heating, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, call systems, stoves, ranges, refrigerators, refrigeration units, freezers, rugs, movable partitions, cleaning equipment, maintenance equipment, shelving, 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.

WST
(Box 93)

MORTGAGE

This Mortgage, made the ____ day of September, 2012 between **MORGAN POND STREET LLC**, a New York limited liability company with an address of 1170 Pittsford-Victor Road, Pittsford, New York 14534 (herein called the "Mortgagor"), **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation having an address at 233 East Washington Street, Syracuse, New York 13302 (herein called the "Agency"), and **PERTICONE HOLDINGS LLC**, a New York limited liability company with a mailing address of 45 San Gabriel Drive, Rochester, New York 14610 (herein called the "Mortgagee").

WHEREAS, Mortgagor is the fee owner of or is acquiring title to and the Agency has a leasehold interest in the premises known as 700 First North Street and Pond Street, Syracuse, Onondaga County, New York, which is more particularly bounded and described in SCHEDULE "A" attached hereto and forming a part hereof (the "Premises"); and

NOW, THEREFORE, to secure the payment of an indebtedness in the sum of **ONE MILLION NINE HUNDRED THOUSAND AND 00/100 DOLLARS (\$1,900,000.00)** lawful money of the United States (or such as may be advanced) to be paid with interest thereon to be computed from the date hereof, to be paid according to a certain Mortgage Note bearing even date herewith ("Note"), the Mortgagor and the Agency hereby mortgage their respective interests in the Premises to the Mortgagee, together with the appurtenances and all the estate and rights of Mortgagor in and to the Premises, but excluding therefrom the Agency's Unassigned Rights as defined in the Agency Lease (as defined below). The Agency represents and warrants that execution and delivery of this Mortgage has been duly authorized by the Agency and the Agency is duly organized as a public benefit corporation under the laws of the State of New York.

TOGETHER with all the right, title and interest of the Mortgagor in and to any and all unearned premiums accrued, accruing or to accrue under any and all insurance policies now or hereafter obtained by the Mortgagor on the Premises,

TOGETHER with all tenements, hereditaments, and appurtenances belonging or in any way appertaining to said Premises, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof,

TOGETHER with and including any and all strips and gores of land adjoining or abutting said Premises,

TOGETHER with all right, title, and interest of the Mortgagor and the Agency, if any, in and to the land lying in the bed of any street, road, avenue or alley, open or proposed, in front of, running through or adjoining said Premises,

TOGETHER with all buildings, structures, and other improvements now or at any time hereafter erected, constructed or situated upon the Premises (collectively, the "Improvements"), and apparatus, fixtures, chattels, and articles of personal property now or hereafter attached to or used in connection with said Premises, including but not limited to furnaces, boilers, oil boilers, radiators and piping, coal stokers, plumbing and bathroom fixtures, refrigeration, air-conditioning and sprinkler systems, wash-tubs, sinks, gas and electric fixtures, stoves, ranges, awnings, screens, window shades, elevators, motors, dynamos, refrigerators, kitchen cabinets, incinerators, plants and shrubbery and all other equipment and machinery, appliances, fittings and fixtures of every kind in or used in the operation of the buildings standing on said Premises, together with any and all replacements thereof and additions thereto (collectively, the "Equipment"),

TOGETHER with all awards heretofore and hereafter made to the Mortgagor and the Agency for a taking by eminent domain, the whole or any part of said Premises or any easement therein, including any awards for changes of grade of streets, which said awards are hereby assigned to the Mortgagee, who is hereby authorized to collect and receive the proceeds of such awards and to give proper receipts and acquittances therefor, and to apply the same toward the payment of the mortgage debt, notwithstanding the fact that the amount owing thereof may not then be due and payable (subject to the provisions below); and Mortgagor and Agency hereby agree, upon request, to make, execute and deliver any and all assignments and other instruments sufficient for the purpose or assigning said awards to the Mortgagee, free, clear, and discharged of any encumbrances of any kind or nature whatsoever, subject to the Agency's Unassigned Rights,

TOGETHER with all rights, titles, interests and estates, together with the appurtenances thereto, all other incidents of ownership therein and all further additional rights, titles, interests and estates which Mortgagor may hereafter acquire therein.

The Mortgagor covenants with the Mortgagee that:

PAY INDEBTEDNESS. The Mortgagor will pay the indebtedness secured hereby with interest thereon as herein provided and according to the Note, and if default shall be made in the payment of part thereof, the Mortgagee shall have power to foreclose this Mortgage and sell the Premises according to law. In addition to and not in limitation of the foregoing, Mortgagee may, either with or without entry or taking possession of the Premises as provided in this Mortgage or otherwise, personally or by its agents or attorneys, and without prejudice to the right to bring an action for foreclosure of this Mortgage, sell the mortgaged property or any part thereof pursuant to any procedures provided by applicable laws, including, without limitation, the procedures set forth in Article 14 of the New York Real Property Actions and Proceedings Law (and any amendments or substitute statutes in regard thereto), and all estate, right, title, interest, claim and demand therein, and right of redemption thereof, at one or more sales as an entity or in parcels, and at such time and place upon such terms and after such notice thereof as may be required or permitted by applicable law.

INSURANCE. The Mortgagor will keep the buildings on the Premises and the fixtures and articles of personal property covered by the Mortgage insured against loss by fire and other hazards, casualties and contingencies, including flood insurance if required by law, regulation or Mortgagee, for the benefit of the Mortgagee in an amount at least equal to 90% of their insurable value determined by the Mortgagee based upon current appraisal. The fire insurance policy as required hereby shall contain the usual extended coverage endorsement and shall provide for twenty (20) days written notice to Mortgagee prior to cancellation. Mortgagor will also maintain business interruption insurance (extra expense/loss of income) in an amount sufficient to cover any loss of income from the Premises for a period of not less than 12 months. In addition thereto the Mortgagor within thirty (30) days after notice and demand will keep the Premises insured against war risk and any other hazard that may reasonably be required by law, regulation or Mortgagee. The Mortgagor will assign and deliver said policies to the Mortgagee and the Mortgagor will reimburse the Mortgagee for any premiums paid for the insurance made by the Mortgagee on the Mortgagor's default in so insuring the buildings or in so assigning and delivering the policies. Mortgagor shall promptly notify Mortgagee of any loss, damage or other casualty with respect to the Improvements, the Equipment or any part thereof. Mortgagor shall not permit any condition to exist on the Premises or in the Improvements which would wholly or partially invalidate the insurance thereon.

All the provisions of this paragraph or of any other provisions of the Mortgage pertaining to fire insurance or any other additional insurance which may be required hereunder shall be construed in accordance with Section 254 Subdivision 4 of the New York Real Property Law, but, said section to the contrary notwithstanding, Mortgagor consents that the Mortgagee may without qualification or limitation by virtue of said section, retain and apply the proceeds of any such insurance in satisfaction or reduction of the Mortgage. Mortgagee may at its election pay the same, either in whole or in part, to the Mortgagor or its personal representatives, successors, or assigns for the repair or replacement of the buildings or of the insured articles of personal property or for any other purpose or object satisfactory to the holder of the Mortgage, and if the Mortgagee shall receive and retain such insurance money, the lien of the Mortgage shall be affected only by a reduction of the amount of such lien by the amount of such insurance money received and retained by the Mortgagee.

In the event of loss, Mortgagor shall give immediate written notice to the insurance carrier and to Mortgagee. Mortgagor hereby authorizes and appoints Mortgagee as attorney-in-fact for Mortgagor to make proof of loss, to adjust and compromise any claims under policies of property damage insurance, to appear in and prosecute any action arising from such property damage insurance policies, to collect and receive the proceeds of property damage insurance, and to deduct from such proceeds Mortgagee's expenses incurred in the collection of such proceeds. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Paragraph shall require Mortgagee to incur any expense or take any action. Mortgagee may, at Mortgagee's option, (1) hold the balance of such proceeds to be used to reimburse Mortgagor for the cost of restoring and repairing the Premises to the equivalent of its original condition or to a condition approved by Mortgagee (the "**Restoration**"), or (2) apply the balance of such proceeds to the payment of the indebtedness, whether or not then due. To the extent Mortgagee determines to apply insurance proceeds to Restoration, Mortgagee shall do so in

accordance with Mortgagee's then-current policies relating to the restoration of casualty damage on similar properties.

Mortgagee shall not exercise its option to apply insurance proceeds to the payment of the indebtedness if all of the following conditions are met: (1) no Event of Default (or any event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default) has occurred and is continuing; (2) Mortgagee determines, in its discretion, that there will be sufficient funds to complete the Restoration; (3) Mortgagee determines, in its discretion, that the net operating income generated by the Premises after completion of the Restoration will be sufficient to support a debt service coverage ratio not less than the greater of (A) the debt service coverage ratio as of the date of this Mortgage (based on the final underwriting of the Premises) or (B) the debt service coverage ratio immediately prior to the loss (in each case, Mortgagee's determination shall include all operating costs and other expenses, deposits to reserves and loan repayment obligations relating to the Premises); (4) Mortgagee determines, in its discretion, that the Restoration will be completed before the earlier of (A) one year before the maturity date of the Note or (B) one year after the date of the loss or casualty; and (5) upon Mortgagee's request, Mortgagor provides Mortgagee evidence of the availability during and after the Restoration of the insurance required to be maintained by Mortgagor pursuant to this Paragraph.

ALTERATIONS, DEMOLITION OR REMOVAL. No building, fixtures or personal property covered by the Mortgage shall be removed, demolished, or substantially altered without the prior written consent of the Mortgagee.

WASTE, MAINTENANCE AND REPAIRS. The Mortgagor will not commit any waste on the Premises or make any change in the use of the Premises which will in any way increase any ordinary fire or other hazard arising out of construction or operation. The Mortgagor will keep and maintain or cause to be kept and maintained all buildings and other improvements now or at any time hereafter erected upon or constituting any portion of the Premises, and the sidewalks and curbs abutting the same, in good order and condition and in a rentable and tenantable state or repair, and will make or cause to be made, as and when the same shall become necessary, all structural and non-structural exterior and interior, ordinary and extraordinary, foreseen and unforeseen repairs, renewals, and replacements necessary to that end. In the event that the Premises shall be damaged or destroyed in whole or in part, by fire or any other casualty, provided insurance proceeds are made available for such purpose as provided above, the Mortgagor shall promptly restore, replace, rebuild or alter the same as nearly as possible to the condition they were in immediately prior to such fire or other casualty. Although damage to or destruction of the Premises, or any portion thereof, shall not of itself constitute a default hereunder, the failure of the Mortgagor to restore, replace, rebuild, or alter the same, as hereinabove provided, shall constitute a default hereunder. The Mortgagor covenants that it will give to the Mortgagee prompt written notice of any damage or injury to the Premises. The Mortgagor shall have the right, at any time and from time to time, to remove and dispose of building service equipment which may have become obsolete or unfit for use or which is no longer useful in the operation of the building now or hereafter constituting a portion of the

Premises. The Mortgagor agrees promptly to replace with other building service equipment, free of superior title, liens or claims, not necessarily of the same character but of at least equal usefulness and quality, any such building service equipment so removed or disposed of, except that, if by reason of technological or other developments in the operation and maintenance of buildings of the general character of the building constituting a portion of the Premises, no replacement of the building service equipment so removed or disposed of is necessary or desirable in the proper operation or maintenance of said building, the Mortgagor shall not be required to replace the same.

CONDEMNATION AWARDS. Mortgagor shall promptly notify Mortgagee of the commencement of any condemnation proceedings affecting the Premises, the Improvements, the Equipment or any other part thereof or for use and occupancy or for change of grade of streets and hereby irrevocably authorizes Mortgagee to appear in such proceedings and to participate with Mortgagor in the determination of any condemnation awards, to collect and receive any condemnation awards from the authorities making the same, to give proper receipts and acquittances therefor and to apply the net proceeds thereof to payment on account of the unpaid principal amount of the Note, whether then matured or not, together with interest thereon at the rate set forth in the Note, to the date of receipt of such payment by Mortgagee, notwithstanding any lesser rate of interest required to be paid by the authorities making the same. After application in accordance with the terms of this Mortgage, the remaining portion of the condemnation award (if any) shall be paid over to the Mortgagor or as a court of competent jurisdiction may otherwise direct. Mortgagor shall submit to Mortgagee for prior approval the proposed amount of any condemnation award to be made by reason of any such taking or condemnation. Mortgagor hereby appoints Mortgagee its agent and attorney-in-fact (which appointment shall be deemed to be an agency coupled with an interest), with full power of substitution, to appear in any such proceeding and to participate in the determination of any condemnation awards on their behalf in the event that, at the time of any such taking or condemnation, Mortgagor has defaulted on one of the covenants set forth in this Mortgage. Mortgagor shall execute and deliver to Mortgagee on demand such assignments and other instruments as Mortgagee may require for such purposes and shall reimburse Mortgagee for its costs (including reasonable legal fees) in the collection of any condemnation awards.

TAXES, ASSESSMENTS, ETC. Mortgagor will pay all taxes, assessments, insurance premiums, sewer rents, or water rates, and in default thereof, the Mortgagee may pay the same. Any sums so advanced by the Mortgagee shall bear interest at the maximum legal rate of interest at the time of such advance or at the highest rate of interest set forth herein or in the Note, whichever is greater, and any such sum and the interest thereon shall be a lien on said Premises, prior to any right, or title to, interest in or claim upon said Premises, or accruing subsequent to the lien of the Mortgage and shall be deemed secured hereby. Upon written request from Mortgagee, Mortgagor shall deliver to Mortgagee receipted tax bills showing payment of all taxes on the Premises within the applicable grace period.

ESTOPPEL STATEMENT. Mortgagor within five (5) days upon request in person or within ten (10) days upon request by mail will furnish a written statement duly

acknowledged of the amount due on the Mortgage and whether any offsets or defenses exist against the Note and Mortgage.

MORTGAGEE MAY CURE MORTGAGOR'S DEFAULTS. Mortgagor covenants and agrees with the Mortgagee that the holder of the Mortgage may cure any default of Mortgagor on the Mortgage or any prior or subsequent mortgage, including payment of any installments of principal and interest or part thereof, and that all costs and expenses, including reasonable attorneys' fees together with interest thereon at the highest rate of interest set forth in the Note secured by the Mortgage, paid by the Mortgagee in so curing said default, shall be repaid by the Mortgagor to the Mortgagee on demand and the same shall be deemed to be secured by the Mortgage and to be collectible in like manner as the Principal Sum.

LIEN LAW COVENANT. The Mortgagor will, in compliance with Section 13 of the New York Lien Law, receive the advances secured hereby 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 improvements before using any part of the total of the same for any other purpose.

ESCROW FOR TAXES/INSURANCE. The Mortgagee may request at any time following a Default hereunder by Mortgagor that, in addition to the monthly payments of principal and interest, the Mortgagor will pay monthly to the Mortgagee on or before the first day of each and every calendar month, until the Note is fully paid, a sum equal to one-twelfth of the known or estimated yearly taxes, payments in lieu of taxes, assessments, liens and charges levied or to be levied against the Premises and/or premiums for insurance held or required by Mortgagee. The Mortgagee shall hold such payments in trust without obligation to pay interest thereon, except such interest as may be made mandatory by law or regulation, to pay such taxes, assessments, liens, charges and insurance premiums within a reasonable time after they become due. If the total of payments made by the Mortgagor for taxes, assessments, liens, charges and insurance premiums shall exceed the amount of payments actually made by the Mortgagee, such excess shall be credited by the Mortgagee on subsequent payments to be made by the Mortgagor. If the total of payments made by the Mortgagor for taxes, assessments, liens, charges and insurance premiums shall not be sufficient to pay therefor, then the Mortgagor shall pay to the Mortgagee any amount necessary to make up the deficiency on or before the date when such amounts shall be due.

LATE CHARGES. If any payment required to be made under the Mortgage or the Note or the obligations secured by the Mortgage shall be overdue in excess of ten (10) days, a late charge of six percent (6%) of the amount so overdue will be paid by the Mortgagor for the purpose of defraying the expenses incident to handling such delinquent payments.

LEASES. Pursuant to the provisions of Section 291-f of the New York Real Property Law, the Mortgagor shall not (a) amend, cancel, abridge, terminate, or otherwise modify any lease of said Premises or of any part thereof, or (b) accept prepayment of rent or installments of rent for more than one month in advance, without the written consent of the Mortgagee, (c) further sell, assign transfer, mortgage, pledge or otherwise encumber any of the

rents due or to become due under any lease or any part thereof; or (d) subordinate or permit the subordination of any lease to any lien subordinate to the lien of this Mortgage, and in the event of any default under the terms of this paragraph the whole of said Principal Sum shall become due immediately upon the happening thereof at the option of the Mortgagee.

In addition thereto, (a) the Mortgagor shall not make any new lease or lease renewal or extension (other than those the Mortgagor as landlord may be required to grant by the terms of an existing lease) without the prior written consent of the Mortgagee and (b) the Mortgagor shall furnish to the Mortgagee, within thirty (30) days after a request by the Mortgagee to do so, a written statement containing the names of all lessees of the Premises, the terms of their respective leases, the space occupied and the rentals payable thereunder.

Mortgagor covenants (a) to duly and punctually perform and observe all of its covenants and obligations as landlord under the leases, (b) to enforce or secure the performance and observance of all of the covenants and obligations of each tenant under the leases, (c) to promptly deliver to Mortgagee a copy of (i) all notices of default which Mortgagor sends to any tenant under any lease, (ii) all notices of the commencement of summary proceedings which Mortgagor brings against any tenant under any lease and (iii) all notices of default which any tenant under any lease sends to Mortgagor, and (d) to promptly obtain and deliver to Mortgagee, upon its request, a certificate of estoppel of any tenant under any lease.

In the event of any default by Mortgagor in the performance or observance of any of its covenants or obligations under any lease, Mortgagee shall have the right, but not the obligation, to enter the Premises at any time and from time to time for the purpose of curing such default, in which event the cost thereof, together with interest thereon at the rate set forth in the Note, but in no event in excess of the maximum rate permitted by law, shall be paid by Mortgagor to Mortgagee on demand, shall be secured by this Mortgage and shall be added to the judgment in any foreclosure action.

Nothing contained herein shall operate or be construed to obligate Mortgagee to perform or observe any of the covenants or obligations contained in any lease, or otherwise to impose any obligation upon Mortgagee with respect to any lease, including, but not limited to, any obligation arising out of any covenant of quiet enjoyment therein contained in the event that the estate of any tenant, subtenant or occupant under any lease is terminated in any foreclosure action, except that, by its acceptance of this Mortgage, Mortgagee agrees not to name or join as a party defendant in such action any tenant under any lease to whom Mortgagee has granted non-disturbance rights, and such tenant's possession or right to possession shall not be otherwise disturbed or affected by reason of such action provided that such tenant is not then in default under any of the terms or provisions of its lease beyond any applicable grace period contained therein.

Mortgagor hereby agrees to indemnify and hold Mortgagee harmless from and against any and all liability, loss, damage and expense, including reasonable attorneys' fees, which Mortgagee may or shall incur under any lease or by reason of any action by taken by Mortgagee hereunder, and from and against any and all claims and demands whatsoever which

may be asserted against Mortgagee by reason of any alleged undertaking on its part to perform or observe any of the covenants or obligations contained in any lease. Should Mortgagee incur any such liability, loss, damage or expense, the amount thereof, together with interest thereon at the rate set forth in the Note, but in no event in excess of the maximum rate permitted by law, shall be paid by Mortgagor to Mortgagee on demand, shall be secured by this Mortgage and shall be added to the judgment in any foreclosure action or, at its option, Mortgagee may reimburse itself therefor out of any other funds collected by it hereunder.

FINANCIAL STATEMENTS. The Mortgagor will furnish the Mortgagee with copies of its Federal Tax returns as they are timely filed and with annual personal and/or corporate Certified Public Accountant reviewed financial statements on forms provided by Mortgagee at least once during each year, and at any time upon Mortgagee's request. At least once every calendar year hereafter, Mortgagor will also furnish a reviewed financial statement covering the operation of the Premises, which financial statements shall include a certified profit and loss statement, balance sheet and rent roll prepared by a duly licensed independent Certified Public Accountant, approved by Mortgagee, in conformity with generally accepted accounting principles with appropriate footnote disclosures.

The Mortgagee shall have the right to examine the financial records covering the operation of the Premises as often as the Mortgagee may require.

PREPAYMENT PREMIUM. Mortgagor shall have the option of paying the Principal Sum to the Mortgagee in advance of the Maturity Date, as defined in the Note, in whole or in part, at any time and from time to time, upon written notice received by Mortgagee at least thirty (30) days prior to making such prepayment; provided, however, if the principal sum is prepaid prior to March 1, 2013, then together with such prepayment, Mortgagor shall pay to Mortgagee the amount of interest that would have accrued on the prepaid principal sum from the date of prepayment through and including March 1, 2013. Thereafter, Mortgagor shall have the right to prepay all or any portion of the unpaid principal sum at any time without penalty or other charge except accrued interest on the amount prepaid to the date of prepayment. All prepayments made under the Note shall be applied first to the payment of accrued interest and then to the reduction of principal.

ACCELERATION OF PRINCIPAL ON TRANSFER, ETC. The Principal Sum with interest thereon shall become immediately due and payable, upon the voluntary or involuntary conveyance or transfer by operation of law or otherwise of all or any part of the Premises, or any interest or estate therein, except as set forth below. Acceptance of payments by the Mortgagee subsequent to any such conveyance, transfer, or encumbering shall not be deemed a waiver of any of the Mortgagee's rights.

A sale or transfer by operation of law or otherwise of any member's interest in Mortgagor or a change in the identity or composition of the members of Mortgagor shall be deemed a conveyance or transfer within the meaning of this provision.

ACCELERATION OF PRINCIPAL ON DEFAULT, ETC. A) The whole of the Principal Sum and interest shall become due at the option of the Mortgagee, after an Event of Default (hereinafter "Event of Default" or "default"), defined as follows: (a) failure by Mortgagor to pay any installment of principal or of interest due in connection with the Note; or, (b) failure of Mortgagor to pay any tax, water rate, assessment, insurance premiums, or sewer rent or default after notice and demand either in assigning and delivering the policies insuring the buildings against any casualty or in reimbursing the Mortgagee for premiums paid on such insurance, as herein provided; or (c) default by Mortgagor, upon request, in furnishing a statement of the amount due and whether any offsets or defenses exist against the mortgage debt, as herein provided; or (d) failure by Mortgagor to exhibit to the Mortgagee, within ten (10) days after demand, receipts showing payment of all taxes, water rates, sewer rents and assessments; or (e) the actual or threatened alteration, demolition or removal of any building on the Premises without the written consent of the Mortgagee; or (f) the assignment of the rents of the Premises or any part thereof without the written consent of the Mortgagee; or (g) Mortgagor's failure to comply with, perform or observe any of its covenants or obligations under any lease or lease now or hereafter affecting the Premises, the Improvements or any part thereof; or (h) the buildings on said Premises are not maintained in reasonably good repair; or (i) failure by Mortgagor to comply with any requirement or order or notice of violation of law or ordinance issued by any governmental department claiming jurisdiction over the Premises within two (2) months from the issuance thereof; or (j) refusal of two or more fire insurance companies lawfully doing business in the State of New York to issue policies insuring the buildings on the premises; or (k) the removal, demolition or destruction in whole or in part of any of the fixtures, chattels or articles of personal property covered hereby, unless the same are promptly replaced by similar fixtures, chattels and articles of personal property at least in quality and condition to those replaced, free from security interests or other encumbrances thereon and free from any reservation of title thereof; or (l) thirty (30) days notice to the Mortgagor, in the event of the passage of any 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 thereby for state or local purposes; or (m) the Mortgagor fails to keep, observe and perform any of the other covenants, conditions or agreements contained in this Mortgage or any document executed in connection herewith, or default by Mortgagor under any other agreement between Mortgagor and Mortgagee; or (n) use of said Premises for any unlawful purpose or public or private nuisance; or (o) the Mortgagor commits or permits waste; or (p) any default under any mortgage or other lien on the Premises or any default under any other note, loan agreement or other instrument between Mortgagor and Mortgagee; or (q) the Mortgagor is no longer personally liable for repayment of the Principal Sum secured hereby; (r) death or judicial incompetency of any individual guarantor of the Principal Sum (and in such event, Mortgagor fails to provide Mortgagee with a substitute guarantor acceptable to Mortgagee in its sole and absolute discretion within one hundred twenty (120) days of such guarantor's death); or (s) reorganization, consolidation or dissolution of Mortgagor; or (t) the entry of any judgment or order of any court or other governmental authority against Mortgagor, which is not discharged, bonded or vacated within sixty (60) days; or (u) an adverse change in the Premises or Mortgagor's business; or (v) engagement in illegal activity by Mortgagor; or (w) Mortgagor files a petition in bankruptcy or institutes any action under federal or state law for the relief of debtors or seeks or consents to the appointment of an administrator,

receiver, custodian or similar official for the wind up of its business (or has a petition or action filed against it and such petition action or appointment is not dismissed or stayed within forty-five (45) days); or (x) any representation or warranty of Mortgagor contained in the Mortgage or any other document executed in connection herewith or in any affidavit, certificate, report, financial statement or other instrument furnished by Mortgagor in connection with obtaining the loan shall prove to have been false or misleading in any material respect when made; or (y) Mortgagor sells, assigns, conveys or otherwise transfers title to the leasehold estate in and to the Premises; or (z) Mortgagor grants or permits any other mortgage (including but not limited to "wrap-around mortgages"), security interest or other secondary financing secured by the Premises or any part thereof without prior written consent of the Mortgagee; or (aa) the occurrence of any event described in items a-z above with respect to any guarantor of the Principal Sum.

(B) Mortgagee, at its sole election, may declare all or any part of any Principal Sum not payable on demand to be immediately due and payable without demand or notice of any kind upon the happening of any Event of Default. All or any part of any Principal Sum not payable on demand shall be automatically and immediately due and payable, without demand or notice of any kind, upon the commencement of Mortgagor's or Debtor's bankruptcy if voluntary and upon the lapse of forty-five (45) days without dismissal if involuntary, unless an order for relief is entered sooner. The provisions of this paragraph are not intended in any way to affect any rights of Mortgagee with respect to any Principal Sum which may now or hereafter be payable on demand.

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

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

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

NOTICES. Notice and demand to or request upon the Mortgagor may be oral or in writing and, if in writing, may be served in person or by mail to the address set forth above.

APPOINTMENT OF RECEIVER. The Mortgagee, in any action to foreclose the Mortgage, shall be entitled, without notice or demand and without regard to the adequacy of any security for the indebtedness hereby or the solvency or insolvency of any person liable for the payment thereof, to the appointment of a receiver of the rents, issues and profits of the Premises.

SALE IN ONE PARCEL. In case of a foreclosure sale, said Premises, or so much thereof as may be affected by the Mortgage, may be sold in one parcel, any provision of law to the contrary notwithstanding. In addition to and not in limitation of the foregoing, Mortgagee may, either with or without entry or taking possession of the mortgaged property as provided in this Mortgage or otherwise, personally or by its agents or attorneys, and without prejudice to the right to bring an action for foreclosure of this Mortgage, sell the mortgaged property or any part thereof pursuant to any procedures provided by applicable laws, including, without limitation, the procedures set forth in Article 14 of the New York Real Property Actions and Proceedings Law (and any amendments or substitute statutes in regard thereto), allowing non-judicial foreclosure of the Mortgage by sale, and all estate, right, title, interest, claim and demand therein, and right of redemption thereof, at one or more sales as an entity or in parcels, and at such time and place upon such terms and after such notice thereof as may be required or permitted by applicable law.

ASSIGNMENT OF RENTS. Mortgagor hereby absolutely and unconditionally assigns, transfers and conveys to the Mortgagee all of its right, title and interest in and to all leases, leases, tenancies, subtenancies and occupancies now or hereafter affecting the Premises or any part thereof and all amendments, modifications, extensions and renewals thereof, together with all of the rents, issues and profits which may be or become due as further security for the payment of the Note, it being the intention of Mortgagor and Mortgagee that this assignment be treated and construed as an absolute assignment and not an assignment for additional security only. The Mortgagor further grants to the Mortgagee the right to enter upon and to take possession of the Premises for the purpose of collecting the same and to let the Premises or any part thereof, and to apply the rents, issues and profits, after payment of all necessary charges and expenses, on account of the Note. This assignment and grant shall continue in effect until the Note is paid. The Mortgagee hereby waives the right to enter upon and to take possession of the Premises for the purpose of collecting the rents, issues, and profits, and the Mortgagor shall be entitled to collect and receive the rents, issues and profits as trustee for the benefit of Mortgagee and Mortgagor until default under any of the covenants, conditions, or agreements contained in the Mortgage; Mortgagor agrees to use such rents, issues and profits in payment of principal and interest and in payment of taxes, assessments, sewer rents, water rates, and carrying charges against the Premises, but such right of the Mortgagor may be revoked by the Mortgagee upon

any default, on five (5) days written notice. The Mortgagor will not, without the written consent of the Mortgagee, receive or collect rent from any subtenant of the Premises or any part thereof for a period of more than one month in advance, and in the event of any default under the Mortgage will pay monthly in advance to the Mortgagee, or to any receiver appointed to collect the rents, issues and profits, the fair and reasonable rental value for the use and occupation of the Premises or of such part thereof as may be in the possession of the Mortgagor, and upon default in any such payment will vacate and surrender the possession of the Premises to the Mortgagee or to such receiver, and in default thereof may be evicted by summary proceedings. Mortgagor shall and does hereby agree to indemnify and hold Mortgagee and its representatives harmless of and from any and all liability, loss of damage which Mortgagor or its representatives may or might incur under or by reason of (a) any subtenant of the Premises, (b) this Mortgage, (c) any action taken by Mortgagee or its representatives hereunder, unless constituting willful misconduct or gross negligence, or (d) claims and demands which may be asserted against Mortgagee or its representatives by reason of any alleged obligations or undertakings on its or their part to perform or discharge any of the terms, covenants or agreements contained in any lease affecting the Premises. This Mortgage shall not operate to place upon Mortgagee any responsibility for the management, operation or maintenance of the Premises, and the execution of this Mortgage by Mortgagor shall constitute conclusive evidence that all responsibility for the management, operation and maintenance of the Premises is, shall be and shall remain that of Mortgagor, in the absence of the taking of actual possession of the Premises by Mortgagee. The provisions of the foregoing indemnification obligation shall survive the assignment or repayment of the Note, the assignment, satisfaction, foreclosure or other termination of this Mortgage and the sale or other transfer or conveyance of the Premises.

SECURITY AGREEMENT. The Mortgage constitutes a security agreement under the Uniform Commercial Code and creates a security interest in all fixtures and equipment and other personal property (and the proceeds thereof) now or hereafter affixed to or constituting a portion of the Premises or used in connection with the operation of the Premises. Mortgagor shall execute, deliver, file and refile any financing statement, continuation statements, or other security agreements Mortgagee may require from time to time to confirm the lien of the Mortgage with respect to such property. Without limiting the foregoing, Mortgagor hereby irrevocably appoints Mortgagee and its successors in interest as attorney-in-fact of Mortgagor to execute, deliver and file such instruments, for and on behalf of Mortgagor.

ANTI-MARSHALLING. The Mortgagee may resort for the payment of any indebtedness, liability, or obligation secured hereby to its several securities therefor, in such order and manner as it may see fit, and the Mortgagee may maintain an action to foreclose the Mortgage notwithstanding the pendency of any action to recover any part of the indebtedness secured hereby, or the recovery of any judgment in such action. The Mortgagee shall not be required during the pendency of any action to foreclose the Mortgage, to obtain leave of any court in order to commence or maintain any other action to recover any part of the indebtedness secured hereby.

The Mortgagee shall also have the right in the Event of Default under the Mortgage or the obligation secured hereby to proceed against any or all interests of the

Mortgagor and the Mortgagee agrees that the Mortgagee shall have the right to elect in writing not to cut off any interest that any Mortgagor might have and in the event that Mortgagee shall so elect, Mortgagor agrees that all of its duties and obligations as to such interest shall continue.

COMPLIANCE WITH LAWS, ETC. The Mortgagor will comply with, or cause compliance with, all present and future laws, ordinances, rules, regulations, zoning and other requirements of all governmental authorities whatsoever having jurisdiction of or with respect to the Premises or any portion thereof or the use or occupation thereof; provided, however, that the Mortgagor may postpone such compliance if and so long as the validity or legality of any such governmental requirement shall be contested by the Mortgagor, with diligence and in good faith, by appropriate legal proceedings.

COMPLIANCE WITH ZONING, ETC. Mortgagor shall comply, and shall cause all tenants, subtenants and occupants of the Premises to comply, with all laws and ordinances relating to the use or occupancy of the Premises and the Improvements and with all requirements, orders and notices of violation thereof issued by any Governmental Authority. If at any time the then existing use or occupancy of the Premises or the Improvements shall, pursuant to any zoning or other law, ordinance or regulation, be permitted only so long as such use or occupancy shall continue, Mortgagor shall not cause or permit such use or occupancy to be discontinued without the prior written consent of Mortgagee.

LEGAL EXPENSES. If any action or proceeding be commenced (except an action to foreclose the Mortgage or to collect the debt secured thereby), to which action or proceeding the Mortgagee is made a party, or in which it becomes necessary to defend or uphold the lien of the Mortgage, all sums paid by the Mortgagee for the expense of any litigation to prosecute or defend the rights and lien created by the Mortgage (including counsel fees), shall be paid by the Mortgagor, together with interest thereon at the legal rate of interest at the time of said payment or at the rate of interest set forth in the Note secured by the Mortgage, and any such sum and interest thereon shall be a lien on said Premises, prior to any right, or title to, interest in or claim upon said Premises attaching or accruing subsequent to the lien of the Mortgage, and shall be deemed to be secured by the Mortgage.

If the Mortgage is referred to attorneys' for collection or foreclosure, the Mortgagor shall pay all sums, including reasonable attorneys' fees, incurred by the Mortgagee, together with all statutory costs, disbursements, and allowances, with or without the institution of an action or proceeding. All such sums with interest thereon at the rate set forth herein shall be deemed to be secured by the Mortgage and collectible out of the Premises.

INTEREST IN THE EVENT OF DEFAULT. If default be made in the payment of the said indebtedness when due, pursuant to the terms hereof, the Mortgagee shall be entitled to receive interest on the entire unpaid principal sum at sixteen percent (16%), to be computed from the due date and until the actual receipt and collection of the entire indebtedness. This charge shall be added to and shall be deemed secured by the Mortgage. This clause, however, shall not be construed as an agreement or privilege to extend the Mortgage, or as a waiver of any other right or remedy accruing to the Mortgagee by reason of any such default.

NO SECONDARY FINANCING. The Mortgagor will not, without the Mortgagee's prior written consent, mortgage (including the so-called "wrap-around mortgage"), pledge, assign, grant a security interest in, cause any lien or encumbrance to attach to or any levy to be made on the Premises except for (a) taxes and assessments not yet delinquent and (b) any mortgage, pledge, security interest, assignment or other encumbrance to the Mortgagee.

BANKRUPTCY. Upon the making of an assignment for the benefit of creditors by, or upon the filing of a petition in bankruptcy by or against the Mortgagor, or any person or corporation who is the guarantor hereof or whose indebtedness is secured hereby, or upon the application for the appointment of a receiver of the property of the Mortgagor or any such person or corporation, or of the property of any person or corporation which may become and be owner of the Premises, or upon any act of insolvency or bankruptcy of the Mortgagor or any such person or corporation or of any such subsequent owner, or upon the legal incapacity of the Mortgagor or any such person or corporation or owner, or any of them, the whole of said indebtedness of every kind or nature held by the Mortgagee and now or hereafter secured hereby shall immediately become due and payable with interest thereon, and Mortgagor and any guarantor(s) hereby waive presentment, demand of payment, protest, notice of non-payment, and/or protest of any instrument on which the Mortgagor or such guarantors are or may become liable now or hereafter secured hereby, and the Mortgagor expressly agrees that the Mortgagee may release or extend the time of any party liable on any such obligation without notice and without affecting his obligation thereon or under this instrument.

LIENS. The Premises shall be kept free and clear from any liens and/or encumbrances of any type and description. Upon the recording of any lien or encumbrance, and the same not having been cleared or bonded of record within sixty (60) days after filing thereof, the entire debt secured hereby shall immediately become due and payable.

RIGHT TO INSPECT. The Mortgagee and any persons authorized by Mortgagee shall have the right to enter and inspect the Premises at all reasonable times during usual business hours.

WAIVER. No waiver by the Mortgagee of the breach of any of the covenants contained in the Note, the Mortgage, or other loan document, or failure of the Mortgagee to exercise any option given to it, shall be deemed to be a waiver of any other breach of the same or any other covenant, or of its rights thereafter to exercise any such option.

MODIFICATION. No change, amendment, modification, cancellation or discharge hereof, or any part hereof, shall be valid unless in writing and signed by the parties hereto or their respective successors and assigns.

COVENANTS SHALL RUN WITH THE LAND, ETC. The covenants contained in the Mortgage shall run with the land and bind the Mortgagor, the heirs, personal representatives, successors and assigns of the Mortgagor and all subsequent holders of the leasehold estate, encumbrancers, tenants and subtenants of the Premises, and shall inure to the

benefit of the Mortgagee, the personal representatives, successors and assigns of the Mortgagee and all subsequent holders of the Mortgage.

LIMITED LIABILITY COMPANY MORTGAGOR. Mortgagor covenants that it is duly formed limited liability company and validly exists under the laws of the state of its formation, and is authorized to do business in the State of New York, and that execution of the Mortgage and related instruments is authorized by the company's entity documents and/or all its members.

ENVIRONMENTAL REPRESENTATIONS, WARRANTIES AND COVENANTS.

1. Mortgagor makes the following representations and warranties which shall survive the closing of this loan. To the best of Mortgagor's knowledge:

A. Mortgagor is in compliance in all respects with all applicable federal, state and local laws, including, without limitation, those relating to toxic and hazardous substances and other environmental matters.

B. Mortgagor shall cause all operators, tenants, subtenants, licensees and occupants of the Premises to comply in all respects with all applicable federal, state and local laws, including, without limitations, those relating to toxic and hazardous substances and other environmental matters.

C. No portion of the Premises 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.

2. Mortgagor agrees that Mortgagee or its agents or representatives may, at any reasonable time and at Mortgagor's expense inspect Mortgagor's books and records and inspect and conduct any tests on the Premises including taking soil samples in order to determine whether Mortgagor is in continuing compliance with all environmental laws and regulations.

3. If any environmental contamination is found on the 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 remove or take such remedial action promptly and to Mortgagee's satisfaction.

4. 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, investigation 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:

A. . . . The past or present disposal, release or threatened release of any hazardous or toxic substances on the Premises;

B. Any personal injury (including wrongful death or property damage, real or personal) arising out of or related to such hazardous or toxic substances;

C. Any lawsuit brought or threatened, settlement reached or government order given relating to such hazardous or toxic substances; and/or

D. 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.

5. To the best of Mortgagor's knowledge, there are no on-site or off-site locations where hazardous or toxic substances from the operation of the facility on the Premises have been stored, treated, recycled or disposed of.

6. Mortgagor agrees that it will conduct no excavations at the Premises unless it gives Mortgagee ten days' notice of its intention to do so. Mortgagor further agrees that it will not commence such excavation until Mortgagee has had the opportunity to sample and test at the excavation location if Mortgagee so desires. Should the testing results disclose the presence of hazardous or toxic substances which require removal and/or remedy under any environmental laws or regulations, the suspension of excavation activity at such location shall continue until the hazardous or toxic substances are removed and/or remedied to Mortgagee's satisfaction. Mortgagor shall pay for any and all costs for any such testing and removal and/or remedy conducted pursuant to this paragraph.

7. Unless waived in writing by Mortgagee, the breach of any of the covenants and warranties contained in this section shall be an Event of Default under the Mortgage.

8. For purposes of this section, "hazardous and toxic substances" includes, without limit, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, the Hazardous Materials Transportation Act, as amended, the New York State Environmental Conservation Law, the Resource Conservation and Recovery Act, as amended, and in the regulations adopted and publications promulgated pursuant thereto. 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.

9. When the terms and provisions contained in the foregoing Paragraphs 1-8 in any way conflict with the terms and provisions contained in a certain Environmental Compliance and Indemnification Agreement of even date herewith ("Indemnification Agreement"), the terms and provisions contained in the Indemnification Agreement shall prevail, and, in the event of any overlapping

terms, covenants and conditions, insofar as possible, the terms, covenants and conditions contained herein and in the Indemnification Agreement shall both be applicable.

TAX ON NOTE. That in the event that hereafter it is claimed by any governmental agency that any tax or other governmental charge or imposition is due, unpaid and payable by the Mortgagor or the Mortgagee upon the Note (other than a tax on the interest receivable by the Mortgagee thereunder), the Mortgagor will upon sixty (60) days prior written notice either (a) pay such tax and within a reasonable time thereafter deliver to the Mortgagee satisfactory proof of payment thereof or (b) deposit with the Mortgagee the amount of such claimed tax, together with interest and penalties thereon, pending an application for a review of the claim for such tax, and within a reasonable time, deliver to the Mortgagee either (i) evidence satisfactory to the Mortgagee that such claim of taxability has been withdrawn or defeated in which event any such deposit shall be returned to the Mortgagor or (ii) a direction from the Mortgagor to the Mortgagee to pay the same out of the deposit above mentioned, any excess due over the amount of said deposit to be paid by the Mortgagor directly to the taxing authority and any excess of such deposit over such payment by the Mortgagee to be returned to the Mortgagor. Upon the failure of the Mortgagor to comply with the provisions of this Article, the whole of said principal sum and interest secured by the Mortgage shall at the option of the Mortgagee become due and payable. If liability for such tax is asserted against the Mortgagee, the Mortgagee will give to the Mortgagor prompt notice of such claim, and the Mortgagor, upon complying with the provisions of this Article, shall have full right and authority to contest such claim of taxability.

CONSTRUCTION. The word "Mortgagor" shall be construed as if it read "Mortgagors" and the "Mortgagee" shall be construed as if it read "Mortgagees" whenever the sense of the Mortgage so requires. This Mortgage shall be governed by and construed in accordance with the laws of the State of New York.

CONFLICT WITH OTHER LOAN AGREEMENTS. Mortgagor represents and warrants to Mortgagee that the execution and delivery of this Mortgage and all related documents and the performance of any term, covenant, or condition herein provided in any agreement or instrument executed in connection therewith, are not in conflict with, or result in any breach of, or constitute a default under or violate:

A. Mortgagor's Articles of Organization, Operating Agreement, Member's Resolution or any other restrictions of the limited liability company; or

B. Any of the terms, conditions, or provisions of any agreement, lease or other instrument to which Mortgagor is a party or subject to; or,

C. Any law, regulation, order, writ, injunction or decree to which Mortgagor is subject or any rules or regulations of any administrative agency which have jurisdiction over Mortgagor or over any property of Mortgagor that would have a material adverse affect on Mortgagor's business or financial condition.

SEVERABILITY. In the event any one or more of the provisions of the Mortgage or the Note shall for any reason be invalid, illegal or unenforceable in whole or in part, then only such provision or provisions shall be deemed to be null and void and of no force or effect, but shall not affect any other provision of the Mortgage or the Note.

MARGINAL NOTES OR CAPTIONS. The marginal notes or captions herein are inserted only as a matter of convenience and for reference and are not and shall not be deemed to be any part of the Mortgage.

PATRIOT ACT. Mortgagor hereby represents and warrants to Mortgagee that neither Mortgagor nor any of its officers, directors, shareholders, partners, members or affiliates (including the indirect holders of equity interests in Mortgagor) is or will be an entity or person: (i) that is listed in the Annex to, or is otherwise subject to the provisions of Executive Order 13224 issued on September 24, 2001 (EO13224:); (ii) whose name appears on the United States Treasury Department's Office of Foreign Assets Control ("OFAC") most current list of "Specifically Designated National and Blocked Persons" (which list may be published from time to time in various mediums including, but not limited to, the OFAC website, <http://www.treas.gov/ofac/t11sdn.pef>); (iii) who commits, threatens to commit or supports "terrorism", as is defined in EO13223; or (iv) who is otherwise affiliated with any entity or person listed above (any and all parties or persons described in clauses (i)-(iv) above are herein referred to as "Prohibited Persons"). Mortgagor covenants and agrees that neither Mortgagor nor any of its officers, directors, shareholders, partners, members or affiliates (including the indirect holders of equity interests in Mortgagor) will: (i) conduct any business, nor engage in any transaction or dealing, with any Prohibited Person; including, but not limited to, the making or receiving of any contribution of funds, goods, or services, to or for the benefit of a Prohibited Person; or (ii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in EO13224. Mortgagor further covenants and agrees to deliver (from time to time) to Mortgagee any such certification or other evidence as may be reasonably requested by Mortgagee in its reasonable discretion, confirming that: (i) neither Mortgagor nor its officers, directors, shareholders, partners, members or affiliates (including the indirect holders of equity interests in Mortgagor) is a Prohibited Person; and (ii) neither Mortgagor nor its officers, directors, shareholders, partners, members or affiliates (including the indirect holders of equity interests in Mortgagor) has engaged in any business, transaction or dealings with a Prohibited Person, including, but not limited to, the making or receiving of any contribution of funds, goods, or services, to or for the benefit of a Prohibited Person.

CHOICE OF LAW. This Mortgage has been delivered to and accepted by the Mortgagee and will be deemed to be made in the State of New York. This Mortgage will be interpreted in accordance with the laws of the State of New York excluding its conflict of laws rules. Mortgagor hereby irrevocably consents to the exclusive jurisdiction of any state or federal court in the County of Onondaga and State of New York and consents that the Mortgagee may effect any service of process in the manner and at the Mortgagor's addresses set forth above for providing notice or demand; provided that nothing contained in this Mortgage will prevent Mortgagee from bringing any action, enforcing any award or judgment or exercising any rights

against Mortgagor, individually, against any security or against any property of Mortgagor within any other county, state or other foreign or domestic jurisdiction. Mortgagor acknowledges and agrees that the venue provided above is the most convenient forum for the Mortgagee and Mortgagor. Mortgagor waives any objection to venue and any objection based on a more convenient forum in any action instituted under this Mortgage.

MORTGAGOR'S OBLIGATIONS TO COMPLY WITH THE COMPANY LEASE, THE AGENCY LEASE AND THE PILOT AGREEMENT. Mortgagor shall (i) pay all other sums of money due and payable at any time and from time to time under (a) the Company Lease Agreement by and between the Mortgagor and the City of Syracuse Industrial Development Agency (the "Agency") dated as of September 1, 2012 (the "Company Lease"), (b) the Agency Lease Agreement by and between the Agency and the Mortgagor dated as of September 1, 2012 (the "Agency Lease") and (c) the Payment in Lieu of Taxes Agreement dated as of September 1, 2012 by and among the City of Syracuse, the Agency and the Mortgagor (the "PILOT Agreement") as and when such sums become due and payable, but in any event before the expiration of any grace period provided in the Company Lease, the Agency Lease and/or PILOT Agreement, as applicable, for the payment of any such sum, and (ii) at all times fully perform, observe and comply with all other terms, covenants and conditions of the Company Lease, Agency Lease and the PILOT Agreement to be performed, observed or complied with by Mortgagor as lessor under the Company Lease and lessee under the Agency Lease, and as a party to the PILOT Agreement. If the Company Lease, the Agency Lease and/or the PILOT Agreement do not provide for a grace period for the payment of a sum of money, Mortgagor shall make the payment on or before the date on which the payment becomes due and payable. Mortgagor shall deliver evidence of the payment to Mortgagee within ten (10) days after receipt of a written request from Mortgagee for evidence of the payment.

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 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.

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

HOLD HARMLESS PROVISIONS. The Mortgagor hereby acknowledges that the terms of the Agency Lease, as amended and restated from time to time, is in full force and effect,

including but not limited to the "Hold Harmless Provisions" contained in Section 8.2 thereof and incorporates same in this Mortgage and makes same applicable hereto as if fully set forth herein.

NO RECOURSE; SPECIAL OBLIGATION. The obligations and agreements of the Agency contained herein and in any other instrument or document executed in connection herewith, and any instrument or document supplemental hereto, shall be deemed the obligations and agreements of the Agency and not of any member, officer, agent 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 shall not constitute or give rise to an obligation of the State New York or of the County of Onondaga, and neither the State of New York nor the County of Onondaga 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 (as that term is defined in the Agency Lease), other than revenues derived from or constituting Unassigned Rights (as that term is defined in the Agency Lease). 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.

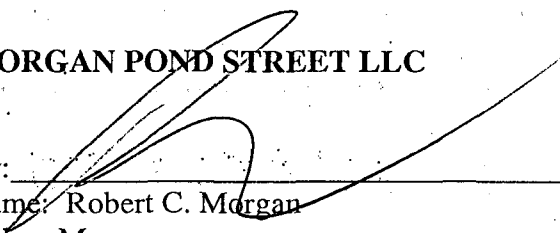
Any failure to provide notice, indemnity, or security to the Agency pursuant to this Section shall not alter the full force and effect of any Event of Default under the Agency Lease.

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

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

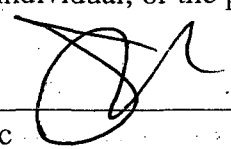
Signature on Following Page

MORGAN POND STREET LLC

By: 
Name: Robert C. Morgan
Title: Manager

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

On the 21st day of September in the year 2012 before me, the undersigned, a Notary Public in and for said State, personally appeared Robert C. Morgan, 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

STEPHEN E. HALL
Notary Public, State of New York
Qualified in Monroe County
My Commission Expires Nov. 30, 2/4/19

Signatures Continue on Following Page

CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY

By: 

Name:

William M. Ryan

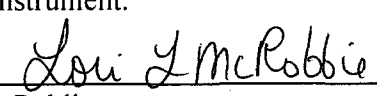
Its:

Chairman

STATE OF NEW YORK)

) ss.:
COUNTY OF Onondaga

On the 20th day of September, 2012 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/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 14

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, being part of Block 105, bounded and described as follows: Beginning at the southeast corner of said block, being the intersection of the westerly line of Pond Street with the northerly line of First North Street; thence N. 61° 42' 30" W. along the northerly line of First North Street 234.17 feet to a point in the southeasterly corner of the DeLong Tract, according to a map of said tract filed in the Onondaga County Clerk's Office on December 14, 1888, as Map No. 526; thence N. 28° 12' 30" E. along the easterly line of said DeLong Tract 605.0 feet to a point; thence S. 61° 42' 30" E. 234.40 feet to a point in the westerly line of Pond Street; thence S. 28° 13' 50" W. along said westerly street line 605.0 feet to the point and place of beginning.

Record & Return to:
Box 93
(WST)

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT is made the 21st day of September, 2012, by **MORGAN POND STREET LLC**, a New York limited liability company; with an address of 1170 Pittsford Victor Road, Pittsford, New York 14534 ("Assignor"), and **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation having an address at 233 East Washington Street, Syracuse, New York 13302 (herein called the "**Agency**"), to **PERTICONE HOLDINGS LLC**, a New York limited liability company with an address of 45 San Gabriel Drive, Rochester, New York 14610 ("Assignee").

WITNESSETH:

Assignor is the present owner in fee simple of and the Agency is the present owner of a leasehold interest in the premises described in Schedule "A" attached hereto together with any and all improvements and fixtures constructed or to be constructed thereon, which land and improvements are referred to herein as the "Premises"; and

Assignee is loaning to Assignor the sum of \$1,900,000.00 (the "Loan"), pursuant to a \$1,900,000.00 mortgage note dated as of the date hereof (the "Note").

Assignee, as a condition to making the Loan to Assignor, has required an assignment of all leases now or in the future encumbering the Premises (collectively, the "Lease") and the Rents (as defined below) as additional security for the Loan and for the performance by Assignor of each and all of Assignor's obligations, covenants, promises and agreements as set forth in this Assignment, and any other instrument securing the Loan (collectively "Loan Documents");

NOW, THEREFORE, in consideration of Assignee making the Loan and to further secure payment of the Note, Assignor does hereby absolutely and unconditionally grant, assign, transfer and set over unto Assignee all of the right, title and interest of Assignor in and to the Lease, together with all rents, issues and profits arising from the Lease and any and all extensions and renewals thereof and together with all rents, issues and profits for the use and occupation of the Premises and from all leases, oral or written to which the Premises may become subject in the future and during the term of this Assignment ("Rents"), it being the intention of Assignor and Assignee that this Assignment be treated and construed as an absolute assignment and not an assignment for additional security only. The Agency represents and warrants that execution and delivery of this Assignment has been duly authorized by the Agency and the Agency is duly organized as a public benefit corporation under the laws of the State of New York. Notwithstanding anything herein to the contrary, the Agency reserves herefrom all of its "Unassigned Rights" as that term is defined in the Agency Lease (as defined herein).

Assignor hereby covenants and agrees with Assignee that Assignor will not, without prior written consent of Assignee:

- (1) Cancel the Lease or accept a surrender thereof;
- (2) Reduce the Rents or accept payment of any installment of the Rents in advance of the due date thereof;
- (3) Modify the Lease in any way or grant any concession in connection therewith;
- (4) Consent to an assignment of the Lessee's interest or to a sub-letting;
- (5) Renew, extend or amend the Lease;

and any of the above acts, if done without the consent of Assignee, shall be, at the option of Assignee, null and void.

Assignor hereby authorizes Assignee or its representatives to collect the Rents and hereby directs each tenant of the Premises to pay all Rents to Assignee or its representatives; provided, however, that until Assignee gives Assignor written notice of default ("Notice of Default") that a default under the Note or any other Loan Document has occurred and is continuing ("Event of Default"), Assignor may receive and collect the Rents, as Trustee for the benefit of Assignee and Assignor and shall apply the Rents first to payment of the Loan and the operating expenses of the Premises and then the Assignee's own account.

Assignor, in the event of such an Event of Default, further authorizes Assignee, (1) to enter upon the Premises by its agents for the collection of the Rents and for the operation and maintenance of the Premises; (2) to cancel or alter the Lease; (3) to execute a new lease, including leases that extend beyond the redemption period; (4) to the use and possession of furniture and appliances used on the Premises; and (5) to take possession of books and records pertaining to the Premises. Assignor hereby grants Assignee in general all the powers of Assignor to perform all acts necessary for the operation and maintenance of the Premises in the same manner and to the same extent that Assignor might reasonably so act.

Assignee shall not be accountable for more monies than it actually receives from the Premises, nor shall it be liable for failure to collect Rents.

Assignee may immediately take possession of all Rents, whether past due, then due or to become due, by delivering a Notice of Default to Assignor, without the necessity of Assignee entering upon and taking possession of the Premises in person, by agent or by a court-appointed receiver, instituting legal proceedings of any kind or taking any other affirmative action of any kind, and Assignor shall thereafter hold all such Rents as trustee for the exclusive

benefit of Assignee. After the delivery of a Notice of Default, each tenant of the Premises is hereby directed by Assignor to pay all Rent to Assignee or Assignee's representatives upon receipt by such tenant of Assignee's written demand therefor, delivered to such tenant personally, by mail or by delivering such demand to the demised premises of such tenant, without any liability on the part of such tenant to inquire any further as to the actual existence of such Event of Default, and Assignor shall execute and deliver to the tenants of the Premises any notices reasonably required to accomplish this result. Assignor shall forward to Assignee all Rents received by Assignor after the delivery of a Notice of Default. All such Rents shall be applied by Assignee first to the costs, if any, of taking control of and managing the Premises and collecting the Rents, including, without limitation, attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Premises, premiums on insurance policies, taxes, assessments and other charges on the Premises, and the costs of discharging any obligations or liability of Assignor as landlord under the Leases and then to the reduction and payment of the Loan. As between Assignee and Assignor and any person claiming through or under Assignor, this Assignment is intended to be absolute, unconditional and presently effective, and the provisions of this paragraph regarding written demand for the Rents by Assignee to the tenants are intended solely for the benefit of such tenants and shall never inure to the benefit of Assignor or any person claiming through or under Assignor, other than a tenant who has not received such written demand.

Upon the curing of the Event of Default, Assignee shall give written notice thereof to all tenants and thereafter, until the receipt of any further similar Notice of Default of Assignee, all tenants shall pay the Rents to Assignor.

IT IS MUTUALLY UNDERSTOOD AND AGREED:

1. That Assignor will forward to the Assignee copies of all notices sent to or received by the Assignor with respect to the Lease.
2. That the Assignee and its successors and assigns assume no liability or obligations under the Lease or any extension or renewal, either by virtue of this Assignment or any receipt or collection of the Rents hereunder.
3. That the Assignee shall not be liable for any loss sustained by the Assignor resulting from the Assignee's failure to let the Premises or from any other act or omission of the Assignee in managing the Premises unless such loss is caused by the willful misconduct and bad faith of the Assignee. The Assignee shall not be obligated to perform or discharge any obligation, duty or liability under the Lease or under or by reason of this Assignment, and the Assignor shall, and does hereby agree to, indemnify the Assignee for, and to hold the Assignee harmless from, any and all liability, loss or damage which may or might be incurred under the Lease or under or by reason of this Assignment and defend Assignee from any and all claims and demands whatsoever which may be asserted against the Assignee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Lease. Should the Assignee incur any such liability

under the Lease or under or by reason of this Assignment or in defense of any such claim or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees shall be secured hereby and the Assignor shall reimburse the Assignee therefor immediately upon demand, and upon the failure of Assignor to do so, the Loan shall become immediately due and payable.

4. That upon payment in full of the Loan, this Assignment shall become void. However, the affidavit, certificate, letter or statement of any officer, agent or attorney of the Assignee showing any part of the Loan to remain unpaid shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment and any person may, and is hereby authorized to, rely thereon.

5. That nothing contained in this Assignment and no act done or omitted by the Assignee pursuant to the powers and rights granted it hereunder shall be deemed to be a waiver by the Assignee of its rights and remedies under the Loan Documents, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by the Assignee under the terms of the Loan Documents. The right of the Assignee to collect the Loan and to enforce any other security therefor held by it may be exercised by the Assignee either prior to, simultaneously with, or subsequent to, any action taken by it hereunder.

6. That this Assignment herein provided for shall continue in full force and effect until payment in full of the Loan, provided, however, that nothing herein contained shall be held to prejudice or impair the right of the Assignee, upon entry or upon the exercise of any other right or remedy under the Note or any other Loan Document, to exercise all the rights, powers and remedies thereunder, as well as to exercise all rights, powers, and remedies conferred upon or reserved to the Assignor, as lessor, by the Lease.

7. That the rights and remedies of the Assignee under this Assignment are cumulative and are not in lieu of, but are in addition to any other rights and remedies which the Assignee or any holder of the Note may have under the Loan Documents and shall not be construed to give any person other than the Assignor, the Assignee and any holder of the Note, any legal or equitable right, remedy or claim under this Assignment.

8. That all communications provided for herein shall be delivered or mailed addressed as follows:

To the Assignor:

Morgan Pond Street LLC
1170 Pittsford Victor Road
Pittsford, New York 14534

To the Assignee:

Perticone Holdings LLC
c/o Francis R. Perticone
45 San Gabriel Drive
Rochester, New York 14610

or to such other addresses as the parties may from time to time designate in writing.

9. Assignor hereby covenants and warrants to Assignee that Assignor has not executed any prior assignment of any of its rights under the Leases; the Assignor has not done anything which might prevent the Assignee from, or limit the Assignee in operating under any of the provisions hereof; the Assignor warrants that all Rents due to date have been collected and no concessions granted; the Assignor has not accepted Rents under the Lease in advance, as far as Assignor knows, there is no present default under the Lease and it is in full force and effect.

10. It is not the intention of the parties hereto that any entry by Assignee upon the Premises under the terms of this Assignment shall constitute Assignee a "Lender in Possession" in contemplation of law, except at the option of Assignee.

11. Assignee acknowledges and agrees that, upon recordation of this Assignment, Assignee's interest in the Rents shall be deemed to be fully perfected, "choate" and enforced as to Assignor and all third parties, including, without limitation, any subsequently appointed trustee in any case under the U.S. Bankruptcy Code, without the necessity of (i) furnishing notice to Assignor or tenants under the Lease, (ii) making formal demand for the Rents, (iii) taking possession of the Premises as a lender-in-possession, (iv) obtaining the appointment of a receiver of the rents and profits of the Premises, (v) sequestering or impounding the Rents, or (vi) taking any other affirmative action.

12. Assignor shall (i) pay all other sums of money due and payable at any time and from time to time under (a) the Company Lease Agreement by and between the Assignor and the City of Syracuse Industrial Development Agency (the "Agency") dated as of September 1, 2012 (the "Company Lease"), (b) the Agency Lease Agreement by and between the Agency and the Assignor dated as of September 1, 2012 (the "Agency Lease") and (c) the Payment in Lieu of Taxes Agreement dated as of September 1, 2012 by and among the City of Syracuse, the Agency and the Assignor (the "PILOT Agreement") as and when such sums become due and payable, but in any event before the expiration of any grace period provided in the Company Lease, the Agency Lease and/or PILOT Agreement, as applicable, for the payment of any such sum, and (ii) at all times fully perform, observe and comply with all other terms, covenants and conditions of the Company Lease, Agency Lease and the PILOT Agreement to be performed, observed or complied with by Assignor as lessor under the Company Lease and lessee under the Agency Lease, and as a party to the PILOT Agreement. If the Company Lease,

the Agency Lease and/or the PILOT Agreement do not provide for a grace period for the payment of a sum of money, Assignor shall make the payment on or before the date on which the payment becomes due and payable. Assignor shall deliver evidence of the payment to Assignee within ten (10) days after receipt of a written request from Assignee for evidence of the payment.

13. The Assignor directs the Agency to execute and deliver this Assignment to the Assignee, and further agrees to indemnify the Agency (and its members, officers, directors, agents, servants and employees) for all fees and costs incurred in connection with the execution, delivery, recording, performing and enforcing of this Assignment, including but not limited to reasonable attorney's fees.

14. Notwithstanding anything herein to the contrary, Assignee by accepting this Assignment acknowledges and agrees that the rights of Assignee hereunder shall be subordinate to the rights of the Agency to receive payments in lieu of taxes pursuant to the PILOT Agreement and that such payments in lieu of taxes to be made by Assignor to the Agency shall have the same force, priority and effect as a real property tax lien under State law against the Premises.

15. The Assignor hereby acknowledges that the terms of the Agency Lease, as amended and restated from time to time, is in full force and effect, including but not limited to the "Hold Harmless Provisions" contained in Section 8.2 thereof and incorporates same in this Assignment and makes same applicable hereto as if fully set forth herein.

16. The obligations and agreements of the Agency contained herein and in any other instrument or document executed in connection herewith, and any instrument or document supplemental hereto, shall be deemed the obligations and agreements of the Agency and not of any member, officer, agent 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 shall not constitute or give rise to an obligation of the State New York or of the County of Onondaga, and neither the State of New York nor the County of Onondaga 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 (as that term is defined in the Agency Lease), other than revenues derived from or constituting Unassigned Rights (as that term is defined in the Agency Lease). 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 Paragraph shall not alter the full force and effect of any Event of Default under the Agency Lease.

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

For purposes of 11 U.S.C. Section 552(b), Assignor and Assignee agree that this Assignment constitutes a "security agreement", that the security interest created by such security agreement extends to property of Assignor acquired before the commencement of a case in bankruptcy and to all amounts paid as Rents and that such security interest shall extend to all Rents acquired by the estate after the commencement of a case in bankruptcy.

Assignor hereby further acknowledges and agrees that all Rents are and shall be deemed to be "Cash Collateral" under Section 363 of the U.S. Bankruptcy Code in the event that Assignor files a voluntary petition in bankruptcy or is made subject to any involuntary bankruptcy proceeding. Assignor may not use the Cash Collateral without the consent of Assignee and/or an order of any Bankruptcy Court pursuant to 11 U.S.C. 363(b)(2), and Assignor hereby waives any right it may have to assert that the Rents do not constitute Cash Collateral. No

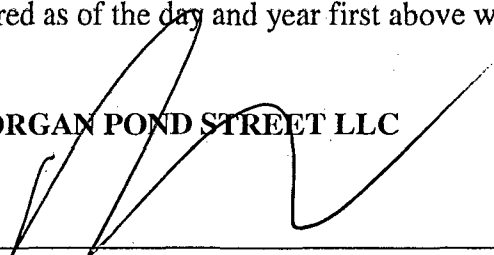
consent by Assignee to the use of Cash Collateral by Assignor shall be deemed to constitute Assignee's approval of the purpose for which such Cash Collateral was expended.

All the covenants and agreements herein contained on the part of either party shall apply to and bind their heirs, executors or administrators, successors or assigns. The word Assignor shall be construed to mean any one or more persons or parties who are holders of the legal title or equity of redemption to or in the Premises. The word "Note(s)" shall be construed to mean the instrument evidencing the indebtedness, whether note or bond.

Signatures on Following Page

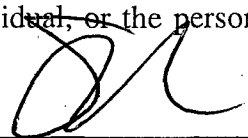
IN WITNESS WHEREOF, the Assignor has caused this Assignment of Leases and Rents to be duly executed and delivered as of the day and year first above written.

MORGAN POND STREET LLC

By: 
Name: Robert C. Morgan
Title: Manager

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

On the 21st day of September in the year 2012 before me, the undersigned, a Notary Public in and for said State, personally appeared Robert C. Morgan, 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

STEPHEN E. HALL
Notary Public, State of New York
Qualified in Monroe County
My Commission Expires Nov. 30, 2/9/14

Signatures Continue on Following Page

SCHEDULE "A"

All that tract or parcel of land situate in the City of Syracuse, County of Onondaga, and State of New York, being part of Block 105, bounded and described as follows: Beginning at the southeast corner of said block, being the intersection of the westerly line of Pond Street with the northerly line of First North Street; thence N. $61^{\circ} 42' 30''$ W. along the northerly line of First North Street 234.17 feet to a point in the southeasterly corner of the DeLong Tract, according to a map of said tract filed in the Onondaga County Clerk's Office on December 14, 1888, as Map No. 526; thence N. $28^{\circ} 12' 30''$ E. along the easterly line of said DeLong Tract 605.0 feet to a point; thence S. $61^{\circ} 42' 30''$ E. 234.40 feet to a point in the westerly line of Pond Street; thence S. $28^{\circ} 13' 50''$ W. along said westerly street line 605.0 feet to the point and place of beginning

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

Woods Oviatt Gilman LLP
 700 Crossroads Building
 Rochester, New York 14614
 Attention: W. Stephen Tierney, Esq.

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
 Morgan Pond Street LLC

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

1c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY
 1170 Pittsford Victor Road Pittsford NY 14534 U.S.

1d. SEE INSTRUCTIONS ADD'L INFO RE ORGANIZATION DEBTOR 1e. TYPE OF ORGANIZATION 1f. JURISDICTION OF ORGANIZATION 1g. ORGANIZATIONAL ID #, if any
 ADD'L INFO RE ORGANIZATION DEBTOR LLC 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
 City of Syracuse Industrial Development Agency

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

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY
 233 East Washington Street Syracuse NY 13302 U.S.

2d. SEE INSTRUCTIONS ADD'L INFO RE ORGANIZATION DEBTOR 2e. TYPE OF ORGANIZATION 2f. JURISDICTION OF ORGANIZATION 2g. ORGANIZATIONAL ID #, if any
 ADD'L INFO RE ORGANIZATION DEBTOR Public Benefit New York 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
 Perticone Holdings LLC

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

3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY
 45 San Gabriel Drive Rochester NY 14610 U.S.

4. This FINANCING STATEMENT covers the following collateral:
 All Fixtures and Equipment owned by Debtor and affixed to, or used in connection with the premises described on attached Schedule A and any and all replacements thereof and additions thereto and in the proceeds, rents, issues, profits and Accounts and General Intangibles arising therefrom.

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

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

8. OPTIONAL FILER REFERENCE DATA

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

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

9a. ORGANIZATION'S NAME

Morgan Pond Street LLC

OR

9b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names

11a. ORGANIZATION'S NAME

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

NONE

12. ADDITIONAL SECURED PARTY'S or ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

12c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

13. This FINANCING STATEMENT covers timber to be cut or as-extracted collateral, or is filed as a fixture filing.

14. Description of real estate:

700 First North Street and Pond Street
Syracuse, Onondaga County, New York
Tax Account No. 006.-12-54.0

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

16. Additional collateral description:

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

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

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

Debtor is a TRANSMITTING UTILITY

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

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

SCHEDULE "A"

All that tract or parcel of land situate in the City of Syracuse, County of Onondaga, and State of New York, being part of Block 105, bounded and described as follows: Beginning at the southeast corner of said block, being the intersection of the westerly line of Pond Street with the northerly line of First North Street; thence N. 61° 42' 30" W. along the northerly line of First North Street 234.17 feet to a point in the southeasterly corner of the DeLong Tract, according to a map of said tract filed in the Onondaga County Clerk's Office on December 14, 1888, as Map No. 526; thence N. 28° 12' 30" E. along the easterly line of said DeLong Tract 605.0 feet to a point; thence S. 61° 42' 30" E. 234.40 feet to a point in the westerly line of Pond Street; thence S. 28° 13' 50" W. along said westerly street line 605.0 feet to the point and place of beginning.

SURVEY- on file with the Agency

700 First North Street & Pond Street

Tax Parcel No. 06.00-12-54

City of Syracuse

County of Onondaga, State of New York

**Prepared by: Costich Engineering
Charles J. Costich, N.Y.S., P.E., L.S., P.C.**

**Drawing No.: 4999 VI-100
Map Date: August 16, 2012**

**GENERAL CERTIFICATE OF THE
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

This certificate is made in connection with the execution by the City of Syracuse Industrial Development Agency (the "**Agency**") of the Company Lease, the Agency Lease 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 Morgan Pond LLC (the "**Company**") consisting of: (A)(i) the acquisition of a leasehold interest in approximately 3.25 acres of improved real property located at 700 First North Street and Pond Street in the City of Syracuse, New York (the "**Land**"); (ii) acquisition of an interest in and the renovation of an approximate 32,800 square foot building for use as a commercial facility (the "**Facility**"); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the "**Equipment**", and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and sales and use taxation (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment by 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 September 1, 2012 (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 certified copies of the Certificates of Appointment relating to all of the current members of the Agency, who are:

William M. Ryan	Chairman
C. Catherine Richardson	Vice Chairman
John Gamage	Secretary
Donald Schoenwald	Treasurer
Pamela Hunter	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. Attached hereto as **Exhibit "D"** is proof of publication of a notice of the public hearing with respect to the Project (the "**Public Hearing**"), required pursuant to Section 859-a of the Act and held on September 6, 2012, 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 August 23, 2012.

8. That a resolution determining that the acquisition, reconstruction, renovation 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 August 21, 2011 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 “E.”**

9. That a resolution approving the undertaking of the acquisition, renovation, reconstruction and equipping of the Project, appointing the Company as agent of the Agency for the purpose of the acquisition, reconstruction, renovation and equipping of the Project, and authorizing the execution and delivery of an agreement between the Agency and the Company (the “**Inducement Resolution**”) was adopted by the Agency on September 6, 2012 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 “F.”**

10. That a resolution approving a payment in lieu of tax schedule and authorizing the execution and delivery of certain documents by the Agency in connection with the Project undertaken at the request of the Company (the “**PILOT Resolution**”) was adopted by the Agency on September 6, 2012 and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the PILOT Resolution is attached hereto at **Exhibit “G.”**

11. That a resolution authorizing the execution and delivery of certain documents by the Agency in connection with the Project was adopted by the Agency on September 6, 2012 (the “**Final Approving Resolution**”) and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the Final Approving Resolution is attached hereto at **Exhibit “H”**.

12. 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.

13. 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.

14. 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.

15. To the best of my knowledge, 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 my knowledge, threatened against or affecting the Agency (or to my knowledge any basis therefor), (a) wherein an unfavorable decision or finding would adversely affect (i) the Inducement Resolution, the Final Approving Resolution, the Resolution, the Company Lease, the Agency Lease or the other Agency Documents or (ii) the existence or organization of the Agency, or (iii) restrain or enjoin the financing, renovation 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.

16. September 21, 2012 has been duly designated as the date for the Closing.

17. 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.

18. 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 and equipping of the Project Facility; and

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

19. 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.

20. That I did officially cause the following Agency Documents to be executed in the name of the Agency by the signing of each of such Agency Documents with the signature of the William M. Ryan, Chairman of the Agency:

(a) a Company Lease from the Company to the Agency pursuant to which the Company agrees to lease the Land and the Facility to the Agency;

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

21. 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;

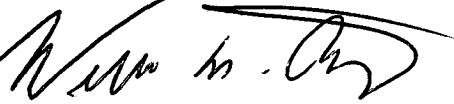
(c) is related to the Company within the meaning of Section 800.3(a) of the New York General Municipal Law.

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.

(SIGNATURE PAGE TO FOLLOW)

WITNESS, as of the 20th day of September, 2012.

**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**

INDUSTRIAL DEVELOPMENT AGENCY

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

- 1) The name of the industrial development agency herein is the City of Syracuse Industrial Development Agency.
- 2) Chapter 641 of the Laws of 1979, the special act of the New York State Legislature establishing the City of Syracuse Industrial Development Agency, was adopted by the New York State Legislature on June 16, 1979 and signed by the Governor on July 18, 1979.
- 3) The names of the Chairman and the Members, respectively, of the City of Syracuse Industrial Development Agency and their terms of office are as follows:
 - (a)

Frank L. Canino	Chairman
David M. Garber	Member
David S. Michel	Member
Erwin G. Schultz	Member
Irwin L. Davis	Member
 - (b) The term of office of the Chairman and of the Members of the City of Syracuse Industrial Development Agency is at the pleasure of the Mayor and continues until a successor is appointed and has qualified.
- 4) The facts establishing the need for the creation of a City of Syracuse Industrial Development Agency are as follows:

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

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

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

STATE OF NEW YORK
DEPARTMENT OF STATE

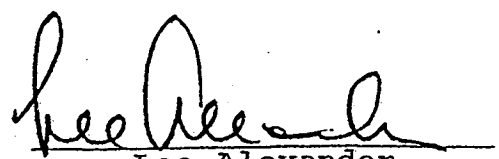
FILED JUL 20 1979

Bill Peterson

Secretary of State

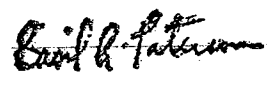
The Syracuse Industrial Development Agency, in combination with, and utilizing these and other resources, will greatly enhance the City's ability to compete for, and successfully attract the commercial and industrial enterprises necessary for continued economic health and growth.

July 20, 1979


Lee Alexander
Mayor

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED JUL 20 1979


Secretary of State

RECEIVED

2010 JAN 25 AM 11:04

CITY OF SYRACUSE
DEPARTMENT OF LAW



RECEIVED
MISC. RECORDS

JAN 21 2010

DEPARTMENT OF STATE

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 and officer of the City of Syracuse Industrial Development Agency:

Mr. William Ryan

- Member/Chairman

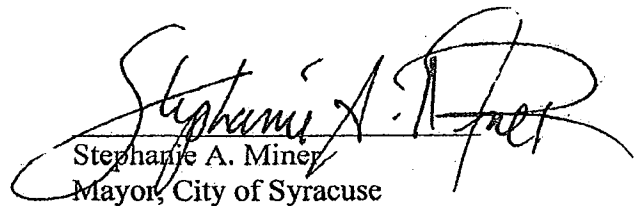
The following Member and Officer of the City of Syracuse Industrial Development Agency shall no longer serve as Member or Officer of said Agency:

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



RECEIVED
MISC. RECORDS

FEB 16 2010

OFFICE OF THE MAYOR

DEPARTMENT OF STATE

Stephanie A. Miner

CERTIFICATE OF APPOINTMENT TO THE
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY


Pursuant to Article 18-A of the General Municipal Law of the State of New York,
Stephanie A. Miner, Mayor of the City of Syracuse, hereby certifies the appointment of
the following person as a ~~Member~~ ^{AN OFFICER} 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

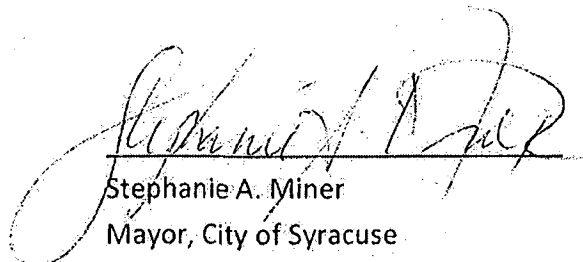
The following Member and Officer of the City of Syracuse Industrial Development Agency shall no longer serve as Member or Officer of said Agency:

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

RECEIVED
MISC. RECORDS
MAR 14 2011
DEPARTMENT OF STATE

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

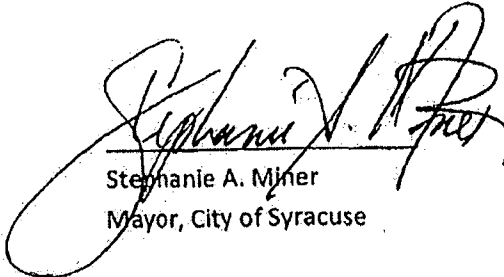
Pursuant to Article 18A of the General Municipal Law of the State of New York, Stephanie A. Miner, Mayor of the City of Syracuse, hereby certifies the appointment of the following person as a Member and Officer of the City of Syracuse Industrial Development Agency:

Mr. 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 March 8, 2011.



Stephanie A. Miner
Mayor, City of Syracuse



RECEIVED
MISC. RECORDS
JUL 12 2012

DEPARTMENT OF STATE

OFFICE OF THE MAYOR

Stephanie A. Miner, Mayor

CERTIFICATE OF APPOINTMENT TO THE
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

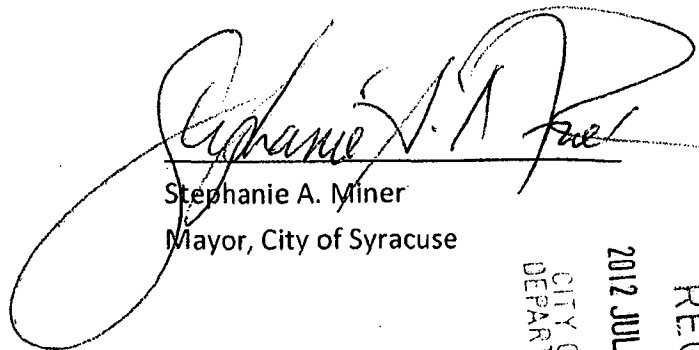
Pursuant to Article 18-A of the General Municipal Law of the State of New York, Stephanie A. Miner, Mayor of the City of Syracuse, hereby certifies the appointment of the following person as a Member of the City of Syracuse Industrial Development Agency:

Ms. Pamela J. 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 July 5, 2012.



Stephanie A. Miner
Mayor, City of Syracuse

RECEIVED
2012 JUL 19 AM 11:10
CITY OF SYRACUSE
DEPARTMENT OF LAW

EXHIBIT "C"

AGENCY'S BY-LAWS

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

Article I

THE AGENCY

Section 1. Name

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

Section 2. Seal

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

Section 3. Office

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

Article II

MEMBERS

Section 1. Members

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

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

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

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

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

Section 2. Meeting of the Members

(a) The Annual Meeting of the members shall be held on such date or dates as shall be fixed, from time to time, by the Members of the Agency. The first Annual Meeting of Members shall be held on a date within twelve (12) months after the filing of the Certificate of the Agency with the Secretary of State as required by General Municipal Law §856 (1) (a). Each successive Annual Meeting of Members shall be held on a date not more than twelve (12) months following the preceding Annual Meeting of Members.

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

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

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

Section 3. Procedure at Meetings of Members

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

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

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

(d) Order of business

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

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

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

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

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

Article III

OFFICERS AND PERSONNEL

Section 1. Officers

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

Section 2. Chairman or Co-Chairmen

The Chairman shall be chief executive officer of the Agency, and shall serve as an ex officio member of all duly constituted committees, shall supervise the general management and the affairs of the Agency, and shall carry out the orders and resolutions of the Agency. Except as otherwise authorized by resolution of the Agency, the Chairman shall execute (manually and by facsimile signature) all agreements, contracts, deeds, bonds, notes or other evidence of indebtedness and any other instruments of the Agency on behalf of the Agency. The Mayor may from time to time appoint two Co-Chairmen in place of the Chairman. During their term of office the Co-

Chairmen shall share equally the duties, rights, powers and responsibilities of the Chairman. The action of either Co-Chairman or execution (manually or by facsimile signature) by either Co-Chairman of any agreement, contract, deed, bond, note or other evidence of indebtedness or any other instrument of the Agency on behalf of the Agency shall have the same force and effect as such action or execution by the Chairman.

Section 3. Vice-Chairman

The Vice-Chairman shall have all the powers and functions of the Chairman or Co-Chairmen in the absence or disability of the Chairman or Co-Chairmen, as the case may be. The Vice-Chairman shall perform such other duties as the Members of the Agency shall prescribe or as delegated by the Chairman or Co-Chairmen.

Section 4. Secretary

The Secretary shall keep the minutes of the Agency, shall have the custody of the seal of the Agency and shall affix and attest the same to documents when duly authorized by the Agency, shall attest to the giving or serving of all notices of the Agency, shall have charge of such books and papers as the Members of the Agency may order, shall attest to such correspondence as may be assigned, and shall perform all the duties incidental to his office.

Section 5. Treasurer

The Treasurer shall have the care and custody of all the funds and securities of the Agency, shall deposit such funds in the name of the Agency, in such bank or trust company as the members of the Agency may elect, shall sign such instrument as may require the Treasurer's signature, but only with the approval of the Chairman or Co-Chairman, as the case may be, shall at all reasonable times exhibit the books and accounts of the Agency to the Mayor or any Member of

the Agency, and at the end of each fiscal year shall present an annual report setting forth in full the financial condition of the Agency.

Section 6. Additional Personnel

The Agency, with the consent of the Mayor, may appoint an Administrative or Executive Director to supervise the administration of the business and affairs of the Agency, subject to the direction of the Agency. The Agency may, from time to time, employ such other personnel as it deems necessary to execute its powers, duties and functions as prescribed by the New York State Industrial Development Agency Act (General Municipal Law, Article 18-A), as amended, and all other laws of the State of New York applicable thereto.

Section 7. Compensation of Chairman, Co-Chairmen, Members, Officers, and Other Personnel

The Chairman, Co-Chairmen, Members and Officers shall receive no compensation for their services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of their duties. The compensation of other personnel, including the Administrative Director, shall be determined by the Members of the Agency.

Article IV

AMENDMENTS

Section 1. Amendments to By-Laws

These by-laws may be amended or revised, from time to time, by a two-third (2/3) vote of the Agency, but no such amendment or revision shall be adopted unless written notice of the proposed action shall have been given by mail to each Member and the Mayor at least ten (10) days prior to the date of the meeting at which it is proposed that such action be taken; provided, however,

that this provision and other provisions relating to the appointment, renewal and terms of office of Members and officers may be amended only with the prior written approval of the Mayor.

Article V

MISCELLANEOUS

Section 1. Sureties and Bonds

In case the Agency shall so require, any officer, employee or agent of the Agency shall execute to the Agency a bond in such sum and with such surety or sureties as the Agency may direct, conditioned upon the faithful performance of his or her duties to the Agency and including responsibility for negligence and for the accounting for all property, funds or securities of the Agency which may come into the hands of the officer, employee or agent.

Section 2. Indemnification

(a) Upon compliance by a Member or Officer of the Agency (including a former Member or Officer, the estate of a Member or Officer or a judicially appointed personal representative thereof) (referred to in this Section 2 collectively as "Member") with the provisions of subdivision (i) of this Section 2, the Agency shall provide for the defense of the Member in any civil action or proceeding, state or federal, arising out of any alleged act or omission which occurred or allegedly occurred while the Member was acting within the scope of the public employment or duties of such Member. This duty to provide for a defense shall not arise where such civil action or proceeding is brought by or at the behest of the Agency.

(b) Subject to the conditions set forth in paragraph (a) of this subdivision, the Member shall be entitled to be represented by private counsel of the Member's choice in any civil action or proceeding whenever the chief legal officer of the Agency or other counsel designated by the

Agency determines that a conflict of interest exists, or whenever a court, upon appropriate motion or otherwise by a special proceeding, determines that a conflict of interest exists and that the Member is entitled to be represented by counsel of the Member's choice, provided, however, that the chief legal officer or other counsel designated by the Agency may require, as a condition to payment of the fees and expenses of such representation, that appropriate groups of such Members be represented by the same counsel. Reasonable attorneys' fees and litigation expenses shall be paid by the Agency to such private counsel from time to time during the pendency of the civil action or proceeding with the approval of a majority of the Members of the Agency eligible to vote thereon.

(c) Any dispute with respect to representation of multiple Members by a single counsel or the amount of litigation expenses or the reasonableness of attorneys' fees shall be resolved by the court upon motion or by way of a special proceeding.

(d) Where the Member delivers process and a written request for a defense to the Agency under subdivision (i) of this Section 2, the Agency shall take the necessary steps on behalf of the Member to avoid entry of a default judgment pending resolution of any question pertaining to the obligation to provide for a defense.

(e) The Agency shall indemnify and save harmless its Members in the amount of any judgment obtained against such Members in a State or Federal court, or in the amount of any settlement of a claim, provided that the act or omission from which such judgment or claim arose occurred while the Member was acting within the scope of the Member's public employment or duties; provided further that in the case of a settlement, the duty to indemnify and save harmless shall be conditioned upon the approval of the amount of settlement by a majority of the Members of the Agency eligible to vote thereon.

(f) Except as otherwise provided by law, the duty to indemnify and save harmless prescribed by this Section 2 shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the Member seeking indemnification.

(g) Nothing in this subdivision shall authorize the Agency to indemnify or save harmless any Member with respect to punitive or exemplary damages, fines or penalties; provided, however, that the Agency shall indemnify and save harmless its Members in the amount of any costs, attorneys' fees, damages, fines or penalties which may be imposed by reason of an adjudication that the Member, acting within the scope of the Member's public employment or duties, has, without willfulness or intent on the Member's part, violated a prior order, judgment, consent decree or stipulation of settlement entered in any court of the State or of the United States.

(h) Upon entry of a final judgment against the Member, or upon the settlement of the claim, the Member shall serve a copy of such judgment or settlement, personally or by certified or registered mail within thirty (30) days of the date of entry or settlement, upon the Chairman and the chief administrative officer of the Agency; and if not inconsistent with the provisions of this Section 2, the amount of such judgment or settlement shall be paid by the Agency.

(i) The duty to defend or indemnify and save harmless prescribed by this Section 2 shall be conditioned upon: (i) delivery by the Member to the Chairman of the Agency and the chief legal officer of the Agency or to its chief administrative officer of a written request to provide for such Member's defense together with the original or a copy of any summons, complaint, process, notice, demand or pleading within ten (10) days after the Member is served with such document, and (ii) the full cooperation of the Member in the defense of such action or

proceeding and in defense of any action or proceeding against the Agency based upon the same act or omission, and in the prosecution of any appeal.

(j) The benefits of this Section shall inure only to Members as defined in subdivision (a) of this Section 2 and shall not enlarge or diminish the rights of any other party.

(k) This Section 2 shall not in any way affect the obligation of any claimant to give notice to the Agency under Section 10 of the Court of Claims Act, Section 880 of the General Municipal Law, or any other provision of law.

(l) The Agency is hereby authorized and empowered to purchase insurance from any insurance company created by or under the laws of the State, or authorized by law to transact business in the State, against any liability imposed by the provisions of this Section 2, or to act as a self-insurer with respect thereto. The provisions of this Section 2 shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

(m) All payments made under the terms of this Section 2, whether for insurance or otherwise, shall be deemed to be for a public purpose and shall be audited and paid in the same manner as other public charges.

(n) Except as otherwise specifically provided in this Section 2, the provisions of this Section 2 shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity to liability available to or conferred upon any Member of the Agency by, in accordance with, or by reason of, any other provision of State or Federal statutory or common law. The benefits under this Section 2 shall supplement, and be available in addition to, defense or indemnification protection conferred by any law or enactment. This Section 2 is intended to confer upon Members of the Agency all of the benefits of Section 18 of the Public Officers Law

and to impose upon the Agency liability for costs incurred under the provisions hereof and thereof.

Section 3. Fiscal Year

The fiscal year of the Agency shall be fixed by the Members, subject to the applicable law.

Section 4. Powers of the Agency

The Agency shall have all the powers of an Industrial Development Agency authorized by Article 18-A of the General Municipal Law and shall have the power to do all things necessary or convenient to carry out its purposes and exercise the powers authorized herein.

EXHIBIT "D"

**NOTICE OF PUBLIC HEARING WITH EVIDENCE OF PUBLICATION AND COPIES
OF LETTERS TO AFFECTED TAX JURISDICTIONS PURSUANT TO SECTIONS
859-a OF THE ACT**

The Post-Standard

PROOF OF PUBLICATION

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.:

Advertiser: HISCOCK & BARCLAY LLP

Reference #: 0000393650

PO #: Matter #3059303

Product: Post-Standard-Full Run

Start Date: 08/25/2012

End Date: 08/25/2012

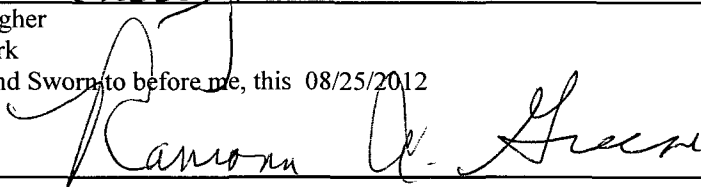
Insertions: 1

Run Dates: 08/25/2012



Pamela Gallagher
Principal Clerk

Subscribed and Sworn to before me, this 08/25/2012



RAMONA A. GREENE
Notary Public, State of New York
No. 5095269
Qualified in Onondaga County
My Commission Expires Dec. 7, 2014

NOTARY PUBLIC, ONONDAGA COUNTY, NY Commission Expires

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 6th day of September, 2012, at 8:30 o'clock a.m., local time, at 233 East Washington Street, Room 215 (SyraStat Room), City Hall, Syracuse, New York, in connection with the following matter: Morgan Pond Street LLC, or a company to be formed (the "Company"), has requested that the Agency undertake a project (the "Project") consisting of: (A)(i) the acquisition of a leasehold interest in approximately 3.25 acres of improved real property located at 700 First North Street and Pond Street in the City of Syracuse, New York (the "Land"); (ii) acquisition of an interest in and the renovation of an approximate 32,800 square foot building for use as a grocery store (the "Facility"); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the "Equipment", and together with the Land and the Facility, the "Project Facility"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and sales and use taxation (collectively, the "Financial Assistance"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment by 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 or location of the Project Facility, and/or the nature of the Project. A copy of the application filed by the Company with the Agency with respect to the Project, including an analysis of the costs and benefits of the Project, is available for public inspection during business hours at the office of the Agency located at 333 West Washington Street, Suite 130, Syracuse, New York. Dated: August __, 2012. CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

HISCOCK & BARCLAY^{LLP}

Susan R. Katzoff
Partner

August 23, 2012

**BY HAND DELIVERY and
CERTIFIED MAIL**

Honorable Stephanie A. Miner
Mayor, City of Syracuse
City Hall
233 East Washington Street
Syracuse, New York 13202

**BY HAND DELIVERY and
CERTIFIED MAIL**

Honorable Joanne M. Mahoney
County Executive, Onondaga County
John Mulroy Civic Center, 14th Floor
421 Montgomery Street
Syracuse, New York 13202

Re: City of Syracuse Industrial Development Agency
Morgan Pond Street, 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 a leasehold interest in approximately 3.25 acres of improved real property located at 700 First North Street and Pond Street in the City of Syracuse, New York (the "Land"); (ii) acquisition of an interest in and the renovation of an approximate 32,800 square foot building for use as a grocery store (the "Facility"); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the "Equipment", and together with the Land and the Facility, the "Project Facility"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and sales and use taxation (collectively, the "Financial Assistance"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation and equipping of the Project Facility; and (D) the lease

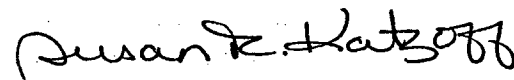
Honorable Stephanie A. Miner
Honorable Joanne M. Mahoney
August 23, 2012
Page 2

of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment by 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 **September 6, 2012** at 8:30 a.m. in the SyraStat Room at City Hall.

Very truly yours,



Susan R. Katzoff

SRK/llm
Enclosure

cc: William Ryan, City of Syracuse Industrial Development Agency (w/Enclosure) – via email
Ben Walsh, Executive Director of City of Syracuse Industrial Development Agency
(w/Enclosure) – via email

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 6th day of September, 2012, at 8:30 o'clock a.m., local time, at 233 East Washington Street, Room 215 (SyraStat Room), City Hall, Syracuse, New York, in connection with the following matter:

Morgan Pond Street LLC, or a company to be formed (the "Company"), has requested that the Agency undertake a project (the "Project") consisting of: (A)(i) the acquisition of a leasehold interest in approximately 3.25 acres of improved real property located at 700 First North Street and Pond Street in the City of Syracuse, New York (the "Land"); (ii) acquisition of an interest in and the renovation of an approximate 32,800 square foot building for use as a grocery store (the "Facility"); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the "Equipment", and together with the Land and the Facility, the "Project Facility"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and sales and use taxation (collectively, the "Financial Assistance"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment by 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 or location of the Project Facility, and/or the nature of the Project.

A copy of the application filed by the Company with the Agency with respect to the Project, including an analysis of the costs and benefits of the Project, is available for public inspection during business hours at the office of the Agency located at 333 West Washington Street, Suite 130, Syracuse, New York.

Dated: August __, 2012

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- 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:

Honorable Stephanie A. Miner
Mayor, City of Syracuse
City Hall - 233 East Washington Street
Syracuse, New York 13202

2. Article Number

(Transfer from service label)

7008 1300 0000 1721 9766

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-154

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Signature]*

- 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

3. Service Type

- Certified Mail
- Registered
- Insured Mail
- Express Mail
- Return Receipt for Merchandise
- C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- 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:

Honorable Joanne M. Mahoney
County Executive, Onondaga County
421 Montgomery Street - 14th Floor
Syracuse, New York 13202

2. Article Number

(Transfer from service label)

7008 1300 0000 1721 9759

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-154

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Signature]*

- Agent
- Addressee

B. Received by (Printed Name)

C. Date of Delivery

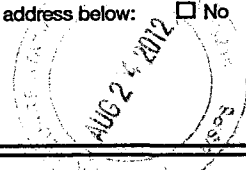
D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type

- Certified Mail
- Registered
- Insured Mail
- Express Mail
- Return Receipt for Merchandise
- C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes



**U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT**

(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark
Here

Sent To

Honorable Stephanie A. Miner
Mayor, City of Syracuse
City Hall - 233 East Washington Street
Syracuse, New York 13202

PS Form 3800, August 2006

See Reverse for Instructions

7008 1300 0000 1721 9766

**U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT**

(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark
Here

Sent To

Honorable Joanne M. Mahoney
County Executive, Onondaga County
421 Montgomery Street - 14th Floor
Syracuse, New York 13202

PS Form 3800, August 2006

See Reverse for Instructions

7008 1300 0000 1721 9759

EXHIBIT "E"

PUBLIC HEARING RESOLUTION

RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on August 21, 2012, at 8:30 o'clock a.m. in the Common Council's Chambers, City Hall, 233 East Washington Street, Syracuse, New York.

The meeting was called to order by the Chairman and, upon roll being called, the following members of the Agency were:

PRESENT: William Ryan, John Gamage, M. Catherine Richardson, Esq., Pamela Hunter

ABSENT: Donald Schoenwald, Esq.

THE FOLLOWING PERSONS WERE ALSO PRESENT: Staff Present: Ben Walsh, Shannon Jones, Esq., Debra Ramsey-Burns, Sue Katzoff, Esq., Judith DeLaney; Others Present: Rich Puchalski, Kevin Morgan, Todd Morgan, John Sidd, Alex Marion; Media: Rick Moriarty

The following resolution was offered by John Gamage and seconded by Pamela Hunter:

RESOLUTION DETERMINING THAT THE ACQUISITION, RENOVATION AND EQUIPPING OF A COMMERCIAL FACILITY AT THE REQUEST OF THE COMPANY CONSTITUTES A PROJECT; DESCRIBING THE FINANCIAL ASSISTANCE IN CONNECTION THEREWITH; AND AUTHORIZING A PUBLIC HEARING

WHEREAS, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, for the purpose of promoting economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to grant "financial assistance" (as defined in the Act) in connection with the acquisition, reconstruction and equipping of one or more "projects" (as defined in the Act); and

WHEREAS, by application dated August 14, 2012 (the "**Application**"), Morgan Pond Street LLC, or a company to be formed (the "**Company**"), has requested that the Agency undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of a leasehold interest in approximately 3.25 acres of improved real property located at 700 First North Street and Pond

Street in the City of Syracuse, New York (the "*Land*"); (ii) acquisition of an interest in and the renovation of an approximate 32,800 square foot building for use as a grocery store (the "*Facility*"); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the "*Equipment*", and together with the Land and the Facility, the "*Project Facility*"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and sales and use taxation (collectively, the "*Financial Assistance*"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment by 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;

WHEREAS, the Agency has not approved undertaking the Project or granting the Financial Assistance;

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; and

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 tax, mortgage recording tax and sales and use taxation.

(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 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.

(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 a vote on roll call, which resulted as follows:

	AYE	NAY
William Ryan	X	
John Gamage	X	
M. Catherine Richardson	X	
Pamela Hunter	X	

The foregoing Resolution was thereupon declared duly adopted.

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

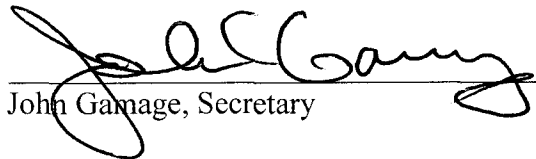
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “*Agency*”) held on August 21, 2012, with the original thereof on 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 6th day of September, 2012.

City of Syracuse Industrial Development Agency



John Gamage, Secretary

(S E A L)

EXHIBIT "F"

INDUCEMENT RESOLUTION

INDUCEMENT RESOLUTION

A special meeting of the City of Syracuse Industrial Development Agency was convened in public session on September 6, 2012 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, John Gamage, M. Catherine Richardson, Esq., Pamela Hunter

ABSENT: Donald Schoenwald, Esq.

THE FOLLOWING PERSONS WERE ALSO PRESENT: Staff Present: Ben Walsh, Shannon Jones, Esq., Debra Ramsey-Burns, Susan Katzoff, Esq., Greg Streeter, Judith DeLaney, Others Present: Councilor Khalid Bey, Councilor Jake Barrett, James Conroy, Len Montreal, Alex Marion, Rich Puchalski, Joel Rinne, Robert Stamey, Daryl Files, Mary Salibrici, John Hawkins, Todd Morgan, Kevin Morgan, Mark Stanko, Liz Ferree, Media: Ryan DeLaney /WRVO, Rick Moriarty, Brandon Roth/Channel 5, YNN news.

The following resolution was offered by John Gamage and seconded by M. Catherine Richardson:

RESOLUTION UNDERTAKING THE ACQUISITION, RENOVATION, RECONSTRUCTION AND EQUIPPING OF A CERTAIN PROJECT, APPOINTING MORGAN POND STREET AS AGENT OF THE AGENCY FOR THE PURPOSE OF THE ACQUISITION, RENOVATION, RECONSTRUCTION AND EQUIPPING OF THE PROJECT FACILITY, AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT BETWEEN THE AGENCY AND MORGAN POND STREET LLC

WHEREAS, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and

recreation facilities, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, lease, and sell real property and grant financial assistance in connection with one or more “projects” (as defined in the Act); and

WHEREAS, Morgan Pond Street LLC, a New York limited liability company (the “*Company*”), by application dated August 14, 2012 (the “*Application*”), requested the Agency undertake a project (the “*Project*”) consisting of: (A)(i) the acquisition of a leasehold interest in approximately 3.25 acres of improved real property located at 700 First North Street and Pond Street in the City of Syracuse, New York (the “*Land*”); (ii) acquisition of an interest in and the renovation of an approximate 32,800 square foot building for use as a commercial facility (the “*Facility*”); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the “*Equipment*”, and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and sales and use taxation (collectively, the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment by a bill of sale from the Company to the Agency and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

WHEREAS, to aid the Agency in determining whether the preliminary agreement of the Agency to undertake the Project may have a significant impact upon the environment, the Company has prepared and submitted to the Agency a Short Environmental Assessment Form (the “*EAF*”), a copy of which is on file at the office of the Agency; 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 has examined the EAF prepared by the Company in order to classify the Project and has determined that the Project constitutes a “Type II” action as that term is defined under SEQRA, and therefore no further review is required;

WHEREAS, the Agency conducted a public hearing with respect to the Project and the proposed Financial Assistance on September 6, 2012 pursuant to Section 859-a of the Act, notice

of which was published on August 25, 2012 in the Post-Standard, a newspaper of general circulation in the City of Syracuse, New York and given to the chief executive officers of the affected tax jurisdictions by letter dated August 23, 2012; 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;

WHEREAS, the Agency has given due consideration to the Application and to representations by the Company that (a) the provision of Financial Assistance: (i) will induce the Company to develop and retain the Project Facility in the City of Syracuse, and (ii) will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act; (b) the Project is located in a “highly distressed area” as defined in Section 854(18) of the Act; and (c) undertaking the Project will preserve 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 hereby makes the following findings and determinations:

(A) The Project constitutes a “Type II” action under SEQRA and therefore, no further review is required; and

(B) The Project constitutes a “project” within the meaning of the Act; and

(C) The acquisition of an interest in the Project Facility by the Agency and the designation of the Company as the Agency’s agent for completion of the Project will be an inducement to the Company to renovate, reconstruct, equip and operate the Project Facility in the City of Syracuse, thereby promoting and/or preserving job opportunities, general prosperity and economic welfare of the inhabitants of the City of Syracuse in furtherance of the purposes of the Act; and

(D) The Project will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act;

(E) The Project is located in a “highly distressed area”; and

(F) Undertaking the Project will serve the public purposes of the Act by preserving and/or creating permanent private sector jobs in the City of Syracuse and the State.

(2) Subject to the conditions set forth in Section 4.02 of the Agreement (hereinafter defined), the Agency will (i) acquire an interest in the Project Facility pursuant to a lease agreement (the “*Lease*”) to be entered into between the Company and the Agency; (ii) lease the Project Facility to the Company pursuant to a sublease to be entered into between the Agency and the Company; (iii) grant the Financial Assistance; and (iv) execute and deliver all other certificates and documents necessary or appropriate for the grant of the approved Financial Assistance or requested by the Company or its commercial lender(s) in connection with financing for the Project.

(3) The form and substance of the proposed agreement (in the form and on the terms and conditions as presented at this meeting and attached hereto as Exhibit “A”) (the “*Agreement*”) between the Agency and the Company setting forth the preliminary undertakings of the Agency and the Company with respect to the Project Facility 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.

(4) No covenant, stipulation, obligation or agreement contained in this resolution or any document referred to herein shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

(5) Subject to the due execution and delivery by the Company of the Agreement, the Company is appointed the true and lawful agent of the Agency to proceed with the Project, all with the same powers and the same validity as if the Agency were acting in its own behalf. The appointment made by this Section 4 shall not be effective until the Agreement referred to in Section 3 hereof is duly executed and delivered by the Company.

(6) The Secretary of the Agency is hereby authorized and directed to distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

(7) 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	
John Gamage	X	
M. Catherine Richardson	X	
Pamela Hunter	X	

The foregoing resolution was thereupon declared duly adopted.

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

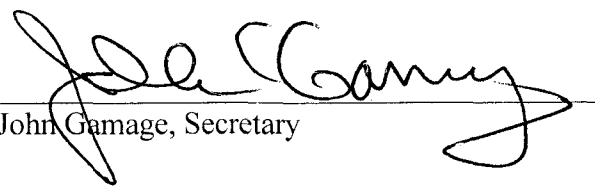
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “*Agency*”) held on September 6, 2012, with the original thereof 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 6th day of September, 2012.

City of Syracuse Industrial Development Agency



John Gamage, Secretary

(S E A L)

EXHIBIT "A"

AGENCY/COMPANY AGREEMENT

THIS AGREEMENT is between **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY** (the "**Agency**"), with an office at 333 West Washington Street, Suite 130, Syracuse, New York 13202, and **MORGAN POND STREET LLC** (the "**Company**"), with a business office at 1170 Pittsford-Victor Road, Suite 100, Pittsford, New York 14534.

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, reconstructing 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 has requested that the Agency undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of a leasehold interest in approximately 3.25 acres of improved real property located at 700 First North Street and Pond Street in the City of Syracuse, New York (the "**Land**"); (ii) acquisition of an interest in and the renovation of an approximate 32,800 square foot building for use as a commercial facility (the "**Facility**"); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the "**Equipment**", and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and sales and use taxation (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment by a bill of sale from the Company

to the Agency and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

1.04. The Company hereby represents to the Agency that the designation of the Company as the Agency's agent for the renovation, reconstruction and equipping of the Project Facility (i) will be an inducement to it to renovate, reconstruct 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; (iii) the Project is located in a "highly distressed area" as defined in Section 854(18) of the Act; and (iv) undertaking the Project will preserve permanent private sector jobs in the State.

1.05. The Agency has determined that the acquisition of a controlling interest in, and the renovation, reconstruction 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 September 6, 2012, 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, renovation, reconstruction and equipping of the Project Facility.

1.07. In the Resolution, subject to the execution of this Agreement by the Company, and other conditions set forth in the Resolution, the Agency appointed the Company as its agent for the purposes of renovating, reconstructing and equipping the Project Facility, entering into contracts and doing all things requisite and proper for renovating, reconstructing 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 the Company as the Agency's agent for renovating, reconstructing 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) designating the Company the Agency's agent for renovation and equipping of the Project Facility, 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 Section 4.02 hereof, the Company may proceed with the renovation, reconstruction and equipping of the Project Facility.

2.05. Subject to Section 4.02 hereof, the Company is appointed the true and lawful agent of the Agency (i) for the renovation, reconstruction 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 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 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 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 defense and indemnities provided for in this Article 3 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, facts, 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.

(e) The Company shall provide and carry worker's compensation and disability insurance as required by law and comprehensive liability insurance with such coverages (including without limitation, owner's protective for the benefit of the Agency 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 of insurance in form satisfactory to the Agency evidencing such insurance.

(f) 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, renovation 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.

(g) The Company shall complete the Local Access Agreement contained at Appendix I of the City of Syracuse Industrial Development Agency Financial Assistance Application and agrees that to the extent practicable utilize local contractors and suppliers for the renovation, construction, reconstruction and equipping of the Project Facility. For purposes of this Agency Agreement, the term "**Local**" shall mean Onondaga, Oswego, Madison and Oneida 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, renovation, construction, reconstruction 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; 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.

Article 4. General Provisions.

4.01. This Agreement shall be superseded in its entirety by the Lease Documents (as defined in the Resolution) and other documents executed in connection therewith.

4.02. It is understood and agreed by the Agency and the Company that the execution of the Lease Documents and related Agency documents and grant of Financial Assistance are subject to (i) obtaining all necessary governmental approvals, permits and consents of any and all governmental authorities as are required for development, renovation and construction of the Project and related site improvements; and (ii) payment by the Company of the Agency fee and Agency's counsel fees.

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, 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.

4.04. If for any reason the Lease Documents are not executed and delivered by the Company and the Agency on or before **September 6, 2013**, the provisions of this Agreement (other than the provisions of Articles 3.01, 3.02, 3.05 and 4.03 above, 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 reconstruction, renovation 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 or the proposed financing thereof.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the
____ day of _____, 2012.

CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Name: _____
Title: _____

MORGAN POND STREET LLC

By: _____
Name: _____
Title: _____

EXHIBIT "G"
PILOT RESOLUTION

PILOT RESOLUTION

A special meeting of the City of Syracuse Industrial Development Agency was convened in public session on September 6, 2012 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, John Gamage, M. Catherine Richardson, Esq., Pamela Hunter

ABSENT: Donald Schoenwald, Esq.

THE FOLLOWING PERSONS WERE ALSO PRESENT: Staff Present: Ben Walsh, Shannon Jones, Esq., Debra Ramsey-Burns, Susan Katzoff, Esq., Greg Streeter, Judith DeLaney, Others Present: Councilor Khalid Bey, Councilor Jake Barrett, James Conroy, Len Montreal, Alex Marion, Rich Puchalski, Joel Rinne, Robert Stamey, Daryl Files, Mary Salibrici, John Hawkins, Todd Morgan, Kevin Morgan, Mark Stanko, Liz Ferree, Media: Ryan DeLaney /WRVO, Rick Moriarty, Brandon Roth/Channel 5, YNN news.

The following resolution was offered by M. Catherine Richardson and seconded by Pamela Hunter:

RESOLUTION APPROVING A PAYMENT IN LIEU OF TAX SCHEDULE AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS BY THE AGENCY IN CONNECTION WITH A CERTAIN PROJECT UNDERTAKEN AT THE REQUEST OF THE COMPANY

WHEREAS, the City of Syracuse Industrial Development Agency (the "*Agency*") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "*State*"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "*Act*") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, lease, and sell real property and grant financial assistance in connection

with one or more “projects” (as defined in the Act); and

WHEREAS, by application dated on or about August 14, 2012 (the “*Application*”), Morgan Pond Street LLC, a New York limited liability company (the “*Company*”), requested that the Agency undertake a project (the “*Project*”) consisting of: (A)(i) the acquisition of a leasehold interest in approximately 3.25 acres of improved real property located at 700 First North Street and Pond Street in the City of Syracuse, New York (the “*Land*”); (ii) acquisition of an interest in and the renovation of an approximate 32,800 square foot building for use as a commercial facility (the “*Facility*”); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the “*Equipment*”, and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and sales and use taxation (collectively, the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment by a bill of sale from the Company to the Agency and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

WHEREAS, to aid the Agency in determining whether the preliminary agreement of the Agency to undertake the Project may have a significant impact upon the environment, the Company has prepared and submitted to the Agency a Short Environmental Assessment Form (the “*EAF*”), a copy of which is on file at the office of the Agency; 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 has examined the EAF prepared by the Company in order to classify the Project and has determined that the Project constitutes a “Type II” action as that term is defined under SEQRA, and therefore no further review is required;

WHEREAS, on September 6, 2012 the Agency adopted a resolution taking official action toward the acquisition, reconstruction, renovation and equipping of the Project (the “*Inducement Resolution*”) and;

WHEREAS, as part of the Financial Assistance, the Company requested the Agency consider a payment in lieu of tax schedule (“*PILOT*”), as more fully described on **Exhibit “A”** attached hereto, which schedule conforms with the Agency’s Uniform Tax Exemption Policy (“*UTEP*”) established pursuant to General Municipal Law Section 874(4); and

WHEREAS, the Agency has given due consideration to the Application and to representations by the Company that the proposed PILOT, as part of the Financial Assistance (i) will induce the Company to develop the Project Facility in the City of Syracuse, and (ii) will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as

may be permitted by the Act; (iii) undertaking the Project will create and/or preserve permanent and temporary private sector jobs in the State and promote the general prosperity and economic welfare of the inhabitants of the City of Syracuse in furtherance of the purposes of the Act;

NOW, THEREFORE, be it resolved by the members of the City of Syracuse Industrial Development Agency, as follows:

- (1) The Agency ratifies all prior resolutions adopted with respect to this Project.
- (2) Based upon the representations made by the Company to the Agency, and the reasons presented by the Company in support of its request for the PILOT schedule, the Agency hereby approves and the (Vice) Chairman and Secretary, acting individually, are each authorized to execute and deliver a payment in lieu of tax agreement ("**PILOT Agreement**") providing for the payment schedule attached as **Exhibit "A"** hereto.
- (3) The Agency will, subject to, and in accordance with all resolutions adopted by the Agency in conjunction with this Project, execute and deliver a PILOT Agreement in such form and substance as shall be consistent with such adopted resolutions and prior PILOT agreements for similar projects as approved by the Chairman or Vice Chairman of the Agency upon the advice of counsel to the Agency.
- (4) The Chairman, Vice Chairman and any authorized representative of the Agency, acting individually, are each hereby authorized and directed, for and in the name and on behalf of the Agency, to execute and deliver the documents and agreements identified herein and any such additional certificates, instruments, documents or affidavits, to pay any such other fees, charges and expenses, to make such other changes, omissions, insertions, revisions, or amendments to the documents referred to herein and to do and cause to be done any such other acts and things, as they determine, on advice of counsel to the Agency, may be necessary or desirable to consummate the transactions contemplated by this resolution.
- (5) No covenant, stipulation, obligation or agreement contained in this resolution or any document referred to above shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.
- (6) The Secretary of the Agency is hereby authorized 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.
- (7) This Resolution shall take effect immediately, but is subject to execution by the Company of a PILOT Agreement and the Agreement (as defined in the Inducement Resolution) and all other resolutions and other related documents adopted and/or approved by the Agency and/or as set forth herein.

(8) 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:

	AYE	NAY
William Ryan	X	
John Gamage	X	
M. Catherine Richardson	X	
Pamela Hunter	X	

The foregoing resolution was thereupon declared duly adopted.

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

I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the "**Agency**") held on September 6, 2012, 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 6th day of September, 2012.

City of Syracuse Industrial Development Agency



John Gamage, Secretary

(S E A L)

EXHIBIT "A"

PROPOSED PILOT SCHEDULE

Morgan Pond Street, LLC PILOT Schedule		
Year	Assessment	Payment
1	$\$1,352,000 \times \text{tax rate}^*$	-
2	$\$1,352,000 \times \text{tax rate}$	-
3	$\$1,352,000 \times \text{tax rate}$	-
4	$\$1,352,000 \times \text{tax rate}$	-
5	$\$1,352,000 \times \text{tax rate}$	-
6	$\$1,352,000 \times \text{tax rate}$	-
7	$\$1,352,000 \times \text{tax rate}$	-
8	$[(\text{full assessment} - \$1,352,000) \times .25] + (\$1,352,000 \times \text{tax rate})$	-
9	$[(\text{full assessment} - \$1,352,000) \times .50] + (\$1,352,000 \times \text{tax rate})$	-
10	$[(\text{full assessment} - \$1,352,000) \times .75] + (\$1,352,000 \times \text{tax rate})$	-

*tax rate = Combined Syracuse City, County, School District and Water District Real Property Tax Rate in effect for each year, or portion thereof, covered by the Agreement

EXHIBIT "H"

FINAL APPROVING RESOLUTION

FINAL APPROVING RESOLUTION

A special meeting of the City of Syracuse Industrial Development Agency was convened in public session on September 6, 2012, 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, John Gamage, M. Catherine Richardson, Esq., Pamela Hunter

ABSENT: Donald Schoenwald, Esq.

THE FOLLOWING PERSONS WERE ALSO PRESENT: Staff Present: Ben Walsh, Shannon Jones, Esq., Debra Ramsey-Burns, Susan Katzoff, Esq., Greg Streeter, Judith DeLaney, Others Present: Councilor Khalid Bey, Councilor Jake Barrett, James Conroy, Len Montreal, Alex Marion, Rich Puchalski, Joel Rinne, Robert Stamey, Daryl Files, Mary Salibrici, John Hawkins, Todd Morgan, Kevin Morgan, Mark Stanko, Liz Ferree, Media: Ryan DeLaney /WRVO, Rick Moriarty, Brandon Roth/Channel 5, YNN news

The following resolution was offered by John Gamage and seconded by Pamela Hunter:

RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS BY THE AGENCY IN CONNECTION WITH A CERTAIN PROJECT UNDERTAKEN AT THE REQUEST OF MORGAN POND STREET LLC

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, Morgan Pond Street LLC (the "**Company**"), submitted an application (the "**Application**") to the Agency on or about August 14, 2012, a copy of which is on file at the office of the Agency, requesting that the Agency undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of a leasehold interest in approximately 3.25 acres of improved real property located at 700 First North Street and Pond Street in the City of Syracuse, New York (the "**Land**"); (ii) acquisition of an interest in and the renovation of an approximate 32,800 square

foot building for use as a commercial facility (the "*Facility*"); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the "*Equipment*", and together with the Land and the Facility, the "*Project Facility*"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and sales and use taxation (collectively, the "*Financial Assistance*"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment by a bill of sale from the Company to the Agency and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

WHEREAS, to aid the Agency in determining whether the preliminary agreement of the Agency to undertake the Project may have a significant impact upon the environment, the Company has prepared and submitted to the Agency a Short Environmental Assessment Form (the "*EAF*"), a copy of which is on file at the office of the Agency; 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 has examined the EAF prepared by the Company in order to classify the Project and has determined that the Project constitutes a "Type II" action as that term is defined under SEQRA, and therefore no further review is required;

WHEREAS, the Agency conducted a public hearing with respect to the Project and the proposed Financial Assistance on September 6, 2012 pursuant to Section 859-a of the Act, notice of which was published on August 25, 2012 in the Post-Standard, a newspaper of general circulation in the City of Syracuse, New York and given to the chief executive officers of the affected tax jurisdictions by letter dated August 23, 2012; and

WHEREAS, the Agency adopted a resolution on September 6, 2012 (the "*Inducement Resolution*") entitled

RESOLUTION UNDERTAKING THE ACQUISITION, RENOVATION, RECONSTRUCTION AND EQUIPPING OF A CERTAIN PROJECT, APPOINTING MORGAN POND STREET AS AGENT OF THE AGENCY FOR THE PURPOSE OF THE ACQUISITION, RENOVATION, RECONSTRUCTION AND EQUIPPING OF THE PROJECT, AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT BETWEEN THE AGENCY AND MORGAN POND STREET LLC

which resolution is in full force and effect and has not been amended or modified; and

WHEREAS, the Agency adopted a resolution on September 6, 2012 (the "**PILOT Resolution**") entitled

RESOLUTION APPROVING A PAYMENT IN LIEU OF TAX SCHEDULE AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS BY THE AGENCY IN CONNECTION WITH A CERTAIN PROJECT UNDERTAKEN AT THE REQUEST OF THE COMPANY

which resolution is in full force and effect and has not been amended or modified; and

WHEREAS, the Agency has considered the policy, purposes and requirements of the Act in making its determinations with respect to undertaking the Project and granting the Financial Assistance;

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 confirms all of its prior Resolutions 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 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 the Company to reconstruct, improve and equip the Project Facility.

(d) The Project Facility constitutes a "project" within the meaning of the Act.

(e) The Project is located in a "highly distressed area" as defined in Article 18-A § 854(18) of the General Municipal Law of the State of New York, and the Project will serve the

public purposes of Article 18-A of the General Municipal Law of the State of New York by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the State.

(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 preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the State.

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 Section 4.02 of the Agreement (as defined in the Inducement Resolution), the Agency will (A) acquire a controlling interest in the Project Facility, (B) lease the Project Facility from the Company pursuant to a lease agreement between the Agency and the Company and sublease the Project Facility to the Company, pursuant to a sublease agreement, (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 lender(s), and pledging and assigning to such lender(s) certain rights and remedies of the Agency under the sublease agreement by the execution and delivery of a pledge and assignment, if required, all in such form and substance as shall be substantially the same as the approved by the Agency for other straight lease transactions and consistent with this resolution.

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 Agency, all documents necessary to effect the undertaking of the Project and the grant of Financial Assistance in connection with the Project.

Section 9. The Secretary of the Agency is hereby authorized 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.

Section 10. This Resolution shall take effect immediately. A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

The question of the adoption of the foregoing resolution was duly put to vote on a roll call, which resulted as follows:

	<u>AYE</u>	<u>NAY</u>
William Ryan	X	
John Gamage	X	
M. Catherine Richardson	X	
Pamela Hunter	X	

The foregoing resolution was thereupon declared duly adopted.

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

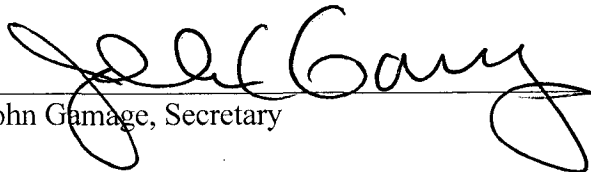
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “*Agency*”) held on September 6, 2012, with the original thereof 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 6th day of September, 2012.

City of Syracuse Industrial Development Agency



John Gamage, Secretary

(S E A L)

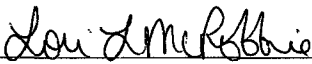
The Deponent submits that no mortgage tax should be imposed upon the Mortgage and the Assignment of Leases and Rents, inasmuch as the Mortgage and the Assignment of Leases and Rents is being executed and delivered under the State authority creating the Agency, inasmuch as the use by the Agency of its 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 20th day of September, 2012.


Notary Public

LORI L. McROBBIE
Notary Public, State of New York
Qualified in Onondaga Co. No. 01MC5055591
Commission Expires on Feb. 12, 20 14

EXHIBIT "A"

REAL PROPERTY DESCRIPTION

All that tract or parcel of land situate in the City of Syracuse, County of Onondaga, and State of New York, being part of Block 105, bounded and described as follows: Beginning at the southeast corner of said block, being the intersection of the westerly line of Pond Street with the northerly line of First North Street; thence N. 61° 42' 30" W. (N. 61° 31' 08" W. per current survey) along the northerly line of First North Street 234.17 feet to a point in the southeasterly corner of the DeLong Tract, according to a map of said tract filed in the Onondaga County Clerk's Office on December 14, 1888, as Map No. 526; thence N. 28° 12' 30" E. (in the Onondaga County Clerk's Office on December 14, 1888, as Map No. 526; thence N. 28° 12' 30" E. (N. 28° 23' 52" E. per current survey) along the easterly line of said DeLong Tract 605.0 feet to a point; thence S. 61° 42' 30" E. (S. 61° 31' 08" E. per current survey) 234.40 feet to a point in the westerly line of Pond Street; thence S. 28° 13' 50" W. (S. 28° 25' 12" W. per current survey) along said westerly street line 605.0 feet to the point and place of beginning.

**GENERAL CERTIFICATE OF
MORGAN POND STREET LLC**

This certificate is made in connection with the execution by Morgan Pond Street LLC, a New York limited liability company (the “*Company*”) of the Ground Lease, the Company Lease (as hereinafter defined), the Agency Lease (as hereinafter defined) 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 a leasehold interest in approximately 3.25 acres of improved real property located at 700 First North Street and Pond Street in the City of Syracuse, New York (the “*Land*”); (ii) acquisition of an interest in and the renovation of an approximate 32,800 square foot building for use as a commercial facility (the “*Facility*”); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the “*Equipment*”, and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and sales and use taxation (collectively, the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment by 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 Project Facility to the Agency pursuant to a Company Lease Agreement dated as of September 1, 2012 (the “*Company Lease*”) and the Agency will sublease the Project Facility back to the Company pursuant to an Agency Lease Agreement dated as of September 1, 2012 (the “*Agency Lease*”).

The Company will then (sub)sublease all or a portion of the Project Facility to Tops Markets, LLC for use as a full service grocery store in accordance with the terms of the Ground Lease.

Capitalized terms not otherwise defined herein shall have the meanings ascribed to them 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 such Operating Agreement 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 the State and authorized and licensed under the laws of the State to transact business as a limited liability company for the purpose of owning, constructing, equipping and operating the Project Facility in the 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 "C"** 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 consents to Tops Markets, LLC entering into a lease transaction with the Agency to sublease its interest under the Ground Lease to the Agency, and hereby confirms that there are no conditions precedent provided for in the Ground Lease or any other agreement that either have not been satisfied or that would prohibit such a transaction.

6. The Company understands and agrees that, to the extent practicable, local labor contractors and suppliers will be used for the renovation of the Project and local contractors shall be provided the opportunity to bid on contracts placed for bid on and after the date of this Certificate relating to the Project. In furtherance thereof, Appendix I to the Agency's Application entitled "Local Access Agreement" has been completed and is attached hereto as **Exhibit "D"**. For purposes of the Local Access Agreement, the term "local" shall be defined to include Onondaga, Oswego, Madison, Cayuga and Oneida Counties.

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 on behalf of 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 the 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 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.

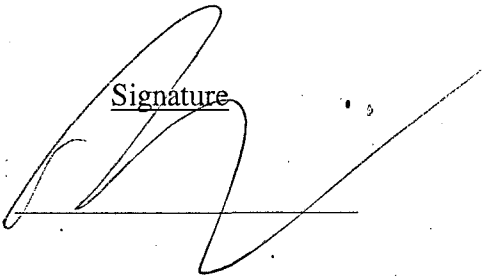
12. All permits (including building permits), licenses and authorizations necessary for the construction, ownership and operation of the Project in the manner contemplated by each of the Company Documents have been obtained or will be obtained, and said construction, ownership and operation will not, 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 PILOT Agreement, the Mortgage 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 PILOT Agreement, the Mortgage 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 authorized representatives of the Company who, pursuant to the Resolution, are authorized to execute the Company Documents and the office held by each person are as set

forth below. The signature set opposite the name of such officer, if any, is a genuine specimen of such officer's signature:

<u>Name</u>	<u>Signature</u>	<u>Office/Title</u>
<u>Robert C. Morgan</u>		<u>Manager</u>

IN WITNESS WHEREOF, I have set my hand and signature as officer of the Company as of September 1, 2012.

MORGAN POND STREET LLC

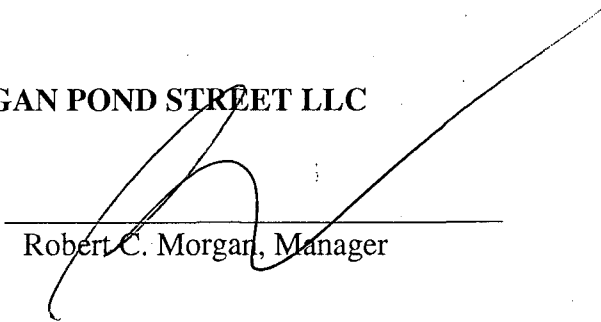
By: 
Robert C. Morgan, Manager

EXHIBIT "A"
ARTICLES OF ORGANIZATION

FILING RECEIPT

=====

ENTITY NAME: MORGAN POND STREET LLC

DOCUMENT TYPE: ARTICLES OF ORGANIZATION (DOM LLC)

COUNTY: MONR

=====

FILED:07/23/2012 DURATION:***** CASH#:120723000166 FILM #:120723000165

FILER:

EXIST DATE

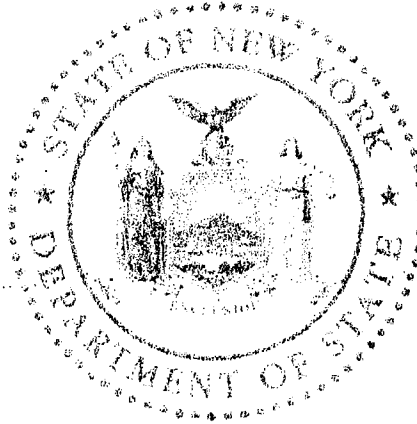
STEPHEN E. HALL, ESQ.
SUITE 400
36 WEST MAIN STREET
ROCHESTER, NY 14614

07/23/2012

ADDRESS FOR PROCESS:

THE LLC
1170 PITTSFORD VICTOR ROAD
PITTSFORD, NY 14534

REGISTERED AGENT:



=====

SERVICE COMPANY: CORPORATION SERVICE COMPANY - 45

SERVICE CODE: 45 *

FEEs 260.00

FILING 200.00
TAX 0.00
CERT 0.00
COPIES 10.00
HANDLING 50.00

PAYMENTS 260.00

CASH 0.00
CHECK 0.00
CHARGE 0.00
DRAWDOWN 260.00
OPAL 0.00
REFUND 0.00

=====

283116SNE

DOS-1025 (04/2007)

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of
the Department of State, at the City of
Albany, on July 23, 2012.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro
First Deputy Secretary of State

CSC 45
DRAW DOWN

120723000 165

ARTICLES OF ORGANIZATION

OF

MORGAN POND STREET LLC

Under Section 203 of the Limited Liability Company Law

FIRST: The name of the limited liability company is

MORGAN POND STREET LLC

SECOND: The county within this state in which the office of the limited liability company is to be located is Monroe.

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

1170 Pittsford Victor Road
Pittsford, New York 14534

FOURTH: The limited liability company is to be member managed.

/S/ Steven Pastore

(signature)

Steven Pastore, Organizer
(name and title)

CSC 45
DRAW DOWN

120723000 165

ARTICLES OF ORGANIZATION

OF

MORGAN POND STREET LLC

Under Section 203 of the Limited Liability Company Law

Filer:

Stephen E. Hall, Esq.
Suite 400
36 West Main Street
Rochester, NY 14614

Cust Ref# 283116SNE

DRAWDOWN

FILED
2012 JUL 23 AM 10:47

100
STATE OF NEW YORK
DEPARTMENT OF STATE
FILED JUL 23 2012
TAXS
BY: MBN

166



CORPORATION SERVICE COMPANY

Publishing Schedule

Company Registered: MORGAN POND STREET LLC

County: Monroe

Date Formed: 07/23/12

Daily Schedule:

Publication: Daily Record
07/31/12
08/07/12
08/14/12
08/21/12
08/28/12
09/04/12

Weekly Schedule:

Publication: City Newspaper
08/01/12
08/08/12
08/15/12
08/22/12
08/29/12
09/05/12

EXHIBIT "B"
OPERATING AGREEMENT

OPERATING AGREEMENT
OF
MORGAN POND STREET LLC

Table of Contents

1. DEFINITIONS..... 1

2. ORGANIZATION..... 1

 2.1 Formation..... 1

 2.2 Operating Agreement..... 1

3. MEMBERS..... 2

 3.1 Names and Addresses 2

 3.2 Additional Members 2

 3.3 Books and Records 2

 3.4 Information 2

 3.5 Meetings of Members 2

 3.6 Voting Agreements..... 3

 3.7 Action by Vote of the Members..... 3

4. MANAGEMENT AND EXTRAORDINARY TRANSACTIONS 4

 4.1 Management..... 4

 4.2 Duty of Manager..... 4

 4.3 Number, Tenure and Qualifications of Manager 5

 4.4 Certain Powers of Manager 5

 4.5 No Exclusive Duty to Company 5

 4.6 Limitation of Liability..... 6

 4.7 Indemnification 6

 4.8 Resignation 6

 4.9 Action by Managers..... 6

 4.10 Vacancies 6

 4.11 Salaries..... 6

 4.12 Extraordinary Transactions..... 6

 4.13 Amendments 6

5. CAPITAL CONTRIBUTIONS, ALLOCATIONS AND DISTRIBUTIONS..... 7

 5.1 Capital Contributions..... 7

 5.2 Additional Capital Contributions..... 7

5.3	Return of Capital Contributions.....	8
5.4	No Interest on Contributions.....	8
5.5	Capital Accounts.....	9
5.6	Loans by Members.....	10
5.7	Allocations.....	10
5.8	Distributions.....	10
6.	TAXES.....	11
6.1	Preparation of Tax Returns.....	11
6.2	Tax Elections.....	11
6.3	Tax Matters Partner.....	11
6.4	Organizational Expenses.....	12
6.5	Withholding.....	12
7.	TRANSFERABILITY.....	13
7.1	General.....	13
7.2	Withdrawal from Company.....	13
7.3	Death, Incapacity, Bankruptcy or Dissolution of a Member.....	13
7.4	Payment for Membership Interest.....	14
7.5	Transfer.....	14
7.6	Purchase Price.....	14
7.7	Pro Rata Purchase.....	16
7.8	Breach by Member.....	16
7.9	Transfer of Equity Interests in Members.....	16
8.	DISSOLUTION.....	17
8.1	Dissolution.....	17
8.2	Winding Up and Liquidation.....	17
8.3	Articles of Dissolution.....	18
8.4	Compliance with Timing Requirements of Regulations.....	18
8.5	Deemed Distribution and Recontribution.....	19
8.6	Rights of Members.....	19
9.	GENERAL PROVISIONS.....	19
9.1	Notices.....	19
9.2	Entire Agreement/Amendments.....	19
9.3	Waiver.....	19
9.4	Severability.....	20
9.5	Binding Effect and Benefit.....	20
9.6	Counterparts.....	20
9.7	Governing Law.....	20
	SCHEDULE A - MEMBERS.....	19
	SCHEDULE B - FAIR MARKET VALUE OF COMPANY REAL ESTATE ASSETS.....	20
	SCHEDULE C - VALUE OF CONTRIBUTED PROPERTY.....	21

EXHIBIT A - DEFINITIONS	A-1
EXHIBIT B - OPERATING PROCEDURES	B-1
1. MEMBERS' ACTION	B-1
1.1 Annual Meeting	B-1
1.2 Special Meetings	B-1
1.3 Notice of Members' Meetings	B-1
1.4 Waiver of Notice	B-1
1.5 Quorum	B-1
1.6 Adjournments	B-1
1.7 Voting Proxies	B-2
1.8 Meetings by Conference Telephone	B-2
1.9 Action By Members Without A Meeting	B-2
2. MANAGER'S ACTION	B-2
2.1 Election and Tenure	B-2
2.2 Voting	B-2
2.3 Procedure	B-2
2.4 Action Without a Meeting	B-3
2.5 Meetings by Conference Telephone	B-3
3.1 OFFICERS	B-3
3.1 Officers	B-3
3.2 Temporary Transfer of Powers and Duties	B-3
EXHIBIT C - TAX DEFINITIONS AND CAPITAL ACCOUNT MAINTENANCE	C-1
1. DEFINITIONS	C-1
2. CAPITAL ACCOUNTS OF THE MEMBERS	C-3
3. NO INTEREST	C-6
4. NO WITHDRAWAL	C-6
EXHIBIT D - ALLOCATION RULES	D-1
1. REGULAR ALLOCATION RULES	D-1
2. SPECIAL ALLOCATION RULES	D-1
3. ALLOCATIONS FOR TAX PURPOSES	D-3
4. NO WITHDRAWAL	D-4

morganpond.002(b)(clean)

OPERATING AGREEMENT
OF
MORGAN POND STREET LLC

This Operating Agreement (“Agreement”), dated as of September 4, 2012, is by and among the undersigned parties.

RECITALS

WHEREAS, the undersigned parties desire to form a New York limited liability company known as Morgan Pond Street LLC pursuant to the Act, defined below; and

WHEREAS, the undersigned parties desire to establish their respective rights and obligations pursuant to the Act in connection with forming such a limited liability company;

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

1. DEFINITIONS

The terms defined in Exhibit A hereto shall have the meanings therein specified for the purposes of this Agreement. All references in this Agreement to a Section, Schedule or Exhibit shall be deemed to mean the respective Section, Schedule or Exhibit of this Agreement.

2. ORGANIZATION

2.1 Formation. The undersigned parties have caused the formation of the Company pursuant to the Act by directing Stephen E. Hall, Esq. to file Articles of Organization with the New York Department of State.

2.2 Operating Agreement.

(a) This Agreement, including all of the Schedules and Exhibits hereto, shall constitute the "Operating Agreement" of the Company as such term is used in the Act.

(b) Each of the Members, by executing this Agreement as Members, agrees to join in and to be bound by the terms of this Agreement and to abide by all of its provisions.

2.3 Purposes. The Company is formed for the purposes of acquiring, developing, managing, leasing, financing, refinancing, selling, exchanging, working out or otherwise investing in, disposing of or dealing with interests in real estate and improvements thereon, and to do any and all other things, necessary, customary, related or incidental to any of the foregoing, and to conduct

any other lawful business or activity whatsoever as is permitted by applicable law and is determined from time to time by the Members.

3. MEMBERS

3.1 Members. The names and addresses of the Members are as set forth in Schedule A. The Members' Membership Units shall be evidenced by a certificate issued by the Company and approved by the Managers. The assignment or transfer of any or all such Membership Interests shall be subject to any restrictions set forth in this Agreement, which restrictions, if any, shall be noted conspicuously on the face of such certificate. Any sale or transfer in violation of such restrictions shall be void. A Membership Interest in the Company shall constitute a "security" within the meaning of, and be governed by, Article 8 of the Uniform Commercial Code (including Section 8-102(a)(15) thereof) as in effect from time to time in the State of New York.

3.2 Additional Members.

(a) A Person may be admitted as a Member after the date of this Agreement upon a vote of the Members in accordance with Section 3.7. At the time of such vote, the Members shall also determine the Capital Contribution to be made by such Person and the number of Membership Units to be allocated to such Person upon admission as a Member.

(b) Notwithstanding the foregoing, no Person shall become a Member until such time as that Person has (i) executed and filed with the Company a written instrument satisfactory to the Managers agreeing to become a party to this Agreement and (ii) made the Capital Contribution determined by the Members in accordance with Section 3.2(a).

(c) Upon the admission of an additional Member in accordance with this Section 3.2, the Managers shall amend Schedule A to reflect the admission of such additional Member.

3.3 Books and Records. The Company shall keep books and records of accounts and minutes of all meetings of 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, this Agreement, the minutes of any meeting of the Members and any tax returns of the Company for the immediately preceding three Fiscal Years.

3.5 Meetings of Members. The Members shall meet annually and at such other times as are determined in accordance with the Operating Procedures set forth in Exhibit B. Meetings of Members shall be conducted in accordance with the Operating Procedures set forth in Exhibit B.

3.6 Voting Agreements. An agreement between two or more Members, if in writing and signed by the parties thereto, may provide that in exercising any voting rights, the Membership Units held by them shall be voted as therein provided, or as they may agree, or as determined in accordance with a procedure agreed upon by them.

3.7 Action by Vote of the Members. The Members shall have only those rights with respect to the management of the property, business and affairs of the Company, and such other powers, as are specified in this Agreement or the Act notwithstanding this Agreement. Except as specifically provided to the contrary in this Agreement, a Member's right to vote with respect to a matter, contract or transaction shall not be affected by the fact that such Person is interested in the matter, contract or transaction. Any act of the Members where the Members are required or permitted to vote or otherwise act shall be determined by unanimous vote of the Members unless otherwise provided in Paragraph 3.8 herein. Without limiting the generality of the foregoing, the following specific actions or transactions by the Managers on behalf of the Company or by the Managers acting to authorize such actions by any company of which the Company is a principal, shall require a unanimous vote of the Members:

- (a) Any Terminating Capital Transaction;
- (b) The merger, consolidation or combination of the Company with any other Person;
- (c) The incurrence of indebtedness by the Company other than in the ordinary course of its business, except as approved by the Managers, as provided for in Section 4.4, below;
- (d) The sale, exchange, lease, pledge, mortgage or granting of a security interest in any of the assets of the Company other than in the ordinary course of its business, except as approved by the Managers, as provided for in Section 4.4, below;
- (e) The admission of an additional Member;
- (f) The transfer by a Member of any Membership Units, as provided in Articles 7 or 7A herein, in which case the transferring Member's Membership Units shall be treated as not outstanding for purposes of the vote, although if the transferee is a Member, the transferee's Membership Units shall be treated as outstanding for purposes of the vote;
- (g) The withdrawal of a Member, in which case the withdrawing Member's Membership Units shall be treated as not outstanding for purposes of the vote;
- (h) The dissolution of the Company following the bankruptcy, death, dissolution, incapacity or withdrawal of any Member or the occurrence of any other event that terminates the continued membership of any Member, as provided in Section 8.1(b), in which case the Membership Units of the Member suffering the dissolution event shall be treated as not outstanding for purposes of the vote;

- (i) The dissolution of the Company as provided in Section 8.1(a);
- (j) An amendment to the Articles of Organization; and

3.8 In the event that the Membership Interest of one or more of the Members has been diluted as a result of the provisions of Section 5.3, and until said dilution is cured as provided in Section 5.3(d), then in said event the provisions of Sections 3.7, 4.3 and any other provision of this Agreement requiring the unanimous consent of the Members are automatically modified to provide that the vote of a majority in interest of the Members shall be required to authorize all of the actions outlined in such provisions.

4. MANAGEMENT AND EXTRAORDINARY TRANSACTIONS

4.1 Management.

(a) The Company's business shall be managed by the Managers. Except where the Members' approval is expressly required by this Agreement or by the Act notwithstanding this Agreement, the Managers shall have full authority, power and discretion to make all decisions with respect to the Company's business and to perform such other services and activities as set forth in this Agreement. Every Manager shall be an agent of the Company for its business purposes and each Manager may bind the Company in carrying out business decisions made in the ordinary course of business of the Company (and not specifically referenced in Section 3.7 herein), provided that (i) the Managers, by unanimous consent, shall have approved said action in accordance with this Agreement, or the Act notwithstanding this Agreement; or (ii) the Managers, by unanimous consent, shall have delegated to any one or more Managers the responsibility to carry out certain actions to be taken by such Manager(s) in accordance with this Agreement or the act notwithstanding this Agreement; or (iii) the business entered into by a Manager is in the ordinary course of business of the Company and the person with whom said Manager is dealing has no knowledge that the action has not been so approved by the Members. Unless otherwise expressly authorized by this Agreement or the Members as set forth herein, the act of a Manager that is not apparently for carrying on the Company's business in the ordinary course shall not bind the Company.

(b) Except as otherwise expressly provided in this Agreement or the Act notwithstanding this Agreement, the Members shall have no right to control or manage, nor shall they take any part in the control or management of, the property, business or affairs of the Company, but they may exercise the rights and powers of Members under this Agreement, including, without limitation, the right to approve certain matters as provided herein.

4.2 Duty of Managers. Each Manager shall perform his or her duties as a Manager in good faith and with that degree of care that an ordinarily prudent person in a like position would use under similar circumstances. In performing his or her duties, a Manager shall be entitled to rely on information, opinions, reports and statements, including, without limitation, financial statements and other financial data, in each case prepared by any Person as to matters the Managers reasonably believe are within such Person's professional or expert competence.

4.3 Number, Tenure and Qualifications of Managers. The Company shall have three (3) Managers. Each Member shall have the right to appoint one (1) Manager of the Company. The initial Managers shall be Robert C. Morgan, Angelo Ingrassia and Frank S. Imburgia, Jr. whose individual terms will continue until the earlier of the following:

- (a) The death or withdrawal of the Manager;
- (b) A unanimous consent of all Members to the termination of the term of one or more said named Managers;
- (c) If the Manager is also a Member, the transfer of such Manager's Membership Interest in the Company; or
- (d) If the Manager owns an Equity Interest, as defined in Section 7.9, in a Member, the transfer of either: (i) a Membership Interest in the Company held by a Member in which such Manager owns an Equity Interest; or (ii) such Manager's Equity Interest in the Member..

4.4 Powers of Managers. Without limiting the generality of Section 4.1, but subject to Sections 4.9, 3.7 and 4.13, the Managers shall have the power and authority, upon unanimous consent of the Managers, to act on behalf of the Company to: (a) purchase, lease or otherwise acquire from, or sell, lease or otherwise dispose of any property, real or personal; (b) borrow money, mortgage, pledge, grant security interests or other encumbrances of any property, real or personal; (c) open bank accounts or otherwise invest the funds of the Company; (d) sell, dispose, trade or exchange the assets of the Company; (e) purchase insurance on the business and assets of the Company; (f) commence or defend lawsuits and other proceedings; (g) enter into any and all agreements, instruments or other writings, for any purpose in the ordinary course of business; (h) execute or modify leases with respect to any part or all of the assets of the Company; (i) borrow money for and on behalf of the Company; (j) retain accountants, attorneys or other agents; (k) execute any and all other instruments and documents which may be necessary or, in the opinion of the Manager, desirable to carry out the intent and purpose of this Agreement; (l) make any and all expenditures which the Manager, in his sole discretion, deems necessary or appropriate in connection with the management of the affairs of the Company and the carrying out of its obligations and responsibilities under this Agreement; (m) enter into any kind of activity necessary to, or in connection with, or incidental to the accomplishment of the purposes of the Company; and (n) take any other lawful action that the Manager considers necessary, convenient or advisable in connection with any business of the Company or of any company of which the Company is a member.

4.5 No Exclusive Duty to Company. A Manager shall not be required to manage the Company as his sole and exclusive function and he may have other business interests and may engage in and shall incur no liability to the Company or any Member for other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right pursuant to this Agreement to share or participate in such other business interests or activities or to the income or proceeds derived therefrom.

4.6 Limitation of Liability. Except as otherwise required by the Act, no Manager shall be liable to the Company or any Member for any loss or damage sustained by the Company or any Member unless the Manager has failed to comply with Section 4.2 with respect to the actions or occurrences giving rise to such loss or damage.

4.7 Indemnification. To the maximum extent permitted under the Act, the Company shall indemnify and hold harmless each Manager from and against all claims and demands.

4.8 Resignation. Any Manager may resign at any time on notice to the Company. The resignation of any Manager shall take effect upon receipt of such notice or at any later time specified in such notice. The resignation of the Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal of a Member.

4.9 Action by Managers. The Managers may designate one or more Managers to manage the Company upon the unanimous consent of all Managers.

4.10 Vacancies. Upon the resignation, withdrawal, death, or removal of Manager, then the Member who appointed such Manager shall elect the successor. A Manager elected to fill a vacancy shall hold office until the expiration of such term as provided for in Section 4.3.

4.11 Salaries. No Manager shall receive any salary or management fee for acting as Manager except that salary or other compensation which is granted to a Manager from time to time by the affirmative vote of Members holding a majority of the Membership Units. No Manager shall be prevented from receiving such a salary or other compensation because such Manager is also a Member.

4.12 Extraordinary Transactions. Notwithstanding anything else in this Agreement, the Act or the Articles of Organization, approval of the Members in accordance with Section 3.7 shall be necessary for the consummation of any of the events or actions specified in Section 3.7.

4.13 Irrespective of the provisions in Article 4 herein requiring unanimous consent by Managers for the carrying out of business as outlined in this section, in the event that the Membership Interest of any Member has been diluted as provided in Section 5.3 herein, and until such time as said Membership Interest is restored as provided in Section 5.3(d), any provisions of this Agreement requiring the unanimous consent of the Managers are automatically modified to provide that the vote of a majority of the Managers shall be required to authorize all of the actions outlined in such provisions.

4.14 Amendments.

(a) Except as the Act otherwise requires, the Articles of Organization or this Agreement or both may be amended from time to time in writing by a unanimous vote of the Members, except (i) if the amendment is an amendment of Schedule A, or Schedule C-1 to Exhibit C, which are not inconsistent with the provisions of these Articles of Organization, or required by the provisions of this Agreement, or (ii) if the amendment is an amendment of the Articles of

Organization of a type set forth in Section 213(b) of the Act, then in either such case, such amendment may be made by the Managers.

(b) Notwithstanding anything to the contrary contained in Section 4.13(a), any amendment to this Agreement that would adversely affect (i) the Federal income tax treatment to be afforded to a Member, (ii) the liabilities of a Member or (iii) the consent and approval rights reserved by the Members, or which would compromise the obligation of a Member to make a contribution or otherwise change the method of calculating allocations of profits, losses, deductions or credits or the distributions of any Member, or the order or method provided for determining the same, shall require the consent of each Member affected, which consent is not to be unreasonably withheld or delayed.

(c) The determination of the fair market value of the Company's real estate assets as listed on Schedule B may be amended only by a writing signed by each of the Members.

5. CAPITAL CONTRIBUTIONS, ALLOCATIONS AND DISTRIBUTIONS

5.1 Capital Contributions. At the time of the execution of this Agreement, the Members shall make the Capital Contributions set forth in Schedule A and all Capital Accounts and Membership Units shall be established accordingly. Each Member shall own Membership Units in the amounts set forth for such Member in Schedule A and shall have a Percentage Interest in the Company as set forth in Schedule A. Schedule A shall be amended from time to time by the Managers to the extent necessary to accurately reflect redemptions, Capital Contributions, the issuance of additional Membership Units, the admission of additional Members, or similar events having an effect on any item set forth therein. Except as provided in Sections 5.2 or 5.5 hereof, the Members shall have no obligation to make any additional Capital Contributions or loans to the Company.

5.2 Additional Capital Contribution.

(a) To the extent that a shortfall exists between Company's revenues (including proceeds from loans from Members or other loans) and Company expenses, then, upon the unanimous consent of the Members, each Member shall be required to pay to the Company its proportional share of any shortfall based upon each Members' Membership Interest as an additional Capital Contribution (a "Shortfall Capital Call").

(b) In addition to the above, the occurrence of one or more of the following events shall be deemed a capital call to be effective without a vote of the Members (a "Critical Capital Call"), the same to approved by a vote of a majority of the Managers. Said Critical Capital Call is to be an amount necessary to cure the following conditions causing the Critical Capital Call:

(i) any event or condition with which the passage of time will or may cause a lien to attach to any of the assets of the Company;

(ii) a default or late payment on any loan or indebtedness which binds the Company, including, without limitation, any mortgage loan;

(iii) the late payment of any taxes due by the Company, including, without limitation, any real property taxes;

(iv) any emergency repairs identified by a majority of the Managers to require prompt attention;

(v) the repair of any casualty to the premises owned by the Company, which casualty is unfunded or under-funded by insurance;

(vi) any other event which, under any then-existing loan or mortgage agreement, will or may cause an event of default upon the passage of time. The term Additional Capital Contribution, as used herein, shall include contributions to meet a Shortfall Capital Call or a Critical Capital Call, or both.

5.3 Failure to Pay an Additional Capital Contribution.

(a) Following written notice of a Shortfall Capital Call or Critical Capital Call as noted above from a Manager which sets for the amount of the Shortfall Capital Call or Critical Capital Call and the condition causing such Shortfall Capital Call or Critical Capital Call, the required Additional Capital Contribution shall be made by the Members to the Company within ten (10) days of receipt of the written notice. The notice of a demand for an Additional Capital Contribution shall state whether it is for a Shortfall Capital Call or a Critical Capital Call. Upon the failure of a Member to make timely payment of an Additional Capital Contribution, the Managers or any one of them shall issue an additional notice to the defaulting Member (the "Second Notice").

(b) In the event that a defaulting Member fails to pay an Additional Capital Contribution within three (3) days after the Second Notice, then the Managers or any one of them shall request the non-defaulting Members to pay the unpaid amount of the defaulting Member's Additional Capital Contribution (the "Unpaid Contribution") pro-rata based on the total Membership Interest of the non-defaulting Members. Any amount paid by a non-defaulting Member by making an Additional Capital Contribution to fund an Unpaid Contribution shall be treated as an Additional Capital Contribution by the contributing Member and the Company shall increase the contributing Member's Percentage Interest and decrease the defaulting Member's Percentage Interest by two to one dilution and Schedule A shall be amended accordingly.

(c) By way of example to illustrate the possibility that a Member defaults on an Additional Capital Contribution, assume the following:

(i) The Company has three equal Members (A, B, and C) each with a one-third ($1/3^{\text{rd}}$) Percentage Interest;

(ii) Each Member to date has contributed \$300,000 for a total of all Capital Contributions to date of \$900,000;

(iii) Managers make a capital call of \$300,000 requiring each Member to contribute an additional \$100,000;

(iv) Member B is unable or unwilling to contribute the required additional \$100,000; and

(v) Then Members A and C shall participate equally by contributing the additional \$50,000 each. Each nondefaulting contributing Member shall then receive additional Percentage Interests and dilute defaulting Member B. If Members A and C choose to dilute B's Percentage Interest, then the dilution is calculated as follows:

(A) Take the total Capital Contributions to date (\$900,000) and add to it the additional Capital Contribution being called for by the Managers (\$300,000) to arrive at a total Capital Contribution to date (\$1,200,000). Divide the defaulting Member B's required Capital Contribution of \$100,000 by the total Capital Contribution to date of \$1,200,000 ($\$100,000/\$1,200,000$) and then multiply by 2 to arrive at $1/6$. This $1/6$ percentage interest is then allocated equally to both Members A and C. The resulting Member's Percentage Interests are as follows: Members A and C = $1/3$ plus $1/12$ to arrive at $5/12$ ths (41 and $2/3$ rds percent) each and Member B's percentage interest is reduced by $1/6$ th of the total Company Percentage Interests (16 and $2/3$ rds percent); and

(B) Accordingly, the Percentage Interests immediately after the capital call and failure to contribute by Member B would be: Member A – $41 \frac{2}{3}$ rd%; Member B – $16 \frac{2}{3}$ rd%; and Member C – $41 \frac{2}{3}$ rd%.

(d) In the event that a Member whose Membership Interest has been diluted pursuant to the provisions of Section 5.3 is desirous of reestablishing his/her/its percentage of Membership Interest, then the following shall be applicable:

(i) The diluted Member shall give written notice to the remaining Members of his/her/its desire to reestablish its proportional share of Membership Interest;

(ii) Said notice shall be delivered not more than six (6) months from the date that the diluted Member is given the Second Notice as provided in Section 5.3(a) and (b).

(iii) The diluted Member shall repay to those Members who advanced the Additional Capital Contribution the sum that was paid by them which was otherwise required to be paid by the diluted Member together with an opportunity premium computed at the rate of eight (8 %) percent of the Additional Capital Contribution so advanced by the other Member(s) which was to be paid by the diluted Member, and upon payment by the diluted Member of the Additional Capital Contribution paid into the Company (which was otherwise payable by the diluted

Member) along with the eight (8%) percent opportunity premium, the Managers shall fully reestablish the Membership Interest and Capital Account of the diluted Member to its prior status without reference to the event causing the dilution. The right of the diluted Member to re-established his/her/its Membership Interest may only be utilized once by a Member.

5.4 Return of Capital Contributions. Except as otherwise provided in this Agreement, no Member shall have the right to withdraw, borrow, demand or otherwise receive the return of all or any part of his Capital Contribution. In the event a Member is entitled to receive all or any part of any Capital Contribution, such Member shall not have the right to receive any property other than cash except as may be specifically provided herein.

5.5 No Interest on Capital Contributions. No Member shall be entitled to receive or be paid any interest, salary or draw with respect to his Capital Contributions or the amount in his Capital Account or for services rendered on behalf of the Company or otherwise solely in his capacity as a Member, except as otherwise provided in this Agreement.

5.6 Capital Accounts. The Company shall establish and maintain a separate Capital Account for each Member in accordance with Exhibit C. The Capital Account of each permitted transferee of a Membership Interest shall initially be equal to the Capital Account of the transferor as of the effective date of the Transfer. Notwithstanding any other provision in this Agreement to the contrary, no Member shall be obligated at any time, to the Company, to the other Members, to the Managers or to any creditor of the Company, to restore a negative Capital Account.

5.7 Loans by Members.

(a) No Member shall be obligated to make any loan to the Company. A Member may, at its election, loan or cause to be loaned to the Company such sums and on such terms as the Managers deem appropriate and necessary for the conduct of the Company's business. Such loans shall bear interest at a rate agreed upon by the Managers and the loaning Member and shall be evidenced by one or more promissory notes.

(b) In the event a Member shall, subject to the terms of this Agreement, make a loan or loans to the Company, such loan or loans shall be repayable out of and be considered a first charge against any amounts available for distribution to the Members. In making such loans, the Member shall be treated as a creditor of the Company and not as a Member. Any such loan shall constitute a loan from the Member to the Company, and shall in no event be deemed to constitute a Capital Contribution.

5.8 Allocations. For purposes of maintaining the Capital Accounts and in determining the rights of the Members among themselves, the Company's items of income, gain, loss and deduction (computed in accordance with Exhibit C) shall be allocated among the Members in each taxable year (or portion thereof) in accordance with Exhibit D.

5.9 Distributions.

(a) Distribution of Available Cash. At least annually, the Managers shall determine the amount of Available Cash generated by the Company during such year or shorter period and shall cause the Company to distribute such Available Cash to the Members in accordance with their Percentage Interests.

(b) Amounts Withheld. All amounts withheld pursuant to the Code or any provisions of any state or local tax law with respect to any allocation, payment or distribution to a Member or Assignee shall be treated as amounts distributed to the Member or Assignee pursuant to Section 5.5(a) for all purposes under this Agreement.

(c) Distributions Upon Liquidation. Proceeds from a Terminating Capital Transaction and any other cash received or reductions in reserves made after commencement of the liquidation of the Company shall be distributed to the Members in accordance with Article 8.

6. TAXES

6.1 Preparation of Tax Returns. The Managers shall arrange for the preparation and timely filing of all returns of Company income, gains, deductions, losses and other items required of the Company for federal and state income tax purposes and shall use all reasonable efforts to furnish, within ninety (90) days of the close of each taxable year, the tax information reasonably required by Members for federal and state income tax reporting purposes.

6.2 Tax Elections. Except as otherwise provided herein, the Managers shall, in their sole and absolute discretion, determine whether to make any available election pursuant to the Code. The Managers shall have the right to seek to revoke any such election (including, without limitation, the election under Section 754 of the Code) upon the Managers' determination in their sole and absolute discretion that such revocation is in the best interests of the Members.

6.3 Tax Matters Partner.

(a) The Managers shall elect one of the Managers as the "Tax Matters Partner" of the Company for federal income tax purposes. Pursuant to Section 6230(e) of the Code, upon receipt of notice from the IRS of the beginning of an administrative proceeding with respect to the Company, the Tax Matters Partner shall furnish the IRS with the name, address, taxpayer identification number, and profit interest of each of the Members; provided, however, that such information is provided to the Company by the Members.

(b) The Tax Matters Partner is authorized, but not required:

(i) to enter into any settlement with the IRS with respect to any administrative or judicial proceedings for the adjustment of Company items required to be taken into account by a Member for income tax purposes (such administrative proceedings being referred to as a "tax audit" and such judicial proceedings being referred to as "judicial review"), and in the settlement agreement the Tax Matters Partner may expressly state that such agreement shall bind all Members, except that such settlement agreement shall not bind any Member (1) who (within the

time prescribed pursuant to the Code and Regulations) files a statement with the IRS providing that the Tax Matters Partner shall not have the authority to enter into a settlement agreement on behalf of such Member or (2) who is a "notice partner" (as defined in Section 6231(a)(8) of the Code) or a member of a "notice group" (as defined in Section 6223(b)(2) of the Code);

(ii) in the event that a notice of a final administrative adjustment at the Company level of any item required to be taken into account by a Member for tax purposes (a "final adjustment") is mailed to the Tax Matters Partner, to seek judicial review of such final adjustment, including the filing of a petition for readjustment with the Tax Court or the filing of a complaint for refund with the United States Claims Court or the District Court of the United States for the district in which the Company's principal place of business is located;

(iii) to intervene in any action brought by any other Member for judicial review of a final adjustment;

(iv) to file a request for an administrative adjustment with the IRS and, if any part of such request is not allowed by the IRS, to file an appropriate pleading (petition or complaint) for judicial review with respect to such request;

(v) to enter into an agreement with the IRS to extend the period for assessing any tax which is attributable to any item required to be taken account by a Member for tax purposes, or an item affected by such item; and

(vi) to take any other action on behalf of the Members or the Company in connection with any tax audit or judicial review proceeding to the extent permitted by applicable law or regulations.

The taking of any action and the incurring of any expense by the Tax Matters Partner in connection with any such proceeding, except to the extent required by law, is a matter in the sole and absolute discretion of the Tax Matters Partner and the provisions relating to indemnification of the Managers set forth in Section 4.7 shall be fully applicable to the Tax Matters Partner in its capacity as such.

(c) The Tax Matters Partner shall receive no compensation for its services as such. All third party costs and expenses incurred by the Tax Matters Partner in performing his duties as such (including legal and accounting fees and expenses) shall be borne by the Company. Nothing herein shall be construed to restrict the Company from engaging an accounting firm to assist the Tax Matters Partner in discharging his duties hereunder.

6.4 Organizational Expenses. The Company, to the extent permitted by the Code, shall elect to deduct expenses, if any, incurred by it in organizing the Company ratably over the shortest length of time permitted by or provided for by the Code.

6.5 Withholding. Each Member hereby authorizes the Company to withhold from or pay on behalf of or with respect to such Member any amount of federal, state, local, or foreign

taxes that the Tax Matters Partner determines that the Company is required to withhold or pay with respect to any amount distributable or allocable to such Member pursuant to this Agreement, including, without limitation, any taxes required to be withheld or paid by the Company pursuant to Sections 1441, 1442, 1445, or 1446 of the Code. Any amount paid on behalf of or with respect to a Member shall constitute a loan by the Company to such Member, which loan shall be repaid by such Member within fifteen (15) days after notice from the Tax Matters Partner that such payment must be made.

7. TRANSFERABILITY

7.1 General. Except as set forth in this Article 7, no Member shall withdraw from membership in the Company or give, sell, assign, pledge, hypothecate, exchange or otherwise dispose to another Person (hereinafter a "transfer") any Membership Units.

7.2 Withdrawal from Company.

(a) A Member does not have the right or power to withdraw from membership in the Company without the consent of the other Members by vote thereof in accordance with Section 3.7. Any such withdrawing Member shall sign the appropriate instrument evidencing withdrawal under this provision as deemed necessary or appropriate by the Managers. In the event such consent is not granted, the Member shall not be permitted to withdraw, and no notice to the Company shall effectuate such withdrawal.

(b) Upon consent to the withdrawal from membership in the Company in accordance with Section 7.2(a), any withdrawing Member shall offer, or be deemed to have offered, to sell his entire Membership Interest to the Members and the Members shall have a right of first refusal to purchase all (but not less than all) of the withdrawing Member's Membership Interest in accordance with the provisions of Section 7.4. If any portion of the Membership Interest subject to the right of first refusal to purchase is not purchased in accordance with the provisions of this Article 7, within the time periods referred to therein, the right of first refusal to purchase shall be deemed to be rejected as to the entire Membership Interest, the withdrawing Member shall not be entitled to receive any amount in liquidation of his Membership Interest until dissolution and winding up of the Company, but shall continue to be entitled to receive, with respect to such Member's Membership Units and on behalf of such Member or such Member's estate, the distributions and allocations of profits and losses to which such Member would be entitled, with no right to act as a Member and such Member's Membership Units shall be treated as not outstanding for purposes of any vote.

7.3 Death, Incapacity, Bankruptcy or Dissolution of a Member. In the event of the death, incapacity, bankruptcy or dissolution of a Member, unless the Company is dissolved in accordance with Section 8.1(b), such Member or the legal or personal representative of the Member or the Member's estate shall offer, or be deemed to have offered, to sell his entire Membership Interest to the Members, and the Members shall have a right of first refusal to purchase all (but not less than all) of the disassociating Member's Membership Interest and subject to the provisions of Section 7.4. If any portion of the Membership Interest subject to the right of first refusal to purchase is not purchased in accordance with the provisions of this Article 7, within the time periods referred

to therein, the right of first refusal to purchase shall be deemed to be rejected as to the entire Membership Interest and the legal or personal representative of the Member or the Member's estate shall not be entitled to receive any amount in liquidation of his Membership Interest until dissolution and winding up of the Company, but shall continue to be entitled to receive, with respect to such Member's Membership Units and on behalf of such Member or such Member's estate, the distributions and allocations of profits and losses to which such Member would be entitled, with no right to act as a Member and such Member's Membership Units shall be treated as not outstanding for purposes of any vote.

7.4 Payment for Membership Interest. In exchange for a Member's Membership Units which are to be purchased pursuant to Sections 7.2, 7.3 or 7.8, within 180 days following the event giving rise to such right of first refusal to purchase, the Members exercising such right shall pay such Member, or the legal or personal representative of the Member or the Member's estate, an amount in cash determined pursuant to Section 7.6. At the option of and in the sole discretion of the purchasing Members, those Members may execute a note payable to the disassociating Member, or the legal or personal representative of the disassociating Member or the disassociating Member's estate, for any amounts payable to such Member pursuant to the provisions hereof. Any such note shall be payable in five (5) annual installments from the date of the purchase and shall bear interest at a rate equal to the prime rate published in the National Real Estate Investor as representative of the interest rate at the top of the range on loans maturing at the end of five (5) years, such rate to be adjusted quarterly on the first day of April, July, October and January of each year, based on such information published most recently preceding each such adjustment date, and if that information is no longer available, the holder of the note will choose a new index which is based upon comparable information. The obligation evidenced by the note shall be secured by the purchasing Members' right to receive distributions of cash or other property from the Company (which shall be paid to the purchasing Members provided that there is no default with respect to the note which has not been cured) and to receive allocations of the income, gains, credits, deductions, profits and losses of the Company and such pledge will not require any further consent from the Members.

7.5 Transfer. Except as provided in Sections 7.2, 7.3 or 7.8, a Member may transfer all or a portion of or any rights with respect to his Membership Units to another Person, whether or not a Member, only upon (i) a vote of the Members in accordance with Section 3.7 hereof, and (ii) the execution by the transferee of a written instrument satisfactory to the Managers agreeing to become a party to this Agreement. Upon a transfer of Membership Units in accordance with this Section 7.5, the transferee shall immediately become a Member and the Managers shall amend Schedule A to reflect such transfer. The Members agree that the restrictions on the transfers of Membership Units hereunder are fair and reasonable. Any transfer or attempted transfer of a Membership Unit in violation of the terms of this Agreement shall be null and void and have no effect.

7.6 Purchase Price. The price of the Membership Units to be purchased under this Agreement shall be their Fair Market Value on the Valuation Date.

(a) The term "Fair Market Value" as used in this Section 7.6 shall be an amount which bears the same proportion to the amount of the Net Worth of the Company as the

number of Membership Units to be purchased bears to the total number of the Company's Membership Units outstanding on the Valuation Date.

(b) The Valuation Date, as used herein shall be the last day of the month preceding the month in which the event giving rise to the purchase occurred, provided, however, that, if the date so determined follows by less than four (4) calendar months the close of the Company's last preceding fiscal year, then the last day of such fiscal year shall be the Valuation Date.

(c) The term "Net Worth", as used in subsection 7.6(a) shall be an amount equal to the amount of the Company's assets, less the amount of its liabilities, on the Valuation Date, as disclosed by the Company's books of account regularly maintained in accordance with the accounting practices regularly followed by the Company and, in cases not covered by such practices, in accordance with cash basis, tax accounting principles consistently applied, but in all events adjusted as follows:

(i) All real estate shall be valued at its fair market value, as stipulated in Schedule B. Such valuation may be modified from time to time by written agreement of all the Members in accordance with Section 4.14. Notwithstanding the foregoing, in the event a purchase is required hereunder and there has been no stipulation of the fair market value of the real estate within the period of five (5) years from the relevant Valuation Date, the fair market value of the real estate shall be determined by the majority vote of a panel of three (3) appraisers each holding the designation of either Senior Real Estate Analyst (SREA) awarded by the Society of Real Estate Appraisers or Member Appraisal Institute (MAI) awarded by the American Institute of Real Estate Appraisers, one appointed by the selling Member or his representative, one appointed by the purchasing Members and one appointed by the other two appraisers;

(ii) Adjustment shall be made on account of events occurring subsequent to the Valuation Date, as provided for in subsection 7.6(e);

(iii) Except by operation of the preceding subsection 7.6(c)(ii), reserves for contingent liabilities shall not be treated as liabilities; and

(iv) No additional amount shall be included for goodwill.

(d) The calculation of the Company's Net Worth shall be determined by the firm of certified public accountants regularly employed by the Company, or, if for any reason such firm does not make such determination, then such determination shall be made by any reputable firm of certified public accountants employed for the purpose by the Company. The determination shall be made from the Company's books of account, the accuracy of which shall be assumed, a formal audit thereof being hereby expressly waived. The expense of determining the Net Worth shall be borne equally by the selling and purchasing parties.

(e) If at any time during the period of three (3) years after the Valuation Date, the Company shall become aware of a loss, liability, cost or expense which was not reflected

on its books of account as of the Valuation Date, but which arose out of its operations prior to the Valuation Date, or which impaired the value of an asset of the Company as of the Valuation Date, the Company shall notify the selling Member, of the amount and nature of such loss. The selling Member shall have the right, at its own cost and expense, to examine the Company's books and records with respect to such loss and, if relevant, to participate with the Company in resisting a claim by a third party if it believes that the amount is not properly due from the Company. The purchase price for the Membership Units of the selling Member shall be reduced to reflect the proportionate amount of such loss, and the selling Member shall reimburse the purchasing Member for said sums; such reimbursement being in the form of a cash payment or a setoff on any note owed by the purchasing Member to the selling Member as part of the purchase price of the Membership Units.

7.7 Pro Rata Purchase. With respect to the right of first refusal provided for in this Article 7, in the absence of any other agreement between them, each Member shall be entitled to purchase that proportion of the selling Member's Membership Interest equal to the proportion which that purchasing Member's Membership Interest bears to the Membership Interests of all of the purchasing Members who wish to purchase a portion of the selling Member's Membership Interest. The right to purchase a pro rata share of the Membership Interest of the selling Member shall be solely the right of the other non-selling Members.

7.8 Breach by Member. If it is determined that a Member has breached any provision of this Agreement and fails to cure said breach within ten (10) days of the Member's receipt of written notice as provided herein, such Member shall be liable to the Company for all damages incurred by the Company as a result of such breach. In addition, such breaching Member shall offer, or be deemed to have offered, to sell his entire Membership Interest to the non-breaching Members, and the non-breaching Members shall have a right of first refusal to purchase all (but not less than all) of the breaching Member's Membership Interest, subject to the provisions of this Article 7. If any portion of the Membership Interest subject to the right of first refusal to purchase is not purchased in accordance with the provisions of this Article 7, within the time periods referred to therein, the right of first refusal to purchase shall be deemed to be rejected as to the entire Membership Interest and the breaching Member shall not be entitled to receive any amount in liquidation of his Membership Interest until dissolution and winding up of the Company, but shall continue to be entitled to receive, with respect to such Member's Membership Units and on behalf of such Member, the distributions and allocations of profits and losses to which such Member would be entitled, with no right to act as a Member and such Member's Membership Units shall be treated as not outstanding for purposes of any vote.

7.9 Transfer of Equity Interests in Members

(a) General. If a Member is an entity, then any Equity Interest, as defined herein, in such Member shall not be transferred, sold, assigned, pledged, hypothecated, exchanged or otherwise disposed of without the prior written consent of all other then-existing Members. As used herein, an "Equity Interest" means a majority or controlling equity ownership interest in such Member. Notwithstanding anything to the contrary, transfers of Equity Interests among members of a Member on the date hereof shall not be considered a transfer for purposes of this Section 7.9.

(b) Effect of Transfer of Equity Interest. In the event that a transfer of an Equity Interest, as defined above, occurs without the prior written consent of all other Members, then upon said transfer of Equity Interest, the effected Member shall be deemed for all purposes as having made an unauthorized transfer of Membership Units as defined in Article 7 herein and the Member in which the Equity Interest was transferred shall offer, or be deemed to have offered, to sell his entire Membership Interest to the other Members in accordance with Section 7.2(b).

8. DISSOLUTION

8.1 Dissolution. The Company shall be dissolved and its affairs shall be wound up upon the following circumstances:

(a) The affirmative vote of the Members in accordance with Section 3.7;

or

(b) In the event of the bankruptcy, death, dissolution, incapacity or withdrawal of any Member or the occurrence of any other event that terminates the continued membership of any Member, the remaining Members shall have the right to continue the Company, and the Company shall continue, unless within one hundred twenty (120) days after such event the Company is dissolved by the affirmative vote of the remaining Members in accordance with Section 3.7.

8.2 Winding Up and Liquidation.

(a) Upon the occurrence of an event set forth in Section 8.1 (a "Liquidating Event"), the Company shall continue solely for the purposes of winding up its affairs in an orderly manner, liquidating its assets and satisfying the claims of its creditors and Members. No Member shall take any action that is inconsistent with, or not necessary to or appropriate for, the winding up of the Company's business and affairs. The Managers (referred to in this Article 8 as, the "Liquidator"), shall be responsible for overseeing the winding up and dissolution of the Company and shall take full account of the Company's liabilities and property and the Company property shall be liquidated as promptly as is consistent with obtaining the fair value thereof, and the proceeds therefrom shall be applied and distributed in the following order:

(i) First, to the payment and discharge of all of the Company's debts and liabilities to its creditors, not including Members who are creditors;

(ii) Second, to Members who are creditors, including the repayment of any loans from Members; and

(iii) Third, to Members and former Members in satisfaction of liabilities for distributions under Section 507 or 509 of the Act; and

(iv) The balance, if any, to the Members in accordance with their Capital Accounts.

(b) Notwithstanding the provisions of Section 8.2(a) which require liquidation of the assets of the Company, but subject to the order of priorities set forth therein, if prior to or upon dissolution of the Company the Liquidator determines that an immediate sale of part or all of the Company's assets would be impractical or would cause undue loss to the Members, the Liquidator may, in its sole and absolute discretion, defer for a reasonable time the liquidation of any assets except those necessary to satisfy liabilities of the Company (including those to Members as creditors) and/or distribute to the Members, in lieu of cash, as tenants in common and in accordance with the provisions of Section 8.2(a), undivided interests in such Company assets as the Liquidator deems not suitable for liquidation. Any such distributions in kind shall be made only if, in the good faith judgment of the Liquidator, such distributions in kind are in the best interest of the Members, and shall be subject to such conditions relating to the disposition and management of such properties as the Liquidator deems reasonable and equitable and to any agreements governing the operation of such properties at such time. The Liquidator shall determine the fair market value of any property distributed in kind using such reasonable method of valuation as it may adopt.

(c) In the discretion of the Liquidator, a pro rata portion of the distributions that would otherwise be made to the Members pursuant to this Article 8 may be:

(i) distributed to a trust established for the benefit of the Members for the purposes of liquidating Company assets, collecting amounts owed to the Company, and paying any contingent or unforeseen liabilities or obligations of the Company or the Members arising out of or in connection with the Company. The assets of any such trust shall be distributed to the Members from time to time, in the reasonable discretion of the Liquidator, in the same proportions as the amount distributed to such trust by the Company would otherwise have been distributed to the Members pursuant to this Agreement; or

(ii) withheld or escrowed to provide a reasonable reserve for Company liabilities (contingent or otherwise) and to reflect the unrealized portion of any installment obligations owed to the Company, provided that such withheld or escrowed amounts shall be distributed to the Members in the manner and order of priority set forth in Section 8.2(a) as soon as practicable.

8.3 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 Department of State pursuant to the Act.

8.4 Compliance with Timing Requirements of Regulations. In the event the Company is "liquidated" within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g), distributions shall be made pursuant to this Article 8 to the Members who have positive Capital Accounts in compliance with Regulations Section 1.704-1(b)(2)(ii)(b)(2). If any Member has a deficit balance in his Capital Account (after giving effect to all contributions, distributions and allocations for all taxable years, including the year during which such liquidation occurs), such Member shall have no obligation to make any contribution to the capital of the Company with respect to such deficit, and such deficit shall not be considered a debt owed to the Company or to any other Person for any purpose whatsoever.

8.5 Deemed Distribution and Recontribution. Notwithstanding any other provision of this Article 8, in the event the Company is considered liquidated within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g), but no Liquidating Event has occurred, the Company's property shall not be liquidated, the Company's liabilities shall not be paid or discharged, and the Company's affairs shall not be wound up. Instead, for federal income tax purposes and for purposes of maintaining Capital Accounts pursuant to Exhibit C hereto, the Company shall be deemed to have distributed the property in kind to the Members, who shall be deemed to have assumed and taken such property subject to all Company liabilities, all in accordance with their respective Capital Accounts. Immediately thereafter, the Members shall be deemed to have recontributed the Company property in kind to the Company, which shall be deemed to have assumed and taken such property subject to all such liabilities.

8.6 Rights of Members. Except as otherwise provided in this Agreement, each Member shall look solely to the assets of the Company for the return of its Capital Account and shall have no right or power to demand or receive property other than cash from the Company. Except as otherwise provided in this Agreement, no Member shall have priority over any other Member as to the return of its Capital Account, distributions, or allocations.

9. GENERAL PROVISIONS

9.1 Notices. Except as otherwise provided in this Agreement or required by law, 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 (i) delivered personally to the Person or to any executive officer of the Person to whom such notice, demand or other communication is directed, or (ii) sent by first-class mail, postage prepaid, addressed to the Person at his/her/its last-known address. In addition, any said notice shall be delivered to legal counsel for the Member or such other counsel at the address as a Member may designate from time to time by written notice to the other Members. All notices required herein shall be delivered as required herein to the Member and to his/her/its then applicable legal counsel. Except as otherwise provided in this Agreement, any such notice shall be deemed to be given five (5) business days after it was mailed.

9.2 Entire Agreement/Amendments. This Agreement and the Articles of Organization contain the entire agreement among the Members with respect to the subject matter hereof and supersede all prior agreements and understandings between the parties with respect to the subject matter hereof. No amendment of this Agreement or the Articles of Organization shall be effective unless made in accordance with Section 4.13.

9.3 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.

9.4 Severability. If any of the terms of this Agreement are declared to be illegal or unenforceable by any court or tribunal of competent jurisdiction, such term or terms shall be null and void and shall be deemed deleted from this Agreement with respect to the jurisdiction of that court or tribunal, provided, however, that all the remaining terms hereof shall remain in full force and effect.

9.5 Binding Effect and Benefit. This Agreement shall be binding upon and inure to the benefit of all Members, and each of the permitted successors and assignees of the Members. No party may assign rights or delegate obligations hereunder except pursuant to the provisions hereof. This Operating Agreement and the right of any party hereto or the Company to require any contribution or loan from any other party shall not be construed as conferring any right or benefit to or upon any other person or entity not a party to this Operating Agreement, it being expressly understood that in entering into this Agreement, the parties did not intend to create any third party beneficiaries of this Agreement.

9.6 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

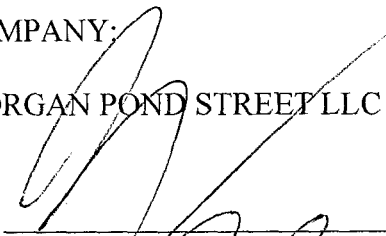
9.7 Governing Law. This Agreement shall be governed by, and interpreted and construed in accordance with, the laws of the State of New York, without regard to principles of conflict of laws.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement with the intent that it be effective as of the date first written above.

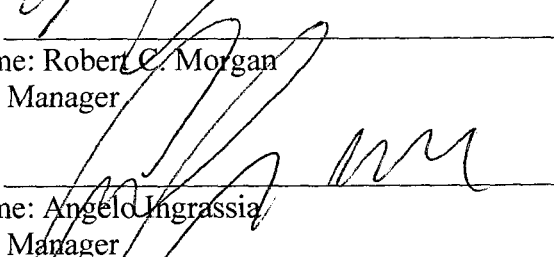
COMPANY:

MORGAN POND STREET LLC

By:  _____

Name: Robert C. Morgan

Its: Manager

By:  _____

Name: Angelo Ingrassia

Its: Manager

By:  _____

Name: Frank S. Imburgia, Jr.

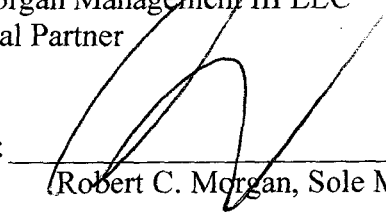
Its: Manager

MEMBERS:

The Robert Morgan Limited Partnership III

By: R. Morgan Management III LLC

Its: General Partner

By:  _____

(Robert C. Morgan, Sole Member)

Imburgia Brothers Pond LLC

By:  _____

Name: Frank S. Imburgia, Jr.

Its: Manager

700 First St LLC

By:  _____

Name: Angelo Ingrassia

Its: Manager

SCHEDULE A - MEMBERS

<u>Member's Names and Addresses</u>	<u>Initial Capital Contributions</u>	<u>Number of Membership Units</u>	<u>Percentage Interest in the Company</u>
The Robert Morgan Limited Partnership III 1170 Pittsford Victor Road Pittsford, New York 14534	\$1.00	33 1/3	33 1/3%
Imburgia Brothers Pond LLC 90 Goodway Drive Rochester, New York 14623	\$1.00	33 1/3	33 1/3%
700 First St LLC 4000 Ridge Road West Rochester, New York 14626	\$1.00	33 1/3	33 1/3%
Total	<u>\$3.00</u>	<u>100</u>	<u>100%</u>

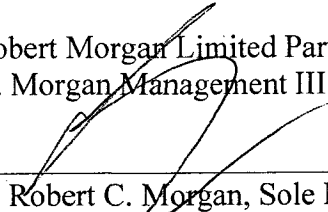
END OF SCHEDULE A

SCHEDULE B -
FAIR MARKET VALUE OF COMPANY REAL ESTATE ASSETS

The agreed fair market value of the real estate assets of the Company is ONE MILLION SIX HUNDRED THIRTY THOUSAND DOLLARS (\$1,600,000.00) as of September 21, 2012.

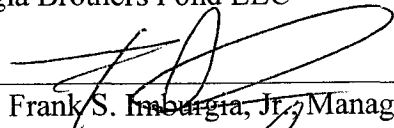
Dated as of: _____

The Robert Morgan Limited Partnership III
By: R. Morgan Management III LLC, its GP

By: 
Robert C. Morgan, Sole Member

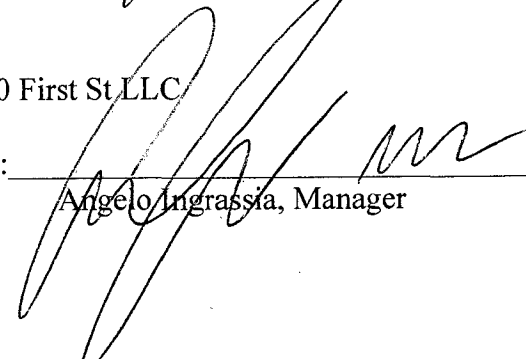
Dated as of: _____

Imburgia Brothers Pond LLC

By: 
Frank S. Imburgia, Jr., Manager

Dated as of: 9-5-2012

700 First St LLC

By: 
Angelo Ingrassia, Manager

END OF SCHEDULE B

SCHEDULE C - VALUE OF CONTRIBUTED PROPERTY

Underlying Property

704(c) Value

Agreed Value

END OF SCHEDULE C

EXHIBIT A - DEFINITIONS

1. DEFINITIONS

In this Agreement, the following terms shall have the meanings set forth below:

1.1 "*Act*" means the New York Limited Liability Company Law, as amended and in effect from time to time.

1.2 "*Agreement*" means this Operating Agreement of Morgan Pond Street LLC, together with all the Schedules and Exhibits hereto.

1.3 "*Articles of Organization*" means the Articles of Organization of the Company filed or to with the New York Department of State on July 23, 2012, as they may from time to time be amended.

1.4 "*Available Cash*" means, with respect to any period for which such calculation is being made:

(a) the sum of:

- (1) the Company's Net Income or Net Loss (as the case may be) for such period (without regard to adjustments resulting from allocations described in Sections 2.1 through 2.5 of Exhibit D);
- (2) Depreciation and all other non-cash charges deducted in determining Net Income or Net Loss for such period;
- (3) the amount of any reduction in the reserves of the Company referred to in clause 1.4(b)(6) below (including, without limitation, reductions resulting because the Members determine such amounts are no longer necessary);
- (4) the excess of proceeds from the sale, exchange, disposition, or refinancing of Company property for such period over the gain recognized from such sale, exchange, disposition, or refinancing during such period (excluding Terminating Capital Transactions); and
- (5) all other cash received by the Company for such period that was not included in determining Net Income or Net Loss for such period;

(b) less the sum of:

- (1) all principal debt payments made by the Company during such period;
- (2) capital expenditures made by the Company during such period;

- (3) investments made by the Company during such period in any entity (including loans made thereto) to the extent that such investments are not otherwise described in clauses (b)(1) or (b)(2), above;
- (4) all other expenditures and payments not deducted in determining Net Income or Net Loss for such period;
- (5) any amount included in determining Net Income or Net Loss for such period that was not received by the Company during such period;
- (6) the amount of any increase in reserves during such period which the Managers determine to be necessary or appropriate in its sole and absolute discretion; and
- (7) the amount of any working capital accounts and other cash or similar balances which the Managers determine to be necessary or appropriate, in its sole and absolute discretion.

Notwithstanding the foregoing, Available Cash shall not include any cash received or reductions in reserves, or take into account any disbursements made or reserves established, after commencement of the dissolution and liquidation of the Company.

1.5 "*Capital Account*" means the Capital Account maintained for a Member pursuant to Exhibit C.

1.6 "*Capital Contribution*" means, with respect to any Member, any cash, cash equivalents or the Agreed Value of Contributed Property which such Member contributes to the Company pursuant to Sections 5.1 or 5.2 of the Agreement.

1.7 "*Code*" means the Internal Revenue Code of 1986, as amended and in effect from time to time, as interpreted by the applicable regulations thereunder. Any reference herein to a specific section or sections of the Code shall be deemed to include a reference to any corresponding provision of future law.

1.8 "*Company*" shall refer to Morgan Pond Street LLC.

1.9 "*Distribution*" means any cash and other property distributed to a Member by the Company from the operations of the Company.

1.10 "*Fiscal Year*" means the fiscal year of the Company, which shall be the year ending December 31.

1.11 "*Manager*" or "*Managers*" means the individual or individuals referenced in Section 4.3 of the Agreement, or any other Person or Persons elected by the Members to serve as a successor Manager of the Company in accordance with and pursuant to Sections 3.7 and 4.10 of the Agreement.

1.12 "*Member*" means each Person who or which executes a counterpart of this Agreement as a Member and each Person who or which may hereafter become a party to this Agreement.

1.13 "*Membership Interest*" means an ownership interest in the Company representing a Capital Contribution by a Member and includes any and all benefits to which the holder of such a Membership Interest may be entitled as provided in this Agreement, together with all obligations of such Person to comply with the terms and provisions of this Agreement. A Membership Interest may be expressed as a number of Membership Units.

1.14 "*Membership Unit*" means a fractional, undivided share of the Membership Interests of all Members. The number of Membership Units outstanding and the Percentage Interest in the Company represented by such Units are set forth in Schedule A of the Agreement, as such Schedule may be amended from time to time. The ownership of Membership Units shall be evidenced by such form of certificate for units as the Managers adopts from time to time.

1.15 "*Net Income*" means, for any taxable period, the excess, if any, of the Company's items of income and gain for such taxable period over the Company's items of loss and deduction for such taxable period. The items included in the calculation of Net Income shall be determined in accordance with federal income tax accounting principles, subject to the specific adjustments provided for in Exhibit C.

1.16 "*Net Loss*" means, for any taxable period, the excess, if any, of the Company's items of loss and deduction for such taxable period over the Company's items of income and gain for such taxable period. The items included in the calculation of Net Loss shall be determined in accordance with federal income tax accounting principles, subject to the specific adjustments provided for in Exhibit C.

1.17 "*Percentage Interest*" means, as to a Member, its interest in the Company as determined by dividing the Membership Units owned by such Member by the total number of Membership Units then outstanding and as specified in Schedule A of the Agreement, as such Schedule may be amended from time to time.

1.18 "*Person*" means any corporation, governmental authority, limited liability company, partnership, trust, unincorporated association or other entity.

1.19 "*Regulations*" means the Income Tax Regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

1.20 "*Terminating Capital Transaction*" means any sale or other disposition of all or substantially all of the assets of the Company or a related series of transactions that, taken together, result in the sale or other disposition of all or substantially all of the assets of the Company.

END OF EXHIBIT A

EXHIBIT B - OPERATING PROCEDURES

1. MEMBERS' ACTION

1.1 Annual Meeting. The annual meeting of the Members of the Company for the transaction of such other business as may properly come before the meeting, shall be held at the principal business office of the Company or at such other place as the Managers shall determine on any business day during the month of April of each year, on such date and time as the Managers shall designate.

1.2 Special Meetings. Special meetings of the Members, except as otherwise provided by law, may be called to be held at the principal business office of the Company or elsewhere at any time by any Manager, and shall be called by any Manager at the request in writing of the Members holding not less than 10% of the Membership Units entitled to vote. Such request and the notice of the meeting shall state the purpose or purposes of the proposed meeting. Business transacted at a special meeting shall be confined to the objects stated in the call and matters germane thereto.

1.3 Notice of Members' Meetings. Written notice of every meeting of Members shall be given in the manner required by law not less than five (5) nor more than sixty (60) days before the date of the meeting to each Member entitled to vote at the meeting. If mailed, such notice is given five (5) days after it is deposited in the United States Mail, with postage thereon prepaid, directed to the Member at his/her/its address as it appears in the records of the Company, or if he/she/it shall have filed with the Company a written request that notices to him/her/it be mailed to some other address, then directed to such other address. The notice shall state the place, date and hour of the meeting and, shall indicate that it is being issued by or at the direction of the person or persons calling the meeting. Notice of a special meeting shall also state the purpose or purposes for which the meeting is called.

1.4 Waiver of Notice. Notice of a Members' meeting need not be given to any Member who submits a signed waiver of notice, in person or by proxy, whether before or after the meeting. The attendance of any Member at a Members' meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting shall constitute a waiver of notice by him or her.

1.5 Quorum. At every meeting of the Members, except as otherwise provided by law or these Operating Procedures, a quorum must be present for the transaction of business and a quorum shall consist of the Members holding not less than fifty-one percent (51%) of all Membership Units entitled to vote, present either in person or by proxy. When a quorum is once present to organize a meeting, it is not broken by the subsequent withdrawal from the meeting of any Members.

1.6 Adjournments. The Members who are present in person or by proxy at any meeting of Members shall have the power by a vote of not less than a majority of all Membership Units entitled to vote to adjourn the meeting from time to time. Subject to any notice required by law, at any adjourned meeting any business may be transacted which might have been transacted on the original date of the meeting. Notice of an adjourned meeting need not be given if the time and place of the adjourned meeting are announced at the original meeting.

1.7 Voting Proxies. All questions that shall come before a meeting shall be decided by the vote required by this Operating Agreement. A Member may vote either in person or by written proxy signed by him or her or by a duly authorized attorney-in-fact and delivered to the Company. No proxy shall be valid after the expiration of eleven (11) months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the person executing it or his or her personal representatives, unless it is entitled "irrevocable proxy," in which event its revocability shall be determined by the law of the State of New York in effect at the time.

1.8 Meetings by Conference Telephone. Any one or more Members may participate in a meeting of such Members by means of a conference telephone or similar communications equipment by means of which all persons participate in the meeting can hear each other. Participation by such means shall constitute presence in person at the meeting.

1.9 Action By Members Without A Meeting.

(a) Whenever Members are required or permitted to take any action by vote, such action may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be either signed by all Members who hold voting rights, or consented to by all Members by electronic communication (email) address to each other Member. Each written consent shall bear the date of signature of each Member who signs the consent, and no written consent shall be effective unless actually received by the Company. Actual receipt by the Company shall constitute delivery by hand, facsimile, overnight courier or by certified or registered mail, return receipt requested, to the office of the Company, or receipt by email by all other Members.

(b) Prompt notice of the taking of the action without a meeting by less than unanimous written consent 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.

2. MANAGER'S ACTION

2.1 Election and Tenure. The Company shall have such Managers as is set forth in Article 4 herein. The initial Managers shall be the parties referenced in Section 4.3 of the Agreement. The number of Managers of the Company may be amended from time to time by vote of the Members in accordance with Section 3.7 of the Agreement. Each Manager shall hold office until the next annual meeting of Members or until a successor shall have been elected and qualified as provided in 4.3.

2.2 Voting. At all meetings of the Managers, except as otherwise provided by the Articles of Organization, these operating procedures or by law notwithstanding this Agreement, a unanimous vote of the Managers shall be required for the transaction of business.

2.3 Procedure. The order of business and all other matters of procedure at every meeting of Managers may be determined by the presiding officer or Manager of the meeting.

2.4 Action Without a Meeting. Any action required or permitted to be taken by a vote of the Managers may be taken without a vote, if the number of Managers sufficient to authorize such action at a meeting at which all Managers entitled to vote thereon were present and voted, consent thereto in writing and the writing is filed with the records of the Company.

2.5 Meetings by Conference Telephone. Any one or more of the Managers may participate in a meeting of the Managers by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation by such means shall constitute presence in person at a meeting.

3. OFFICERS

3.1 Officers. The Managers may designate one or more individuals as officers of the Company, who shall have such titles including, without limitation, President, and who shall exercise and perform all ministerial functions associated with the operations of the Company and such other functions as shall be specifically assigned to them from time to time by the Managers. Any officer may be removed by the Managers at any time, with or without cause. Each officer shall hold office until his or her successor is designated and qualified. Any number of offices may be held by the same individual. The salaries and other compensation of the officers shall be fixed by the Managers. Vacancies in any office shall be filled by the Managers.

3.2 Temporary Transfer of Powers and Duties. In case of the absence or illness of any officer of the Company, or for any other reason that the Managers may deem sufficient, the Managers may delegate and assign, for the time being, the powers and duties of any officer to any other officer.

END OF EXHIBIT B

EXHIBIT C - TAX DEFINITIONS AND CAPITAL ACCOUNT MAINTENANCE

1. DEFINITIONS

For purposes of the Agreement, including the Exhibits thereto, the following terms shall have the following meanings:

1.1 "*Adjusted Capital Account*" means the Capital Account maintained for each Member as of the end of each Company taxable year (i) increased by any amounts which such Member is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5) and (ii) decreased by the items described in Regulations Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), and 1.704-1(b)(2)(ii)(d)(6). The foregoing definition of Adjusted Capital Account is intended to comply with the provisions of Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

1.2 "*Adjusted Capital Account Deficit*" means, with respect to any Member, the deficit balance, if any, in such Member's Adjusted Capital Account as of the end of the relevant Company taxable year.

1.3 "*Adjusted Property*" means any property the Carrying Value of which has been adjusted pursuant to this Exhibit C. Once an Adjusted Property is deemed distributed by, and recontributed to, the Company for federal income tax purposes upon a termination thereof pursuant to Section 708 of the Code, such property shall thereafter constitute a Contributed Property until the Carrying Value of such property is further adjusted pursuant to this Exhibit C.

1.4 "*Agreed Value*" means (i) in the case of any Contributed Property set forth in Schedule C-1 and as of the time of its contribution to the Company, the Agreed Value of such property as set forth in Schedule C-1; (ii) in the case of any Contributed Property not set forth in Schedule C-1 and as of the time of its contribution to the Company, the 704(c) Value of such property, reduced by any liabilities either assumed by the Company upon such contribution or to which such property is subject when contributed, and (iii) in the case of any property distributed to a Member by the Company, the Company's Carrying Value of such property at the time such property is distributed, reduced by any indebtedness either assumed by such Member upon such distribution or to which such property is subject at the time of distribution as determined under Section 752 of the Code and the Regulations thereunder.

1.5 "*Book-Tax Disparities*" means, with respect to any item of Contributed Property or Adjusted Property, as of the date of any determination, the difference between the Carrying Value of such Contributed Property or Adjusted Property and the adjusted basis thereof for federal income tax purposes as of such date. A Member's share of the Company's Book-Tax Disparities in all of its Contributed Property and Adjusted Property will be reflected by the difference between such Member's Capital Account balance as maintained pursuant to this Exhibit C, and the hypothetical balance of such Member's Capital Account computed as if it had been maintained strictly in accordance with federal income tax accounting principles.

1.6 "*Carrying Value*" means (i) with respect to a Contributed Property or Adjusted Property, the 704(c) Value of such property, reduced (but not below zero) by all Depreciation with respect to

such Property charged to the Members' Capital Accounts following the contribution of or adjustment with respect to such Property, and (ii) with respect to any other Company property, the adjusted basis of such property for federal income tax purposes, all as of the time of determination. The Carrying Value of any property shall be adjusted from time to time in accordance with this Exhibit C, and to reflect changes, additions or other adjustments to the Carrying Value for dispositions and acquisitions of Company properties, as deemed appropriate by the Manager.

1.7 "*Company Minimum Gain*" means "partnership minimum gain" within the meaning set forth in Regulations Section 1.704-2(b)(2), and the amount of Company Minimum Gain, as well as any net increase or decrease in a Company Minimum Gain, for a Company taxable year shall be determined in accordance with the rules of Regulations Section 1.704-2(d).

1.8 "*Contributed Property*" means each property or other asset, in such form as may be permitted by the Act, but excluding cash, contributed or deemed contributed to the Company (including deemed contributions to the Company on termination and reconstitution thereof pursuant to Section 708 of the Code). Once the Carrying Value of a Contributed Property is adjusted pursuant to this Exhibit C, such property shall no longer constitute a Contributed Property for purposes of this Exhibit C, but shall be deemed an Adjusted Property for such purposes.

1.9 "*Member Minimum Gain*" means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Regulations Section 1.704-2(i)(3).

1.10 "*Member Nonrecourse Debt*" means "partner nonrecourse debt" within the meaning set forth in Regulations Section 1.704-2(b)(4).

1.11 "*Member Nonrecourse Deductions*" means "partner nonrecourse deductions" within the meaning set forth in Regulations Section 1.704-2(i)(2), and the amount of Member Nonrecourse Deductions with respect to a Member Nonrecourse Debt for a Company taxable year shall be determined in accordance with the rules of Regulations Section 1.704-2(i)(2).

1.12 "*Nonrecourse Built-in Gain*" means, with respect to any Contributed Properties or Adjusted Properties that are subject to a mortgage or negative pledge securing a Nonrecourse Liability, the amount of any taxable gain that would be allocated to the Members pursuant to Section 3.2 of Exhibit D if such properties were disposed of in a taxable transaction in full satisfaction of such liabilities and for no other consideration.

1.13 "*Nonrecourse Deductions*" has the meaning set forth in Regulations Section 1.704-2(b)(1), and the amount of Nonrecourse Deductions for a Company taxable year shall be determined in accordance with the rules of Regulations Section 1.704-2(c).

1.14 "*Nonrecourse Liability*" has the meaning set forth in Regulations Section 1.752-1(a)(2).

1.15 "*Recapture Income*" means any gain recognized by the Company upon the disposition of any property or asset of the Company, which gain is characterized as ordinary income because it represents the recapture of deductions previously taken with respect to such property or asset.

1.16 "*Residual Gain*" or "*Residual Loss*" means any item of gain or loss, as the case may be, of the Company recognized for federal income tax purposes resulting from a sale, exchange or other disposition of Contributed Property or Adjusted Property, to the extent such item of gain or loss is not allocated pursuant to Section 3.2(a)(1) or Section 3.2(b)(1) of Exhibit D to eliminate Book-Tax Disparities.

1.17 "*704(c) Value*" of any Contributed Property means the value of such property as set forth in Schedule C or if no value is set forth in Schedule C, the fair market value of such property or other consideration at the time of contribution as determined by the Manager using such reasonable method of valuation as they may adopt; provided, however, that the 704(c) Value of any property deemed contributed to the Company for federal income tax purposes upon termination and reconstitution thereof pursuant to Section 708 of the Code shall be determined in accordance with this Exhibit C. Subject to the provisions of this Exhibit C, the Manager shall, in his or their sole and absolute discretion, use such method as he or they deem reasonable and appropriate to allocate the aggregate of the 704(c) Values of Contributed Properties in a single or integrated transaction among the separate properties on a basis proportional to their respective fair market values.

1.18 "*Unrealized Gain*" attributable to any item of Company property means, as of any date of determination, the excess, if any, of (i) the fair market value of such property (as determined under this Exhibit C) as of such date, over (ii) the Carrying Value of such property (prior to any adjustment to be made pursuant to this Exhibit C) as of such date.

1.19 "*Unrealized Loss*" attributable to any item of Company property means, as of any date of determination, the excess, if any, of (i) the Carrying Value of such property (prior to any adjustment to be made pursuant to this Exhibit C) as of such date, over (ii) the fair market value of such property (as determined under this Exhibit C) as of such date.

2. CAPITAL ACCOUNTS OF THE MEMBERS

2.1 The Company shall maintain for each Member a separate Capital Account in accordance with the rules of Regulations Section 1.704-1(b)(2)(iv). Such Capital Account shall be increased by (i) the amount of all Capital Contributions and any other deemed contributions made by such Member to the Company pursuant to this Agreement and (ii) all items of Company income and gain (including income and gain exempt from tax) computed in accordance with Section 2.2 hereof and allocated to such Member pursuant to Exhibit D, and decreased by (x) the amount of cash or Agreed Value of all actual and deemed distributions of cash or property made to such Member pursuant to this Agreement and (y) all items of Company deduction and loss computed in accordance with Section 2.2 hereof and allocated to such Member pursuant to Exhibit D.

2.2 For purposes of computing the amount of any item of income, gain, deduction or loss to be reflected in the Members' Capital Accounts, unless otherwise specified in this Agreement, the determination, recognition and classification of any such item shall be the same as its determination, recognition and classification for federal income tax purposes determined in accordance with Section 703(a) of the Code (for this purpose all items of income, gain, loss or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in taxable income or loss), with the following adjustments:

- (a) Except as otherwise provided in Regulations Section 1.704-1(b)(2)(iv)(m), the computation of all items of income, gain, loss and deduction shall be made without regard to any election under Section 754 of the Code which may be made by the Company, provided that the amounts of any adjustments to the adjusted bases of the assets of the Company made pursuant to Section 734 of the Code as a result of the distribution of property by the Company to a Member (to the extent that such adjustments have not previously been reflected in the Members' Capital Accounts) shall be reflected in the Capital Accounts of the Members in the manner and subject to the limitations prescribed in Regulations Section 1.704-1(b)(2)(iv)(m)(4).
- (b) The computation of all items of income, gain, and deduction shall be made without regard to the fact that items described in Sections 705(a)(1)(B) or 705(a)(2)(B) of the Code are not includable in gross income or are neither currently deductible nor capitalized for federal income tax purposes.
- (c) Any income, gain or loss attributable to the taxable disposition of any Company property shall be determined as if the adjusted basis of such property as of such date of disposition were equal in amount to the Company's Carrying Value with respect to such property as of such date.
- (d) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such fiscal year.
- (e) In the event the Carrying Value of any Company Asset is adjusted pursuant to Section 2.4 hereof, the amount of any such adjustment shall be taken into account as gain or loss from the disposition of such asset.
- (f) Any items specifically allocated under Article 3 of Exhibit D shall not be taken into account.

2.3 Generally, a transferee (including an Assignee) of a Membership Unit shall succeed to a pro rata portion of the Capital Account of the transferor; provided, however, that, if the transfer causes a termination of the Company under Section 708(b)(1)(B) of the Code, the Company's properties shall be deemed solely for federal income tax purposes, to have been distributed in liquidation of the Company to the holders of Membership Units (including such transferee) and recontributed by such Persons in reconstitution of the Company. In such event, the Carrying Values of the Company properties shall be adjusted immediately prior to such deemed distribution pursuant to Section 2.4(b) hereof. The Capital Accounts of such reconstituted Company shall be maintained in accordance with the principles of this Exhibit C.

2.4 (a) Consistent with the provisions of Regulations Section 1.704-1(b)(2)(iv)(f), and as provided in Section 2.4(b) hereof, the Carrying Value of all Company assets shall be adjusted upward or downward to reflect any Unrealized Gain or Unrealized Loss attributable to such Company property, as of the times of the adjustments provided in Section 2.4(b) hereof, as if such Unrealized Gain or Unrealized Loss had been recognized on an actual sale of each such property and allocated pursuant to Exhibit D.

(b) Such adjustments shall be made as of the following times:

- (1) immediately prior to the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution;
- (2) immediately prior to the distribution by the Company to a Member of more than a de minimis amount of property as consideration for an interest in the Company; and
- (3) immediately prior to the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g);

provided, however, that adjustments pursuant to clauses (1) and (2) above shall be made only if the Manager determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company.

(c) In accordance with Regulations Section 1.704-1(b)(2)(iv)(e), the Carrying Value of Company assets distributed in kind shall be adjusted upward or downward to reflect any Unrealized Gain or Unrealized Loss attributable to such Company property, as of the time any such asset is distributed.

(d) In determining Unrealized Gain or Unrealized Loss for purposes of this Exhibit C, C, the aggregate cash amount and fair market value of all Company assets (including cash or cash equivalents) shall be determined and allocated among the assets of the Company by the Manager, or in the case of a liquidating distribution pursuant to Article 8 of the Agreement, by the Liquidator, using such reasonable methods of valuation as they or it, as the case may be, may adopt.

2.5 The provisions of this Agreement (including this Exhibit C, and other Exhibits to the Agreement) relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulations. In the event the Manager shall determine that it is prudent to modify (i) the manner in which the Capital Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities which are secured by contributed or distributed property or which are assumed by the Company, or any Member are computed or (ii) the manner in which items are allocated among the Members for federal income tax purposes in order to comply with such Regulations or to comply with Section 704(c) of the Code, the Manager may make such modification without regard to Article 5 of the Agreement, provided that it is not likely to have a material effect on the amounts distributable to any Person pursuant to Article 8 of the Agreement upon the dissolution of the Company. The Manager also shall (i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of Company capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Regulations Section 1.704-1(b)(2)(iv)(q), and (ii) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Regulations Section 1.704-1(b). In addition, the Manager may adopt and employ such methods and procedures for (i) the maintenance of book and tax capital accounts, (ii) the determination and allocation of adjustments under Sections 704(c), 734 and 743 of the Code, (iii) the determination of Net Income, Net Loss, taxable income, taxable loss and items thereof under this Agreement and pursuant to the Code, (iv) the adoption of reasonable conventions and methods for the valuation of assets and the determination of tax basis, (v) the allocation of asset value and tax basis, and (vi) conventions for the determination of cost recovery, depreciation and amortization deductions, as the Manager determines in his or their sole discretion are necessary or appropriate to execute the provisions of this Agreement and to comply with federal and state tax laws.

3. NO INTEREST

No interest shall be paid by the Company on Capital Contributions or on balances in Members' Capital Accounts.

4. NO WITHDRAWAL

No Member shall be entitled to withdraw any part of his Capital Contribution or his Capital Account or to receive any distribution from the Company, except as provided in Articles 5 and 8 of the Agreement.

END OF EXHIBIT C

EXHIBIT D - ALLOCATION RULES

1. REGULAR ALLOCATION RULES.

Except as otherwise provided in this Exhibit D, the Company's items of income, gain, loss and deduction (computed in accordance with Exhibit C) shall be allocated among the Members in each taxable year (or portion thereof) as follows:

1.1 Net Income shall be allocated to the Members in accordance with their respective Percentage Interests;

1.2 After giving effect to the special allocations set forth in Article 2 of this Exhibit D, Net Losses shall be allocated to the Members in accordance with their respective Percentage Interests;

1.3 For purposes of Regulations Section 1.752-3(a), the Members agree that Nonrecourse Liabilities of the Company in excess of the sum of (i) the amount of Company Minimum Gain and (ii) the total amount of Nonrecourse Built-in Gain shall be allocated among the Members in accordance with their respective Percentage Interests; and

1.4 Any gain allocated to the Members upon the sale or other taxable disposition of any Company asset shall to the extent possible, after taking into account other required allocations of gain pursuant to Article 2 of this Exhibit D, be characterized as Recapture Income in the same proportions and to the same extent as such Members have been allocated any deductions directly or indirectly giving rise to the treatment of such gains as Recapture Income.

2. SPECIAL ALLOCATION RULES

Notwithstanding any other provision of the Agreement or this Exhibit D, the following special allocations shall be made in the following order:

2.1 Minimum Gain Chargeback. Notwithstanding the provisions of the Agreement or any other provisions of this Exhibit D, if there is a net decrease in Company Minimum Gain during any Company taxable year, each Member shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, as determined under Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations Section 1.704-2(f)(6). This Section 2.1 is intended to comply with the minimum gain chargeback requirements in Regulations Section 1.704-2(f) and shall be interpreted consistently therewith. Solely for purposes of this Section 2.1, each Member's Adjusted Capital Account Deficit shall be determined prior to any other allocations pursuant to Article 1 of this Exhibit D of Member Minimum Gain during such Company taxable year.

2.2 Member Minimum Gain Chargeback. Notwithstanding any of the provisions of the Agreement or any other provisions of this Exhibit D (except Section 2.1 hereof), if there is a net decrease in Member Minimum Gain attributable to a Member Nonrecourse Debt during any Company taxable year, each Member who has a share of the Member Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(5), shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Member's share of the net decrease in Member Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(5). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations Section 1.704-2(i)(4). This Section 2.2 is intended to comply with the minimum gain chargeback requirement in such Section of the Regulations and shall be interpreted consistently therewith. Solely for purposes of this Section 2.2, each Member's Adjusted Capital Account Deficit shall be determined prior to any other allocations pursuant to Article 1 of this Exhibit D with respect to such Company taxable year, other than allocations pursuant to Section 2.1 hereof.

2.3 Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations or distributions described in Regulations Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6), and after giving effect to the allocations required under Sections 2.1 and 2.2 hereof, such Member has an Adjusted Capital Account Deficit, items of Company income and gain (consisting of a pro rata portion of each item of Company income, including gross income and gain for the Company taxable year) shall be specifically allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, its Adjusted Capital Account Deficit created by such adjustments, allocations or distributions as quickly as possible.

2.4 Nonrecourse Deductions. Nonrecourse Deductions for any Company taxable year shall be allocated to the Members in accordance with their respective Percentage Interests. If the Manager determines in his or her good faith discretion that the Company's Nonrecourse Deductions must be allocated in a different ratio to satisfy the safe harbor requirements of the Regulations promulgated under Section 704(b) of the Code, the Manager is authorized to revise the prescribed ratio to the numerically closest ratio for such Company taxable year which would satisfy such requirements.

2.5 Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any Company taxable year shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i).

2.6 Code Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Section 734(b) or 743(b) of the Code is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis), and such item of gain or loss shall be specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Regulations.

2.7 Curative Allocations. The allocations set forth in Section 2.1 through 2.6 of this Exhibit D (the "Regulatory Allocations") are intended to comply with certain requirements of the Regulations under Section 704(b) of the Code. The Regulatory Allocations may not be consistent with the manner in which the Members intend to divide Company distributions. Accordingly, the Manager is hereby authorized to divide other allocations of income, gain, deduction and loss among the Members so as to prevent the Regulatory Allocations from distorting the manner in which Company distributions will be divided among the Members. In general, the Members anticipate that this will be accomplished by specially allocating other items of income, gain, loss and deduction among the Members so that the net amount of the Regulatory Allocations and such special allocations to each person is zero. However, the Manager will have discretion to accomplish this result in any reasonable manner; provided, however, that no allocation pursuant to this Section 2.7 shall cause the Company to fail to comply with the requirements of Regulations Sections 1.704-1(b)(2)(ii)(d), -2(e) or -2(i).

3. ALLOCATIONS FOR TAX PURPOSES

3.1 Except as otherwise provided in this Article 3, for federal income tax purposes, each item of income, gain, loss and deduction shall be allocated among the Members in the same manner as its correlative item of "book" income, gain, loss or deduction is allocated pursuant to Articles 1 and 2 of this Exhibit D.

3.2 In an attempt to eliminate Book-Tax Disparities attributable to a Contributed Property or Adjusted Property, items of income, gain, loss, and deduction shall be allocated for federal income tax purposes among the Members as follows:

- (a) In the case of a Contributed Property, such items attributable thereto shall:
 - (i) be allocated among the Members consistent with the principles of Section 704(c) of the Code and the Regulations thereunder to take into account the variation between the 704(c) Value of such property and its adjusted basis at the time of contribution; and
 - (ii) any item of Residual Gain or Residual Loss attributable to a Contributed Property shall be allocated among the Members in the same manner as its correlative item of "book" gain or loss is allocated pursuant to Articles 1 and 2 of this Exhibit D.
- (b) In the case of an Adjusted Property, such items shall:

- (i) first, be allocated among the Members in a manner consistent with the principles of Section 704(c) of the Code and the Regulations thereunder to take into account the Unrealized Gain or Unrealized Loss attributable to such property and the allocations thereof pursuant to Exhibit C, and
 - (ii) second, in the event such property was originally a Contributed Property, be allocated among the Members in a manner consistent with Section 3.2(a) of this Exhibit D; and
 - (iii) any item of Residual Gain or Residual Loss attributable to an Adjusted Property shall be allocated among the Members in the same manner its correlative item of "book" gain or loss is allocated pursuant to Articles 1 and 2 of this Exhibit D.
- (c) all other items of income, gain, loss and deduction shall be allocated among the Members in the same manner as their correlative item of "book" gain or loss is allocated pursuant to Articles 1 and 2 of this Exhibit D.

3.3 To the extent that the Treasury Regulations promulgated pursuant to Section 704(c) of the Code permit the Company to utilize alternative methods to eliminate the disparities between the Carrying Value of property and its adjusted basis, the Manager shall have the authority to elect the method to be used by the Company and such election shall be binding on all Members. It is anticipated that the Manager will elect the "traditional method" under Section 704(c) of the Code with respect to property contributed as of the date hereof.

4. NO WITHDRAWAL

No Member shall be entitled to withdraw any part of his Capital Contribution or his Capital Account or to receive any distribution from the Company, except as provided in Articles 5 and 8 of the Agreement.

END OF EXHIBIT D

EXHIBIT "C"
RESOLUTION

CERTIFICATE OF APPROVING RESOLUTIONS

The undersigned, being a Manager of Morgan Pond Street LLC, a New York limited liability company (the "Company,") hereby certifies to Hiscock Barclay, LLP and the City of Syracuse Industrial Development Agency (the "Lender") as follows:

1. A true, correct and complete copy of the Articles of Organization of the Company and all amendments thereto were duly filed in the office of the Secretary of State of the State of New York. Annexed hereto as Exhibits A and B, respectively, are (a) true copies of the Articles of Organization of the Company and all amendments thereto and modifications thereof, together with the filing receipt issued in connection therewith and proof of publication, and (b) a true and complete copy of Company's Operating Agreement and all amendments thereto and modifications thereof. Any terms used and not otherwise defined herein shall have the meanings ascribed to them in the Operating Agreement.

2. On the date of this Certificate the Company is validly existing and in good standing under the laws of New York State.

3. The following resolutions have been duly adopted by the members of the Company on September 21, 2012:

WHEREAS, at the application and request of 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 a leasehold interest in approximately 3.25 acres of improved real property located at 700 First North Street and Pond Street in the City of Syracuse, New York (the "**Land**"); (ii) acquisition of an interest in and the renovation of an approximate 32,800 square foot building for use as a commercial facility (the "**Facility**"); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the "**Equipment**", and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and sales and use taxation (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment by 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 also requested that the Agency appoint the Company as its agent for purposes of completing the Project and the granting of certain Financial Assistance; and

WHEREAS, the Company is acquiring ownership of the Project Facility; and

WHEREAS, the Agency will acquire a leasehold interest in the Project Facility from the Company pursuant to a Company Lease Agreement dated as of September 1, 2012 (the "*Company Lease*"), between the Company, as landlord and the Agency, as tenant. The Agency will sublease the Project Facility back to the Company, pursuant to an Agency Lease Agreement dated as of September 1, 2012 (the "*Agency Lease*") between the Agency, as sublessor, and the Company, as sublessee. Capitalized terms used herein and not otherwise defined shall have the meaning given to such terms in Exhibit "C" to the Agency Lease;

NOW, THEREFORE, be it

RESOLVED, that any and all acts of the Company in connection with the aforesaid request, application and other matters are hereby in each and every respect ratified, confirmed, adopted and approved as the acts of the Company;

RESOLVED, that the Company execute and deliver all other documents, instruments and certificates as may be deemed necessary or appropriate by the Agency;

RESOLVED, that Robert C. Morgan, as a Manager of the Company, be and hereby is, authorized, empowered and directed to execute, acknowledge if required, and deliver on behalf of the Company, or otherwise, all such documents, instruments and certificates as may be necessary or appropriate in connection therewith containing such terms and provisions as he shall deem appropriate; and to do such other acts and things as may be necessary appropriate and consistent with carrying out the intent and purpose of this and the foregoing resolutions, the execution and delivery of any of the foregoing documents or the doing of any act or thing being conclusive evidence as to the appropriateness thereof and as to the authority of Robert C. Morgan to so execute and deliver any such document and to do any such act or thing, all of which shall be binding upon the Company.

IN WITNESS WHEREOF, this Certificate has been duly signed by the undersigned on this 21 day of September, 2012.



Frank S. Amburgia, Jr., Manager

EXHIBIT A

Articles of Organization

EXHIBIT B
Operating Agreement

morganpond.006(b)(clean)

EXHIBIT "D"
LOCAL ACCESS AGREEMENT

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

Local Access Agreement

Recognizing the goal of SIDA to promote the use of local labor, contractors and suppliers, and in consideration of the extension of financial assistance by the Agency, Morgan Pond Street LLC (the "Company") understands that it is the Agency's policy that benefiting companies should utilize local labor and businesses, particularly in the construction phase of a project. The Company agrees to provide the information requested below as a way to provide access for local participation.

Company				General Contractor			
Representative for Contract Bids and Awards				Contact			
Address				Address			
City		ST		Zip			
Phone			Fax				
Email				Email			
Project Address				Construction Start Date			
City		ST		Zip			Occupancy Date

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

Item	Estimated Value	Bid Date	Contact
Site work/Demolition			
Foundation and footings			
Building			
Masonry			
Metals			
Wood/casework			
Thermal/moisture proof			
Doors, windows, glazing			
Finishes			
Electrical			
HVAC			
Plumbing			
Specialties			
Machinery & Equipment			
Furniture and Fixtures			
Utilities			
Paving			
Landscaping			
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): ROBERT C MULLAN

Title: MANAGER

Date: 9/21/12

HISCOCK & BARCLAY^{LLP}

September 21, 2012

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

Morgan Pond Street LLC
1170 Pittsford-Victor Road, Suite 100
Pittsford, New York 14534
Attn: Kevin Morgan

Re: City of Syracuse Industrial Development Agency
Lease/Leaseback Transaction
Morgan Pond Street LLC Project

Ladies and Gentlemen:

We have acted as counsel to the City of Syracuse Industrial Development Agency (the "**Agency**") in connection with a project (the "**Project**") undertaken by the Agency at the request of Morgan Pond Street LLC (the "**Company**") consisting of: (A)(i) the acquisition of a leasehold interest in approximately 3.25 acres of improved real property located at 700 First North Street and Pond Street in the City of Syracuse, New York (the "**Land**"); (ii) acquisition of an interest in and the renovation of an approximate 32,800 square foot building for use as a commercial facility (the "**Facility**"); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the "**Equipment**", and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and sales and use taxation (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment by 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 a leasehold interest in the Land and Facility pursuant to that certain Company Lease Agreement dated as of September 1, 2012 (the "**Company Lease**") between the Company, as lessor and the Agency, as lessee, obtained an ownership interest in the Equipment pursuant to a bill of sale dated as of September 1, 2012 from the Company to the Agency (the "**Bill of Sale**"), appointed the Company as its agent to complete the Project and subleased the Project Facility to the Company pursuant to the Agency Lease Agreement dated as of February 1, 2012 (the "**Agency Lease**") between the Agency and the Company.

The Company has also requested that the Agency grant the Financial Assistance to the Project. The Agency, the Company and the City of Syracuse will enter into a Payment in Lieu of Taxes Agreement dated as of September 1, 2012 (the "**PILOT Agreement**") with respect to the Project. Capitalized terms used herein shall have the meaning given to them in the Table of Definitions attached as Exhibit "C" to the Agency Lease.

The Agency has granted a mortgage lien and security interest on its leasehold interest in the Project Facility pursuant to the terms of a Mortgage, dated September 21, 2012 (the "**Mortgage**") by the Agency and the Company to Perticone Holdings, LLC (the "**Mortgagee**"), to secure certain loans made by the Mortgagee to the Company and an assignment of leases and rents dated September 21, 2012 between the Company and the Agency (the "**Assignment of Leases and Rents**").

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, demolish existing improvements, construct, and equip the Project, to lease the Facility from the Company pursuant to the Company Lease, to purchase the Equipment from the Company pursuant to the Bill of Sale, to lease 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 Company Lease, Agency Lease, the Mortgage, the Assignment of Rents, the Pledge and Assignment, the PILOT Agreement and the other documents to which the Agency is a party (that are listed on the Closing Memorandum) 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.

City of Syracuse Industrial Development Agency
Morgan Pond Street LLC
September 21, 2012
Page 3

In rendering this opinion, we advise you of the following:

The enforceability of the Company Lease, Agency Lease, the Mortgage, the Assignment of Rents, the Pledge and Assignment, the PILOT Agreement, and other documents to which the Agency is a party that are listed in the Closing Memorandum 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 may not be relied upon by any other person without our prior, express written consent.

Very truly yours,

HISCOCK & BARCLAY, LLP

Hiscock + Barclay, LLP

STEPHEN E. HALL
ATTORNEY AT LAW
400 EXECUTIVE OFFICE BUILDING
36 WEST MAIN STREET
ROCHESTER, NEW YORK 14614

ADMITTED TO PRACTICE
NEW YORK, ARIZONA AND
PENNSYLVANIA BARS

TELEPHONE: (585) 546-3770
FACSIMILE: (585) 546-3776
(NOT FOR SERVICE OF PROCESS)

September 21, 2012

Morgan Pond Street LLC
1170 Pittsford-Victor Road, Suite 100
Pittsford, New York 14534
Attn: Kevin Morgan

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

Re: City of Syracuse Industrial Development Agency
Lease/Leaseback Transaction
Morgan Pond Street LLC Project

Ladies and Gentlemen:

We have acted as counsel to Morgan Pond Street LLC (the "**Company**") in connection with the 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 a leasehold interest in approximately 3.25 acres of improved real property located at 700 First North Street and Pond Street in the City of Syracuse, New York (the "**Land**"); (ii) acquisition of an interest in and the renovation of an approximate 32,800 square foot building for use as a commercial facility (the "**Facility**"); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the "**Equipment**", and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and sales and use taxation (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment by 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 a leasehold interest in the Land and Facility pursuant to that certain Company Lease Agreement dated as of September 1, 2012 ("**Company Lease**") between the Company as lessor and the Agency as lessee, an ownership interest in the Equipment pursuant to a bill of sale dated as of September 1, 2012 from the Company to the Agency (the "**Bill of Sale**"), and appointed the Company as its agent to complete the Project and leased the Project Facility to the Company pursuant to the Agency Lease Agreement dated as of September 1, 2012 (the "**Agency Lease**") between the Agency and the Company. Capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Agency Lease.

In that regard, we have examined the Company Lease and the Agency Lease and the other documents identified in the Closing Memorandum to which the Company is a party, and as defined in the Agency Lease, including but not limited to the PILOT Agreement (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.

For purposes of factual matters material to the opinions expressed herein, we have relied generally upon certificates of members or managers of the Company, specifically including the General Certificate of the Company dated as of February 1, 2012 and provided to the Agency herewith, and of public officials. Without limiting the general nature of the reliance described above, we have relied specifically upon the results of searches performed by public officers and independent agencies.

Based upon the foregoing, it is our opinion that:

1. The Company is a duly organized and validly existing as a New York limited liability company and possesses full power and authority to own its property, to conduct its business, to execute and deliver the Company Documents, and to carry out and perform its obligations thereunder and is duly authorized to conduct business in the State of New York.

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.

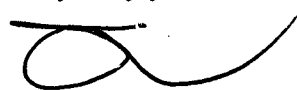
4. To the best of our knowledge, in reliance on the certificates and opinions specified herein, the execution and delivery by the Company of the Company Documents, the execution and compliance with the provisions of each and the consummation of the transactions contemplated therein do not and will not 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,



Stephen E. Hall

CLOSING MEMORANDUM

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

(MORGAN POND STREET LLC PROJECT)

DATE AND TIME OF CLOSING: September 21, 2012
10:00 a.m.

PLACE OF CLOSING: Hiscock & Barclay, LLP
One Park Place
300 South State Street
Syracuse, New York 13202

I. Action Taken Prior to Closing

At the request of Morgan Pond Street LLC (the "**Company**"), the City of Syracuse Industrial Development Agency (the "**Agency**"), a public benefit corporation organized under the laws of the State of New York, has undertaken a project (the "**Project**") consisting of: (A)(i) the acquisition of a leasehold interest in approximately 3.25 acres of improved real property located at 700 First North Street and Pond Street in the City of Syracuse, New York (the "**Land**"); (ii) acquisition of an interest in and the renovation of an approximate 32,800 square foot building for use as a commercial facility (the "**Facility**"); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the "**Equipment**", and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and sales and use taxation (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment by 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 the owner of the Project Facility.

The Agency will acquire a leasehold interest in the Project Facility from the Company pursuant to a Company Lease Agreement dated as of September 1, 2012 (the "**Company Lease**"), between the Company, as landlord and the Agency, as tenant. The Agency will sublease the Project Facility back to the Company, pursuant to an Agency Lease Agreement dated as of September 1, 2012 (the "**Agency Lease**") between the Agency, as sublessor, and the Company, as sublessee. Capitalized terms used herein and not otherwise defined shall have the meaning given to such terms in Exhibit "C" to the Agency Lease.

Among the actions taken by the Agency with respect to the Project prior to Closing were the following:

- | | |
|--------------------|---|
| August 14, 2012 | The Company submitted an application for financial assistance for the project. |
| August 21, 2012 | A resolution determining that the acquisition, reconstruction, renovation and equipping of the Project constitutes a project and authorizing a public hearing (the " Public Hearing Resolution "). |
| August 23, 2012 | 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. |
| August 25, 2012 | Notice of the Public Hearing was published in the <u>Post-Standard</u> pursuant to Section 859-a of the Act. |
| September 6, 2012 | The Agency conducted the Public Hearing pursuant to Section 859-a of the Act. |
| September 6, 2012 | A resolution authorizing the undertaking of a Project and appointing the Company as Agent of the Agency for the purpose of the acquisition, renovation, reconstruction and equipping of the Project Facility and authorizing the execution and delivery of an agreement between the Agency and the Company and determining the Project constitutes a Type II action (the " Inducement Resolution "). |
| September 6, 2012 | A resolution approving a payment in lieu of tax schedule (" PILOT Schedule ") at the request of the Company and authorizing the execution and delivery of a Payment in Lieu of Tax Agreement (the " PILOT Resolution "). |
| September 6, 2012 | A resolution authorizing the execution and delivery of certain documents by the Agency at the request of the Company (the " Final Approving Resolution "). |
| September 10, 2012 | An ordinance adopted by the City of Syracuse Common Council approving the PILOT schedule. |

II. Action To Be Taken At Closing

The following documents, or copies thereof, are to be delivered (except as indicated) to the Agency (A), Agency's Counsel (AC), the Company (C), Company's Counsel (CC), Lender (L) and Lender's Counsel (LC) as follows:

A. Basic Documents	Responsible Party	Signatories
1. Bargain and Sale Deed		
2. Ground Lease between Tops and Morgan Pond		
3. Company Lease Agreement	AC	C, A
4. Memorandum of Company Lease Agreement with TP-584	AC	C, A
3. Agency Lease Agreement	AC	C, A
4. Memorandum of Agency Lease Agreement with Form TP-584	AC	C, A
5. Required Insurance	AC	
6. Pledge and Assignment	AC	C, A, L
7. Environmental Compliance and Indemnification Agreement	AC	C
8. Closing Receipt	AC	C, A
9. PILOT Agreement	Corporation Counsel	C, A, City (Mayor)
10. Form 412A	AC	A
11. Ordinance No. 515 of 2012 approving PILOT schedule	A, C	
12. Bill of Sale	AC	C
13. Mortgage	LC	
14. Assignment of Leases and Rents	CCLC	
15. UCC-1 Financing Statements		

16. Survey

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 AC

Exhibit "B" - Certificate of Establishment of the Agency and Certificates of appointment of current members A

Exhibit "C" - By-laws AC

Exhibit "D" - Notice of Public Hearing with evidence of publication and copies of letters to affected tax jurisdictions AC

Exhibit "E" - Public Hearing Resolution AC

Exhibit "F" - Inducement Resolution AC

Exhibit "G" - PILOT Resolution AC

Exhibit "H" - Final Approving Resolution

2. Mortgage Recording Tax Affidavit AC

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" Good Standing Certificate	C	
Exhibit "D" Approving Resolution	C	
Exhibit "E" Local Access Agreement		
D. Opinions of Counsel	C	
1. Opinion of Hiscock & Barclay, LLP, counsel to the Agency, addressed to the Company and the Agency.	AC	AC
2. Opinion of Stephen E. Hall, Esq., 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.

Application on Form 412A is to be filed with the City of Syracuse Tax Assessor.

Closing completed as above.

SCHEDULE "A"

PERSONS APPEARING

For the Agency:	City of Syracuse Industrial Development Agency William M. Ryan, Chairman
For the Company:	Morgan Pond Street LLC Kevin Morgan
For the Company's Counsel:	Stephen Hall, Esq.
For the Lender:	Perticone Holdings LLC Francis Perticone
For the Lender's Counsel:	W. Stephen Tierney, Esq. Woods Oviatt Gilman LLP
Agency's Counsel:	Hiscock & Barclay, LLP Susan R. Katzoff, Esq.