

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

AND

455 NORTH FRANKLIN, LLC

**FIRST AMENDMENT TO
AGENCY LEASE AGREEMENT**

DATED AS OF JANUARY 1, 2014

**FIRST AMENDMENT TO
AGENCY LEASE AGREEMENT**

THIS FIRST AMENDMENT TO THE AGENCY LEASE AGREEMENT, (the “*First Amendment*”) made as of this 1st day of January 2014, by and between the **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation organized and existing pursuant to the laws of the State of New York, whose address is 333 West Washington Street, Suite 130 Syracuse, New York 13202 (the “*Agency*”) and **455 NORTH FRANKLIN, LLC** a New York limited liability corporation, having an address at c/o Hueber-Breuer Construction Co., Inc., 148 Berwyn Avenue, P.O. Box 515, Syracuse, New York 13205 (the “*Company*”), amending that certain Agency Lease dated as of the 1st day of December 2002 by and between the Agency and the Company (the Agency Lease, as amended by this First Amendment, the “*First Amended Agency Lease*”).

WITNESSETH:

THE MEANING OF CAPITALIZED TERMS NOT OTHERWISE DEFINED
HEREIN SHALL HAVE THE MEANINGS ATTACHED TO THEM IN THE
AGENCY LEASE DATED AS OF DECEMBER 1, 2002; AS AMENDED
FROM TIME TO TIME

WHEREAS, the Agency and the Company, are parties to a certain Agency Lease Agreement dated as of December 1, 2002, (the “*Agency Lease*”) wherein the Agency subleased certain of its interests in the Project Facility to the Company in furtherance of its undertaking of a project (the “*Project*”) consisting of: (A) (i) the acquisition of a controlling interest in certain real property and the improvements thereon located at 455 North Franklin Street in the City of Syracuse, Onondaga County, New York (the “*Land*”); (ii) the renovation and equipping of the existing building and improvements thereon (the “*Existing Facility*”) and (iii) the construction and equipping of one or more additions of approximately 10,000 square foot (the “*Addition*” and with the Land and the Existing Facility, collectively the “*Project Facility*”) intended for use with the Existing Facility as commercial office space; (B) granting certain financial assistance within the meaning of Section 858(14) of the Act in the form of exemptions from real property tax, mortgage recording tax and sales and use taxation (collectively, the “*Financial Assistance*”) (C) appointing the Company as its agent for completion of the Project; and (D) the lease of the Project Facility by the Agency pursuant to a lease agreement and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

WHEREAS, the Company is refinancing on the Project Facility and is entering into a new note and mortgage relative to same; and

WHEREAS, the parties are desirous of amending the Agency Lease to amend the definitions of certain terms relative to the financing on the Project; and

WHEREAS, on September 17, 2013 the Agency authorized its participation in the refinancing and the execution and delivery of all necessary documents to effectuate same; and

WHEREAS, there is no default under the Company Lease, the Agency Lease or the other Company Documents; and

WHEREAS, the Agency Lease, the Company Lease and the other Company Documents are in full force and effect; and

NOW THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in accordance with Section 11.4 of the Agency Lease, the parties hereto mutually agree as follows:

1. Amendments to the Agency Lease.

a. The definition of "**Mortgage**", as contained in Exhibit "C" to the Agency Lease, is deleted in its entirety and replaced with: "means one or more mortgages from the Agency and the Company to the Mortgagee, to be recorded in the Onondaga County Clerk's office simultaneously with or subsequent to the filing and recording of the Memorandum of Agency Lease, securing construction or permanent financing for the Project Facility, executed in accordance with Section 4.5 of the Agency Lease, and securing the Promissory Note."

b. The definition of "**Mortgagee**", as contained in Exhibit "C" to the Agency Lease, is deleted in its entirety and replaced with: "means a lender selected by the Company providing construction and/or permanent financing pursuant to the Promissory Note and Mortgage, relative to the costs of construction, renovation and equipping of the Project Facility".

c. The definition of "**Note**" as contained in Exhibit "C" to the Agency Lease, is deleted in its entirety and replaced with: "means one or more notes given by the Company to the Mortgagee in connection with a Mortgage for construction or permanent financing relative to the Project Facility".

d. The definition of "**Unassigned Rights**" as contained in Exhibit "C" to the Agency Lease is amended at (v) to include a reference to Section 10.2.

2. Miscellaneous.

From this date forward, any place in the Agency Lease or other Agency or Company Documents that references the terms "Mortgage", "Mortgagee" or "Note" shall refer to those terms as defined herein.

3. Ratification of Agency Lease.

a. The Agency and the Company agree that all other terms, covenants and conditions of the Agency Lease are hereby ratified and confirmed and, as herein modified and amended, shall remain in full force and effect, and each term, covenant and condition shall apply to this First Amendment as if it were executed as of the date of the Agency Lease.

b. This First Amendment amends and supplements the Agency Lease as and to the extent set forth herein and is executed in accordance with Section 11.4 of the Agency Lease. This First Amendment forms a part of the Agency Lease and all the terms and conditions contained herein shall be deemed to be part of the terms and conditions of the Agency Lease for any and all purposes and the respective rights, duties and obligations under the Agency Lease of the Agency and the Company shall be determined, exercised and enforced under the Agency Lease, as supplemented hereby. References to the Agency Lease in the Agency and Company Documents shall be deemed to refer to the Agency Lease as amended and supplemented by this First Amendment and the Agency Lease, as so amended and supplemented hereby, shall be read, taken and construed as one in the same instrument. The Agency and the Company hereby ratify and confirm the terms, conditions and covenants set forth in the Agency Lease, as amended hereby.

4. Authority.

Each of the Agency and the Company represents and warrants that it has the requisite power and authority to enter into and execute this First Amendment.

5. Binding Effect.

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

6. Effective Date.

This First Amendment shall be effective (the "*Effective Date*") as of January 1, 2014.

7. Invalidity.

If any part, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this First Amendment shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such part, 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 First Amendment 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.

8. Non-Recourse.

a. All covenants, stipulations, promises, agreements and obligations of the Agency contained in this First Amendment, the Agency Documents and the other documents and instruments connected therewith and executed and delivered by the Agency shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency and not of any member, officer, agent or employee of the Agency in his individual capacity, and no recourse under or upon any obligation, covenant or agreement contained in the Agency Documents or otherwise based upon or in respect of the Agency Documents or any documents supplemental hereto or thereto, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, officer, agent or employee, as such, of the Agency, or of any successor public benefit corporation or political subdivision, or any person executing the Agency Documents either directly or through the Agency or any successor public benefit corporation or political subdivision, it being expressly understood that no such personal liability whatsoever shall attach to, or is or shall be incurred by, any such member, officer, agent or employee of the Agency or of any such successor public benefit corporation or political subdivision, or any person executing the Agency Documents, because of or by reason of the obligations, covenants or agreements contained in any of the Agency Documents or implied therefrom.

b. Nothing contained herein shall be construed to increase in any material respect the rights of the Agency under the Agency Lease or decrease in any material respect the rights of the Agency thereunder.

9. Execution.

This First Amendment 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.

10. Governing Law.

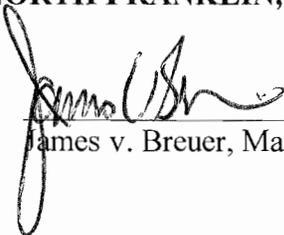
This First Amendment shall be governed by and construed in accordance with the laws of the State of New York. Venue of any action or proceeding hereunder shall be in the respective State or Federal court located in Onondaga County.

IN WITNESS WHEREOF, the Agency and the Company have caused this First Amendment to be executed in their respective names, all being done as of the date first above written, in accordance with the applicable provisions of the Agency Lease.

**CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY**

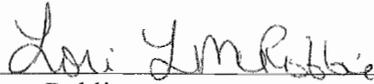
By: 
William M. Ryan, Chairman

455 NORTH FRANKLIN, LLC

By: 
James v. Breuer, Manager

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss:

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

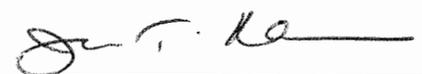


Notary Public

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

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss:

On the 28th day of January, in the year 2014, before me the undersigned, a notary public in and for said state, personally appeared **James V. Breuer**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that 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

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

EXHIBIT "A"

Parcel I

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

Parcel 2

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

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