
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

**BUTTERNUT COMMONS PROJECT
(BUTTERNUT ST. LLC)**

TRANSCRIPT OF PROCEEDINGS

CLOSING DATE: DECEMBER 12, 2013

INDEX OF CLOSING DOCUMENTS

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

BUTTERNUT COMMONS PROJECT

(BUTTERNUT ST. LLC)

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 - Exhibit "B" Certificate of Establishment of the Agency and Certificates of appointment of current members
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BUTTERNUT ST. LLC

AND

**CITY OF SYRACUSE
INDUSTRIAL DEVELOPMENT AGENCY**

COMPANY LEASE AGREEMENT

DATED AS OF DECEMBER 1, 2013

COMPANY LEASE AGREEMENT

THIS COMPANY LEASE AGREEMENT (the “*Company Lease*”), made and entered into as of December 1, 2013, by and between **BUTTERNUT ST. LLC** (the “*Company*”), a limited liability company organized under the laws of the State of New York with an office at 3721 New Court Avenue, Syracuse, New York 13206 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 April 25, 2013, 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 1.4 acres of improved real property located at the corner of North Townsend Street and Butternut Street (specifically, 400 Butternut St., 410 Butternut St. and 811 N. McBride St.¹) in the City of Syracuse, New York (the “*Land*”); (ii) the renovation of ten (10) existing buildings totaling approximately 18,400 square feet and the construction of three (3) new buildings totaling approximately 50,000 square feet, all for mixed-use, specifically,

¹ These parcels were formally known as 400-02 Butternut St. & Townsend S., 404-06 Butternut St., 410 Butternut St., 412 Butternut St., 414 Butternut St., 708 Townsend St. N., 712 Townsend St. N., 714 Townsend St. N., 716 Townsend St. N., 811 N. McBride St. and 813 N. McBride St.)

retail/pharmacy, commercial, approximately 24 apartments and approximately 4 rental townhouses and related parking, all located on the Land (collectively, the “*Facilities*”); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the “*Equipment*”, and together with the Land and the Facilities, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and State and local 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, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

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

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

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

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

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

ARTICLE I

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 December 1, 2013, 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 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 bill of sale together with any other documents therewith and to take such other and

further actions reasonably necessary to confirm the termination of the Agency's interest in the Project.

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, 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 as if fully set forth herein.

ARTICLE III

DISPUTE RESOLUTION

3.1 GOVERNING LAW.

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

3.2 WAIVER OF TRIAL BY JURY.

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

ARTICLE IV

MISCELLANEOUS CLAUSES

4.1 NOTICES.

All notices, certificates, and other communications hereunder shall be in writing, shall be sufficiently given, and shall be deemed given when (a) sent to the applicable address

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

(a) To the Agency:

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

With copies to:

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

(b) To the Company:

Butternut St. LLC
3721 New Court Avenue
Syracuse, New York 13206
Attn: Giovanni LaFace

With copies to:

Thomas J. Cerio, Esq.
Cerio Law Firm
407 South Warren Street
Syracuse, New York 13202

4.2 NO RECOURSE UNDER THIS COMPANY LEASE.

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

4.3 ENTIRE AGREEMENT.

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

4.4 AGENCY REPRESENTATIONS.

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

4.5 BINDING EFFECT.

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

4.6 PARAGRAPH HEADINGS.

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

4.7 CONSENT TO AGENCY LEASE; SUBORDINATION.

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

4.8 HOLD HARMLESS PROVISIONS.

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

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

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

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

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

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

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

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

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

4.9 NO RECOURSE; SPECIAL OBLIGATION.

The obligations and agreements of the Agency contained herein and in the other Agency Documents and in any other instrument or document executed in connection herewith or therewith, and any instrument or document supplemental hereto or thereto, shall be deemed the obligations and agreements of the Agency and not of any member, officer, agent, or employee of

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

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

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

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

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

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

4.10 MERGER OF AGENCY.

(a) Nothing contained in this Company Lease shall prevent the consolidation of the Agency with, or merger of the Agency into, or assignment by the Agency of its rights and interests hereunder to any other body corporate and politic and public instrumentality of the State of New York, or political subdivision thereof, which has the legal authority to perform the

obligations of the Agency hereunder, provided that upon any such consolidation, merger, or assignment, the due and punctual performance and observance of all the agreements and conditions of this Company Lease to be kept and performed by the Agency shall be expressly assumed in writing by the public instrumentality or political subdivision resulting from such consolidation or surviving such merger or to which the Agency's rights and interests hereunder shall be assigned.

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

4.11 EXECUTION OF COUNTERPARTS

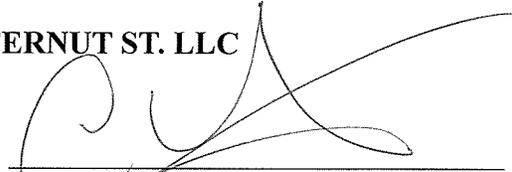
This Company Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

(Remainder of page intentionally left blank)

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

BUTTERNUT ST. LLC

By:

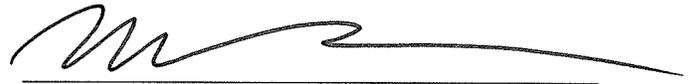


Name: Giovanni LaFace

Title: Sole Member

**CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY**

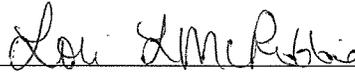
By:



William M. Ryan, Chairman

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

On the 12th day of December, 2013, before me, the undersigned, personally appeared **GIOVANNI LAFACE**, 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.

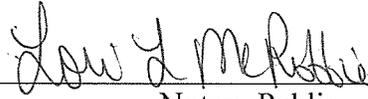


Notary Public

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 the 9th day of December, 2013, 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

Exhibit A

Lot 1

All that tract or parcel of land situate in Block 275C of the City of Syracuse, County of Onondaga, State of New York and being more particularly described as follows:

BEGINNING at the intersection of the east line of North Townsend Street with the south line of Butternut Street;

1. Thence, North 59° 24' 30" East, in the south line of said Butternut Street, a distance of 179.17 feet;
2. Thence, South 30° 32' 30" East, in aforesaid Block 275C, a distance of 198.80 feet;
3. Thence, South 59° 24' 30" West, continuing in said Block 275C, a distance of 30.41 feet;
4. Thence, South 30° 29' 40" East, continuing in said Block 275C, a distance of 50.00 feet;
5. Thence, South 59° 24' 30" West, continuing in said Block 275C, a distance of 148.72 feet to a point in the east line of aforesaid North Townsend Street;
6. Thence, North 30° 32' 30" West, in the east line of North Townsend Street, a distance of 248.80 feet to the POINT OF BEGINNING.

Containing 43,055 square feet, (0.988 ± acres)

Intending to describe "NEW LOT-1" as shown on a plat titled "BUTTERNUT COMMONS – RESUBDIVISION OF PROPERTIES" prepared by CHA Inc. project No. 24556 and filed in the Onondaga County Clerk's Office on 11/14/2013, map file No. 11771.

Lot 2

All that tract or parcel of land situate in Block 275C of the City of Syracuse, County of Onondaga, State of New York and being more particularly described as follows:

BEGINNING at a point in the south line of Butternut Street at the northwest corner of property now or formerly of Dung V. Lam per L.4814 of Deeds, P.473, said corner being South 59° 24' 30" West, a distance of 38.50 feet from the intersection of the south line of said Butternut Street with the west line of North McBride Street;

1. Thence, South 30° 29' 40" East, in the west line of said Lam property, a distance of 98.80 feet to the southwest corner thereof;
2. Thence, South 59° 24' 30" West, in said Block 275C, a distance of 14.89 feet;
3. Thence, South 30° 32' 30" East, continuing in said Block 275C, a distance of 100.00 feet;
4. Thence, South 59° 24' 30" West, continuing in said Block 275C, a distance of 65.00 feet;
5. Thence, North 30° 32' 30" West, continuing in said Block 275C, a distance of 198.80 feet to a point in the south line of aforesaid Butternut street;
6. Thence, North 59° 24' 30" East, in the south line of said Butternut Street, a distance of 79.97 feet to the POINT OF BEGINNING.

Containing 14,397 square feet, (0.331 ± acres)

Intending to describe "NEW LOT-2" as shown on a plat titled "BUTTERNUT COMMONS – RESUBDIVISION OF PROPERTIES" prepared by CHA Inc. project No. 24556 and filed in the Onondaga County Clerk's Office on 11/14/2013, map file No. 11771.

Lot 3

All that tract or parcel of land situate in Block 275C of the City of Syracuse, County of Onondaga, State of New York and being more particularly described as follows:

BEGINNING at a point in the west line of North McBride Street at the southeast corner of property now or formerly of Dung V. Lam per L.4814 of Deeds, P.473, said corner being South 30° 29' 40" East, a distance of 98.80 feet from the intersection of the west line of said North McBride Street with the south line of Butternut Street;

1. Thence, South 30° 29' 40" East, in the west line of said North McBride Street, a distance of 100.00 feet;
2. Thence, South 59° 24' 30" West, in said Block 275C, a distance of 53.31 feet;
3. Thence, North 30° 32' 30" West, continuing in said Block 275C, a distance of 100.00 feet;
4. Thence, North 59° 24' 30" East, continuing in said Block 275C, a distance of 53.39 feet to the POINT OF BEGINNING.

Containing 5,335 square feet, (0.122 ± acres)

Intending to describe "NEW LOT-3" as shown on a plat titled "BUTTERNUT COMMONS – RESUBDIVISION OF PROPERTIES" prepared by CHA Inc. project No. 24556 and filed in the Onondaga County Clerk's Office on 11/14/2013, map file No. 11771.

ONONDAGA COUNTY CLERK'S OFFICE
 SANDRA A SCHEPP - COUNTY CLERK
 401 Montgomery St - Room 200
 Syracuse, NY 13202

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

Doc Type: M/LEAS
 Grantor: BUTTERNUT ST LLC
 CITY OF SYRACUSE INDUSTRIAL
 Grantee: CITY OF SYRACUSE INDUSTRIAL
 BUTTERNUT ST LLC
 Legal Desc: SYR L1-3 BUTTERNUT COMMONS N E

Receipt: 1114371 RS
 Book/Page: 05263/0673 Inst: 52326
 Date Filed: 12/13/2013 at 2:24PM
 Updated: 12/16/2013 MS
 Record and Return To:

GILBERTI STINZIANO HEINTZ &
 SMITH PC
 ATTORNEYS PICK UP BOX
 COURTHOUSE

Prop Address: 400&410 BUTTERNUT ST & 811 N
 MCBRIDE ST

Submitted by: LINDA ORIOLI

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

MORTGAGE TAX		DEED TRANSFER TAX	
Mortgage:		Consideration	\$0.00
Basic:	\$0.00	Transfer Tax:	\$0.00
Ins Fund:	\$0.00	SWIS:	3115
Net Add:	\$0.00	Map #:	
Misc:	\$0.00		=====
=====		Total Paid	\$ 75.50
TOTAL	\$0.00	Control no	4624

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

SANDRA A SCHEPP
 Onondaga County Clerk

Book/Page 05263 / 0673 Instrument no.: 52326



D052630673

MEMORANDUM OF
COMPANY LEASE AGREEMENT

NAME AND ADDRESS OF LESSOR: Butternut St. LLC
3721 New Court Avenue
Syracuse, New York 13206

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 December 1, 2013

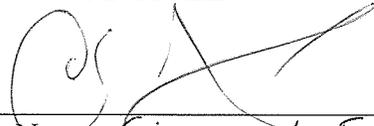
TERM OF COMPANY LEASE AGREEMENT:

The Project is leased for a term which shall commence as of December 1, 2013, and shall end on the expiration or earlier termination of the Agency Lease.

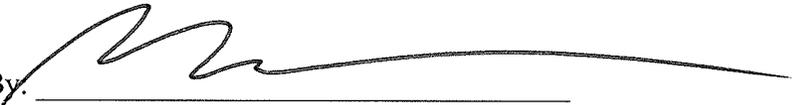
R & H: Silvestri, Stinson & Heintz & Smith, P.C.
555 East Genesee Street
Syracuse, NY 13202

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum as of the 1st day of December, 2013.

BUTTERNUT ST. LLC

By: 
Name: Giovanna La Face
Title: Sole Member

**CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
William M. Ryan, Chairman

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

On the 17th day of December, 2013, before me, the undersigned, personally appeared **GIOVANNI LAFACE**, 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 this 9th day of December, 2013, 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

Exhibit A

Lot 1

All that tract or parcel of land situate in Block 275C of the City of Syracuse, County of Onondaga, State of New York and being more particularly described as follows:

BEGINNING at the intersection of the east line of North Townsend Street with the south line of Butternut Street;

1. Thence, North 59° 24' 30" East, in the south line of said Butternut Street, a distance of 179.17 feet;
2. Thence, South 30° 32' 30" East, in aforesaid Block 275C, a distance of 198.80 feet;
3. Thence, South 59° 24' 30" West, continuing in said Block 275C, a distance of 30.41 feet;
4. Thence, South 30° 29' 40" East, continuing in said Block 275C, a distance of 50.00 feet;
5. Thence, South 59° 24' 30" West, continuing in said Block 275C, a distance of 148.72 feet to a point in the east line of aforesaid North Townsend Street;
6. Thence, North 30° 32' 30" West, in the east line of North Townsend Street, a distance of 248.80 feet to the POINT OF BEGINNING.

Containing 43,055 square feet, (0.988 ± acres)

Intending to describe "NEW LOT-1" as shown on a plat titled "BUTTERNUT COMMONS – RESUBDIVISION OF PROPERTIES" prepared by CHA Inc. project No. 24556 and filed in the Onondaga County Clerk's Office on 11/14/2013, map file No. 11771.

Lot 2

All that tract or parcel of land situate in Block 275C of the City of Syracuse, County of Onondaga, State of New York and being more particularly described as follows:

BEGINNING at a point in the south line of Butternut Street at the northwest corner of property now or formerly of Dung V. Lam per L.4814 of Deeds, P.473, said corner being South 59° 24' 30" West, a distance of 38.50 feet from the intersection of the south line of said Butternut Street with the west line of North McBride Street;

1. Thence, South 30° 29' 40" East, in the west line of said Lam property, a distance of 98.80 feet to the southwest corner thereof;
2. Thence, South 59° 24' 30" West, in said Block 275C, a distance of 14.89 feet;
3. Thence, South 30° 32' 30" East, continuing in said Block 275C, a distance of 100.00 feet;
4. Thence, South 59° 24' 30" West, continuing in said Block 275C, a distance of 65.00 feet;
5. Thence, North 30° 32' 30" West, continuing in said Block 275C, a distance of 198.80 feet to a point in the south line of aforesaid Butternut street;
6. Thence, North 59° 24' 30" East, in the south line of said Butternut Street, a distance of 79.97 feet to the POINT OF BEGINNING.

Containing 14,397 square feet, (0.331 ± acres)

Intending to describe "NEW LOT-2" as shown on a plat titled "BUTTERNUT COMMONS – RESUBDIVISION OF PROPERTIES" prepared by CHA Inc. project No. 24556 and filed in the Onondaga County Clerk's Office on 11/14/2013, map file No. 11771.

Lot 3

All that tract or parcel of land situate in Block 275C of the City of Syracuse, County of Onondaga, State of New York and being more particularly described as follows:

BEGINNING at a point in the west line of North McBride Street at the southeast corner of property now or formerly of Dung V. Lam per L.4814 of Deeds, P.473, said corner being South 30° 29' 40" East, a distance of 98.80 feet from the intersection of the west line of said North McBride Street with the south line of Butternut Street;

1. Thence, South 30° 29' 40" East, in the west line of said North McBride Street, a distance of 100.00 feet;
2. Thence, South 59° 24' 30" West, in said Block 275C, a distance of 53.31 feet;
3. Thence, North 30° 32' 30" West, continuing in said Block 275C, a distance of 100.00 feet;
4. Thence, North 59° 24' 30" East, continuing in said Block 275C, a distance of 53.39 feet to the POINT OF BEGINNING.

Containing 5,335 square feet, (0.122 ± acres)

Intending to describe "NEW LOT-3" as shown on a plat titled "BUTTERNUT COMMONS – RESUBDIVISION OF PROPERTIES" prepared by CHA Inc. project No. 24556 and filed in the Onondaga County Clerk's Office on 11/14/2013, map file No. 11771.

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

Part I – Computation of tax due

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

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

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

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

1.		
2.		
3.		

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

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

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

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

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

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

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

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

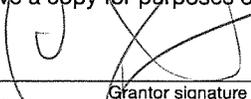
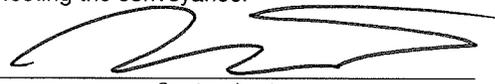
Please note: for purposes of determining whether the maximum principal amount secured is \$3,000,000 or more as described above, the amounts secured by two or more credit line mortgages may be aggregated under certain circumstances. See TSB-M-96(6)-R for more information regarding these aggregation requirements.

Other (attach detailed explanation).

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

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

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

 _____ Grantor signature Giovanni LaFace	Sole Member _____ Title	 _____ Grantee signature William M. Ryan	Chairman _____ Title
_____	_____	_____	_____
Grantor signature	Title	Grantee signature	Title

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

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

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

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

Part I - New York State residents

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

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

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

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

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

Part II - Nonresidents of New York State

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

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

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

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

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

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

BILL OF SALE TO AGENCY

BUTTERNUT ST. LLC, a New York State limited liability company, with an address at 3721 New Court Avenue, Syracuse, New York 13206 (the "**Company**"), for the consideration of One Dollar (\$1.00), cash in hand paid, and other good and valuable consideration received by the Company from the City of Syracuse Industrial Development Agency, a public benefit corporation organized and existing pursuant to the laws of the State of New York (the "**Agency**"), having its office at 333 West Washington Street, Suite 130, Syracuse, New York 13202, the receipt of which is hereby acknowledged by the Company, hereby sells, transfers, and delivers unto the Agency, its successors and assigns, all those materials, machinery, equipment, fixtures and furnishings now owned or hereafter acquired by the Company in connection with the Project Facility, as described in the Agency Lease entered between the Agency and the Company dated as of December 1, 2013 (the "**Agency Lease**"), and as listed on "**Exhibit A**" attached hereto.

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

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

IN WITNESS WHEREOF, the Company has caused this instrument to be executed by its duly authorized representative on the date indicated beneath the signature of such representative and dated as of the 1st day of December, 2013.

BUTTERNUT ST. LLC

By:



Givoanni LaFace, Sole Member

EXHIBIT “A”

DESCRIPTION OF THE EQUIPMENT

All articles of personal property, all machinery, apparatus, equipment, appliances, floor coverings, furniture, furnishings, supplies, materials, fittings and fixtures of every kind and nature whatsoever and all appurtenances acquired by Butternut St. 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, 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.

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

AND

BUTTERNUT ST. LLC

AGENCY LEASE AGREEMENT

DATED AS OF DECEMBER 1, 2013

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EXHIBIT “B”	DESCRIPTION OF EQUIPMENT
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EXHIBIT “E”	FORM OF ANNUAL REPORTING REQUIREMENTS

AGENCY LEASE AGREEMENT

THIS AGENCY LEASE AGREEMENT, dated as of December 1, 2013 (the "**Agency Lease**"), by and between the **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, a body corporate and politic and a public instrumentality of the State of New York, having its office at 333 West Washington Street, Suite 130, Syracuse, New York 13202 (the "**Agency**"), and **BUTTERNUT ST. LLC**, a New York limited liability company having its office at 3721 New York Avenue, Syracuse, New York 13206 (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 April 25, 2013, 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 1.4 acres of improved real property located at the corner of North Townsend Street and Butternut Street (specifically, 400 Butternut St., 410 Butternut St. and 811 N. McBride St.¹) in the City of Syracuse, New York (the "**Land**"); (ii) the renovation of ten (10) existing buildings totaling approximately 18,400 square feet and the construction of three (3) new buildings totaling approximately 50,000 square feet, all for mixed-use, specifically, retail/pharmacy, commercial, approximately 24 apartments and approximately 4 rental townhouses and related parking, all located on the Land (collectively, the "**Facilities**"); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the "**Equipment**", and together with the Land and the Facilities, the "**Project Facility**"); (B) the granting of certain

¹ These parcels were formally known as 400-02 Butternut St. & Townsend S., 404-06 Butternut St., 410 Butternut St., 412 Butternut St., 414 Butternut St., 708 Townsend St. N., 712 Townsend St. N., 714 Townsend St. N., 716 Townsend St. N., 811 N. McBride St. and 813 N. McBride St.)

financial assistance in the form of exemptions from real property tax, mortgage recording tax and State and local 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, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

WHEREAS, the Agency proposes to assist the Company’s acquisition, construction, renovation and equipping of the Project Facility and grant the Financial Assistance to the Project by, among other things, (1) accepting a leasehold interest in the Land and Facility from the Company and a fee interest in the Equipment; and (2) subleasing the Project Facility 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 December 1, 2013 (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 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) This Agency Lease and the other Agency Documents constitute, or upon their execution and delivery in accordance with the terms thereof will constitute, valid and legally binding obligations of the Agency, enforceable in accordance with their respective terms.

2.2 REPRESENTATIONS AND COVENANTS OF THE COMPANY.

The Company 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 Project Facility.

(d) The Project will constitute a project where facilities or property primarily used in making retail sales of goods or services to customers who personally visit such facilities constitute more than one-third of the total cost of the Project, but the Project is located within a highly distressed area, as defined in the Act. Undertaking the Project will serve the public purposes of the Act by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the State.

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

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

(1) Result in a breach of, or conflict with any term or provision in, the Company's Articles of Organization 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) The providing of Financial Assistance to the Project by the Agency:

(1) Has been an important consideration in the Company's decision to acquire, renovate, construct, reconstruct 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.

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

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

(j) The 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.

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

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

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

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

(o) The Company shall perform, or cause to be performed, for and on behalf of the Agency, each and every obligation of the Agency (which is within the control of the

Company) under and pursuant to this Agency Lease, the Company Lease and the other Company Documents and shall defend, indemnify, and hold harmless the Agency and its members, officers, agents (other than the Company), servants, and employees from and against every expense, liability, or claim arising out of the failure of the Company to fulfill its obligations under the provisions of this Section 2.2.

(p) 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.

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

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

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

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

(3) The Company shall cooperate with the Agency in the Agency's efforts to recover, recapture, receive or otherwise obtain from the Company any Recapture Amount (as defined in Section 8.10(e) hereof), and shall, upon the Agency's request, promptly pay to the Agency any Recapture Amount, together with any interest or penalties thereon imposed by the Agency or by operation of law or by judicial order or otherwise, as provided in Section 8.10(e) hereof. The Company acknowledges and agrees that the failure of the Company to promptly pay such Recapture Amount to the Agency will be grounds for the State Commissioner of Taxation and Finance to collect sales and use taxes from the Company under Article 28 of the State Tax Law, together with interest and penalties.

(s) The total cost of the Project, as of the date of this Agency Lease, is estimated to be \$7,847,700.

(t) The estimated value of the goods and services to be exempted from sales and use taxes as a result of the Project's designation as an IDA project is \$6,400,000. The amount of State sales and use tax exemption sought from the Agency, as part of the approved financial assistance is approximately \$512,000.

ARTICLE III

CONVEYANCE OF LEASEHOLD INTEREST IN PROJECT FACILITY

3.1 AGREEMENT TO CONVEY LEASEHOLD INTEREST TO COMPANY.

The Company has conveyed to the Agency, pursuant to the Company Lease, a leasehold interest in the Land and Facility, as more fully described in **Exhibit "A"** attached hereto, and an 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, renovate and equip the Project Facility, all in accordance with the Plans and Specifications. The Company further agrees to utilize local contractors and suppliers for the construction, renovation and equipping of the Project Facility, unless a written waiver is obtained from the Agency. For purposes of this Agency Lease, and in particular this Section 4.1, the term "*local*" shall mean Onondaga, Oswego, Madison, Cayuga, Cortland and Oneida Counties. Failure to comply with the local labor requirements of this Section 4.1 may result in the revocation or recapture of benefits provided/approved to the Project by the Agency. The Company further agrees to complete and supply the Agency, quarterly, starting the first quarter following the date hereof, the "Contract Status Report", the form of which is attached hereto at **Exhibit "D"**.

(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, renovate 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, reconstruction, renovation 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, servants, and employees harmless from all fines and penalties due to failure to comply therewith. All permits and licenses necessary for the prosecution of work on the Project Facility shall be procured promptly by the Company.

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

4.2 COMPLETION OF PROJECT FACILITY.

(a) The Company will proceed with due diligence to acquire, construct, reconstruct and equip the Project Facility. Completion of the acquisition, construction,

reconstruction, renovation and equipping of the Project Facility shall be evidenced by a certificate signed by an Authorized Representative of the Company and approved by the Agency, stating:

- (1) The date of such completion;
- (2) That all labor, services, materials, and supplies used therefor and all costs and expenses in connection therewith have been paid;
- (3) That the Company has good and valid title to all Property constituting the Project Facility subject to the interest of the Agency therein and to this Agency Lease, the Company Lease and the Bill of Sale; and
- (4) That the Project Facility is ready for occupancy, use and operation for its intended purposes.

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

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

4.3 COSTS OF COMPLETION PAID BY COMPANY.

(a) The Company agrees to complete the Project and to pay in full all costs of the construction, reconstruction 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, reconstruction 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 one or more Mortgages and such additional instruments and documents as may be requested by the Company and approved by counsel to the Agency and as may be required in connection with the Company's financing or refinancing for the costs of construction, renovation 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; and

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

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

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

ARTICLE V

AGREEMENT TO LEASE PROJECT FACILITY; RENTAL PAYMENTS

5.1 AGREEMENT TO LEASE PROJECT FACILITY.

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

The Agency's acceptance of the leasehold interest in and to the Land and Facility pursuant to the Company Lease, and its acquisition of an interest in the Equipment pursuant to

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

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

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

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

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

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

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

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

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

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

5.2 TERM OF LEASE; EARLY TERMINATION; SURVIVAL.

(a) The term of this Agency Lease shall commence on the date hereof and continue in full force and effect until June 30, 2024, 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 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, the Company Lease and the PILOT Agreement (including, but not limited to those in connection with the early termination of this Agency Lease); and

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

(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 Agency shall transfer, and the Company shall accept, all of the Agency's right, title and interest in the Project Facility, including the Equipment, for a purchase price of One Dollar (\$1.00) plus the payment of all other sums due hereunder. Contemporaneously with the termination of this Agency Lease, the Company Lease and the PILOT Agreement shall terminate.

(f) The Agency shall, upon payment by the Company of the amounts pursuant hereto and to Sections 5.2(c) above and Section 5.3, deliver to the Company all documents furnished to the Agency by the Company, or prepared by the Agency at the request of and at the sole expense of the Company, and reasonably necessary to evidence termination of the Company Lease and the Agency Lease, including, but not limited to, lease terminations and a bill of sale from the Agency to the Company with respect to the Agency's right, title and interest in all of the Equipment, as such then exists, 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.

(g) The obligation of the Agency under this Section 5.2 to convey the Project Facility to the Company will be subject to: (i) there being no Event of Default existing hereunder or under any payment in lieu of tax agreement now or hereafter entered into with respect to all or

any portion of the Project Facility or under any other Company Documents, or any other event which would, but for the passage of time or the giving of notice, or both, be such an Event of Default; and (ii) the Company's payment of all expenses, fees and taxes, if any, applicable to or arising from such transfer.

5.3 RENTAL PAYMENTS AND OTHER AMOUNTS PAYABLE.

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

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

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

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

5.4 NATURE OF OBLIGATIONS OF COMPANY HEREUNDER.

(a) The obligations of the Company to make the payments required by this Agency Lease and to perform and observe any and all of the other covenants and agreements on its part contained herein are general obligations of the Company and are absolute and unconditional irrespective of any defense or any rights of set-off, recoupment, or counterclaim it may otherwise have against the Agency. The Company agrees that it will not suspend, discontinue, or abate any payment required by, or fail to observe any of its other covenants or agreements contained in this Agency Lease or terminate this Agency Lease, except as provided in Section 5.2 hereof, at any time prior to the completion for any cause whatsoever, including, without limiting the generality of the foregoing, failure to complete the construction, reconstruction, renovation and equipping of the Project Facility, any defect in the title, design, operation, merchantability, fitness, or condition of the Project Facility, or any part thereof, or in the suitability of the Project Facility, or any part thereof, for the Company's purposes or needs, or failure of consideration for, destruction of or damage to, or Condemnation of title to, or the use of all or any part of the Project Facility, any change in the tax or other laws of the United States of America or of the State of New York, or any political subdivision thereof, or any failure of the Agency to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or in connection with this Agency Lease or the Company Lease.

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

ARTICLE VI

MAINTENANCE, MODIFICATIONS, TAXES, AND INSURANCE

6.1 MAINTENANCE AND MODIFICATIONS OF PROJECT FACILITY.

The Company shall:

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

6.3 INSURANCE REQUIRED.

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

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

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

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

(c) A policy of commercial general liability insurance with a \$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 first business day of each December thereafter a certificate dated not earlier than the immediately preceding September 1 reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance in the amounts and of the types required by Sections 6.3 and 6.4. The Company shall furnish to the Agency evidence that the policy has been renewed or replaced or is no longer required by this Agency Lease each year throughout the term of this Agency Lease.

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

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.

ARTICLE VII

DAMAGE, DESTRUCTION, AND CONDEMNATION

7.1 DAMAGE OR DESTRUCTION.

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

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

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

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

(b) If the Mortgage shall not be in effect and the Mortgagee shall have no interest in the Project Facility, then notwithstanding anything to the contrary contained in subsection 7.1(a), the Company shall not be obligated to replace, repair, rebuild, or restore the Project Facility, and the Net Proceeds of any insurance settlement shall not be applied as

provided in subsection 7.1(a) if the Company shall notify the Agency that, in the Company's sole judgment, the Company does not deem it practical or desirable to replace, repair, rebuild, or restore the Project Facility. In such event, the lesser of (1) the total amount of the Net Proceeds collected under any and all policies of insurance covering the damage to or destruction of the Project Facility, or (2) any other sums payable to the Agency pursuant to this Agency Lease and the other Agency and Company Documents, shall be applied to the repayment of all amounts due to the Agency under this Agency Lease, the Company Lease, the PILOT Agreement and other Agency Documents. If the Net Proceeds collected under any and all policies of insurance are less than the amount necessary to repay any and all amounts payable to the Agency, the Company shall pay the difference between such amounts and the Net Proceeds of all such insurance settlements so that any and all amounts payable under this Agency Lease, the Company Lease, the PILOT Agreement and the other Agency Documents to the Agency shall be paid in full. If all amounts due under this Agency Lease, the Mortgage, the Company Lease, the PILOT Agreement and the other Agency Documents are paid in full, all such Net Proceeds, or the balance thereof, shall be paid to the Company for its purposes.

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

7.2 CONDEMNATION.

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

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

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

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

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

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

7.3 ADDITIONS TO PROJECT FACILITY.

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

ARTICLE VIII

SPECIAL COVENANTS

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

THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY, OR FITNESS OF THE PROJECT FACILITY, OR ANY PART THEREOF, OR AS TO THE SUITABILITY OF THE PROJECT FACILITY OR ANY PART THEREOF FOR THE COMPANY'S PURPOSES OR NEEDS. NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY IS MADE. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE

AGENCY SHALL NOT HAVE ANY RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

8.2 HOLD HARMLESS PROVISIONS.

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

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

(2) Liability arising from or expense incurred by the Agency's acquisition of a leasehold interest in the Project Facility and the subleasing of the Project Facility, including, without limiting the generality of the foregoing, all liabilities or claims arising as a result of the Agency's obligations under this Agency Lease, the Company Lease, the PILOT Agreement, 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) Any and all claims arising from the non-disclosure of information, if any, requested by the Company in accordance with Section 11.14 hereof;

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

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

(b) In the event of any claim against the Agency or its members, officers, agents, or employees by any employee of the Company, or any 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 Project and/or the Company, its finances, and for itself and each of its (sub)contractors, information regarding job creation, State and local sales and use tax exemptions, and other topics as the Agency from time to time reasonably considers necessary or appropriate including, but not limited to those reports, in substantially the form as set forth in **Exhibit "E"** attached hereto, and such other information necessary as to enable the Agency to make any reports required by law or governmental regulation, including but not limited to §875 of the Act. Notwithstanding anything in this Section 8.5 to the contrary, the Company shall provide the Contract Status Report in accordance with Section 4.1 hereof.

8.6 BOOKS OF RECORD AND ACCOUNT; FINANCIAL STATEMENTS.

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

8.7 COMPLIANCE WITH ORDERS, ORDINANCES, ETC.

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

(b) Notwithstanding the provisions of subsection 8.7(a), the Company may, in good faith, actively contest the validity or the applicability of any requirement of the nature referred to in said subsection 8.7(a), provided that the Company shall have first notified the Agency of such contest, no Event of Default shall be continuing under this Agency Lease, or any of the other Company Documents; and such contest and failure to comply 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, or employees may be liable for prosecution for failure to comply therewith, in which event the Company shall promptly take such action with respect thereto as shall be satisfactory to the Agency.

8.8 DISCHARGE OF LIENS AND ENCUMBRANCES.

During the term of this Agency Lease, the Company hereby covenants that, except for Permitted Encumbrances, the Company agrees not to create, or suffer to be created, any Lien, on the Project Facility, or any part thereof. The Company shall promptly notify the Agency of any Permitted Encumbrances created, or suffered to be created, on the Project Facility.

8.9 PERFORMANCE BY AGENCY OF COMPANY'S OBLIGATIONS.

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

8.10 DEPRECIATION DEDUCTIONS AND TAX CREDITS.

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

8.11 EMPLOYMENT OPPORTUNITIES.

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

8.12 SALES AND USE TAX EXEMPTION.

(a) Pursuant to Section 874 of the Act, the parties understand that the Agency is exempt from certain sales taxes and use taxes imposed by the State and local governments in the State, and that the Project may be exempted from those taxes due to the involvement of the Agency in the Project. The Agency makes no representations or warranties that any property is exempt from the payment of State or local sales or use taxes. Any exemption from the payment of State sales or use taxes resulting from the involvement of the Agency with the Project shall be subject to Section 875 of the Act and shall be limited to purchases of services and tangible personal property conveyed to the Agency or utilized by the Agency or by the Company as agent of the Agency as a part of the Project prior to the Completion Date, or incorporated within the Project Facility prior to the Completion Date. No operating expenses of the Project Facility, and no other purchases of services or property shall be subject to an exemption from the payment of State sales or use tax. It is the intention of the parties hereto that the Company will receive a State and local sales and use tax exemption with respect to the Project, said sales tax exemption to be evidenced by a letter to be issued by the Agency on the date of the execution of this Agency Lease. The Company acknowledges that only such sales tax exemption letter shall be appropriate documentation of the basis to make any purchase exempt from tax.

(b) Pursuant to Section 874(8) of the Act, the Company agrees to annually file and cause any sublessee or other operator of the Project Facility to file annually, with the New York State Department of Taxation and Finance, on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (the "*Annual Sales Tax Report*"), a statement of the value of all sales and use tax exemptions claimed by the Company and all contractors, subcontractors, consultants and other agents of the Company under the authority granted to the Company pursuant to Section 4.1(b) of this Agency Lease. Pursuant to Section 874(8) of the Act, the penalty for failure to file the Annual Sales Tax Report shall be removal of authority to act as agent of the Agency. Additionally, if the Company shall fail to comply with the requirements of this subsection (B), after the expiration of any applicable notice and cure period afforded to the Company hereunder, the Company shall immediately cease to be the agent

of the Agency in connection with the Project. The Company is responsible for obtaining from the New York State Department of Taxation and Finance the current version of such Annual Sales Tax Report.

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

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

(e) Pursuant to Section 875(3) of the Act, the Agency shall recover, recapture, receive or otherwise obtain from the Company the portion of the Financial Assistance (the "**Recapture Amount**") consisting of (1) (a) that portion of the State Sales and Use Tax exemption to which the Company or the Project Facility was not entitled, which is in excess of the amount of the State Sales and Use Tax exemption authorized by the Agency or which is for property or services not authorized by the Agency; or (b) the full amount of such State Sales and Use Tax exemption, if the Company fails to comply with a material term or condition regarding the use of the property or services as provided in the Agency Documents; (2) together with any interest or penalties thereon imposed by the Agency or by operation of law or by judicial order or otherwise. The failure of the Company to promptly pay such Recapture Amount to the Agency will be grounds for the State Commissioner of Taxation and Finance (the "**Commissioner**") to collect State Sales and Use taxes from the Company under Article 28 of the State Tax Law, together with interest and penalties.

8.13. IDENTIFICATION OF THE EQUIPMENT.

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

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; provided however, that the Company may enter into leases for individual rental units that are part of the Project Facility without the consent of the Agency. Any assignment or sublease of this Agency Lease shall not effect a release of the Company from its obligations hereunder or under the PILOT Agreement.

9.2 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, the PILOT Agreement, the Company Lease or any of the other Company Documents which is not timely cured as provided therein; or

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

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

(g) 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

(h) 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.

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

10.2 REMEDIES ON DEFAULT.

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

- 1) Terminate this Agency Lease;
- 2) Terminate the Company Lease;
- 3) Terminate the PILOT Agreement; 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 Company Lease or the PILOT Agreement 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, or a dispute arises hereunder, 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
Attn: Chairman

With a copy to:

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

(b) If to the Company, to:

Butternut St. LLC
3721 New Court Avenue
Syracuse, New York 13206
Attn: Giovanni LaFace, President

With a copy to:

Thomas J. Cerio, Esq.
Cerio Law Office
407 South Warren Street
Syracuse, New York 13202

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.

11.9 SURVIVAL OF OBLIGATIONS.

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

(c) The obligations of the Company required by Section 2.2 hereof shall survive the termination of this Agency Lease.

11.10 TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING.

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

11.11 NO RECOURSE; SPECIAL OBLIGATION.

The obligations and agreements of the Agency contained herein and in the other Agency Documents and in any other instrument or document executed in connection herewith or therewith, and any instrument or document supplemental hereto or thereto, shall be deemed the obligations and agreements of the Agency and not of any member, officer, agent or employee of the Agency in his individual capacity; and the members, officers, agents and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby. The obligations and agreements of the Agency contained herein or therein shall not constitute or give rise to an obligation of the State New York or of the City of Syracuse,

and neither the State of New York nor the City of Syracuse shall be liable hereon or thereon. Further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency, payable solely from the revenues of the Agency derived, and to be derived from, the lease, sale, or other disposition of the Project Facility, other than revenues derived from or constituting Unassigned Rights. No order or decree of specific performance with respect to any of the obligations of the Agency hereunder or thereunder shall be sought or enforced against the Agency unless:

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

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

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

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.

11.12 OBLIGATION TO SELL AND PURCHASE THE EQUIPMENT.

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

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

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

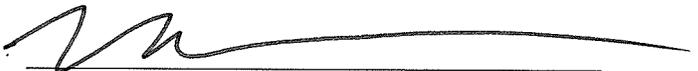
(d) The Company and the Corporation acknowledges that all of the Agency's right, title and interest in all of the Equipment shall be transferred to the Company at the conclusion or earlier termination of this lease agreement.

11.13 DISCLOSURE.

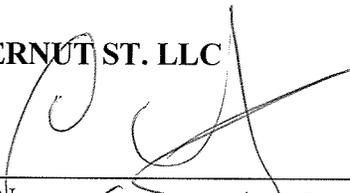
Section 875(7) of the New York General Municipal Law ("GML") requires that the Agency post on its website all resolutions and agreements relating to the Company and Corporation's appointment as an agent of the Agency or otherwise related to the Project; and Article 6 of the New York Public Officers Law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

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

**CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
William M. Ryan, Chairman

BUTTERNUT ST. LLC

By: 
Name: Giovanni LaFace
Title: Sole Member

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

On the 9th day of December in the year 2013 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 12th day of December in the year 2013 before me, the undersigned, personally appeared **GIOVANNI LAFACE**, 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

Exhibit A

Lot 1

All that tract or parcel of land situate in Block 275C of the City of Syracuse, County of Onondaga, State of New York and being more particularly described as follows:

BEGINNING at the intersection of the east line of North Townsend Street with the south line of Butternut Street;

1. Thence, North 59° 24' 30" East, in the south line of said Butternut Street, a distance of 179.17 feet;
2. Thence, South 30° 32' 30" East, in aforesaid Block 275C, a distance of 198.80 feet;
3. Thence, South 59° 24' 30" West, continuing in said Block 275C, a distance of 30.41 feet;
4. Thence, South 30° 29' 40" East, continuing in said Block 275C, a distance of 50.00 feet;
5. Thence, South 59° 24' 30" West, continuing in said Block 275C, a distance of 148.72 feet to a point in the east line of aforesaid North Townsend Street;
6. Thence, North 30° 32' 30" West, in the east line of North Townsend Street, a distance of 248.80 feet to the POINT OF BEGINNING.

Containing 43,055 square feet, (0.988 ± acres)

Intending to describe "NEW LOT-1" as shown on a plat titled "BUTTERNUT COMMONS – RESUBDIVISION OF PROPERTIES" prepared by CHA Inc. project No. 24556 and filed in the Onondaga County Clerk's Office on 11/14/2013, map file No. 11771.

Lot 2

All that tract or parcel of land situate in Block 275C of the City of Syracuse, County of Onondaga, State of New York and being more particularly described as follows:

BEGINNING at a point in the south line of Butternut Street at the northwest corner of property now or formerly of Dung V. Lam per L.4814 of Deeds, P.473, said corner being South 59° 24' 30" West, a distance of 38.50 feet from the intersection of the south line of said Butternut Street with the west line of North McBride Street;

1. Thence, South 30° 29' 40" East, in the west line of said Lam property, a distance of 98.80 feet to the southwest corner thereof;
2. Thence, South 59° 24' 30" West, in said Block 275C, a distance of 14.89 feet;
3. Thence, South 30° 32' 30" East, continuing in said Block 275C, a distance of 100.00 feet;
4. Thence, South 59° 24' 30" West, continuing in said Block 275C, a distance of 65.00 feet;
5. Thence, North 30° 32' 30" West, continuing in said Block 275C, a distance of 198.80 feet to a point in the south line of aforesaid Butternut street;
6. Thence, North 59° 24' 30" East, in the south line of said Butternut Street, a distance of 79.97 feet to the POINT OF BEGINNING.

Containing 14,397 square feet, (0.331 ± acres)

Intending to describe "NEW LOT-2" as shown on a plat titled "BUTTERNUT COMMONS – RESUBDIVISION OF PROPERTIES" prepared by CHA Inc. project No. 24556 and filed in the Onondaga County Clerk's Office on 11/14/2013, map file No. 11771.

Lot 3

All that tract or parcel of land situate in Block 275C of the City of Syracuse, County of Onondaga, State of New York and being more particularly described as follows:

BEGINNING at a point in the west line of North McBride Street at the southeast corner of property now or formerly of Dung V. Lam per L.4814 of Deeds, P.473, said corner being South 30° 29' 40" East, a distance of 98.80 feet from the intersection of the west line of said North McBride Street with the south line of Butternut Street;

1. Thence, South 30° 29' 40" East, in the west line of said North McBride Street, a distance of 100.00 feet;
2. Thence, South 59° 24' 30" West, in said Block 275C, a distance of 53.31 feet;
3. Thence, North 30° 32' 30" West, continuing in said Block 275C, a distance of 100.00 feet;
4. Thence, North 59° 24' 30" East, continuing in said Block 275C, a distance of 53.39 feet to the POINT OF BEGINNING.

Containing 5,335 square feet, (0.122 ± acres)

Intending to describe "NEW LOT-3" as shown on a plat titled "BUTTERNUT COMMONS – RESUBDIVISION OF PROPERTIES" prepared by CHA Inc. project No. 24556 and filed in the Onondaga County Clerk's Office on 11/14/2013, map file No. 11771.

EXHIBIT "B"

DESCRIPTION OF EQUIPMENT

All articles of personal property, all machinery, apparatus, equipment, appliances, floor coverings, furniture, furnishings, supplies, materials, fittings and fixtures of every kind and nature whatsoever and all appurtenances acquired by Butternut St. 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, 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, the Mortgage and any other documents executed by the Agency in connection with the Project or the Financial Assistance granted in connection therewith.

Agency Lease: means the Agency Lease Agreement dated as of December 1, 2013, by and between the Agency and the Company, as the same may be amended or supplemented from time to time.

Application: means the application submitted by the Company to the Agency dated March 11, 2013, requesting the Agency undertake the Project, as same may be amended or supplemented from time to time.

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

Bill of Sale: means that certain Bill of Sale from the Company to the Agency dated as of December 1, 2013 in connection with the Equipment.

City: means the City of Syracuse.

Closing Date: means December 12, 2013.

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

Company: means Butternut St. LLC, a limited liability company, organized and existing under the laws of the State of New York having an address at 3721 New Court Avenue, Syracuse, New York 13206, and its permitted successors and assigns.

Company Documents: means the Company Lease, the Agency Lease, the PILOT Agreement, the Mortgage, the PILOT Agreement, 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 December 1, 2013 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 December 1, 2013 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 Note, the Mortgage, the Assignment of Leases and Rents, 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.

Land: means the improved real property located at the corner of North Townsend Street and Butternut Street (specifically, 400-02 Butternut St. & Townsend S., 404-06 Butternut St., 410 Butternut St., 412 Butternut St., 414 Butternut St., 708 Townsend St. N., 712 Townsend St. N., 714 Townsend St. N., 716 Townsend St. N., 811 N. McBride St. and 813 N. McBride St.) 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: one or mortgages from the Agency and the Company to the Mortgagee recorded in the Onondaga County Clerk's office, 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.

Mortgagee: 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.

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

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

PILOT Agreement: means the Payment in Lieu of Taxes Agreement dated as of December 1, 2013 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 and as set forth by the Company in its Application and at Agency meetings relating to the construction, reconstruction and equipping of the Project Facility.

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

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

Promissory Note: 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.

Resolution or Resolutions: means the Agency's resolutions adopted on April 25, 2013 authorizing the undertaking of the Project and the execution and delivery of certain documents by the Agency in connection therewith, each as amended from time to time.

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

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

State: means the State of New York.

Unassigned Rights: means:

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

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

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

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

(v) the right of the Agency in its own behalf (or on behalf of the appropriate taxing authorities) to enforce, receive amounts payable under or otherwise exercise its rights under Sections 2.2, 4.1(d), 4.5, 5.3, 5.4, 6.2, 6.3, 6.4, 8.2, 8.3, 8.5, 8.7, 8.9, 8.12, 10.1, 10.2, 10.4, 11.4, 11.9, 11.11, 11.12 and 11.13 of the Agency Lease and Sections 2.6(g), 4.2, 4.8 and 4.9 of the Company Lease; and

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

EXHIBIT "D"

FORM OF CONTRACT STATUS REPORT

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

Appendix II – Contract Status Report

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

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

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

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

Signature: _____ Name (printed): _____

Title: _____ Date: _____

EXHIBIT "E"

FORM OF ANNUAL REPORTING REQUIREMENTS

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

Date

COMPANY
COMPANY ADDRESS

Dear _____:

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

Sale - Leaseback Financing

Project: _____

Date of Financing:

Principal Amount Financed:

Maturity Date:

Original Interest Rate:

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

Name of Lender

Debt Retired in [year] Yes/No

Debt Refinanced in [year] Yes/No

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

Debt in Default as of [date] Yes/No

Current Interest Rate(s)

Rate range, if Variable

Principal balance outstanding as of [date]

Principal payments made during [year]

Payments in Lieu of Taxes (PILOT)

paid in [year]

Total cost of goods/services purchased: \$ _____

New York State Sales Tax Exemptions Claimed [year]

New York Local Sales Tax Exemptions Claimed: [year]

New York State Mortgage Recording

Tax Exemption: [year]

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

From:

To: _____, CPAs

Re:

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

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

of Current FTE Employees as of [closing date]

of FTE Jobs Created during [year]

of FTE Jobs Retained during [year]

of FTE Construction Jobs Created during [year]

Comments:

Signature

Print Name

Title

Date

ONONDAGA COUNTY CLERK'S OFFICE
 SANDRA A SCHEPP - COUNTY CLERK
 401 Montgomery St - Room 200
 Syracuse, NY 13202

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

Doc Type: M/LEAS
 Grantor: CITY OF SYRACUSE INDUSTRIAL
 BUTTERNUT ST LLC
 Grantee: BUTTERNUT ST LLC
 CITY OF SYRACUSE INDUSTRIAL
 Legal Desc: SYR L1-3 BUTTERNUT COMMONS N E

Receipt: 1114371 RS
 Book/Page: 05263/0667 Inst: 52325
 Date Filed: 12/13/2013 at 2:22PM
 Updated: 12/16/2013 MS
 Record and Return To:

GILBERTI STINZIANO HEINTZ &
 SMITH PC
 ATTORNEYS PICK UP BOX
 COURTHOUSE

Prop Address: 400&410 BUTTERNUT ST & 811 N
 MCBRIDE ST

Submitted by: LINDA ORIOLI

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

MORTGAGE TAX		DEED TRANSFER TAX	
Mortgage:		Consideration	\$0.00
Basic:	\$0.00	Transfer Tax:	\$0.00
Ins Fund:	\$0.00	SWIS:	3115
Net Add:	\$0.00	Map #:	
Misc:	\$0.00		=====
	=====	Total Paid	\$ 75.50
TOTAL	\$0.00	Control no	4623

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

SANDRA A SCHEPP
 Onondaga County Clerk

Book/Page 05263 / 0667 Instrument no.: 52325



D052630667

MEMORANDUM OF
AGENCY LEASE AGREEMENT

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: Butternut St. LLC
3721 New Court Avenue
Syracuse, New York 13206

DESCRIPTION OF LEASED PREMISES:

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

DATE OF EXECUTION OF AGENCY LEASE AGREEMENT:

As of December 1, 2013

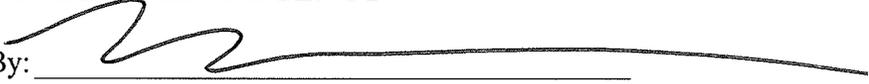
TERM OF AGENCY LEASE AGREEMENT:

The Agency Lease Agreement shall be in effect for a term commencing as of December 1, 2013 and terminating on June 30, 2024, or earlier as provided therein.

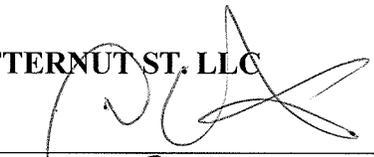
R & R: Silvestri, Stingiano, Heintz & Smith, P.C.
555 East Genesee Street
Syracuse, NY 13202

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum as of the 1st day of December, 2013.

**CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY**

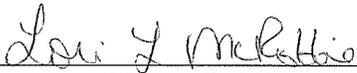
By: 
William M. Ryan, Chairman

BUTTERNUT ST. LLC

By: 
Name: Giovanni LaFace
Title: Sole Member

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

On this 9th day of December, 2013, 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.

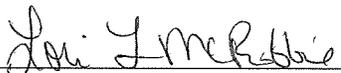


Notary Public

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

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

On this 12th day of December, 2013, before me, the undersigned, personally appeared, **GIOVANNI LAFACE**, 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

Exhibit A

Lot 1

All that tract or parcel of land situate in Block 275C of the City of Syracuse, County of Onondaga, State of New York and being more particularly described as follows:

BEGINNING at the intersection of the east line of North Townsend Street with the south line of Butternut Street;

1. Thence, North 59° 24' 30" East, in the south line of said Butternut Street, a distance of 179.17 feet;
2. Thence, South 30° 32' 30" East, in aforesaid Block 275C, a distance of 198.80 feet;
3. Thence, South 59° 24' 30" West, continuing in said Block 275C, a distance of 30.41 feet;
4. Thence, South 30° 29' 40" East, continuing in said Block 275C, a distance of 50.00 feet;
5. Thence, South 59° 24' 30" West, continuing in said Block 275C, a distance of 148.72 feet to a point in the east line of aforesaid North Townsend Street;
6. Thence, North 30° 32' 30" West, in the east line of North Townsend Street, a distance of 248.80 feet to the POINT OF BEGINNING.

Containing 43,055 square feet, (0.988 ± acres)

Intending to describe "NEW LOT-1" as shown on a plat titled "BUTTERNUT COMMONS – RESUBDIVISION OF PROPERTIES" prepared by CHA Inc. project No. 24556 and filed in the Onondaga County Clerk's Office on 11/14/2013, map file No. 11771.

Lot 2

All that tract or parcel of land situate in Block 275C of the City of Syracuse, County of Onondaga, State of New York and being more particularly described as follows:

BEGINNING at a point in the south line of Butternut Street at the northwest corner of property now or formerly of Dung V. Lam per L.4814 of Deeds, P.473, said corner being South 59° 24' 30" West, a distance of 38.50 feet from the intersection of the south line of said Butternut Street with the west line of North McBride Street;

1. Thence, South 30° 29' 40" East, in the west line of said Lam property, a distance of 98.80 feet to the southwest corner thereof;
2. Thence, South 59° 24' 30" West, in said Block 275C, a distance of 14.89 feet;
3. Thence, South 30° 32' 30" East, continuing in said Block 275C, a distance of 100.00 feet;
4. Thence, South 59° 24' 30" West, continuing in said Block 275C, a distance of 65.00 feet;
5. Thence, North 30° 32' 30" West, continuing in said Block 275C, a distance of 198.80 feet to a point in the south line of aforesaid Butternut street;
6. Thence, North 59° 24' 30" East, in the south line of said Butternut Street, a distance of 79.97 feet to the POINT OF BEGINNING.

Containing 14,397 square feet, (0.331 ± acres)

Intending to describe "NEW LOT-2" as shown on a plat titled "BUTTERNUT COMMONS – RESUBDIVISION OF PROPERTIES" prepared by CHA Inc. project No. 24556 and filed in the Onondaga County Clerk's Office on 11/14/2013, map file No. 11771.

Lot 3

All that tract or parcel of land situate in Block 275C of the City of Syracuse, County of Onondaga, State of New York and being more particularly described as follows:

BEGINNING at a point in the west line of North McBride Street at the southeast corner of property now or formerly of Dung V. Lam per L.4814 of Deeds, P.473, said corner being South 30° 29' 40" East, a distance of 98.80 feet from the intersection of the west line of said North McBride Street with the south line of Butternut Street;

1. Thence, South 30° 29' 40" East, in the west line of said North McBride Street, a distance of 100.00 feet;
2. Thence, South 59° 24' 30" West, in said Block 275C, a distance of 53.31 feet;
3. Thence, North 30° 32' 30" West, continuing in said Block 275C, a distance of 100.00 feet;
4. Thence, North 59° 24' 30" East, continuing in said Block 275C, a distance of 53.39 feet to the POINT OF BEGINNING.

Containing 5,335 square feet, (0.122 ± acres)

Intending to describe "NEW LOT-3" as shown on a plat titled "BUTTERNUT COMMONS – RESUBDIVISION OF PROPERTIES" prepared by CHA Inc. project No. 24556 and filed in the Onondaga County Clerk's Office on 11/14/2013, map file No. 11771.



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

Recording office time stamp

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

Schedule A – Information relating to conveyance

Grantor/Transferor <input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Estate/Trust <input type="checkbox"/> Single member LLC <input checked="" type="checkbox"/> Other	Name (if individual, last, first, middle initial) <input type="checkbox"/> check if more than one grantor City of Syracuse Industrial Development Agency <hr/> Mailing address 333 West Washington Street, Suite 130 <hr/> City State ZIP code Syracuse NY 13202 <hr/> Single member's name if grantor is a single member LLC (see instructions)	Social security number Social security number Federal EIN 52-1380308 Single member EIN or SSN
Grantee/Transferee <input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Estate/Trust <input type="checkbox"/> Single member LLC <input checked="" type="checkbox"/> Other	Name (if individual, last, first, middle initial) <input type="checkbox"/> check if more than one grantee Butternut St LLC <hr/> Mailing address 3721 New Court Avenue <hr/> City State ZIP code Syracuse NY 13206 <hr/> Single member's name if grantee is a single member LLC (see instructions) Giovanni LaFace	Social security number Social security number Federal EIN 46-0828670 Single member EIN or SSN 090-68-5441

Location and description of property conveyed

Tax map designation – Section, block & lot (include dots and dashes)	SWIS code (six digits)	Street address	City, town, or village	County
017.-05-01.0 017.-05-03.0 017.-05-08.0		400 Butternut St., 410 Butternut St., 811 N. McBride St.	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 type="checkbox"/> Commercial/Industrial 6 <input type="checkbox"/> Apartment building 7 <input type="checkbox"/> Office building 8 <input checked="" type="checkbox"/> Other <u>Mixed use - commercial/residential</u>	Date of conveyance <table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 30px; text-align: center;">12</td> <td style="width: 30px; text-align: center;">12</td> <td style="width: 30px; text-align: center;">2013</td> </tr> <tr> <td style="font-size: 8px; text-align: center;">month</td> <td style="font-size: 8px; text-align: center;">day</td> <td style="font-size: 8px; text-align: center;">year</td> </tr> </table>	12	12	2013	month	day	year	Percentage of real property conveyed which is residential real property _____ 0% (see instructions)
12	12	2013							
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 checked="" type="checkbox"/> Leasehold assignment or surrender n. <input type="checkbox"/> Leasehold grant o. <input type="checkbox"/> Conveyance of an easement p. <input type="checkbox"/> Conveyance for which exemption from transfer tax claimed (complete Schedule B, Part III) q. <input type="checkbox"/> Conveyance of property partly within and partly outside the state r. <input type="checkbox"/> Conveyance pursuant to divorce or separation s. <input type="checkbox"/> Other (describe) _____
--	--	---

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

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

Part I – Computation of tax due

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

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

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

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

1.		
2.		
3.		

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

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

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

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

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

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

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

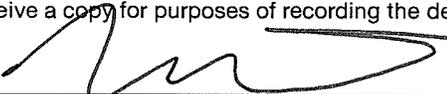
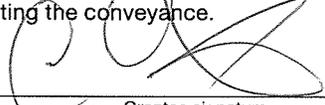
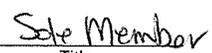
1. The real property being sold or transferred is not subject to an outstanding credit line mortgage.
2. The real property being sold or transferred is subject to an outstanding credit line mortgage. However, an exemption from the tax is claimed for the following reason:
 - The transfer of real property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

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

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

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

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

 _____ Grantor signature William M. Ryan	Chairman _____ Title	 _____ Grantee signature Giovanni La Face	 _____ Title
Grantor signature	Title	Grantee signature	Title

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

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

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

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

Part I - New York State residents

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

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

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

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

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

Part II - Nonresidents of New York State

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

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

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

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

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

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

SCHEDULE "A"

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



ADDITIONAL REMARKS SCHEDULE

AGENCY CH Insurance Brokerage Services Co Inc		NAMED INSURED Butternut Street LLC 3721 New Court Ave Syracuse, NY 13206	
POLICY NUMBER 3DQ8537		EFFECTIVE DATE: 09/24/2013	
CARRIER Essex Insurance Company	NAIC CODE 39020		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
 FORM NUMBER: 25(2010/05) FORM TITLE: Certificate of Liability Insurance

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New York State Insurance Fund

Workers' Compensation & Disability Benefits Specialists Since 1914

1045 SEVENTH NORTH STREET, LIVERPOOL, NEW YORK 13088-6186
Phone: (315) 453-6513

CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

***** 460828670
BUTTERNUT ST LLC
3721 NEW COURT AVE
SYRACUSE NY 13206

POLICYHOLDER
BUTTERNUT ST LLC
3721 NEW COURT AVE
SYRACUSE NY 13206

CERTIFICATE HOLDER
BUTTERNUT ST LLC
3721 NEW COURT AVE
SYRACUSE NY 13206

POLICY NUMBER S 2296 701-2	CERTIFICATE NUMBER 897513	PERIOD COVERED BY THIS CERTIFICATE 08/29/2013 TO 08/29/2014	DATE 12/10/2013
-------------------------------	------------------------------	--	--------------------

THIS IS TO CERTIFY THAT THE POLICYHOLDER NAMED ABOVE IS INSURED WITH THE NEW YORK STATE INSURANCE FUND UNDER POLICY NO. 2296 701-2 UNTIL 08/29/2014, COVERING THE ENTIRE OBLIGATION OF THIS POLICYHOLDER FOR WORKERS' COMPENSATION UNDER THE NEW YORK WORKERS' COMPENSATION LAW WITH RESPECT TO ALL OPERATIONS IN THE STATE OF NEW YORK, EXCEPT AS INDICATED BELOW, AND, WITH RESPECT TO OPERATIONS OUTSIDE OF NEW YORK, TO THE POLICYHOLDER'S REGULAR NEW YORK STATE EMPLOYEES ONLY.

IF SAID POLICY IS CANCELLED, OR CHANGED PRIOR TO 08/29/2014 IN SUCH MANNER AS TO AFFECT THIS CERTIFICATE, 10 DAYS WRITTEN NOTICE OF SUCH CANCELLATION WILL BE GIVEN TO THE CERTIFICATE HOLDER ABOVE. NOTICE BY REGULAR MAIL SO ADDRESSED SHALL BE SUFFICIENT COMPLIANCE WITH THIS PROVISION. THE NEW YORK STATE INSURANCE FUND DOES NOT ASSUME ANY LIABILITY IN THE EVENT OF FAILURE TO GIVE SUCH NOTICE.

THIS POLICY DOES NOT COVER THE SOLE PROPRIETOR, PARTNERS AND/OR MEMBERS OF A LIMITED LIABILITY COMPANY.

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS NOR INSURANCE COVERAGE UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICY.

NEW YORK STATE INSURANCE FUND

DIRECTOR, INSURANCE FUND UNDERWRITING

This certificate can be validated on our web site at <https://www.nysif.com/cert/certval.asp> or by calling (888) 875-5790
VALIDATION NUMBER: 815088427

PLEDGE AND ASSIGNMENT

This Pledge and Assignment (the "**Assignment**"), dated as of December 1, 2013, 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**") First Niagara Bank, N.A. a national banking association having an address of at P.O. Box 28, Buffalo, New York 14240-0028 (together with its successors and assigns, the "**Mortgagee**"), as the beneficiary of a mortgage dated December 12, 2013 (the "**Mortgage**") from Butternut St. LLC (the "**Company**") and the Agency to the Mortgagee to secure the Mortgagee's loan of \$5,300,000 (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 December 1, 2013 (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 P.O. Box 28, Buffalo, New York 14240-0028 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.

**ACKNOWLEDGEMENT BY BUTTERNUT ST. LLC
OF THE PLEDGE AND ASSIGNMENT OF CITY OF SYRACUSE
INDUSTRIAL DEVELOPMENT AGENCY'S
RIGHTS UNDER THE AGENCY LEASE**

Butternut St. 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 December 1, 2013 (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 April 1, 2013.

BUTTERNUT ST. LLC

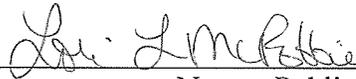
By:



Giovanni LaFace, Sole Member

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

On the 12th day of December, in the year 2013, before me, the undersigned, personally appeared **GIOVANNI LAFACE**, 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

Lot 1

All that tract or parcel of land situate in Block 275C of the City of Syracuse, County of Onondaga, State of New York and being more particularly described as follows:

BEGINNING at the intersection of the east line of North Townsend Street with the south line of Butternut Street;

1. Thence, North 59° 24' 30" East, in the south line of said Butternut Street, a distance of 179.17 feet;
2. Thence, South 30° 32' 30" East, in aforesaid Block 275C, a distance of 198.80 feet;
3. Thence, South 59° 24' 30" West, continuing in said Block 275C; a distance of 30.41 feet;
4. Thence, South 30° 29' 40" East, continuing in said Block 275C, a distance of 50.00 feet;
5. Thence, South 59° 24' 30" West, continuing in said Block 275C, a distance of 148.72 feet to a point in the east line of aforesaid North Townsend Street;
6. Thence, North 30° 32' 30" West, in the east line of North Townsend Street, a distance of 248.80 feet to the POINT OF BEGINNING.

Containing 43,055 square feet, (0.988 ± acres)

Intending to describe "NEW LOT-1" as shown on a plat titled "BUTTERNUT COMMONS – RESUBDIVISION OF PROPERTIES" prepared by CHA Inc. project No. 24556 and filed in the Onondaga County Clerk's Office on 11/14/2013, map file No. 11771.

Lot 2

All that tract or parcel of land situate in Block 275C of the City of Syracuse, County of Onondaga, State of New York and being more particularly described as follows:

BEGINNING at a point in the south line of Butternut Street at the northwest corner of property now or formerly of Dung V. Lam per L.4814 of Deeds, P.473, said corner being South 59° 24' 30" West, a distance of 38.50 feet from the intersection of the south line of said Butternut Street with the west line of North McBride Street;

1. Thence, South 30° 29' 40" East, in the west line of said Lam property, a distance of 98.80 feet to the southwest corner thereof;
2. Thence, South 59° 24' 30" West, in said Block 275C, a distance of 14.89 feet;
3. Thence, South 30° 32' 30" East, continuing in said Block 275C, a distance of 100.00 feet;
4. Thence, South 59° 24' 30" West, continuing in said Block 275C, a distance of 65.00 feet;
5. Thence, North 30° 32' 30" West, continuing in said Block 275C, a distance of 198.80 feet to a point in the south line of aforesaid Butternut street;
6. Thence, North 59° 24' 30" East, in the south line of said Butternut Street, a distance of 79.97 feet to the POINT OF BEGINNING.

Containing 14,397 square feet, (0.331 ± acres)

Intending to describe "NEW LOT-2" as shown on a plat titled "BUTTERNUT COMMONS – RESUBDIVISION OF PROPERTIES" prepared by CHA Inc. project No. 24556 and filed in the Onondaga County Clerk's Office on 11/14/2013, map file No. 11771.

Lot 3

All that tract or parcel of land situate in Block 275C of the City of Syracuse, County of Onondaga, State of New York and being more particularly described as follows:

BEGINNING at a point in the west line of North McBride Street at the southeast corner of property now or formerly of Dung V. Lam per L.4814 of Deeds, P.473, said corner being South 30° 29' 40" East, a distance of 98.80 feet from the intersection of the west line of said North McBride Street with the south line of Butternut Street;

1. Thence, South 30° 29' 40" East, in the west line of said North McBride Street, a distance of 100.00 feet;
2. Thence, South 59° 24' 30" West, in said Block 275C, a distance of 53.31 feet;
3. Thence, North 30° 32' 30" West, continuing in said Block 275C, a distance of 100.00 feet;
4. Thence, North 59° 24' 30" East, continuing in said Block 275C, a distance of 53.39 feet to the POINT OF BEGINNING.

Containing 5,335 square feet, (0.122 ± acres)

Intending to describe "NEW LOT-3" as shown on a plat titled "BUTTERNUT COMMONS – RESUBDIVISION OF PROPERTIES" prepared by CHA Inc. project No. 24556 and filed in the Onondaga County Clerk's Office on 11/14/2013, map file No. 11771.

ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT

THIS ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT (the “*Agreement*”) is made as of the December 1, 2013, between **BUTTERNUT ST. 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 1.4 acres of improved real property located at the corner of North Townsend Street and Butternut Street (specifically, 400 Butternut St., 410 Butternut St. and 811 N. McBride St.¹) in the City of Syracuse, New York (the “*Land*”) as more fully described on Schedule A annexed hereto; (ii) the renovation of ten (10) existing buildings totaling approximately 18,400 square feet and the construction of three (3) new buildings totaling approximately 50,000 square feet, all for mixed-use, specifically, retail/pharmacy, commercial, approximately 24 apartments and approximately 4 rental townhouses and related parking, all located on the Land (collectively, the “*Facilities*”); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the “*Equipment*”, and together with the Land and the Facilities, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and State and local 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, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

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.”

¹ These parcels were formally known as 400-02 Butternut St. & Townsend S., 404-06 Butternut St., 410 Butternut St., 412 Butternut St., 414 Butternut St., 708 Townsend St. N., 712 Townsend St. N., 714 Townsend St. N., 716 Townsend St. N., 811 N. McBride St. and 813 N. McBride St.)

2. **Representations and Warranties.**

(a) Except as disclosed in Schedule B annexed hereto, Indemnitor represents and warrants that it has no knowledge of any deposit, storage, disposal, burial, discharge, spillage, uncontrolled loss, seepage or filtration of oil, petroleum or chemical liquids or solids, liquid or gaseous products or any hazardous wastes or hazardous substances (collectively, "***Hazardous Substances***"), as those terms are used in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or in any other federal, state or local law governing hazardous substances, as such laws may be amended from time to time (collectively, the "***Hazardous Waste Laws***"), at, upon, under or within the Project Facility or any contiguous real estate, and (ii) it has not caused or permitted to occur, and shall not permit to exist, any condition which may cause a discharge of any Hazardous Substances at, upon, under or within the Project Facility or on any contiguous real estate.

(b) Except as disclosed in the reports listed on Schedule B annexed hereto, Indemnitor further represents and warrants that (i) it has not been nor will be involved in operations at or near the Project Facility which operations could lead to (A) the imposition of liability on Indemnitor or on any subsequent or former owner of the Project Facility or (B) the creation of a lien on the Project Facility under the Hazardous Waste Laws or under any similar laws or regulations; and (ii) it has not permitted, and will not permit, any tenant or occupant of the Project Facility to engage in any activity that could impose liability under the Hazardous Waste Laws on such tenant or occupant, on Agency, the Indemnitor or on any other owner of any of the Project Facility.

3. **Covenants.**

(a) Indemnitor shall comply strictly and in all respects with the requirements of the Hazardous Waste Laws and related regulations and with all similar laws and regulations and shall notify Agency immediately in the event of any discharge or discovery of any Hazardous Substance at, upon, under or within the Project Facility which is not otherwise already disclosed in Schedule B. Indemnitor shall promptly forward to Agency copies of all orders, notices, permits, applications or other communications and reports in connection with any discharge or the presence of any Hazardous Substance or any other matters relating to the Hazardous Waste Laws or any similar laws or regulations, as they may affect the Project Facility.

(b) Promptly upon the written request of Agency, Indemnitor shall provide Agency, at Indemnitor's expense, with an environmental site assessment or environmental audit report prepared by an environmental engineering firm acceptable to the requesting Person, to assess with a reasonable degree of certainty the presence or absence of any Hazardous Substances and the potential costs in connection with abatement, cleanup or removal of any Hazardous Substances found on, under, at or within the Project Facility.

4. **Indemnity.**

(a) Indemnitor shall at all times indemnify and hold harmless Agency against and from any and all claims, suits, actions, debts, damages, costs, losses, obligations, judgments,

charges, and expenses, of any nature whatsoever suffered or incurred by Agency, whether as contract vendor, owner, mortgagee, as mortgagee in possession, or as successor-in-interest to Indemnitor by foreclosure deed or deed in lieu of foreclosure, under or on account of the Hazardous Waste Laws or any similar laws or regulations, including the assertion of any lien thereunder, with respect to:

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

(2) any costs of removal or remedial action incurred by the United States Government or any costs incurred by any other person or damages from injury to, destruction of, or loss of natural resources, including reasonable costs of assessing such injury, destruction or loss incurred pursuant to any Hazardous Waste Laws;

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

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

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

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

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

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

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

7. **No Waiver.** Notwithstanding any terms of the Company Documents to the contrary, the liability of Indemnitor under this Agreement shall in no way be limited or impaired by: (i) any extensions of time for performance required by any of the Company Documents; (ii) any sale, assignment or foreclosure of the Agency Lease or any sale or transfer of all or part of the Project Facility; (iii) the accuracy or inaccuracy of the representations and warranties made by Indemnitor under any of the Company Documents; or (iv) the release of Indemnitor or any other person from performance or observance of any of the agreements, covenants, terms or conditions contained in the Company Documents by operation of law, Agency's voluntary act, or otherwise; and, in any such case, whether with or without notice to Indemnitor and with or without consideration.

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

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

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

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

12. **Consent to Jurisdiction.** Indemnitor consents to the exercise of personal jurisdiction over Indemnitor by any federal or state court in the State of New York and consent

to the laying of venue in any jurisdiction or locality in the City of Syracuse. Service shall be effected by any means permitted by the court in which any action is filed.

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

(a) If to the Agency, to:

City of Syracuse Industrial Development Agency
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:

Butternut St. LLC
3721 New Court Avenue
Syracuse, New York 13206
Attn: Giovanni LaFace, President

With copies to:

Thomas J. Cerio, Esq.
Cerio Law Office
407 South Warren Street
Syracuse, New York 13202

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

14. **Waivers.** The parties waive trial by jury in any action brought on, under or by virtue of this Agreement. Indemnitor waives any right to require Agency at any time to pursue any remedy in such Person's power whatsoever. The failure of Agency to insist upon strict compliance with any of the terms hereof shall not be considered to be a waiver of any such

terms, nor shall it prevent Agency from insisting upon strict compliance with this Agreement or any other Company Document at any time thereafter.

15. **Severability.** If any clause or provisions herein contained operates or would prospectively operate to invalidate this Agreement in whole or in part, then such clause or provision shall be held for naught as though not contained herein, and the remainder of this Agreement shall remain operative and in full force and effect.

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

17. **Successors and Assigns.** This Agreement shall be binding upon Indemnitor's successors, assigns, heirs, personal representatives and estate and shall inure to the benefit of Agency and its successors and assigns.

18. **Controlling Laws.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

[Remainder of page intentionally left blank]

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

BUTTERNUT ST. LLC

By: _____

Giovanni LaFace, Sole Member

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

On the 12th day of December, in the year 2013 before me, the undersigned, a notary public in and for said state, personally appeared **GIOVANNI LAFACE**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that ~~she~~ ^{he} executed the same in ~~her~~ ^{his} capacity, and that by ~~her~~ ^{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

Schedule A

Lot 1

All that tract or parcel of land situate in Block 275C of the City of Syracuse, County of Onondaga, State of New York and being more particularly described as follows:

BEGINNING at the intersection of the east line of North Townsend Street with the south line of Butternut Street;

1. Thence, North 59° 24' 30" East, in the south line of said Butternut Street, a distance of 179.17 feet;
2. Thence, South 30° 32' 30" East, in aforesaid Block 275C, a distance of 198.80 feet;
3. Thence, South 59° 24' 30" West, continuing in said Block 275C, a distance of 30.41 feet;
4. Thence, South 30° 29' 40" East, continuing in said Block 275C, a distance of 50.00 feet;
5. Thence, South 59° 24' 30" West, continuing in said Block 275C, a distance of 148.72 feet to a point in the east line of aforesaid North Townsend Street;
6. Thence, North 30° 32' 30" West, in the east line of North Townsend Street, a distance of 248.80 feet to the POINT OF BEGINNING.

Containing 43,055 square feet, (0.988 ± acres)

Intending to describe "NEW LOT-1" as shown on a plat titled "BUTTERNUT COMMONS – RESUBDIVISION OF PROPERTIES" prepared by CHA Inc. project No. 24556 and filed in the Onondaga County Clerk's Office on 11/14/2013, map file No. 11771.

Lot 2

All that tract or parcel of land situate in Block 275C of the City of Syracuse, County of Onondaga, State of New York and being more particularly described as follows:

BEGINNING at a point in the south line of Butternut Street at the northwest corner of property now or formerly of Dung V. Lam per L.4814 of Deeds, P.473, said corner being South 59° 24' 30" West, a distance of 38.50 feet from the intersection of the south line of said Butternut Street with the west line of North McBride Street;

1. Thence, South 30° 29' 40" East, in the west line of said Lam property, a distance of 98.80 feet to the southwest corner thereof;
2. Thence, South 59° 24' 30" West, in said Block 275C, a distance of 14.89 feet;
3. Thence, South 30° 32' 30" East, continuing in said Block 275C, a distance of 100.00 feet;
4. Thence, South 59° 24' 30" West, continuing in said Block 275C, a distance of 65.00 feet;
5. Thence, North 30° 32' 30" West, continuing in said Block 275C, a distance of 198.80 feet to a point in the south line of aforesaid Butternut street;
6. Thence, North 59° 24' 30" East, in the south line of said Butternut Street, a distance of 79.97 feet to the POINT OF BEGINNING.

Containing 14,397 square feet, (0.331 ± acres)

Intending to describe "NEW LOT-2" as shown on a plat titled "BUTTERNUT COMMONS – RESUBDIVISION OF PROPERTIES" prepared by CHA Inc. project No. 24556 and filed in the Onondaga County Clerk's Office on 11/14/2013, map file No. 11771.

Lot 3

All that tract or parcel of land situate in Block 275C of the City of Syracuse, County of Onondaga, State of New York and being more particularly described as follows:

BEGINNING at a point in the west line of North McBride Street at the southeast corner of property now or formerly of Dung V. Lam per L.4814 of Deeds, P.473, said corner being South 30° 29' 40" East, a distance of 98.80 feet from the intersection of the west line of said North McBride Street with the south line of Butternut Street;

1. Thence, South 30° 29' 40" East, in the west line of said North McBride Street, a distance of 100.00 feet;
2. Thence, South 59° 24' 30" West, in said Block 275C, a distance of 53.31 feet;
3. Thence, North 30° 32' 30" West, continuing in said Block 275C, a distance of 100.00 feet;
4. Thence, North 59° 24' 30" East, continuing in said Block 275C, a distance of 53.39 feet to the POINT OF BEGINNING.

Containing 5,335 square feet, (0.122 ± acres)

Intending to describe "NEW LOT-3" as shown on a plat titled "BUTTERNUT COMMONS – RESUBDIVISION OF PROPERTIES" prepared by CHA Inc. project No. 24556 and filed in the Onondaga County Clerk's Office on 11/14/2013, map file No. 11771.

SCHEDULE "B"

EXCEPTIONS

NONE

CLOSING RECEIPT

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY LEASE/SUBLEASE TRANSACTION BUTTERNUT COMMONS PROJECT

CLOSING RECEIPT executed December 12th, 2013 by the City of Syracuse Industrial Development Agency (the “*Agency*”) and Butternut St. LLC (the “*Company*”) in connection with a certain project (the “*Project*”) consisting of: (A)(i) the acquisition of a leasehold interest in approximately 1.4 acres of improved real property located at the corner of North Townsend Street and Butternut Street (specifically, 400 Butternut St., 410 Butternut St. and 811 N. McBride St.¹) in the City of Syracuse, New York (the “*Land*”); (ii) the renovation of ten (10) existing buildings totaling approximately 18,400 square feet and the construction of three (3) new buildings totaling approximately 50,000 square feet, all for mixed-use, specifically, retail/pharmacy, commercial, approximately 24 apartments and approximately 4 rental townhouses and related parking, all located on the Land (collectively, the “*Facilities*”); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the “*Equipment*”, and together with the Land and the Facilities, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and State and local 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, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

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.

¹ These parcels were formally known as 400-02 Butternut St. & Townsend S., 404-06 Butternut St., 410 Butternut St., 412 Butternut St., 414 Butternut St., 708 Townsend St. N., 712 Townsend St. N., 714 Townsend St. N., 716 Townsend St. N., 811 N. McBride St. and 813 N. McBride St.)

(Signature page to Closing Receipt)

**CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY**

By: 

William M. Ryan, Chairman

BUTTERNUT ST. LLC

By: 

Name: Giovanni LaFace
Title: Sole Member

CITY OF SYRACUSE

and

**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT
AGENCY**

and

BUTTERNUT ST. LLC

PAYMENT IN LIEU OF TAX AGREEMENT

Dated as of: December 1, 2013

**BUTTERNUT ST. LLC
Federal Tax ID #: 46-0828670**

THIS PAYMENT IN LIEU OF TAX AGREEMENT, (this "*Agreement*") dated as of December 1, 2013, 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 City Hall Commons, 201 East Washington Street, Syracuse, New York 13202, and **BUTTERNUT ST. LLC**, a limited liability company organized and existing pursuant to the laws of the State of New York, having a principal place of business at 3721 New Court Avenue, Syracuse, New York 13206 (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 April 25, 2013, (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 1.4 acres of improved real property located at the corner of North Townsend Street and Butternut Street (specifically, 400-02 Butternut St. & Townsend St. N., 404-06 Butternut St., 410 Butternut St., 412 Butternut St., 414 Butternut St., 708 Townsend St. N., 712 Townsend St. N., 714 Townsend St. N., 716 Townsend St. N., 811 N. McBride St. and 813 N. McBride St.) in the City of Syracuse, New York (the "*Land*"); (ii) the renovation of ten (10) existing buildings totaling approximately 18,400 square feet and the construction of three (3) new buildings totaling approximately 50,000 square feet, all for mixed-use, specifically, retail/pharmacy, food and drink, approximately 24 apartments and approximately 4 townhouses and related parking, all located on the Land (collectively, the "*Facilities*"); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the "*Equipment*", and together with the Land and the Facilities, the "*Project Facility*"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and State and local 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, construction and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

WHEREAS, the Agency will lease the Project Facility from the Company pursuant to that certain Company Lease Agreement dated as of December 1, 2013, (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 December 1, 2013, (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. 208 of 2013, adopted by the Municipality's Common Council on April 29, 2013, and approved by Mayor Stephanie A. Miner on April 30, 2013.

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 limited liability company duly organized and validly existing as a limited liability company 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 2014/2015 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, 2014. 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, 2015. Without regard to the Agency exemption, the Company shall continue paying real property tax through June 30, 2014 with respect to the City and School portion of the real property tax and through December 31, 2014 with respect to the County and Water District portion of the real property tax, based upon the assessment and the combined real property tax rate in effect for that period as if the Project Facility were privately owned and the Agency had no interest in the same.

(b) Amount of Payments in Lieu of Taxes. Unless otherwise stated, the Company's agreed upon annual payment in lieu of tax hereunder shall be an amount determined by reference to Exhibit "A", attached hereto and made a part hereof. The payments in lieu of tax due, as set forth in Exhibit "A", include any real property tax exemptions that might be afforded to the Company if the Project Facility were owned by the Company and not the Agency. As consideration for the benefits conferred on the Company pursuant to this Agreement, the Company hereby agrees to be bound by any determination by the City of Syracuse Board of Assessment Review resulting from a review of the assessment pertaining to the Project Facility and/or Additional Property throughout the term of this Agreement. The Company hereby agrees to waive any and all right to challenge or contest in a court of law (a "*Legal Challenge*"), those payments or the basis for those payments due pursuant to Exhibit "A." It shall also be an event of default under Article IV of this Agreement should the Company bring a Legal Challenge on the Project Facility and/or Additional Property.

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

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

(b) Maximum Legal Rate. It is the intent of the Agency, the Municipality, and Company that in no event shall interest be payable at a rate in excess of the maximum rate permitted by applicable law (the "Maximum Legal Rate"). Solely to the extent necessary to prevent interest under this Agreement from exceeding the Maximum Legal Rate, any amount that would be treated as excessive under a final judicial interpretation of applicable law shall be deemed to have been a mistake and automatically canceled, and, if received by the Agency or Municipality, shall be refunded to the Company.

ARTICLE III

LIMITED OBLIGATION OF THE AGENCY

Section 3.01. No Recourse; Limited Obligation of the Agency

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

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

solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project.

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

ARTICLE IV

EVENTS OF DEFAULT

Section 4.01. Events of Default

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

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

(b) Commencement by the Company of a Legal Challenge, as defined in Section 2.02(b), to those payments or the basis for those payments due pursuant to Exhibit "A."

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

(d) Any warranty, representation or other statement by or on behalf of the Company contained in this Agreement or the Lease Agreement shall prove to have been false or incorrect in

any material respect on the date when made or on the effective date of this Agreement or the Lease Agreement.

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

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

(g) 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), 4.01 (f) or 4.01(g) shall have occurred and be continuing with respect to this Agreement, and/or the Company shall be in default under the Lease Agreement, the 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) 4.01 (f) or 4.01(g) shall have occurred and be continuing with respect to this Agreement or the Lease Agreement, the Agency may, upon notice to the Company provided for in this Agreement or the Lease Agreement, terminate the Lease Agreement and record such termination or other necessary documents in the Onondaga County Clerk's Office, terminating the Agency's interest in the Project Facility and terminating this Agreement.

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

Section 4.05. Remedies; Waiver and Notice

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

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

(c) Notice Not Required. In order to entitle the Agency 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 Agency Lease Agreement terminates; (ii) on any earlier date permitted under the Agency Lease Agreement; or (iii) upon the expiration on June 30, 2024, 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:
Butternut St. LLC
3721 New Court Avenue
Syracuse, NY 13206
Attention: Giovanni LaFace

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.

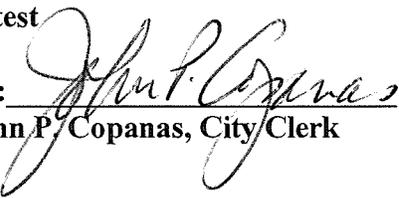
Section 5.09. Assignment

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

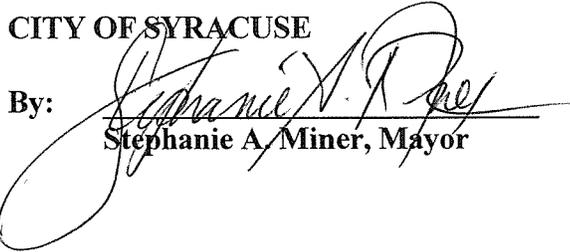
[No Further Text – Signature Pages Follows]

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

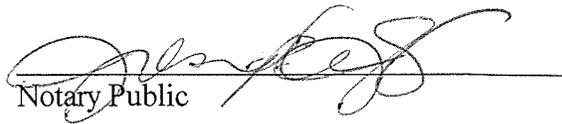
By: 
John P. Copanas, City Clerk

CITY OF SYRACUSE

By: 
Stephanie A. Miner, Mayor

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

On this 9 day of December, 2013, 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; and that she signed said instrument as Mayor of said City of Syracuse by like authority.


Notary Public

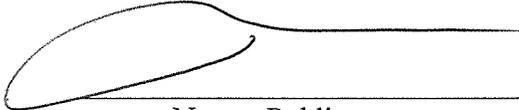
JOSEPHINE JAMES
Notary Public, State of New York
No. 01JA6239482
Qualified in Onondaga County
My Commission Expires April 18, 2015

**CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
William M. Ryan, Chairman

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss:

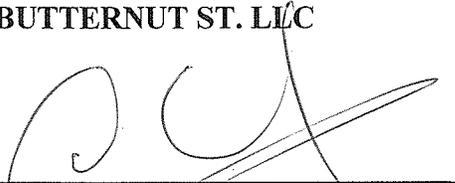
On the 9 day of December, 2013, before me the undersigned, a Notary Public in and for said state, personally appeared William M. Ryan, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to 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

THOMAS RAYMOND BABILON
Notary Public in the State of New York
Qualified in Onondaga County
No. 01BA6091431
My Commission Expires 5/28/15

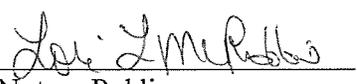
BUTTERNUT ST. LLC

By:


Giovanni LaFace

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss:

On the 12th day of December, in the year 2013, before me the undersigned, a notary public in and for said state, personally appeared Giovanni LaFace, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or he person upon behalf of which the individual acted, executed the instrument.


Notary Public

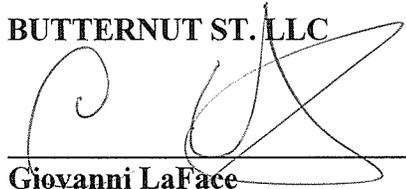
LORI L. McROBBIE
Notary Public, State of New York
Qualified in Onondaga Co. No. 01MC5055591
Commission Expires on Feb. 12, 20 14

ACKNOWLEDGEMENT BY

BUTTERNUT ST. LLC

Butternut St. LLC, (the “*Company*”) hereby acknowledges receipt and review of this Agreement, and consents to, and approves of, the terms and provisions contained herein.

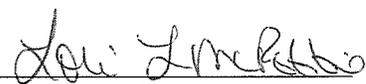
IN WITNESS WHEREOF, the Company has caused this Acknowledgment to be executed in its name by its duly authorized representative, dated as of December 1, 2013.

BUTTERNUT ST. LLC
By: 

Giovanni LaFace

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss:

On the 12th day of December, in the year 2013, before me the undersigned, a notary public in and for said state, personally appeared Giovanni LaFace, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or he person upon behalf of which the individual acted, executed the instrument.



Notary Public

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

EXHIBIT "A"

PILOT SCHEDULE

Butternut St. LLC PILOT Schedule		
Year	Assessment	Payment
1	$\$694,000 \times \text{tax rate}^*$	-
2	$\$694,000 \times \text{tax rate}$	-
3	$\$694,000 \times \text{tax rate}$	-
4	$\$694,000 \times \text{tax rate}$	-
5	$\$694,000 \times \text{tax rate}$	-
6	$\$694,000 \times \text{tax rate}$	-
7	$\$694,000 \times \text{tax rate}$	-
8	$[(\text{full assessment} - \$694,000) \times .25] + (\$694,000 \times \text{tax rate})$	-
9	$[(\text{full assessment} - \$694,000) \times .50] + (\$694,000 \times \text{tax rate})$	-
10	$[(\text{full assessment} - \$694,000) \times .75] + (\$694,000 \times \text{tax rate})$	-

*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

Lot 1

All that tract or parcel of land situate in Block 275C of the City of Syracuse, County of Onondaga, State of New York and being more particularly described as follows:

BEGINNING at the intersection of the east line of North Townsend Street with the south line of Butternut Street;

1. Thence, North 59° 24' 30" East, in the south line of said Butternut Street, a distance of 179.17 feet;
2. Thence, South 30° 32' 30" East, in aforesaid Block 275C, a distance of 198.80 feet;
3. Thence, South 59° 24' 30" West, continuing in said Block 275C, a distance of 30.41 feet;
4. Thence, South 30° 29' 40" East, continuing in said Block 275C, a distance of 50.00 feet;
5. Thence, South 59° 24' 30" West, continuing in said Block 275C, a distance of 148.72 feet to a point in the east line of aforesaid North Townsend Street;
6. Thence, North 30° 32' 30" West, in the east line of North Townsend Street, a distance of 248.80 feet to the POINT OF BEGINNING.

Containing 43,055 square feet, (0.988 ± acres)

Intending to describe "NEW LOT-1" as shown on a plat titled "BUTTERNUT COMMONS. RESUBDIVISION OF PROPERTIES" prepared by CHA Inc. project No. 24556.

Lot 2

All that tract or parcel of land situate in Block 275C of the City of Syracuse, County of Onondaga, State of New York and being more particularly described as follows:

BEGINNING at a point in the south line of Butternut Street at the northwest corner of property now or formerly of Dung V. Lam per L.4814 of Deeds, P.473, said corner being South 59° 24' 30" West, a distance of 38.50 feet from the intersection of the south line of said Butternut Street with the west line of North McBride Street;

1. Thence, South 30° 29' 40" East, in the west line of said Lam property, a distance of 98.80 feet to the southwest corner thereof;
2. Thence, South 59° 24' 30" West, in said Block 275C, a distance of 14.89 feet;
3. Thence, South 30° 32' 30" East, continuing in said Block 275C, a distance of 100.00 feet;
4. Thence, South 59° 24' 30" West, continuing in said Block 275C, a distance of 65.00 feet;

5. Thence, North 30° 32' 30" West, continuing in said Block 275C, a distance of 198.80 feet to a point in the south line of aforesaid Butternut street;
6. Thence, North 59° 24' 30" East, in the south line of said Butternut Street, a distance of 79.97 feet to the POINT OF BEGINNING.

Containing 14,397 square feet, (0.331 ± acres)

Lot 3

All that tract or parcel of land situate in Block 275C of the City of Syracuse, County of Onondaga, State of New York and being more particularly described as follows:

BEGINNING at a point in the west line of North McBride Street at the southeast corner of property now or formerly of Dung V. Lam per L.4814 of Deeds, P.473, said corner being South 30° 29' 40" East, a distance of 98.80 feet from the intersection of the west line of said North McBride Street with the south line of Butternut Street;

1. Thence, South 30° 29' 40" East, in the west line of said North McBride Street, a distance of 100.00 feet;
2. Thence, South 59° 24' 30" West, in said Block 275C, a distance of 53.31 feet;
3. Thence, North 30° 32' 30" West, continuing in said Block 275C, a distance of 100.00 feet;
4. Thence, North 59° 24' 30" East, continuing in said Block 275C, a distance of 53.39 feet to the POINT OF BEGINNING.

Containing 5,335 square feet, (0.122 ± acres)

Intending to describe "NEW LOT-3" as shown on a plat titled "BUTTERNUT COMMONS — RESUBDIVISION OF PROPERTIES" prepared by CHA Inc. project No. 24556.

City of Syracuse

CITY CLERK'S OFFICE

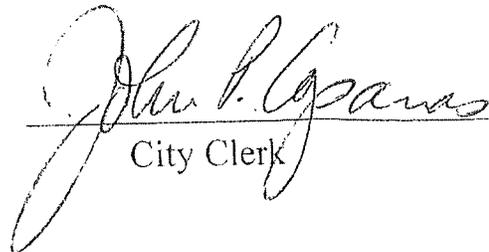
I, JOHN P. COPANAS, City Clerk of the City of Syracuse, New York do hereby certify that the attached is a true copy of an ORDINANCE:

Adopted by the Common Council on

April 29, 2013

Signed by the Mayor on

April 30, 2013


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 BUTTERNUT ST., LLC FOR ANNUAL
PAYMENTS IN LIEU OF TAXES WITH
RESPECT TO THE PROPERTIES LOCATED
AT 400-02 BUTTERNUT STREET &
TOWNSEND STREET NORTH, 404-06
BUTTERNUT STREET, 410 BUTTERNUT
STREET, 412 BUTTERNUT STREET, 414
BUTTERNUT STREET, 813 MCBRIDE
STREET NORTH, 811 MCBRIDE STREET
NORTH, 708 TOWNSEND STREET NORTH,
712 TOWNSEND STREET NORTH, 714
TOWNSEND STREET NORTH, AND 716
TOWNSEND STREET NORTH, 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 Butternut St., LLC, (the "*Company*") covering the properties located at 400-02 Butternut Street & Townsend Street North, 404-06 Butternut Street, 410 Butternut Street, 412 Butternut Street, 414 Butternut Street, 813 McBride Street North, 811 McBride Street North, 708 Townsend Street North, 712 Townsend Street North, 714 Townsend Street North, and 716 Townsend Street North for the Project at the property site that will consist of a \$7,847,700 demolition and redevelopment of the parcels into three mixed-use buildings totaling approximately 50,000 square feet, the buildings will consist of 24 upper floor apartments, four townhouses, and multiple ground floor commercial tenants, including Kinney Drugs; with payments in lieu of

taxes under the Agreement to be calculated pursuant to the PILOT Schedule attached as Exhibit "A"; and

BE IT FURTHER ORDAINED, that the 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 real property tax revenues are shared.

Exhibit "A"

Butternut St. LLC PILOT Schedule		
Year	Assessment	Payment
1	$\$694,000 \times \text{tax rate}^*$	-
2	$\$694,000 \times \text{tax rate}$	-
3	$\$694,000 \times \text{tax rate}$	-
4	$\$694,000 \times \text{tax rate}$	-
5	$\$694,000 \times \text{tax rate}$	-
6	$\$694,000 \times \text{tax rate}$	-
7	$\$694,000 \times \text{tax rate}$	-
8	$[(\text{full assessment} - \$694,000) \times .25] + (\$694,000 \times \text{tax rate})$	-
9	$[(\text{full assessment} - \$694,000) \times .50] + (\$694,000 \times \text{tax rate})$	-
10	$[(\text{full assessment} - \$694,000) \times .75] + (\$694,000 \times \text{tax rate})$	-

*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

City of Syracuse
Industrial Development Agency

333 West Washington Street, Suite 130
Syracuse, New York 13202
Tel (315) 473-3275 Fax (315) 435-3669

December 11, 2013

Butternut St. LLC
3721 New Court Avenue
Syracuse, New York 13206
Attn: Giovanni LaFace, President

Re: City of Syracuse Industrial Development Agency
Butternut Commons Project
Sales Tax Appointment Letter

Dear Mr. LaFace:

Pursuant to a resolution duly adopted on April 25, 2013, the City of Syracuse Industrial Development Agency (the “*Agency*”) appointed Butternut St. LLC (the “*Company*”) the true and lawful agent of the Agency to undertake a project (the “*Project*”) consisting of: (A)(i) the acquisition of a leasehold interest in approximately 1.4 acres of improved real property located at the corner of North Townsend Street and Butternut Street (specifically, 400 Butternut St., 410 Butternut St. and 811 N. McBride St.¹) in the City of Syracuse, New York (the “*Land*”); (ii) the renovation of ten (10) existing buildings totaling approximately 18,400 square feet and the construction of three (3) new buildings totaling approximately 50,000 square feet, all for mixed-use, specifically, retail/pharmacy, commercial, approximately 24 apartments and approximately 4 rental townhouses and related parking, all located on the Land (collectively, the “*Facilities*”); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the “*Equipment*”, and together with the Land and the Facilities, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and State and local 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, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the

¹ These parcels were formally known as 400-02 Butternut St. & Townsend S., 404-06 Butternut St., 410 Butternut St., 412 Butternut St., 414 Butternut St., 708 Townsend St. N., 712 Townsend St. N., 714 Townsend St. N., 716 Townsend St. N., 811 N. McBride St. and 813 N. McBride St.)

Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

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

The estimated value of the goods and services subject to this exemption, as approved by the Agency is \$6,400,000.

This agency appointment includes the power to delegate such agency, in whole or in part to agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents, and to such other parties as the Company chooses. The Company hereby agrees to complete "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (Form ST-60) for itself and each agent, subagent, contractor, subcontractor, contractors or subcontractors of such agents and subagents, and to such other parties as the Company chooses who provide materials, equipment, supplies or services and deliver said form to the Agency within fifteen (15) days of appointment such that the Agency can execute and deliver said form to the State Department of Taxation and Finance within thirty (30) days of appointment.

In exercising this agency appointment, the Company, its agents, subagents, contractors and subcontractors should give the supplier or vender a copy of this letter to show that the Company, its agents, subagents, contractors and subcontractors are each acting as agent for the Agency. The supplier or vendor should identify the Project Facility on each bill or invoice and indicate thereon which of the Company, its agents, subagents, contractors and subcontractors acted as agent for the Agency in making the purchase.

In order to be entitled to use this exemption, you or your contractor should present to the supplier or other vendor of materials for the Project Facility, a completed "Contractor Exempt Purchase Certificate" (Form ST-120.1), checking box "(a)". You should give the supplier or vendor a copy of this letter to show that you (or the contractor) are acting as agent for the Agency in making the purchase. A copy of this letter retained by any vendor or seller may be accepted by such vendor or seller as a "statement and additional documentary evidence of such exemption" as provided by New York Tax Law §1132(1)(ii), thereby relieving such vendor or

seller from the obligation to collect sales and use tax with respect to the construction and installation and equipping of the **Project Facility**.

In addition, General Municipal Law §874(8) requires you to file an Annual Statement with the New York State Department of Taxation and Finance on "Annual Report of Sales and Use Tax Exemptions" (Form St-340) regarding the value of sales and use tax exemptions you, your agents, consultants or subcontractors have claimed pursuant to the agency we have conferred on you with respect to this project. The penalty for failure to file such statement is the removal of your authority to act as our agent.

The agency created by this letter is limited to the Project Facility, and will expire on the earlier of **March 31, 2014** or termination of the Agency Lease. You may apply to extend this agency authority by showing good cause.

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

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

(SIGNATURE PAGE TO FOLLOW)

Butternut St. LLC
December 11, 2013
Page 4

Very truly yours,

CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY

By: 
William M Ryan, Chairman



IDA Appointment of Project Operator or Agent For Sales Tax Purposes

ST-60

(4/13)

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

For IDA use only

Name of IDA City of Syracuse Industrial Development Agency		IDA project number (use OSC numbering system for projects after 1998)	
Street address 333 West Washington Street, Suite 130		Telephone number (315) 473-3275	
City Syracuse		State NY	ZIP code 13202
Name of IDA project operator or agent Butternut St. LLC		Mark an X in the box if directly appointed by the IDA: <input checked="" type="checkbox"/>	Employer identification or social security number 46-0828670
Street address 3721 New Court Avenue		Telephone number (315) 952-3797	Primary operator or agent? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
City Syracuse		State NY	ZIP code 13206
Name of project Butternut Commons Project		Purpose of project (see instructions) other - commercial	
Street address of project site corner of North Townsend Street and Butternut Street (400 Butternut St., 410 Butternut St. and 811 N. McBride St.)			
City Syracuse		State NY	ZIP code
Description of goods and services intended to be exempted from New York State and local sales and use taxes building materials, equipment, fixtures and furnishings installed in the Project Facility			

Date project operator or agent appointed (mm/dd/yy) 12/11/13	Date project operator or agent status ends (mm/dd/yy) 03/31/14	Mark an X in the box if this is an extension to an original project: <input type="checkbox"/>
Estimated value of goods and services that will be exempt from New York State and local sales and use tax: \$6,400,000	Estimated value of New York State and local sales and use tax exemption provided: \$512,000	

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

Print name of officer or employee signing on behalf of the IDA William M. Ryan	Print title Chairman
Signature 	Date 03/12/2014
	Telephone number (315) 473-3275

Instructions

Filing requirements

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

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

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

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

Purpose of project

For Purpose of project, enter one of the following:

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

Mailing instructions

Mail completed form to:

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

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

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

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

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

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

Need help?



Internet access: www.tax.ny.gov
(for information, forms, and publications)



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



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

HISCOCK & BARCLAY^{LLP}

Susan R. Katzoff
Partner

March 14, 2014

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

Re: IDA Appointment of Project Operator or Agent for Sales Tax Purposes
City of Syracuse Industrial Development Agency Appointment of
Butternut St. LLC (Butternut Commons Project)
Amended ST-60 Filing

Dear Ladies and Gentlemen:

Enclosed for filing on behalf of the City of Syracuse Industrial Development Agency (“SIDA”), please find an Amended ST-60 form in connection with the appointment by SIDA of Butternut St. LLC as its agent for sales tax purposes in connection with SIDA’s project identified therein. The ST-60 has been amended to reflect the correct Employer Identification number for Butternut St. LLC.

Please acknowledge receipt of the enclosed by date stamping the copy of this letter enclosed herewith and returning it in the postage-paid envelope provided.

Please do not hesitate to contact me with any questions.

Very truly yours,
COPY
Susan R. Katzoff

SRK:llm
Enclosure



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 Dev. Agency
Street 333 West Washington Street, Suite 130
City Syracuse
Telephone no. Day (315) 473-3275
Evening () N.A
Contact Ben Walsh
Title Executive Director

2. OCCUPANT (IF OTHER THAN IDA)

(If more than one occupant attach separate listing)

Name Butternut St. LLC
Street 3721 New Court Avenue
City Syracuse
Telephone no. Day () 315 952-3787
Evening () _____
Contact Giovanni LaFace
Title _____

3. DESCRIPTION OF PARCEL

a. Assessment roll description (tax map no./roll year)
2013 Roll, see attached list
b. Street address see attached list
c. City, Town or Village Syracuse

d. School District Syracuse
e. County Onondaga
f. Current assessment \$645,200.00
g. Deed to IDA (date recorded; liber and page)
N/A Straight Lease Transaction

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

a. Brief description (include property use) approx. 1.4 acres, renovation of ten existing buildings and construction of three new buildings for mixed use/retail/pharmacy/ 24 apartments/4 townhouses/parking
b. Type of construction brick, mortar wood
c. Square footage approx. 68,400
d. Total cost \$7,847,700.00
e. Date construction commenced _____
f. Projected expiration of exemption (i.e. date when property is no longer possessed, controlled, supervised or under the jurisdiction of IDA)
June 30, 2024

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

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

a. Formula for payment see attached PILOT agreement

b. Projected expiration date of agreement June 30, 2024

c. Municipal corporations to which payments will be made

	Yes	No
County _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Town/City _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Village _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>
School District _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>

d. Person or entity responsible for payment

Name Butternut St. LLC
 Title _____
 Address 3721 New Court Avenue
Syracuse, NY

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

If "No" identify owner and explain IDA rights or interest Telephone 315 952-3797
 in an attached statement. Owner-Butternut St. LLC
SIDA-Leasehold

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

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

7. A copy of this application, including all attachments, has been mailed or delivered on 12/17/13 (date) to the chief executive official of each municipality within which the project is located as indicated in Item 3.

CERTIFICATION

I, William M. Ryan, Chairman _____ of _____
 Name Title
City of Syracuse Industrial Development Agency hereby certify that the information
 Organization

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

12/17/13
 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

<u>Property</u>	<u>Tax Map #</u>	<u>Assessment</u>
400-02 Butternut St	017.-05-01.0	\$182,000
404-06 Butternut St	017.-05-02.0	\$ 7,400
410 Butternut St.	017.-05-03.0	\$ 19,500
412 Butternut St.	017.-05-04.0	\$ 14,900
414 Butternut St.	017.-05-05.0	\$ 56,200
708 N. Townsend St.	017.-05-21.0	\$ 40,000
712 N. Townsend St.	017.-05-22.0	\$ 95,500
714 N. Townsend St.	017.-05-23.0	\$ 56,800
716 N. Townsend St.	017.-05-24.0	\$ 55,000
811 N. McBride St.	017.-05-08.0	\$ 52,400
813 N. McBride St.	017.-05-07.0	\$ 65,500

ONONDAGA COUNTY CLERK'S OFFICE
 SANDRA A SCHEPP - COUNTY CLERK
 401 Montgomery St - Room 200
 Syracuse, NY 13202

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

Doc Type: MTG
 Mortgagor: CITY OF SYRACUSE INDUSTRIAL
 BUTTERNUT ST LLC
 Mortgagee: FIRST NIAGARA BANK N A
 Legal Desc: SYR L1-3 BUTTERNUT COMMONS N E

Receipt: 1114371 RS
 Book/Page: 17392/0580 Inst: 52327
 Date Filed: 12/13/2013 at 2:25PM
 Updated: 12/16/2013 MS
 Record and Return To:

GILBERTI STINZIANO HEINTZ &
 SMITH PC
 ATTORNEYS PICK UP BOX
 COURTHOUSE

Prop Address: 400&410 BUTTERNUT ST & 811 N
 MCBRIDE ST

Submitted by: LINDA ORIOLI

Recording Fees		Miscellaneous Fees	
Addl pages:	23 x 5.00 = \$ 115.00	RMI:	\$ 20.00
Addl Names:	0 x 0.50 = \$ 0.00	TP 584:	\$ 0.00
Addl Refs:	0 x 0.50 = \$ 0.00	RP5217:	\$ 0.00
Misc:	0.00	AFFTS:	\$ 5.00
Basic	\$25.50		
=====		=====	
TOTAL:	\$140.50	TOTAL:	\$ 25.00

MORTGAGE TAX		DEED TRANSFER TAX	
Mortgage:	\$5300000.00	Consideration	
Basic:	\$0.00	Transfer Tax:	\$0.00
Ins Fund:	\$0.00	SWIS:	
Net Add:	\$0.00	Map #:	
Misc:	\$0.00		
=====		=====	
TOTAL	\$0.00	Total Paid	\$ 165.50
		Control no	DE13923

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

SANDRA A SCHEPP
 Onondaga County Clerk

Book/Page 17392 / 0580 Instrument no.: 52327



M173920580

23 1500

ONONDAGA COUNTY	
BASIC TAX	\$
MTG. INS. FUND TAX	\$
NET ADDITIONAL TAX	\$
TOTAL MTG. TAX PAID	\$ 1500

DL 013923TL

**MORTGAGE AND SECURITY AGREEMENT
(Building Loan)**

BUTTERNUT ST. LLC
and
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

to

FIRST NIAGARA BANK, N.A.

Dated as of December 12, 2013

PREMISES KNOWN AS:

LOT 1

410 Butternut
City of Syracuse,
New York
Onondaga County

LOT 2

400 Butternut Street
City of Syracuse,
New York
Onondaga County

LOT 3

811 North McBride Street
City of Syracuse,
New York
Onondaga County

After Recording Return to:

Gilberti Stinziano Heintz & Smith, P.C.
555 East Genesee Street
Syracuse, New York 13202
Attn: Francis D. Stinziano, Esq.

Box #04449

14:25 12/13/13 5232713 RS MB-17392P-580

**MORTGAGE AND SECURITY AGREEMENT
(Building Loan)**

THIS MORTGAGE AND SECURITY AGREEMENT (“Mortgage”), dated as of December 12, 2013, by **BUTTERNUT ST. LLC**, a New York limited liability company having an address of 3721 New Court Avenue, Syracuse, New York 13206 (“Borrower”) and **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation existing under the laws of the State of New York, having an address at 333 West Washington Street, Suite 130, Syracuse, New York 13202 (“Agency”), to **FIRST NIAGARA BANK, N.A.**, a national banking association having an address of P.O. Box 28, Buffalo, New York 14240-0028 (“Lender”), evidences:

ARTICLE I. DEFINITIONS

The following terms shall have the following respective meanings when used herein:

1.1 Agency Lease: Collectively, those certain Lease/Leaseback Agreements, each dated on or about the date hereof by and between Borrower and Agency, memoranda of which are intended to be recorded in the Onondaga County Clerk’s Office.

1.2 Awards: Any and all awards heretofore or hereafter made by any federal, state, county, municipal or other governmental authority, or by whosoever made in any condemnation, eminent domain, or equivalent proceeding, to the present or subsequent owners of any interest encumbered by this Mortgage for the acquisition for public purposes of said interest, or any portion thereof, and for severance and consequential damages on account thereof, including any award for any change of grade of any street affecting said interest, and also any award for any damage to said interest; and all proceeds of insurance on or in connection with the Real Property, the Fixtures, and the Improvements.

1.3 Building Loan Contract: Agreement of even date herewith between Borrower and Lender governing development of the Premises, which will be filed for record in the Office of the Clerk of the County in which the Premises is located, if required by law.

1.4 Collateral Documents:

(a) Collateral Assignment of Agreements by Borrower to Lender of even date herewith.

(b) Any Guaranty by Guarantor (as defined in the Note) given to Lender simultaneously herewith.

(c) Assignment of Leases and Rents by Borrower and Agency to Lender of even date herewith.

(d) Any other document given by or on behalf of Borrower to secure the Note.

1.5 Environmental Laws: All federal, state and local environmental, land use, development, environmental quality, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection of human health or the Environment and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or Disposal of Hazardous Substances and the rules, regulations, policies, guidelines, interpretations, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto.

1.6 Environmental Questionnaire: A questionnaire provided by the Lender and all attachments thereto concerning: (a) activities and conditions affecting the environment at the Premises; or (b) the enforcement or possible enforcement of any Environmental Law against Borrower.

1.7 Environmental Report: That Environmental Report previously submitted to Lender for review; if any.

1.8 Fixtures: All fixtures and equipment now or hereafter affixed to or installed on the Real Property or the Improvements, including without limitation, heating, ventilation, air conditioning, plumbing, gas and electric fixtures and equipment, engines, motors, incinerators, pumps, fire prevention equipment, floor coverings, furniture and equipment, now owned or hereafter acquired, all insurance policies covering the Premises and the proceeds thereof, all insurance, conversion and condemnation awards and the Improvements, all lease, rental and sale agreements related to the Real Property and Improvements, any security deposits, down payments and any other payments related to the Real Property, all income or profit, all contracts related to the Premises, all books and records, all options or agreements, all plans and specifications and all renewals and replacements thereof and articles in substitution therefor and all proceeds thereof. All capitalized terms defined in the Uniform Commercial Code in New York State shall have the same meanings in this definition.

1.9 Hazardous Substance: Any flammable explosives, radon, radioactive materials, asbestos, asbestos-containing materials, urea formaldehyde foam insulation, lead-based paints, polychlorinated biphenyls, petroleum and petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials as defined in or subject to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), Articles 15 and 27 of the New York State Environmental Conservation Act or any other applicable Environmental Law and in the regulations adopted pursuant thereto.

1.10 Improvements: All buildings, structures and other improvements now or hereafter constructed or located on the Real Property and any related Fixtures.

1.11 Indebtedness and Maximum Principal Amount: All amounts due to Lender from Borrower from time to time pursuant to the terms of the Note, this Mortgage, the Building Loan Contract, and the Collateral Documents or under any Interest Rate Protection Agreement; provided, however, that the principal amount secured by this Mortgage does not, and shall not under any

contingency, exceed **FIVE MILLION THREE HUNDRED THOUSAND AND 00/100 DOLLARS (\$5,300,000.00)**.

1.12 Indemnitee: Lender, its participants, all subsequent holders of the Mortgage securing the Loan, their respective successors and assigns and their respective officers, directors, employees, agents, representatives, contractors and subcontractors and any subsequent owner of the Real Property who acquires title thereto from or through Lender.

1.13 Note: Borrower's promise of even date herewith to pay to the order of Lender the maximum principal sum of \$5,300,000.00 plus interest and other sums as provided therein, and all extensions, modifications, renewals and replacements thereof.

1.14 PILOT Agreement: The Payment in Lieu of Tax Agreement, if any, entered into between Borrower and Agency, as said agreement may be amended or supplemented from time to time.

1.15 Premises: The Real Property, Improvements, Fixtures, Rents, and Awards.

1.16 Real Property: The land described on Schedule A attached hereto; all appurtenances and all the estate and rights of Borrower thereto; all the right, title and interest of Borrower in and to all streets, alleys, highways, public ways, and waterways adjacent thereto; all public and private easements and rights of way now or hereafter benefiting, existing, or used in connection therewith; and all land hereafter acquired by Borrower in connection with the Project (as defined in the Building Loan Contract).

1.17 Rents: All credits, cash, deposits (whether for security or otherwise), rents, advance rentals, issues, profits revenues, royalties, fees, charges, accounts, benefits and other payments and income of every nature of and from any portion of the Premises, including, without limitation, minimum rents, additional rents, termination payments, forfeited security deposits, liquidated damages following an Event of Default or demand, as applicable, and all proceeds payable under any policy of insurance covering loss or rents resulting from untenability due to destruction or damage to the Premises, or any part thereof, together with the immediate and continuing right to collect and receive the same, whether due or hereafter becoming due, and together with all rights and claims of any kind that Borrower may have against any tenant, lessee or licensee under the leases or against any other occupant of the Real Property or Improvements, and all rents, oil and gas or other mineral royalties, revenues, fees, charges, accounts and other payments, and bonuses, issues and profits from any portion of the Premises.

ARTICLE II. GRANT OF MORTGAGE AND SECURITY INTEREST

To secure the payment of the Indebtedness to Lender, Borrower and Agency hereby grant a security interest in and to, and mortgage to Lender in Borrower's and Agency's respective interest (except the Agency's "Unassigned Rights" as that term is defined in the Agency Lease) in the Premises.

This Mortgage shall be considered a financing statement pursuant to the provisions of the Uniform Commercial Code covering fixtures which are affixed to the Real Property.

ARTICLE III. COVENANTS AND REPRESENTATIONS OF BORROWER

Borrower covenants and agrees with, and represents to, Lender as follows:

3.1 Payment of Indebtedness: Borrower will pay the Indebtedness when and as due.

3.2 Payment of Taxes and Assessments: Lender waives the establishment and maintenance of a tax and insurance escrow account in accordance with Lender's procedures relating to the same, provided Borrower does not default in any agreement, covenant or condition in the Loan Documents. Lender will engage and Borrower will pay for a lifetime monitoring service to monitor real property tax accounts affecting the Property, in lieu of establishing a tax escrow account. Borrower will annually submit to Lender, on or prior to the anniversary of the Loan, evidence of payment of premiums for Project insurance coverage required by Lender. Upon the occurrence of an Event of Default, Lender shall have the option, at its sole discretion, to require the Borrower establish a tax escrow account should any delinquencies arise.

3.3 Insurance: Borrower will keep the Premises insured as required by the Building Loan Contract. The proceeds of any casualty insurance shall be applied toward the repair or restoration of the Improvements or to the payment of the Indebtedness, at Lender's option; provided, however, that in the absence of an Event of Default, Lender will advance to Borrower in accordance with the Lender's then current construction loan policy any such insurance proceeds necessary to restore portions of the Improvements which in Lender's reasonable judgment will be restored (a) within the term of the Note and (b) at a cost not to exceed such proceeds, unless any such excess is deposited with Lender for that purpose. Borrower irrevocably appoints Lender as Borrower's attorney-in-fact to make any claim upon, receive payment from, and execute and endorse any documents, checks or other instruments in payment for loss, theft, or damage under any such insurance policy.

3.4 Statement of Amount Due: Borrower will within ten (10) days of receipt of Lender's request, furnish a written statement duly acknowledged of the amount due on this Mortgage and whether any offsets or defenses exist against the Indebtedness.

3.5 Notice of Transfer or Casualty: Borrower will give immediate notice to Lender of any damage by fire or other casualty to the Premises or of any conveyance, transfer or change of ownership of the Premises or any part thereof or interest therein.

3.6 Demolition or Alteration: Borrower will not remove, demolish or structurally alter any of the Improvements or Fixtures without the prior written consent of the Lender.

3.7 Inspection: Borrower will comply with all government requirements respecting the Premises and will not use the Premises in any way that violates any law, ordinance, rule, regulation or requirement, or in any way that violates any enforceable restrictive covenant on the use of the Premises. Borrower will keep and maintain all Improvements, Fixtures and other property constituting the Premises in good order and in rentable and tenantable condition and state of repair. No building, Fixture or other property on the Premises will be removed, demolished or altered without the prior written consent of Lender. Borrower will promptly repair or replace to the satisfaction of Lender any buildings or improvements of the Premises damaged by casualty, and will

not suffer any waste. Lender and its agents shall have the right to enter and inspect the Premises at any reasonable time.

3.8 Rents: Borrower will not accept prepayments of installments of rent more than one month in advance of the time when such rent is due; Borrower shall include in all future leases of any part of the Premises a provision prohibiting the prepayment of any rent without the prior written consent of Lender. Borrower will promptly send notices of default related to any leases of the Premises to Lender. Borrower represents that (a) there is no pledge or assignment of any of the Rents except to Lender; (b) that Borrower will make no such pledge or assignment, except to Lender, so long as any portion of the Indebtedness remains unpaid; and (c) no Rents have been paid by any tenants or occupants thereof except rentals which have become due prior to the date hereof.

3.9 Consent: Borrower represents that the execution and delivery of this Mortgage have been duly authorized.

3.10 Warranty of Title: Borrower warrants the title to the Premises.

3.11 Partial Payments: Borrower agrees that any payment or part payment of principal or interest or of any other sum or sums due or to become due hereunder or the doing of any act or acts under the terms hereof by any then owner of the Premises or person liable upon the Indebtedness shall for the purpose of the Statute of Limitations be deemed to be a payment by or act of every person included in the term Borrower.

3.12 Protection of Premises: Cure of Defaults: Borrower will maintain the Premises in good repair and condition and cause or permit no waster thereof. Borrower agrees that if, in the reasonable opinion of Lender, the Premises are in danger of destruction or deterioration, Lender may enter upon the Premises and perform such acts thereon or with respect thereto as it may deem suitable for preservation or protection of the Premises, and may thereafter remove from the Premises or hold possession thereof at its option. Lender may also perform such acts and make such expenditures as Lender may reasonably deem appropriate or desirable to cure material defaults in any agreement affecting the Premises.

3.13 Change of Law: Borrower agrees that in the event of the passage of any law changing in any way the laws for the taxation of mortgages or debts secured by mortgages, for state or local purposes, or the manner of collection of any such taxes, so as to affect this Mortgage, Lender shall have the right to give thirty (30) days written notice to Borrower requiring the payment of the Indebtedness or payment by Borrower of any such additional taxes imposed, at Borrower's option. If such notice is given, the Indebtedness or such additional taxes shall become immediately due and payable at the expiration of said thirty (30) days.

3.14 Reimbursement of Expenses: Borrower agrees to reimburse Lender for the following expenses within thirty (30) days of receipt of Lender's demand therefor:

(a) Payment of taxes, PILOT payments, if any, assessments, water charges, utilities, and insurance premiums not paid when due by Borrower.

(b) Expenses of preserving, protecting or securing the Premises.

(c) Expenses of curing defaults under this Mortgage or any other agreement affecting the Premises.

(d) Expenses of enforcing this Mortgage and defending the security thereof, including without limitation, the fees and disbursements of accountants, appraisers, consultants, and attorneys.

(e) In any action or proceeding to foreclosure this Mortgage, or to recover or collect the debt secured by it, the Lender shall be entitled to recover, in addition to statutory costs and disbursements, all costs Lender incurs including, but not limited to, reasonable architects', engineers', and attorneys fees and all other disbursements and expenses incurred by Lender in connection with said foreclosure action or proceeding. All sums paid by the Lender for the expenses of such a foreclosure action or proceeding, shall be paid by the Borrower, together with interest at the interest rate set forth in the Note, and any such sum and the interest on it shall be a lien on the Premises, prior to any right, title to, interest in or claim upon the Premises attaching or occurring subsequent to the lien of this Mortgage, and shall be deemed to be secured by this Mortgage.

3.15 Maintain Premises: Borrower will maintain the Premises in good repair and condition and cause or permit no waste thereof.

3.16 Comply with Covenants: Borrower will not use the Premises in any manner which will violate an enforceable restrictive covenant affecting the same.

3.17 Environmental Representations: Borrower represents and warrants that to the best of its knowledge and except as contained in the Environmental Report:

(a) The Environmental Questionnaire previously provided to Lender was and is accurate and complete and does not omit any material fact the omission of which would make the information contained therein materially misleading.

(b) No friable asbestos insulation is located in any of the buildings or structures improving the Property. Any asbestos-containing building material and urea foam insulation is maintained in accordance with applicable Environmental Laws.

(c) Any underground storage tanks (including any tanks no longer in use) on the property have been registered and are being maintained in accordance with all Environmental Laws. No such tank is leaking. Any leaks that have occurred have been repaired properly and all substances that leaked from any such tank and impacted media have been removed from the Property and disposed of in accordance with Environmental Laws.

(d) Radon gas is not present in buildings on the Property in concentrations exceeding 4 pCi/l.

(e) Any electrical transformers, capacitors, lighting ballasts or other electric equipment on the Property which contain polychlorinated biophenyls (PCBs) are being maintained in accordance with applicable Environmental Laws and no such equipment is leaking. Any leaks that have occurred have been repaired properly and all substances that leaked from any such equipment

and impacted media have been removed from the Property and disposed of in accordance with Environmental Laws.

(f) The property is not and has not been used for the treatment, storage, generation, handling or transportation of Hazardous Substances except to the extent permitted by law.

(g) No disposal and/or release of a Hazardous Substance has occurred or is threatened on, at, or from the Property.

(h) Neither the Borrower nor the Property is subject to any existing, pending or threatened suit, claim, notice of violation or request for information under any Environmental Law.

(i) The Borrower is in compliance with all Environmental Laws applicable to its operations at the Property.

3.18 Indemnification: Borrower agrees to and does hereby hold Indemnitee harmless from, and defend and indemnify Indemnitee from and against all claims, losses, expenses and liabilities, damages, penalties, expenditures or charges including but not limited to reasonable attorneys' fees and disbursements, all costs of investigation, monitoring, remedial response, removal, restoration or permit acquisition which may now or in the future be undertaken, suffered, paid, awarded, assessed or otherwise incurred by Indemnitee on account of any claim by any party arising out of the Loan or Indemnitee's interest in or lien upon the Property or Improvements, including without limitation those relating to a Release or threatened Release of any Hazardous Substance on, at, under, near or from the Project, and compliance or noncompliance by Borrower or the Project related to Environmental Laws or Environmental Permits. This indemnification will survive repayment of the Loan and discharge, foreclosure, or assignment of this Mortgage, and transfer of the Property by deed in lieu of foreclosure or otherwise. This indemnification is not limited by any exculpatory provisions herein or in the Note or Collateral Documents.

3.19 Environmental Covenants: Borrower covenants and agrees with Lender that so long as this Mortgage remains a lien on the Property:

(a) Borrower shall comply with all Environmental Laws in connection with its ownership or use of the Property or any related property.

(b) Borrower shall not suffer, cause or permit the disposal of Hazardous Substances at the Property.

(c) Borrower shall not suffer, cause or permit the generation, handling, processing, use, or storage of Hazardous Substances on the Property except in compliance with all Environmental Laws.

(d) Borrower shall promptly notify Lender in the event of the release, threatened release or disposal of any Hazardous Substance at the Property.

(e) Borrower shall allow Lender and its agent access to the Property at all reasonable times upon reasonable notice and subject to tenant leases of the Premises, and permit such inspections, tests, drilling of monitoring wells, soil borings or other analysis of the Property as Lender may require.

(f) Borrower shall, at Lender's request, provide, at Borrower's expense, updated answers to Environmental Questionnaires and/or any reports concerning the environmental conditions at the Property prepared for the Lender by an environmental consulting firm.

(g) Borrower shall deliver promptly to Lender copies of any and all correspondence or documents involving Environmental Laws or environmental issues related to the Borrower in connection with its ownership or use of the Property.

Borrower agrees to indemnify, defend, and hold harmless Lender from and against any and all liabilities, claims, damages, penalties, expenditures, losses, or charges, including, but not limited to, all costs of investigation, monitoring, legal representation, remedial response, removal, restoration or permit acquisition, which may now or in the future be undertaken, suffered, paid, awarded, assessed, or otherwise incurred by Lender or any other person or entity as a result of the presence of, Release of or threatened Release of Hazardous Substance on, in, under or near the Property.

3.20 Other Acts: At Lender's request, execute and deliver to Lender all further documents and perform all other acts which Lender reasonably deems necessary or appropriate to perfect or protect its security for the Loan.

3.21 Environmental Reports: In the event that Borrower has provided Lender an Environmental Report; notwithstanding anything herein to the contrary, Lender does not adopt, ratify or vouch for the adequacy or reliability of said environmental site assessment or report, or assume any duty to warn Borrower or any other entity about any actual or potential environmental hazard which may become apparent during the course of Lender's environmental review.

Borrower agrees that the Lender shall not be liable in any way for the completeness or accuracy of any environmental report or the information contained therein. Borrower further agrees that the Lender has no duty to warn the Borrower or any other person or entity about any actual or potential environmental contamination or other problem that may have become apparent or will become apparent to the Lender.

3.22 Financial and Affirmative Covenants: The following financial and affirmative covenants of the Borrower shall apply to the Loan if required by Lender:

(a) All hard costs may be subject to a ten percent (10%) retainage withholding to be released upon completion of the building and receipt by Lender of the items referenced above. A final lien waiver may be required and must accompany the request from the subcontractor who performed the work.

(b) Third party inspections at Borrower's expense may be required prior to each draw as well as title updates required.

(c) No additional secured financing for Borrower shall be permitted without the prior written consent of Lender.

3.23 Security Agreement/Fixture Filing:

(a) This Mortgage shall also constitute a security agreement and financing statement within the meaning of Article 9 of the New York Uniform Commercial Code (as amended from time to time, "UCC"). Borrower hereby grants to Lender a security interest in the Fixtures, whether now owned or hereafter acquired, and all proceeds thereof in order to secure the Indebtedness. Notwithstanding the filing of any financing statement covering any of the Premises in the records normally pertaining to personal property, at Lender's option, all of the Fixtures, for all purposes and in all proceedings, legal or equitable, shall be regarded (to the extent permitted by law) as part of the Real Property. The mention in any such financing statement of any of the Premises shall not be construed as in any way altering any of the rights of Lender or adversely affecting the priority of the lien granted hereby or by the loan documents, but such mention in the financing statement is hereby declared to be for the protection of Lender in the event any court shall at any time hold that notice of Lender's priority of interest, to be effective against any third party, must be filed in the UCC records.

(b) Borrower hereby agrees that it shall execute and hereby authorizes Lender to file such documents, instruments and further assurances (including, without limitation, any financing or continuation statements), in each case in form and substance satisfactory to Lender, as Lender may, from time to time, reasonably consider necessary to create, perfect and preserve Lender's security interest hereunder. Borrower hereby irrevocably authorizes Lender to cause financing statements (and amendments and continuations thereof) and any such documents, instruments and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest, and Borrower shall pay all reasonable costs and expenses incurred by Lender in connection therewith, including, without limitation, reasonable attorneys' fees and costs of filing or recordation.

(c) This Mortgage shall also constitute a "fixture filing" for the purposes of the UCC against all of the Premises which is or is to become Fixtures related to the Premises. Borrower is the "Debtor" and its name and mailing address are set forth in the preamble of this Mortgage. Lender is the "Secured Party" and its name and mailing address from which information concerning the security interest granted herein may be obtained are also set forth in the preamble of this Mortgage. The definition of Fixtures is set forth herein. Borrower is the record owner of the applicable fee title.

(d) At Lender's request, Borrower shall execute and deliver to Lender all further documents and perform all other acts which Lender reasonably deems necessary or appropriate to perfect or protect its security for the Indebtedness, and Borrower shall pay all reasonable costs and expenses incurred by Lender in connection therewith, including, without limitation, reasonable attorneys' fees and costs of filing or recordation.

3.24 Maintain Existence; No Liabilities: Maintain its existence in good standing, and to make no changes in its organization or ownership as presently constituted without Lender's prior

written approval; not to convey, transfer, or lease any substantial part of its property, assets, or business to any other person or entity except in the normal course of its business; not engage in any business enterprise other than as provided in this Agreement; not to merge or consolidate with or into any other firm or corporation or enter into any partnership or joint venture with any other person or entity except with Lender's prior written consent; and not make any loans, guarantees, or advances to or investments in any other person or entity except extensions of credit in the normal course of business.

3.25 Borrower Lease Provisions:

(a) Representations and Warranties Regarding Agency Lease and PILOT Agreement. Borrower warrants and represents to Lender that, as of the date of this Mortgage: (i) each of the Agency Lease and the PILOT Agreement, if any, and any amendments thereto, is in full force and effect in accordance with its terms; (ii) Borrower has not waived, canceled or surrendered any of its rights under the Agency Lease or the PILOT Agreement, if any; (iii) Borrower is the sole owner of, and has good and marketable title to, the Real Property, Improvements and Fixtures; (iv) the Real Property, Improvements and Fixtures are free and clear of all liens, encumbrances and other matters affecting title, other than the lien of this Mortgage and the easements and restrictions listed in a schedule of exceptions to coverage in the title insurance policy issued to Lender contemporaneously with the execution and recordation of this Mortgage and insuring Lender's interest in the Premises; (v) to the best of Borrower's knowledge, there is no existing default by the Borrower under the Agency Lease, and no event has occurred which, with the passage of time or the giving of notice, or both, would constitute a default under the Agency Lease; and (vi) to the best of Borrower's knowledge, there is no existing default by the Borrower under the PILOT Agreement, if any, and no event has occurred which, with the passage of time or the giving of notice, or both, would constitute a default under the PILOT Agreement.

(b) Notices Under Agency Lease. Borrower shall deliver to Lender, within ten (10) days after Borrower's receipt, a true and correct copy of each notice, demand, complaint or request from the Agency under, or with respect to, the Agency Lease or the PILOT Agreement, if any.

(c) Borrower's Obligations To Comply With Agency Lease and the PILOT Agreement. Borrower shall (i) pay the all other sums of money due and payable at any time and from time to time under the Agency Lease and the PILOT Agreement, if any, as and when such sums become due and payable, but in any event before the expiration of any grace period provided in the Agency Lease and/or PILOT Agreement, if any, for the payment of any such sum, and (ii) at all times fully perform, observe and comply with all other terms, covenants and conditions of the Agency Lease and the PILOT Agreement, if any, to be performed, observed or complied with by Borrower under the Agency Lease and as a party to the PILOT Agreement, if any. If the Agency Lease and/or PILOT Agreement, if any, does not provide for a grace period for the payment of a sum of money, Borrower shall make the payment on or before the date on which the payment becomes due and payable. Borrower shall deliver evidence of the payment to Lender within ten (10) days after receipt of a written request from Lender for evidence of the payment.

ARTICLE IV. EVENTS OF DEFAULT

The existence of any of the following conditions or the occurrence of any of the following events of default hereunder (“Events of Default”):

4.1 Failure to Pay Indebtedness: Failure by Borrower to pay the Indebtedness within ten (10) days of when due.

4.2 Default Under Other Documents: The occurrence of any Event of Default under the Note, Building Loan Contract, or any of the Collateral Documents and not otherwise specifically set forth herein.

4.3 Sale or Transfer: Sale, transfer or conveyance of the Premises or any part thereof, or of the Borrower, or of any legal or equitable interest in the Premises or the Borrower, without the prior written consent of Lender.

4.4 Other Liens: The existence of any mortgage, encumbrance, or lien to secure debt (other than in favor of Lender) affecting all or any of the Premises.

4.5 Default Under Other Mortgages and Notes: Default in the performance of any other mortgage, note or encumbrance given by Borrower to Lender or to which Lender has consented affecting all or any of the Premises.

4.6 Failure to Perform Other Covenants: Failure by or on behalf of Borrower to perform any other covenant or agreement herein, which failure continues for twenty (20) days after receipt by Borrower of Lender’s demand for cure of the same.

4.7 Voluntary Insolvency Proceedings: The filing by Borrower of a request or a petition for liquidation, reorganization, adjustment of debts, arrangement, adjudication as a bankrupt or similar relief under the bankruptcy, insolvency or similar laws of the United States or any state or territory thereof or any foreign jurisdiction; the consent by Borrower to the filing of any such petition against Borrower; the making by Borrower of a general assignment for the benefit of its creditors or the institution by Borrower of, or consent by Borrower to, any formal or informal proceeding for the reorganization, dissolution or liquidation of, settlement of claims against, or winding up of affairs of, Borrower; or the cessation by Borrower as a going business concern.

4.8 Involuntary Insolvency Proceedings: The filing against Borrower of a request or a petition for liquidation, reorganization, adjustment of debts, arrangement, adjudication as a bankrupt or similar relief under the bankruptcy, insolvency or similar laws of the United States or any state or territory thereof or any foreign jurisdiction; or the institution against Borrower of any formal or informal proceeding for the reorganization, dissolution or liquidation of, settlement of claims against or winding up of affairs of Borrower; and the failure by Borrower within ninety (90) days to terminate, discharge or otherwise remove such proceeding.

4.9 Receiver: The appointment of or authorization for a custodian, trustee or receiver of Borrower, or for a trustee, custodian, receiver or agent to take charge of any property of Borrower;

provided, such custodian, trustee, receiver or agent shall not have been removed or otherwise discharged within ninety (90) days of the date of qualification.

ARTICLE V. REMEDIES

Upon the occurrence of an Event of Default, Lender shall have the absolute right, at its option and election and in its sole discretion, to exercise alternatively or cumulatively any or all of the following remedies:

5.1 Accelerate Indebtedness: Declare the Indebtedness immediately due and payable with interest, advances, costs and attorneys' fees (including those for appellate proceedings).

5.2 Foreclose Mortgage: Institute judicial or non-judicial proceedings to foreclose the lien of this Mortgage or the enforcement of any other Collateral Documents to the fullest extent permitted by law.

5.3 Power of Sale: Lender may, either with or without taking possession of the Premises, and without prejudice to the right to bring an action for foreclosure of this Mortgage, sell the Premises and all estate, right, title and interest therein, and right of redemption thereof, pursuant to any applicable law, including, without limitation, Article 14 of the New York Real Property Actions and Proceedings Law and any amendments or substitute statutes in regard thereto, at one or more sales and in one or more parcels.

5.4 Take Possession of Premises: Enter into and take possession of all or any of the Premises (and Borrower agrees to peaceably surrender the same immediately upon receipt of Lender's demand therefor), whether in connection with a judicial or non-judicial proceeding to foreclose or not; lease and re-lease all or any of the Premises; collect the rents, income and profits therefrom and apply the same against the Indebtedness; collect reasonable rent from Borrower if Borrower remains in possession after Lender's demand to surrender; dispossess by summary proceeding any tenant (including Borrower) defaulting in the payment of rent; provided, however, that no such acts by or on behalf of Lender shall constitute Lender a "mortgagee in possession." The rights enumerated herein shall inure to the benefit of any receiver appointed respecting the Premises.

5.5 Receiver: Obtain the appointment of a receiver of rents and profits without notice and without regard to the solvency of Borrower or the adequacy of any Collateral, for the purpose of preserving the Premises, preventing waste and to protect all rights accruing to Lender by virtue of this Mortgage or any of the Collateral Documents and whether or not in connection with an action to foreclose this Mortgage. All expenses incurred in connection with the appointment of such receiver, or in protecting, preserving, improving or operating the Premises, shall be charged against Borrower and shall be secured by the Collateral Documents.

5.6 Sell in One or More Parcels: In the event of a foreclosure hereof, cause the Premises to be sold in one or more parcels, any provision of law to the contrary notwithstanding.

5.7 Fixtures: Lender shall have all rights and remedies contemplated hereunder, including, without limitation, the right to take possession of the Fixtures, and for this purpose, Lender shall have the right to enter upon any Premises on which any or all of the Fixtures are

situated without being deemed guilty of trespass and without liability for damages thereby occasioned, and take possession of and operate the Fixtures or remove them therefrom. Lender shall have the further right, as Lender may determine, to repair, refurbish or otherwise prepare the Fixtures for sale, lease or other use or disposition, and to sell at public or private sale or otherwise dispose of, lease or utilize the Fixtures and any part thereof in any manner authorized or permitted by law and to apply the proceeds thereof toward payment of any costs and expenses incurred by Lender including, to the fullest extent not prohibited by applicable law, attorneys' fees and expenses, and toward payment of the indebtedness secured hereby, in such order and manner as Lender may determine. To the fullest extent not prohibited by applicable law, Borrower expressly waives any notice of sale or other disposition and any other rights or remedies of a debtor or formalities prescribed by law relative to a sale or disposition or to exercise any other right or remedy existing. To the extent any notice is required and cannot be waived, Borrower agrees that if such notice is deposited for mailing, postage prepaid, certified or registered mail, to the owner of record of the Premises, directed to such owner at the last address actually furnished to Lender at least five (5) days before the time of sale or disposition, such notice shall be deemed reasonable and shall fully satisfy any requirements for giving of such notice. Lender shall have the right to dispose of any or all of the Fixtures at the same time and place upon giving the same notice, if any, provided for in this Mortgage, and in the same manner as the nonjudicial foreclosure sale provided under the terms and conditions of this Mortgage.

5.8 Other: Exercise any other remedy and obtain any other relief as may be available to Lender in law or equity.

5.9 Environmental Testing on Default: If an Event of Default occurs under this Mortgage, the Note or any other loan document, Lender or its designee shall have the right, during the period of time the Event of Default is continuing and if Lender has reasonable evidence suggesting a possible violation of Environmental Laws, upon reasonable notice to Borrower, and subject to the leases of the Premises, to enter upon the Property and conduct such tests, investigation and sampling, including but not limited to, installation of monitoring wells, as shall be reasonably necessary for Lender to determine whether any Disposal of Hazardous Substances has occurred on, at or near the Property. The costs of all such tests, investigations and samplings shall be added to the balance of the Loan.

ARTICLE VI. MISCELLANEOUS

6.1 Releases: Lender may, without the consent of Borrower or any other person liable for the payment of the Indebtedness, release any portion or portions of or interest or interests in the Premises from the lien of this Mortgage, either with or without consideration, and may release or discharge in whole or in part any other property which it may at any time hold as security for payment of the Indebtedness or any part thereof and may take any other bond, note or obligation as evidence of the Indebtedness, payable at such time and on such terms as Lender may approve.

6.2 Application of Payments: If Lender receives from or on behalf of Borrower any sum less than the full amount then due and payable, Lender may, but shall not be obligated to, accept the same and if it elects to accept any such payment, it may hold the same or any part thereof, without liability for interest, in a special account and may from time to time apply the same or any part thereof to the Indebtedness or to the payment of any taxes, assessments, sewer or water charges or

insurance premiums which Lender deems desirable to maintain the lien of this Mortgage, or to any expenses, including costs and attorneys' fees and disbursements, incurred by Lender in attempting to collect any amount owing on the Indebtedness and in bringing foreclosure proceedings with respect to this Mortgage.

6.3 Notice: The giving and effectiveness of notices, elections or demands required or permitted hereby shall be governed by the provisions of the Building Loan Contract.

6.4 Parties: Subject to the provisions of paragraphs 6.19 and 6.20 of this Mortgage, if more than one party join in the execution of this Mortgage, the covenants and agreements herein contained shall be the joint and several obligation of each of them and their respective heirs, executors, administrators, successors and assigns, and relative words herein shall be read as if written in the plural when appropriate. Any reference herein to Lender shall be deemed to include and apply to every subsequent holder of this Mortgage and any reference herein to Borrower shall be deemed to include and apply to every subsequent owner of the Premises and every person liable upon the Indebtedness, unless the language or circumstances clearly requires the contrary. Words of masculine or neuter import shall be read as if written in the neuter or masculine or feminine when appropriate.

6.5 Waiver: No course of dealing and no delay or omission by Lender in exercising any right or remedy hereunder or with respect to any indebtedness of Borrower to Lender shall operate as a waiver thereof or of any other right or remedy and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right or remedy. Lender may remedy any default by Borrower to Lender or any other person, firm or corporation in any reasonable manner without waiving the default remedied and without waiving any other prior or subsequent default by Borrower and shall be reimbursed for any and all of its expenses in so remedying such default. All rights and remedies of Lender hereunder are cumulative.

6.6 Building Loan Contract: This Mortgage is given in connection with the Building Loan Contract.

6.7 Severability: Inapplicability or unenforceability of any provisions of this Mortgage shall not limit or impair the operation or validity of any other provision of this Mortgage.

6.8 Trust Fund Provisions: This Mortgage is subject to the trust fund provisions of Section 13 of the Lien Law of the State of New York.

6.9 Governing Law: This Mortgage, and the rights and obligations of the parties hereto, shall be construed and interpreted in accordance with the internal laws of the State of New York, without regard to principles of conflicts of laws.

6.10 Jurisdiction: BORROWER AGREES THAT ANY ACTION OR PROCEEDING TO ENFORCE OR ARISING OUT OF THIS MORTGAGE MAY BE COMMENCED IN THE SUPREME COURT OF NEW YORK IN ANY COUNTY, OR IN THE DISTRICT COURT OF THE UNITED STATES IN ANY DISTRICT, IN WHICH LENDER HAS AN OFFICE, AND BORROWER WAIVES PERSONAL SERVICE OF PROCESS AND AGREES THAT A SUMMONS AND COMPLAINT COMMENCING AN ACTION OR PROCEEDING IN ANY

SUCH COURT SHALL BE PROPERLY SERVED AND SHALL CONFER PERSONAL JURISDICTION IF SERVED BY REGISTERED MAIL TO BORROWER AT THE ADDRESS SPECIFIED ABOVE, OR AS OTHERWISE PROVIDED BY THE LAWS OF THE STATE OF NEW YORK OR THE UNITED STATES.

6.11 Waiver of Jury Trial: BORROWER AND LENDER HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY BORROWER AND LENDER MAY HAVE IN ANY ACTION OR PROCEEDING, IN LAW OR IN EQUITY, IN CONNECTION WITH THIS MORTGAGE OR THE TRANSACTIONS RELATED HERETO. BORROWER REPRESENTS AND WARRANTS THAT NO REPRESENTATIVE OR AGENT OF LENDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT LENDER WILL NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THIS JURY TRIAL WAIVER. BORROWER ACKNOWLEDGES THAT LENDER HAS BEEN INDUCED TO ENTER INTO THIS MORTGAGE BY, AMONG OTHER THINGS, THE PROVISIONS OF THIS SECTION.

6.12 Terms: Capitalized terms not defined herein shall have the meaning given to them in the Building Loan Contract.

6.13 Tax Law Section 253 Statement: This Mortgage does not cover real property principally improved or to be improved by one or more structures containing in the aggregate not more than six residential dwelling units, each having their own separate cooking facilities.

6.14 Changes in Rate of Interest. The Note contains provisions allowing for changes in the interest rate and the monthly payment. This Mortgage shall continue to secure the Indebtedness, with the same priority of lien, notwithstanding any change in the rate of interest on the Note. None of the Indebtedness can be modified, altered, amended or waived orally.

6.15 NOTICE TO JUNIOR LIEN CLAIMANTS. ALL ACTUAL AND POTENTIAL JUNIOR LIEN CLAIMANTS ARE HEREBY PLACED ON NOTICE THAT THE INDEBTEDNESS SECURED BY THIS MORTGAGE IS SUBJECT TO CHANGE(S) AS SET FORTH IN SECTION 6.14. BY TAKING OR ACCEPTING ITS INTEREST IN THE MORTGAGED PROPERTY SUBJECT TO THIS MORTGAGE, EVERY JUNIOR LIEN CLAIMANT UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT THE PRIORITY AND VALIDITY OF THE LIEN OF THIS MORTGAGE SHALL NOT BE IMPAIRED OR LIMITED IN ANY WAY BY ANY CHANGE. NOTWITHSTANDING THE MAGNITUDE OR NATURE OF ANY OF THE FOREGOING, THE SAME SHALL UNDER NO CIRCUMSTANCES BE DEEMED TO CONSTITUTE A "NOVATION" WITH RESPECT TO ANY OBLIGATION SECURED BY THIS MORTGAGE, OR OTHERWISE IMPAIR OR REDUCE THE PRIORITY OF THE LIEN OF THIS MORTGAGE.

6.16 Satisfaction of Mortgage. Upon payment of all sums secured by this Mortgage, Lender, without cost to the Borrower, shall execute a satisfaction of this Mortgage and shall surrender this Mortgage and all notes evidencing Indebtedness secured by this Mortgage to the person or persons legally entitled thereto.

6.17 Subordination to PILOT Agreement: This Mortgage shall be subject and subordinate to any PILOT Agreement between the Borrower and the Agency with respect to the payments in lieu of taxes assessed or imposed upon the Premises, and by accepting this Mortgage, Lender acknowledges and agrees that such PILOT payments shall have the same force, priority and effect as a real property tax lien under New York State law against the Premises.

6.18 Subordination of Agency Lease. The Agency Lease, and all rights of the Borrower and the Agency thereunder, is and shall be subordinate to the lien of this Mortgage and all renewals and replacements hereof. The subordination of the Agency Lease to this Mortgage shall be automatic, without the execution of any further subordination agreement by the Borrower or the Agency. Nonetheless, if Lender requires a further written subordination agreement, the Borrower and the Agency hereby agree to execute, acknowledge and deliver the same.

6.19 Exculpation of City of Syracuse Industrial Development Agency. By accepting this Mortgage, Lender agrees to the provisions of this section. The Agency and its members, officers, agents (other than Borrower) and employees shall have no personal liability hereunder. The provisions of this section shall apply not only to the Mortgage, but to any other document given in connection with the extension of credit secured by this Mortgage, notwithstanding any provision to the contrary set forth in such document. This Mortgage is executed by the Agency solely for the purpose of subjecting its interest in the Premises to the lien of this Mortgage and to evidence its consent to the terms and covenants contained in this Mortgage. The Agency shall not be obligated to perform any of such terms and covenants and Lender shall have no recourse to the Agency other than to the Agency's interest in the Premises. No provision, covenant or agreement contained in this Mortgage or any obligation herein imposed upon the Agency or the breach thereof shall constitute or give rise to or impose upon the Agency a pecuniary liability or charge upon its general credit. In making the agreements set forth in this Mortgage, the Agency has not obligated itself, except with respect to the Agency's interest in the Premises. Borrower and Lender agree that the Agency, its directors, members, officers, agents (except the Borrower) and employees shall not be liable for and Borrower agrees to defend, indemnify, release and hold the Agency, its directors, members, officers, agents (except the Borrower) and employees harmless from and against any and all (i) liability for loss or damage to Property or injury to or death of any and all Persons that may be occasioned by, directly or indirectly, any cause whatsoever pertaining to the Premises or arising by reason of or in connection with the occupation or the use thereof or the presence of any Person or Property on, in or about the Premises or (ii) liability arising from or expense incurred by the Agency's financing, acquiring, constructing, renovating, equipping, owning and leasing of the Premises, including without limiting the generality of the foregoing, all claims arising from the breach by the Borrower of any of covenants contained herein and all causes of action and attorneys' fees and any other expenses incurred in defending any claims, suits or actions which may arise as a result of any of the foregoing, provided that any such losses, damages, liabilities or expenses of the Agency are not incurred or do not result from the gross negligence or intentional or willful wrongdoing of the Agency, or any of its directors, members, agents (except the Borrower) or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency or any of its members, directors, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability.

6.20 No Recourse; Special Obligation: The obligations and agreements of the Agency contained herein and in any Agency Documents (as that term is defined in the Agency Lease) and in any other instrument or document executed in connection herewith or therewith, and any instrument or document supplemental hereto or thereto, shall be deemed the obligations and agreements of the Agency and not of any member, officer, agent or employee of the Agency in his individual capacity; and the members, officers, agents and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby. The obligations and agreements of the Agency contained herein or therein shall not constitute or give rise to an obligation of the State New York or of the County of Tompkins, and neither the State of New York nor the County of Tompkins 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 Premises, 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 Borrower shall not be deemed to constitute an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

6.21 Industrial Development Agency Provision:

(a) Agency Executing at the Direction of Borrower. The Borrower directs the Agency to execute and deliver this Mortgage to the Lender, and further agrees to indemnify the Agency (and its members, officers, directors, agents, servants and employees) for all fees and costs incurred in connection with the execution, delivery, recording, performing and enforcing of this Mortgage, including but not limited to reasonable attorney's fees.

6.22 Counterparts. This Mortgage may be executed in any number of counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same agreement.

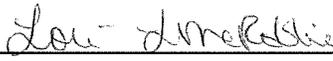
[SIGNATURE PAGES FOLLOW]

CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY

By: 
Name: William M Ryan
Title: Chairman

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

On this 9th day of December, 2013, 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

SCHEDULE A

Description of Real Property

Lot 1

All that tract or parcel of land situate in Block 275C of the City of Syracuse, County of Onondaga, State of New York and being more particularly described as follows:

BEGINNING at the intersection of the east line of North Townsend Street with the south line of Butternut Street;

1. Thence, North 59° 24' 30" East, in the south line of said Butternut Street, a distance of 179.17 feet;
2. Thence, South 30° 32' 30" East, in aforesaid Block 275C, a distance of 198.80 feet;
3. Thence, South 59° 24' 30" West, continuing in said Block 275C, a distance of 30.41 feet;
4. Thence, South 30° 29' 40" East, continuing in said Block 275C, a distance of 50.00 feet;
5. Thence, South 59° 24' 30" West, continuing in said Block 275C, a distance of 148.72 feet to a point in the east line of aforesaid North Townsend Street;
6. Thence, North 30° 32' 30" West, in the east line of North Townsend Street, a distance of 248.80 feet to the POINT OF BEGINNING.

Containing 43,055 square feet, (0.988 ± acres)

Intending to describe "NEW LOT-1" as shown on a plat titled "BUTTERNUT COMMONS – RESUBDIVISION OF PROPERTIES" prepared by CHA Inc. project No. 24556 and filed in the Onondaga County Clerk's Office on 11/14/2013, map file No. 11771.

Lot 2

All that tract or parcel of land situate in Block 275C of the City of Syracuse, County of Onondaga, State of New York and being more particularly described as follows:

BEGINNING at a point in the south line of Butternut Street at the northwest corner of property now or formerly of Dung V. Lam per L.4814 of Deeds, P.473, said corner being South 59° 24' 30" West, a distance of 38.50 feet from the intersection of the south line of said Butternut Street with the west line of North McBride Street;

1. Thence, South 30° 29' 40" East, in the west line of said Lam property, a distance of 98.80 feet to the southwest corner thereof;
2. Thence, South 59° 24' 30" West, in said Block 275C, a distance of 14.89 feet;
3. Thence, South 30° 32' 30" East, continuing in said Block 275C, a distance of 100.00 feet;
4. Thence, South 59° 24' 30" West, continuing in said Block 275C, a distance of 65.00 feet;
5. Thence, North 30° 32' 30" West, continuing in said Block 275C, a distance of 198.80 feet to a point in the south line of aforesaid Butternut street;
6. Thence, North 59° 24' 30" East, in the south line of said Butternut Street, a distance of 79.97 feet to the POINT OF BEGINNING.

Containing 14,397 square feet, (0.331 ± acres)

Intending to describe "NEW LOT-2" as shown on a plat titled "BUTTERNUT COMMONS – RESUBDIVISION OF PROPERTIES" prepared by CHA Inc. project No. 24556 and filed in the Onondaga County Clerk's Office on 11/14/2013, map file No. 11771.

Lot 3

All that tract or parcel of land situate in Block 275C of the City of Syracuse, County of Onondaga, State of New York and being more particularly described as follows:

BEGINNING at a point in the west line of North McBride Street at the southeast corner of property now or formerly of Dung V. Lam per L.4814 of Deeds, P.473, said corner being South 30° 29' 40" East, a distance of 98.80 feet from the intersection of the west line of said North McBride Street with the south line of Butternut Street;

1. Thence, South 30° 29' 40" East, in the west line of said North McBride Street, a distance of 100.00 feet;
2. Thence, South 59° 24' 30" West, in said Block 275C, a distance of 53.31 feet;
3. Thence, North 30° 32' 30" West, continuing in said Block 275C, a distance of 100.00 feet;
4. Thence, North 59° 24' 30" East, continuing in said Block 275C, a distance of 53.39 feet to the POINT OF BEGINNING.

Containing 5,335 square feet, (0.122 ± acres)

Intending to describe "NEW LOT-3" as shown on a plat titled "BUTTERNUT COMMONS – RESUBDIVISION OF PROPERTIES" prepared by CHA Inc. project No. 24556 and filed in the Onondaga County Clerk's Office on 11/14/2013, map file No. 11771.

ONONDAGA COUNTY CLERK'S OFFICE
 SANDRA A SCHEPP - COUNTY CLERK
 401 Montgomery St - Room 200
 Syracuse, NY 13202

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

Doc Type: A/L&R
 Mortgagor: CITY OF SYRACUSE INDUSTRIAL
 BUTTERNUT ST LLC
 Mortgagee: FIRST NIAGARA BANK N A
 Legal Desc: SYR L1-3 BUTTERNUT COMMONS N E

Receipt: 1114371 RS
 Book/Page: 17392/0604 Inst: 52328
 Date Filed: 12/13/2013 at 2:26PM
 Updated: 12/16/2013 MS
 Record and Return To:

GILBERTI STINZIANO HEINTZ &
 SMITH PC
 ATTORNEYS PICK UP BOX
 COURTHOUSE

Prop Address: 400&410 BUTTERNUT ST & 811 N
 MCBRIDE ST

Submitted by: LINDA ORIOLI

Recording Fees		Miscellaneous Fees	
Addl pages:	10 x 5.00 = \$ 50.00	RMI:	\$ 20.00
Addl Names:	0 x 0.50 = \$ 0.00	TP 584:	\$ 0.00
Addl Refs:	1 x 0.50 = \$ 0.50	RP5217:	\$ 0.00
Misc:	0.00	AFFTS:	\$ 5.00
Basic:	\$25.50		
=====		=====	
TOTAL:	\$76.00	TOTAL:	\$ 25.00

MORTGAGE TAX		DEED TRANSFER TAX	
Mortgage:	\$5300000.00	Consideration	
Basic:	\$0.00	Transfer Tax:	\$0.00
Ins Fund:	\$0.00	SWIS:	
Net Add:	\$0.00	Map #:	
Misc:	\$0.00		
=====		=====	
TOTAL	\$0.00	Total Paid	\$ 101.00
		Control no	DE13924

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

SANDRA A SCHEPP
 Onondaga County Clerk

Book/Page 17392 / 0604 Instrument no.: 52328



M173920604

10/1
15000

ONONDAGA COUNTY	
BASIC TAX	\$ _____
MTG. INS. FUND TAX	\$ _____
NET ADDITIONAL TAX	\$ _____
TOTAL MTG. TAX PAID	\$ <u>15000</u>

ASSIGNMENT OF LEASES AND RENTS

BUTTERNUT ST. LLC
and
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

to

FIRST NIAGARA BANK, N.A.

Dated as of December 12, 2013

PREMISES KNOWN AS:

LOT 1
410 Butternut
City of Syracuse,
New York
Onondaga County

LOT 2
400 Butternut Street
City of Syracuse,
New York
Onondaga County

LOT 3
811 North McBride Street
City of Syracuse,
New York
Onondaga County

After Recording Return to:

Gilberti Stinziano Heintz & Smith, P.C.
555 East Genesee Street
Syracuse, New York 13202
Attn: Francis D. Stinziano, Esq.

Box #04449

D013924TR

.14:26 12/19/13 5232813 RS MB-17592P-604

17392 p 580

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS dated as of the 12th day of December, 2013, is given by **BUTTERNUT ST. LLC**, a New York limited liability company having an address of 3721 New Court Avenue, Syracuse, New York 13206 (“Assignor”) and **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation existing under the laws of the State of New York, having an address at 333 West Washington Street, Suite 130, Syracuse, New York 13202 (“Agency”) to **FIRST NIAGARA BANK, N.A.**, a national banking association having an address of P.O. Box 28, Buffalo, New York 14240-0028 (“Assignee”).

The Assignor is the present owner of the real property described on Schedule A attached hereto and made a part hereof (the “Premises”) and is obligated to pay indebtedness in the principal amount of **FIVE MILLION THREE HUNDRED THOUSAND AND 00/100 DOLLARS (\$5,300,000.00)** and under any Interest Rate Protection Agreement (the “Indebtedness”) secured by a Mortgage and Security Agreement (Building Loan) of even date herewith from Assignor and Agency to Assignee (the “Mortgage”). “Interest Rate Protection Agreement” shall mean any agreement, device or arrangement designed to protect such Assignor from fluctuations of interest rates, exchange rates or forward rates, including, but not limited to, dollar-denominated or cross-currency exchange agreements, forward currency exchange agreements, interest rate caps, collars or floors, forward rate currency or interest rate options, puts, warrants, swaps, swaptions, U.S. Treasury locks and U.S. Treasury options, and any and all cancellations, buybacks, reversals, terminations or assignments of any of the foregoing.

For purposes of giving additional continuing collateral security for the repayment of the Indebtedness, Assignor and Agency hereby assign to Assignee all existing and future leases of the Premises, excepting therefrom, the Agency’s Unassigned Rights, as defined in those certain Lease/Leaseback Agreements (defined herein) (collectively, the “Leases”), and all rents and other monies now due or hereafter to become due to Assignor, its successors and assigns pursuant to any lease or tenancy of the Premises or any part thereof, including without limitation, all management fees, operating profits, revenues, receipts, income, fees charges, accounts, accounts receivable and other payments and receivables. So long as there shall exist no default under the Mortgage or under the covenants and agreements of this Assignment, Assignor shall have the right to collect the rents and monies assigned hereunder as they come due and to retain and use the same. As used herein, “Leases” shall include subleases of space in the Premises, if any.

And the Assignor covenants, agrees and represents as follows:

1. The existing Leases submitted to Assignee are now valid and enforceable according to their terms, and have not, since their execution, been altered or amended in any manner which would cause a reduction of the rental or other sums due to the landlord named therein or to create greater financial obligations on the part of the landlord named therein, and no rents thereunder have been collected in advance of the time when such rent is due.
2. Assignor will duly perform all the duties and comply with all the terms, covenants, conditions, provisions and agreements required of or made by Assignor according to the Leases and

any renewal, extension or modification thereof or any subsequent lease or rental agreement affecting the Premises.

3. Except in the ordinary course of Assignor's business, the Assignor will not, without Assignee's written consent, enter into any new lease, cancel, abridge, or modify any lease or any tenancy or rental agreement affecting the Premises, transfer, mortgage or otherwise encumber the Premises, the rents due under the Leases or tenancies or any part thereof, or accept prepayments of installments of rent to become due, and reference is hereby made to Section 291-f of the Real Property Law.

4. Assignor has the right to the rents presently due or to become due under the existing Leases, has not previously assigned such rents or any part thereof except to Assignee, has the right and authority to make this Assignment, has performed or will perform all necessary acts to authorize payment of the rents to Assignee and will execute and deliver to Assignee any and all other documents and perform all acts requested by Assignee in connection with such Leases and this Assignment.

5. Assignee is hereby appointed attorney-in-fact of Assignor with full power and authority to act in the name of Assignor after any Event of Default under the Mortgage:

(a) to demand, recover and receive any and all rents and income of the Premises.

(b) to perform such acts as may be required of Assignor by the Leases, any other tenancies of the Premises and this Assignment.

(c) to let or lease the Premises or any part thereof which is now or may become vacant for such periods as Assignee may deem proper.

(d) to maintain any and all actions or proceedings to recover rents or other income from the Premises or to remove tenants therefrom.

(e) to pay all sums deemed necessary toward taxes, assessments, utility charges, prior liens, insurance premiums or repairs affecting the Premises, and if the income of the Premises is not sufficient to cover such payments, together with sums then due on the Indebtedness secured hereby, Assignor will promptly reimburse Assignee to the extent thereof and such sums shall be secured hereby.

Nothing herein shall in any way obligate Assignee to act in any manner on behalf of the Assignor or relieve Assignor from its duty to perform according to the provisions of the Leases and this Assignment. The rights and powers granted to Assignee hereby shall be irrevocable so long as the Indebtedness remains unpaid.

6. Nothing contained in this Assignment shall operate as or be deemed to be an extension of the time for payment of the Indebtedness or to in any way affect any of Assignee's rights, powers or remedies to enforce payment of the Indebtedness or any part thereof, no delay or omission by Assignee in exercising any right or remedy hereunder or with respect to any Indebtedness shall operate as a waiver thereof or of any other right or remedy, and no single or

partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right or remedy. Assignee may remedy any default by Assignor hereunder or with respect to any Indebtedness in any reasonable manner without waiving the default remedied and without waiving any other prior or subsequent default by Assignor. All rights and remedies of Assignee hereunder are cumulative.

7. CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY SPECIAL OBLIGATIONS; RECORDING. Notwithstanding any other terms or condition contained in this Assignment:

(a) This Assignment is executed by the Agency solely for the purpose of subjecting its rights under the Leases to the rights of the Assignee and for no other purpose. All representations, covenants, and warranties of the Agency and Assignor herein are hereby deemed to have been made by the Assignor and not by the Agency. It is hereby agreed and understood that the Agency has not granted an interest in the Unassigned Rights as defined in those certain Lease and Leaseback Agreements by and between the Agency and the Assignor (“Leaseback Agreements”).

(b) The obligations and agreements of the Agency contained herein or therein shall not constitute or give rise to an obligation of the State of New York or the City of Syracuse, New York, and neither the State of New York nor the City of Syracuse, New York shall be liable hereon. All obligations of the Agency hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Premises by means of this Assignment or any other Loan Documents. Neither the members of the Agency, nor any person executing this Assignment on its behalf shall be liable personally under this Assignment. No recourse shall be had for the payment of the principal or interest on the Secured Debt or for any claim based on the Mortgage, or otherwise in respect hereof, or based upon or in respect of this Assignment, or any modification of or supplemental hereto, against any past, present, or future member, officer, agent, servant, or employee, as such, of the Agency or of any successor or political subdivision, either directly or through the Agency or any such successor, all such liability of such members, officers, agents (except for the Assignor), servants and employees being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this Assignment. Any judgment or decree shall be enforceable against the Agency only to the extent of its interest in the Premises and any such judgment shall not be subject to execution on or by a lien on assets of the Agency other than its interest in the Premises.

(c) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and thirty (30) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than thirty (30) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period. If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree may, at its option, place in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses whereupon the Agency

shall agree to comply with such request. If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, directors, servants, agents or employees shall be subject to potential liability, the party seeking such order or decree may, at its option, (1) agree to protect, defend, indemnify and hold harmless the Agency and its members, officers, directors, servants, agents (other than the Assignor) and employees against any liability incurred as a result of its compliance with such demand, and (2) if requested by the Agency, furnish to the Agency reasonably satisfactory security to protect the Agency and its members, officers, directors, servants, agents (other than the Assignor) and employees against all liability reasonably expected to be incurred as a result of compliance with such request whereupon the Agency shall agree to comply with such request. The agreement on the part of the Assignee shall not be construed in any way so as to effect or impair the lien of this Assignment or the Assignee's right to foreclose hereunder as provided by law or construed in any way so as to limit or restrict any of the rights or remedies of the Assignee in any foreclosure proceedings.

(d) The Assignor will record or cause this Assignment to be recorded in the office of the Onondaga County Clerk and will pay, or cause to be paid, all documentary stamp taxes, if any, which may be imposed by the United States of America or any agency thereof or by the State of New York or other governmental authority upon this Assignment.

8. Exculpation of City of Syracuse Industrial Development Agency. Assignor and Assignee agree that the Agency, its directors, members, officers, agents (except the Assignor) and employees shall not be liable for and Assignor agrees to defend, indemnify, release and hold the Agency, its directors, members, officers, agents (except the Assignor) and employees harmless from and against any and all (i) liability for loss or damage to Property or injury to or death of any and all Persons that may be occasioned by, directly or indirectly, any cause whatsoever pertaining to the Premises or arising by reason of or in connection with the occupation or the use thereof or the presence of any Person or Property on, in or about the Premises or (ii) liability arising from or expense incurred by the Agency's financing, acquiring, constructing, renovating, equipping, owning and leasing of the Premises, including without limiting the generality of the foregoing, all claims arising from the breach by the Assignor of any of covenants contained herein and all causes of action and attorneys' fees and any other expenses incurred in defending any claims, suits or actions which may arise as a result of any of the foregoing, provided that any such losses, damages, liabilities or expenses of the Agency are not incurred or do not result from the gross negligence or intentional or willful wrongdoing of the Agency, or any of its directors, members, agents (except the Assignor) or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency or any of its members, directors, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability.

9. Industrial Development Agency Provision:

(a) Agency Executing at the Direction of Assignor. 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.

10. Counterparts. This Assignment may be executed in any number of counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same agreement.

This Assignment shall be binding upon the Assignor, its successors and assigns, and inure to the benefit of the Assignee, its successors and assigns.

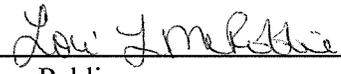
[SIGNATURE PAGES FOLLOW]

**CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Name: William M. Ryan
Title: Chairman

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

On this 9th day of December, 2013, 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

SCHEDULE A

Description of Real Property

Lot 1

All that tract or parcel of land situate in Block 275C of the City of Syracuse, County of Onondaga, State of New York and being more particularly described as follows:

BEGINNING at the intersection of the east line of North Townsend Street with the south line of Butternut Street;

1. Thence, North 59° 24' 30" East, in the south line of said Butternut Street, a distance of 179.17 feet;
2. Thence, South 30° 32' 30" East, in aforesaid Block 275C, a distance of 198.80 feet;
3. Thence, South 59° 24' 30" West, continuing in said Block 275C, a distance of 30.41 feet;
4. Thence, South 30° 29' 40" East, continuing in said Block 275C, a distance of 50.00 feet;
5. Thence, South 59° 24' 30" West, continuing in said Block 275C, a distance of 148.72 feet to a point in the east line of aforesaid North Townsend Street;
6. Thence, North 30° 32' 30" West, in the east line of North Townsend Street, a distance of 248.80 feet to the POINT OF BEGINNING.

Containing 43,055 square feet, (0.988 ± acres)

Intending to describe "NEW LOT-1" as shown on a plat titled "BUTTERNUT COMMONS – RESUBDIVISION OF PROPERTIES" prepared by CHA Inc. project No. 24556 and filed in the Onondaga County Clerk's Office on 11/14/2013, map file No. 11771.

Lot 2

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AFFIDAVIT RE: MORTGAGE TAX EXEMPTION

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

WILLIAM M. RYAN, being duly sworn, deposes and says:

He is Chairman of the City of Syracuse Industrial Development Agency (the “*Agency*”).

The Agency is an industrial development agency duly established under Title I of Article 18-A of the General Municipal Law of the State of New York (the “*State*”), as amended, and Chapter 641 of the Laws of 1979 of the State (collectively, the “*Act*”), and it is a corporate governmental agency constituting a public benefit corporation of the State.

On or about April 25, 2013 the Agency adopted a resolution at the request of Butternut St. LLC (the “*Applicant*” and/or “*Company*”) agreeing to undertake a project (the “*Project*”) consisting of: (A)(i) the acquisition of a leasehold interest in approximately 1.4 acres of improved real property located at the corner of North Townsend Street and Butternut Street (specifically, 400 Butternut St., 410 Butternut St. and 811 N. McBride St.¹) in the City of Syracuse, New York (the “*Land*”); (ii) the renovation of ten (10) existing buildings totaling approximately 18,400 square feet and the construction of three (3) new buildings totaling approximately 50,000 square feet, all for mixed-use, specifically, retail/pharmacy, commercial, approximately 24 apartments and approximately 4 rental townhouses and related parking, all located on the Land (collectively, the “*Facilities*”); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the “*Equipment*”, and together with the Land and the Facilities, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and State and local 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, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Company and the Agency are mortgaging their respective interests in the improved real property described on **Exhibit “A”** to First Niagara Bank, a national banking association (the “*Mortgagee*”), pursuant to a certain Mortgage dated December 12, 2013 in the amount of \$5,300,000 (the “*Mortgage*”) and an Assignment of Leases and Rents dated December 12, 2013 (the “*Assignment of Rents*”). The Mortgage is pledged to secure a Note given by the Company to the Mortgagee. The Agency is also assigning to the Mortgagee all of its right, title and interest (other than its Unassigned Rights) under that certain Agency Lease Agreement dated as of December 1, 2013 pursuant to the Pledge and Assignment dated as of December 1, 2013.

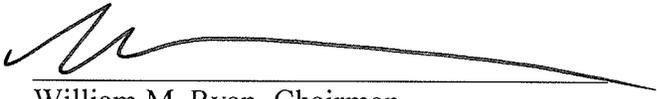
¹ These parcels were formally known as 400-02 Butternut St. & Townsend S., 404-06 Butternut St., 410 Butternut St., 412 Butternut St., 414 Butternut St., 708 Townsend St. N., 712 Townsend St. N., 714 Townsend St. N., 716 Townsend St. N., 811 N. McBride St. and 813 N. McBride St.)

Pursuant to Article 18-A of the New York General Municipal Law, the Agency is regarded as performing a governmental function and is generally not required to pay taxes or assessments upon any property acquired by it or under its jurisdiction, control or supervision or upon its activities.

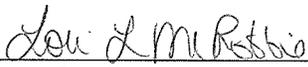
The Deponent submits that no mortgage tax should be imposed upon the Mortgage and the Assignment of Rents, insomuch as the Mortgage and the Assignment of Rents are being executed and delivered under the State authority creating the Agency, insomuch as the use by the Agency of its powers to secure the payment of principal and interest on the loan is deemed by Article 18-A public purpose essential to the public interest, and insomuch as both the New York State Department of Taxation and Finance and Counsel to the New York State Department of Taxation and Finance have expressed their opinion that the recording of similar documents by similar agencies organized under Article 18-A of the New York General Municipal Law are operations of said agencies entitled to exemption from the mortgage recording tax.

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**CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
William M. Ryan, Chairman

Subscribed and sworn to before me
this 9th day of December, 2013.


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

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BEGINNING at a point in the south line of Butternut Street at the northwest corner of property now or formerly of Dung V. Lam per L.4814 of Deeds, P.473, said corner being South 59° 24' 30" West, a distance of 38.50 feet from the intersection of the south line of said Butternut Street with the west line of North McBride Street;

1. Thence, South 30° 29' 40" East, in the west line of said Lam property, a distance of 98.80 feet to the southwest corner thereof;
2. Thence, South 59° 24' 30" West, in said Block 275C, a distance of 14.89 feet;
3. Thence, South 30° 32' 30" East, continuing in said Block 275C, a distance of 100.00 feet;
4. Thence, South 59° 24' 30" West, continuing in said Block 275C, a distance of 65.00 feet;
5. Thence, North 30° 32' 30" West, continuing in said Block 275C, a distance of 198.80 feet to a point in the south line of aforesaid Butternut street;
6. Thence, North 59° 24' 30" East, in the south line of said Butternut Street, a distance of 79.97 feet to the POINT OF BEGINNING.

Containing 14,397 square feet, (0.331 ± acres)

Intending to describe "NEW LOT-2" as shown on a plat titled "BUTTERNUT COMMONS – RESUBDIVISION OF PROPERTIES" prepared by CHA Inc. project No. 24556 and filed in the Onondaga County Clerk's Office on 11/14/2013, map file No. 11771.

Lot 3

All that tract or parcel of land situate in Block 275C of the City of Syracuse, County of Onondaga, State of New York and being more particularly described as follows:

BEGINNING at a point in the west line of North McBride Street at the southeast corner of property now or formerly of Dung V. Lam per L.4814 of Deeds, P.473, said corner being South 30° 29' 40" East, a distance of 98.80 feet from the intersection of the west line of said North McBride Street with the south line of Butternut Street;

1. Thence, South 30° 29' 40" East, in the west line of said North McBride Street, a distance of 100.00 feet;
2. Thence, South 59° 24' 30" West, in said Block 275C, a distance of 53.31 feet;
3. Thence, North 30° 32' 30" West, continuing in said Block 275C, a distance of 100.00 feet;
4. Thence, North 59° 24' 30" East, continuing in said Block 275C, a distance of 53.39 feet to the POINT OF BEGINNING.

Containing 5,335 square feet, (0.122 ± acres)

Intending to describe "NEW LOT-3" as shown on a plat titled "BUTTERNUT COMMONS – RESUBDIVISION OF PROPERTIES" prepared by CHA Inc. project No. 24556 and filed in the Onondaga County Clerk's Office on 11/14/2013, map file No. 11771.

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

Gilberti Stinziano Heintz & Smith, P.C.
555 East Genesee Street
Syracuse, New York 13202

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME BUTTERNUT ST. LLC					
OR	1b. INDIVIDUAL'S LAST NAME				
	FIRST NAME	MIDDLE NAME	SUFFIX		
1c. MAILING ADDRESS 3721 New Court Avenue		CITY Syracuse	STATE NY	POSTAL CODE 13206	COUNTRY USA
1d. <u>SEE INSTRUCTIONS</u>	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION Ltd. Liability Co.	1f. JURISDICTION OF ORGANIZATION New York	1g. ORGANIZATIONAL ID #, if any <input checked="" type="checkbox"/> NONE	

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

2a. ORGANIZATION'S NAME					
OR	2b. INDIVIDUAL'S LAST NAME				
	FIRST NAME	MIDDLE NAME	SUFFIX		
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE	COUNTRY
2d. <u>SEE INSTRUCTIONS</u>	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID #, if any <input type="checkbox"/> NONE	

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

3a. ORGANIZATION'S NAME FIRST NIAGARA BANK, N.A.					
OR	3b. INDIVIDUAL'S LAST NAME				
	FIRST NAME	MIDDLE NAME	SUFFIX		
3c. MAILING ADDRESS PO Box 28		CITY Buffalo	STATE NY	POSTAL CODE 14240	COUNTRY USA

4. This FINANCING STATEMENT covers the following collateral:

All fixtures and equipment now or hereafter affixed to or installed on the Real Property described in Exhibit A attached hereto or the Improvements, including without limitation, heating, ventilation, air conditioning, plumbing, gas and electric fixtures and equipment, engines, motors, incinerators, pumps, fire prevention equipment, floor coverings, furniture and equipment, now owned or hereafter acquired, all insurance policies covering the Premises and the proceeds thereof, all insurance, conversion and condemnation awards and the Improvements, all lease, rental and sale agreements related to the Real Property and Improvements, any security deposits, down payments and any other payments related to the Real Property, all income or profit, all contracts related to the Premises, all books and records, all options or agreements, all plans and specifications and all renewals and replacements thereof and articles in substitution therefor and all proceeds thereof. All capitalized terms defined in the Uniform Commercial Code in New York State shall have the same meanings in this definition.

5. ALTERNATIVE DESIGNATION (if applicable):	LESSEE/LESSOR	CONSIGNEE/CONSIGNOR	BAILEE/BAILOR	SELLER/BUYER	AG. LIEN	NON-UCC FILING
6. <input checked="" type="checkbox"/> This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum	7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (if applicable) (ADDITIONAL FEE)		All Debtors		Debtor 1	Debtor 2

8. OPTIONAL FILER REFERENCE DATA
FIRS09/61061- Onondaga County, New York

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			
OR BUTTERNUT ST. LLC			
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 <u>one</u> 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
11d. <u>SEE INSTRUCTIONS</u>		ADD'L INFO RE ORGANIZATION DEBTOR	11e. TYPE OF ORGANIZATION	11f. JURISDICTION OF ORGANIZATION
				11g. ORGANIZATIONAL ID #, if any <input type="checkbox"/> NONE

12. <input type="checkbox"/> ADDITIONAL SECURED PARTY'S or <input type="checkbox"/> ASSIGNOR S/P'S NAME - insert only <u>one</u> 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

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:

See Exhibit "A" which is attached hereto and made a part hereof.

**Property: 400 & 410 Butternut Street and
811 North McBride Street
Syracuse, New York**

County: Onondaga

**SBL #s: 017.-05-01.0
017.-05-03.0
017.-05-08.0**

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

SAME AS ABOVE

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

EXHIBIT A

Lot 1

All that tract or parcel of land situate in Block 275C of the City of Syracuse, County of Onondaga, State of New York and being more particularly described as follows:

BEGINNING at the intersection of the east line of North Townsend Street with the south line of Butternut Street;

1. Thence, North 59° 24' 30" East, in the south line of said Butternut Street, a distance of 179.17 feet;
2. Thence, South 30° 32' 30" East, in aforesaid Block 275C, a distance of 198.80 feet;
3. Thence, South 59° 24' 30" West, continuing in said Block 275C, a distance of 30.41 feet;
4. Thence, South 30° 29' 40" East, continuing in said Block 275C, a distance of 50.00 feet;
5. Thence, South 59° 24' 30" West, continuing in said Block 275C, a distance of 148.72 feet to a point in the east line of aforesaid North Townsend Street;
6. Thence, North 30° 32' 30" West, in the east line of North Townsend Street, a distance of 248.80 feet to the POINT OF BEGINNING.

Containing 43,055 square feet, (0.988 ± acres)

Intending to describe "NEW LOT-1" as shown on a plat titled "BUTTERNUT COMMONS – RESUBDIVISION OF PROPERTIES" prepared by CHA Inc. project No. 24556 and filed in the Onondaga County Clerk's Office on 11/14/2013, map file No. 11771.

Lot 2

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1. Thence, South 30° 29' 40" East, in the west line of said Lam property, a distance of 98.80 feet to the southwest corner thereof;
2. Thence, South 59° 24' 30" West, in said Block 275C, a distance of 14.89 feet;
3. Thence, South 30° 32' 30" East, continuing in said Block 275C, a distance of 100.00 feet;
4. Thence, South 59° 24' 30" West, continuing in said Block 275C, a distance of 65.00 feet;
5. Thence, North 30° 32' 30" West, continuing in said Block 275C, a distance of 198.80 feet to a point in the south line of aforesaid Butternut street;
6. Thence, North 59° 24' 30" East, in the south line of said Butternut Street, a distance of 79.97 feet to the POINT OF BEGINNING.

Containing 14,397 square feet, (0.331 ± acres)

Intending to describe "NEW LOT-2" as shown on a plat titled "BUTTERNUT COMMONS – RESUBDIVISION OF PROPERTIES" prepared by CHA Inc. project No. 24556 and filed in the Onondaga County Clerk's Office on 11/14/2013, map file No. 11771.

Lot 3

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1. Thence, South 30° 29' 40" East, in the west line of said North McBride Street, a distance of 100.00 feet;
2. Thence, South 59° 24' 30" West, in said Block 275C, a distance of 53.31 feet;
3. Thence, North 30° 32' 30" West, continuing in said Block 275C, a distance of 100.00 feet;
4. Thence, North 59° 24' 30" East, continuing in said Block 275C, a distance of 53.39 feet to the POINT OF BEGINNING.

Containing 5,335 square feet, (0.122 ± acres)

Intending to describe "NEW LOT-3" as shown on a plat titled "BUTTERNUT COMMONS – RESUBDIVISION OF PROPERTIES" prepared by CHA Inc. project No. 24556 and filed in the Onondaga County Clerk's Office on 11/14/2013, map file No. 11771.

SURVEY- on file with the Agency

Map of:

**Butternut Commons
Resubdivision of Properties
Performed for
C&D LeFace Construction**

**Prospect Hill Property- Block 275C – Lots 1-4, 10-15
City of Syracuse, Onondaga County, State of New York**

**Prepared by: CHA
Powers Building, 16 Main Street West, Rochester, NY
David L. Standinger, Licensed Land Surveyor**

Project No.: 24556

Map Date: March 2013

City of Syracuse
Industrial Development Agency
333 West Washington Street, Suite 130
Syracuse, New York 13202
Tel (315) 473-3275 Fax (315) 435-3669

December 3, 2013

Honorable Stephanie A. Miner
Mayor, City of Syracuse
City Hall
233 East Washington Street
Syracuse, New York 13202

Re: City of Syracuse Industrial Development Agency
 Butternut Commons Project

Dear Mayor:

The City of Syracuse Industrial Development Agency (the “**Agency**”) has agreed to undertake, at the request of Butternut St. LLC (the “**Applicant**” and/or “**Company**”) agreeing to undertake a project (the “**Project**”) consisting of: (A)(i) the acquisition of a leasehold interest in approximately 1.4 acres of improved real property located at the corner of North Townsend Street and Butternut Street (specifically, 400-02 Butternut St. & Townsend S., 404-06 Butternut St., 410 Butternut St., 412 Butternut St., 414 Butternut St., 708 Townsend St. N., 712 Townsend St. N., 714 Townsend St. N., 716 Townsend St. N., 811 N. McBride St. and 813 N. McBride St., as same may have been resubdivided) in the City of Syracuse, New York (the “**Land**”); (ii) the renovation of ten (10) existing buildings totaling approximately 18,400 square feet and the construction of three (3) new buildings totaling approximately 50,000 square feet, all for mixed-use, specifically, retail/pharmacy, commercial, approximately 24 apartments and approximately 4 rental townhouses and related parking, all located on the Land (collectively, the “**Facilities**”); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the “**Equipment**”, and together with the Land and the Facilities, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and State and local 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, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

The Agency conducted a public hearing with respect to the Project as required by Section 859-a of the New York General Municipal Law on April 25, 2013, including the proposed Financial Assistance at which persons interested and desiring to be heard were heard and were advised that they also had an opportunity to submit written statements or comments, and the Agency considered all statements or comments received.

At a meeting of the Agency conducted on April 25, 2013, the Agency took action to approve its undertaking of the Butternut Commons Project, and based upon, inter alia, the representations made by the Company to the Agency, the Agency made the following findings and determinations:

- a) The Project Facility constitutes a “project” within the meaning of the Act.
- b) The granting of the Financial Assistance will be an inducement to the Company to develop the Project Facility in the City of Syracuse.
- c) The commitment of the Agency to provide Financial Assistance to the Company will enable the Company to reconstruct and renovate the Project Facility, will provide an automobile sales facility and a service facility in the City of Syracuse area to help ensure the continued physical and financial viability of the area.
- d) The construction, reconstruction, equipping and improvement of the Project Facility will promote employment opportunities and help prevent economic deterioration in City of Syracuse by the creation and/or preservation of both full and part-time jobs.
- e) The construction, reconstruction, renovation, equipping, improvement and operation of the Project Facility and the attendant promotion of the local economy will advance the job opportunities, health, prosperity and economic welfare of the people of the City of Syracuse and the granting of the other Financial Assistance is necessary to finance the costs of the acquisition and construction of the Project.
- f) The Project will not result in the removal of any commercial, industrial or manufacturing plant or facility of the Company or of any other proposed occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State.
- g) The Project, a retail facility, is located in a Highly Distressed Area.

Section 862(2)(c) of the General Municipal Law requires that the chief executive officer of the municipality for whose benefit the Agency was created confirm the proposed action of the Agency.

Accordingly we hereby respectfully request that you sign the enclosed confirmation to evidence such confirmation.

Very truly yours,

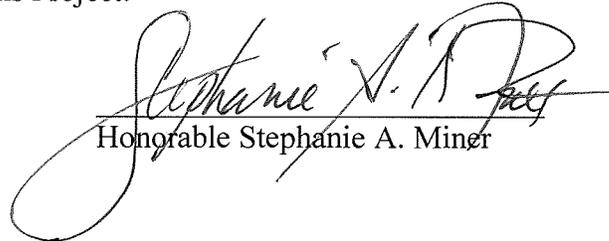
A handwritten signature in black ink, appearing to read 'W. M. Ryan', with a long horizontal flourish extending to the right.

William M. Ryan
Chairman

**CONFIRMATION OF CHIEF EXECUTIVE OFFICER OF THE CITY OF SYRACUSE
PURSUANT TO SECTION 862(2)(c) OF THE GENERAL MUNICIPAL LAW**

I hereby confirm the action and findings taken by the City of Syracuse Industrial Development Agency (the "Agency") at its meeting on April 25, 2013 with respect to its approval of the undertaking of the Butternut Commons Project.

December __, 2013


Honorable Stephanie A. Miner

**GENERAL CERTIFICATE OF THE
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

This certificate is made in connection with the execution by the City of Syracuse Industrial Development Agency (the "**Agency**") of the Company Lease, the Agency Lease, the Mortgage and any other document now or hereafter executed by the Agency (collectively, the "**Agency Documents**") with respect to a project (the "**Project**") undertaken at the request of Butternut St. LLC (the "**Company**") consisting of: (A)(i) the acquisition of a leasehold interest in approximately 1.4 acres of improved real property located at the corner of North Townsend Street and Butternut Street (specifically, 400 Butternut St., 410 Butternut St. and 811 N. McBride St.¹) in the City of Syracuse, New York (the "**Land**"); (ii) the renovation of ten (10) existing buildings totaling approximately 18,400 square feet and the construction of three (3) new buildings totaling approximately 50,000 square feet, all for mixed-use, specifically, retail/pharmacy, commercial, approximately 24 apartments and approximately 4 rental townhouses and related parking, all located on the Land (collectively, the "**Facilities**"); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the "**Equipment**", and together with the Land and the Facilities, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and State and local 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, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

Capitalized terms used herein which are not otherwise defined herein and which are defined in the Agency Lease Agreement dated as of December 1, 2013 (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.

¹ These parcels were formally known as 400-02 Butternut St. & Townsend S., 404-06 Butternut St., 410 Butternut St., 412 Butternut St., 414 Butternut St., 708 Townsend St. N., 712 Townsend St. N., 714 Townsend St. N., 716 Townsend St. N., 811 N. McBride St. and 813 N. McBride St.)

2. The Agency is an industrial development agency duly established under Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended (the "**Enabling Act**") and Chapter 641 of the Laws of 1979 of the State (said Chapter with the Enabling Act, the "**Act**") (a certified copy of Chapter 641 of the Laws of 1979 of the State is attached hereto as **Exhibit "A"**), and it is a corporate governmental agency constituting a public benefit corporation of the State.

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

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

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

William M. Ryan	Chairman
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. That a resolution determining that the acquisition, construction, 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 March 27, 2013 and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the Public Hearing Resolution is attached hereto at **Exhibit “D.”**

8. Attached hereto as **Exhibit “E”** is proof of publication of a notice of the public hearing with respect to the Project (the “**Public Hearing**”), required pursuant to Section 859-a of the Act and held on April 25, 2013, 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 April 11, 2013.

9. That a resolution classifying the Project as an Unlisted Action pursuant to SEQRA, declaring the Agency Lead Agency for purposes of an uncoordinated review and determining that the Project would not have a significant impact on the environment (the “**SEQRA Resolution**”) was adopted by the Agency on April 25, 2013 and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the SEQRA Resolution is attached hereto at **Exhibit “F.”**

10. That a resolution approving the undertaking of the acquisition, construction, renovation and equipping of the Project, appointing the Company as agent of the Agency for the purpose of the acquisition, construction, renovation, construction and equipping of the Project, and authorizing the execution and delivery of an agreement between the Agency and the Company (the “**Inducement Resolution**”) was adopted by the Agency on April 25, 2013 and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the Inducement Resolution is attached hereto at **Exhibit “G.”**

11. That a resolution approving a payment in lieu of tax schedule and authorizing the execution and delivery of certain documents by the Agency (the “**PILOT Resolution**”) was adopted by the Agency on April 25, 2013 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 “H.”**

12. That a resolution authorizing the execution and delivery of certain documents by the Agency in connection with the Project was adopted by the Agency on April 25, 2013 (the “**Final Approving Resolution**”) and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the Final Approving Resolution is attached hereto at **Exhibit “I”**.

13. The execution, delivery and performance of all Agency Documents, certificates and documents required to be executed, delivered and performed by the Agency in order to carry out, give effect to and consummate the transactions contemplated by the Agency Documents have been duly authorized by all necessary action of the Agency, and the Agency Documents have been duly authorized, executed and delivered. The Agency Documents are in full force and effect on and as of the date hereof, and no authority or proceeding for the execution, delivery or performance of the Agency Documents has been materially amended, repealed, revoked or rescinded; and no event or circumstance has occurred or exists which constitutes, or with the giving of notice or the passage of time would constitute, a default on the part of the Agency under the Agency Documents.

14. The execution, delivery, and performance of the Agency Documents, the consummation of the transactions therein contemplated and compliance with the provisions of each do not and will not (a) violate the Act or the by-laws of the Agency, (b) require consent (which has not heretofore been received) under or result in a breach or default of any credit agreement, purchase agreement, indenture, deed of trust, commitment, guaranty, lease, or other agreement or instrument to which the Agency is a party or by which the Agency may be bound or affected, or (c) conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction, or decree of any government, governmental instrumentality, or court, domestic or foreign, having jurisdiction over the Agency or any of its Property.

15. The Agency has not received written notice that any event of default has occurred and is continuing, or that any event has occurred which with the lapse of time or the giving of notice or both would constitute an event of default, by any party to the Agency Documents.

16. 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 or Final Approving Resolution, the Company Lease, the Agency Lease or the other Agency Documents or (ii) the existence or organization of the Agency, or (iii) restrain or enjoin the financing, 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.

17. December 11, 2013 has been duly designated as the date for the Closing.

18. The Agency has complied with all agreements and satisfied all conditions on its part to be performed or satisfied at or prior to the Closing Date.

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

(a) to assist the Company's acquisition, construction, 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, construction, renovation 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 Mortgagee and grant the Mortgagee a security interest in the Agency Lease and the Agency's leasehold interest in the Project Facility.

20. That I did officially cause all certificates necessary for the financing and included in the Official Transcript of Closing, to be executed, as required, in the name of the Agency by the signing of each of such certificates with the signature of the (Vice) Chairman of the Agency.

21. That I did officially cause the following Agency Documents to be executed in the name of the Agency by the signing of each of such Agency Documents with the signature of the William M. Ryan, Chairman of the Agency:

(a) a Company Lease from the Company to the Agency pursuant to which the Company agrees to lease the Land and the Facility to the Agency;

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

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

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

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

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

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

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

(SIGNATURE PAGE TO FOLLOW)

WITNESS, as of the 9th day of December, 2013.

**CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY**

By: 

William M. Ryan, Chairman

EXHIBIT "A"

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

LAWS OF NEW YORK, 1979

CHAPTER 641

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

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

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

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

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

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

§ 2. This act shall take effect immediately.

EXHIBIT "B"

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

CERTIFICATE OF THE CITY OF SYRACUSE
INDUSTRIAL DEVELOPMENT AGENCY

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

- 1) The name of the industrial development agency herein is the City of Syracuse Industrial Development Agency.
- 2) Chapter 641 of the Laws of 1979, the special act of the New York State Legislature establishing the City of Syracuse Industrial Development Agency, was adopted by the New York State Legislature on June 16, 1979 and signed by the Governor on July 18, 1979.
- 3) The names of the Chairman and the Members, respectively, of the City of Syracuse Industrial Development Agency and their terms of office are as follows:
 - (a)

Frank L. Canino	Chairman
David M. Garber	Member
David S. Michel	Member
Erwin G. Schultz	Member
Irwin L. Davis	Member
 - (b) The term of office of the Chairman and of the Members of the City of Syracuse Industrial Development Agency is at the pleasure of the Mayor and continues until a successor is appointed and has qualified.
- 4) The facts establishing the need for the creation of a City of Syracuse Industrial Development Agency are as follows:

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

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

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

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED JUL 20 1979

Bill Fater

Secretary of State

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

July 20, 1979


Lee Alexander
Mayor

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED JUL 20 1979


Secretary of State

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CITY OF SYRACUSE
DEPARTMENT OF LAW



OFFICE OF THE MAYOR

Stephanie A. Miner, Mayor

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DEPARTMENT OF STATE

CERTIFICATE OF APPOINTMENT TO THE
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

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

Mr. William Ryan

- Member/Chairman

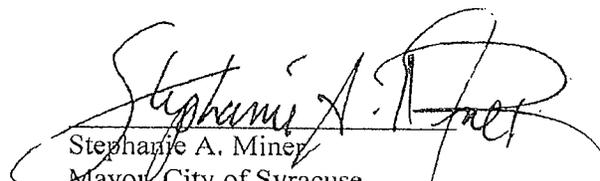
The following Member and Officer of the City of Syracuse Industrial Development Agency shall no longer serve as Member or Officer of said Agency:

Mr. Irwin Davis

-Member/Chairman

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

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


Stephanie A. Miner
Mayor, City of Syracuse



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OFFICE OF THE MAYOR

DEPARTMENT OF STATE

Stephanie A. Miner

CERTIFICATE OF APPOINTMENT TO THE
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

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

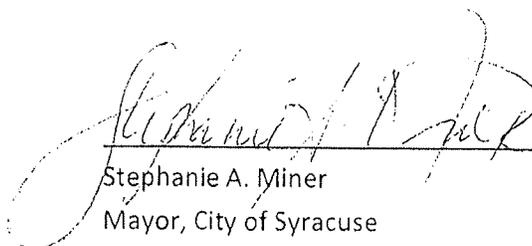
The following Member and Officer of the City of Syracuse Industrial Development Agency shall no longer serve as Member or Officer of said Agency:

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

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CERTIFICATE OF APPOINTMENT TO THE
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

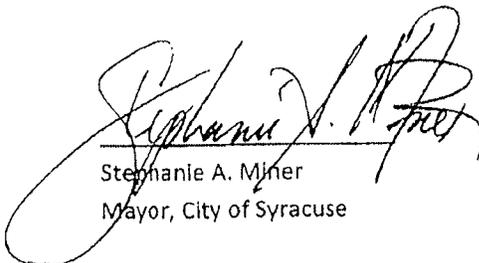
Pursuant to Article 18A of the General Municipal Law of the State of New York, Stephanie A. Miner, Mayor of the City of Syracuse, hereby certifies the appointment of the following person as a Member and Officer of the City of Syracuse Industrial Development Agency:

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



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DEPARTMENT OF STATE

OFFICE OF THE MAYOR

Stephanie A. Miner, Mayor

CERTIFICATE OF APPOINTMENT TO THE
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

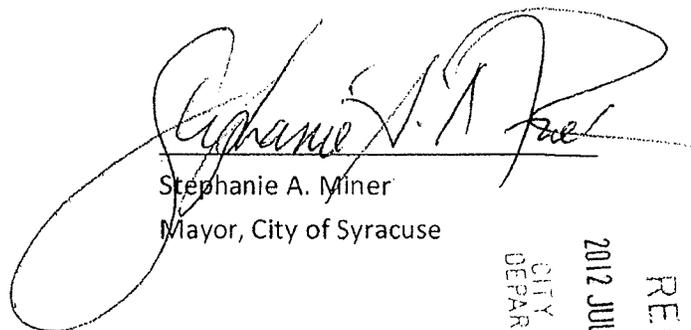
Pursuant to Article 18-A of the General Municipal Law of the State of New York, Stephanie A. Miner, Mayor of the City of Syracuse, hereby certifies the appointment of the following person as a Member of the City of Syracuse Industrial Development Agency:

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

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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"

PUBLIC HEARING RESOLUTION

RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on March 27, 2013, at 9:30 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, M. Catherine Richardson, John Gamage, Pamela Hunter

ABSENT: Donald Schoenwald (excused)

The following persons were **ALSO PRESENT:** Staff Present: Ben Walsh, Meghan Gaffey, Esq., Judith DeLaney, Gregory Streeter, Debra Ramsey-Burns, Sue Katzoff, Esq. Others Present: Giovanni LaFace, James Trasher, Wendy Reese.

The following resolution was offered by Pamela Hunter and seconded by John Gamage:

RESOLUTION DETERMINING THAT THE ACQUISITION, CONSTRUCTION, RENOVATION AND EQUIPPING OF MIXED-USE COMMERCIAL AND RESIDENTIAL FACILITIES 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 March 11, 2013 (the "**Application**"), Butternut St.

LLC, or an entity to be formed (the “*Company*”), has requested that the Agency undertake a project (the “*Project*”), to be completed in one or more phases, consisting of: (A)(i) the acquisition of a leasehold interest in approximately 1.4 acres of improved real property located at the corner of North Townsend Street and Butternut Street (specifically, 400-02 Butternut St. & Townsend S., 404-06 Butternut St., 410 Butternut St., 412 Butternut St., 712 Townsend St. N., 714 Townsend St. N., 716 Townsend St. N., 811 N. McBride St. and 813 N. McBride St.) in the City of Syracuse, New York (the “*Land*”); (ii) the renovation of ten (10) existing buildings totaling approximately 18,400 square feet and the construction of three (3) new buildings totaling approximately 50,000 square feet, all for mixed-use, specifically, retail/pharmacy, food and drink, approximately 24 apartments and approximately 4 townhouses and related parking, all located on the Land (collectively, the “*Facilities*”); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the “*Equipment*”, and together with the Land and the Facilities, 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, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

WHEREAS, 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 or the Executive Director of the Agency is hereby authorized to and may distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

(4) A copy of this Resolution shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

	AYE	NAY
William Ryan	X	
M. Catherine Richardson	X	
John Gamage	X	
Pamela Hunter	X	

The foregoing Resolution was thereupon declared duly adopted.

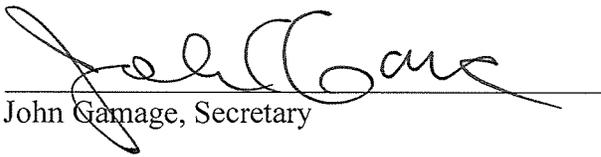
STATE OF NEW YORK)
) SS.:
COUNTY OF ONONDAGA)

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 March 27, 2013, 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 2nd day of April, 2013.

City of Syracuse Industrial Development Agency


John Gamage, Secretary

(S E A L)

EXHIBIT "E"

**NOTICE OF PUBLIC HEARING WITH EVIDENCE OF PUBLICATION AND COPIES
OF LETTERS TO AFFECTED TAX JURISDICTIONS PURSUANT TO SECTIONS
859-a OF THE ACT**

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Section 859-a of the New York General Municipal Law, will be held by the City of Syracuse Industrial Development Agency (the "Agency") on the 25th day of April, 2013, at 8:30 o'clock a.m., local time, at 233 East Washington Street, Common Council Chambers, City Hall, Syracuse, New York, in connection with the following matter:

Butternut St. LLC, or an entity 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 1.4 acres of improved real property located at the corner of North Townsend Street and Butternut Street (specifically, 400-02 Butternut St. & Townsend S., 404-06 Butternut St., 410 Butternut St., 412 Butternut St., 414 Butternut St., 708 Townsend St. N., 712 Townsend St. N., 714 Townsend St. N., 716 Townsend St. N., 811 N. McBride St. and 813 N. McBride St.) in the City of Syracuse, New York (the "Land"); (ii) the renovation of ten (10) existing buildings totaling approximately 18,400 square feet and the construction of three (3) new buildings totaling approximately 50,000 square feet, all for mixed-use, specifically, retail/pharmacy, food and drink, approximately 24 apartments and approximately 4 townhouses and related parking, all located on the Land (collectively, the "Facilities"); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the "Equipment", and together with the Land and the Facilities, 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, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Company shall be the initial owner or operator of the Project Facility.

The Agency will at the above-stated time and place hear all persons with views with respect to the proposed Financial Assistance to the Company, the proposed owner/operator 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: April 11, 2013

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

HISCOCK & BARCLAY LLP

Susan R. Katzoff
Partner

April 11, 2013

BY CERTIFIED MAIL

Honorable Stephanie A. Miner
Mayor, City of Syracuse
City Hall
233 East Washington Street
Syracuse, New York 13202

BY 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
Butternut Commons Project (Butternut St. LLC)

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 1.4 acres of improved real property located at the corner of North Townsend Street and Butternut Street (specifically, 400-02 Butternut St. & Townsend S., 404-06 Butternut St., 410 Butternut St., 412 Butternut St., 414 Butternut St., 708 Townsend St. N., 712 Townsend St. N., 714 Townsend St. N., 716 Townsend St. N., 811 N. McBride St. and 813 N. McBride St.) in the City of Syracuse, New York (the "*Land*"); (ii) the renovation of ten (10) existing buildings totaling approximately 18,400 square feet and the construction of three (3) new buildings totaling approximately 50,000 square feet, all for mixed-use, specifically, retail/pharmacy, food and drink, approximately 24 apartments and approximately 4 townhouses and related parking, all located on the Land (collectively, the "*Facilities*"); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the "*Equipment*", and together with the Land and the Facilities, 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, construction, renovation

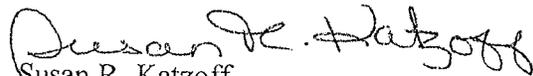
Honorable Stephanie A. Miner
Honorable Joanne M. Mahoney
April 11, 2013
Page 2

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

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.

Please note that the public hearing for this matter was originally scheduled for April 16, 2013, however, same has been rescheduled for **April 25, 2013** at 8:30 a.m. in the Common Council Chambers at City Hall.

Very truly yours,


Susan R. Katzoff

SRK/llm
Enclosure

cc: William Ryan, City of Syracuse Industrial Development Agency (w/Enclosure)
Meghan Gaffey, Esq., City of Syracuse (w/Enclosure)
Ben Walsh, City of Syracuse (w/Enclosure)

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
 233 East Washington Street
 Syracuse, New York 13202

2. Article Number
 (Transfer from service label) **7010 3090 0002 4917 9307**

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature
 X *M. Mahanne* Agent Addressee

B. Received by (Printed Name) C. Date of Delivery
 _____ **4/12/03**

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

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail 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
 John Mulroy Civic Center, 14th Floor
 421 Montgomery Street
 Syracuse, New York 13202

2. Article Number
 (Transfer from service label) **7010 3090 0002 4917 9314**

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

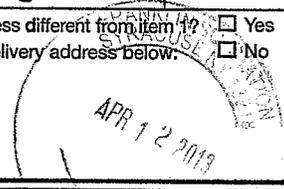
A. Signature
 X *E. Crumb* Agent Addressee

B. Received by (Printed Name) C. Date of Delivery
E. Crumb _____

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

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes



7010 3090 0002 4917 9314

7010 3090 0002 4917 9307

PS Form 3800, August 2006
 Street, Apt. No., or PO Box No.
 City, State, ZIP+4
 Sent To
 County Executive
 See Reverse for Instructions

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)
OFFICIAL USE
 For delivery information visit our website at www.usps.com®
 PS Form 3800, August 2006
 See Reverse for Instructions

Sent To
 Street, Apt. No., or PO Box No.
 City, State, ZIP+4
 Mayor

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)
OFFICIAL USE
 For delivery information visit our website at www.usps.com®
 PS Form 3800, August 2006
 See Reverse for Instructions

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 #: 0000436734

PO #: Billing Matter #3062373

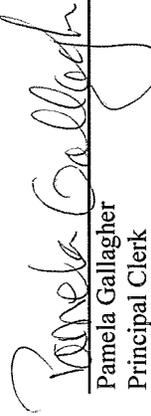
Product: Post-Standard-Full Run

Start Date: 04/14/2013

End Date: 04/14/2013

Insertions: 1

Run Dates: 04/14/2013


Pamela Gallagher
Principal Clerk

Subscribed and Sworn to before me, this 04/14/2013



LAURA M. SCALES
Notary Public, State of New York
No. 01SC6210783
Qualified in Onondaga County
My Commission Expires: 8/3/13

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 25th day of April, 2013, at 8:30 o'clock a.m., local time, at 233 East Washington Street Common Council Chambers, City Hall, Syracuse, New York, in connection with the following matter: Butternut St. LLC, or an entity to be formed (the "Company"), has requested that the Agency undertake a project (the "Project") consisting of: (A) the acquisition of a leasehold interest in approximately 1.4 acres of improved real property located at the corner of North Townsend Street and Butternut Street (specifically, 400-02 Butternut St. & Townsend St., 404-06 Butternut St., 410 Butternut St., 412 Butternut St., 414 Butternut St., 708 Townsend St. N., 712 Townsend St. N., 714 Townsend St. N., 716 Townsend St. N., 811 N. McBride St. and 813 N. McBride St.) in the City of Syracuse, New York (the "Land"); (ii) the renovation of ten (10) existing buildings totaling approximately 18,400 square feet and the construction of three (3) new buildings totaling approximately 50,000 square feet all for mixed-use, specifically retail/pharmacy food and drink approximately 24 apartments and approximately 4 townhouses and related parking, all located on the Land (collectively, the "Facilities"); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the "Equipment") and together with the Land and the Facilities, 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 tax (collectively the "Financial Assistance"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition,

construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency, and the sublease of the Project Facility back to the Company pursuant to a sublease agreement. The Company shall be the initial owner or operator of the Project Facility. The Agency will at the above-stated time and place hear all persons with views with respect to the proposed Financial Assistance to the Company, the proposed owner/operator 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: April 11, 2013 CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

EXHIBIT "F"

SEQRA RESOLUTION

SEQRA RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on April 25, 2013 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, Pamela Hunter, Catherine Richardson., Esq., Donald Schoenwald, Esq.

The following persons were **ALSO PRESENT:** **Staff Present:** Ben Walsh, Meghan Gaffey, Esq., Susan R. Katzoff, Esq., Matthew T. Kerwin, Esq., Judith DeLaney, Debra Ramsey-Burns; **Others Present:** Giovanni LaFace, James Trasher, Joe Girardi, Catherine Johnson, Greg LeVan; **Media:** Rick Moriarty

The following resolution was offered by M. Catherine Richardson and seconded by Donald Schoenwald:

RESOLUTION CLASSIFYING A CERTAIN PROJECT AS AN UNLISTED ACTION PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT, DECLARING THE AGENCY LEAD AGENCY FOR PURPOSES OF AN UNCOORDINATED REVIEW THEREUNDER AND DETERMINING THAT THE ACTION WILL NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT

WHEREAS, the policy of the State of New York (the "**State**") set forth in Title 1 of Article 18-A of the General Municipal Law of the State, as amended (the "**IDA Act**"), is to promote the economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation, economically sound commerce and industry through governmental action for the purpose of preventing unemployment and economic deterioration by the creation of industrial development agencies and to protect and promote the health of the inhabitants of the State and to increase trade through promoting the development of facilities to provide recreation for the citizens of the State and to attract tourists from other states; and

WHEREAS, Butternut St. LLC, a New York limited liability company, or an entity to be formed (the "**Company**"), by application dated March 11, 2013 (the "**Application**"), requested the Agency undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of a leasehold interest in approximately 1.4 acres of improved real property located at the corner of North Townsend Street and Butternut Street (specifically, 400-02 Butternut St. & Townsend S., 404-06 Butternut St., 410 Butternut St., 412 Butternut St., 414 Butternut St., 708 Townsend St. N., 712 Townsend St. N., 714 Townsend St. N., 716 Townsend St. N., 811 N. McBride St. and 813 N. McBride St.) in the City of Syracuse, New York (the "**Land**"); (ii) the renovation of ten (10)

existing buildings totaling approximately 18,400 square feet and the construction of three (3) new buildings totaling approximately 50,000 square feet, all for mixed-use, specifically, retail/pharmacy, food and drink, approximately 24 apartments and approximately 2-4 rental townhouses and related parking, all located on the Land (collectively, the “**Facilities**”); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the “**Equipment**”, and together with the Land and the Facilities, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and State and local 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, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

WHEREAS, as part of the Financial Assistance, the Company requested the Agency consider a payment in lieu of tax (“**PILOT**”) schedule in accordance with the Agency’s Uniform Tax Exemption Policy (“**UTEF**”) established pursuant to General Municipal Law Section 874(4). The Agency has not yet resolved to grant the PILOT as part of the requested Financial Assistance; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as “**SEQRA**”), the Agency is required to make a determination whether the “action” (as said quoted term is defined in SEQRA) to be taken by the Agency may have a “significant impact on the environment” (as said quoted term is utilized in SEQRA), and the Project constitutes such an action; and

WHEREAS, to aid the Agency in determining whether the preliminary agreement of the Agency to undertake the Project may have a significant adverse impact upon the environment, the Company has prepared and submitted to the Agency an Environmental Assessment Form (the “**EAF**”), a copy of which is on file at the office of the Agency; and

WHEREAS, the Agency has examined and reviewed the EAF in order to classify the Project and make a determination as to the potential significance of the Project pursuant to SEQRA; and

NOW, THEREFORE, be it resolved by the members of the City of Syracuse Industrial Development Agency, as follows:

(1) Based upon an examination of the EAF and additional project-related materials prepared by the Company, the criteria contained in 6 NYCRR §617.7(c), and based further upon the Agency’s knowledge of the area surrounding the Project Facility, all the representations made by the Company in connection with the Project, and such further investigation of the Project and its environmental effects as the Agency has deemed appropriate, the Agency makes the following findings and determinations with respect to the Project pursuant to SEQRA:

(a) The Project consists of the components described above in the second WHEREAS clause of this resolution;

(b) The Project constitutes an “Unlisted Action” (as said quoted term is defined in SEQRA);

(c) The Agency declares itself “Lead Agency” (as said quoted term is defined in SEQRA) with respect to an uncoordinated review of the Project pursuant to SEQRA;

(d) The Project will not have a significant effect on the environment, and the Agency hereby issues a negative declaration for the Project pursuant to SEQRA, attached hereto as *Exhibit A*, which shall be filed in the office of the Agency in a file that is readily accessible to the public.

(2) A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

(3) This Resolution shall take effect immediately. The Secretary of the Agency is hereby authorized and directed to distribute copies of this Resolution 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) The Agency hereby authorizes Agency staff to take all further actions deemed necessary and appropriate to fulfill the Agency’s responsibilities under SEQRA.

The question of the adoption of the foregoing Resolution was duly put to vote on a roll call, which resulted as follows:

	AYE	NAY
William Ryan	X	
John Gamage	X	
Pamela Hunter	X	
Catherine Richardson., Esq.	X	
Donald Schoenwald, Esq.	X	

The foregoing Resolution was thereupon declared duly adopted.

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

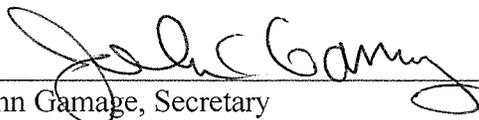
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “*Agency*”) held on April 25, 2013, with the original thereof on 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 20th day of May, 2013.

City of Syracuse Industrial Development Agency



John Gamage, Secretary

(S E A L)

EXHIBIT "A"

NEGATIVE DECLARATION

Notice of Determination of Non-Significance

Project Number: _____

Date: April 25, 2013

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law.

The City of Syracuse Industrial Development Agency, as lead agency, has determined that the proposed action described below will not have a significant environmental impact and a Draft Impact Statement will not be prepared.

Name of Action: Butternut Commons LLC Project

SEQR Status: Type 1
Unlisted

Conditioned Negative Declaration: Yes
 No

Description of Action: The action includes, but is not limited to, the renovation of ten (10) existing buildings totaling approximately 18,400 square feet and the construction of three (3) new buildings totaling approximately 50,000 square feet, all for mixed-use, specifically, retail/pharmacy, food and drink, approximately 24 apartments and approximately 4 townhouses and related parking, , as well as the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and State and local sales and use taxation.

Location: (Include street address and the name of the municipality/county. A location map of appropriate scale is also recommended.)

400-02 Butternut St. & Townsend S., 404-06 Butternut St., 410 Butternut St., 412 Butternut St., 414 Butternut St., 708 Townsend St. N., 712 Townsend St. N., 714 Townsend St. N., 716 Townsend St. N., 811 N. McBride St. and 813 N. McBride St. in the City of Syracuse, New York, Syracuse, Onondaga County, New York

Reasons Supporting This Determination:

(See 617.7(a)-(c) for requirements of this determination; see 617.7(d) for Conditioned Negative Declaration)

This determination is based upon an examination of the EAF and, the criteria contained in 6 NYCRR §617.7(c), and based further upon the Agency's knowledge of the area, and such further investigation of the action and its environmental effects as the Agency has deemed appropriate.

If Conditioned Negative Declaration, provide on attachment the specific mitigation measures imposed, and identify comment period (not less than 30 days from date of publication in the ENB)

For Further Information:

Contact Person: Ben Walsh, Deputy Commissioner

Address: Office of Neighborhood & Business Development
City of Syracuse
333 W. Washington St., Suite 130
Syracuse, NY 13202

Telephone Number: (315) 448-8028

For Type I Actions and Conditioned Negative Declarations, a Copy of this Notice is sent to:

Department of Environmental Conservation, 625 Broadway, Albany, New York 12233-1750

Chief Executive Officer

Any person requesting a copy

All involved agencies

Applicant (if any)

Environmental Notice Bulletin, 625 Broadway, Albany, NY 12233-1750

EXHIBIT "G"

INDUCEMENT RESOLUTION

INDUCEMENT RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on April 25, 2013 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, Pamela Hunter, Catherine Richardson., Esq., Donald Schoenwald, Esq.

The following persons were **ALSO PRESENT:** **Staff Present:** Ben Walsh, Meghan Gaffey, Esq., Susan R. Katzoff, Esq., Matthew T. Kerwin, Esq., Judith DeLaney, Debra Ramsey-Burns; **Others Present:** Giovanni LaFace, James Trasher, Joe Girardi, Catherine Johnson, Greg LeVan; **Media:** Rick Moriarty

The following resolution was offered by M. Catherine Richardson and seconded by John Gamage:

RESOLUTION UNDERTAKING THE ACQUISITION, CONSTRUCTION, RENOVATION AND EQUIPPING OF A CERTAIN PROJECT, APPOINTING THE COMPANY AS AGENT OF THE AGENCY FOR THE PURPOSE OF THE ACQUISITION, CONSTRUCTION, RENOVATION AND EQUIPPING OF THE PROJECT FACILITY AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT BETWEEN THE AGENCY AND THE COMPANY

WHEREAS, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, lease, and sell real property and grant financial assistance in connection

with one or more “projects” (as defined in the Act); and

WHEREAS, Butternut St. LLC, a New York limited liability company, or an entity to be formed (the “**Company**”), by application dated March 11, 2013 (the “**Application**”), requested the Agency undertake a project (the “**Project**”) consisting of: (A)(i) the acquisition of a leasehold interest in approximately 1.4 acres of improved real property located at the corner of North Townsend Street and Butternut Street (specifically, 400-02 Butternut St. & Townsend S., 404-06 Butternut St., 410 Butternut St., 412 Butternut St., 414 Butternut St., 708 Townsend St. N., 712 Townsend St. N., 714 Townsend St. N., 716 Townsend St. N., 811 N. McBride St. and 813 N. McBride St.) in the City of Syracuse, New York (the “**Land**”); (ii) the renovation of ten (10) existing buildings totaling approximately 18,400 square feet and the construction of three (3) new buildings totaling approximately 50,000 square feet, all for mixed-use, specifically, retail/pharmacy, food and drink, approximately 24 apartments and approximately 2-4 rental townhouses and related parking, all located on the Land (collectively, the “**Facilities**”); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the “**Equipment**”, and together with the Land and the Facilities, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and State and local 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, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

WHEREAS, as part of the Financial Assistance, the Company requested the Agency consider a payment in lieu of tax (“**PILOT**”) schedule in accordance with the Agency’s Uniform Tax Exemption Policy (“**UTEF**”) established pursuant to General Municipal Law Section 874(4). The Agency has not yet resolved to grant the PILOT as part of the requested Financial Assistance; and

WHEREAS, the Agency adopted a resolution on March 27, 2013 describing the Project and the proposed financial assistance and authorizing a public hearing (“**Public Hearing Resolution**”); and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as “**SEQRA**”), the Agency is required to make a determination whether the “action” (as said quoted term is defined in SEQRA) to be taken by the Agency may have a “significant impact on the environment” (as said quoted term is utilized in SEQRA), and the Project constitutes such an action; and

WHEREAS, to aid the Agency in determining whether the Project may have a significant impact upon the environment, the Company has prepared and submitted to the Agency an Short Environmental Assessment Form (the “**EAF**”), a copy of which is on file at the office of the

Agency; and

WHEREAS, the Agency examined the EAF in order to classify the Project and determined that the Project constitutes an “Unlisted Action” as defined under SEQRA; and

WHEREAS, by resolution adopted April 25, 2013 (the “*SEQRA Resolution*”), the Agency determined that the Project will not have a significant adverse effect on the environment and issued a negative declaration; and

WHEREAS, the Agency conducted a public hearing with respect to the Project and the proposed Financial Assistance on April 25, 2013 pursuant to Section 859-a of the Act, notice of which was published on April 14, 2013 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 April 11, 2013; 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, for purposes of exemption from New York State (the “*State*”) sales and use taxation as part of the Financial Assistance requested, “sales and use taxation” shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the New York State tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight; and

WHEREAS, the Agency has given due consideration to the Application and to representations by the Company that the provision of Financial Assistance: (i) will induce the Company to develop the Project Facility in the City of Syracuse, (ii) will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act; (iii) the Project Facility is located in a “highly distressed area” as defined in the Act and (iv) the Project will serve the purposes of the Act by creating and/or preserving permanent, private sector jobs and 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:

Section 1. It is the policy of the State to promote the economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation and economically sound commerce and industry for the purpose of preventing unemployment and economic deterioration. It is among the purposes of the Agency to promote, develop, encourage and assist in the acquiring, constructing, 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 2. Based upon the representations and projections made by the Company to the Agency, the Agency hereby and makes the following determinations:

(A) Ratifies the findings in its Initial Resolution and SEQRA Resolution and determines that this Project constitutes a project where the facilities or property comprising the Project will be primarily used in making retail sales of goods or services to customers who personally visit such facilities and constitute more than one-third (1/3) of the total Project cost;

(B) The Project is located in a highly distressed area.

(C) The Project constitutes a “*project*” within the meaning of the Act; and

(D) The acquisition of a controlling interest in the Project Facility by the Agency and the designation of the Company as the Agency’s agent for completion of the Project will be an inducement to the Company to renovate, reconstruct, equip and operate the Project Facility in the City of Syracuse, and will serve the purposes of the Act by, among other things, preserving and/or creating permanent private sector jobs, the general prosperity and economic welfare of the inhabitants of the City of Syracuse; and

(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; and

(F) Undertaking the Project will serve the public purposes of the Act by creating jobs in the City of Syracuse.

Section 3. Subject to the conditions set forth in Section 4.02 of the Agreement (hereinafter defined), the Agency will (i) acquire an interest in the Land and Facility pursuant to a lease agreement (the “*Lease*”) to be entered into between the Company and the Agency and accept an interest in the Equipment pursuant to a bill of sale from the Company (the “*Bill of Sale*”); (ii) lease the Project Facility to the Company pursuant to a sublease agreement (the “*Sublease*” and with the Lease and the Bill of Sale, the “*Lease Documents*”) to be entered into between the Agency and the Company; (iii) grant the Financial Assistance, subject to approval of the PILOT; and (iv) provided that no default shall have occurred and be continuing under the Agreement, the Lease Documents or any loan documents, execute and deliver all other certificates and documents necessary or appropriate for the grant of the approved Financial Assistance or requested by the Company, in form and substance acceptable to the Agency, or its commercial lender(s) in connection with financing for the Project. Notwithstanding anything herein to the contrary, the amount of State and local sales and use tax exemption benefits comprising the Financial Assistance approved herein shall not exceed the amount reflected in the Company’s Application.

Section 4. The Agency shall maintain records of the amount of State and local sales and use tax exemption benefits provided to the Project and each agent or Project operator and shall make such records available to the State Commissioner of Taxation and Finance (the “**Commissioner**”) upon request. The Agency shall, within thirty (30) days of providing any State sales and use tax exemption benefits, report to the Commissioner the amount of such benefits for the Project, identifying the Project, along with any such other information and specificity as the Commissioner may prescribe. As a condition precedent to the Company’s receipt of, or benefit from, any State or local sales and use tax exemptions, the Company must acknowledge and agree to make, or cause its agents and/or operators to make, all records and information regarding State and local sales and use tax exemption benefits available to the Agency upon request.

Section 5. 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.

Section 6. Subject to the due execution and delivery by the Company of the Agreement, the satisfaction of the conditions of this Resolution, and the payment by the Company of any attendant fees, 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 6 shall not be effective until the Agreement referred to in Section 4 hereof is duly executed and delivered by the Company.

Section 7. The Chairman and/or Vice Chairman of the Agency, acting individually, are each hereby authorized and directed, for and in the name and on behalf of the Agency, to execute and deliver the documents and agreements identified herein and any such additional certificates, instruments, documents or affidavits, to pay any such other fees, charges and expenses, to make such other changes, omissions, insertions, revisions, or amendments to the documents referred herein and to do and cause to be done any such other acts and things, as they determine, on advice of counsel to the Agency, may be necessary or desirable to consummate the transactions contemplated by this resolution.

Section 8. 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 9. The obligation of the Agency to consummate any transaction contemplated herein or hereby is subject to and conditioned upon the execution and delivery of, among other things, an Environmental Compliance and Indemnification Agreement in favor of the Agency in

form and substance acceptable to the Agency and its counsel by the Company and some or all of its principals, in the discretion of the appropriate Chairman and/or Vice Chairman of the Agency.

Section 10. No covenant, stipulation, obligation or agreement contained in this resolution or any document referred to herein shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

Section 11. Should the Agency's participation in the Project be challenged by any party, in the courts or otherwise, the Company shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from any such challenge including, but not limited to, the fees and disbursement of the Agency's counsel. Should any court of competent jurisdiction determine that the Agency is not authorized under the Act to participate in the Project, this Resolution shall automatically become null, void and of no further force and effect, and the Agency shall have no liability to the Company hereunder or otherwise.

Section 12. Counsel to the Agency is hereby authorized to work with the Company and others to prepare for submission to the Agency, all documents necessary to effect the grant of Financial Assistance and consummate the Lease Documents.

Section 13. This Resolution shall take effect immediately.

Section 14. 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	
Pamela Hunter	X	
Catherine Richardson., Esq.	X	
Donald Schoenwald, Esq.	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 April 25, 2013, with the original thereof on file in my office, and that the same (including all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

I FURTHER CERTIFY that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

I FURTHER CERTIFY that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have set my hand and affixed the seal of the Agency this 21st day of May, 2013.

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 **BUTTERNUT ST. LLC** (the "**Company**"), with a business office at 3721 New Court Avenue, Syracuse, New York 13206.

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 1.4 acres of improved real property located at the corner of North Townsend Street and Butternut Street (specifically, 400-02 Butternut St. & Townsend S., 404-06 Butternut St., 410 Butternut St., 412 Butternut St., 414 Butternut St., 708 Townsend St. N., 712 Townsend St. N., 714 Townsend St. N., 716 Townsend St. N., 811 N. McBride St. and 813 N. McBride St.) in the City of Syracuse, New York (the "**Land**"); (ii) the renovation of ten (10) existing buildings totaling approximately 18,400 square feet and the construction of three (3) new buildings totaling approximately 50,000 square feet, all for mixed-use, specifically, retail/pharmacy, food and drink, approximately 24 apartments and approximately 2-4 rental townhouses and related parking, all located on the Land (collectively, the "**Facilities**"); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the "**Equipment**", and together with the Land and the Facilities, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and State and local 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, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

1.04. The Company hereby represents to the Agency that the designation of the Company as the Agency’s agent for the reconstruction, renovation and equipping of the Project Facility (i) will be an inducement to it to reconstruct, renovate and equip the Project Facility in the City of Syracuse (the “*City*”); (ii) will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or of any other proposed occupant of the Project Facility from one area of the State to another or in the abandonment of one or more plants or facilities of the Company or of any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act; and (iii) undertaking the Project will promote, create and/or preserve private sector jobs in the State and reduce blight.

1.05. The Agency has determined that the acquisition of a controlling interest in, and the reconstruction, renovation and equipping of the Project Facility and the subleasing of the same to the Company will promote and further the purposes of the Act.

1.06 On April 25, 2013, the Agency adopted a resolution (the “*Inducement Resolution*”) agreeing, subject to the satisfaction of all conditions precedent set forth in such Resolution, to designate the Company as the Agency’s agent for the acquisition, construction, renovation and equipping of the Project Facility and determining that the leasing of the same to the Company will promote further purposes of the Act.

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 construction, renovating and equipping the Project Facility, entering into contracts and doing all things requisite and proper for construction, renovating 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 constructing, renovating and equipping the Project Facility.

2.02. The Agency will adopt such proceedings and authorize the execution of such Agency documents as may be necessary or advisable for (i) acquisition of a controlling interest in the Project Facility, (ii) designating the Company the Agency’s agent for construction, 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 reconstruction, renovation 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 construction, renovation and equipping of the Project Facility and (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency, and in general to do all things which may be requisite or proper for the construction, renovation and equipping of the Project Facility, all with the same powers and the same validity as if the Agency were acting in its own behalf.

2.06. The Agency will take or cause to be taken such other acts and adopt such further proceedings as may be required to implement the aforesaid undertakings or as it may deem appropriate in pursuance thereof. The Agency may in accordance with Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as “*SEQRA*”), undertake supplemental review of the Project. Such review to be limited to specific significant adverse environmental impacts not addressed or inadequately addressed in the Agency’s review under SEQRA that arise from changes in the proposed Project, newly discovered information or a change in the circumstances related to the Project.

Article 3. Undertakings on the Part of the Company. Based upon the statements, representations and undertakings of the Agency and subject to the conditions set forth herein the Company agrees as follows:

3.01. (a) The Company shall indemnify and hold the Agency harmless from all losses, expenses, claims, damages and liabilities arising out of or based on labor, services, materials and supplies, including equipment, ordered or used in connection with the acquisition of a controlling interest in, and reconstruction, renovation and equipping of the Project Facility (including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of any of the foregoing), whether such claims or liabilities arise as a result of the Company 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 survive expiration or termination of this Agreement and shall apply whether or not the claim, liability, cause of action or expense is caused or alleged to be caused, in whole or in part, by the activities, 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 coverage 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, reconstruction and 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 reconstruction, renovation 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, reconstruction, renovation and equipping thereof, the operation and maintenance of the Project Facility, supplemental review of adverse environmental impacts in accordance with SEQRA and the financing of the Project. Every provision required by law to be inserted herein shall be deemed to be set forth herein as if set forth in full; and upon the request of either party, this Agreement shall be amended to specifically set forth any such provision or provisions.

3.03. The Company agrees that, as agent for the Agency or otherwise, to the extent that such provisions of law are in fact applicable (without creating an obligation by contract beyond that which is created by statute) it will comply with the requirements of Section 220 of the Labor Law of the State of New York, as amended.

3.04. The Company will take such further action and adopt such further proceedings as may be required to implement its aforesaid undertakings or as it may deem appropriate in pursuance thereof.

3.05. If it should be determined that any State or local sales or compensatory use taxes are payable with respect to the acquisition, purchase or rental of machinery or equipment, materials or supplies in connection with the Project Facility, or are in any manner otherwise payable directly or indirectly in connection with the Project Facility, the Company shall pay the same and defend and indemnify the Agency from and against any liability, expenses and penalties arising out of, directly or indirectly, the imposition of any such taxes.

3.06 The Company ratifies and confirms its obligations to pay an annual administrative reporting fee in accordance with the Agency's fee schedule to cover administrative and reporting requirements to comply with New York State reporting regulations on Agency assisted projects.

3.07 Whenever practicable, the Company and/or its agents, employees and contractors agree to hire from the local labor pool during the construction period of the Project Facility.

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 grant of Financial Assistance and the execution of the Agency Lease and related documents are subject to (i) payment by the Company of the Agency fee and Agency's counsel fees; (ii) obtaining all necessary governmental approvals, permits and consents of any kind required in connection with the Project Facility; (iii) approval by the members of the Agency; (vi) approval by the Company; and (v) the condition that there are no changes in New York State Law, including regulations, which prohibit or limit the Agency from fulfilling its obligations hereunder; (b) The Company,

by executing this agreement, acknowledges and agrees to make, or cause its agents and/or operators to make, all records and information regarding State and local sales and use tax exemption benefits given to the Project as part of the Financial Assistance available to the Agency upon request; (c) Pursuant to Section 875(3) of the Act, the Agency shall recover, recapture, receive or otherwise obtain from the Company the portion of the Financial Assistance (the "**Recapture Amount**") consisting of: (1) (a) that portion of the State sales tax exemption to which the Company was not entitled, which is in excess of the amount of the State sales tax exemption authorized by the Agency or which is for property or services not authorized by the Agency; or (b) the full amount of such State sales tax exemption, if the Company fails to comply with a material term or condition regarding the use of the property or services as represented to the Agency in its Application or otherwise; and (2) any interest or penalties thereon imposed by the Agency or by operation of law or by judicial order or otherwise; and (d) The failure of the Company to promptly pay such Recapture Amount to the Agency will be grounds for the Commissioner to collect sales and use taxes from the Company under Article 28 of the State Tax Law, together with interest and penalties. In addition to the foregoing, the Company acknowledges and agrees that for purposes of exemption from New York State (the "**State**") sales and use taxation as part of the Financial Assistance requested, "sales and use taxation" shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the New York State tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight.

4.03. The Company agrees that it will, within thirty (30) days of a written request for same, regardless of whether or not this matter closes or the Project Facility is completed: (i) reimburse the Agency for all reasonable and necessary expenses, including without limitation the fees and expenses of counsel to the Agency, 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 **April 25, 2014**, 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 _____, 2013.

CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Name: _____
Title: _____

BUTTERNUT ST. LLC

By: _____
Name: _____
Title: _____

EXHIBIT "H"

PILOT RESOLUTION

PILOT RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on April 25, 2013 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, Pamela Hunter, Catherine Richardson., Esq., Donald Schoenwald, Esq.

The following persons were **ALSO PRESENT:** **Staff Present:** Ben Walsh, Meghan Gaffey, Esq., Susan R. Katzoff, Esq., Matthew T. Kerwin, Esq., Judith DeLaney, Debra Ramsey-Burns; **Others Present:** Giovanni LaFace, James Trasher, Joe Girardi, Catherine Johnson, Greg LeVan; **Media:** Rick Moriarty

The following resolution was offered by M. Catherine Richardson and seconded by Donald Schoenwald:

RESOLUTION APPROVING A PAYMENT IN LIEU OF TAX SCHEDULE AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS BY THE AGENCY IN CONNECTION WITH A CERTAIN PROJECT UNDERTAKEN AT THE REQUEST OF THE COMPANY

WHEREAS, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, lease, and sell real property and grant financial assistance in connection with one or more "projects" (as defined in the Act); and

WHEREAS, Butternut St. LLC, a New York limited liability company, or an entity to be formed (the “**Company**”), requested by application dated March 11, 2013 (the “**Application**”) that the Agency undertake a project (the “**Project**”) consisting of: (A)(i) the acquisition of a leasehold interest in approximately 1.4 acres of improved real property located at the corner of North Townsend Street and Butternut Street (specifically, 400-02 Butternut St. & Townsend S., 404-06 Butternut St., 410 Butternut St., 412 Butternut St., 414 Butternut St., 708 Townsend St. N., 712 Townsend St. N., 714 Townsend St. N., 716 Townsend St. N., 811 N. McBride St. and 813 N. McBride St.) in the City of Syracuse, New York (the “**Land**”); (ii) the renovation of ten (10) existing buildings totaling approximately 18,400 square feet and the construction of three (3) new buildings totaling approximately 50,000 square feet, all for mixed-use, specifically, retail/pharmacy, food and drink, approximately 24 apartments and approximately 2-4 rental townhouses and related parking, all located on the Land (collectively, the “**Facilities**”); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the “**Equipment**”, and together with the Land and the Facilities, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and State and local 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, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

WHEREAS, to aid the Agency in determining whether the preliminary agreement of the Agency to undertake the Project may have a significant impact upon the environment, the Company has prepared and submitted to the Agency an Environmental Assessment Form (the “**EAF**”), a copy of which is on file at the office of the Agency; and

WHEREAS, on April 25, 2013 the Agency adopted a resolution classifying the Project as an “Unlisted Action”, determining that the Project will not have a significant effect on the environment and preparation of an Environmental Impact Statement is not required, and authorizing the execution of a negative declaration (the “**SEQRA Resolution**”) and a resolution taking official action toward the acquisition, construction, 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, solely with respect to the Land and those portions of the Facility constituting Commercial Space, (the “**PILOT**”), as more fully described on **Exhibit “A”** attached hereto, which schedule conforms with the Agency’s Uniform Tax Exemption Policy (“**UTEP**”) established pursuant to General Municipal Law Section 874(4); and

WHEREAS, the Agency has given due consideration to the Application and to representations by the Company that the proposed PILOT, as part of the Financial Assistance (i) will induce the Company to develop the Project Facility in the City of Syracuse, and (ii) will not result in the removal of a commercial, industrial or manufacturing plant or facility of the

Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act; (iii) undertaking the Project will 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) 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.

(2) The Agency will, subject to, and in accordance with all resolutions adopted by the Agency in conjunction with this Project, execute and deliver a PILOT Agreement all in such form and substance as shall be substantially the same as approved by the Agency for other similar transactions and consistent with this Resolution and as approved by the Chairman or Vice Chairman of the Agency upon the advice of counsel to the Agency.

(3) The Chairman, Vice Chairman and any authorized representative of the Agency, acting individually, are each hereby authorized and directed, for and in the name and on behalf of the Agency, to execute and deliver the documents and agreements identified herein and any such additional certificates, instruments, documents or affidavits, to pay any such other fees, charges and expenses, to make such other changes, omissions, insertions, revisions, or amendments to the documents referred to herein and to do and cause to be done any such other acts and things, as they determine, on advice of counsel to the Agency, may be necessary or desirable to consummate the transactions contemplated by this resolution.

(4) No covenant, stipulation, obligation or agreement contained in this resolution or any document referred to above shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

(5) The Secretary of the Agency is hereby authorized and directed to distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

(6) The resolution shall take effect immediately, but is subject to execution by the Company of a PILOT Agreement and the Agreement (as defined in the Inducement Resolution) and

all other resolutions and other related documents adopted and/or approved by the Agency and/or as set forth herein.

(7) A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

The question of the adoption of the foregoing Resolution was duly put to vote on a roll call, which resulted as follows:

	AYE	NAY
William Ryan	X	
John Gamage	X	
Pamela Hunter	X	
Catherine Richardson., Esq.	X	
Donald Schoenwald, Esq.	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 April 25, 2013, with the original thereof on file in my office, and that the same (including any and all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

I FURTHER CERTIFY that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

I FURTHER CERTIFY that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have set my hand and affixed the seal of the Agency this 20th day of May, 2013.

City of Syracuse Industrial Development Agency



John Gamage, Secretary

(S E A L)

EXHIBIT "A"

PROPOSED PILOT SCHEDULE

Butternut St. LLC PILOT Schedule		
Year	Assessment	Payment
1	$\$694,000 \times \text{tax rate}^*$	-
2	$\$694,000 \times \text{tax rate}$	-
3	$\$694,000 \times \text{tax rate}$	-
4	$\$694,000 \times \text{tax rate}$	-
5	$\$694,000 \times \text{tax rate}$	-
6	$\$694,000 \times \text{tax rate}$	-
7	$\$694,000 \times \text{tax rate}$	-
8	$[(\text{full assessment} - \$694,000) \times .25] + (\$694,000 \times \text{tax rate})$	-
9	$[(\text{full assessment} - \$694,000) \times .50] + (\$694,000 \times \text{tax rate})$	-
10	$[(\text{full assessment} - \$694,000) \times .75] + (\$694,000 \times \text{tax rate})$	-

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

EXHIBIT "I"

FINAL APPROVING RESOLUTION

FINAL APPROVING RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on April 25, 2013, at 8:30 o'clock a.m. at the Agency's offices 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, Pamela Hunter, Catherine Richardson., Esq., Donald Schoenwald, Esq.

The following persons were **ALSO PRESENT:** **Staff Present:** Ben Walsh, Meghan Gaffey, Esq., Susan R. Katzoff, Esq., Matthew T. Kerwin, Esq., Judith DeLaney, Debra Ramsey-Burns; **Others Present:** Giovanni LaFace, James Trasher, Joe Girardi, Catherine Johnson, Greg LeVan; **Media:** Rick Moriarty

The following Resolution was offered by Donald Schoenwald and seconded by John Gamage:

RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS BY THE AGENCY IN CONNECTION WITH A CERTAIN PROJECT UNDERTAKEN AT THE REQUEST OF THE COMPANY

WHEREAS, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, for the purpose of promoting economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living; and

WHEREAS, by application dated March 11, 2013 (the "**Application**"), Butternut St. LLC, a New York State limited liability company, or an entity to be formed, (the "**Company**"), requested that the Agency undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of a leasehold interest in approximately 1.4 acres of improved real property located at the corner of North Townsend Street and Butternut Street (specifically, 400-02 Butternut St. & Townsend S., 404-06 Butternut St., 410 Butternut St., 412 Butternut St., 414 Butternut St., 708 Townsend St. N., 712 Townsend St. N., 714 Townsend St. N., 716 Townsend St. N., 811 N. McBride St. and 813 N. McBride St.) in the City of Syracuse, New York (the "**Land**"); (ii) the renovation of ten (10) existing buildings totaling approximately 18,400 square feet and the construction of three (3) new buildings totaling approximately 50,000 square feet, all for mixed-use, specifically, retail/pharmacy, food and drink, approximately 24 apartments and approximately 2-4 rental

townhouses and related parking, all located on the Land (collectively, the “*Facilities*”); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the “*Equipment*”, and together with the Land and the Facilities, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and State and local 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, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

WHEREAS, the Agency conducted a public hearing with respect to the Project and the proposed Financial Assistance on April 25, 2013 pursuant to Section 859-a of the Act and Section 147 of the Internal Revenue Code of 1986, as amended (the “*Code*”), notice of which was published on April 14, 2013 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 April 11, 2013; and

WHEREAS, pursuant to SEQRA, the Agency is required to make a determination with respect to the environmental impact of any “action” (as defined by SEQRA) to be taken by the Agency and the approval of the Project and grant of Financial Assistance constitute such an action; and

WHEREAS, in accordance with SEQRA, on April 25, 2013, the Agency adopted a resolution (the “*SEQRA Resolution*”) entitled:

RESOLUTION CLASSIFYING A CERTAIN PROJECT AS AN UNLISTED ACTION PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT, DECLARING THE AGENCY LEAD AGENCY FOR PURPOSES OF AN UNCOORDINATED REVIEW THEREUNDER AND DETERMINING THAT THE PROJECT WILL NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT

which resolution is in full force and effect and has not been amended or modified; and

WHEREAS, the Agency adopted a resolution on April 25, 2013 (the “*Inducement Resolution*”) entitled:

RESOLUTION UNDERTAKING THE ACQUISITION, CONSTRUCTION, RENOVATION AND EQUIPPING OF A CERTAIN PROJECT, APPOINTING THE COMPANY AS AGENT OF THE AGENCY FOR THE PURPOSE OF THE ACQUISITION, CONSTRUCTION, RENOVATION AND EQUIPPING OF THE PROJECT FACILITY AND

**AUTHORIZING THE EXECUTION AND DELIVERY OF
AN AGREEMENT BETWEEN THE AGENCY AND THE
COMPANY**

which resolution is in full force and effect and has not been amended or modified; and

WHEREAS, the Agency adopted a resolution on April 25, 2013 (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**

The SEQRA Resolution, the Inducement Resolution and the PILOT Resolution are hereinafter collectively referred to as the “**Resolutions**”.

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 (the “**City**”) in furtherance of the purposes of the Act.

(b) The Project will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act.

(c) The commitment of the Agency to provide Financial Assistance to the Company will enable and induce the Company to reconstruct, renovate and equip the Project Facility.

(d) The reconstruction, renovation, equipping and operation of the Project Facility and the attendant promotion of the local economy will advance the job opportunities,

health, prosperity and economic welfare of the people of the City of Syracuse and the granting of the other Financial Assistance is a necessary component to the financing of the Project.

(e) The Project Facility constitutes a “project” within the meaning of the Act.

(f) It is desirable and in the public interest for the Agency to grant Financial Assistance in connection with the Project.

Section 2. It is the policy of the State to promote the economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation and economically sound commerce and industry for the purpose of preventing unemployment and economic deterioration. The Project will serve the public purposes of Article 18-A of the General Municipal Law of the State of New York by creating and/or preserving private sector jobs and promoting economic development.

Section 3. It is among the purposes of the Agency to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of certain facilities, including commercial facilities, and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their recreation opportunities, prosperity and standard of living.

Section 4. Subject to the conditions set forth in 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 a bill of sale from 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; and (D) provide the approved Financial Assistance.

Section 5. The Chairman, Vice Chairman and any authorized representative of the Agency, acting individually, are each hereby authorized and directed, for and in the name and on behalf of the Agency, to execute and deliver the documents and agreements identified in Section 4 of this resolution and any such additional certificates, instruments, documents or affidavits, to pay any such other fees, charges and expenses, to make such other changes, omissions, insertions, revisions, or amendments to the documents referred to in Section 4 of this resolution and to do and cause to be done any such other acts and things, as they determine, on advice of counsel to the Agency, may be necessary or desirable to consummate the transactions contemplated by this resolution.

Section 6. The Agency’s participation in any of the documents referenced herein, or the granting of the approved Financial Assistance, is contingent upon counsel for the Agency’s review and the Chairman or Vice Chairman’s approval of, all documents requested or

required by the Agency in connection with the Project Facility, as well as the Company's execution of the Agreement (as defined in the Inducement Resolution) and all other documents required by the Agency to effectuate the intent of this Resolution and as required in similar transactions.

Section 7. No covenant, stipulation, obligation or agreement contained in this resolution or any document referred to herein shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

Section 8. Counsel to the Agency is hereby authorized to work with the Company and others to prepare, for submission to the Chairman and/or Vice Chairman, all documents necessary to effect the undertaking of the Project and the grant of Financial Assistance in connection with the Project.

Section 9. The approvals provided for herein are contingent upon the Company's payment of all of the Agency's fees and costs, including but not limited to attorneys fees.

Section 10. The Secretary of the Agency is hereby authorized and may distribute copies of this Resolution and do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 11. Counsel to the Agency is hereby authorized to work with the Company and others to prepare for submission to the Agency, all documents necessary to effect the grant of Financial Assistance and to consummate the transactions contemplated by this Resolution.

Section 12. This Resolution shall take effect immediately. A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

The question of the adoption of the foregoing resolution was duly put to vote on a roll call, which resulted as follows:

	AYE	NAY
William Ryan	X	
John Gamage	X	
Pamela Hunter	X	
Catherine Richardson., Esq.	X	
Donald Schoenwald, Esq.	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 April 25, 2013, with the original thereof on file in my office, and that the same (including all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

I FURTHER CERTIFY that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

I FURTHER CERTIFY that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have set my hand and affixed the seal of the Agency this 21st day of May, 2013.

City of Syracuse Industrial Development Agency



John Gamage, Secretary

(S E A L)

**GENERAL CERTIFICATE OF
BUTTERNUT ST. LLC**

This certificate is made in connection with the execution by Butternut St. LLC, a New York limited liability company (the “**Company**”) of the Company Lease, the Agency Lease, the Mortgage, the PILOT Agreement and any other document now or hereafter executed by the Company in connection with the City of Syracuse Industrial Development Agency (the “**Agency**”) agreeing, at the Company’s request, to undertake a project (the “**Project**”) consisting of: (A)(i) the acquisition of a leasehold interest in approximately 1.4 acres of improved real property located at the corner of North Townsend Street and Butternut Street (specifically, 400 Butternut St., 410 Butternut St. and 811 N. McBride St.¹) in the City of Syracuse, New York (the “**Land**”); (ii) the renovation of ten (10) existing buildings totaling approximately 18,400 square feet and the construction of three (3) new buildings totaling approximately 50,000 square feet, all for mixed-use, specifically, retail/pharmacy, commercial, approximately 24 apartments and approximately 4 rental townhouses and related parking, all located on the Land (collectively, the “**Facilities**”); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the “**Equipment**”, and together with the Land and the Facilities, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and State and local 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, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Project Facility is owned by the Company. The Company will lease the Land and Facility to the Agency pursuant to a Company Lease Agreement dated as of December 1, 2013 (the “**Company Lease**”) and transfer its interest in the Equipment back to the Agency pursuant to a bill of sale dated as of December 1, 2013 (the “**Bill of Sale**”) and the Agency will sublease the Project Facility back to the Company pursuant to an Agency Lease Agreement dated as of December 1, 2013 (the “**Agency 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 These parcels were formally known as 400-02 Butternut St. & Townsend S., 404-06 Butternut St., 410 Butternut St., 412 Butternut St., 414 Butternut St., 708 Townsend St. N., 712 Townsend St. N., 714 Townsend St. N., 716 Townsend St. N., 811 N. McBride St. and 813 N. McBride St.)

1. Attached hereto as **Exhibit "A"** is a true, correct and complete copy of the Articles of Organization of the Company and any amendments thereto filed with the New York State Secretary of State with proof of publication thereof attached thereto, which Articles (including any amendments) are in full force and effect on the date hereof.

2. Attached hereto as **Exhibit "B"** is a true, correct and complete copy of the Company's Operating Agreement, and any amendments thereto, and such Operating Agreement, as may have been amended, is in full force and effect on the date hereof.

3. The Company is, and at all times will be, a limited liability company, duly organized, validly existing and in good standing under the laws of New York State and authorized and licensed under the laws of New York State to transact business as a business corporation for the purpose of owning and operating the Project Facility in New York State. Attached hereto as **Exhibit "C"** is a true and correct copy of a Certificate of Good Standing of the Company issued by the New York State Secretary of State.

4. The Company has full legal right, power and authority to execute and deliver the Company Documents and to consummate the transactions on the part of the Company contemplated by the Company Documents. The Company Documents have been duly authorized, executed, and delivered by the Managing Member on behalf of the Company and are in full force and effect as of the date hereof. Attached hereto as **Exhibit "D"** is a true, correct and complete copy of the authorizing resolution of the Managing Member of the Company (the "**Resolution**") in respect of the execution, delivery and performance of the Company Documents.

5. The Company understands and agrees that, 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 "E"**. For purposes of the Local Access Agreement, the term "local" shall be defined to include Onondaga, Oswego, Madison, Cayuga, Cortland and Oneida Counties.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

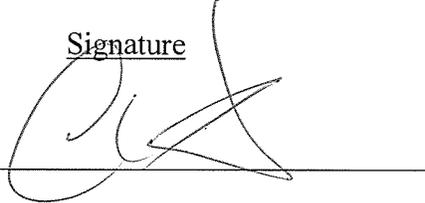
12. There is no Event of Default or default on the part of the Company under the Company Lease, the Agency Lease, the Mortgage, the PILOT Agreement or any other Company Document, and no event has occurred and is continuing which, after notice or passage of time or both, would give rise to a default under any thereof.

13. The Company Lease, the Agency Lease, the Mortgage, the PILOT Agreement and the other Company Documents are in full force and effect and the Company has not assigned or pledged any of its rights under these documents.

14. The Company acknowledges and restates all of the representations and covenants in Section 2.2 of the Agency Lease and incorporates same herein by reference as if fully set forth herein.

15. The Company further acknowledges its obligation under Section 8.5 of the Agency Lease to provide the additional information as set forth therein and agrees to same.

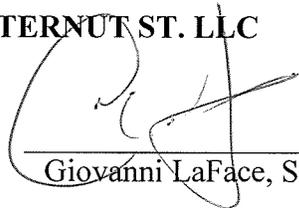
16. The authorized representatives of the Company who, pursuant to the Resolution, are authorized to execute the Company Documents and the office held by each person are as set forth below. The signature set opposite the name of such officer, if any, is a genuine specimen of such officer's signature:

<u>Name</u>	<u>Signature</u>	<u>Office/Title</u>
<u>Giovanni LaFace</u>		<u>Sole Member</u>

IN WITNESS WHEREOF, I have set my hand and signature as officer of the Company as of December 1, 2013.

BUTTERNUT ST. LLC

By:



Giovanni LaFace, Sole Member

EXHIBIT "A"
ARTICLES OF ORGANIZATION

ARTICLES OF ORGANIZATION
OF

BUTTERNUT ST. LLC

FILED BY:

Service Inc.

P.O. Box 871

Albany, NY 12201

CUSTOMER REFERENCE:

Acct #

ARTICLES OF ORGANIZATION

OF

BUTTERNUT ST. LLC

Under Section 203 of the Limited Liability Company Law

THE UNDERSIGNED, being a natural person of at least eighteen (18) years of age and acting as the organizer of the limited liability company (the "company") hereby being formed under Section 203 of the Limited Liability Company Law of the State of New York certifies that:

FIRST: The name of the limited liability company is:

BUTTERNUT ST. LLC

SECOND: The purpose of the limited liability company is:

To engage in any lawful act or activity for which limited liability companies may be organized under the LLCL.

THIRD: The county within the State of New York in which the office of the limited liability company is to be located is Onondaga.

FOURTH: The Secretary of State is designated as the agent of the Company upon whom process against the Company may be served. The post office address to which the Secretary of State shall mail a copy of any process served upon the Company is:

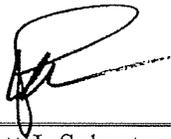
3721 New Court Ave.
Syracuse, NY 13206

FIFTH: The Company is to be managed by one or more members.

SIXTH: The Company shall have the power to indemnify, to the full extent permitted by the LLCL, as amended from time to time, all persons whom it is permitted to indemnify pursuant thereto.

IN WITNESS WHEREOF, the undersigned has subscribed this certificate and hereby affirms the foregoing as true under the penalties of perjury.

Dated: August 10, 2012

A handwritten signature in black ink, appearing to read 'Scott J. Schuster', is written above a horizontal line.

Scott J. Schuster
Sole Organizer
283 Washington Avenue
Albany, NY 12206

FILING RECEIPT

=====

ENTITY NAME: BUTTERNUT ST. LLC

DOCUMENT TYPE: CERTIFICATE OF PUBLICATION (DOM LLC)

COUNTY: ONON

=====

FILED:11/14/2012 DURATION:***** CASH#:121114000128 FILM #:121114000117

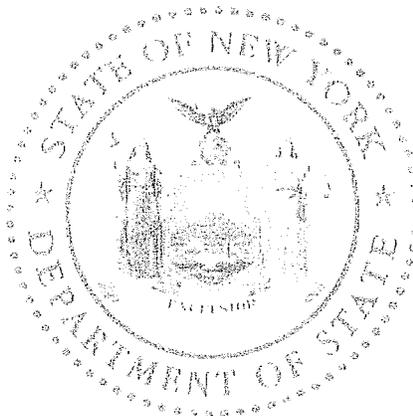
FILER:

SERVICO, INC.
P.O. BOX # 871

ALBANY, NY 12201

ADDRESS FOR PROCESS:

REGISTERED AGENT:



=====

SERVICE COMPANY: SERVICO - 35

SERVICE CODE: 35

FEEs 50.00

FILING 50.00
TAX 0.00
CERT 0.00
COPIES 0.00
HANDLING 0.00

PAYMENTS 50.00

CASH 0.00
CHECK 0.00
CHARGE 0.00
DRAWDOWN 50.00
OPAL 0.00
REFUND 0.00

SERVICO 35

CERTIFICATE OF PUBLICATION OF

BUTTERNUT ST. LLC

Under Section 206 of the LIMITED LIABILITY COMPANY LAW

The undersigned is the authorized person of

BUTTERNUT ST. LLC

The published notices described in the annexed affidavits of publication contain all of the information required by Section 206 of the LIMITED LIABILITY COMPANY LAW

The newspapers described in such affidavits of publication satisfy the requirements set forth in the Limited Liability Company Law and the designation made by the county clerk.

I certify the foregoing statements to be true under penalties of perjury.

DATED: October 30, 2012



Scott J. Schuster,
Person duly authorized to sign

The Post-Standard

PROOF OF PUBLICATION

Under Section 206 of the Limited Liability Company Law of New York, County of Onondaga, ss: The undersigned is publisher of The Post-Standard, a daily newspaper published in Syracuse, New York.

A notice regarding: BUTTERNUT ST. LLC was published in said newspaper once in each week for six successive weeks, commencing on 09/07/2012 and ending on 10/12/2012. The text of the notice as published in said newspaper is as set forth below or in the annexed exhibit.

This newspaper has been designated by the Clerk of Onondaga County for this purpose.

Advertiser: SERVICO

Reference #: 0000395818

PO #:

Product: Post-Standard-Full Run

Start Date: 09/07/2012

End Date: 10/12/2012

Insertions: 6

Run Dates: 09/07/2012, 09/14/2012, 09/21/2012, 09/28/2012, 10/05/2012, 10/12/2012



Pamela Gallagher
Principal Clerk
an Authorized Designee of the Publisher, Stephen A. Rogers.
Subscribed and Sworn to before me, this 10/12/2012

LAURA M. SCALES
Notary Public, State of New York
No. 01SC6210783
Qualified in Onondaga County
My Commission Expires: 12/31/13



NOTARY PUBLIC, ONONDAGA COUNTY, NY Commission Expires

BUTTERNUT ST. LLC Articles of Org. filed NY Sec. of State (SSNY) 8/10/12. Office in Onondaga Co. SSNY design agent of LLC upon whom process may be served. SSNY shall mail copy of process to 3721 New Court Ave., Syracuse, NY 13206, which is also the principal business location. Purpose: Any lawful purpose.



AFFIDAVIT OF PUBLICATION under Section 206 of the Limited Liability Company Law

State of New York,

County of Onondaga, ss.:

The undersigned is the printer of the Star Review, a weekly newspaper published in Cicero, New York. A notice regarding, BUTTERNUT ST. LLC was published in said newspaper once in each week for six successive weeks, commencing on Sept. 12, 2012 and ending Oct. 17, 2012. The text of this notice as published in said newspaper is as set forth below, or in the annexed exhibit. **This newspaper has been designated by the Clerk of Onondaga County for this purpose.**

Mary Newcomb

Mary Newcomb, Authorized Designee of Printer,
COMMUNITY MEDIA GROUP LLC

**NOTICE OF
FORMATION**
BUTTERNUT ST. LLC
Articles of Org. filed NY Sec.
of State (SSNY) 8/10/12.
Office in Onondaga Co.
SSNY desig. agent of LLC
upon whom process may be
served. SSNY shall mail copy
of process to 3721 New
Court Ave., Syracuse, NY
13206, which is also the
principal business location.
Purpose: Any lawful purpose.
EB-42

SWORN 17th DAY OF October 2012

Lisa M. Congdon

Lisa M. Congdon
No. 01CO622819

Notary Public, State of New York
Qualified in Onondaga County
Commission Expires June 1, 2014

2501 James St., Suite 100
Syracuse, New York 13206
(315) 434-8889
Fax: (315) 434-8883

SERVICO 35

CERTIFICATE OF PUBLICATION OF

BUTTERNUT ST. LLC

Under Section 206 of the LIMITED LIABILITY COMPANY LAW

DRAWDOWN

SERVICO 35

**FILER:
SERVICO, INC.
P.O. BOX # 871
ALBANY, N.Y. 12201**

EXHIBIT "B"
OPERATING AGREEMENT

OPERATING AGREEMENT
Butternut St., LLC

THIS AGREEMENT IS executed this 15th day of
August, 2012 by and among
Giovanni LaFace hereinafter
referred to as the "Members."

RECITALS

The Members have formed a limited liability company pursuant to and in accordance with the New York Limited Liability Law as amended from time to time.

The Members desire to set forth their agreement as to the business and management of the company and their interests therein:

NOW, THEREFORE, in consideration of the contributions to be made as provided herein and of these premises, the parties hereto agree as follows:

ARTICLE I

FORMATION AND BUSINESS OF THE COMPANY

1.1 The Limited Liability Company (the "Company") was organized on August 10,
2012 in accordance with and pursuant to the Act.

1.2 The name of the Company is Butternut St. LLC
_____. The Company may do
business under the name, as permitted by applicable law and under any other name as
determined from time to time by the Members.

1.3 The purposes of the Company shall be to conduct any lawful business or activity whatsoever,
permitted by applicable law and as determined by the Members. The Company may exercise all
powers necessary to or reasonably connected with the Company's business from time to time and
may engage in all activities necessary, customary, related or incidental to any of the foregoing.

1.4 The principal place of business of the LLC shall be Onondaga County or such other place
of business as determined by the Members.

1.5 The names, addresses and Capital Interests of the Members are set forth on the balance sheet
of the Company attached hereto as Schedule A.

ARTICLE II

MEMBERS

- 2.1 No Member shall be personally liable for any debt, losses or obligations of the Company by virtue of being a Member, except to the extent of its capital contribution and obligation to make a capital contribution.
- 2.2 The property, business and affairs of the Company shall be managed by the Members, who shall have full authority power and discretion to make all decisions with respect to the company's business. Each of the Members shall have an equal voice in the management and conduct of the Company business.

ARTICLE III

CAPITAL-CAPITAL ACCOUNTS

- 3.1 Upon the execution of this Agreement, the Member shall contribute to the company the cash and property as set forth in Schedule A.
- 3.2 An individual income account shall be maintained for each Member. Profits and losses shall be credited or debited to the individual income accounts as soon as practicable after the close of each fiscal year.
- 3.3 In the event that a Member is entitled to receive a return of a Capital Contribution, the Company may distribute cash, notes, property or a combination thereof to the Member in return of the Capital Contribution.

ARTICLE IV

PROFIT, LOSS AND DISTRIBUTIONS

4.1 The net profits or net losses of the Company shall be distributable or chargeable, as the case maybe, to each of the Members based on the Capital Interest of each Member.

4.2 No Distributions shall be declared as paid unless, after giving effect thereto, the assets of the Company exceed the Company's liabilities.

4.3 If there is no balance in the individual income accounts, net losses shall be debited to the individual capital accounts. If the capital account of a Member shall have been depleted by the debiting of losses under this paragraph, future profits of that Member shall not be credited to his income account until the depletion shall have been made good, but shall be credited to his capital account. After the depletion in his capital account shall have been made good, his share of the profit thereafter shall be credited to his income account.

4.4 If the Company is liquidated, the assets shall be distributed to the Members in accordance with their respective Capital Interests after taking into account allocations of profit and loss.

ARTICLE V
TRANSFERABILITY

- 5.1 No Member may transfer all, or any portion of, or rights in its Membership Interest.
- 5.2 Any such Transfer of an Interest in violation of the terms of this Agreement shall be null and void and have no effect.
- 5.3 No person acquiring an interest other than a Member shall become a Member without the vote of all of the interest of the Members. If no such approval is obtained, the Person's interest shall entitle the person to receive the distributions of the profits and losses to which the Member from whom or which such person received such interest would be entitled. Approval may be subject to terms and conditions imposed by the Members.
- 5.4 The provisions of this Section shall not apply to the transfer of an interest to a Member, the issuance of a new Membership Interest or the Transfer of an Interest of a Bankrupt, dissolved or incompetent Member to his or her successor in interest.

ARTICLE VI
WITHDRAWAL OF A MEMBER

- 6.1 Any Member may withdraw from the Company upon *six months* prior notice to the other Members.
- 6.2 If the business of the Company continues after a voluntary withdrawal, the Withdrawing Member shall not be entitled to receive any amount of liquidation until the dissolution and winding up of the company but shall on the date of the withdrawal event but shall become an assignee of the economic component of the former Membership interest.

6.3 If the business is not continued, the withdrawing member shall be entitled to have the interest repurchased.

6.4 In the event of an involuntary withdrawal of a member, the withdrawn Member shall be treated the same as any Member.

ARTICLE VII

DISSOLUTION AND TERMINATION

7.1 The Company shall be dissolved and wound up upon the first to occur of the following events:

- (a) the written consent of a majority of the Members in interest;
- (b) the retirement, expulsion, death, bankruptcy or insanity of a Member;
- (c) the sale of all or substantially all of the business; or
- (d) a judicial decree of dissolution

7.2 The events specified in Article 7.1 shall not result in the dissolution, winding up and termination of the Company unless within ninety 90 days of the occurrence of an event, a majority in Capital Interests of the remaining Members elect to discontinue the business of the company. The Company shall then commence the process of dissolution, winding up and termination.

7.3 Upon the dissolution of the Company, a proper accounting shall be made of the capital and income accounts of each partner and of the net profit or net loss of the Company from the date of the last previous accounting to the date of dissolution.

ARTICLE VIII

FINANCIAL MANAGEMENT

8.1 Checks shall be drawn on the company bank account for Company purposes only.

8.2 No Member may without the consent of the other Members

- A. Borrow money in the firm name for other than firm purposes or utilize collateral owned by the Company as security for such loans; borrowing in the firm name for firm purposes shall be approved by the Members;
- B. Assign, transfer, pledge, compromise, or release any of the claims of or debts due the Company except upon payment in full, or arbitrate or consent to the arbitration of any of the disputes or controversies of the Company;
- C. Make, execute, or deliver any assignment for the benefit of creditors, or any bond, confession of judgment, chattel mortgage, deed, guarantee, indemnity bond, surety bond, or contract to sell or contract of sale of all or substantially all of the property of the Company;
- D. Lease or mortgage any Company real estate or any interest therein or enter into any contract for any such purpose;
- E. Pledge or hypothecate or in any manner transfer his interest in the Company, except to another party to this agreement;
- F. Become a surety, guarantor, or accommodation party to any obligation.

8.3 The Members shall cause to prepare all necessary tax returns for the Company and shall make appropriate elections concerning the tax year, the manner of accounting and any other election that the Members deem to be in the best interest of the Company.

ARTICLE IX

GENERAL PROVISIONS

9.1 The Company shall maintain a bank account or bank accounts in such bank or banks as may be agreed upon by the Members.

9.2 All notices provided for under this agreement shall be in writing and shall be sufficient if sent by registered or certified mail to the last known address of the party to whom such notice is to be given.

9.3 Proper and complete books of account shall be kept at all times and shall be open to inspection by any partner or his accredited representative at any reasonable time during business hours. The books of account shall be examined and reviewed as of the close of each fiscal year by an accountant agreeable to the Members, who shall make a report thereon.

9.4 The parties hereto covenant and agree that they will execute any further instruments and that they will perform any acts which are or may become necessary to effectuate and to carry on the Company created by this agreement.

9.5 Any matter not specifically covered by a provision of this agreement shall be governed by the applicable provisions of the New York Limited Liability Company Act.

9.6 This Agreement shall be governed by the Laws of the State of New York.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

Witnesses


_____[Seal]
_____[Seal]
_____[Seal]

EXHIBIT "C"
GOOD STANDING CERTIFICATE

**State of New York
Department of State } ss:**

I hereby certify, that BUTTERNUT ST. LLC a NEW YORK Limited Liability Company filed Articles of Organization pursuant to the Limited Liability Company Law on 08/10/2012, and that the Limited Liability Company is existing so far as shown by the records of the Department. I further certify the following:

A Certificate of Publication of BUTTERNUT ST. LLC was filed on 11/14/2012.

I further certify, that no other documents have been filed by such Limited Liability Company.



*Witness my hand and the official seal
of the Department of State at the City
of Albany, this 22nd day of August
two thousand and thirteen.*

Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

EXHIBIT "D"
APPROVING RESOLUTION

A RESOLUTION OF BUTTERNUT STREET, LLC AUTHORIZING THE APPLICATION OF THE CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY; THE UNDERTAKING OF THE PROJECT KNOWN AS THE BUTTERNUT COMMONS AND THE EXECUTION AND DELIVERY OF ALL CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY DOCUMENTS AND AUTHORIZING GIOVANNI LAFACE TO EXECUTE ALL SUCH DOCUMENTS ON BEHALF OF THE LIMITED LIABILITY COMPANY

WHEREAS, Butternut Street, LLC is a limited liability company duly organized and existing pursuant to the laws of the State of New York with principal business office located at 3721 New Court Ave., Syracuse, New York; and

WHEREAS, Butternut Street, LLC is desirous of making, or has made, an application to the City of Syracuse Industrial Development Agency for purposes of obtaining certain beneficial tax arrangements and beneficial financial arrangements for the Butternut Commons Project being conducted on property presently owned by Butternut Street, LLC (collectively the “*Financial Benefits*”); and

WHEREAS, Butternut Street, LLC is desirous of entering into the agreements listed on the attached Schedule A for purposes of moving forward with the Butternut Commons Project; and

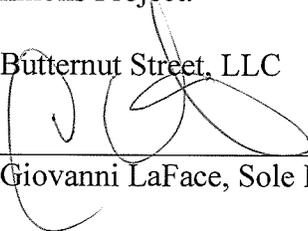
WHEREAS, Butternut Street, LLC is a single member entity, the single member being Giovanni LaFace and it is the desire of the limited liability company that Giovanni LaFace be authorized to execute any and all necessary documents to effectuate the transaction and agreements because The Syracuse Industrial Development Agency and Butternut Street, LLC; now therefore be it

RESOLVED, that the application by Butternut Street, LLC to the City of Syracuse Industrial Development Agency is hereby approved; and that Butternut Street, LLC is authorized to undertake the project known as The Butternut Commons, and to execute and deliver to the City of Syracuse Industrial Development Agency all documents required by them for purposes of establishing the agreements and interrelationships between the City of Syracuse Industrial Development Agency and Butternut Street, LLC in connection with the Butternut Commons Project and the conference of the Financial Benefits; and be it further

RESOLVED, that Giovanni LaFace is hereby authorized to act on behalf of Butternut Street, LLC to sign and execute and deliver any and all documents necessary to effectuate the transactions between Butternut Street, LLC and The City of Syracuse Industrial Development Agency in connection with the Butternut Commons Project.

DATE: Dec 13 2013

Butternut Street, LLC


Giovanni LaFace, Sole Member

SCHEDULE A

1. Closing Memorandum
2. Company Lease Agreement
3. Memorandum of Company Lease Agreement
4. Bill of Sale
5. Agency Lease Agreement
6. Memorandum of Agency Lease Agreement
7. Pledge and Assignment
8. Environment Compliance and Indemnification Agreement
9. Closing Receipt
10. Sales Tax Appointment Letter
11. ST-60
12. General Certificate of the Agency
13. Mortgage Recording Tax Affidavit
14. General Certificate of the Company
15. Pilot Agreement

EXHIBIT "E"
LOCAL ACCESS AGREEMENT

City of Syracuse
Industrial Development Agency

APPENDIX B
Local Access Agreement

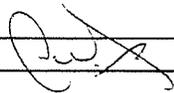
(go back)

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, Butternut St 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	Butternut St LLC				General Contractor	Butternut St LLC					
Representative for Contract Bids and Awards	Giovanni LaFace				Contact	Giovanni LaFace					
Address	P.O. Box 161				Address	P.O. Box 161					
City	Manlius	ST	NY	Zip	13104	City	Manlius	ST	NY	Zip	13104
Phone	315-471-6964		Fax	471-3405		Phone	315-471-6964		Fax	471-3405	
Email					Email						
Project Address	400 Butternut Street				Construction Start Date	01/01/2014					
City	Syracuse	ST	NY	Zip	13206	Occupancy Date	01/01/2015				

Project Components – Indicate those for which bids will be sought:

Item	Estimated Value	Bid Date	Contact
Site work/Demolition	\$900,000.00	02/2014	
Foundation and footings	\$71,000.00	02/2014	
Building	\$0	02/2014	
Masonry	\$287,000.00	02/2014	
Metals	\$100,000.00	02/2014	
Wood/casework	\$555,000.00	02/2014	
Thermal/moisture proof	\$242,500.00	02/2014	
Doors, windows, glazing	\$220,827.00	02/2014	
Finishes	\$712,467.00	02/2014	
Electrical	\$440,000.00	02/2014	
HVAC (COMBINED)	\$460,965.00	02/2014	
Plumbing	(see above)	02/2014	
Specialties	\$41,000.00	02/2014	
Machinery & Equipment	\$90,000.00	02/2014	
Furniture and Fixtures			
Utilities			
Paving	Site Work	02/2014	
Landscaping			
Other (identify)			

Date: _____
 Signature:  _____

Company: _____
 Name: _____

HISCOCK & BARCLAY^{LLP}

December 12, 2013

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

Butternut St. LLC
3721 New Court Avenue
Syracuse, New York 13206

Re: City of Syracuse Industrial Development Agency
Butternut St. 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 Butternut St. LLC (the “*Company*”) consisting of: (A)(i) the acquisition of a leasehold interest in approximately 1.4 acres of improved real property located at the corner of North Townsend Street and Butternut Street (specifically, 400 Butternut St., 410 Butternut St. and 811 N. McBride St.¹) in the City of Syracuse, New York (the “*Land*”); (ii) the renovation of ten (10) existing buildings totaling approximately 18,400 square feet and the construction of three (3) new buildings totaling approximately 50,000 square feet, all for mixed-use, specifically, retail/pharmacy, commercial, approximately 24 apartments and approximately 4 rental townhouses and related parking, all located on the Land (collectively, the “*Facilities*”); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the “*Equipment*”, and together with the Land and the Facilities, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and State and local 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, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

¹ These parcels were formally known as 400-02 Butternut St. & Townsend S., 404-06 Butternut St., 410 Butternut St., 412 Butternut St., 414 Butternut St., 708 Townsend St. N., 712 Townsend St. N., 714 Townsend St. N., 716 Townsend St. N., 811 N. McBride St. and 813 N. McBride St.)

The Agency acquired an interest in the Project Facility pursuant to that certain Company Lease Agreement dated as of December 1, 2013 (the “*Company Lease*”) between the Company, as lessor and the Agency, as lessee, and that certain bill of sale from the Company to the Agency dated as of December 1, 2013 (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 December 1, 2013 (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, New York will enter into a Payment in Lieu of Taxes Agreement dated as of December 1, 2013 (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 (the “*Mortgage*”) on its leasehold interest in the Project Facility, dated December 12, 2013 by the Agency and the Company to the Mortgagee (as defined herein), to secure those certain loans in an aggregate principal amount of \$5,300,000 made by First Niagara Bank (the “*Mortgagee*”) to the Company.

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, reconstruct, renovate and equip the Project, to lease the Facility from the Company pursuant to the Company Lease, to sublease the Project Facility back to the Company pursuant to the Agency Lease and to appoint the Company as its agent for completion of the Project. Capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Agency Lease.
3. The Company Lease, Agency Lease, the PILOT, the Mortgage 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.

In rendering this opinion, we advise you of the following:

The enforceability of the Company Lease, Agency Lease, the PILOT, the Mortgage 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 their successors and/or assigns, 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

Cerio Law Offices

Attorneys and Counselors at Law
407 South Warren Street • 5th Floor
Syracuse, New York 13202
(315) 422-8769
Fax (315) 476-8002

*Also Admitted in
Washington, D.C.

Thomas J. Cerio*
David W. Herkala

December 13, 2013

Butternut St. LLC
3721 New Court Avenue
Syracuse, New York 13206

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
Butternut St. LLC Project

Ladies and Gentlemen:

We have acted as counsel to Butternut St. LLC (the “**Company**”) in connection with a certain project (the “**Project**”) undertaken by the City of Syracuse Industrial Development Agency (the “**Agency**”) at the Company’s request. The Project consists of: (A)(i) the acquisition of a leasehold interest in approximately 1.4 acres of improved real property located at the corner of North Townsend Street and Butternut Street (specifically, 400-02 Butternut St. & Townsend S., 404-06 Butternut St., 410 Butternut St., 412 Butternut St., 414 Butternut St., 708 Townsend St. N., 712 Townsend St. N., 714 Townsend St. N., 716 Townsend St. N., 811 N. McBride St. and 813 N. McBride St.) in the City of Syracuse, New York (the “**Land**”); (ii) the renovation of ten (10) existing buildings totaling approximately 18,400 square feet and the construction of three (3) new buildings totaling approximately 50,000 square feet, all for mixed-use, specifically, retail/pharmacy, commercial, approximately 24 apartments and approximately 4 rental townhouses and related parking, all located on the Land (collectively, the “**Facilities**”); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the “**Equipment**”, and together with the Land and the Facilities, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and State and local sales and use taxation (collectively, the “**Financial Assistance**”);

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(C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Agency has acquired an interest in the Project Facility pursuant to that certain Company Lease Agreement dated as of June 1, 2013 (“*Company Lease*”) between the Company as lessor and the Agency as lessee and that certain bill of sale from the Company to the Agency dated as of June 1, 2013 (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 June 1, 2013 (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, the Agency Lease, the Bill of Sale, the Mortgage, the Environmental Compliance and Indemnification Agreement, the PILOT Agreement and the other documents identified in the Closing Memorandum and defined in the Agency Lease to which the Company is a party (collectively, the “*Company Documents*”).

We have also examined corporate documents and records of the Company and made such investigation of law and/or fact that we deem necessary or advisable in order to render this opinion. For purposes of such examination, we have assumed the genuineness of all certificates and the authenticity of all documents submitted to us as original counterparts or as certified or photostatic copies; the genuineness of all signatures of all parties to the Company Documents other than on behalf of the Company; and the due authorization, execution and delivery of the Company Documents by and the enforceability thereof against all parties thereto other than the Company.

As to questions of fact material to our opinion, we have relied upon the representations and warranties made by the Company in the Company Documents and upon one or more certificates of officers of the Company. Whenever the phrase “to the best of our knowledge” is used in this opinion, it refers to actual knowledge of members of this firm obtained from our representation of the Company and inquiries of responsible officers of the Company made in connection with this opinion, but no further investigation or review has been conducted.

Based upon the foregoing, it is our opinion that:

1. The Company is a validly existing New York limited liability company and possesses full corporate power and authority to own its property, to conduct its business, to execute and deliver the Company Documents, and to carry out and perform its obligations thereunder.

2. The execution, delivery and performance of the Company Documents have been duly authorized by the Company and the Company Documents have been duly executed and delivered by an Authorized Representative of the Company.

3. The Company Documents constitute the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with their terms, except as enforceability may be limited by applicable bankruptcy and insolvency laws and laws affecting creditors' rights generally and to the extent that the availability of the remedy of specific performance or injunctive relief or other equitable remedies is subject to the discretion of the court before which any proceeding therefor may be brought.

4. To the best of our knowledge, in reliance on the certificates and opinions specified herein, the execution and delivery by the Company of the Company Documents, the execution and compliance with the provisions of each and the consummation of the transactions contemplated therein do not and will not constitute a breach of, or default under the Company's Articles of Organization, Operating Agreement or any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Company or any of its Property may be bound, for which a valid consent has not been secured; nor is any approval or any action by any governmental authority required in connection with the execution, delivery and performance thereof by the Company.

5. To the best of our knowledge, in reliance on the certificates and opinions specified herein, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened against, or affecting the Company wherein an unfavorable decision, ruling or finding would in any way adversely affect in a material fashion the validity or enforceability of the Company Documents.

Our examination of law relevant to matters herein is limited to the laws of the State of New York and also the Federal law, where appropriate, and we express no opinion as to matters governed by the laws of any other state or jurisdiction.

This opinion is only for the benefit of and may be relied upon only by the Agency, its successors and assigns. The opinions set forth in this letter are limited to those expressly stated and no other opinion may be inferred nor is any implied. No other use of this opinion may be made without prior written consent. This opinion is given as of the date hereof and we undertake no obligation, and hereby disclaim any obligation, to update or supplement this opinion in response to a subsequent change in the law or future events affecting the documents identified in this letter.

Butternut St. LLC
City of Syracuse Industrial Development Agency
December 13, 2013
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Very truly yours,

A handwritten signature in black ink, consisting of a large, stylized loop followed by a long horizontal stroke that tapers to the right.

Cerio Law Offices
By: David Herkala, Esq.

CLOSING MEMORANDUM

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

BUTTERNUT COMMONS PROJECT

(BUTTERNUT ST. LLC)

DATE AND TIME OF CLOSING: December 12, 2013
11:00 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 Butternut St. 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 1.4 acres of improved real property located at the corner of North Townsend Street and Butternut Street (specifically, 400 Butternut St., 410 Butternut St. and 811 N. McBride St.¹) in the City of Syracuse, New York (the “*Land*”); (ii) the renovation of ten (10) existing buildings totaling approximately 18,400 square feet and the construction of three (3) new buildings totaling approximately 50,000 square feet, all for mixed-use, specifically, retail/pharmacy, commercial, approximately 24 apartments and approximately 4 rental townhouses and related parking, all located on the Land (collectively, the “*Facilities*”); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the “*Equipment*”, and together with the Land and the Facilities, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and State and local 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, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

¹ These parcels were formally known as 400-02 Butternut St. & Townsend S., 404-06 Butternut St., 410 Butternut St., 412 Butternut St., 414 Butternut St., 708 Townsend St. N., 712 Townsend St. N., 714 Townsend St. N., 716 Townsend St. N., 811 N. McBride St. and 813 N. McBride St.)

The Company also requested that the Agency appoint the Company as its agent for purposes of completing the Project and the granting of certain Financial Assistance.

The Company is, or will be at the time of closing, the owner of the Project Facility.

The Agency will acquire a leasehold interest in the Land and Facility from the Company pursuant to a Company Lease Agreement dated as of December 1, 2013 (the "**Company Lease**"), between the Company, as landlord and the Agency, as tenant; and an interest in the Equipment pursuant to a bill of sale from the Company. The Agency will sublease the Project Facility back to the Company, pursuant to an Agency Lease Agreement dated as of December 1, 2013 (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.

To finance certain costs of completing the Project, First Niagara Bank (the "**Mortgagee**") will loan \$5,300,000 (the "**Loan**") to the Company pursuant to a Note dated the Closing Date from the Company in favor of the Mortgagee.

To secure the Loan, the Agency and the Company will grant the Mortgagee a mortgage lien on and security interest in the Project Facility pursuant to a Mortgage dated December 11, 2013 (the "**Mortgage**").

Among the actions taken by the Agency with respect to the Project prior to Closing were the following:

- | | |
|----------------|---|
| March 11, 2013 | The Company submitted an application for financial assistance for the project. |
| March 27, 2013 | A resolution determining that the acquisition, construction, renovation and equipping of the Project constitutes a project and authorizing a public hearing (the " Public Hearing Resolution "). |
| April 11, 2013 | 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. |
| April 14, 2013 | Notice of the Public Hearing was published in the <u>Post-Standard</u> pursuant to Section 859-a of the Act. |
| April 25, 2013 | The Agency conducted the Public Hearing pursuant to Section 859-a of the Act. |
| April 25, 2013 | A resolution classifying the Project as an Unlisted Action pursuant to SEQRA, declaring the Agency Lead Agency for purposes of an uncoordinated review and determining that the Project would not |

have a significant impact on the environment (“**SEQRA Resolution**”).

April 25, 2013

A resolution authorizing the undertaking of the acquisition, construction, renovation and equipping of the Project, appointing the Company agent of the Agency for the purpose of the acquisition, construction, renovation and equipping of the Project Facility and authorizing the execution and delivery of an agreement between the Agency and the Company (the “**Inducement Resolution**”).

April 25, 2013

A resolution approving a payment in lieu of tax schedule at the request of the Company (the “**PILOT Resolution**”).

April 25, 2013

A resolution authorizing the execution and delivery of certain documents by the agency at the request of the Company (the “**Final Approving Resolution**”).

April 29, 2013

An ordinance adopted by the City of Syracuse Common Council approving the PILOT schedule.

December 3, 2013

Approval of Mayor

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), the Lender (L), Lender's Counsel (LC) as follows:

A. Basic Documents	Responsible Party	Signatories
1. Company Lease Agreement	AC	C, A
2. Memorandum of Company Lease Agreement with TP-584	AC	C, A
3. Bill of Sale		
4. Agency Lease Agreement	AC	C, A
5. Memorandum of Agency Lease Agreement with Form TP-584	AC	C, A
6. Certificates of casualty, liability and other required insurance	AC	
7. Pledge and Assignment	AC	C, A, L
8. Environmental Compliance and Indemnification Agreement	AC	C
9. Closing Receipt	AC	C, A
10. PILOT Agreement	Corporation Counsel	C, A, City (Mayor)
11. Ordinance No. 208 of 2013 approving PILOT schedule	A, C	
12. Sales Tax Exemption Letter	AC	A
13. Form ST-60 indicating appointment of the Company to act as the agent of the Agency	AC	A
14. Form 412A	AC	A
15. Mortgage	LC	A, C

16.	Assignment of Leases and Rents	LC	A, C
17.	UCC-1 Financing Statement(s)	LC	
18.	Survey		
19.	Approval of Mayor	AC	Mayor

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	C	
	Exhibit "C" By-laws	AC	
	Exhibit "D" Public Hearing Resolution	AC	
	Exhibit "E" Notice of Public Hearing with evidence of publication and copies of letters to affected tax jurisdictions	AC	
	Exhibit "F" SEQRA Resolution	AC	
	Exhibit "G" Inducement Resolution	AC	
	Exhibit "H" PILOT Resolution	AC	
	Exhibit "I" Final Approving Resolution	AC	
2.	Mortgage Recording Tax Affidavit	AC	A

C. Items To Be Delivered By The Company

1. General Certificate of the Company relating to capacity and signatures of officers, execution and delivery of the Documents to which it is a party, no litigation and approval, with the following items included as exhibits: AC C

Exhibit "A" - Articles of Organization C

Exhibit "B" - Operating Agreement C C

Exhibit "C" Good Standing Certificate C

Exhibit "D" Approving Resolution

Exhibit "E" Local Access Agreement C

D. Opinions of Counsel C

1. Opinion of Hiscock & Barclay, LLP, counsel to the Agency, addressed to the Company, the Agency and the Lender AC AC

2. Opinion of Cerio Law Office, 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:	Butternut St. LLC Giovanni LaFace, President
For the Company's Counsel:	Cerio Law Firm Tom Cerio, Esq.
For the Bank:	First Niagara Bank
For the Bank's Counsel:	Francis Stinziano, Esq. Gilberti, Stinziano, Heintz & Smith, P.C.
Agency's Counsel:	Hiscock & Barclay, LLP Susan R. Katzoff, Esq.