

BUILDING LOAN
MORTGAGE AND SECURITY AGREEMENT

Dated: As of April 16, 2021

in the amount of \$5,010,000.00

from

216 SOUTH DIVISION LLC

and

CITY OF PEEKSKILL
INDUSTRIAL DEVELOPMENT AGENCY

in favor of

MAHOPAC BANK

Street Address: 216 South Division Street
Peekskill, New York
County of: Westchester
State of: New York
Section: 33.37
Block: 4
Lot: 6

RECORD & RETURN TO:

Mahopac Bank
Attn: Commercial Lending
1441 Route 22
Brewster, New York 10509

This Security Instrument covers real property principally improved, or to be improved, by one or more structures containing, in the aggregate, not more than six (6) residential dwelling units with each unit having its own separate cooking facilities.

**BUILDING LOAN
MORTGAGE AND SECURITY AGREEMENT**

THIS BUILDING LOAN MORTGAGE AND SECURITY AGREEMENT ("Mortgage") made as of April 16, 2021 from 216 SOUTH DIVISION LLC, a New York limited liability company having offices at 10 Julia Lane, Suite 103, Cold Spring, New York 10516 ("Mortgagor") and the CITY OF PEEKSKILL INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having offices at 840 Main Street, City of Peekskill, New York ("Agency") in favor of MAHOPAC BANK, a bank chartered under the laws of the State of New York, having an address at 1441 Route 22, Brewster, New York 10509 ("Mortgagee").

WHEREAS, Mortgagor is the lawful owner of the Premises (as such term is hereinafter defined);

WHEREAS, the Agency is the beneficial owner of a leasehold interest in the Premises pursuant to the Lease Agreement dated as of April 16, 2021, between Mortgagor, as lessor, and the Agency, as lessee ("Agency Lease"), which will be recorded in the Westchester County Clerk's Office immediately prior to the recording hereof, and Agency will derive material benefits from the Indebtedness (as hereinafter defined); and

WHEREAS, Mortgagor is the beneficial owner of a sub-leasehold interest in the Premises pursuant to the Leaseback Agreement dated as of April 16, 2021 between the Agency, as sublandlord, and the Mortgagor, as subtenant (the "Leaseback Agreement", and together with the Agency Lease, the "Agency Leases").

DEFINITIONS

The Mortgagor, the Agency and the Mortgagee agree that, unless the context otherwise specifies or requires, the following terms shall have the meanings herein specified, such definitions to be applicable equally to the singular and to the plural forms of such terms.

"Chattels" means all fixtures, fittings, appliances, apparatus, equipment, machinery and articles of personal property, and all additions and accessions thereto and replacements thereof, and substitutions therefor other than those owned by parties unrelated to Mortgagor, now or at any time hereafter affixed to, attached to, placed upon, or used in any way in connection with the complete and comfortable use, enjoyment, occupancy or operation of, the Improvements (as hereinafter defined) or the Premises (as hereinafter defined).

"Code" means the Uniform Commercial Code adopted in New York State, as the same may from time to time be in effect.

"Event of Default" means an event of default described as such in Section 2.01 hereof.

"Guarantor" means Paul F. Guillaro.

"Improvements" means all structures and buildings, and replacements thereof, now or hereafter located or erected upon the Premises, including all plant, equipment, apparatus, machinery and fixtures of every kind and nature whatsoever forming part of said structures and/or buildings.

"Intangibles" means all "general intangibles" (as such term is defined in the Code in any way relating to the Premises and/or the Improvements and in which the Mortgagor has any interest, including, without limitation, all licenses, trade names, goodwill and books and records relating to the Premises or the business operated or to be operated on the Premises or any part thereof, and all unearned premiums, accrued, accruing or to accrue under all insurance policies now or hereafter obtained by the Mortgagor insuring the Mortgaged Property (as hereinafter defined), and all rights and interests of the Mortgagor thereunder.

"Involuntary Rate" means the Default Rate as set forth in the Note, but in no event to exceed the maximum rate allowed by law.

"Note" means that certain Building Loan Note in the principal amount of Five Million Ten Thousand and 00/100 (\$5,010,000.00) Dollars dated of even date herewith made by the Mortgagor payable to the order of the Mortgagee, as the same may be modified, renewed or extended from time to time.

"Premises" means all that certain plot, piece or parcel of land described in Schedule A hereto, together with all of the improvements thereon, air space, easements, rights, privileges, royalties and appurtenances belonging or in anyway appertaining thereunto, and all of the estate, right, title, interest, claim or demand whatsoever of the Mortgagor therein and in the streets, alleys and ways adjacent thereto, either at law or in equity, in possession or expectancy, now or hereafter acquired.

THIS MORTGAGE IS INTENDED TO CONSTITUTE A "BUILDING LOAN MORTGAGE" AS DEFINED IN THE LIEN LAW OF THE STATE OF NEW YORK (THE "LIEN LAW") AND SECURES REPAYMENT OF THE BUILDING LOAN MADE PURSUANT TO THE BUILDING LOAN AGREEMENT DATED THE DATE HEREOF BETWEEN MORTGAGEE, AS LENDER, AND MORTGAGOR, AS BORROWER ("BUILDING LOAN AGREEMENT"), WHICH BUILDING LOAN AGREEMENT HAS BEEN DULY FILED IN ACCORDANCE WITH THE LIEN LAW.

All terms of this Mortgage that are not defined above shall have the meaning set forth in this Mortgage.

GRANTING CLAUSE

NOW, THEREFORE, the Mortgagor and Agency, in consideration of the premises and in order to secure payment of both the principal of the Note in the amount of up to FIVE MILLION TEN THOUSAND and 00/100 (\$5,010,000.00) DOLLARS and the interest thereunder, the payment of any other sums payable thereunder and/or under this Mortgage, and the payment of any sums advanced by the Mortgagee pursuant to the terms of this Mortgage

(collectively, all of such obligations are hereinafter referred to as the "Indebtedness"), hereby give, grant, bargain, sell, warrant, alienate, premise, release, convey, assign, transfer, mortgages, hypothecate, deposit, pledge, set over and confirms unto the Mortgagee all the Mortgagor's and Agency's respective estates, rights, titles and interests in, to and under any and all of the following described property ("Mortgaged Property"), whether now owned or held or hereafter acquired:

- (a) the Premises;
- (b) the Improvements;
- (c) the Chattels;
- (d) the Intangibles;

(e) all leases including the Agency Lease, subleases including the Leaseback Agreement, lettings, licenses and other uses and occupancies of the Premises now or hereafter entered into and all right, title and interest of the Mortgagor thereunder, together with the rents, issues, income and profits thereof including, without limitation, cash or securities deposited thereunder to secure performance by the lessees of their obligations thereunder, whether such cash or securities are to be held until the expiration of the terms of such leases (except that the Mortgagor shall as licensee of the Mortgagee have the right to collect such rents and other amounts, subject to provisions of this Mortgage, so long as no Event of Default shall have occurred and be continuing), and all guaranties of the obligations of the tenants, subtenants, lessees, licensees, users or occupants thereunder;

(f) all agreements and/or contracts now or hereafter entered into for the sale, leasing, brokerage, development, management, maintenance and/or operation of the Premises or any part thereof (including any construction, marketing, engineering, architectural or purchase contracts or agreements), including all moneys due and to become due thereunder, all cash or securities deposited thereunder, and all permits, licenses, bonds, insurance policies, plans and specifications relative to the construction and/or operation of the Improvements, and all tax certiori claims and proceeds with respect to the Premises and Improvements;

(g) all books and records relating to the operation of the Premises and/or the construction of any Improvements and all options and agreements with respect to any additional real property for the use or development of the Premises and/or the construction of any Improvements;

(h) all Chattel Paper, Accounts, Deposit Accounts, Letter of Credit Rights, Documents, Inventory and Instruments, as such terms are defined in the Code, including, without limitation, all of the Mortgagor's operating accounts with respect to the Premises and the Improvements;

(i) all consents, certificates, authorizations, variances, waivers, licenses, permits and approvals from any governmental authority relating to the Premises and/or the construction of any Improvements; and

(j) all proceeds of the conversion, voluntary or involuntary, or any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of hazard and title insurance and condemnation awards.

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

ARTICLE I.

PARTICULAR COVENANTS OF THE MORTGAGOR

The Mortgagor covenants and agrees as follows:

Section 1.01 (a) Mortgagor represents and warrants that it has and will continue to hold good and marketable title to an indefeasible fee estate in the Premises subject to no lien, charge or encumbrance, except such as are listed as exceptions in Schedule B attached hereto ("Permitted Exceptions").

(b) Mortgagor represents, warrants and covenants: (i) that it is the owner of, and shall own, the Mortgaged Property free and clear of any liens and claims, other than the Permitted Exceptions, (ii) that this Mortgage is and shall remain a valid and enforceable first lien on the Mortgaged Property subject only to the Permitted Exceptions, (iii) that the execution of this Mortgage by the Agency has been duly authorized by the Agency and that the execution and delivery of this Mortgage and the Note have been duly authorized by the Mortgagor's board of directors, or all of Mortgagor's members, as the case may be, and that there is no provision in any document evidencing or establishing the existence of the Mortgagor that requires the further consent for such action by any other entity or person, (iv) that it is duly organized, validly existing and is in good standing under the laws of New York State, (v) that it has all necessary licenses, authorizations, registrations, permits and/or approvals, and full power and authority, to own its properties and carry on its business as currently conducted, and (vi) that the execution and delivery by it of, and performance of its obligations under this Mortgage and the Note, shall not result in the Mortgagor and/or the Agency being in default under any provision of any document evidencing or establishing the existence of the Mortgagor and/or the Agency or of any mortgage, credit or other agreement to which the Mortgagor and/or the Agency is a party or that affects the Mortgagor and/or the Agency or the Premises, or any part thereof.

(c) The Mortgagor warrants title to the Premises.

Section 1.02 The Mortgagor shall, at its sole cost and expense, and without expense to the Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers and assurances as the Mortgagee shall from time to time require, for the better assuring, conveying, assigning, transferring and confirming unto the Mortgagee the Mortgaged Property and the rights hereby

conveyed or assigned or intended now or hereafter so to be, or which the Mortgagor may be or may hereafter become bound to convey or assign to the Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage, or for filing, registering or recording this Mortgage and, on demand, shall execute and deliver, and hereby authorizes the Mortgagee to execute and file in the name of the Mortgagor to the extent it may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments to evidence more effectively the lien hereof upon the Mortgaged Property or any part thereof.

Section 1.03 (a) The Mortgagor forthwith upon the execution and delivery of this Mortgage, and thereafter from time to time, shall, at the sole cost of the Mortgagor, cause this Mortgage and any security instrument creating a lien or evidencing the lien hereof upon the Mortgaged Property and each instrument of further assurance, to be filed, registered and/or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and to fully protect the lien hereof upon, and the interest of the Mortgagee in, the Mortgaged Property.

(b) The Mortgagor shall pay all filing, registration or recording fees, and all expenses incident to the execution and acknowledgment of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property, and any instrument of further assurance, and all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note, this Mortgage or any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance.

Section 1.04 The Mortgagor shall punctually pay the principal and interest and all other sums to become due in respect of the Note at the time and place and in the manner specified in the Note, according to the true intent and meaning thereof, all in any coin or currency of the United States of America that at the time of such payment shall be legal tender for the payment of public and private debts and all such principal and interest due in respect of the Note is hereby deemed an obligation due under and secured by this Mortgage.

Section 1.05 Mortgagor represents and warrants that Mortgagor shall, so long as it is owner of the Mortgaged Property or any part thereof, do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges as a corporation under the laws of the State of New York and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court applicable to the Mortgagor or to the Mortgaged Property or any part thereof.

Section 1.06 All right, title and interest of the Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Mortgaged Property hereafter acquired by, or released to, the Mortgagor, or constructed, assembled or placed by the Mortgagor on the Premises or any part thereof, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further mortgage, conveyance, assignment or other act by the Mortgagor or Mortgagee, shall become subject to the lien of this Mortgage as fully and

completely, and with the same effect, as though now owned by the Mortgagor and specifically described in the granting clause hereof, but at any and all times the Mortgagor shall execute and deliver to the Mortgagee any and all such further assurances, mortgages, conveyances or assignments thereof as the Mortgagee may reasonably require for the purpose of expressly and specifically subjecting the same to the lien of this Mortgage.

Section 1.07 (a) The Mortgagor, from time to time when the same shall become due and payable, shall pay and discharge all taxes of every kind and nature, all general and special assessments, levies, permits, inspection and license fees, all water and sewer rents and charges, and all other public charges whether of a like or different nature, imposed upon or assessed against the Mortgaged Property, or any part thereof, or upon the revenue, rents, issues, income and profits of the Mortgaged Property, or any part thereof, or arising in respect of the occupancy, use or possession thereof. In default thereof the Mortgagee may, but shall be under no obligation to, pay the same, and the Mortgagor shall repay the same to the Mortgagee with interest at the Involuntary Rate and the same shall be a lien of the Premises secured on this Mortgage. The Mortgagor shall deliver to the Mortgagee receipts evidencing the payment of all such taxes, assessments, levies, fees, rents and other public charges imposed upon or assessed against the Mortgaged Property, or any part thereof, or the revenues, rents, issues, income or profits thereof, promptly upon the payment thereof.

(b) The Mortgagor shall from and after the occurrence of an Event of Default deposit, at the time of each payment of an installment of interest and/or principal under the Note, an additional amount sufficient to discharge the obligations under subsection 1.07(a) above when they become due. The determination of the amount so payable and of the fractional part thereof to be deposited with the Mortgagee, so that the aggregate of such deposit shall be sufficient for this purpose, shall be made by the Mortgagee in its sole discretion. Such amounts shall be held by the Mortgagee without interest and applied to the payment of the obligations in respect to which such amounts were deposited on or before the respective dates on which the same or any of them would become delinquent or, at the option of the Mortgagee (but only if an Event of Default has occurred and is continuing), to the payment of any amount due under the Note or hereunder (including principal, interest and late charges) in such order or priority as the Mortgagee shall determine. If, on or after the date that is thirty (30) days prior to the due date of any of the aforementioned obligations, the amounts then on deposit therefor shall be insufficient for the payment of such obligation in full, the Mortgagor, within five (5) days after demand by the Mortgagee, shall deposit the amount of the deficiency with the Mortgagee. Nothing herein contained shall be deemed to affect any right or remedy of the Mortgagee under any provision of this Mortgage or of any statute or rule of law to pay any such amount and to add the amount so paid to the Indebtedness. The Mortgagor hereby grants to the Mortgagee a security interest in any and all such funds to secure the repayment of the Indebtedness.

(c) Nothing in this Section 1.07 shall require the payment or discharge of any obligation imposed upon the Mortgagor by this Section 1.07 so long as the Mortgagor is in good faith and at its own expense contesting the same or the validity thereof by appropriate legal proceedings that operate to prevent the collection thereof, or other realization thereon, from the sale or forfeiture of the Mortgaged Property or any part thereof; provided that during such contest the Mortgagor shall, at the option of the Mortgagee, provide security satisfactory to the

Mortgagee assuring the discharge of the Mortgagor's obligations under Section 1.07(a) and of any additional charge, penalty or expense arising from or incurred as a result of such contest; and provided further that if, at any time, payment of any obligation imposed upon the Mortgagor by Section 1.07 (a) shall become necessary, in the Mortgagee's sole reasonable judgment, to prevent the delivery of a tax deed, or its equivalent, conveying the Mortgaged Property, or any part thereof, then the Mortgagor shall, upon the Mortgagee's demand, immediately pay such obligation.

Section 1.08 The Mortgagor shall pay, from time to time when the same shall become due, all lawful claims and demands of mechanics, materialmen, laborers and others, which claims and demands, if unpaid, might result in, or permit the creation of, a lien on the Mortgaged Property or any part thereof, or on the revenues, rents, issues, income and profits arising therefrom and in general shall do or cause to be done everything necessary so that the lien on this Mortgage shall be fully preserved, at the cost of the Mortgagor, without expense to the Mortgagee.

Section 1.09 (a) The Mortgagor, at its sole cost and expense, shall maintain the following insurance:

(i) Insurance on the Improvements and the Chattels against loss or damage by fire and against loss or damage by other risks now or hereafter embraced by "All-Risks" insurance, so called, in an amount sufficient to prevent the Mortgagor from becoming a co-insurer under the applicable policies and not less than 100% of the "full replacement cost" of the Improvements and Chattels, without deduction for depreciation, and with a replacement cost endorsement satisfactory to the Mortgagee. As used herein, "full replacement cost" shall mean (A) with reference to the Improvements, the cost of replacing the Improvements exclusive of the cost of excavations, foundations and footings below the lowest basement floor, and (B) with reference to the Chattels, the cost of replacing the Chattels, and in either case, without deduction for the physical depreciation thereof. Such full replacement cost shall be determined from time to time (but not more often than once every twelve months) at the request of the Mortgagee by an insurer or by an appraiser, architect or contractor designated by the Mortgagee and paid by the Mortgagor. No omission on the part of the Mortgagee to request any such determination shall relieve the Mortgagor of any of its obligations under this Section 1.09. Additionally, during any period in which construction work or alterations are being performed at the Premises the Mortgagor shall maintain extended coverage casualty insurance in the form of a "Builder's Risk" non-reporting policy in an amount to be determined by the Mortgagee as the insurable value of the Improvements.

(ii) Comprehensive general liability insurance (with contractual liability on an occurrence basis and including blanket contractual liability, completed operations and personal injury coverage) against claims for bodily injury, death or property damage occurring on, in or about the Premises, such insurance to afford protection, during the term of this Mortgage, in such amounts as the Mortgagee may from time to time require.

(iii) Worker's compensation insurance, in accordance with all applicable statutory requirements.

(iv) Insurance against loss or damage from (A) leakage of sprinkler systems and (B) explosion of steam boilers, air conditioning equipment, pressure vessels and similar apparatus now or hereafter installed in the Premises, in form, and in such amounts, as the Mortgagee shall from time to time require.

(v) Rent and/or business interruption insurance for loss occasioned by the perils commonly insured in the "All Risks" policy, so-called, in an amount not less than one year's gross income from the Premises plus the annual real estate taxes thereon.

(vi) Insurance in such amounts as may from time to time be reasonably required by the Mortgagee, against such other insurable casualties, hazards or risks as shall from time to time commonly be insured against in the case of premises comparable to the Premises.

Each policy of insurance required by clauses (i), (iii), (iv), (v) and (vi) of this subdivision (a) of this Section 1.09 shall contain the standard non-contributory mortgagee endorsement in favor of the Mortgagee (including, without limitation, naming the Mortgagee as loss payee and entitling the Mortgagee to collect any and all proceeds payable under such insurance without subjecting the Mortgagee to defenses that may be available against the Mortgagor), and shall provide that the Mortgagee shall have the sole and exclusive right to adjust any insurance awards. All policies of insurance required by clause (ii) of this subdivision (a) of this Section 1.09 shall be written on an "on occurrence" basis and shall name the Mortgagee as an additional insured.

All insurance policies and endorsements required pursuant to this Section 1.09 shall be fully paid for, nonassessable and contain such provisions and expiration dates and be in such form and amounts and issued by such insurance companies as shall be satisfactory to the Mortgagee. Without limiting the foregoing, each policy shall specifically provide that (A) such policy may not be canceled or modified except upon thirty (30) days prior written notice to the Mortgagee via certified mail and that no act or thing done, or omission or neglect, by the Mortgagor or any other owner of the Mortgaged Property shall invalidate such policy as against Mortgagee and (B) any and all insurance proceeds shall be paid to the Mortgagee. In addition, the Mortgagee may require the Mortgagor to carry such other insurance on the Mortgaged Property in such amounts as may from time to time be required by institutional lenders, against insurable casualties which at the time are commonly insured against in the case or premises similarly situated. In addition, from time to time, upon the occurrence of any change in the use, operation or value of the Premises, or in the availability of insurance in the area in which the Premises are located, the Mortgagor shall, within ten (10) business days after demand by the Mortgagee, take out such additional amounts and/or require other kinds of insurance as the Mortgagee may reasonably require. The Mortgagor shall assign and deliver the policies of all such insurance to the Mortgagee, in such manner and form that the Mortgagee and its successors and assigns shall at all times have and hold said policy or policies as collateral and further security for the payment of the Indebtedness until the full payment of the Indebtedness.

(b) The Mortgagor shall not take out separate insurance concurrent in form or contribution in the event of loss with that required to be maintained under this Section 1.09, unless the Mortgagee is included thereon as a named insured with loss payable to the Mortgagee

under a standard mortgagee endorsement of the character above described. The Mortgagor shall immediately notify the Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to the Mortgagee the policy or policies of such insurance.

(c) If the Premises, or any part thereof, are located in an area which has been identified by the Secretary of Housing and Urban Development as a flood hazard area, the Mortgagor shall keep, for as long as any Indebtedness remains unpaid, the Premises covered by flood insurance in an amount at least equal to the full amount of the Note or the maximum limit of coverage available for the Premises under the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1983, as the same may have been or may hereafter be amended or modified (and any successor act thereto), whichever is less, naming Mortgagee as an additional insured party.

(d) The Mortgagor shall give the Mortgagee prompt notice of any loss covered by the insurance required under this Mortgage and the Mortgagee shall have the right to join the Mortgagor in adjusting any loss; provided however if an Event of Default shall have occurred and be continuing, the Mortgagee shall have the sole right to adjust all losses. Notwithstanding anything to the contrary contained herein or in Section 254 of the Real Property Law or any other provision of applicable law, the proceeds of insurance policies coming into the possession of the Mortgagee shall not be deemed trust funds and the Mortgagee shall have the option in its sole discretion to apply any insurance proceeds it may receive pursuant hereto, or otherwise, to the payment of the Indebtedness, or to allow all or a portion of such proceeds to be used for the restoration of the Premises without affecting the lien of this Mortgage for the full amount of the Indebtedness owing prior to receipt of such proceeds. In the event any such insurance proceeds shall be used to reduce the Indebtedness, the same shall be applied by the Mortgagee, after the deduction therefrom and repayment to the Mortgagee of any and all costs and expenses incurred by the Mortgagee in the recovery thereof, in any manner Mortgagee shall designate including but not limited to, the application of such proceeds to the principal balance due under the Note such that the regular principal installment payments, if any, under the Note shall not be reduced or altered in any manner.

(e) All insurance provided for in this Section 1.09 shall be effected under valid and enforceable policies issued by financially responsible insurers having an A.M. Best Key Rating of at least A/IX (or an equivalent rating with a publication of a similar nature if Bests Insurance Reports is no longer being published), and incorporated under the Laws of the United States or any state thereof and authorized to do business in the State of New York and which are approved in writing by the Mortgagee. It is further agreed that the aggregate amount of coverage underwritten by any insurer in conformance with the provisions of this Mortgage shall not exceed 10% of that insurer's surplus to policyholders. Upon the execution of this Mortgage and thereafter from time to time, not less than thirty (30) days prior to the expiration dates of the expiring policies theretofore furnished pursuant to this Section, the Mortgagor shall deliver to the Mortgagee originals or certified copies of the policies required by subsection 1.09(a) bearing notations evidencing the payment of not less than one year's premiums, or accompanied by other evidence satisfactory to the Mortgagee of such payment.

(f) If the Mortgagor shall fail to procure, pay for or deliver to the Mortgagee any policy or policies of insurance and/or renewals thereof as in this Section 1.09 required, the

Mortgagee may, at its option, but shall be under no obligation to do so, effect such insurance and pay the premium therefor, and the Mortgagor shall immediately repay to the Mortgagee any premiums so paid, with interest thereon at the Involuntary Rate. Any amount so expended by the Mortgagee, with interest thereon at the Involuntary Rate, shall be secured by the lien of this Mortgage. The Mortgagor hereby waives any claim against the Mortgagee by reason of the failure of the Mortgagee to (i) notify the Mortgagor of the cancellation or non-renewal of any insurance required by this Section 1.09, or (ii) effect any such insurance.

(g) Upon Mortgagee's request (to be made only if Mortgagee determines that Mortgagor is not paying amounts sufficient to discharge the obligations under subsection 1.09(a) above), the Mortgagor shall deposit, at the time of each payment of an installment of interest and principal under the Note, an additional amount sufficient to discharge the obligations under subsection 1.09(a) above when they become due. The determination of the amount so payable and of the fractional part thereof to be deposited with the Mortgagee, so that the aggregate of such deposit shall be sufficient for this purpose, shall be made by the Mortgagee in its reasonable discretion. Such amounts shall be held by the Mortgagee without interest and applied to the payment of the obligations in respect to which such amounts were deposited on or before the respective dates on which the same or any of them would become delinquent or, at the option of the Mortgagee, to the payment of any amount due under the Note or hereunder (including principal, interest and late charges) in such order or priority as the Mortgagee shall determine. If one (1) month prior to the due date of any of the aforementioned obligations, the amounts then on deposit therefor shall be insufficient for the payment of such obligation in full, the Mortgagor, within five (5) days after demand by the Mortgagee, shall deposit the amount of the deficiency with the Mortgagee. Nothing herein contained shall be deemed to affect any right or remedy of the Mortgagee under any provision of this Mortgage or of any statute or rule of law to pay any such amount and to add the amount so paid to the Indebtedness. The Mortgagor hereby grants the Mortgagee a security interest in any and all such funds to secure the repayment of the Indebtedness.

Section 1.10 If the Mortgagor shall fail to perform any of the covenants contained in Sections 1.01, 1.03, 1.04, 1.07, 1.08, 1.09 or 1.12 hereof, the Mortgagee may make advances to perform the same on Mortgagors' behalf, and all sums so advanced shall be a lien upon the Mortgaged Property and shall be secured hereby. The Mortgagor shall repay on demand by Mortgagee all such sums so advanced by Mortgagee on Mortgagor's behalf with interest at the Involuntary Rate. The provision of this Section 1.10 shall not prevent any default in the observance by Mortgagor of any covenant contained in Sections 1.01, 1.03, 1.04, 1.07, 1.08, 1.09 or 1.12 hereof from constituting an Event of Default.

Section 1.11 (a) The Mortgagor shall keep adequate records and books of account in accordance with generally accepted cash flow accounting principles, consistently applied, and shall permit the Mortgagee, by its agents, accountants and attorneys, to visit and inspect the Premises and examine the Mortgagor's records and books of account and to discuss its affairs, finances and accounts with the shareholders, officers, accountants, employees, attorneys and agents of the Mortgagor, at such reasonable times as may be requested by the Mortgagee.

(b) The Mortgagor will furnish the Mortgagor's Federal Income Tax Returns to the Mortgagee within one hundred twenty (120) days of each calendar year end.

(c) The Mortgagor will furnish, or cause the Guarantor to furnish, the Guarantor's Federal Income Tax Returns, together with the Guarantor's updated personal financial statements, to the Mortgagee within one hundred twenty (120) days of each fiscal year end.

(d) The Mortgagor shall, within five (5) business days after written request from the Mortgagee, furnish to Mortgagee a written statement, duly acknowledged, of the amount due whether for principal or interest under the Note and whether any offsets, counterclaim or defenses exist against payment of the Indebtedness or any part thereof.

(e) The Mortgagor, with reasonable promptness, shall deliver or cause to be delivered to the Mortgagee such other information (financial or otherwise) with respect to the Mortgagor, Guarantor, or the Mortgaged Property as the Mortgagee may request from time to time.

(f) The Mortgagor shall immediately notify the Mortgagee of the occurrence of any default in the payment of any rent or additional rent (however denominated) by any tenant or lessee at the Premises.

Section 1.12 The Mortgagor shall not commit any waste on the Mortgaged Property, or any part thereof, nor make any change in the use of the Mortgaged Property, nor any part thereof, which shall in any way increase any ordinary fire or other hazard arising out of alteration, construction or operation. The Mortgagor shall, at all times, maintain the Improvements in good operating order and condition and shall promptly make, at its sole expense, from time to time, all repairs, renewals, replacements, additions and improvements in connection therewith which are needful or desirable to such end.

Section 1.13 The Mortgagor, immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Premises or any part thereof, shall notify the Mortgagee of the pendency of such proceedings. The Mortgagee may participate in any such proceedings and the Mortgagor from time to time shall deliver to the Mortgagee all instruments requested by it to permit such participation. In the event of such condemnation proceedings, the award or compensation payable to the Mortgagor is hereby assigned to and shall be paid to the Mortgagee for application against the Indebtedness. The Mortgagee shall be under no obligation to question the amount of any such award or compensation and may accept the same in the amount in which the same shall be paid. In any such condemnation proceedings, the Mortgagee may be represented by counsel selected by the Mortgagee, at the sole cost and expense of Mortgagor. The proceeds of any award or compensation so received shall, at the sole option of the Mortgagee, either be applied toward the payment of the Indebtedness, notwithstanding the fact that the Indebtedness may not then be due and payable, or to the restoration of the Improvements. In the event that any portion of the condemnation awards or compensation shall be used to reduce the Indebtedness, same shall be applied by the Mortgagee in any manner it shall designate including, but not limited to, application to the then unpaid principal balance due under the Note such that the regular payments under the Note shall not be

reduced or altered in any manner. The Mortgagor, upon request by the Mortgagee, shall make, execute and deliver to the Mortgagee any and all instruments requested for the purpose of confirming the assignment of the aforesaid awards and compensation to the Mortgagee free and clear of any liens, charges or encumbrances of any kind or nature whatsoever. The Mortgagee shall not be limited to the interest paid on the proceeds of any award or compensation, but shall be entitled to the payment by the Mortgagor of interest at the applicable rate provided for in the Note.

Section 1.14 (a) That the Mortgagor has no right or power, as against the Mortgagee without the Mortgagee's prior written consent, to cancel, abridge or otherwise modify the leases or subleases of the Premises or any of the terms, provisions or covenants thereof or to accept prepayments of any installment of rent to become due thereunder and the Mortgagor shall not do so without such consent, which consent shall not be unreasonably withheld or delayed. This agreement, insofar as it affects any lease or sublease which is not primarily for the residential purposes of the owner of the leasehold estate and which, at the date hereof, has an unexpired term of not less than five (5) years, is made with reference to Section 291-f of the Real Property Law.

(b) The Mortgagor shall not enter into any lease of all or any portion of the Premises and/or the Improvements without the prior written consent of the Mortgagee, which consent will not be unreasonably withheld or delayed.

(c) The Mortgagor shall not (i) accept prepayments of any installments of rents to become due under any lease of the Premises or any part thereof, except prepayments for payments made not more than one month in advance and payments in the nature of security for the performance of the lessee thereunder, or (ii) in any manner impair the value of the Mortgaged Property or the security of this Mortgage.

(d) The Mortgagor shall at all times promptly and faithfully perform, or cause to be performed promptly, all of the covenants, conditions and agreements contained in all leases of the Premises, or any part thereof, now or hereafter existing, on the part of the lessor thereunder to be kept and performed and shall at all times do all things necessary to compel performance by the lessees under each lease of all obligations, covenants and agreements by such lessee to be performed thereunder. If any of such leases provide for the giving by the lessee of certificates with respect to the status of such leases, the Mortgagor shall exercise its right to request such certificates within five (5) days of any demand therefor by the Mortgagee.

(e) The Mortgagor shall furnish to the Mortgagee, within ten (10) days after a request by the Mortgagee to do so, a written statement containing the names of all lessees, sublessees, licensees and other occupants of the Premises, the terms of their respective leases, subleases, licenses and other occupancy agreements the space occupied and the rentals payable thereunder.

Section 1.15 Each lease covering the Premises, or any part thereof, shall by its terms be subject and subordinate to the lien of this Mortgage.

Section 1.16 Mortgagor shall not grant any licenses covering the Premises or any portion thereof without the prior written consent of the Mortgagee, which consent will not be unreasonably withheld or delayed.

Section 1.17 (a) The Mortgagor, in compliance with Section 13 of the New York Lien Law, shall receive the advances secured by this Mortgage and shall hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of improvement and shall apply the same first to the payment of the cost of improvement before using any part of the total of the same for any other purpose.

(b) The Mortgagor agrees that it shall indemnify and hold the Mortgagee harmless from and against any loss or liability, cost or expense, including, without limitation, any judgments, attorneys' fees, costs of appeal bonds and printing costs arising out of or relating to any proceeding instituted by any claimant alleging priority over the lien of this Mortgage, and/or by any claimant alleging a violation by the Mortgagor or the Mortgagee of any section of any applicable law.

Section 1.18 The Mortgagor shall (i) execute and deliver to the appropriate governmental authority any affidavit, instrument, document and/or filing required pursuant to any applicable statute, ordinance, rule and/or regulation, and (ii) deliver to the Mortgagee, within thirty (30) days after request by Mortgagee, all information Mortgagee deems appropriate in order to comply with the provision of any applicable law.

Section 1.19 The Mortgagor expressly covenants and agrees to pay in full the costs and expenses of the Mortgagee (including, without limitation, the reasonable fees and expenses of Mortgagee's counsel), promptly upon receipt of a statement therefor, which are incurred prior to and after the date hereof and which costs and expenses arise in connection with any matter incidental to the preparation, negotiation, execution, delivery, filing and recording, administration, amendment or modification, and enforcement of the Note and/or this Mortgage including, without limitation, the costs and expenses of every kind incurred by Mortgagee (including, without limitation, the reasonable fees and expenses of Mortgagee's counsel) in connection with the commencement of any action to foreclose this Mortgage or to collect the Indebtedness, all which costs and expenses shall, to the extent not prohibited by law, be a lien on the Mortgaged Property prior to any interest in, or claim upon, the Mortgaged Property arising subsequent to the date hereof. "Costs and expenses" as used in the preceding sentence shall include, without limitation (and in addition to those costs and expenses specified above), the reasonable attorneys' fees and expenses incurred by Mortgagee in retaining counsel for advice, suit, appeal or any insolvency or other proceedings under the Federal Bankruptcy Code or otherwise.

Section 1.20 The Mortgagor and the Agency (subject to the Agency's reservation of the Unassigned Rights, as defined within the Leaseback Agreement) each hereby assigns to the Mortgagee the leases, rents, issues and profits of the Premises, if any, and the Mortgagor grants to the Mortgagee the right to enter upon and to take possession of the Premises for the purpose of collecting such rents, issues and profits and to let the Premises or any part thereof, and to apply the rents, issues and profits, after payment of all necessary charges and expenses, on account of the Indebtedness. This assignment and grant shall continue in effect

until the Note shall have been paid in full. The Mortgagee hereby grants to Mortgagor a license for the purpose of collecting said rents, issues and profits, and the Mortgagor shall be entitled to collect and receive said rents, issues and profits; provided, however, after an Event of Default shall have occurred under this Mortgage, such license shall automatically terminate and the Mortgagee shall have the right to send written notice to any tenant of the Premises, or any part thereof, to pay rent directly to the Mortgagee.

Section 1.21 The Mortgagor shall maintain its primary banking relationships with the Mortgagee.

(End of Article I)

ARTICLE II.

EVENTS OF DEFAULT AND REMEDIES

Section 2.01 If one or more of the following events of default (each an "Event of Default") shall happen, that is to say:

(a) if (i) default shall be made in the payment of the principal and interest due under the Note at maturity, (ii) default shall be made in the payment of any principal, interest, fee or other amount due under the Note, when and as the same shall become due and payable, other than at maturity, or (iii) default shall be made in the payment of any other fee or amount due under this Mortgage and said default shall have continued for a period of ten (10) days after written notice thereof shall have been given to the Mortgagor by the Mortgagee; or

(b) if default shall be made in the due observance or performance of any covenant or agreement on the part of the Mortgagor in the Note, the Building Loan Agreement, or in this Mortgage contained (other than those covered in clause (a) above) and such default shall have continued for a period of thirty (30) days after written notice thereof shall have been given to the Mortgagor by the Mortgagee, provided however that if such default is of a nature that the same cannot be cured within said thirty (30) days, it shall not be an Event of Default so long as the Mortgagor diligently continues to pursue such cure, but in no event shall such cure period extend beyond an additional reasonable period of time not to exceed thirty (30) days; or

(c) if by the order of a court of competent jurisdiction, a trustee, receiver or liquidator of the Mortgaged Property, or any part thereof, or of the Mortgagor shall be appointed and such order shall not be discharged or dismissed within thirty (30) days after such appointment; or

(d) if the Mortgagor shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case under any such law or to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Mortgagor or of any substantial part of its property, or if the Mortgagor shall make any general assignment for the benefit of creditors, or if the Mortgagor shall fail generally to pay its debts as such debts become due, or if the Mortgagor shall take any action in furtherance of any of the foregoing; or

(e) if any of the creditors of the Mortgagor shall commence against the Mortgagor an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect and if such case shall not be discharged or dismissed within thirty (30) days after the date on which such case was commenced; or

(f) if final judgment for the payment of money in excess of \$25,000.00 that is not covered by insurance to Mortgagee's satisfaction shall be rendered against the Mortgagor and the Mortgagor shall not discharge the same or cause it to be discharged within thirty (30)

days from the entry thereof, or shall not appeal therefrom or from the order, decree or process upon which or pursuant to which said judgment was granted, based or entered, and secure a stay of execution pending such appeal within the aforementioned thirty (30) day period; or

(g) if any of the events enumerated in clauses (c) through (f) of this Section 2.01 shall occur with respect to Guarantor or with respect to Guarantor's properties; or

(h) if Guarantor dies or shall default under or attempt to withdraw, revoke, cancel or disclaim liability under any guaranty, indemnity or other agreement executed in favor of the Mortgagee; or

(i) if the Mortgagor sells, transfers, assigns, leases, conveys, mortgages, grants on easement, or encumbers the Mortgaged Property or any part thereof or any interest therein without the prior written consent of the Mortgagee; or

(j) if a default occurs under any mortgage (which mortgage would only be permitted with the prior written consent of the Mortgagee) encumbering the Mortgaged Property, or any part thereof, that is prior or subordinate to the lien of this Mortgage or the mortgagee under any prior or subordinate mortgage commences a foreclosure action in connection with said mortgage; or

(k) if any shareholder interest, membership interest, partnership interest, or any other ownership interest whatsoever, in the Mortgagor shall be sold, assigned, transferred, conveyed, mortgaged, pledged, hypothecated or alienated without the prior written consent of the Mortgagee; or

(l) if the Mortgagor defaults under any of the other agreements delivered to the Mortgagee to evidence or secure the performance of any of the obligations hereunder or under the Note and such default continues beyond the expiration of any applicable notice, grace and/or cure period; or

(m) if the Mortgagor or Guarantor defaults under any note, mortgage or other agreement with, or obligation in favor of, the Mortgagee and such default continues beyond the expiration of any applicable notice, grace and/or cure period; or

(n) if any certificate, written statement, representation, warranty or financial statement furnished to the Mortgagee by or on behalf of the Mortgagor or by or on behalf of Guarantor (including, without limitation, representations and warranties contained herein) shall prove to have been false in any material respect at the time as of which the facts therein set forth were certified, or to have omitted any substantial contingent or unliquidated liability or claim against the Mortgagor or Guarantor, or if on the date of the execution of this Mortgage there shall have been any materially adverse change in any of the facts disclosed by any such statement or certificate, which change shall not have been disclosed in writing by the Mortgagor or by Guarantor, as the case may be, to the Mortgagee at or prior to the time of such execution; or

(o) if the Premises or Improvements, or any portion thereof, are condemned or otherwise taken by eminent domain or if the Improvements are substantially damaged, demolish or destroyed in whole or in part; or

(p) if the Mortgagor incurs debt other than (i) ordinary course-of-business trade debt and/or equipment financing(s) incurred in connection with the operation of the Premises and Improvements; (ii) the Indebtedness; and/or (iii) reimbursement obligations incurred in connection with surety and appeal bonds and other similar obligations in the course of operating the Premises and Improvements;

then and in each and every such case:

I. During the continuance of any such Event of Default (other than an Event of Default under Sections 2.01(c), (d) and (e) hereof), the Mortgagee, by written notice given to the Mortgagor, may declare the entire principal of the Note then outstanding (if not then due and payable), and all accrued and unpaid interest thereon, together with all other Indebtedness, to be due and payable immediately, and upon any such declaration the principal of the Note, said accrued and unpaid interest thereon, and all other indebtedness shall become and be immediately due and payable, anything in the Note or in this Mortgage to the contrary notwithstanding. The entire principal of the Note then outstanding (if not then due and payable), and all accrued and unpaid interest thereon, together with all other Indebtedness, shall automatically be due and payable immediately, without demand or notice of any kind, during the continuance of an Event of Default under Sections 2.01(c), (d) and (e) hereof.

II. During the continuance of any such Event of Default, the Mortgagee personally, or by its agents or attorneys, may enter into and upon all or any part of the Mortgaged Property, and each and every part thereof, whereof it shall become possessed as aforesaid, and may exclude the Mortgagor, its agents and servants wholly therefrom; having and holding the same, may use, operate, manage and control the Mortgaged Property and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or receivers; upon every such entry, the Mortgagee, at the expense of the Mortgagor, from time to time, either by purchase, repairs or construction, may maintain and restore the Mortgaged Property, may complete the construction of any of the Improvements and in the course of such completion may make such changes in the contemplated Improvements as it may deem desirable and may insure the same; likewise, from time to time, at the expense of the Mortgagor, the Mortgagee may make all necessary or proper repairs, renewals and replacements and such useful alterations, additions, betterments and improvements thereto and thereon as it may deem advisable; in every such case the Mortgagee shall have the right to manage and operate the Mortgaged Property and to carry on the business thereof and exercise all rights and powers of the Mortgagor with respect thereto either in the name of the Mortgagor or otherwise as it shall deem best; the Mortgagee shall be entitled to collect and receive all earnings, revenues, rents, issues, profits and income of the Mortgaged Property and every part thereof, all of which shall for all purposes constitute property of the Mortgagee; and after deducting the expenses of conducting the business thereof and of all maintenance, repairs, renewals, replacements, alterations, additions, betterments and improvements and amounts necessary to pay for taxes, assessments, insurance and prior or other proper charges upon the Mortgaged Property, or any part thereof, as

well as reasonable compensation for the services of the Mortgagee and for all of the Mortgagee's attorneys, agents, clerks, and other employees, the Mortgagee shall apply the moneys arising as aforesaid to the payment of the Indebtedness in the manner and in the amounts as the Mortgagee shall elect in its sole discretion.

III. During the continuance of any Event of Default, the Mortgagee, with or without entry, personally or by its agents or attorneys, may:

(1) sell the Mortgaged Property, or any part thereof, to the extent permitted and pursuant to the procedures provided by applicable law, and all estate, right, title and interest, claim and demand therein, and right of redemption thereof, at one or more sales as a single entity or in parcels, and at such time and place upon such terms and after such notice thereof as may be required or permitted by law; or

(2) institute proceedings to foreclose this Mortgage; or

(3) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Note or in this Mortgage, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy as the Mortgagee shall elect.

Section 2.02 (a) The Mortgagee may adjourn from time to time any sale to be made pursuant to or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable law, the Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(b) Upon the completion of any sale or sales made pursuant to or by virtue of this Mortgage, the Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the purchaser or purchasers a good and sufficient instrument or instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold and shall execute and deliver to the appropriate governmental authority any affidavit, instrument, document and/or filing required pursuant to any applicable statute, ordinance, rule and/or regulation. The Mortgagee is hereby irrevocably appointed the true and lawful attorney of the Mortgagor, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property and rights so sold, and for that purpose the Mortgagee may execute all necessary instruments of conveyance, assignment and transfer, including, without limitation, any required affidavit, instrument, document and/or filing and may substitute one or more persons with like power. The Mortgagor hereby ratifies and confirms all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, the Mortgagor, if so requested by the Mortgagee, shall ratify and confirm any such sale or sales by executing and delivering to the Mortgagee or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of the Mortgagee, for that purpose. Any such sale or sales whether made under or by virtue of this Article II, under the power of sale herein granted, or under or by virtue of judicial proceedings of sale herein granted or of a

judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of the Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against the Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof, from, through or under the Mortgagor.

(c) In the event of any sale or sales whether made under or by virtue of this Article II, under the power of sale herein granted, or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the entire principal of, and interest on, the Note, if not previously due and payable, and all other sums required to be paid by the Mortgagor pursuant to this Mortgage, immediately thereupon, shall, anything in the Note or in this Mortgage to the contrary notwithstanding, become due and payable.

(d) The purchase money proceeds or avails of any sale made under or by virtue of this Article II, together with any other sums which then may be held by the Mortgagee under this Mortgage, whether under the provisions of this Article II or otherwise, shall be applied as follows:

First: To the payment of the costs and expenses of such sale, including, but not limited to, the reasonable compensation to the Mortgagee, its agents and attorneys, and any sums that may be due under and/or pursuant to any statute, rule, regulation and/or law that imposes any tax, charge, fee and/or levy in connection with and/or arising from the exercise of any right and/or remedy under this Mortgage or the recording or filing of any deed, instrument of transfer or other such document in connection with any such sale and of any judicial proceedings wherein the same may be made, and of all expenses, liabilities and advances made or incurred by the Mortgagee under this Mortgage, together with interest at the Involuntary Rate, on all advances made by the Mortgagee pursuant to this Mortgage.

Second: To the payment of the whole amount then due, owing or unpaid under the Note for principal and interest, in such order as the Mortgagee shall determine in its sole and absolute discretion with interest on the unpaid principal at the Involuntary Rate from and after the due date (whether by acceleration or otherwise).

Third: To the payment of the surplus, if any, to whomsoever may lawfully be entitled to receive the same.

(e) Upon any sale made under or by virtue of this Article II, whether made under the power of sale herein granted or under by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Indebtedness of the Mortgagor secured by this Mortgage the net sales price after deducting therefrom the expenses of the sale and the costs of the action and any other sums which the Mortgagee is authorized to deduct under this Mortgage.

Section 2.03 (a) If all of the principal shall be due and payable under the Note, whether by acceleration or otherwise, the Mortgagor shall pay to the Mortgagee (i) interest at the Involuntary Rate on the then unpaid principal of the Note, and on the sums required to be paid by the Mortgagor pursuant to any provision of this Mortgage from the due date thereof until the payment in full of the Indebtedness, and (ii) such further amount as shall be sufficient to cover the costs and expenses of collection, including reasonable compensation to the Mortgagee, its agents, and attorneys and any expenses incurred by the Mortgagee pursuant to the exercise of any of the Mortgage rights hereunder.

(b) In the event of a sale of the Mortgaged Property, or any part thereof, and of the application of the proceeds of sale, as in this Mortgage provided, to the payment of the debt hereby secured, the Mortgagee shall be entitled to enforce payment of, and to receive all amounts then remaining due and unpaid upon the Note, and to enforce payment of all other charges, payments, costs and amounts due under this Mortgage, and shall be entitled to recover judgment for any portion of the debt remaining unpaid, with interest at the Involuntary Rate. In case of the commencement of any case against the Mortgagor under any applicable bankruptcy, insolvency, or other similar law now or hereafter in effect or any proceedings for its reorganization or involving the liquidation of its assets, then the Mortgagee shall be entitled to prove the whole amount of principal and interest due upon the Note to the full amount thereof, and all other payments, charges, costs and amounts due under this Mortgage, without deducting therefrom any proceeds obtained from the sale of the whole or any part of the Mortgaged Property; provided, however, that in no case shall the Mortgagee receive a greater amount than such principal and interest and such other payments, charges, costs and amounts from the aggregate amount of the proceeds of the sale of the Mortgaged Property and the distribution from the estate of the Mortgagor.

(c) No recovery of any judgment by the Mortgagee and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of the Mortgagor shall affect in any manner or to any extent, the lien of this Mortgage upon the Mortgaged Property, or any part thereof, or of any liens, rights, powers or remedies of the Mortgagee hereunder, but such liens, rights, powers and remedies of the Mortgagee shall continue unimpaired as before.

(d) Any moneys collected by the Mortgagee under this Section 2.03 shall be applied by the Mortgagee in accordance with the provisions of subsection (d) of Section 2.02.

Section 2.04 The holder of this Mortgage, in any action to foreclose it, shall be entitled to the appointment of a receiver. Any such receiver shall have the right to immediate possession of the Mortgaged Property from and after his or her appointment.

Section 2.05 Notwithstanding the appointment of any receiver, liquidator or trustee of the Mortgagor, or of any of its property, or of the Mortgaged Property or any part thereof, the Mortgagee shall be entitled to retain possession and control of all property now or hereafter held by the Mortgagee under this Mortgage.

Section 2.06 No remedy herein conferred upon or reserved to the Mortgagee is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall

be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of the Mortgagee to exercise any right or power accruing upon any Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Event of Default or any acquiescence therein; and every power and remedy given by this Mortgage to the Mortgagee may be exercised from time to time as often as may be deemed expedient by the Mortgagee. Nothing in this Mortgage or in the Note shall affect the obligation of the Mortgagor to pay the principal of, and interest on, the Note in the manner and at the time and place therein respectively expressed.

Section 2.07 The Mortgagor shall not insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of any stay or extension or moratorium law, any exemption from execution or sale of the Mortgaged Property or any part thereof, wherever enacted, now or at any time hereafter in force, that may affect the covenants and terms of performance of this Mortgage, nor claim, take or insist upon any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale or sales thereof that may be made pursuant to any provision herein, or pursuant to the decree, judgment or order of any court of competent jurisdiction; nor, after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted to redeem the property so sold or any part thereof and the Mortgagor hereby expressly waives all benefit or advantage of any such law or laws, and covenants not to hinder, delay or impede the execution of any power herein granted or delegated to the Mortgagee, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted. The Mortgagor, for itself and all who may claim under it, waives, to the extent that it lawfully may, all right to have the Mortgaged Property marshalled upon any foreclosure hereof.

Section 2.08 During the continuance of any Event of Default, and pending the exercise by the Mortgagee of its right to exclude the Mortgagor from all or any part of the Mortgaged Property, the Mortgagor agrees to pay the fair and reasonable rental value for the use and occupancy of the Mortgaged Property, or any part thereof that is in its possession for such period, and upon default of any such payment, shall vacate and surrender possession of the Mortgaged Property, or any part thereof, to the Mortgagee or to a receiver, if any, and in default thereof may be evicted by any summary action or proceeding for the recovery of possession of the Mortgaged Property for non-payment of rent, however designated.

(End of Article II)

ARTICLE III.

MISCELLANEOUS

Section 3.01 In the event any one or more of the provisions contained in this Mortgage or in the Note shall for any reason be held to be invalid, illegal or unenforceable in any respect, such in validity, illegality or unenforceability shall not affect any other provision of this Mortgage, but this Mortgage shall be construed as if such provision had never been contained herein or therein.

Section 3.02 All notices hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when delivered in person or within two (2) business days after mailing or within one (1) business day after being sent by reliable overnight courier (such as Federal Express) to any party hereto at such party's address set forth in the first paragraph of this Mortgage:

Section 3.03 Whenever notice is required herein, the giving of such notice may be waived in writing by the person or persons entitled to receive such notice.

Section 3.04 All of the grants, terms, conditions, provisions and covenants of this Mortgage shall run with the land, shall be binding upon the Mortgagor and shall inure to the benefit of the Mortgagee, subsequent holders of this Mortgage and their respective successors and assigns. For the purpose of this Mortgage, the term "Mortgagor" shall include and refer to each of the mortgagors named herein, any subsequent owner of the Mortgaged Property, or any part thereof, and their respective heirs, executors, legal representatives, successors and assigns. If there is more than one Mortgagor, all their undertakings hereunder shall be joint and several, and each representation, warranty, covenant and agreement in this Mortgage shall apply to each and all of such Mortgagors named herein.

Section 3.05 The enforcement of this Mortgage shall be governed, construed and interpreted by the laws of the State of New York, without regard to the principle of conflicts of laws. Nothing in this Mortgage, the Note or in any other agreement between the Mortgagor and the Mortgagee shall require the Mortgagor to pay, or the Mortgagee to accept, interest in an amount that would subject the Mortgagee to any penalty or forfeiture under applicable law. If the payment of any charges, fees or other sums due hereunder or under the Note or any such other agreement that are or could be held to be in the nature of interest and that would subject the Mortgagee to any penalty or forfeiture under applicable law, then, ipso facto, the obligations of the Mortgagor to make such payment shall be reduced so that interest under the Note shall be the highest rate authorized under applicable law. Should the Mortgagee receive any payment that is or would be in excess of the highest rate authorized under applicable law, such payment shall be deemed to have been made in error, and shall automatically be applied to reduce the outstanding principal balance of the Indebtedness.

Section 3.06 The Mortgagor represents and warrants that the Improvements currently are, and covenants to keep the Improvements, in compliance with all applicable

statutes, regulations, and other laws (including all applicable zoning, building, fire and health codes and ordinances and all permits, covenants and restrictions affecting the Premises).

Section 3.07 Except as expressly set forth herein to the contrary, whenever the consent or approval of the Mortgagee is required, the decision whether to consent or approve shall be in the sole and absolute discretion of the Mortgagee.

Section 3.08 This Mortgage, the Note and all other documents executed and delivered in connection herewith shall be given a fair and reasonable construction in accordance with the intention of the parties as expressed herein and therein and without regard for any rule of law requiring construction against the party that prepared such instruments.

Section 3.09 This Mortgage shall constitute a "security agreement," as such term is defined in the Code. By executing and delivering this Mortgage, the Mortgagor has granted, in the same manner and with the same effect described in the Granting Clause hereof, to the Mortgagee, a security interest in the Chattels, the Intangibles and those items listed as (f) -(j) in the Granting Clause of this Mortgage (collectively, "Documents"). The Mortgagor authorizes the Mortgagee to file any financing statements or other documents or instruments, with or without the Mortgagor's signature, that the Mortgagee may require to protect, perfect or establish any lien or security interest granted to the Mortgagee and further authorizes the Mortgagee to authenticate or sign the Mortgagor's name on same. If any Event of Default shall occur, the Mortgagee shall have, in addition to any and all other rights and remedies set forth in this Mortgage, and may exercise without demand, any and all rights and remedies granted to a secured party under the Code, including, but not limited to, the right to take possession of the Chattels, the Documents, and the Intangibles, or any part thereof, and the right to advertise and sell the Chattels, the Documents, and the Intangibles, or any part thereof, pursuant to and in accordance with the power of sale provided for in this Mortgage. The Mortgagor agrees that any notice of public or private sale with respect to the Chattels, the Documents, and the Intangibles, or any part thereof, shall constitute reasonable notice if it is sent to the Mortgagor not less than five (5) days prior to the date of any such sale. The proceeds of any such sale of the Chattels, the Documents, and the Intangibles, or any part thereof, shall be applied in the manner set forth in Section 2.02(d) of this Mortgage.

Section 3.10 All covenants hereof shall be construed as affording to the Mortgagee rights additional to and not exclusive of the rights conferred under the provisions of any applicable law.

Section 3.11 This Mortgage cannot be altered, amended, waived, modified or discharged orally, and no executory agreement shall be effective to modify, waive or discharge, in whole or in part, anything contained in this Mortgage unless it is in writing and signed by the party against whom enforcement of the modification, alteration, amendment, waiver or discharge is sought.

Section 3.12 The Mortgagor acknowledges that it has received a true copy of this Mortgage.

Section 3.13 This Mortgage may be executed in any number of counterparts, and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts shall together constitute but one and the same Mortgage.

Section 3.14 The information set forth on the cover hereof is hereby incorporated herein.

Section 3.15 (a) As used in this Section 3.15, the following capitalized terms shall have the meanings set forth below:

“Disposal” means the intentional or unintentional abandonment, discharge, deposit, injection, dumping, spilling, leaking, storage, burning, thermal destruction or placing of any substance so that it or any of its constituents may enter the Environment.

“Environment” means any water including but not limited to surface water and ground water or water vapor, any land including land surface or subsurface, stream sediments, air, fish, wildlife, plants, and all other natural resources or environmental media.

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

“Environmental Permits” means all licenses, permits, approvals, authorizations, consents or registrations required by any applicable Environmental Laws and all applicable judicial and administrative orders in connection with ownership, lease, purchase, transfer, closure, use and/or operation of the Premises and/or as may be required for the storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances.

“Environmental Questionnaire” means a questionnaire and all attachments thereto concerning: 1) activities and conditions affecting the Environment at the Premises, or 2) the enforcement or possible enforcement of any Environmental Law against the Mortgagor.

“Environmental Report” means a written report prepared for the Mortgagee by an environmental consulting or environmental engineering firm.

“Hazardous Substances” means, without limitation, any explosives, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum and petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances and any other material defined as a hazardous substance in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601(14).

"Release" has the same meaning as given to that term in Section 101(22) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601(22), and the regulations promulgated thereunder.

(b) The Mortgagor represents and warrants to the Mortgagee that:

(i) no asbestos or urea formaldehyde foam insulation is located in any of the buildings or structures improving the Premises,

(ii) no above-ground or underground storage tanks containing Hazardous Substances are or have been located at the Premises,

(iii) radon gas is not present in buildings on any of the Premises in concentrations exceeding 4 pCi/l,

(iv) no electrical transformers, capacitors, lighting ballasts or other electric equipment on any of the Premises contain polychlorinated biphenyls (PCBs) in concentrations exceeding amounts allowed by any Environmental Law,

(v) the Premises are not being used and have not been used for the Disposal of any Hazardous Substance or for the treatment, storage or Disposal of Hazardous Substances, except for substances used in ordinary office cleaning in minor quantities, which are being held in accordance with all Environmental Laws and Environmental Permits,

(vi) no Release of a Hazardous Substance has occurred or is threatened on, at, or from the Premises,

(vii) neither the Mortgagor nor the Premises is subject to any existing, pending or threatened suit, claim, notice of violation or request for information under any Environmental Law, and

(viii) the Mortgagor is in compliance with all Environmental Laws applicable to its operations at the Premises.

(c) The Mortgagor covenants and agrees with the Mortgagee that so long as this Mortgage remains a lien on the Premises that:

(i) the Mortgagor shall comply with all Environmental Laws in connection with its ownership or use of the Premises or any related property,

(ii) Mortgagor shall not suffer, cause or permit the Disposal of Hazardous Substances at the Premises,

(iii) the Mortgagor shall not suffer, cause or permit the generation, handling, processing, use, or storage of Hazardous Substances on the Premises except in compliance with all Environmental Laws and Environmental Permits,

(iv) the Mortgagor shall promptly notify the Mortgagee in the event of the Disposal of any Hazardous Substance at the Premises, or any Release, or threatened Release, of a Hazardous Substance, from the Premises,

(v) the Mortgagor shall allow the Mortgagee and its agents access to the Premises at all reasonable times and permit such inspections, tests, drilling of monitoring wells, soil borings or other analysis of the Premises as the Mortgagee may reasonably require,

(vi) the Mortgagor shall, at the Mortgagee's request, provide to the Mortgagee, at the Mortgagor's expense, updated answers to Environmental Questionnaires and/or Environmental Reports concerning the Premises, and

(vii) the Mortgagor shall deliver promptly to the Mortgagee (A) copies of any documents received from the United States Environmental Protection Agency or any state, county or municipal environmental or health agency concerning the Mortgagor's operations at the Premises, and (B) copies of any documents submitted by the Mortgagor to the United States Environmental Protection Agency or any state, county or municipal environmental or health agency concerning its operations at the Premises.

(d) The Mortgagor agrees to indemnify, defend, and hold harmless the Mortgagee 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 the Mortgagee 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 Premises. The liability of the Mortgagor to the Mortgagee under the covenants of this Section 3.15 is not limited by any exculpatory provisions in the Note or in any of the other documents securing the loan and shall survive any foreclosure of this Mortgage, transfer of the Premises by deed in lieu of foreclosure or any other transfer or termination of this Mortgage regardless of the means of such transfer or termination.

(e) If the Mortgagor defaults on any of its obligations pursuant to this Mortgage, the Note or any other loan document, the Mortgagee or its designee shall have the right, upon reasonable notice to the Mortgagor, to enter upon the Premises and conduct such tests, investigations and samplings, including but not limited to, installation of monitoring wells, as shall be reasonably necessary for the Mortgagee to determine whether any Disposal of Hazardous Substances has occurred on, at or near the Premises. The costs of all such tests, investigations and samplings shall be added to the balance of the Indebtedness.

(f) The Mortgagor agrees that the Mortgagee shall not be liable in any way for the completeness or accuracy of any Environmental Report or the information contained therein. The Mortgagor further agrees that the Mortgagee has no duty to warn the Mortgagor 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 Mortgagee.

Section 3.16 If and to the extent the Premises are located in the State of New York, then notwithstanding anything contained herein to the contrary, the maximum amount of indebtedness secured by this Mortgage at execution or which under any contingency may become secured hereby at any time hereafter is \$5,010,000.00 plus interest thereon, plus all amounts expended by the Mortgagee after default by the Mortgagor that constitute payment of (i) taxes, charges or assessments that may be imposed by law upon the Premises; (ii) premiums on insurance policies covering the Premises; (iii) expenses incurred in protecting or upholding the lien of this Mortgage, including, but not limited to the expenses of any litigation to prosecute or defend the rights and lien created by this Mortgage; (iv) expenses incurred in protecting the collateral encumbered by this Mortgage; or (v) any amount, cost or charge to which the Mortgagee becomes subrogated upon payment, whether under recognized principles of law or equity, or under express statutory authority.

Section 3.17 No course of dealing between Mortgagor and Mortgagee and no act, delay or omission by Mortgagee in exercising any right or remedy hereunder, including, without limitation, acceptance of any partial payment on the Indebtedness, shall operate as a waiver of any right, remedy or default hereunder, or of any other right or remedy, and no single or partial exercise of any right or remedy shall preclude any other or further exercise thereof or the exercise of any other right or remedy. All rights and remedies of Mortgagee hereunder are cumulative.

Section 3.18 The Mortgagee may release any portion or portions of or interest or interests in the Mortgaged Property 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 the Mortgagee may approve, and may change the rate of interest in accordance with the provisions of the Note, and until the Indebtedness shall have been paid in full, every person who shall be or become personally liable for the Indebtedness shall be bound and continue to be liable for the Indebtedness as fully and effectively as if his consent had been previously obtained.

Section 3.19 If the Mortgagee shall receive from or on behalf of the Mortgagor any sum less than the full amount then due and payable, the Mortgagee may, but shall not be obligated to, accept the same and if the Mortgagee 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 desirable to maintain the lien of this Mortgage or to any expenses, including costs and attorneys' fees and disbursements, incurred by the Mortgagee in attempting to collect any amount owing on the Indebtedness and in bringing any foreclosure proceedings with respect to this Mortgage.

Section 3.20 Without limiting any other right of Mortgagee, whenever Mortgagee has the right to declare any Indebtedness to be immediately due and payable (whether or not it has so declared), Mortgagee at its sole election may set off against the Indebtedness any and all moneys then owed to Mortgagor by Mortgagee in any capacity, whether or not the Indebtedness or the obligation to pay such moneys owed by Mortgagee is then due, and

Mortgagee shall be deemed to have exercised such right of setoff immediately at the time of such election even though any charge therefor is made or entered on Mortgagee's records subsequent thereto.

Section 3.21 The Mortgagor recognizes that, in general, borrowers who experience difficulties in honoring their loan obligations, in an effort to inhibit or impede lenders from exercising the rights and remedies available to lenders pursuant to mortgages, notes, loan agreements or other instruments evidencing or affecting loan transactions, frequently present in court the argument, without merit, that some loan officer or administrator of the lender made an oral modification or made some statement that could be interpreted as an extension or modification or amendment of one or more debt instruments and that the borrower relied to its detriment upon such "oral modification of the loan document". For that reason, and in order to protect the Mortgagee from such allegations in connection with the transactions contemplated by this Mortgage, the Mortgagor acknowledges that this Mortgage, the Note, and all instruments referred to in any of them can be extended, modified or amended only in writing executed by the Mortgagee and that none of the rights or benefits of the Mortgagee can be waived permanently except in a written document executed by the Mortgagee. The Mortgagor further acknowledges the Mortgagor's understanding that no officer or administrator of the Mortgagee has the power or the authority from the Mortgagee to make an oral extension or modification or amendment of any such instrument or agreement on behalf of the Mortgagee.

Section 3.22 Except as hereinafter provided, the Agency, or any present or future officer, shareholder, member, or director of the Agency, or any of its authorized signatories, designees or managers, or any of its successors or assigns, shall not be personally liable for the payment of any sums due hereunder or the performance of any obligations of the Agency hereunder or under the Note, Mortgage or any other loan document executed in connection herewith (collectively, with the Note and Mortgage, "Loan Documents"). No judgment for the repayment of the Indebtedness will be enforced against the Agency, or any present or future officer, shareholder, member, or director of the Agency, or any of their authorized signatories, designees or managers, or any of its successors or assigns, personally, or any property of the Agency, or any present or future officer, shareholder, member, or director of the Agency, or any of its authorized signatories, designees or managers, or any of its successors or assigns, other than the Property and any other security furnished under the Loan Documents, in any action to foreclose this Mortgage or to otherwise realize upon any security furnished under the Loan Documents or to collect any amount payable under the Loan Documents. Notwithstanding the foregoing nothing herein contained shall be construed as prohibiting Mortgagee from exercising any and all remedies which the Loan Documents permit, including the right to bring actions or proceedings against the Agency and to enter a judgment against Mortgagor, so long as the exercise of any remedy does not extend to execution against or recovery out of any property of Agency other than the security furnished under the Loan Documents.

Section 3.23 City of Peekskill Industrial Development Agency Special Obligations; Recording.

Notwithstanding any other terms or conditions contained in this Mortgage:

(a) This Mortgage is executed by the City of Peekskill County Industrial Development Agency (the "Agency") solely for the purpose of subjecting its rights under the Agency Lease and Leaseback Agreement to the rights of Mortgagee (hereinafter, the "Lender") and for no other purpose. All representations, covenants, and warranties of the Agency and the Mortgagor herein are hereby deemed to have been made by the Mortgagor (hereinafter, the "Company") 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 Section 6.1 of the Leaseback Agreement.

(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, City of Peekskill or Westchester County, New York, and neither the State of New York, City of Peekskill nor Westchester County, 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 Property by means of this Mortgage or any other Loan Documents. Neither the members of the Agency, nor any person executing this Mortgage on its behalf shall be liable personally under this Mortgage. No recourse shall be had for the payment of the principal or interest on the Indebtedness or for any claim based on the Mortgage, or otherwise in respect hereof, or based upon or in respect of this Mortgage, 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 Company), 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 Mortgage. Any judgment or decree shall be enforceable against the Agency only to the extent of its interest in the Property 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 Property.

(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 ten (10) 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 ten (10) 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 Company) 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 Company) 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 Lender shall not be construed in any way so as to effect or impair the lien of this Mortgage or the Lender'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 Lender in any foreclosure proceedings.

(d) The Agency will record or cause this Mortgage to be recorded in the office of the Westchester 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 Mortgage.

(e) **HOLD HARMLESS PROVISIONS:** The Company agrees that the Agency, its directors, members, officers, agents (except the Company) and employees shall not be liable for and agrees to defend, indemnify, release and hold the Agency, its director, members, officers, agents (except the Company) 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 Property or arising by reason of or in connection with the use thereof or under the Mortgage, or (ii) liability arising from or expense incurred by the project work or the Agency's acquiring, owning and leasing of the Property, including without limiting the generality of the foregoing, all claims arising from the breach by the Company of any of its covenants contained herein and all causes of action and reasonable attorneys' fees (whether by reason of third party claims or by reason of the enforcement of any provision of the Mortgage (including, without limitation, this Section) and any other expenses incurred in defending any claims, suits or actions which may arise as a result 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, officers, agents (except the Company) or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence on the 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. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law, and upon the application of such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

(f) Notwithstanding any other provisions of this Mortgage, the obligations of the Company pursuant to this Section shall remain in full force and effect after the termination of the Mortgage 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 payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all reasonable expenses and charges incurred by the Agency, or its respective members, directors, officers, agents (except the Company) and employees, relating to the enforcement of the provisions herein specified.

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

(h) Upon the termination of the Lease Agreement for any reason whatsoever, and at the sole cost and expense of the Company, the Mortgagee shall prepare, execute and deliver to the Agency and the Company, and the Agency and the Company shall execute, any documents necessary to amend the Mortgage to remove the Agency as a party thereto.

Section 3.24 (a) Mortgagor and Agency warrant and represent to Mortgagee that, as of the date of this Mortgage, each of the Agency Lease and the Leaseback Agreement is in full force and effect in accordance with its terms.

(b) Mortgagor shall deliver to Mortgagee, within ten (10) days after Mortgagor's receipt, a true and correct copy of each notice, demand, complaint or request from Agency under, or with respect to, the Agency Lease and/or the Leaseback Agreement.

(c) Mortgagor shall (i) pay all sums of money due and payable at any time and from time to time under the Agency Lease and the Leaseback Agreement as and when such sums become due and payable, but in any event before the expiration of any grace period provided in the Agency Lease and/or the Leaseback Agreement for the payment of any such sum, and (ii) at all times fully perform, observe and comply with all other terms, covenants and conditions of the Agency Lease and the Leaseback Agreement to be performed, observed or complied with by Mortgagor.

(d) Mortgagor shall not, without the prior written consent of Mortgagee (which may be given or withheld by Mortgagee in its discretion), (i) terminate or cancel the Agency Lease, (ii) amend, modify or change the Agency Lease or the Leaseback Agreement, either orally or in writing, or waive any of Mortgagor's rights under the Agency Lease or Leaseback Agreement.

[The remainder of this page has been intentionally left blank; signature page follows]

IN WITNESS WHEREOF, this Building Loan Mortgage and Security Agreement has been duly executed by the Mortgagor and the Agency as of the date first above written.

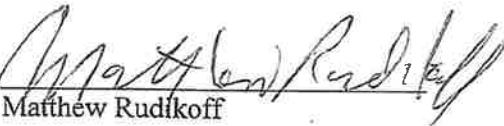
MORTGAGOR

216 SOUTH DIVISION LLC

By: _____
Paul F. Guillaro
Manager

AGENCY

CITY OF PEEKSKILL INDUSTRIAL
DEVELOPMENT AGENCY

By: 
Matthew Rudikoff
Executive Director

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

On the ____ day of April the year 2021, before me, the undersigned, personally appeared Paul F. Guillaro, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

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

On the 12th day of April in the year 2021, before me, the undersigned, personally appeared Matthew Rudikoff, 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.


Virtual Notary
Susan E. McStravick
Notary Public

SUSAN E MCSTRAVICK
Notary Public, State of New York
Monroe County
Registration No. 01MC8301744
Commission Expires April 21, 2022

IN WITNESS WHEREOF, this Building Loan Mortgage and Security Agreement has been duly executed by the Mortgagor and the Agency as of the date first above written.

MORTGAGOR

216 SOUTH DIVISION LLC

By: 
Paul F. Guillaro
Manager

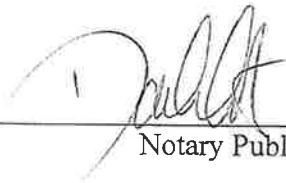
AGENCY

CITY OF PEEKSKILL INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Matthew Rudikoff
Executive Director

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

On the 14 day of April the year 2021, before me, the undersigned, personally appeared Paul F. Guillaro, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

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

DAVID M. GLADSTONE
Notary Public, State of New York
Registration No. 01GL4678167
Qualified in Westchester County
Commission Expires Sept. 30, 2022

On the ____ day of April in the year 2021, before me, the undersigned, personally appeared Matthew Rudikoff, 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

Schedule A

ALL that certain parcel of land situate in the City of Peekskill, County of Westchester, and State of New York that was heretofore conveyed by Patrick Brown & Kimberly R. Turner to 216 South Division LLC by that certain deed dated December 5, 2019, and recorded in the Westchester County Clerk's office as Document No. 593383560, that by more recent survey is bounded and described as follows:

BEGINNING at the point on the northwesterly line of Second Street where it is met by the line dividing the land so conveyed to 216 South Division LLC, on the northeast, from lands formerly of Wiley, formerly of Clinton and now or formerly of Alsina, on the southwest, which point is distant 119.94 feet southwesterly, measured along the said northwesterly line of Second Street from the southerly end of the curve with a radius of 6.64 feet and a length of 13.98 feet that connects it to the southwesterly line of South Division Street, which point occupies coordinate position

N 894,902.87 (y)

E 651,684.76 (x)

of the New York State Coordinate System, East Zone (NAD 83, expressed in feet).

THENCE from the said point of beginning along the said Alsina lands and continuing along lands formerly of Clinton and now or formerly of Deutsche Bank National Trust Company, Trustee

N 30°58'30" W 100.62 feet, and

N 27°36'20" W 113.84 feet,

to a point on the southeasterly line of Fr. Ambro Way (formerly known as 1st Street). Thence northeasterly along the said southeasterly line of Fr. Ambro Way

N 62°23'40" E 6.00 feet

to a point on the southwesterly line of South Division Street. Thence southeasterly along the southwesterly line of South Division Street, first on a non-tangent curve to the left, the center of which bears N41°27'59"E, the central angle of which is 19°32'07", the radius of which is 449.97 feet for 153.42 feet, and then

S 68°04'08" E 67.91 feet

to a point. Thence southeasterly along the aforementioned tangent curve to the right, the central angle of which is 120°37'48", the radius of which is 6.64 feet for 13.98 feet, to a point on the northwesterly line of Second Street. Thence southwesterly along the northwesterly line of Second Street

S 52°33'40" W 119.94 feet

to the point or place of beginning, containing 13,144 square feet, more or less.

N.B. The meridian (North Point) and coordinate values used in the foregoing description refer to the New York State Coordinate System, East Zone, NAD 1983, expressed in feet. The meridian is True North at 74°30'00" West Longitude and bears 27°20'00" clockwise from the meridian in the deed, Document No. 593383560. The distances used in this description are Grid Distances. To obtain Ground Distances divide the Grid Distances by the Combined Scale Factor 0.9999262. The substance of this note should remain with this description in any instrument to which it may become a part.

Schedule B

Permitted Exceptions

The matters set forth in Schedule B to the policy issued by Old Republic National Title Insurance Company, through its agent, Sutton Land Title Agency, insuring the lien of this Mortgage (Title No. SL-007370).