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BNS I, LLC  
(Mortgagor)

And

CITY OF PEEKSKILL INDUSTRIAL DEVELOPMENT AGENCY  
(Agency)

in favor of

STERLING NATIONAL BANK,  
as administrative agent and as lender for itself and on behalf of certain other lenders  
(Mortgagee)

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**PROJECT MORTGAGE AND SECURITY AGREEMENT (THIRD)**

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Dated:	March 8, 2021
Street Address:	1 Park Place Peekskill, New York
Section:	33.30
Block:	5
Lot:	1
County:	Westchester
State:	New York

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RECORD AND RETURN TO:

Sterling National Bank  
One Jericho Plaza  
Jericho, New York 11753  
Attn: Recording Department

## **PROJECT MORTGAGE AND SECURITY AGREEMENT (THIRD)**

THIS PROJECT MORTGAGE AND SECURITY AGREEMENT (THIRD) (this "Mortgage") is made March 8, 2021, by **BNS I, LLC**, a New York limited liability, having an address at 31-10 37<sup>th</sup> Avenue, Suite 500, Long Island City, New York 11101 ("**Mortgagor**"), and **CITY OF PEEKSKILL INDUSTRIAL DEVELOPMENT AGENCY**, a New York public benefit corporation, having an address at 840 Main Street, Peekskill, New York 10566 (the "**Agency**"), to **STERLING NATIONAL BANK**, having a place of business at One Jericho Plaza, Jericho, New York 11753, as administrative agent, and as lender, for itself and on behalf of certain other lenders, and any successors appointed (the "**Mortgagee**").

### **DEFINITION OF TERMS**

Unless the context clearly indicates a contrary intent, or unless otherwise specifically provided in this Mortgage, words used in this Mortgage shall be used interchangeably in singular or plural form. Whenever the context may require, any pronouns used in this Mortgage shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa. In addition, the following terms are defined as provided below:

"**Agency**" means all persons or entities identified as "Agency" in the first paragraph of this Mortgage, together with their successors and assigns. The rights and obligations of the Agency and Mortgagor with respect to the Property (as defined herein) are governed pursuant to (i) a certain Lease Agreement, by and between the Agency and Mortgagor, dated as of the date hereof (the "Company Lease Agreement"), a Memorandum of which was recorded in the Westchester County Clerk's Office, and (ii) a certain Leaseback Agreement, by and between the Agency and Mortgagor, dated as of the date hereof (the "Leaseback Agreement"), a Memorandum of which was recorded in the Westchester County Clerk's Office.

"**Assessments**" is defined in Section 1.14 hereof.

"**Building Loan**" shall mean the building loan to Mortgagor evidenced by (i) that certain Building Promissory Note in the principal amount of up to \$20,190,042.86 of even date herewith by Mortgagor in favor of Sterling National Bank in care of Mortgagee, as administrative agent ("Administrative Agent") and (ii) that certain Building Promissory Note in the principal amount of up to \$8,076,017.14 of even date herewith by Mortgagor in favor of The Bank of Greene County ("Greene") in care of Administrative Agent, each advanced pursuant to that certain Building Loan Agreement (defined below) and secured, in part, by that certain Building Mortgage (defined below), in the amount of up to Twenty-Eight Million Two Hundred Sixty-Six Thousand Sixty and 00/100 DOLLARS (\$28,266,060.00).

"**Business Day**" means any day other than a Saturday, a Sunday or any other day on which Mortgagee or the national banking associations are not open for business.

"**Damage**" is defined in Section 1.13(c) hereof.

"**Debt**" means the indebtedness, interest and all other sums due under the Note (defined below), this Mortgage and the other Loan Documents (defined below).

**“Default Rate”** is defined in Section 3.6 hereof.

**“Environmental Rule”** means collectively all present and future laws, statutes, common law, ordinances, rules, regulations, orders, codes, licenses, permits, decrees, judgments, directives (or the equivalent) of or by any Governmental Authority and relating to or addressing the protection of the environment or human health or safety, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), and the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), and the regulations adopted and publications promulgated pursuant thereto.

**“Event of Default”** is defined in Section 3.1 hereof.

**“Governmental Authority”** means each of the following: (a) the federal government, (b) any state or local government or any political subdivision of any state or local government, or (c) any agency, court or body of either the federal government, or any state or local government or any other political subdivision of any state or local government, exercising executive, legislative, judicial, regulatory or administrative functions.

**“Guarantor”** means collectively, Efstathios Valiotis and any other Person (defined below) now or hereafter guaranteeing payment of the Debt (or any portion thereof) or performance by the Mortgagor of any of the terms of this Mortgage and each such person’s respective heirs, executors, administrators, legal representatives, successors and assigns.

**“Guaranty”** means any indemnity agreement or guaranty made by any Guarantor to the Mortgagee.

**“Hazardous Substance”** means any material or substance that, whether by its nature or use, is now or hereafter defined or regulated as a hazardous waste, hazardous substance, pollutant or contaminant under any Environmental Rule, or which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous or which is or contains petroleum, gasoline, diesel fuel, another petroleum hydrocarbon product, asbestos, asbestos-containing materials or polychlorinated biphenyls.

**“Including”** or **“including”** means “including, without limitation.”

**“Loan”** shall mean the loan to Mortgagor evidenced by the Note and secured, in part, by this Mortgage, in the amount of up to Two Million Seven Hundred Thirty-Three Thousand Nine Hundred Forty and 00/100 DOLLARS (\$2,733,940.00).

**“Loan Documents”** shall mean this Mortgage, the Note, the Project Loan Agreement, any Guaranty, and each other instrument, certificate and other documents executed in connection with the providing of the Loan, or any or all of the foregoing, all as the context may require, in each case as the same may be amended, supplemented or otherwise modified from time to time.

**"Mortgage"** means this Project Mortgage and Security Agreement (Third), as the same may be amended, supplemented or otherwise modified from time to time.

**"Mortgagee"** means the entity identified as "Mortgagee" in the first paragraph of this Mortgage, or any subsequent holder of the Note and this Mortgage.

**"Mortgagor"** means all persons or entities identified as "Mortgagor" in the first paragraph of this Mortgage, together with their successors and assigns.

**"Note"** means , collectively, (i) that certain Project Promissory Note in the principal amount of up to \$1,952,874.29 of even date herewith by Mortgagor in favor of Sterling National Bank in care of Administrative Agent and (ii) that certain Project Promissory Note in the principal amount of up to \$781,125.71 of even date herewith by Mortgagor in favor of Greene in care of Administrative Agent for the Loan, as the same may be amended, supplemented or otherwise modified from time to time, and secured, in part, by this Mortgage.

**"Person"** or **"person"** means an individual, corporation, partnership, limited liability partnership, limited liability company, trust, unincorporated association, government, governmental authority, or other entity.

**"Project Loan Agreement"** means that certain Project Loan Agreement of even date herewith executed by Mortgagor and Mortgagee with respect to the Improvements (defined below) to be constructed on the Land (defined below).

**"Superior Mortgage"** is defined in Section 4.27 hereof

**"Title Policy"** means that certain commitment of title insurance bearing Title No.: CORE24809 and issued by Core Title Services, as agent for First American Title Insurance Company.

The defined terms used in this Mortgage which are not defined above have the meanings set forth elsewhere in this Mortgage.

#### **GRANTING CLAUSE**

In order to secure the payment of the Debt, the Mortgagor and Agency have mortgaged, given, granted, bargained, sold, aliened, enfeoffed, conveyed, confirmed and assigned, and by these presents does mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm and assign unto the Mortgagee forever all of the respective rights, title and interests of the Mortgagor and Agency now owned, or hereafter acquired, in and to the property, rights and interests specified below (such property, rights and interests being hereinafter collectively referred to as, the **"Property"**):

(a) all property described in Exhibit A annexed to this Mortgage (such property being called, the **"Land"**, which term includes all property enclosed within the perimeter description set forth in Exhibit A, including, without limitation, all minerals and other property located below the surface enclosed by such perimeter description, and all other rights and other property located on

or above such surface or relating to the airspace above such surface);

(b) all buildings, structures, fixtures and other improvements now or hereafter located on the Land (including, but not limited to, furnaces, boilers, oil burners, radiators and piping, coal stokers, fuel lines, plumbing and bathroom fixtures, refrigeration, air conditioning and sprinkler systems, wash-tubs, sinks, gas and electric fixtures, stoves, ranges, ovens, disposals, dishwashers, hood and fan combinations, awnings, screens, window shades, elevators, motors, dynamos, refrigerators, kitchen cabinets, incinerators, kitchen equipment, laundry equipment, plants and shrubbery), and all alterations and replacements to any of the above items specified in this subparagraph (all of the above items in this subparagraph being collectively called, the **"Improvements"**), and all cash and non-cash proceeds thereof, being the same Land and Improvements which were conveyed to Mortgagor by deed from BNS Buildings, LLC recorded May 10, 2000, in the Westchester County Recording Office as Control No. 401080709.

(c) all of the estate, right, title, claim or demand of any nature whatsoever of the Mortgagor, either in law or in equity, in possession or expectancy, in and to: (i) the Land, (ii) all additional lands and estates hereafter acquired by Mortgagor for use in connection with the Land and all lands and estates that may, from time to time, by supplemental mortgage or additional agreement, be made subject to the lien of this Mortgage, (iii) the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof, and (iv) all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Land and all other interests which are included in the Property;

(d) all easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, mineral rights, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Property (including, without limitation, all zoning rights, air rights, development rights and similar or comparable rights of any nature whatsoever now or hereafter appurtenant to the Land or now or hereafter transferred to the Land or the Mortgagor);

(e) (i) all machinery, apparatus, equipment, fittings, fixtures and other property of every kind and nature whatsoever and all additions to any such property, and all renewals and replacements of any such property, and all substitutions for any such property (all such machinery, apparatus, equipment, fittings, fixtures and other property, and all additions, renewals, replacements, and substitutions being called, the **"Equipment"**), to the extent such Equipment is now owned or is hereafter acquired by the Mortgagor, if: (1) such Equipment is now or hereafter located upon or in, or attached to, any portion of the Property, or appurtenances thereto, or (2) such Equipment is not located on the Property but is purchased with the proceeds of the Debt, or (3) such Equipment is used or usable in connection with the present or future improvement, maintenance, operation and occupancy of the Property, and (ii) all building equipment, materials and supplies of any nature whatsoever owned by the Mortgagor, now or hereafter located upon, or intended to be incorporated in, the Property, and whether stored at the Mortgage Property or elsewhere (all the items specified above in this paragraph being called, the **"Tangible Personality"**), and (iii) all right, title and interest of the Mortgagor in and to any of the Tangible

Personalty which may be subject to any "security agreement" as defined in the Uniform Commercial Code of the State of New York (the "**Uniform Commercial Code**"), superior in lien to the lien of this Mortgage, and (iv) all proceeds and products of each of the items specified above in this paragraph.

(f) all awards and payments, including, without limitation, interest thereon, and the right to receive such awards and payments, which may be made with respect to the Property, whether (i) from the exercise of the right of eminent domain (including any transfer made in lieu of the exercise of said right), or (ii) for any other injury to or decrease in the value of the Property;

(g) all leases, licenses, concessions, occupancy agreements, and other agreements affecting the use or occupancy of the Property now or hereafter entered into and all guarantees of any of the foregoing (all such leases, licenses, concessions, occupancy agreements, and other agreements, and guarantees being collectively called, the "**Leases**"), and all rents, issues and profits of the Property (such rents, issues and profits being called, the "**Rents**"), and all right, title and interest of Mortgagor under each Lease, including, without limitation, all cash or securities, if any, deposited under each Lease to secure performance by any tenant or occupant under such Lease of its respective obligations under such Lease and the right to enforce, whether by action at law or in equity or by other means, all provisions, covenants and agreements of such Lease;

(h) all rights in and to (i) all contracts from time to time executed by the Mortgagor, or any manager or agent on its behalf, relating to the ownership, construction, maintenance, repair, operation, occupancy, sale or financing of the Property, and (ii) all agreements relating to the purchase or lease of the Property or any property which is adjacent to, or is or can be used in common with, the Property, together with the right to exercise all options under each such contract or agreement, and under each lease of any Tangible Personalty, (iii) all consents, franchises, licenses, building permits, certificates of occupancy and other governmental approvals relating to construction, completion, occupancy, use or operation of the Property, and (iv) all drawings, plans, specifications and similar or related items relating to the Property;

(i) all trade names, trademarks, logos, copyrights, patents, intellectual property, good will and books and records, electronic media, computer software, and data in paper, electronic, microwave, and other formats, relating to or used in connection with the operation of the Property; and all general intangibles related to the operation of the Property now existing or hereafter arising;

(j) all accounts and revenues arising from the operation of the Property, including, without limitation, (i) each right to payment now existing or hereafter arising for license or rental of any room, suite, or other space, or for goods sold or leased or for services rendered, whether or not yet earned by performance, arising from the operation of the Property, and (ii) all rights to payment from each credit-card, charge-card, or debit-card organization or entity, (iii) any monies deposited by Mortgagor into one or more bank accounts, and any investments made by Mortgagor for the benefit of Mortgagor or Mortgagee, (iv) all utility or municipal deposits made by or on behalf of Mortgagor or made in connection with the Property, and (v) all substitutions for each such account or item of revenue, all proceeds of each such account or item of revenue (whether cash or non-cash, movable or immovable, tangible or intangible) received upon the sale, exchange, transfer, collection or other disposition or substitution of any such account or item of revenue, and any and all of the foregoing items specified in this paragraph, and all proceeds from each such

item;

(k) all proceeds of, and all unearned premiums on, each insurance policy covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu of such proceeds, for damage to the Property;

(l) Mortgagor's interest in all claims and causes of action relating directly or indirectly to the Property, whether such claims or causes of action arise in Mortgagor's name or such claims or causes of action are acquired by Mortgagor, directly or indirectly, by subrogation or otherwise; and the right, in the name and on behalf of the Mortgagor, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of the Mortgagee in the Property;

(m) all proceeds, whether cash or non-cash, of each of the foregoing items specified in the subsections (a) through (l) above;

(n) all of the Mortgagor's claims and rights to the payment of damages arising from any rejection of a Lease under or pursuant to the Bankruptcy Code, 11 U.S.C. §101 et seq; and

(o) the proceeds of any loan secured by any interest in the Property described in the subsections (a) through (m) above.

TO HAVE AND TO HOLD the above granted and described Property unto and to the proper use and benefit of the Mortgagee, and the successors and assigns of the Mortgagee, forever.

This is a project mortgage, the proceeds of which are to be used to finance certain indirect costs in connection with the construction of certain improvements on the Property. This Mortgage is subject to all of the terms, covenants and conditions of the Project Loan Agreement, the terms of which are incorporated herein by this reference.

## **ARTICLE I. MORTGAGOR'S COVENANTS, REPRESENTATIONS AND WARRANTIES**

The Mortgagor covenants and agrees with, and represents and warrants to, the Mortgagee as follows:

**Section 1.1 Payment of Debt.** Mortgagor will pay the Debt when due in accordance with the terms of the Note and the other Loan Documents, and will perform, observe and comply with all other provisions of the Note and the other Loan Documents. Mortgagor shall pay a prepayment premium, if any, and any applicable fee, as provided in the Note, in connection with certain prepayments of the Debt, including, without limitation, a payment made after Mortgagee's exercise of any right of acceleration of the Debt as provided in the Note and this Mortgage.

**Section 1.2 Marketable Title.** Mortgagor warrants good, marketable and insurable title in fee simple to the Property, free and clear of all liens, claims and encumbrances except such as are listed as exceptions to title in the Title Policy insuring the lien of this Mortgage (such exceptions to the Title Policy being collectively hereinafter referred to as, the "**Permitted Encumbrances**");

that it will own the Property free and clear of liens and claims except as otherwise provided in the Note and this Mortgage; and that this Mortgage is and will remain a valid and enforceable lien on the Property subject only to the Permitted Encumbrances. Mortgagor will preserve such title and will forever warrant and defend the same to the Mortgagee and will forever warrant and defend the validity and priority of the lien hereof against the claims of all persons and parties whomsoever. Unless expressly provided otherwise, in the event the ownership of this Mortgage and title to the fee in the Property covered by this Mortgage are vested in the same person or entity, neither this Mortgage nor the Debt shall merge in said title, but shall continue to be and remain a valid third lien on the Property for the amount of the Debt.

**Section 1.3 Estoppel Certificate.** After request by Mortgagee, Mortgagor, within five (5) days and at its expense, will furnish Mortgagee with a statement, duly acknowledged and certified, setting forth the amount of the Debt, the offsets or defenses thereto, if any, that the Note and this Mortgage have not been modified, or if modified, giving particulars of such modification, and any additional facts requested by Mortgagee.

**Section 1.4 Indemnification By Mortgagor.** Notwithstanding anything in the Loan Documents to the contrary, the Mortgagor shall indemnify and hold the Mortgagee harmless, and defend the Mortgagee, at the Mortgagor's sole cost and expense, against all loss, liability, cost, expense (including, without limitation, attorneys' fees and disbursements of the Mortgagee's counsel, whether in-house staff, retained firms or otherwise), and against all claims, actions, procedures, and suits, arising out of or in connection with: (a) the Debt, any of the Loan Documents, or any ongoing matter arising out of any Loan Document or any transaction contemplated by any Loan Document, including, but not limited to, all costs of appraisal or reappraisal of all or any portion of any collateral for the Debt (whether for diminution in the value of the Property that results in a higher loan-to-value ratio than exists on the date of this Mortgage, or breach of a financial covenant, or otherwise) or of the granting by the Mortgagee, in its sole and absolute discretion, of any subordination, non-disturbance, or other agreement, (b) any amendment to, or restructuring of, the Debt, or any of the Loan Documents, (c) any lawful action that may be taken by the Mortgagee in connection with the enforcement of the provisions of any of the Loan Documents (including, without limitation, the provisions of this indemnity), whether or not suit is filed in connection with the same, or in connection with: (i) the Mortgagor, (ii) any Guarantor of all or any portion of the Debt, (iii) any member, partner, joint-venturer or shareholder of either the Mortgagor or any Guarantor, becoming a subject of a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding, (iv) any other litigation relating to the Debt or any Loan Document, (v) the past, present, or future sale (or offering for sale) of stock, partnership interests, or other equity interests in the Mortgagor, or (vii) any liability to brokers, finders or similar persons or under any applicable securities or blue sky laws. All sums expended by the Mortgagee on account of any loss, liability, cost, expense, claim, action, proceeding or suit in connection with any matters against which the Mortgagee is entitled to be indemnified under this Section 1.4 shall be reimbursed by the Mortgagor to the Mortgagee, on demand by the Mortgagee, and until reimbursed by the Mortgagor pursuant hereto, shall be deemed additional indebtedness evidenced by the Note and shall bear interest at the Default Rate. The obligations of the Mortgagor under this paragraph shall constitute the personal recourse undertakings, obligations and liabilities of the Mortgagor.

**Section 1.5 Mortgagee's Administrative Fees.** Mortgagor will, on demand, pay or reimburse



Mortgagee for the payment of any costs or expenses (including attorneys' fees and disbursements) which are incurred or expended in connection with or incidental to (a) the preparation, execution, delivery, filing, recording, amendment or modification of this Mortgage, the agreement to any waiver of any term under it, the release or substitution of any Property, or any other aspect of the administration of this Mortgage, (b) any change in law affecting this Mortgage or the Property, (c) any default by Mortgagor or Event of Default under this Mortgage or any of the other Loan Documents, (iv) Mortgagee exercising its right to cure any Event of Default under this Mortgage, (d) Mortgagee exercising its right to act to protect the lien of this Mortgage, or (e) the enforcement, defense or maintenance of any of its rights or remedies or Mortgagor's obligations under this Mortgage or any of the Loan Documents by litigation or otherwise. All sums so advanced and all expenses incurred by Mortgagee hereunder or under applicable law shall be deemed obligations owing by Mortgagor to Mortgagee and shall bear interest, from the date paid or incurred by Mortgagee until the date finally and indefeasibly paid in full by Mortgagor, at the Default Rate. Any amounts advanced shall be secured by this Mortgage.

**Section 1.6 Changes in Taxation of Mortgages and Debts.** In the event of the passage after the date of this Mortgage of any law deducting from the value of real property, for the purpose of taxation, any lien or encumbrance on such real property or changing in any way the laws for the taxation of mortgages or debts secured by mortgages for state or local purposes or the manner of the collection of any such taxes, and imposing a tax, either directly or indirectly, on the Debt, or any Loan Document, then the Mortgagor shall, if permitted by law, pay any tax imposed as a result of any such law on or before the last day for payment without penalty, or within fifteen (15) days after demand by the Mortgagee, whichever is less. If, in the opinion of the attorneys for the Mortgagee, the Mortgagor is not permitted by law to pay such taxes, then the Mortgagee shall have the right, at its option, to declare the Debt due and payable on a date specified in a notice to the Mortgagor, which date shall be not less than thirty (30) days after the date such notice is given.

**Section 1.7 No Credit For Assessments; Application of Payments on Debt.** The Mortgagor will not claim or demand, or be entitled to, any credit or credits (on account of the Debt) for any part of the Assessments assessed against the Property. No deduction shall otherwise be made or claimed by the Mortgagor from the taxable value of the Property, by reason of this Mortgage or the Debt. If at any time this Mortgage shall secure less than the entire principal amount of the Debt, then each repayment of the principal amount of the Debt shall be applied first against the portion of the Debt which is not secured by this Mortgage until such portion has been completely satisfied.

**Section 1.8 Revenue Stamps.** If at any time the United States of America, any state thereof, or any governmental subdivision of any such state, shall require revenue or other stamps to be affixed to any Loan Document, then the Mortgagor will, upon demand by the Mortgagee, pay for such stamps, with interest and penalties thereon, if any, and affix them to such Loan Document (to the extent required by law).

**Section 1.9 Recording of Mortgage.** The Mortgagor will cause (a) this Mortgage, (b) each extension, modification, renewal or replacement of this Mortgage, (c) each security instrument creating a lien or evidencing the lien of this Mortgage upon the Property, and (d) each instrument of further assurance, to be filed, registered or recorded (immediately upon execution and delivery of each such document to the Mortgagee or its agents, but in any event within ten (10) days of such

execution and delivery), in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect, preserve and perfect the lien of this Mortgage upon, and the interest of the Mortgagee in, the Property. The Mortgagor will pay all title insurance fees and charges, all filing, registration and recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Mortgage, each mortgage supplemental hereto, each security instrument with respect to the Property, and each instrument of further assurance, and all federal, state, county, municipal, and other governmental taxes, duties, imposts, assessments and charges arising out of or in connection with the Debt or the execution and delivery of this Mortgage, each mortgage supplemental hereto, each security instrument with respect to the Property, and each instrument of further assurance, or other Loan Document (all such taxes, duties, imposts, assessments and charges being called, the "**Mortgage Taxes**"). The Mortgagor shall hold harmless and indemnify the Mortgagee, and its successors and assigns, against all liability incurred by reason of the imposition of any such Mortgage Taxes on the making and recording of this Mortgage.

**Section 1.10 Cooperation by Mortgagor.** The Mortgagor will (at the sole cost and expense of the Mortgagor), do, execute, acknowledge and deliver all such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and assurances as the Mortgagee shall, from time to time, require for the better assuring, conveying, assigning, transferring and confirming to and unto the Mortgagee the property and rights mortgaged by this Mortgage 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 any Loan Document or for filing, registering or recording this Mortgage. On demand from the Mortgagee, the Mortgagor will execute and deliver, and the Mortgagor hereby authorizes the Mortgagee to execute in the name of the Mortgagor (to the extent the Mortgagee may lawfully do so), one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively each lien and security interest arising pursuant to this Mortgage or any other Loan Document upon the Property. The Mortgagor hereby authorizes the Mortgagee to act as the attorney-in-fact of the Mortgagor to take any action which the Mortgagor is required or authorized to take pursuant to any Loan Document. This power of attorney is coupled with an interest and is granted for a valuable consideration, and is irrevocable.

**Section 1.11 Mortgagor's General Representations and Warranties.** (a) Subject only to the Permitted Encumbrances, the Mortgagor warrants that it is the owner of, and the holder of title to, the Property.

(b) The Mortgagor also represents and warrants that: (i) the Mortgagor is now, and, after giving effect to this Mortgage, will be, both solvent and able to pay its debts as they come due, (ii) there has been no material adverse change in the financial condition of the Mortgagor or any Guarantor of the Debt since the date of the Mortgagor's application for the Loan or other financing or credit secured by this Mortgage, (iii) the Mortgagor is not in default under any note, loan or security agreement to which it is a party, and the Mortgagor is not in default in payment of any of its indebtedness, (iv) the execution and delivery of this Mortgage, and the granting of any lien or security interest, by the Mortgagor to the Mortgagee, does not constitute a "fraudulent conveyance" within the meaning of Title 11 of the United States Code (the "**Bankruptcy Code**") as now constituted or under any other applicable statute, (v) no bankruptcy

or insolvency proceeding is pending or contemplated by or against the Mortgagor, (vi) there is no existing, or, to Mortgagor's knowledge, threatened, or pending action or proceeding affecting the Property (or any part thereof or interest therein), and (vii) the Land is not part of a larger tract of land owned or leased by the Mortgagor.

(c) The Mortgagor additionally represents and warrants that: (i) the Mortgagor has full power, authority and legal right to execute this Mortgage, and to mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm and assign the Property pursuant to the terms of this Mortgage and to keep and observe all of the terms of this Mortgage on the Mortgagor's part to be performed, all of which have been duly authorized by all proper and necessary limited liability company action and do not conflict with Mortgagor's articles of organization or operating agreement and (ii) the Mortgagor is a duly organized and validly existing limited liability company which is in good standing in the jurisdiction of its formation and this Mortgage has been executed by authority of the management of Mortgagor and with the requisite consent of the holders of the membership interests entitled to vote thereon, if such consent is required under the provisions of the articles of organization and operating agreement of the Mortgagor.

(d) There is no material litigation now pending or, to the best of Mortgagor's knowledge threatened in writing, against Mortgagor or Guarantor which, if adversely decided would materially impair the ability of Mortgagor or Guarantor to pay and perform Mortgagor's or Guarantor's obligations under this Mortgage or the Guaranty, respectively. On the date hereof, there is no litigation (whether or not material) pending, or threatened in writing, against Mortgagor or Guarantor in which the amount in controversy exceeds \$25,000.00 which is not either: (i) covered by adequate insurance (subject to applicable deductibles), or (ii) previously disclosed in writing to Mortgagee. Mortgagor agrees to notify the Mortgagee of the commencement of any lawsuits initiated against Mortgagor or Guarantor after the date hereof where the amount of the potential exposure equals or exceeds \$25,000.00 or Mortgagor has reason to believe such lawsuit is not covered by insurance. Notwithstanding the foregoing, as of the date hereof, Guarantor has disclosed to Mortgagee that certain lead paint notice disclosure investigation by the United States Attorney Office, Southern District of New York (the "Lead Paint Investigation"), against Guarantor, among others; provided, however, neither Mortgagor nor the Property is named or involved in the Lead Paint Investigation. Guarantor has represented to Mortgagee (pursuant to the provisions of that certain Unlimited Guaranty executed by Guarantor in favor of Mortgagee dated on or about the date hereof (the "Guaranty")) that, as of the date hereof, the Lead Paint Investigation and any anticipated settlement or judgment against Guarantor in connection with the Lead Paint Investigation is not reasonably expected to materially adversely affect the ability of Guarantor to perform its obligations under the Guaranty.

**Section 1.12 Single Purpose Entity.** So long as any obligations secured by this Mortgage remain outstanding, Mortgagor hereby covenants that, Mortgagor has not, and shall not:

(a) engage in any business or activity other than the ownership, development, operation and maintenance of the Property, and activities incidental thereto;

(b) acquire or own any material assets other than (i) the Property, and (ii) such incidental personal property as may be necessary for the operation of the Property;

(c) merge into or consolidate with any person or entity or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure, without in each case Mortgagee's written consent;

(d) fail to preserve its existence as an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization or formation, or without the prior written consent of Mortgagee, amend, modify, terminate or fail to comply with the provisions of Mortgagor's organizational documents, as same may be further amended or supplemented, if such amendment, modification, termination or failure to comply would adversely affect the ability of Mortgagor to perform its obligations under the Note, this Mortgage or the other Loan Documents;

(e) own any subsidiary or make any investment in, any person or entity without the written consent of Mortgagee;

(f) commingle its assets with the assets of any of its members, managers, shareholders, directors, officers, partners, trustees, affiliates, principals or of any other person or entity;

(g) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Debt secured hereby, except with respect to trade payables in the ordinary course of its business of owning and operating the Property, provided that, such trade payable debt (i) is paid within sixty (60) days of the date in which it is incurred, (ii) is unsecured, (iii) is not evidenced by a note, and (iv) does not exceed two (2%) percent of the outstanding principal amount of the Debt;

(h) become insolvent and fail to pay its debts and liabilities from its assets as the same shall become due;

(i) fail to maintain its records, books of account and bank accounts separate and apart from those of the members, managers, shareholders, directors, officers, partners, trustees, principals or affiliates of Mortgagor, or of any members, managers, shareholders, directors, officers, partners, trustees, principals or affiliates thereof, or of any other person or entity;

(j) enter into any contract or agreement with any member, manager, shareholder, director, officer, partner, trustee, principal or affiliate of Mortgagor, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any member, manager, shareholder, director, officer, partner, trustee, principal or affiliate of Mortgagor;

(k) seek the dissolution or winding up in whole, or in part, of Mortgagor;

(l) maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any member, shareholder, director, officer, partner, trustee, principal or affiliate of Mortgagor, or of any member, shareholder, director, officer, partner, trustee, principal or affiliate thereof, or of any other person or entity;

- (m) hold itself out to be responsible for the debts of another person or entity;
- (n) make any loans or advances to any third party, including any member, manager, shareholder, director, officer, partner, trustee, principal or affiliate of Mortgagor, or of any member, manager, shareholder, director, officer, partner, trustee, principal or affiliate thereof, or of any other person or entity;
- (o) fail to file its own tax returns;
- (p) fail either to hold itself out to the public as a legal entity separate and distinct from any other entity or person or to conduct its business solely in its own name in order not (i) to mislead others as to the identity with which such other party is transacting business, or (ii) to suggest that Mortgagor is responsible for the debts of any third party including any member, shareholder, director, officer, partner, trustee, principal or affiliate of Mortgagor, or of any member, shareholder, director, officer, partner, trustee, principal or affiliate thereof, or of any other person or entity;
- (q) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; or
- (r) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, or make an assignment for the benefit of creditors.

**Section 1.13 Insurance.** (a) The Mortgagor (i) will keep the Improvements and the Tangible Personalty insured with all-risk and, during any period of construction, builder's risk coverage against loss or damage by fire, vandalism, malicious mischief and such other hazards (each such fire and other hazard being called, a "**Casualty**") as the Mortgagee shall from time to time require, in amounts approved by the Mortgagee, which amounts shall in no event be less than one hundred (100%) percent of the replacement cost of the Improvements and the Tangible Personalty, and (ii) will maintain comprehensive general liability, rental and business interruption insurance, and such other forms of insurance coverage with respect to the Property as the Mortgagee shall from time to time require in amounts approved by the Mortgagee. If the Land is improved, and any portion of the Land or any interest therein is located in a federally designated "special flood hazard area," then a flood insurance policy shall also be delivered by the Mortgagor to the Mortgagee (all insurance policies required to be maintained by the Mortgagor pursuant to this Mortgage are collectively called, the "**Policies**"). If no portion of the Land is located in a federally designated "special flood hazard area," then such fact shall be substantiated by a certificate, in form satisfactory to the Mortgagee, from a licensed surveyor, appraiser or professional engineer or other qualified person, satisfactory to the Mortgagee, in accordance with all applicable laws and regulations.

(b) The Mortgagor shall at all times comply with, and shall cause both the Property, and the use, occupancy, operation, maintenance, alteration, repair and restoration of the Property, to comply with, the terms, conditions, stipulations and requirements of the Policies. Each

Policy shall be issued by an insurer having a minimum policy holders rating of "A-" and Financial Size Category of Class IX or higher pursuant to the latest rating publication of Property and Casualty Insurers by A.M. Best Company (or, in the absence of such publication, or if A.M. Best Company shall change its ratings or the standards for such ratings, or shall fail to publish them currently, or shall not maintain its current reputation, then each Policy shall be issued by an insurer having a minimum rating pursuant to such rating standards as may be designated by the Mortgagee in its sole discretion), at all times when such Policy is in effect. Each such insurer must be lawfully doing business in the State of New York and must otherwise be acceptable in all respects to the Mortgagee. All Policies shall, with respect to the Improvements, contain the standard mortgagee non-contribution clause endorsement (subject to the Mortgagee's approval in its sole discretion). All Policies shall, with respect to the remaining portion of the Property, contain such endorsement to the extent such endorsement is available. To the extent that such endorsement is not available with respect to any such portion of the Property, then the Policies shall contain, with respect to such portion, a lender's loss payable clause endorsement (subject to the Mortgagee's approval in its sole discretion), all naming the Mortgagee as the person to which all payments made by the insurer under such Policies shall be paid. All Policies shall otherwise be in form and substance satisfactory in all respects to the Mortgagee. Blanket insurance policies shall not be acceptable for the purposes of this Section 1.13 unless otherwise approved in writing to the contrary by the Mortgagee. Subject to the provisions of Section 1.15 of this Mortgage, the Mortgagor shall pay the premiums for the Policies as the same become due and payable. At the request of the Mortgagee, the Mortgagor will deliver the Policies to the Mortgagee. Not later than thirty (30) days prior to the expiration date of each Policy, the Mortgagor will deliver to the Mortgagee a renewal policy or policies (in replacement of such Policies), or certificates of insurance (in form and substance satisfactory to Mortgagee) evidencing the renewal of such policy or policies, marked "premium paid" (with respect to the premium under such Policies for the next twelve (12) month period) by the insurer issuing such Policies or accompanied by other evidence of payment of premium which is satisfactory to the Mortgagee. The insurer issuing each Policy must be obligated, pursuant to an endorsement or certificate satisfactory to the Mortgagee in its sole discretion, to give at least thirty (30) days prior written notice to the Mortgagee of the expiration, cancellation, termination, or modification of such Policy. If at any time the Mortgagee is not in receipt of written evidence that all insurance required under this Mortgage is in full force and effect, then the Mortgagee shall have the right, without notice to the Mortgagor, to take such action as the Mortgagee deems necessary to protect its interest in the Property, including, without limitation, the obtaining of such insurance coverage as the Mortgagee in its sole discretion deems appropriate, and all expenses incurred by the Mortgagee in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by the Mortgagor to the Mortgagee upon demand and until paid shall be secured by this Mortgage in accordance with the provisions of this Mortgage.

(c) If the Property shall be damaged or destroyed, in whole or in part, by fire or other hazard or casualty (such damage or destruction being called, the "**Damage**"), then the Mortgagor shall give notice of such Damage to the Mortgagee, within two (2) days after the date of the Damage, and the Mortgagor hereby authorizes and empowers the Mortgagee, at the Mortgagee's option and at the Mortgagee's sole discretion, as attorney-in-fact for the Mortgagor, to give notice of loss and make proof of loss, to adjust and compromise any claim under any Policy, to appear in and prosecute any action arising from any Policy, to collect and receive insurance proceeds and to deduct therefrom the Mortgagee's expenses incurred in the collection process, to

endorse any checks, drafts or other instruments representing any proceeds of such insurance, whether payable by reason of loss under any Policy or otherwise, and to make any election required or permitted under any Policy relating to repair or restoration. All proceeds of insurance on account of any Damage, to the extent received by the Mortgagor, shall be deemed to have been received in trust for the Mortgagee, and shall be immediately paid by the Mortgagor to the Mortgagee. Any sums paid to the Mortgagee by any insurer may be retained and applied by the Mortgagee toward payment of the Debt, whether or not then due and payable, in such order, priority and proportions as the Mortgagee in its discretion shall deem proper. At the discretion of the Mortgagee, any sums paid to the Mortgagee by any insurer, on account of any Damage, may: (i) be held, either in whole or in part, as additional security for the Debt, (ii) be paid, either in whole or in part, to the Mortgagor for such purposes as the Mortgagee shall designate, or (iii) be paid, either in whole or in part, to such third parties, for the repair or restoration of the Damage, as the Mortgagee may determine. If the Mortgagee shall receive and retain any insurance proceeds on account of any Damage, then the lien of this Mortgage shall be reduced only by the amount of such proceeds actually applied by the Mortgagee in reduction of the Debt. The Mortgagee shall not be deemed to have applied any insurance proceeds in reduction of the Debt unless and until the Mortgagee has given notice to the Mortgagor that the Mortgagee has applied such proceeds to the Debt. Until such notice is given with respect to the insurance proceeds, then such proceeds, to the extent paid to the Mortgagee and held by it, shall be deemed to be held by the Mortgagee as additional security for the Debt. The Mortgagee shall not be obligated to see to the proper application of insurance money paid over to the Mortgagor. If the Property shall have been sold on foreclosure of this Mortgage, then, as between the Mortgagor and the Mortgagee, the Mortgagee shall have the right to receive all insurance proceeds on account of any Damage, and the Mortgagor shall pay over to the Mortgagee said insurance proceeds as, if and when the Mortgagor receives same, to the extent of (x) any deficiency between (1) the unpaid balance of this Mortgage at the time of such sale, and (2) the net proceeds of such sale (after payment of all expenses) actually received by the Mortgagee, with legal interest thereon, whether or not a deficiency judgment on this Mortgage shall have been sought or recovered, and (y) the attorney's fees, costs and disbursements incurred by the Mortgagee in connection with the collection of such insurance proceeds. Mortgagor will not permit any condition to exist on the Property that would wholly or partially invalidate any Policy. All right, title and interest of the Mortgagor in and to all Policies shall inure to the benefit of and pass to the successor-in-interest of the Mortgagor or the purchaser or grantee of the Property. If the prior written appraisal of any underwriter is required in connection with the transfer of any Policy to such successor-in-interest, purchaser, or grantee, then the Mortgagor shall obtain such appraisal, and deliver a copy of such appraisal to the Mortgagee, on or before the date of such transfer.

(d) Notwithstanding anything to the contrary contained in this Section 1.13, so long as no Event of Default has occurred and is continuing, Mortgagee shall disburse any Rents received under any insurance policy to Mortgagor. Mortgagee shall make the net amount of all insurance proceeds received by Mortgagee as a result of damage or destruction of the Property after deducting Mortgagee's costs and expenses in collecting the same ("Net Proceeds") available for the repair and restoration of the Improvements, provided that (i) no Event of Default has occurred and is continuing, (ii) Mortgagor shall proceed with the repair and restoration of the Property, including, without limitation, the Improvements, as nearly as reasonably possible to the condition the Property was in immediately prior to such fire or other casualty promptly after the insurance claims are settled, (iii) no commercial Lease shall be terminated as a result of such

casualty, (iv) Mortgagee shall be reasonably satisfied that upon the completion of such repair and restoration the "as built" appraised value of the Property will be restored to a level at least equal to the level the same was at prior to the date of such fire or other casualty, (v) Mortgagee shall be reasonably satisfied that the repair and restoration (and the completion of construction of the Improvements) are able to be completed prior to the Maturity Date, and (vi) the estimated cost of repair, restoration, rebuilding or replacement (hereinafter, collectively, the "Cost to Repair") does not exceed \$750,000.00. If the Cost to Repair is greater than or equal to \$750,000.00, the Mortgagee, in its sole and absolute discretion, may either apply the proceeds of insurance to reduce the Debt or, provided the conditions set forth in (i), (ii), (iii), (iv) and (v) above have been satisfied, release so much of the Net Proceeds as may be required to pay for the actual cost of the repair work to repair, restore, rebuild or replace the Property (collectively, the "Repair Work") as such Repair Work progresses directly to the Mortgagor in accordance with the provisions of this Section 1.13.

(e) Upon satisfaction of the provisions of the preceding paragraph (d), the Net Proceeds will be disbursed by Mortgagee to Mortgagor to pay for the costs of the Repair Work as such Repair Work progresses, as provided herein. The Net Proceeds shall be held by Mortgagee in escrow until expended in connection with the Repair Work, it being agreed that any Net Proceeds so held by Mortgagee shall constitute additional security for the payment of the Debt. The Net Proceeds shall be advanced from time to time during the course of the Repair Work in accordance with the provisions for advances set forth in that certain Building Loan Agreement dated the date hereof between Mortgagor, Mortgagee, as administrative agent and as lender and Greene, as lender (the "Building Loan Agreement"), in connection with the Building Loan upon satisfaction of the following conditions: (i) all plans, specifications, costs estimates, contracts and bonds, if any, for the Repair Work, have been obtained and are satisfactory to Mortgagee in Mortgagee's discretion and (ii) Mortgagee has received satisfactory evidence that: (x) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested payment) in connection with the repair and restoration have been paid for in full, (y) there exists no notices of intention, mechanics or other liens and encumbrances on the Property arising out of the Repair Work, and (z) the balance of the Net Proceeds plus the balance of any deficiency deposits made by Mortgagor pursuant to the provisions of this paragraph hereinafter set forth shall be sufficient to pay in full the balance of the cost of the Repair Work. The Repair Work shall be done and completed by Mortgagor in an expeditious and diligent fashion and in compliance with all applicable laws, rules and regulations, and all plans and specifications required in connection with the repair and restoration shall be subject to the prior review and approval in all respects by an independent inspecting engineer selected by Mortgagor and acceptable to Mortgagee (the "Inspecting Engineer"). All actual costs and expenses incurred by Mortgagee in connection with making the Net Proceeds available for the Repair Work, including, without limitation, reasonable attorneys' fees and disbursements and the Inspecting Engineer's fees incurred by Mortgagee, shall be paid by Mortgagor. In no event shall Mortgagee be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the value of the work in place as part of the repair and restoration, as certified by the Inspecting Engineer, minus Retainage (as defined in the Building Loan Agreement) in accordance with the provisions regarding Retainage in the Building Loan Agreement. In the event of any excess Net Proceeds after the completion of the Repair Work and the payment in full of all costs incurred in connection therewith and provided no Event of Default has occurred and is continuing, Mortgagee shall release such excess Net Proceeds to Mortgagor. If at any time the Net Proceeds, or the undisbursed balance



thereof, shall not, in the opinion of Mortgagee, be sufficient to pay in full the balance of the costs which will be incurred in connection with the completion of the Repair Work, Mortgagor shall deposit the deficiency with Mortgagee before any further disbursement of the Net Proceeds shall be made, which deficiency deposit shall be disbursed for costs actually incurred in connection with the Repair Work on the same conditions applicable to the Net Proceeds. Any such deficiency deposit, until disbursed pursuant to this paragraph, shall constitute additional security for the payment of the Obligations. The balance, if any, of any such deficiency deposit remaining after the Inspecting Engineer certifies that the Repair Work has been completed in accordance with the provisions of this Section and the receipt by Mortgagee of evidence satisfactory to Mortgagee that all costs incurred in connection with the Repair Work have been paid in full shall be returned by Mortgagee to Mortgagor within five (5) business days after substantial completion of the Repair Work. All costs of the Repair Work in excess of the Net Proceeds shall be paid for by Mortgagor. If Mortgagee shall receive and retain such Net Proceeds, the lien of this Mortgage shall be reduced only by the amount thereof received and retained by Mortgagee and actually applied by Mortgagee in reduction of the Debt. Mortgagee shall not be obligated to see to the proper application of insurance money paid over to Mortgagor, and if Mortgagee receives and retains any Net Proceeds, the lien of this Mortgage shall be affected only by a reduction of the amount of said lien by the amount of such Net Proceeds so received and retained by Mortgagee. Nevertheless, if prior to the receipt by Mortgagee of any insurance proceeds, the Property shall have been sold on foreclosure of this Mortgage, as between Mortgagor and Mortgagee, Mortgagee shall have the right to receive said insurance proceeds, and Mortgagor shall pay over to Mortgagee said insurance proceeds as, if and when Mortgagor receives same, to the extent of (i) any deficiency found to be due upon such sale, with legal interest thereon, whether or not a deficiency judgment on this Mortgage shall have been sought or recovered, and (ii) of the reasonable attorneys' fees, actual costs and disbursements incurred by Mortgagee in connection with the collection of such insurance proceeds. Mortgagor will not permit any condition to exist on the Property that would wholly or partially invalidate any Policy.

(f) The provisions of this Mortgage are only for the benefit of the Mortgagor and the Mortgagee, and no third party shall be a beneficiary of any provision of this Mortgage. Moreover, the Mortgagee shall have no obligation to supervise the disbursement of the proceeds of any Policy (or any Award (defined below) pursuant to Section 1.16 hereof), and the Mortgagee shall have no liability if such proceeds are not applied, in whole or in part, to the restoration of any Casualty, or if the Award is not applied to the restoration of any part of the Property not taken by a Taking (defined below) pursuant to Section 1.16 hereof. Notwithstanding anything contained herein to the contrary, the provisions of Section 254(4) of the Real Property Law of New York (covering the insurance of buildings against loss by fire) shall not apply to this Mortgage.

**Section 1.14 Assessments.** Subject to the Superior Mortgage and Section 1.15 of this Mortgage, the Mortgagor shall pay all taxes, assessments, water rates, sewer rents and other charges (including vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Land, and all special assessments and other assessments for local improvements, except that if any such assessment is payable in installments, then the Mortgagor need only pay, at any given time, the installments which are then due and payable) which are now due and payable, or which are now or hereafter levied or assessed against the Property (all such taxes, assessments, rates, rents, charges and fees being collectively hereinafter referred to as, the "**Assessments**") prior to the date upon which any fine, penalty, interest or cost may be added to any such Assessments or

imposed by law for the nonpayment of any such Assessments, and, upon the failure of the Mortgagor to pay any Assessments, the Mortgagee may, in its sole discretion, but shall not be obligated to, pay such Assessments, and the Mortgagor shall reimburse the Mortgagee, upon demand by the Mortgagee, for such expenditures. The Mortgagor shall deliver to the Mortgagee (as and when payment is made of the Assessments) receipted bills, cancelled checks and other evidence satisfactory to the Mortgagee evidencing the payment of such Assessments prior to the date upon which any fine, penalty, interest or cost may be added thereto or imposed by law for the nonpayment of such Assessments.

**Section 1.15 Reserve Fund.** Upon the occurrence of an Event of Default and subject to the terms of the Superior Mortgage, Mortgagor will, at the option of Mortgagee, in addition to the payments of principal and/or interest due and payable pursuant to the Note (the “**Monthly Loan Payments**”), pay to the Mortgagee, on each date and in the manner specified in the Note for payment of the Monthly Loan Payments, one-twelfth of the amount which would be sufficient to pay, during the one-year period commencing on such first day (such year being called, the “**Current Year**”), the sum of (a) the Assessments, and (b) the premiums on all Policies (the “**Insurance Premiums**”), to the extent such Assessments and Insurance Premiums are payable, or, at the Mortgagee’s option, are estimated by the Mortgagee to be payable, during the Current Year (the total monthly payment to the Mortgagee, pursuant to this sentence, at any given time, on account of the Assessments and the Insurance Premiums, is called, the “**Monthly Escrow Payments**”). The Mortgagee will apply the amounts paid by the Mortgagor to the Mortgagee pursuant to the preceding sentences of this paragraph (such amounts held by the Mortgagee being called, the “**Reserve Fund**”) to the payment of Assessments and the Insurance Premiums which are required to be paid by the Mortgagor pursuant to the provisions of this Mortgage. If the Mortgagor shall ever be entitled to a refund of all or any portion of the Reserve Fund, then the Mortgagee may pay such refund to the person shown on the records of the Mortgagee to be the owner of the Property, and may otherwise deal with such owner, even if such owner is not the original Mortgagor specified in this Mortgage. If, at any time, the amount of the Reserve Fund is less than the sum of the two next Monthly Escrow Payments which are due in the then Current Year, then the Mortgagor shall pay to the Mortgagee, upon request, an amount which the Mortgagee shall estimate, in its sole discretion, as sufficient to make up the deficiency. Until expended or applied as above provided, any amounts in the Reserve Fund may be commingled with the general funds of the Mortgagee and shall constitute additional security for the Debt and shall not bear interest. Furthermore, the Mortgagor shall pay for any fee incurred by the Mortgagee, should the Mortgagee engage a third party provider to service the Reserve Fund.

**Section 1.16 Eminent Domain.** Notwithstanding any taking by any public or quasi-public authority through eminent domain, change of grade, inverse condemnation, or other similar action (each such taking being called, a “**Taking**”), the Mortgagor shall continue to pay the Debt as provided in the Note and this Mortgage. The Debt shall not be reduced until and to the extent that any award or payment for any Taking (each such award or payment being called, the “**Award**”) shall have been actually received and applied by the Mortgagee to the discharge of the Debt. The Mortgagee shall not be deemed to have applied any proceeds of the Award in reduction of the Debt unless and until the Mortgagee has given notice to the Mortgagor that the Mortgagee has applied such proceeds to the Debt. Until such notice is given with respect to such proceeds of the Award, then such proceeds, to the extent paid to the Mortgagee and held by it, shall be deemed to be held by the Mortgagee as additional security for the Debt. The Mortgagee may apply the entire amount

of any such Award to the discharge of the Debt whether or not then due and payable in such order, priority and proportions as the Mortgagee in its discretion shall deem proper. The Mortgagee shall not be obligated to see to the proper application of any Award paid over to the Mortgagor. If the Property is sold, through foreclosure or otherwise, prior to the receipt by the Mortgagee of such Award, then the Mortgagee shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive such Award. The Mortgagor shall pay over to the Mortgagee: (a) said Award as, if and when the Mortgagor receives such Award, together with (b) interest on such Award, whether or not a deficiency judgment on this Mortgage shall have been sought or recovered or denied, and (c) the reasonable attorney's fees, costs and disbursements incurred by the Mortgagee in connection with the collection of such Award. The Mortgagor shall file and prosecute its claim or claims for each Award in good faith and with due diligence and cause the same to be collected and paid over to the Mortgagee. The Mortgagor hereby irrevocably authorizes and empowers the Mortgagee, in the name of the Mortgagor or otherwise, to collect and receipt for each Award and to file and prosecute such claim or claims. The Mortgagor shall, upon demand of the Mortgagee, make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning each Award to the Mortgagee, free and clear of all encumbrances of any kind or nature whatsoever. However, such assignments and other instruments shall not be necessary in order to establish the Mortgagee's rights to any Award.

**Section 1.17 Leases and Tenancies.** Subject to the terms of this Section 1.17, the Mortgagee waives the right to enter the Property for the purpose of collecting the Rents, and grants the Mortgagor the right to collect the Rents and to lease the Property. The Mortgagor shall hold the Rents in trust for use in payment of the Debt, provided, however, that prior to an Event of Default, the Mortgagor may apply the Rents held by the Mortgagor at any given time, first, to all amounts which are due and payable on account of the Debt at such time, second, to all expenses accruing with respect to the Property, third, to the payment of all other liabilities of the Mortgagor, to the extent then due and payable, and then fourth, to the Mortgagor. The right of the Mortgagor to collect the Rents and to lease the Property or any part thereof may be revoked by the Mortgagee upon any Event of Default under the terms of this Mortgage, the Note or any other Loan Document. Thereafter, the Mortgagee may let the Property or any part thereof, and may retain and apply the Rents toward payment of the Debt in such order, priority and proportions as the Mortgagee, in its discretion, shall deem proper, or toward the operation, maintenance and repair of the Property or any part thereof, and irrespective of whether the Mortgagee shall have commenced a foreclosure of this Mortgage or shall have applied or arranged for the appointment of a receiver. The Mortgagee shall give to the Mortgagor notice of such revocation of the right to let and collect the Rents within a reasonable time after such revocation. The Mortgagor represents, warrants, and covenants that, on or before the date of this Mortgage, the Mortgagor has not: (a) made, or suffered to be made, any Lease, (b) modified any Lease, (c) cancelled or terminated any Lease, (d) accepted any prepayment of any Rents for a period of more than one (1) month in advance of the date when such Rents are due and payable or (e) further assigned the whole or any part of the Rents or any Lease. On and after the date of this Mortgage, the Mortgagor shall not, without the prior written consent of the Mortgagee: (1) make, or suffer to be made, any non-residential Lease for more than 1,000 square feet at the Property, (2) modify any non-residential Lease, for more than 1,000 square feet at the Property (3) cancel or terminate any Lease (other than based on tenant's default), (4) accept any prepayment of any Rents for a period of more than one (1) month in advance of the date when such Rents are due and payable, or (5) further assign the whole or any part of the Rents or any Lease. The Mortgagor shall (i) fulfill or perform each and every provision of the Leases on

the part of the Mortgagor to be fulfilled or performed, (ii) promptly send to the Mortgagee copies of each notice of default which the Mortgagor shall send or receive under each Lease, and (iii) enforce, short of termination of any Lease, the performance or observance of the provisions of such Lease by the tenant under such Lease. All Leases of the Property shall, at the election of the Mortgagee, be subject and subordinate to this Mortgage. The Mortgagor shall, in accordance with terms of the Note, provide to the Mortgagee a complete and detailed leasing status report with respect to the Improvements, which leasing status report is required to be in form and substance reasonably satisfactory in all respects to the Mortgagee. In addition to the rights which the Mortgagee may have in this Mortgage, in the event of any default under this Mortgage, the Mortgagee, at its option, may require the Mortgagor to pay monthly in advance to the Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of each part of the Property as may be in possession of the Mortgagor or any of its affiliates. Upon default in any such payment, the Mortgagor will vacate and surrender possession of the Property to the Mortgagee, or to such receiver, and, if the Mortgagor shall fail to vacate and surrender the Property as provided above, then the Mortgagor may be evicted by summary proceedings or otherwise. Nothing contained in this Section 1.17 shall be construed as imposing on the Mortgagee any of the obligations of the landlord under the Leases. Notwithstanding anything contained herein to the contrary, the Mortgagee shall have all of the rights against each tenant or other occupant of the Property pursuant to Section 291-f of the Real Property Law of the State of New York.

**Section 1.18 Financial Records and Statements.** (a) The Mortgagor will keep and maintain, or will cause to be kept and maintained, on a fiscal year basis in accordance with generally accepted accounting principles consistently applied, proper and accurate books, records and accounts reflecting all of the financial affairs of the Mortgagor and all items of income and expense in connection with (i) the operation of the Property, or (ii) any services, equipment or furnishings provided in connection with the operation of the Property, whether such income or expense be realized by the Mortgagor or by any other person whatsoever (excepting tenants unrelated to and unaffiliated with the Mortgagor who have leased from the Mortgagor portions of the Property for the purpose of occupying the same). The Mortgagee shall have the right from time to time, upon at least twenty-four (24) hours prior telephonic notice, at all times during normal business hours to examine such books, records and accounts at the office of either the Mortgagor or such other person maintaining such books, records and accounts, and to make copies or extracts of such books, records and accounts as the Mortgagee shall desire.

(b) The Mortgagor will furnish, or cause to be furnished to, the Mortgagee financial reports and information as follows: (i) within thirty (30) days of filing, but not later than May 30<sup>th</sup> (or November 30<sup>th</sup> in the event Mortgagor has provided Mortgagee a copy of the extension) of each calendar year during the term of the Loan, Mortgagor shall submit to Mortgagee copies of Mortgagor's signed Federal Income Tax Returns, and any extensions thereof, if applicable, including all schedules, prepared by, and certified (as being in accordance with generally acceptable accounting principles) by, an independent certified public accountant of recognized standing selected by Mortgagor and reasonably acceptable to the Mortgagee and certified by an officer of Mortgagor, and otherwise in form and substance reasonably satisfactory to Mortgagee, (ii) no later than June 15<sup>th</sup> and December 15<sup>th</sup> of each calendar year during the term of the Loan until the Property is stabilized, Mortgagor shall submit to Mortgagee (1) semi-annual profit and loss statements with respect to the Property, including, without limitation, detailed

income and expense statements with respect to the Property, and (2) semi-annual rent roll for the Property, all in form and substance satisfactory to Mortgagee, prepared by and certified as true and accurate by a manager or authorized officer of Mortgagor, and otherwise in form and substance satisfactory to Mortgagee, (iii) after the Property is stabilized, within thirty (30) days following the end of each calendar year during the term of the Loan, but not later than February 1<sup>st</sup> of each year, Mortgagor shall submit to Mortgagee (1) annual profit and loss statements with respect to the Property, including, without limitation, detailed income and expense statements for the Property, and (2) annual rent roll for the Property, in form and substance satisfactory to Mortgagee, prepared by and certified as true and accurate by a manager or authorized officer of Mortgagor, and otherwise in form and substance reasonably satisfactory to Mortgagee, (iv) within thirty (30) days of filing, but not later than May 31<sup>st</sup> (or November 30<sup>th</sup> in the event Mortgagor or Guarantor has provided Mortgagee a copy of the extension) of each calendar year, Mortgagor shall or shall cause Guarantor to submit to Mortgagee copies of Guarantor's signed Federal Income Tax Returns, and any extensions thereof, if applicable, pursuant to the Guaranty, (vi) within one hundred twenty (120) days following the end of each calendar year during the term of the Loan, but not later than April 30<sup>th</sup> of each year, Mortgagor shall cause each Guarantor to submit to Mortgagee such Guarantor's (1) annual personal financial statement pursuant to the Guaranty, (2) annual global cash flow statement pursuant to the Guaranty and (3) bank and brokerage statements pursuant to the Guaranty, (vii) within thirty (30) days following the date the same are due and payable, Mortgagor shall deliver to Mortgagee proof of payment of real estate taxes, (viii) within thirty (30) days following the annual premium renewal, Mortgagor shall deliver to Mortgagee proof of payment of insurance and (ix) on an annual basis, Mortgagor shall submit to Mortgagee any other information of Mortgagor that Mortgagee reasonably determines it needs in the future.

(c) Together with each such document set forth above in this paragraph, the Mortgagor shall furnish to the Mortgagee an affidavit signed by the Mortgagor (or in the case of any Mortgagor which is an entity, such entity's manager, authorized signatory or other duly authorized representative) attesting on the date of such affidavit that: (x) such financial statement is true, complete and accurate, and (y) that there does not exist an Event of Default under this Mortgage or, if such Event of Default exists, the nature of such Event of Default and the period of time it has existed (an "Affidavit"). The Mortgagor shall furnish to the Mortgagee, within ten (10) days after request from the Mortgagee, such further detailed financial and other information, as may be requested by the Mortgagee, with respect to each of the following: the Property, the Mortgagor, any Guarantor, and each affiliate of, and each entity controlled by, the Mortgagor or any Guarantor, as of a date not earlier than that specified by the Mortgagee in such request, together with an Affidavit with respect to such further detailed financial and other information. If Mortgagor fails to provide Mortgagee with any of the financial and operating information required to be provided under this Section 1.18 within the time periods required under this Section 1.18 in addition to any other remedy which Mortgagee may possess in connection with Mortgagor's failure to comply with said reporting requirements, Mortgagor shall pay to Mortgagee, as liquidated damages for the extra expense in servicing the Loan, Fifty and 00/100 Dollars (\$50.00) per day until such failure is cured, which charge shall commence ten (10) days after written notice to Mortgagor that Mortgagor is in default with such reporting requirements. All such amounts shall be secured by this Mortgage.

**Section 1.19 Sale or Mortgage By Mortgagor.** (a) Other than the Superior Mortgage, neither the Property, nor any interest in the Mortgagor (whether membership, partnership, stock, equity,

beneficial, profit, loss or otherwise), shall in any manner, directly or indirectly, be further encumbered, sold, transferred, assigned or conveyed, or permitted to be further encumbered, sold, transferred, assigned or conveyed, without the prior written consent of the Mortgagee. The above provisions of this Section 1.19 shall apply to each and every such further encumbrance, sale, transfer, assignment or conveyance, regardless of whether or not the Mortgagee has consented to, or waived by its action or inaction its rights under this Mortgage with respect to, any particular encumbrance, sale, transfer, assignment or conveyance, and irrespective of whether such further encumbrance, sale, transfer, assignment or conveyance is voluntary, by reason of operation of law or is otherwise made. In addition, the Mortgagor shall not, without the Mortgagee's prior written consent, (i) permit the transfer or issuance of any stock, partnership, membership, ownership or other equity or beneficial interest in the Mortgagor, (ii) merge or consolidate with any other party or entity, (iii) liquidate or dissolve itself (or suffer any liquidation or dissolution), or (iv) acquire by purchase or otherwise all or substantially all the business or assets of, or any stock, partnership, membership, ownership interest or other evidence of equity or beneficial ownership of, any entity. If the Mortgagor is a partnership or other noncorporate entity, the Mortgagor shall not dissolve or terminate or materially amend the terms of its partnership agreement, operating agreement, or other agreement with the holders of equity interests.

(b) Notwithstanding the foregoing, Mortgagee's prior written consent will not be required for any Permitted Transfer (as defined below), so long as all Transfer Requirements (as defined below) applicable to such Permitted Transfer are timely satisfied. For purposes of this Section 1.19(b), (i) the term **"Permitted Transfer"** shall mean the following: (1) a transfer of the Equity Interests (as defined below) in Mortgagor (or in any entity that owns, directly or indirectly through one or more intermediate entities, an Equity Interest in Mortgagor) to non-minor immediate family members (*i.e.*, the parents, spouse, siblings, children and other lineal descendants, and the spouses of parents, siblings, children and other lineal descendants) of the transferor or to one or more trusts established for the benefit of the transferor and/or such immediate family members of the transferor (an **"Estate Planning Transfer"**); (ii) the term **"Transfer Requirements"** means, with respect to any Permitted Transfer, all of the following that apply to that transfer: (1) in the case of any Permitted Transfer, none of the persons or entities liable for the repayment of the Loan evidenced by the Note, including, without limitation, any Guarantor of the Loan pursuant to any Guaranty, shall be released from such liability and Guarantor shall execute and deliver to Mortgagee a reaffirmation of any Guaranty or other Loan Document previously executed by Guarantor, (2) in the case of any Estate Planning Transfer, there shall be no change in the individuals or entities exercising day-to-day powers of decision making, management and control over either Mortgagor or the Property unless Mortgagee has given its prior written consent to such change in its sole and absolute discretion, (3) in the case of any Estate Planning Transfer that results in a transfer of an interest in the Property or in a change in the trustee of any trust owning an interest in the Property, the transferee or new trustee (in such new trustee's fiduciary capacity) shall, prior to the transfer, execute and deliver to Mortgagee an assumption agreement satisfactory to Mortgagee, providing Mortgagee with recourse substantially identical to that which Mortgagee had against the transferor or predecessor trustee and granting Mortgagee liens on any and all interests of the transferee or the new trustee in the Property, (4) in the case of any Permitted Transfer that results in a transfer of any interest in the Property, Mortgagee shall be provided, at no cost to Mortgagee, with an endorsement to its Title Policy insuring the lien of this Mortgage, which endorsement shall insure that there has been no impairment of that lien or of the priority of that lien, (5) in the case of any Permitted Transfer, Mortgagor or the transferee shall

pay all costs and expenses incurred by Mortgagee in connection with that Permitted Transfer, together with any applicable fees in accordance with Mortgagee's fee schedule in effect at the time of the Permitted Transfer, and shall provide Mortgagee with such information and documents as Mortgagee reasonably requests in order to make the determinations called for by this Mortgage and to comply with applicable laws, rules and regulations, (6) no Event of Default shall exist or would occur as a result of the proposed transfer, (7) Mortgagor shall notify Mortgagee in writing of such proposed transfer, and (8) all proposed transfers shall be subject to the provisions of Section 1.24 hereof; and (iii) the term "**Equity Interest**" means direct and indirect membership interests in Mortgagor, if Mortgagor is a limited liability company, partnership interests in Mortgagor, if Mortgagor is a partnership, or shares of stock of Mortgagor, if Mortgagor is a corporation. In furtherance of the foregoing and notwithstanding anything herein to the contrary, transfers of any Equity Interest shall not be permitted if the proposed transferee is named as a Prohibited Person (defined below) and any such transfer shall be void ab initio. In addition to the foregoing, all transfers, including, without limitation, Permitted Transfers, shall be subject to Mortgagee's "know your customer" ("KYC") credit review procedures and Mortgagee's approval of the ownership chart of Mortgagor (through to the individual level after giving effect to the proposed transfer). Notwithstanding anything to the contrary contained herein, at all times during the term of the Loan, Efstathios Valiotis shall be required to own not less than fifty-one percent (51%) of the membership interests in Mortgagor and retain control of the day-to-day decision making and management authority of Mortgagor.

**Section 1.20 Maintenance and Repairs; Compliance with Laws and Recorded Documents.**

(a) The Mortgagor shall cause the Property to be maintained in good condition and repair and, to the extent of any renovations that are made by the Mortgagor, the same shall be made in compliance with the requirements of all Governmental Authorities having jurisdiction over the Property. The Mortgagor will not commit or suffer to be committed any waste of the Property. The Improvements and the Tangible Personalty shall not be removed, demolished or materially altered, without the prior written consent of the Mortgagee, provided, however, that the Mortgagor may, in the ordinary course of business, replace Tangible Personalty with other Tangible Personalty free of any liens, and of a value at least equal to the replaced Tangible Personalty, and by such removal and replacement the Mortgagor shall be deemed to have subjected the replacement Tangible Personalty to the lien of this Mortgage. Subject to the preceding provisions of this paragraph, the Mortgagor shall, at its expense, promptly repair, replace or rebuild all Damage (including, without limitation, all damage from any Casualty for which insurance was not obtained or obtainable). Subject to the preceding provisions of this paragraph, the Mortgagor shall also, at its expense, restore the Property after each Taking so that the remaining portion of the Property (which remains after such Taking) may continue to be used (to the extent practicable) for the purposes for which such portion of the Property was used (in compliance with this Mortgage) immediately prior to such Taking. The Mortgagor shall complete and pay for, within a reasonable time (but not later than any applicable completion date provided in the Loan Documents, as defined below, or applicable laws), each structure and other improvement at any time in the process of construction or repair on the Land.

(b) The Mortgagor represents and warrants that the Property is currently in compliance with, and the Mortgagor shall in the future promptly comply with, all existing and future governmental laws, orders, ordinances, rules and regulations affecting the Property or its use, including specifically, but not limited to, provisions of the Americans with Disabilities Act.

The Mortgagor shall comply with the requirements of all (and shall not modify, amend or terminate any) easements and restrictive covenants which from time to time affect the Property. The Mortgagor shall also comply with all requirements of (and to the extent reasonably within the Mortgagor's control, maintain, preserve, enforce and renew) all rights of way, easements, grants, privileges, licenses, franchises, restrictive covenants, recorded instruments, and other agreements which from time to time benefit or pertain to the Property. The Mortgagor shall not modify, amend or terminate, or surrender any of its rights under, any of such rights of way, easements, grants, privileges, licenses, franchises or restrictive covenants. The Mortgagor will not, without obtaining the prior written consent of the Mortgagee, initiate, join in or consent to any new private restrictive covenant, zoning ordinance, or other public or private restrictions, limiting or affecting the uses which may be made of the Property. The Mortgagor will not alter the use of the Property (or any part thereof or interest therein) without the prior written consent of the Mortgagee. The Mortgagor shall not permit the Property or any part thereof to be used to qualify for fulfillment of any municipal or other governmental requirements for the construction or maintenance of any building, structure, or other improvement on premises not mortgaged under this Mortgage; and Mortgagor hereby assigns to Mortgagee all rights to consent to such use. No building or other improvement now or hereafter constructed on the Property shall rely on any premises not mortgaged under this Mortgage in order to qualify for fulfillment of any municipal or other governmental requirements. The Mortgagor shall not impair, or permit impairment of, the integrity of the Property as a single zoning lot or lots separate and apart from other premises. Any attempt by Mortgagor to violate any of the provisions of this paragraph shall be void.

**Section 1.21 Environmental Rules.** (a) Except as disclosed in that certain Phase I Environmental Site Assessment prepared by Middleton Environmental Inc. dated April 16, 2019, the Mortgagor hereby represents and warrants to the Mortgagee that (i) no Hazardous Substance is currently located at, on, in, under or about the Property, (ii) no releasing, emitting, discharging, leaching, dumping, disposing or transporting of any Hazardous Substance from the Property onto any other property or from any other property onto or into the Property has occurred or is occurring in violation of any Environmental Rule, (iii) no notice of violation, non-compliance, liability or potential liability, lien, complaint, suit, order or other notice with respect to the Property is presently outstanding under any Environmental Rule, nor does the Mortgagor have knowledge or reason to believe that any such notice will be received or is being threatened, and (iv) the Property and its operation are in full compliance with all Environmental Rules.

(b) The Mortgagor shall comply, and shall use commercially reasonable efforts to cause each tenant and other occupant of the Property to comply, in all respects with all Environmental Rules, and will not generate, store, handle, process, dispose of or otherwise use, and will not permit any tenant or other occupant of the Property to generate, store, handle, process, dispose of or otherwise use, Hazardous Substances at, in, on, or about the Property in a manner that could lead or potentially lead to the imposition on the Mortgagor, the Mortgagee or the Property of any liability or lien of any nature whatsoever under any Environmental Rule. The Mortgagor shall notify the Mortgagee promptly in the event of any spill or other release of any Hazardous Substance at, in, on, under or about the Property which is required to be reported to a Governmental Authority under any Environmental Rule, will promptly forward to the Mortgagee copies of each notice received by the Mortgagor relating to any alleged violation of any Environmental Rule or any potential liability under any Environmental Rule. The Mortgagor will promptly pay when due each fine or assessment against the Mortgagee, the Mortgagor or the



Property relating to any Environmental Rule. If at any time: (i) the operation or use of the Property is in violation of any applicable Environmental Rule, (ii) there is any Hazardous Substance located at, in, on, under or about the Property in a manner which violates any applicable Environmental Rule, or (iii) there is any Hazardous Substance located at, in, on, under or about the Property which, under any Environmental Rule, requires special handling in collection, storage, treatment or disposal, or any form of cleanup or corrective action, then the Mortgagor shall, within thirty (30) days after receipt of notice (of any condition or matter specified in subsections (i) through (iii) above) from any Governmental Authority or from the Mortgagee, take, at the Mortgagor's sole cost and expense, such actions as may be necessary to comply fully in all respects with all Environmental Rules, provided, however, that if such compliance cannot reasonably be completed within such thirty (30) day period, then the Mortgagor shall commence such necessary action within such thirty (30) day period and shall, within ninety (90) days thereafter, diligently and expeditiously proceed to comply fully in all respects, and in a timely fashion, with all Environmental Rules.

(c) If the Mortgagor fails to take, on a timely basis, or to proceed, diligently and expeditiously, to complete in a timely fashion, any action which the Mortgagor is obligated to take pursuant to Section 1.21(b) of this Mortgage, then the Mortgagee may, in its sole and absolute discretion, make one or more advances or payments relating to the performance or satisfaction of the said obligations of the Mortgagor, but the Mortgagee shall in no event be under any obligation to do so. Each sum advanced or paid by the Mortgagee pursuant to this paragraph (including, without limitation, reasonable attorneys' fees and consultant fees and expenses, investigation and laboratory fees and expenses, and fines or other penalty payments) and each sum advanced or paid in connection with any judicial or administrative investigation or proceeding relating: (i) to any Hazardous Substance at or in the Property, or (ii) to any action which the Mortgagor is obligated to take pursuant to Section 1.21(b) of this Mortgage, will immediately, upon demand by the Mortgagee, become due and payable from the Mortgagor and shall bear interest at the Default Rate from the date such sum is so advanced or paid by the Mortgagee until the date such sum is repaid by the Mortgagor to the Mortgagee. The Mortgagor will execute and deliver, promptly upon request, such instruments as the Mortgagee may deem useful or necessary to permit the Mortgagee to take any action which the Mortgagee is permitted to take pursuant to this Mortgage, and such additional notes and mortgages, as the Mortgagee may require to secure all sums which are advanced or paid by the Mortgagee pursuant to this Mortgage. If a lien is filed against the Property by any Governmental Authority resulting from the need to expend or the actual expending of monies arising from an action or omission, whether intentional or unintentional, of the Mortgagor or for which the Mortgagor is responsible, resulting in the releasing, spilling, leaking, leaching, pumping, emitting, pouring, emptying or dumping of any Hazardous Substance into the waters or onto land located within or without any state where the Property is located, then the Mortgagor will, within thirty (30) days from the date that the Mortgagor is first given notice that such lien has been placed against the Property, or within such shorter period of time as may be specified by the Mortgagee if such Governmental Authority has commenced steps to cause the Property to be sold pursuant to such lien, either (x) pay the claim of such Governmental Authority and remove such lien, or (y) furnish a cash deposit, bond, or such other security with respect to such lien as is satisfactory in all respects to the Mortgagee and is sufficient to effect a complete discharge of such lien on the Property.

(d) The Mortgagee may, at its option, at intervals of not less than one (1) year,

or more frequently if the Mortgagee reasonably believes that a Hazardous Substance or other environmental condition violates or threatens to violate any Environmental Rule, cause an environmental audit of the Property to be conducted, at the Mortgagor's sole expense, to confirm the Mortgagor's compliance with the provisions of this Mortgage. The Mortgagor shall cooperate in all reasonable ways with the Mortgagee in connection with any such audit.

(e) If this Mortgage is foreclosed, or if the Property is sold pursuant to this Mortgage, or if the Mortgagor tenders a deed (or assignment) in lieu of foreclosure or sale with respect to the Property pursuant to terms which have been agreed to in writing by the Mortgagee, then the Mortgagor covenants that it shall deliver the Property (or the part or interest that is foreclosed, sold, or transferred as provided above in this paragraph) to the purchaser at such foreclosure or sale or to the Mortgagee, its nominee, or wholly-owned subsidiary, as designated by the Mortgagee in its sole discretion, in a condition that complies in all respects with all Environmental Rules.

(f) The Mortgagor will defend, indemnify, and hold harmless the Mortgagee, each Transferee, and each of their respective co-lenders, participants, employees, agents, officers, directors, members, shareholders, and holders of equity interests (all persons and entities specified above in this paragraph being called collectively, the "**Holder Parties**"), from and against each claim, demand, penalty, cause of action, fine, liability, settlement, damage, cost, or expense of whatever kind or nature, known or unknown, foreseen or unforeseen, contingent or otherwise (including, without limitation, attorneys' and consultant fees and expenses, investigation and laboratory fees and expenses, court costs, and litigation expenses) arising out of, or in any way related to, (i) any breach by the Mortgagor of any of the provisions of this Section 1.21, (ii) the presence, disposal, spillage, discharge, emission, leakage, release, or threatened release of any Hazardous Substance which is at, in, on, under, about, from or affecting the Property, including, without limitation, any damage or injury resulting from any such Hazardous Substance to or affecting the Property or the soil, water, air, vegetation, buildings, personal property, persons or animals located on the Property or on any other property or otherwise, (iii) any personal injury (including, without limitation, wrongful death) or property damage (real or personal) arising out of or related to any such Hazardous Substance, (iv) any lawsuit brought or threatened, settlement reached, or order or directive of or by any Governmental Authority relating to such Hazardous Substance, or (v) any violation of any Environmental Rule or any policy or requirement of the Mortgagee under this Mortgage. The indemnification provided in this paragraph shall, notwithstanding any exculpatory or other provision of any other document or instrument now or hereafter executed and delivered in connection with the Loan, constitute the personal recourse undertakings, obligations and liabilities of the Mortgagor.

(g) The obligations and liabilities of the Mortgagor under this Section 1.21 shall survive and continue in full force and effect and shall not be terminated, discharged or released, in whole or in part, irrespective of whether the Debt has been paid in full and irrespective of any foreclosure of this Mortgage, sale of the Property pursuant to the provisions of this Mortgage or acceptance by the Mortgagee, its nominee or affiliate of a deed or assignment in lieu of foreclosure or sale and irrespective of any other fact or circumstance of any nature whatsoever.

**Section 1.22 Compliance With Loan Documents.** The Mortgagor shall observe and perform each of the terms, covenants and provisions contained in any of the Loan Documents, except for

any covenants which are binding only on the Mortgagee.

**Section 1.23 Inspection.** The Mortgagee and its agents shall have the right to enter and inspect the Property at all reasonable times.

**Section 1.24 Anti-Terrorism.** Mortgagor hereby represents and warrants that, Mortgagor, nor Mortgagor's members, managers, shareholders, directors, officers, partners, trustees, affiliates, or principals: (a) is in violation of any legal requirements relating to terrorism or money laundering, including, without limitation, Executive Order No. 13224 on Terrorist Financing effective September 24, 2001 (the "**Executive Order**"), and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56 (the "**Patriot Act**"), (b) is a "Prohibited Person" which is defined as follows: (i) a person or entity that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order, (ii) a person or entity owned or controlled by, or acting for or on behalf of, any person or entity that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order, (iii) a person or entity with whom Mortgagor is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering legal requirements, including the Executive Order and the Patriot Act, (iv) a person or entity who commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order, (v) a person or entity that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control, and (vi) a person or entity who is affiliated with any person or entity listed above, and (c) will (i) conduct any business or engage in any transaction or dealing with any Prohibited Person, including the making or receiving of any contribution of funds, goods or services to or for the benefit of any Prohibited Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purposes of evading or avoiding, or attempts to violate, any of the prohibitions set forth in the Executive Order or the Patriot Act.

**Section 1.25 Operating Account.** Mortgagor shall establish and maintain an operating account, a loan disbursement account and such other accounts as set forth in the Note with the Mortgagee from which the Mortgagee shall be authorized to automatically deduct the Monthly Loan Payments, Monthly Escrow Payments, if applicable, and any other payments of interest, principal, escrow, fees and any other expenses due the Mortgagee.

**Section 1.26 No Brokers.** The Mortgagor covenants and agrees that no brokerage commission or other fee, commission or compensation is to be paid by the Mortgagee on account of the loan evidenced by the Note and secured hereby, or any other transaction between the Mortgagor and the Mortgagee. The Mortgagor agrees to indemnify the Mortgagee against all claims for any such fee, commission, or compensation.

**Section 1.27 City of Peekskill Industrial Development Agency.** Mortgagor covenants and agrees that Mortgagor shall not permit the modification of the Leaseback Agreement (defined below) any agreements, documents or other instruments executed in connection with the Leaseback Agreement or other agreements between Mortgagor and the Agency (defined below) without the prior written consent of Mortgagee, in Mortgagee's sole and absolute discretion.

## ARTICLE II. SECURITY AGREEMENT

**Section 2.1 Security Interest.** This Mortgage constitutes both a real property mortgage and a "security agreement," within the meaning of the Uniform Commercial Code, and the Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of the Mortgagor in the Property. The Mortgagor, by executing and delivering this Mortgage, hereby grants to the Mortgagee, as security for the Debt, a security interest in, and lien on, the Property and all proceeds thereof.

**Section 2.2 Remedies Under Security Agreement and UCC.** If the Mortgagor shall default under any of the Loan Documents, then the Mortgagee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Tangible Personalty and all other tangible property which is included in the Property, and to take such other measures as the Mortgagee may deem necessary for the care, protection and preservation of the Property, and to sell the Property. Upon request or demand of the Mortgagee, the Mortgagor shall at its expense assemble the Tangible Personalty (and all other tangible personal property which is included in the Property) and make it available to the Mortgagee at a convenient place acceptable to the Mortgagee. The Mortgagor shall pay to the Mortgagee on demand any and all expenses, including legal expenses and attorneys' fees, incurred or paid by the Mortgagee in protecting its interest in the Property and in enforcing the Mortgagee's rights under this Mortgage with respect to the Property. Any notice of sale, disposition or other intended action by the Mortgagee with respect to the Property sent to the Mortgagor in accordance with the provisions of this Mortgage at least seven (7) days prior to the date of any such sale, disposition or other action, shall constitute reasonable notice to the Mortgagor, and the method of sale or disposition or other intended action set forth or specified in such notice shall conclusively be deemed to be commercially reasonable within the meaning of the Uniform Commercial Code unless objected to in writing by the Mortgagor within five (5) days after receipt by the Mortgagor of such notice. The proceeds of any sale or disposition of the Property may be applied by the Mortgagee to the payment of the Debt in such order, priority and proportions as the Mortgagee in its discretion shall deem proper.

**Section 2.3 Mortgagee's Right Of Setoff.** In addition to all rights available to the Mortgagee under applicable law or any other agreement, the Mortgagor hereby gives to the Mortgagee a lien on, security interest in and right of setoff against: (a) all moneys, securities and other property of the Mortgagor (and the proceeds of such moneys, securities and other property), which have been, are now being, or will be delivered to the Mortgagee, its correspondents or its agents, whether for safekeeping, custody, pledge, transmission, collection or otherwise, or coming into possession of the Mortgagee in any way, or in any capacity, (b) the balance of each deposit or other account, and (c) each credit of the Mortgagor, with, and each claim of the Mortgagor against, the Mortgagee at any time existing. Such lien and security interest are given to the Mortgagee as collateral security for the payment of the Debt and of all liabilities and obligations now or hereafter owed by the Mortgagor to the Mortgagee in connection with the Debt, including, without limitation, fees contracted with or acquired by the Mortgagee, whether joint, several, direct, indirect, absolute, contingent, secured, matured or unmatured (all of such liabilities and obligations are hereafter

collectively called, the "**Obligations**"). The Mortgagor hereby authorizes the Mortgagee at any time or times, without prior notice, to apply such moneys, securities, properties, proceeds, balances, credits or claims (all such moneys, securities, properties, proceeds, balances, credits and claims being called collectively, the "**Deposits**"), to such Obligations in such amounts as the Mortgagee may select, whether contingent, unmatured or otherwise and whether any collateral security for such Obligations is deemed adequate or not. The collateral security described in this Mortgage shall be in addition to any collateral security described in any separate agreement executed by the Mortgagor. The Mortgagee, in addition to any right available to it under applicable law or any other agreement, shall have the right, at its option, to set off immediately, as against any or all of the Obligations, all Deposits owed by the Mortgagee in any capacity to the Mortgagor, whether or not due. The Mortgagee shall, at its option, be deemed to have exercised such right to set off and to have made a charge against the Deposits (in such order and manner as determined by the Mortgagee) immediately upon the occurrence of any default under the Note or any Event of Default hereunder, even though such charge is made or entered on the books of the Mortgagee subsequent to those events.

### **ARTICLE III. EVENTS OF DEFAULT; MORTGAGEE'S REMEDIES**

**Section 3.1 Definition of "Event of Default".** The Debt shall become due at the option of the Mortgagee upon the occurrence of any one or more of the following events (each of which is by this Mortgage deemed and referred to as an "**Event of Default**"):

(a) if any portion of the Debt is not paid on its due date for payment of such portion (as provided in the Loan Documents), or if the Debt is not paid in full on the maturity date of the Note (or any accelerated maturity date);

(b) if the Mortgagor shall fail to pay within ten (10) days of notice and demand by the Mortgagee, any installment of any Assessment against the Property for local improvements heretofore or hereafter laid, which Assessment is or may become payable in annual or periodic installments and is or may become a lien on the Property, notwithstanding the fact that such installment may not be due and payable at the time of such notice and demand;

(c) if any federal tax lien is filed against the Mortgagor, any Guarantor or the Property, and such tax lien is not discharged of record within thirty (30) days after such lien is filed;

(d) other than the Superior Mortgage, if, without the consent of the Mortgagee (which consent in any and all circumstances may be withheld in the sole and absolute discretion of the Mortgagee), the Property, or any portion thereof or interest therein, or any interest of any nature whatsoever in the Mortgagor (whether membership, partnership, stock, equity, beneficial, profit, loss or otherwise) is in any manner, by operation of law or otherwise, whether directly or indirectly, further issued, encumbered, sold, transferred, assigned or conveyed, and irrespective of whether any such further issuance, encumbrance, sale, transfer, assignment or conveyance is voluntary, by reason or operation of law or is otherwise made;

(e) if without the consent of the Mortgagee any Improvement or Tangible Personalty (except for the normal replacement of the Tangible Personalty) is removed, demolished

or materially altered, or if the Property is not kept in good condition and repair;

(f) if the Mortgagor shall fail to comply with any requirement or order or notice of violation of law or ordinance issued by any governmental department claiming jurisdiction over the Property within three (3) months from the issuance of any such requirement, order, or notice, or the time period set forth therein, whichever is less;

(g) if the Policies, are not assigned to the Mortgagee or kept in full force and effect, or if the Policies are not delivered to the Mortgagee upon request;

(h) if, after cancellation or termination by an existing insurer, or notice thereof, on application of the Mortgagee two or more fire insurance companies lawfully doing business in the State of New York refuse to issue Policies;

(i) if the Mortgagor shall fail to pay the Mortgagee on demand for all insurance premiums and/or Assessments paid by the Mortgagee pursuant to this Mortgage, together with any late payment charge and interest thereon calculated at the Default Rate;

(j) if, without the consent of the Mortgagee, any non-residential Lease is made or modified, or any Lease is cancelled (other than based on tenant's default), or if the Mortgagor shall consent to any assignment of any non-residential Lease or subletting under any such Lease, or if any portion of the Rents is paid for a period of more than one (1) month in advance or if any of the Rents are further assigned;

(k) if any representation or warranty of the Mortgagor or any Guarantor is false or misleading in any material respect; or if any representation or warranty in any certificate, report, financial statement or other instrument furnished in connection with the making of the Note, this Mortgage, any Guaranty or any other Loan Document, is, in any such case, false or misleading in any material respect;

(l) if the Mortgagor or Guarantor (each of whom is called, an "**Obligor**") shall commence any case, proceeding or other action relating to it in bankruptcy or seeking reorganization, liquidation, dissolution, winding-up, arrangement, composition or readjustment of its debts, or for any other relief, under bankruptcy, insolvency, reorganization, liquidation, dissolution, winding-up, arrangement, composition, readjustment of debt or other similar act or law of any jurisdiction, domestic or foreign, now or hereafter existing; or if an Obligor shall apply for a receiver, custodian or trustee of it or for all or a substantial part of its property; or if an Obligor shall make an assignment for the benefit of creditors; or if an Obligor shall be unable to, or shall admit in writing the inability to pay its debts generally as they become due; or if an Obligor shall take any action indicating its consent to, approval of, acquiescence in, or in furtherance of, any of the foregoing; or if any case, proceeding or other action against an Obligor shall be commenced in bankruptcy or seeking reorganization, liquidation, dissolution, winding-up, arrangement, composition or readjustment of its debts, or any other relief, under any bankruptcy, insolvency, reorganization, liquidation, dissolution, arrangement, composition, readjustment of debt or other similar act or law of any jurisdiction, domestic or foreign, now or hereafter existing, and such condition shall continue for a period of thirty (30) days undismissed, undischarged or unbonded; or if a receiver, custodian or trustee of an Obligor or for all or a substantial part of its property shall

be appointed and such condition shall continue for a period of thirty (30) days undismissed, undischarged or unbonded; or if a warrant of attachment, execution or distraint, or similar process, shall be issued against any substantial part of the property of an Obligor and such condition shall continue for a period of thirty (30) days undismissed, undischarged or unbonded;

(m) if the Mortgagor, Guarantor or any other Person shall be in default under any Loan Document;

(n) if the Mortgagor, or any other Person shall be in default under any mortgage or deed of trust covering the Property, or any portion thereof, whether superior or inferior in lien to this Mortgage, and including, without limitation, any such mortgage or deed of trust now or hereafter held by the Mortgagee, including, without limitation, the Superior Mortgage, or if the Mortgagor shall be in default, beyond the expiration of any applicable notice or grace period, in respect of either any other indebtedness owed by the Mortgagor to the Mortgagee, or any other (i) secured indebtedness aggregating at least \$25,000.00 or (ii) unsecured indebtedness incurred in the customary, ordinary and usual course of the operation of owning and operating the Property aggregating at least \$100,000/00 owed to any third party, or, in any such case, if the Mortgagor shall default under any lease, mortgage, indenture or other agreement or instrument relating to any such indebtedness (to the extent specified in this subparagraph) or any other indebtedness of any kind or nature beyond any grace period, if applicable, with respect to such indebtedness, agreement, or instrument;

(o) if the Property, or any portion thereof, shall become subject (i) to any tax lien, other than a lien for local real estate taxes and assessments not due and payable, or (ii) to any lis pendens, notice of pendency, stop order, notice of intention to file mechanic's or materialman's lien, mechanic's or materialman's lien or other lien of any nature whatsoever, or (iii) to forfeiture under applicable laws, and the same shall not either be discharged of record or in the alternative insured over to the satisfaction of the Mortgagee by the title company insuring the lien of this Mortgage within a period of thirty (30) days after the same is filed or recorded, and irrespective of whether the same is superior or subordinate in lien or other priority to the lien of this Mortgage and irrespective of whether the same constitutes a perfected or inchoate lien or encumbrance on the Property, or any part thereof, or is only a matter of record or notice;

(p) if the Mortgagor shall continue to be in default under any of the other terms, covenants or conditions of this Mortgage (other than those provisions and grace periods expressly provided herein) for five (5) days after notice from the Mortgagee in the case of any default which can be cured by the payment of a sum of money or for thirty (30) days after notice from the Mortgagee in the case of any other default; provided, however, with respect to any other default which cannot be cured by the payment of a sum of money, in the event the same is not capable of being cured within such thirty (30) day period and so long as Mortgagor has commenced and diligently continues to cure the same with such thirty (30) days, such cure period shall be extended for an additional period in the sole but reasonable discretion of Mortgagee;

(q) if Guarantor or any other Person shall be in default under any Guaranty, including, without limitation, if Guarantor shall fail to maintain the minimum unencumbered liquidity and minimum net worth required pursuant to that certain Unlimited Guaranty dated on or about the date hereof executed by Guarantor in favor of Administrative Agent;

(r) if Mortgagor fails to establish, maintain and/or replenish any account with the Mortgagee as required pursuant to the Note from which Monthly Loan Payments, Monthly Escrow Payments, if applicable, and any other payments of interest, principal, escrow, fees and/or any other expenses due the Mortgagee may be deducted;

(s) if the Mortgagor shall incur any additional debt other than unsecured trade payables incurred in the customary, ordinary and usual course of the operation of owning and operating the Property, any such debt not to be outstanding for more than thirty (30) days;

(t) if Mortgagor is dissolved or Guarantor should die or be declared judicially incompetent; or

(u) if Mortgagor shall be in default under any agreements, documents or instruments executed by Mortgagor in connection with the Leaseback Agreement or other agreements between Mortgagor and the Agency or Mortgagor shall otherwise be in default as to any obligations of Mortgagor in favor of the Agency.

**Section 3.2 Remedies Upon Default.** Upon the occurrence of any Event of Default all sums secured hereby shall become immediately due and payable, without notice or demand, at the option of Mortgagee and Mortgagee may:

(a) Have a receiver appointed as a matter of right on an *ex parte* basis without notice to Mortgagor and without regard to the sufficiency of the Property or any other security for the indebtedness secured hereby and, without the necessity of posting any bond or other security. Such receiver shall take possession and control of the Property and shall collect and receive the Rents. If Mortgagee elects to seek the appointment of a receiver for the Property, Mortgagor, by its execution of this Mortgage, expressly consents to the appointment of such receiver, including the appointment of a receiver *ex parte* if permitted by applicable law. The receiver shall be entitled to receive a reasonable fee for managing the Property, which fee may be deducted from the Rents or may be paid by Mortgagee and added to the Debt secured by this Mortgage. Immediately upon appointment of a receiver, Mortgagor shall surrender possession of the Property to the receiver and shall deliver to the receiver all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Property and all security deposits. If the Rents are not sufficient to pay the costs of taking control of and managing the Property and collecting the Rents, any funds expended by Mortgagee, or advanced by Mortgagee to the receiver, for such purposes shall become an additional part of the Debt secured by this Mortgage. The receiver may exclude Mortgagor and its representatives from the Property. Mortgagor acknowledges and agrees that the exercise by Mortgagee of any of the rights conferred under this Section 3.2 shall not be construed to make Mortgagee a "mortgagee-in-possession" of the Property so long as Mortgagee has not itself entered into actual possession of the Property.

(b) Proceed to foreclose on this Mortgage as now or then provided by law (in which event Mortgagee shall be entitled to the appointment of a receiver) pursuant to a judicial proceeding in accordance with Article 13 of the New York Real Property Actions and Proceedings Law or by advertisement in accordance with Article 14 of New York Real Property Actions and Proceedings Law (or any successor or replacement statute thereof). Any foreclosure shall forever



bar Mortgagor and all persons claiming under Mortgagor from all right and interest in the Property. In any such proceeding Mortgagee shall be entitled to recover all costs and expenses (regardless of the particular nature thereof and whether incurred prior to or during such proceeding) incident to the realization of its rights hereunder, including court costs and reasonable attorneys' fees. Mortgagee shall be entitled to possession of the Property during any period of redemption. Mortgagor hereby waives any right it or its successors in interest may have in the event of acceleration or foreclosure to obtain a partial release of the Property from the lien of this Mortgage by paying less than the entire amount then secured hereby, or to partially redeem the Property by paying less than the amount necessary to effect full redemption. If a deficiency remains after proper application of the proceeds of sale of the Property, Mortgagor shall pay the same immediately after determination of the amount thereof.

(c) Sue on the Note as permitted under applicable law.

(d) Avail itself of any other right or remedy available to it under the terms of this Mortgage, the other Loan Documents or applicable law.

**Section 3.3 No Waiver.** By accepting payment of any sum secured hereby after its due date, Mortgagee does not waive its right either to require prompt payment when due of all other sums so secured or to declare an Event of Default for failure to do so.

**Section 3.4 Litigation Relating to Property.** The Mortgagee shall have the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of the Mortgagor, which the Mortgagee, in its discretion, feels should be brought to protect the Mortgagee's interest in the Property.

**Section 3.5 Waiver of Marshaling, Etc.** In connection with any foreclosure sale under this Mortgage, Mortgagor hereby waives, for itself and all others claiming by, through or under Mortgagor, any right Mortgagor or such others would otherwise have to require marshaling or to require that the Property be sold in parcels or in any particular order.

**Section 3.6 Interest Rate Increase in the Event of Default.** Mortgagor will pay, from the date of an Event of Default through the earlier of the date upon which the Event of Default is cured or the date upon which the Debt is paid in full, interest on the unpaid principal amount of the Note at a per annum rate equal to five percent (5%), plus the interest rate of the Note that is in effect at the time of the default (the "**Default Rate**"). The Default Rate shall increase at the rate of one (1%) percentage point per month beginning on the first day of the month following the month in which the Default Rate became effective and on the first day of each month thereafter up to the maximum rate permitted by law, until the Loan is finally and indefeasibly paid in full. Mortgagee shall not be obligated to give any notice of such increase in the interest rate. Such increase in the interest rate shall not be deemed an extension of any due date hereunder or a waiver by the Mortgagee of its right to enforce collection or pursue its remedies. The Mortgagor acknowledges that (a) such rate increase is a material inducement to the Mortgagee to make the loan, (b) the Mortgagee would not have made the loan in the absence of the agreement of the Mortgagor to pay such rate increase, (c) such rate increase represents compensation for increased risk to the Mortgagee that the loan will not be repaid, and (d) such rate increase is not a penalty and represents a reasonable estimate of the cost to the Mortgagee in allocating resources (both personal and financial) to the on-going review, monitoring,

administration and collection of the loan and compensation to the Mortgagee for losses that are difficult to ascertain.

**Section 3.7 Mortgagee's Right to Remedy Defaults.** Upon the occurrence of any Event of Default under this Mortgage, the Mortgagee may, at its discretion, remedy the same and for such purpose shall have the right to enter upon the Property without thereby becoming liable to the Mortgagor or any person holding under or claiming under or through the Mortgagor. Nothing contained in this Mortgage shall in any manner obligate the Mortgagee to remedy any Event of Default under this Mortgage. If the Mortgagee shall remedy such Event of Default or appear in, defend, or bring any action or proceeding to protect the Mortgagee's interest in the Property or to foreclose this Mortgage or collect the Debt, then the costs and expenses of remedying such default, or bringing such action or proceeding (including attorneys' fees to the extent permitted by law), with interest at the Default Rate, shall be paid by the Mortgagor to the Mortgagee upon demand. To the extent that any of the costs or expenses paid by the Mortgagee after default by the Mortgagor shall constitute payment of (a) taxes, charges or assessments which may be imposed by law upon the Property, (b) premiums on insurance policies covering the Property, (c) expenses incurred in upholding the lien of this Mortgage, including, but not limited to, the costs and expenses of any litigation to collect the Debt secured by this Mortgage or to prosecute, defend, protect or preserve the rights and the lien created by this Mortgage, (d) 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, or (e) unless prohibited by applicable laws, any other amount; then, and in each such event, all such costs, expenses and amounts, together with interest thereon at the Default Rate, shall be added to the Debt secured by this Mortgage, and shall be secured by this Mortgage.

**Section 3.8 Late Charge.** If any payment is not paid by the due date specified in the Note, this Mortgage or any other Loan Document, Mortgagor shall pay to Mortgagee upon demand an amount equal to six percent (6%) of any such payment to defray the expense incurred by Mortgagee in handling and processing such delinquent payment, and such amount shall be deemed to be secured by this Mortgage.

**Section 3.9 Multiple Parcels.** In addition to all other rights and remedies of Mortgagee set forth herein, upon the occurrence of an Event of Default, which remains uncured following the expiration of any applicable grace period, Mortgagee may institute a non-judicial foreclosure proceeding in compliance with applicable law in effect on the date foreclosure is commenced for Mortgagee to sell all or any portion of the Property either as a whole or in separate parcels as Mortgagee may determine at public sale or sales to the highest bidder for cash, in order to pay the Debt. If the Property is sold as separate parcels, Mortgagee may direct the order in which the parcels are sold. Mortgagee shall deliver to the purchaser a Mortgagee's deed or deeds without covenant or warranty, express or implied. Mortgagee may postpone the sale of all or any portion of the Property by public announcement at the time and place of sale, and from time to time may further postpone the sale by public announcement in accordance with applicable law.

#### **ARTICLE IV. MISCELLANEOUS**

**Section 4.1 Notices.** Any notice, request or demand given or made under this Mortgage shall be in writing and shall be hand delivered or sent Federal Express, United Parcel Services or other

reputable nationally recognized overnight courier service or sent postage prepaid registered or certified mail, return receipt requested, and shall be deemed given (a) when received at the following addresses if hand delivered, (b) one (1) Business Day after delivery to a nationally recognized overnight courier service, and (c) three (3) Business Days after being postmarked and addressed as follows if sent by registered or certified mail, return receipt requested:

*If to Mortgagee:*

Sterling National Bank  
One Jericho Plaza  
Jericho, New York 11753  
Attention: Commercial Loan Department

*With a copy to:*

Norris McLaughlin P.A.  
7 Times Square, 21<sup>st</sup> Floor  
New York, New York 10036  
Attention: Hugh P. Finnegan, Esq.

*If to the Mortgagor:*

BNS 1, LLC  
31-10 37<sup>th</sup> Avenue, Suite 500  
Long Island City, New York 11101  
Attention: Efstathios Valiotis

*With a copy to:*

Karabelas & Papagianopoulos LLP  
31-10 37<sup>th</sup> Avenue  
Long Island City, New York 11101  
Attention: Michael Papagianopoulos, Esq.

It being understood and agreed that each party will use reasonable efforts to send copies of any notices to the addresses marked "With a copy to" hereinabove set forth; provided, however, that failure to deliver such copy or copies shall have no consequence whatsoever to the effectiveness of any notice made to Mortgagor or Mortgagee. Mortgagor or Mortgagee may designate a change of address by notice given, as herein provided, to the other party fifteen (15) days prior to the date such change of address is to become effective.

**Section 4.2 No Notice From Mortgagee Unless Agreed in Mortgage.** The Mortgagor shall not be entitled to any notices of any nature whatsoever from the Mortgagee except with respect to matters for which this Mortgage specifically and expressly provides for the giving of notice by the Mortgagee to the Mortgagor. The Mortgagor hereby expressly waives, to the maximum extent permitted by law, the right to receive any notice from the Mortgagee with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of notice by the Mortgagee to the Mortgagor.

**Section 4.3 Interest Rate Ceilings.** This Mortgage and the Note are subject to the express condition that at no time shall the Mortgagor be obligated or required to pay interest on the principal amount of the Debt at a rate which violates any usury or interest rate maximum limitation,

or which could subject the holder of the Note to either civil or criminal liability as a result of such rate being in excess of the maximum interest rate which the Mortgagor is permitted by law to contract or agree to pay (the "**Maximum Legal Rate**"). If, by the terms of any Loan Document, the Mortgagor is at any time required or obligated to pay interest on the principal amount of the Debt at a rate in excess of such Maximum Legal Rate, then the rate of interest under the Note shall be deemed to be immediately reduced to such Maximum Legal Rate and the interest payable shall be computed at such Maximum Legal Rate and all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal amount of the Debt.

**Section 4.4 No Verbal Modification.** This Mortgage may only be modified, amended or changed by an agreement in writing signed by the Mortgagor and the Mortgagee. This Mortgage may only be released, discharged or satisfied of record by an agreement in writing signed by the Mortgagee. No waiver of any term, covenant or provision of this Mortgage shall be effective unless given, for value, in writing by the Mortgagee and if so given by the Mortgagee shall only be effective in the specific instance in which given. The Mortgagor acknowledges that the Loan Documents set forth the entire agreement and understanding of the Mortgagor and the Mortgagee with respect to the Loan and that no oral or other agreement, understanding, representation or warranty exists with respect to the Loan other than the agreements, understandings, representations, and warranties set forth in the Loan Documents.

**Section 4.5 Severability.** If any provision of this Mortgage is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Mortgage, then such provision shall be fully severable, and this Mortgage shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Mortgage, and the remaining provisions of this Mortgage shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Mortgage.

**Section 4.6 Debtor-Creditor Status.** The relationship of the Mortgagee to the Mortgagor under this Mortgage is solely that of lender and borrower, and mortgagor and mortgagee. Nothing contained in the Loan Documents is intended to create, or shall in any event or under any circumstance be construed as creating, a partnership, joint venture, tenancy-in-common, joint tenancy or other relationship of any nature whatsoever between the Mortgagee and the Mortgagor other than as lender and borrower and mortgagor and mortgagee.

**Section 4.7 No Presumption Against Drafter.** The Mortgagor agrees that, when interpreting this Mortgage or any other document delivered by the Mortgagor to the Mortgagee, there shall be no presumption against the Mortgagee on account of the fact that the Mortgagee is the party causing the drafting of this Mortgage.

**Section 4.8 Joint and Several.** If the Mortgagor consists of more than one person, the obligations and liabilities of each such person under this Mortgage shall be joint and several.

**Section 4.9 Time Is of the Essence.** Time is of the essence under this Mortgage and in the performance of every term, covenant and obligation contained herein.

**Section 4.10 Headings Have No Legal Effect.** The headings and captions of this Mortgage are

for convenience of reference only, and have no legal effect, and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions of this Mortgage.

**Section 4.11 Counterparts; Electronic Signatures.** This Mortgage may be executed in any number of duplicate counterparts. If there is more than one Mortgagor, then each such counterpart need not be signed by each signatory. Each such duplicate counterpart which has been signed by at least one signatory, when combined with other counterparts which have been signed by the other signatories, shall be deemed an original. This Mortgage may be executed via Electronic Signatures (including, without limitation, .pdf and/or via facsimile), and, when completed, shall be considered an original, and shall have the same legal effect, validity and enforceability as a paper record. This Mortgage may be executed in as many counterparts as deemed necessary, including both paper and electric counterparts, but all such counterparts when taken together shall be deemed as one and the same document. For the avoidance of doubt, the authorization under this Section 4.11 may include, without limitation, use or acceptance by Mortgagee of a manually signed paper communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed communication converted into another format, for transmission or delivery to Mortgagee. It shall not be necessary, in making proof of this Mortgage, to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart, without impairing the legal effect of the signatures thereon, and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

**Section 4.12 Reasonableness.** If at any time the Mortgagor believes that the Mortgagee has not acted reasonably in granting or withholding any approval or consent under any Loan Document, as to which approval or consent either the Mortgagee has expressly agreed to act reasonably, or absent such agreement, a court of law having jurisdiction over the subject matter would require the Mortgagee to act reasonably, then the Mortgagor's sole remedy shall be to seek injunctive relief or specific performance and no action for monetary damages or punitive damages shall in any event or under any circumstance be maintained by the Mortgagor against the Mortgagee.

**Section 4.13 Mortgagee Has Absolute Discretion.** Except as may otherwise be expressly provided to the contrary, wherever, pursuant to any Loan Document: (a) the Mortgagee exercises any right given to it to consent or not consent, or to approve or disapprove, (b) any arrangement or term or item is to be satisfactory to the Mortgagee, (c) the Mortgagee may take any action in a manner it deems appropriate, (d) the Mortgagee is entitled to exercise its opinion as to any matter, then the decision of the Mortgagee to consent or not consent, or to approve or disapprove, or to decide that arrangements or terms are satisfactory or not satisfactory, or to take any such action or to reach any such opinion, shall be in the sole and absolute discretion of the Mortgagee, and shall be final and conclusive. The Mortgagee shall have no liability to the Mortgagor or any other party (whether in damages or otherwise), on account of such exercise of such right, or such consent or approval, or such action or opinion, even if the exercise of such right, or such consent or approval, or such action or opinion, is deemed to be unreasonable.

**Section 4.14 No Action or Omission by Mortgagee Shall Be A Waiver.** The failure of the Mortgagee to insist upon strict performance of any term of this Mortgage shall not be deemed to be a waiver of any term of this Mortgage. No delay or omission by the Mortgagee to exercise any right, power or remedy accruing under this Mortgage shall be construed to be a waiver of any

default or acquiescence therein. A waiver in one or more instances to exercise any right, power or remedy accruing under this Mortgage shall apply only to the particular instance or instances, and at the particular time or times only, and no such waiver shall be deemed a continuing waiver, but every term, covenant, provision or condition establishing such right, power or remedy shall survive and continue to remain in full force and effect. The Mortgagor shall not be relieved of the Mortgagor's obligation to pay the Debt, at the time and in the manner provided for its payment in the Loan Documents, by reason of: (a) failure of the Mortgagee to comply with any request of the Mortgagor to take any action to foreclose this Mortgage or otherwise enforce any of the provisions of the Loan Documents, (b) the release, regardless of consideration, of the Property or any other security for the Debt, or (c) any agreement or stipulation between the Mortgagee and any subsequent owner or owners of the Property or other person extending the time of payment or otherwise modifying or supplementing the terms of any of the Loan Documents, without first having obtained the consent of the Mortgagor, and, even if such consent is not obtained, the Mortgagor shall continue to be obligated to pay the Debt at the time and in the manner provided in the Note and this Mortgage, as so extended, modified and supplemented, unless expressly released and discharged from such obligation by the Mortgagee in writing. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien, encumbrance, right, title or interest in or to the Property, the Mortgagee may (i) release (1) any person at any time liable for the payment of the Debt or any portion thereof, or (2) the Property, and (ii) extend the time of payment or otherwise modify the terms of any Loan Document, including, without limitation, a modification of the interest rate payable on the principal amount of the Note, without, in each such case, in any manner impairing or affecting this Mortgage or the lien or priority of this Mortgage, as so extended and modified, as security for the Debt over any such subordinate lien, encumbrance, right, title or interest. The Mortgagee may resort for the payment of the Debt to any other security held by the Mortgagee in such order and manner as the Mortgagee, in its discretion, may elect. The Mortgagee may take action to recover the Debt, or any portion thereof, or to enforce any covenant of this Mortgage without prejudice to the right of the Mortgagee thereafter to foreclose this Mortgage. The Mortgagee shall not be limited exclusively to the rights and remedies stated in this Mortgage but shall be entitled to every additional right and remedy now or hereafter afforded by law or equity. The rights of the Mortgagee under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of the Mortgagee shall be construed as an election to proceed under any one provision in this Mortgage to the exclusion of any other provision.

**Section 4.15 Liability.** In acting under this Mortgage, neither Mortgagee nor any of its respective officers, directors, shareholders, members, managers, employees, or agents or contractors (collectively called, the "**Mortgagee Parties**"), shall be liable, in the case of any such Mortgagee Party causing damage to the Mortgagor, for any error of judgment of such party, or for any act done or step taken or omitted in good faith by such party. Mortgagee shall have no liability or responsibility for taking any necessary steps to preserve rights against any third parties with respect to the Property. If the Mortgagee (or any Mortgagee Party) shall fail to perform any of its respective obligations under any Loan Document, then such party (the "**Nonperforming Party**") shall not be in default under such Loan Document unless and to the extent that the Nonperforming Party is in default pursuant to the express terms of such Loan Document and only if the Mortgagor shall give notice of such default to such Nonperforming Party, and the Nonperforming Party shall fail to cure such default within thirty (30) days (or if such default cannot reasonably be cured within such thirty (30) day period, then the Nonperforming Party shall fail to commence curing

such default within such thirty (30) day period and cure such default within a reasonable period thereafter). In no event shall any Mortgagee Party be liable for any direct, consequential, or punitive damages on account of any default under any Loan Document or any violation of applicable law or procedures.

**Section 4.16 Mortgagor's Liability For Debt is Absolute and Unconditional.** The Mortgagor acknowledges that the Mortgagor's obligation to pay the Debt in accordance with the provisions of the Note, this Mortgage and the other Loan Documents is and shall at all times continue to be absolute and unconditional in all respects, and shall at all times be valid and enforceable irrespective of any other agreements or circumstances of any nature whatsoever which might otherwise constitute a defense to: (a) any of the Loan Documents, (b) the obligation of the Mortgagor under the Loan Documents to pay the Debt, (c) the obligations of any other person relating to the Loan Documents, or (d) the obligations of the Mortgagor, whether under the Loan Documents or otherwise, with respect to the Loan. The Mortgagor absolutely, unconditionally and irrevocably waives any and all right to assert any setoff, counterclaim or cross-claim of any nature whatsoever with respect to: (i) the obligation of the Mortgagor to pay the Debt in accordance with the Loan Documents, or (ii) the obligations of any other person relating to the Loan Documents, or (iii) the obligations of the Mortgagor, whether under the Loan Documents or otherwise, with respect to the Loan in any action or proceeding brought by the Mortgagee to collect the Debt, or any portion thereof, or to enforce, foreclose and realize upon the lien and security interest created by any Loan Document, in whole or in part (provided, however, that the foregoing shall not be deemed a waiver of the Mortgagor's right to assert any compulsory counterclaim maintained in a court of the United States, or of the State of New York if such counterclaim is compelled under local law or rule of procedure, nor shall the foregoing be deemed a waiver of the Mortgagor's right to assert any claim which would constitute a defense, setoff, counterclaim or crossclaim of any nature whatsoever against the Mortgagee in any separate action or proceeding, provided that, the Mortgagor shall not seek to consolidate any such separate action or proceeding with any action or proceeding by the Mortgagee).

**Section 4.17 Governing Law; Submission to Jurisdiction.** THIS MORTGAGE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE SUBSTANTIVE LAWS OF THE STATE OF NEW YORK AND THE APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST MORTGAGEE OR MORTGAGOR ARISING OUT OF OR RELATING TO THIS MORTGAGE MAY BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN WESTCHESTER COUNTY, NEW YORK STATE, AND EACH OF MORTGAGEE (BY ITS ACCEPTANCE OF THIS MORTGAGE) AND MORTGAGOR WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND EACH OF MORTGAGEE (BY ITS ACCEPTANCE OF THIS MORTGAGE) AND MORTGAGOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. SUBJECT TO THE REQUIREMENTS FOR A CASE TO BE HEARD IN THE COMMERCIAL DIVISION OF THE NEW YORK STATE SUPREME COURT, MORTGAGOR FURTHER AGREES AND CONSENTS TO SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COMMERCIAL DIVISION OF THE NEW YORK STATE SUPREME COURT, AND TO THE APPLICATION OF SAID COURT'S ACCELERATED PROCEDURES PURSUANT TO RULE 9 OF SECTION 202.70(G) OF THE UNIFORM RULES

FOR NEW YORK STATE TRIAL COURTS. FURTHERMORE, THE MORTGAGOR AGREES AND CONSENTS THAT, IN ADDITION TO ANY METHODS OF SERVICE OF PROCESS PROVIDED FOR UNDER APPLICABLE LAW, ALL SERVICE OF PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING REFERRED TO ABOVE MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, POSTAGE PREPAID, RETURN RECEIPT REQUESTED, DIRECTED TO MORTGAGOR AT THE ADDRESS INDICATED IN THIS MORTGAGE FOR SUCH PARTY, AND SERVICE SO MADE SHALL BE COMPLETE AND FOR ALL PURPOSES DEEMED BY THE MORTGAGOR TO BE GOOD AND SUFFICIENT SERVICE FIVE DAYS AFTER THE SAME SHALL HAVE BEEN SO MAILED.

**Section 4.18 No Statutory Rights.** THE MORTGAGOR SHALL NOT AND WILL NOT APPLY FOR OR AVAIL ITSELF OF ANY APPRAISEMENT, VALUATION, STAY, EXTENSION OR EXEMPTION LAWS, OR ANY SO-CALLED "MORATORIUM LAWS," NOW EXISTING OR HEREAFTER ENACTED, IN ORDER TO PREVENT OR HINDER THE ENFORCEMENT OR FORECLOSURE OF THIS MORTGAGE, BUT THE MORTGAGOR HEREBY WAIVES THE BENEFIT OF SUCH LAWS TO THE FULL EXTENT THAT THE MORTGAGOR MAY DO SO UNDER APPLICABLE LAW. THE MORTGAGOR, FOR ITSELF AND ALL WHO MAY CLAIM THROUGH OR UNDER IT, WAIVES ANY AND ALL RIGHT TO HAVE THE PROPERTY MARSHALLED UPON ANY FORECLOSURE OF THE LIEN OF THIS MORTGAGE AND AGREES THAT ANY COURT HAVING JURISDICTION TO FORECLOSE SUCH LIEN MAY ORDER THE PROPERTY SOLD AS AN ENTIRETY. THE MORTGAGOR HEREBY WAIVES FOR ITSELF AND ALL WHO MAY CLAIM THROUGH OR UNDER IT, AND TO THE FULL EXTENT THE MORTGAGOR MAY DO SO UNDER APPLICABLE LAW, ANY AND ALL RIGHTS OF REDEMPTION FROM SALE UNDER ANY ORDER OR DECREE OF FORECLOSURE OF THIS MORTGAGE OR GRANTED UNDER ANY STATUTE NOW EXISTING OR HEREAFTER ENACTED.

**Section 4.19 No Trial by Jury.** THE MORTGAGOR HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, SUIT OR COUNTERCLAIM ARISING IN CONNECTION WITH, OUT OF OR OTHERWISE RELATING TO THE LOAN DOCUMENTS, OR THE LOAN, OR IN ANY WAY RELATED TO THIS TRANSACTION OR OTHERWISE WITH RESPECT TO THE PROPERTY.

**Section 4.20 Relief from Automatic Stay in a Bankruptcy Proceeding.** MORTGAGOR KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND AFTER CONSULTATION AND ADVICE OF COUNSEL AGREES WITH MORTGAGEE THAT NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS, IN THE EVENT A CASE IS COMMENCED UNDER THE BANKRUPTCY CODE BY OR AGAINST THE MORTGAGOR (IT BEING UNDERSTOOD THAT THIS MORTGAGE IS NOT INTENDED TO PRECLUDE SUCH A FILING), AND AN EVENT OF DEFAULT SHALL HAVE OCCURRED HEREUNDER, THE FOLLOWING PROVISIONS SHALL BE APPLICABLE WITH EACH SUCH EVENT TO THE EXTENT PERMITTED UNDER APPLICABLE LAW: (A) MORTGAGEE SHALL BE ENTITLED TO THE IMMEDIATE TERMINATION OF THE AUTOMATIC STAY PROVISIONS OF SECTION 362 OF THE BANKRUPTCY CODE, AS THE SAME MAY BE AMENDED FROM TIME TO TIME (AND ANY OTHER RELEVANT PROVISIONS OF THE BANKRUPTCY



CODE), AND GRANTED COMPLETE RELIEF FROM THE AUTOMATIC STAY AND ALLOWED TO PURSUE ANY AND ALL OF ITS RIGHTS, REMEDIES AND RECOURSES AVAILABLE TO MORTGAGEE UNDER THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS AND PURSUANT TO ANY PROVISIONS OF APPLICABLE LAW WITHOUT REQUIREMENT THAT MORTGAGEE FURNISH TO MORTGAGOR ANY NOTICE OR PROVIDE MORTGAGOR WITH ANY GRACE PERIOD. MORTGAGEE SHALL ONLY BE REQUIRED TO SUBMIT AN AFFIDAVIT AND PROPOSED ORDER TO THE BANKRUPTCY COURT NOTICED FOR PRESENTMENT ON THE MORTGAGOR AND MORTGAGOR'S COUNSEL, ANNEXING A COPY OF THIS MORTGAGE TO SUCH PROPOSED ORDER, WITH THE AFFIDAVIT SOLELY FOR PURPOSES OF IDENTIFYING THE EXISTING DEFAULT HEREUNDER, AND TO ADVISE THE COURT OF THE MORTGAGOR'S CONSENT TO MORTGAGEE'S RELIEF FROM THE AUTOMATIC STAY, AND (B) MORTGAGEE SHALL BE ENTITLED AS AFORESAID TO THE LIFTING OF THE AUTOMATIC STAY WITHOUT THE NECESSITY OF AN EVIDENTIARY HEARING AND WITHOUT THE NECESSITY OR REQUIREMENT OF MORTGAGEE TO ESTABLISH OR PROVE THE VALUE OF THE MORTGAGOR'S ASSETS, THE LACK OF ADEQUATE PROTECTION OF ITS INTEREST IN MORTGAGOR'S ASSETS OR THE LACK OF EQUITY THEREIN. MORTGAGEE'S ENTITLEMENT AS AFORESAID TO THE LIFTING OF THE AUTOMATIC STAY HEREUNDER BY THE APPROPRIATE BANKRUPTCY COURT SHALL BE DEEMED "FOR CAUSE" PURSUANT TO SECTION 362(D)(1) OF THE BANKRUPTCY CODE, AS THE SAME MAY BE AMENDED FROM TIME TO TIME.

**Section 4.21 Bankruptcy.** (a) Upon the occurrence and during the continuance of an Event of Default, Mortgagee shall have the right to proceed in its own name or in the name of Mortgagor in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Mortgagor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code (defined below).

(b) If there shall be filed by or against Mortgagor a petition under the Bankruptcy Code and Mortgagor, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Mortgagor shall give Mortgagee not less than ten (10) days' prior notice of the date on which Mortgagor shall apply to the bankruptcy court for authority to reject the Lease. Mortgagee shall have the right, but not the obligation, to serve upon Mortgagor within such ten (10) day period a notice stating that (i) Mortgagee demands that Mortgagor assume and assign the Lease to Mortgagee pursuant to Section 365 of the Bankruptcy Code and (ii) Mortgagee covenants to cure or provide adequate assurance of future performance under the Lease. If Mortgagee serves upon Mortgagor the notice described in the preceding sentence, Mortgagor shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Mortgagee of the covenant provided for in clause (ii) of the preceding sentence.

**Section 4.22 Maximum Principal Amount; Additional Interest.** NOTWITHSTANDING ANY PROVISION SET FORTH HEREIN TO THE CONTRARY, THE MAXIMUM AMOUNT OF PRINCIPAL INDEBTEDNESS SECURED BY THIS MORTGAGE AT EXECUTION, OR WHICH UNDER ANY CONTINGENCY MAY BECOME SECURED HEREBY AT ANY

TIME HEREAFTER, IS \$2,733,940.00 LAWFUL MONEY OF THE UNITED STATES OF AMERICA, PLUS ALL INTEREST PAYABLE UNDER THE NOTE AND ALL AMOUNTS EXPENDED BY MORTGAGEE AFTER DEFAULT BY MORTGAGOR (A) FOR THE PAYMENT OF TAXES, CHARGES OR ASSESSMENTS WHICH MAY BE IMPOSED BY LEGAL REQUIREMENTS UPON THE PROPERTY, (B) TO MAINTAIN THE INSURANCE REQUIRED UNDER THIS MORTGAGE, (C) FOR ANY EXPENSES INCURRED IN MAINTAINING THE PROPERTY AND UPHOLDING THE LIEN OF THIS MORTGAGE, INCLUDING, BUT NOT LIMITED TO, THE EXPENSE OF ANY LITIGATION TO PROSECUTE OR DEFEND THE RIGHTS AND LIEN CREATED BY THIS MORTGAGE, AND (D) FOR ANY AMOUNT, COST OR CHARGE TO WHICH MORTGAGEE BECOMES SUBROGATED, UPON PAYMENT, WHETHER UNDER RECOGNIZED PRINCIPLES OF LAW OR EQUITY, OR UNDER EXPRESS STATUTORY AUTHORITY, TOGETHER WITH INTEREST ON ALL OF THE FOREGOING AMOUNTS AT THE DEFAULT RATE.

**Section 4.23 New York Lien Law.** Pursuant to Section 13 of the Lien Law of New York, Mortgagor shall receive the advances secured hereby 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 Mortgagor shall apply such advances first to the payment of the "cost of improvement" on the Property before using any part of the total of the same for any other purpose. The Mortgagor will indemnify and hold Mortgagee harmless against any loss or liability, cost of expense, including, without limitation, any judgments, attorney's fees, costs of appeal bonds and printing costs, arising out of or relating to any proceeding instituted by any claimant alleging a violation by Mortgagee of any applicable lien law, including, without limitation, any section of Article 3-A of the Lien Law of New York. For purposes of this section, "cost of improvement" has the meaning set forth in Subdivision 5 of Section 2 of the Lien Law of New York, whether or not the Land is located in that state.

**Section 4.24 Type of Property.** This mortgage does not cover real property principally improved or to be improved by one or more structures containing in the aggregate not more than six residential dwelling units, each having their own separate cooking facilities.

**Section 4.25 Information for Participants, Etc.** Mortgagor agrees to furnish such information and confirmation as may be required from time to time by Mortgagee on request of potential loan participants and assignees and agrees to make adjustments in this Mortgage, the Note, and the other documents evidencing or securing the loan secured hereby to accommodate such participant's or assignee's requirements, provided that, such requirements do not vary the economic terms of the loan secured hereby. Mortgagor hereby authorizes Mortgagee to disclose to potential participants and assignees any information in Mortgagee's possession with respect to Mortgagor and the loan secured hereby.

**Section 4.26 Satisfaction of Debt.** Upon the final and indefeasible payment in full of the Debt, Mortgagee shall discharge this Mortgage and in that event only, all rights under this Mortgage shall terminate except for those provisions hereof which by their terms survive, and the Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, and Mortgagee shall execute and deliver to Mortgagor, at the sole cost and expense of Mortgagor (including, without limitation, reasonable attorneys' fees and expenses), any such documents that may be required to release this Mortgage of record. If it is the practice of the industry at the time the Debt is paid in full to assign, rather than discharge a mortgage, then at

Mortgagor's written request, Mortgagee shall assign this Mortgage, without recourse, warranty or representation of any nature, express or implied, to any new lender provided that, (a) Mortgagor has finally and indefeasibly paid in full (i) the Debt, (ii) Mortgagee's standard assignment fee as in effect at the time of such assignment (not to exceed \$1,500.00), and (iii) Mortgagee's costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred in connection with the assignment of this Mortgage, and (b) Mortgagor has delivered to Mortgagee an executed affidavit pursuant to Section 275 of the New York Real Property Law and such other documents and instruments as Mortgagee may reasonably request. Notwithstanding the foregoing, Mortgagee shall not be responsible for any mortgage recording taxes, recording fees or other charges payable in connection with any such assignment.

**Section 4.27 Superior Mortgage.** This Mortgage will constitute a third priority lien. On the date hereof, Mortgagor is executing and delivering (i) a Mortgage Extension and Modification Agreement in the original principal amount of \$4,000,000.00 encumbering the Property (the "Land Mortgage") and (ii) a Building Mortgage and Security Agreement (Second) in the original principal amount of up to \$28,266.060.00 encumbering the Property (the "Building Mortgage"; the Land Mortgage and the Building Mortgage, collectively, the "Superior Mortgage"), each to be recorded in the Office of the County Clerk of Westchester County immediately prior to this Mortgage. This Mortgage shall be subject and subordinate to the Superior Mortgage. Mortgagor hereby covenants to comply with all of the terms, covenants and conditions of the Superior Mortgage, and agrees that any default under the Superior Mortgage shall be a default under this Mortgage. Other than the Superior Mortgage or as otherwise permitted hereunder, the existence of any other mortgages, liens or encumbrances against the Mortgagor's right, title and interest in the Property shall be deemed to be a default hereunder.

**Section 4.28 Project Loan Agreement.** The proceeds of the Loan secured, in part, hereby are to be advanced by Mortgagee to Mortgagor in accordance with the Project Loan Agreement. Mortgagor shall perform all of the terms of the Project Loan Agreement. All advances made and all indebtedness arising and accruing under the Project Loan Agreement from time to time shall be secured hereby. In the event of any conflict or ambiguity between the terms of this Mortgage and the Project Loan Agreement, the terms which shall enlarge the rights and remedies of Mortgagee and the interest of Mortgagee in the Property, afford Mortgagee greater financial security in the Property and better assure payment of the obligations in full, shall control.

**Section 4.29 City of Peekskill Industrial Development Agency Special Obligations; Recording.** Notwithstanding any other terms or condition contained in this Mortgage:

(a) This Mortgage is executed by the City of Peekskill Industrial Development Agency (the "Agency") solely for the purpose of subjecting its rights under the Company Lease Agreement and Leaseback Agreement (the "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 4.29 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.

**THE MORTGAGOR AND AGENCY ACKNOWLEDGE THAT THEY HAVE EACH**

**RECEIVED A TRUE COPY OF THIS MORTGAGE.**

*[no further text on this page; signature page to follow]*

IN WITNESS WHEREOF, this Mortgage has been executed by Mortgagor and Agency as of the date first set forth above.

**MORTGAGOR:**

**BNS I, LLC,**  
a New York limited liability company


By:

  
Name: John Mavroudis  
Title: Authorized Signatory

**AGENCY:**

**CITY OF PEEKSKILL**  
**INDUSTRIAL DEVELOPMENT AGENCY,**  
a New York public benefit corporation

By:

  
Name: Matthew Rudikoff  
Title: Executive Director

IN WITNESS WHEREOF, this Mortgage has been executed by Mortgagor and Agency as of the date first set forth above.

**MORTGAGOR:**

**BNS I, LLC,**  
a New York limited liability company

By: \_\_\_\_\_  
Name: John Mavroudis  
Title: Authorized Signatory

**AGENCY:**

**CITY OF PEEKSKILL  
INDUSTRIAL DEVELOPMENT AGENCY,**  
a New York public benefit corporation

By:   
Name: Matthew Rudikoff  
Title: Executive Director



ACKNOWLEDGMENT(S)

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

On the 28 day of December, 2020, before me, the undersigned, a notary public in and for said state, personally appeared John Mavroudis personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

*[Faint notary seal and text]*  
21

*[Handwritten signature]*  
Notary Public

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

On the \_\_\_\_ day of December, 2020, before me, the undersigned, a notary public in and for said state, 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 executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

ACKNOWLEDGMENT(S)

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

On the \_\_\_\_ day of December, 2020, before me, the undersigned, a notary public in and for said state, personally appeared John Mavroudis personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

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

On the 23<sup>rd</sup> day of December, 2020, before me, the undersigned, a notary public in and for said state, 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 executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

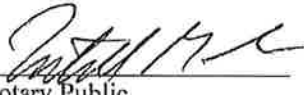
  
\_\_\_\_\_  
Notary Public

EXHIBIT A

Description of Land

ALL that certain plot, piece or parcel of land, situate, lying and being in the City of Peekskill, County of Westchester and State of New York, bounded and described as follows:

BEGINNING at the Southerly intersection of Park Street (a/k/a Park Place), as same is reopened and relocated with the Westerly line of Broad Street;

RUNNING THENCE Southerly along the Westerly line of Broad Street, South 1 degree 19 minutes 15 seconds East, 199.94 feet to a point of curve;

THENCE along a curve to the right having a radius of 30.00 feet an arc distance of 47.30 feet to the Northerly line of Brown Street;

THENCE Westerly along the Northerly line of Brown Street, South 89 degrees 00 minutes 25 seconds West, 383.18 feet to the point of curve;

THENCE along said curve to the right having a radius of 30 feet an arc distance of 47.14 feet to the Easterly side of James Street, as widened;

THENCE Northerly along James as widened, North 0 degrees 57 minutes 15 seconds West 199.92 feet to the Southerly line of Park Street (a/k/a Park Place) as relocated;

THENCE Easterly along the Southerly line of Park Street (a/k/a Park Place), North 88 degrees 59 minutes 07 seconds East, 441.90 feet to the point or place of BEGINNING.

For information only: Premises is known as 1 Park Place, Peekskill NY