

## PAYMENT IN LIEU OF TAXES AGREEMENT

**THIS PAYMENT IN LIEU OF TAXES AGREEMENT** (this "Agreement"), made as of the first day of December, 2005 by and among **NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation duly organized and existing under the laws of the State of New York, having its principal office at 1100 Franklin Avenue, Suite 300, Garden City, NY 11530 (the "Agency"), and **MILL RIVER RESIDENCES, L.P.**, a limited partnership duly organized and validly existing under the laws of the State of New York, having its principal office c/o Omni New York LLC, 575 Lexington Avenue, New York, NY 10022 (the "Obligor") (capitalized terms used in this Agreement but not defined herein shall have the meanings assigned to such terms in the Installment Sale Agreement referred to below):

### **WITNESSETH:**

WHEREAS, the Agency was created by Chapter 1030 of the Laws of 1969 of the State of New York, being Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 674 of the Laws of 1975 of the State of New York, as amended (collectively, the "Act"); and

WHEREAS, the Agency has issued its Multifamily Housing Revenue Bonds (Mill River Residences Project), Series 2005, in the aggregate principal amount of up to \$14,725,000 (the "Bonds") to finance a portion of the costs of the acquisition, renovation, installation and equipping of a commercial facility within Nassau County, New York (the "Facility") consisting of (A) (1) the acquisition of an interest in (a) a parcel of land located at 40 Maine Avenue, Village of Rockville Centre, Town of Hempstead, County of Nassau, New York (the "Maine Parcel"), and (b) a parcel of land located at 1-20 Meehan Lane, Village of Rockville Centre, Town of Hempstead, County of Nassau, New York (the "Meehan Parcel" and together with the Maine Parcel, collectively, the "Land"), (2) the renovation of the existing apartment building on the Maine Parcel and the four (4) existing garden apartment buildings on the Meehan Parcel (collectively, the "Building"), together with related improvements to the Land, and (3) the acquisition and installation therein and thereon of certain furniture, fixtures, machinery and equipment (the "Equipment"), all of the foregoing to constitute a housing complex comprised of approximately 175 affordable housing units, together with associated parking areas; and

WHEREAS, the Agency has agreed to sell the Facility to the Obligor under a certain Installment Sale Agreement, of even date herewith, between the Agency and the Obligor (as amended, modified, supplemented or restated, the "Installment Sale Agreement"), pursuant to which title to the Facility will be conveyed to the Obligor after all payments under the Installment Sale Agreement have been made, as more fully described in the Installment Sale Agreement; and

WHEREAS, pursuant to Section 874(l) of the Act, the Agency is exempt from the payment of all taxes and assessments imposed upon real property and improvements owned by it, other than special ad valorem levies and special assessments; and

WHEREAS, the Agency and the Obligor deem it necessary and proper to enter into an agreement making provision for payments in lieu of taxes and such assessments by the Obligor to all taxing jurisdictions in which any part of the Facility is or may be wholly or partially located, taking into account the provisions of law for abatements and exemptions and the benefits permitted under such law;

NOW, THEREFORE, in consideration of the issuance of the Bonds by the Agency for the purposes hereinabove stated and in consideration of the covenants herein contained, the parties hereto mutually agree as follows:

1. (a) As long as the Agency shall have title to the Facility, the Obligor agrees to make payments in lieu of all real estate taxes and assessments (in addition to paying all special ad valorem levies, special assessments and service charges against real property located in the Village of Rockville Centre, New York that are or may be imposed for special improvements or special district improvements) that would be levied upon or with respect to the Facility as if the Facility were owned by the Obligor and not by the Agency (the "Taxes on the Facility"). The amounts of such payments are set forth herein.

(b) From and after the date the Agency acquires title to the Facility through and including the Abatement Expiration Date (as hereinafter defined), the Obligor shall pay, as payments-in-lieu-of-taxes and assessments:

(1) for the balance of the 2005 calendar year, the product of (y) \$255.55, and (z) the number of days from the Closing Date through and including December 31, 2005;

(2) for calendar year 2006, \$201,825;

(3) for calendar year 2007, \$230,504;

(4) for calendar year 2008, \$237,419;

(5) for calendar year 2009, \$244,542;

(6) for calendar year 2010, \$251,878;

(7) for calendar year 2011, \$259,434;

(8) for calendar year 2012, \$267,217;

(9) for calendar year 2013, \$275,234;

(10) for calendar year 2014, \$283,491;

- (11) for calendar year 2015, \$291,996;
- (12) for calendar year 2016, \$300,756;
- (13) for calendar year 2017, \$309,779;
- (14) for calendar year 2018, \$319,072;
- (15) for calendar year 2019, \$328,644;
- (16) for calendar year 2020, \$338,503;
- (17) for calendar year 2021, \$348,658;
- (18) for calendar year 2022, \$359,118;
- (19) for calendar year 2023, \$369,892;
- (20) for calendar year 2024, \$380,989;
- (21) for calendar year 2025, \$392,419;
- (22) for calendar year 2026, \$404,192;
- (23) for calendar year 2027, \$416,318;
- (24) for calendar year 2028, \$428,808;
- (25) for calendar year 2029, \$441,672;
- (26) for calendar year 2030, \$454,922;
- (27) for calendar year 2031, \$468,570;
- (28) for calendar year 2032, \$482,627;
- (29) for calendar year 2033, \$497,106; and
- (30) for calendar year 2034, \$512,019.

(c) After the expiration of the approximately twenty-nine (29) year period of exemption set forth above (i.e., December 31, 2034) (such date, the “Abatement Expiration Date”), the Obligor shall make payments-in-lieu of taxes and assessments, equal to 100 % of the taxes and assessments that would be levied upon the Facility by the respective taxing authorities computed as if the Facility were owned by the Obligor, until such time as the Agency shall no longer have any estate or title interest in the Facility and the Facility has been returned to the tax rolls as taxable property.

(d) The Obligor shall pay, or cause to be paid, the amounts set forth in Sections 1 (a), (b) and (c) hereof, as applicable. Failure to receive a tax bill shall not relieve the Obligor of its obligation to make payment of the same no later than the due dates provided herein. Payments shall be made directly to the Treasurer of the County of Nassau (the "Treasurer"). In the event the Obligor shall fail to make any such installments of payments in lieu of real estate taxes, the amount or amounts so in default shall continue as an obligation of the Obligor until fully paid and the Obligor agrees to pay the same to such taxing authorities as the Agency may designate to the Obligor in writing. The Obligor shall pay a late payment penalty of five percent (5%) of any amount which is not paid when due hereunder (subject to the grace period set forth in Section 8 of this Agreement). In addition, for each month or part thereof that a payment hereunder is delinquent beyond the first month, interest shall accrue and be payable by the Obligor on the total amount due as provided above plus a late payment penalty in the amount of one percent (1%) per month for each month or part thereof until the payment is made. Anything contained in this subparagraph (d) to the contrary notwithstanding, the Obligor shall have the obligation to make all annual payments required by this subparagraph (d) (other than payments of penalties, if any) in one (1) annual installment on or prior to June 1 for the Village Tax, and two (2) equal semiannual installments on or prior to January 1 and July 1 for the General Tax, and April 1 and October 1 for the School Tax, as applicable, of each year of the Installment Sale Agreement term or on such other due dates as may be established from time to time by the Agency (if permitted by the affected tax jurisdictions) during the Installment Sale Agreement term.

(e) During the term of this Agreement, the Obligor shall continue to pay all special ad valorem levies, special assessments and service charges levied against the Facility for special improvements or special district improvements.

(f) Intentionally omitted.

(g) Intentionally omitted.

(h) In the event any structural additions other than those contemplated by the Project or consented to by the Agency shall be made to the building or buildings included in the Facility or any additional building or improvement shall be constructed on the real property (such structural additions, buildings and improvements being referred to hereinafter as "Additional Facilities"), the Obligor hereby agrees to increase its payments in lieu of taxes in an amount equal to the increased tax payments that would have been due and payable on such increase if this Agreement were not in effect. All other provisions of this Agreement shall apply to this obligation for additional payments.

2. In the event that title to the Facility, or any part thereof, is transferred from the Agency to the Obligor at such time, in reference to any taxable status date, as to make it impossible to place the Facility, or part thereof, on the tax rolls of the taxing authorities or appropriate special districts, as the case may be, within which the Facility is, or may be, wholly or partially located by such taxable status date, the Obligor hereby agrees to pay, at the first instance taxes or assessments are due following the taxable status date at which the Facility, or part thereof, is placed on the tax rolls, an amount equal to the taxes or assessments that would

have been levied on the Facility, or part thereof, had it been on the tax rolls from the time the Obligor took title until the date of the tax rolls following the taxable status date as of which the Facility, or part thereof, is placed on the tax rolls. There shall be deducted from such amount any amounts previously paid pursuant to this Agreement by the Agency or the Obligor to the Treasurer relating to any period of time after the date of transfer of title to the Obligor. The provisions of this Section 2 shall survive the termination or expiration of the Installment Sale Agreement.

3. In the event the Facility, or any part thereof, is declared to be subject to taxation for taxes or assessments by an amendment to the Act, other legislative change or a final judgment of a court of competent jurisdiction, the obligations of the Obligor hereunder shall, to such extent, be null and void.

4. In the event the Obligor shall enter into a subsequent Payment in Lieu of Taxes Agreement or Agreements with respect to the Taxes on the Facility directly with any or all taxing authorities under whose jurisdiction the Facility is located, the obligations of the Obligor hereunder that are inconsistent with such future agreement or agreements shall be superseded and shall, to such extent, be null and void.

5. Intentionally omitted.

6. The Obligor, in recognition of the benefits provided under the terms of this Agreement, and for so long as the Agency shall have title to the Facility or any part thereof, hereby expressly waives any rights it may have for any exemption under Section 485-b of the Real Property Tax Law or any other exemption under any other law or regulation (except, however, for the exemption provided by Article 18-A of the General Municipal Law) with respect to the Facility. The Obligor, however, reserves any such rights with respect to all special ad valorem levies, special assessments and service charges levied against the Facility referred to in Section 1(e) hereof and against the Additional Facilities referred to in Section 1(h) hereof and with respect to the assessment and/or exemption of the Additional Facilities.

7. (a) Failure by the Agency in any instance to insist upon the strict performance of any one or more of the obligations of the Obligor under this Agreement, or to exercise any election herein contained, shall in no manner be or be deemed to be a waiver by the Agency of any of the Obligor's defaults or breaches hereunder or of any of the rights and remedies of the Agency by reason of such defaults or breaches, or a waiver or relinquishment of any and all of the Obligor's obligations hereunder. No waiver, amendment, release or modification of this Agreement shall be established by conduct, custom or course of dealing. Further, no payment by the Obligor or receipt by the Agency of a lesser amount than the correct amount or manner of payment due hereunder shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed to effect or evidence an accord and satisfaction, and the Agency may accept any check or payments as made without prejudice to the right to recover the balance or pursue any other remedy in this Agreement or otherwise provided at law or in equity.

(b) In the event the Obligor should fail to make any payments in lieu of taxes required to be made hereunder within any applicable grace period, the amount or amounts so in default shall continue as an obligation of the Obligor until fully paid, and the Obligor agrees to pay the same with interest thereon as provided in Section 1(d) hereof. The Obligor and the Agency agree that the respective taxing authorities and their officials shall be deemed third party beneficiaries of this Section 7 and are authorized by the parties hereto to enforce the provisions hereof relating to amount and payment of taxes and payments in lieu of taxes. However, the respective taxing authorities are not authorized to enforce any other provisions of this Agreement.

(c) In the event title to the Facility is conveyed to the Obligor or any other entity prior to the Abatement Expiration Date, this Agreement shall become null and void and any remaining tax abatement shall be canceled.

8. Amounts due and payable for a calendar year under subparagraphs (a), (b) and (c) of Section 1 hereof shall be due and payable to the Treasurer of the County of Nassau, One West Street, Mineola, New York 11501, on or before June 1 for the Village Tax, on or before January 1 and July 1 for the General Tax, and on or before April 1 and October 1 for the School Tax, as applicable, such amounts to be payable without penalty within forty (40) days of said due date, or such other dates and grace period as would apply if the Facility were owned by the Obligor and not by the Agency.

9. This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof, and may be executed simultaneously in several counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

10. Whenever the Obligor fails to comply with any provision of this Agreement, the Agency may, but shall not be obligated to, take whatever action at law or in equity as may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations, agreements and covenants of the Obligor under this Agreement.

11. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York, as the same may be in effect from time to time, without regard to its principles of conflicts of laws.

12. The Obligor agrees to hold the Agency harmless from and against any liability arising from any default by the Obligor in performing its obligations hereunder or any expense incurred hereunder, including, without limitation, any expenses of the Agency and attorneys' fees and disbursements.

13. This Agreement may be modified only by written instrument duly executed by the parties hereto.

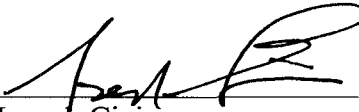
14. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, heirs, distributees and assigns.

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

16. If the Obligor fails to make any payment when due, the Agency, in addition to any remedy or right it or any taxing authority may have pursuant to this Agreement, shall have the rights and remedies set forth in the Installment Sale Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

NASSAU COUNTY INDUSTRIAL DEVELOPMENT  
AGENCY


By   
Joseph Gioino  
Executive Director

MILL RIVER RESIDENCES, L.P.

By: MILL RIVER DEVELOPERS, LLC, its  
General Partner

By: ONY MILL RIVER, LLC, its Manager

By: OMNI NEW YORK LLC, its  
Manager

By   
Name: Eugene Schneur  
Title: Member

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**MORTGAGE**

**NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY,**  
as Owner

and

**MILL RIVER RESIDENCES, L.P.**  
as Obligor

To

**COUNTY OF NASSAU,**  
on behalf of such instrumentalities to which amounts  
shall be due and owing pursuant to the PILOT Agreement,  
as Mortgagee

Dated as of December 1, 2005

\$14,725,000

Nassau County Industrial Development Agency  
Multifamily Housing Revenue Bonds  
(Mill River Residences Project), Series 2005

Affecting that real and personal property described in the  
appendices to this Mortgage  
in the County of Nassau, State of New York,  
and affecting certain intangibles, personal property  
and other property described herein.

Meehan Lane and Maine Avenue  
Rockville Centre, New York  
Section: 38; Block: 539; Lots: 20, 37

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**RECORD AND RETURN TO:**  
Phillips Lytle LLP  
1100 Franklin Avenue, 4<sup>th</sup> floor  
Garden City, NY 11530  
Attention: Milan K. Tyler, Esq.



**FIRST AMENDMENT TO MORTGAGE**

**(PILOT MORTGAGE)**

Title # 16-CN-51514

**RECORD AND RETURN TO:**

Cassin & Cassin LLP  
2900 Westchester Avenue, Suite 402  
Purchase, New York 10577  
Attention: Recording Department

Section: 38  
Block: 539  
Lot: 20 and 37  
County: Nassau

**FIRST AMENDMENT  
TO MORTGAGE**

**(PILOT MORTGAGE)**

**THIS FIRST AMENDMENT TO MORTGAGE (PILOT MORTGAGE)** (this “**Amendment**”), is made and entered into as of April 28, 2017, by and among: (i) **NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York (the “**Owner**”), having its principal office at 1550 Franklin Avenue, Mineola, NY 11501; (ii) **MILL RIVER RESIDENCES, L.P.**, a limited partnership organized and existing under the laws of the State of New York (the “**Obligor**”), having its principal office c/o Omni New York LLC, 885 Second Avenue, 31st Floor, New York, New York 10017; and (iii) **COUNTY OF NASSAU**, a municipal corporation duly organized and existing under the laws of the State of New York (the “**County**”), having its office at One West Street, Mineola, New York 11501 (the County being sometimes referred to herein as the “**Mortgagee**”):

WITNESSETH:

WHEREAS, the Owner issued the Bonds pursuant to the Act, the Bond Resolution and that certain Indenture of Trust dated as of December 1, 2005 (as amended, modified, supplemented or restated, the “**Indenture**”) between the Agency and The Bank of New York, as trustee (the “**Trustee**”); and

WHEREAS, the proceeds derived from the issuance of the Bonds were used to finance a portion of the costs of a commercial facility within the County consisting of the Facility, which is to be or has been sold by the Owner to the Obligor pursuant to that certain Installment Sale Agreement dated as of December 1, 2005 (as amended, modified, supplemented or restated, the “**Sale Agreement**”); and

WHEREAS, pursuant to Section 4.3 of the Sale Agreement, the Obligor has covenanted and agreed, *inter alia*, to make certain payments in lieu of real property taxes (the “**PILOT Obligations**”) with respect to the Facility Realty pursuant to that certain Payment in Lieu of Taxes Agreement dated as of December 1, 2005 (as amended, modified, supplemented or restated, the “**PILOT Agreement**”) between the Obligor and the Owner; and

WHEREAS, in order to secure the PILOT Obligations, Owner and Obligor executed, to and for the benefit of the County, that certain Mortgage, dated as of December 1, 2005, recorded on December 29, 2005, in the Official Records of the County, in Liber 29895 at Page 501 (as amended, modified, supplemented or restated, the “**PILOT Mortgage**”); and

WHEREAS, the Indenture, Sale Agreement, PILOT Agreement, PILOT Mortgage, and any other instrument executed in connection with the issuance of the Bonds, are referred to herein, collectively, as the “**Transaction Documents**”; and

WHEREAS, in order to refinance the Mortgaged Property, Obligor has applied for a loan (the “**New Loan**”) to be made by KEYBANK NATIONAL ASSOCIATION, a national banking association (together with its successors and assigns, the “**Lender**”), which Loan or a portion thereof may now or in the future be included in a securitization and/or further sold and assigned to a securitized lender in accordance with the requirements of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association; and

WHEREAS, the New Loan will be evidenced by a Multifamily Note and Multifamily Loan and Security Agreement (together with all other documents executed in connection with the New Loan, including the New Mortgage, collectively, the “**New Loan Documents**”), and which will be secured by a Multifamily Mortgage, Assignment of Rents and Security Agreement (the “**New Mortgage**”); and

WHEREAS, as a condition to making the New Loan, Lender requires that the PILOT Mortgage be amended as provided herein;

**NOW, THEREFORE**, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Recitals. The foregoing Recitals are hereby incorporated into this Amendment as agreements among the parties.
2. Definitions. Capitalized terms used but not defined herein shall have the respective meanings as set forth in the PILOT Mortgage.
3. Continuation of PILOT Mortgage Lien. Lender acknowledges that the Mortgaged Property (as defined in the PILOT Mortgage) shall remain subject to the lien created and secured by the PILOT Mortgage and, except as expressly set forth in this Amendment, nothing herein contained or done pursuant hereto shall impair the substantive effects of the lien of PILOT Mortgage, or the priority thereof over other liens or encumbrances, including that of the New Mortgage.
4. County Consent. Notwithstanding anything to the contrary in the PILOT Mortgage (or elsewhere in the Transaction Documents, if and as applicable), including but not limited to Section 7 of the PILOT Mortgage, the County hereby consents to the New Loan and New Mortgage, and agrees that the New Mortgage shall be among the “Permitted Encumbrances” permitted against the Mortgaged Property.

5. PILOT Mortgage Amendments. The PILOT Mortgage is hereby amended as follows:

- (a) The “Granting Clauses” numerals II through X, inclusive, are hereby amended to add the following at the beginning of each of the respective Granting Clauses: “Subject and subordinate to the New Mortgage and the rights of Lender under the New Loan Documents:”.
- (b) Section 10 regarding “Protective Action” is hereby amended to add the following at the beginning thereof: “Subject in all cases to the provisions of Section 50 hereof:”
- (c) Section 14 regarding “Assignment of Leases and Rents” is deleted and replaced with “Intentionally Omitted”.
- (d) Section 19(a) (regarding the Mortgagee’s remedy of entering into or upon the Mortgaged Property and dispossessing Obligor and Owner thereof) is hereby amended to add the following at the beginning thereof: “Subject and subordinate to the New Mortgage and the rights of Lender under the New Loan Documents (excluding, however, such rights and remedies of Mortgagee as provided in Sections 19(b), 19(c), and 19(d) hereof, which shall at all times remain superior to the New Mortgage and the rights of Lender under the New Loan Documents), and subject in all cases to the provisions of Section 50 hereof (including but not limited to such rights and remedies of Mortgagee as provided in Sections 19(b), 19(c), and 19(d) hereof):”
- (e) Section 19(f) regarding the remedy of appointing a trustee, receiver, liquidator, or conservator of the Mortgaged Property is deleted and replaced with “Intentionally Omitted”.
- (f) Section 19(g) is deleted and replaced with: “pursue such other remedies as the Mortgagee may have under applicable law, excluding, however, the appointment of a trustee, receiver, liquidator, or conservator.”
- (g) The second full paragraph following Section 19(g) is hereby amended to add the following at the beginning thereof: “Upon the occurrence and continuance of any Event of Default:”.
- (h) Section 19 is amended to add the following at the end thereof: “Notwithstanding anything contained in this Mortgage to contrary, the Mortgagee shall not have the right to accelerate payments with respect to future fiscal tax years under the PILOT Agreement.”

- (i) Section 20 regarding “Appointment of a Receiver” is deleted and replaced with “Intentionally Omitted”.
- (j) Section 33 regarding “Application of Proceeds and Limitation of Remedies” is deleted and replaced with the following: “All proceeds derived through the exercise of any remedies or the commencement of any proceedings under this Mortgage or otherwise shall be applied, notwithstanding any provision of this Mortgage to the contrary, FIRST, to the payment of any amounts due and unpaid by the Obligor under the PILOT Agreement or this Mortgage, as the case may be, and SECOND, the balance shall be paid to the Obligor, subject to the rights of junior lien mortgagees (including, without limitation, the Lender under the New Mortgage and the other New Loan Documents).
- (k) Section 35 regarding “Notices” is amended to add the following at the end of the first sentence thereof: “, with a further copy to Lender at the address and in the manner as provided in the New Mortgage and New Loan Documents.” Further, the notice address of the Owner in Section 35 is deleted and replaced with: “1550 Franklin Avenue, Suite 235, Mineola, NY 11501, Attention: Executive Director.”
- (l) Section 40 regarding “Amendments and Modifications” is amended to add the following at the end thereof: “Notwithstanding the foregoing, any future amendment or modification of this Mortgage shall require the prior written consent of Lender.”
- (m) The first sentence of Section 46 regarding “Notice of Event of Default” is deleted and replaced with: “The Obligor shall immediately notify the Mortgagee and the Lender in writing of any Event of Default.”
- (n) A new Section 50 is hereby added to the Mortgage, as follows:

“Section 50. Special Lender Provisions.

(a) The Mortgagee shall simultaneously give to the Lender a copy of each notice of default given to the Obligor under this Mortgage concurrently with the giving of any such notice by the Mortgagee to the Obligor.

(b) The Lender shall have the right, but not the obligation, to remedy such default within the greater of (i) the applicable notice, cure or grace period, if any, provided under this Mortgage with respect to such default, or (ii) thirty (30) days, in each case measured from the date of Lender’s receipt from the Mortgagee of notice of a default in accordance with this Mortgage. The Mortgagee shall accept performance by the Lender of any covenant,

condition or agreement on the Obligor's part to be performed hereunder with the same force and effect as though performed by the Obligor. In addition, the Mortgagee shall give to the Lender a copy of any notice of Event of Default given to the Obligor under this Mortgage concurrently with the giving of any such notice by the Mortgagee to the Obligor.

(c) Further, so long as the New Loan remains outstanding and the Mortgagee has notice of same, the Mortgagee shall not exercise any remedies under this Mortgage until the expiration of a thirty (30) day period (the "Stand Still Period") following Lender's receipt from the Mortgagee of notice of a default in accordance with this Mortgage. During the Stand Still Period, and otherwise as provided herein, Lender shall have the right, but not the obligation, in Lender's sole discretion, to cure a default under this Mortgage.

(d) The Lender is an intended third-party beneficiary of the provisions of this Section 50 and shall be entitled to enforce the terms and provisions under this Section 50. There shall be no amendment, modification or waiver of the terms and provisions of this Mortgage without the prior written consent of the Lender at any time that any portion of the New Loan is outstanding and the New Mortgage is a lien on the Mortgaged Property."

(e) Notwithstanding anything to the contrary contained in the PILOT Mortgage and/or the Transaction Documents, nothing shall prevent Lender from exercising any or all of its remedies under the New Mortgage and New Loan Documents as provided therein, including but not limited to foreclosure.

(f) County and Owner hereby affirm and agree that, if the obligations, covenants, and other requirements as provided under the PILOT Agreement and secured by the PILOT Mortgage are performed and satisfied as provided therein, then the County and/or the Owner, as applicable, respectively, shall not have the right to exercise remedies under the PILOT Agreement and/or the PILOT Mortgage, including but not limited to foreclosure.

6. Conflicting Provisions. In the event of any conflict in the terms and provisions of this Amendment and the terms and provisions of the PILOT Mortgage, the terms and provisions of this Amendment shall govern.

7. Binding Effect. This Amendment shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

8. Entire Agreement; Counterparts. This Amendment constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

9. Severability. Any provision of this Amendment held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Amendment or the PILOT Mortgage, as applicable, and the effect thereof shall be confined to the provision so held to be invalid or unenforceable.

10. Ratification. Except as expressly amended hereby, each of the terms, covenants and conditions of the PILOT Mortgage are hereby ratified and reaffirmed, including but not limited to Section 4 of the PILOT Mortgage regarding "Limitation on Owner Liability."

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties have duly executed this Amendment as of the date first written above.

**NASSAU COUNTY INDUSTRIAL DEVELOPMENT  
AGENCY**

By: \_\_\_\_\_  
Name: Joseph J. Kearney  
Title: Executive Director

**MILL RIVER RESIDENCES, L.P.**

By: MILL RIVER DEVELOPERS, LLC, its  
General Partner

By: ONY MILL RIVER, LLC, its Manager

By: OMNI NEW YORK LLC, its  
Manager

By: \_\_\_\_\_  
Name: Eugene Schneur  
Title: Member

**Agreed To and Consented:**

**COUNTY OF NASSAU**

By: \_\_\_\_\_  
Name: Nicholas Sarandis  
Title: Deputy County Attorney



IN WITNESS WHEREOF, the parties have duly executed this Amendment as of the date first written above.

**NASSAU COUNTY INDUSTRIAL DEVELOPMENT  
AGENCY**

By: \_\_\_\_\_

Name: Joseph J. Kearney

Title: Executive Director

**MILL RIVER RESIDENCES, L.P.**

By: MILL RIVER DEVELOPERS, LLC, its  
General Partner

By: ONY MILL RIVER, LLC, its Manager

By: OMNI NEW YORK LLC, its  
Manager

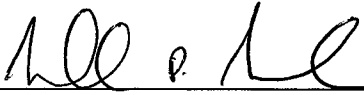
By: \_\_\_\_\_

Name: Eugene Schneur

Title: Member

**Agreed To and Consented:**

**COUNTY OF NASSAU**

By:  \_\_\_\_\_

Name: Nicholas Sarandis


Title: Deputy County Attorney

**MILL RIVER RESIDENCES, L.P., a**  
New York limited partnership

By: **MILL RIVER DEVELOPERS, LLC, a**  
New York limited liability company,  
its General Partner

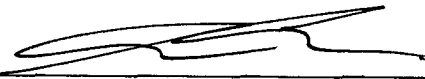
By: **ONY MILL RIVER, LLC, a**  
New York limited liability company,  
its Manager

By: **OMNI NEW YORK LLC, a**  
New York limited liability company,  
its Manager

By:  [SEAL]  
Name: Eugene Schneur  
Title: Managing Director

STATE OF NEW YORK    )  
                                  ) SS:  
COUNTY OF            )

On the 4 day of April in the year 2017, before me, the undersigned, personally appeared Eugene Schneur, 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

ABEL DANNY LANDAZURI  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01LA6258097  
Qualified in Queens County  
Commission Expires 3/19/20

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

On the 31st day of March in the year 2017, before me, the undersigned, personally appeared Joseph J. Kearney, 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

Paul V O'Brien  
Notary Public State of New York  
No. 02OB6235944  
Qualified in Nassau County  
Commission Expires February 14, ~~2015~~ 2015

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

On the \_\_\_ day of \_\_\_\_\_ in the year 2017, before me, the undersigned, personally appeared \_\_\_\_\_, 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 NASSAU )

On the \_\_\_ day of \_\_\_\_\_ in the year 2017, before me, the undersigned, personally appeared \_\_\_\_\_, 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 NASSAU )

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2017, before me, the undersigned, personally appeared Joseph J. Kearney, 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 NASSAU )

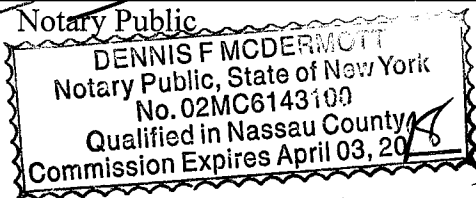
On the \_\_\_\_ day of \_\_\_\_\_ in the year 2017, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the 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 NASSAU )

On the 3 day of April in the year 2017, before me, the undersigned, personally appeared Nicholas P. Scordis, 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



## **MORTGAGE**

**THIS MORTGAGE** made and entered into as of the date set forth on the cover page hereof (this "Mortgage") (capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Indenture or in the Sale Agreement defined herein) from **NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having its office at 1100 Franklin Avenue, Suite 300, Garden City, NY 11530 (the "Owner"), and **MILL RIVER RESIDENCES, L.P.**, a New York limited partnership (the "Obligor"), having its office c/o Omni New York LLC, 575 Lexington Avenue, New York, NY 10022, to the **COUNTY OF NASSAU**, a municipal corporation duly organized and existing under the laws of the State of New York (the "County"), having its office at One West Street, Mineola, New York 11501 (the County being sometimes referred to herein as the "Mortgagee"):

WITNESSETH:

WHEREAS, the Owner issued the Bonds pursuant to the Act, the Bond Resolution and that certain Indenture of Trust dated of even date herewith (as amended, modified, supplemented or restated, the "Indenture") between the Agency and The Bank of New York, as trustee (the "Trustee"); and

WHEREAS, the proceeds derived from the issuance of the Bonds are being used to finance a portion of the costs of a commercial facility within the County consisting of the Facility, which is to be sold by the Owner to the Obligor pursuant to that certain Sale Agreement of even date herewith (as amended, modified, supplemented or restated, the "Sale Agreement"); and

WHEREAS, pursuant to Section 4.3 of the Sale Agreement, the Obligor has covenanted and agreed, *inter alia*, to make certain payments in lieu of real property taxes (the "PILOT Obligations") with respect to the Facility Realty pursuant to that certain Payment in Lieu of Taxes Agreement of even date herewith (as amended, modified, supplemented or restated, the "PILOT Agreement") between the Obligor and the Owner; and

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt of which is hereby acknowledged, and in order to secure:

- (i) the payment of the PILOT Obligations and the indebtedness represented thereby according to their tenor and effect and the performance and observance by the Obligor of all the covenants expressed or implied in the PILOT Agreement, and
- (ii) the payment, performance and observance of all obligations of the Owner and the Obligor under this Mortgage,

whether now arising or hereafter arising, direct or indirect, absolute or contingent, joint or several, due or to become due, liquidated or unliquidated, secured or unsecured, original, renewed or extended, whether arising directly or acquired from others (all such indebtedness and obligations described in clauses (i) and (ii) above being collectively referred to herein as the "Obligations"), the Owner and the Obligor do hereby grant, bargain, sell, convey, transfer, mortgage, grant a security interest in, pledge and assign to the County, as Mortgagee, as its interests may appear, and its successors and assigns forever, the following (the "Mortgaged Property"), excepting, in each case, the Agency's Reserved Rights (as defined in the Indenture), which may be enforced by the Trustee (until the repayment of the Bonds and all amounts due pursuant to the Indenture) and the Agency, jointly or severally:

## GRANTING CLAUSES

The Facility Realty, together with the tenements, hereditaments, servitudes, appurtenances, estates, rights, privileges, liberties, appurtenances, licenses, royalties, mineral, oil and gas rights, water, water rights, reversions, remainders and immunities thereunto belonging or appertaining that may from time to time be owned by the Owner or the Obligor, including all the right, title and interest of the Owner and the Obligor in and to all streets, ways, alleys, roads, waters, water courses, water rights, waterways, passages, sewer rights and public places adjoining any portion of the Facility Realty and all easements and rights-of-way, public or private, and strips and gores of land, now or hereafter used in connection therewith, together with all land lying in the bed of any street, road or avenue, open or proposed, in front of or adjoining any portion of the Facility Realty to the center line thereof, now or hereafter used in connection with any portion of the Facility Realty, together with all land lying in the bed of any street, road or avenue, open or proposed, in front of or adjoining any portion of the Facility Realty to the center line thereof, now or hereafter used in connection with any portion of the Facility Realty; together with any and all air rights, development rights, zoning rights or other similar rights or interests that benefit or are appurtenant to any portion of the Facility Realty and any proceeds arising therefrom.

## II

All property insurance proceeds, awards, payments and other compensation payments, including interest thereon, and the right to receive the same, which are heretofore or hereafter made with respect to the Facility Realty as a result of or in lieu of any taking by eminent domain (including any transfer made in lieu of the exercise of said right), the alteration of the grade of any street, or the occurrence of any casualty or condemnation (as set forth in Article V of the Sale Agreement), or other damage or injury to or decrease in the value of the Facility Realty, to the extent of all amounts that may be secured by this Mortgage at the date of payment of any such award or payment, and of the reasonable attorneys' fees, costs and disbursements incurred by the Mortgagee in connection with the collection of such award or payment, subject to the terms of the Indenture and the Sale Agreement, as to the application of all such amounts so received.

### III

All right, title and interest of the Owner and the Obligor in and to (a) any and all present and future leases of space in the Facility Realty; (b) any and all present and future subleases of space in the Facility Realty; (c) all earnings, revenues, rents, issues, profits and other income (collectively, the "Rents") payable under any such leases and subleases; and (d) any contracts for the sale of all or any portion of the Facility Realty ("Sale Contracts") and amounts paid, deposited or payable thereunder (other than the Sale Agreement). Nothing in this paragraph is intended to constitute the consent of the Mortgagee to any such leases, subleases or Sale Contracts.

### IV

All right, title and interest of the Owner and the Obligor in all proceeds of and any unearned premiums on any property insurance policies concerning the Facility Realty or any other Mortgaged Property.

### V

All the right, in the name and on behalf of the Owner and the Obligor, to appear in and defend any action or proceeding brought with respect to the Facility Realty and to commence any action or proceeding to protect the interest of the Mortgagee in the Facility Realty.

### VI

Any and all air rights, development rights, zoning rights or other similar rights or interests that benefit or are appurtenant to the Facility Realty and any income and proceeds arising therefrom.

### VII

All of the right, title and interest of the Obligor and the Owner in and to all suits, claims, judgments, proceedings, actions or settlements of or with respect to the acquisition, ownership or operation of the Facility Realty.

### VIII

All of the right, title and interest of the Obligor and the Owner in and to:

(a) to the extent assignable, all consents, certificates, authorizations, variances, waivers, licenses, permits and approvals from any governmental authority with respect to the Facility Realty;

(b) to the extent assignable, all management, maintenance, service, marketing, engineering, architectural and construction contracts, receipts, trademarks, names, logos, copyrights and other items of intangible personal property now or hereafter in existence and relating to the ownership, improvement, operation or management of the Facility Realty (but no such assignment shall be construed as a consent by the Mortgagee to any agreement, contract, license or permit so assigned, or to impose upon the Mortgagee any obligations with respect thereto);

(c) to the extent assignable, all rights and remedies at any time arising under or pursuant to § 365(h) of the Federal Bankruptcy Code, including, without limitation, all rights of the Obligor to remain in possession of the Mortgaged Property thereunder;

(d) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, and all rights of the Obligor to refunds of real estate taxes and assessments; and

(e) all extensions, improvements, betterments, renewals, substitutions and replacements of, and all additions and appurtenances to, the Facility Realty and/or any other property or rights encumbered or conveyed hereby, hereafter acquired by or released to the Obligor or constructed, assembled or placed by the Obligor on the Facility Realty and/or any other property or rights encumbered or conveyed hereby, and all conversions of the security constituted thereby that, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case without any further mortgage, conveyance, assignment or other act by the Obligor, shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by the Obligor and as specifically described herein.

## IX

Any and all further estate, right, title, interest, property, claim and demand whatsoever of the Obligor and the Owner in and to any of the above.

## X

Any and all other property of every kind and nature from time to time that was heretofore or hereafter is by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned or transferred, as and for additional security hereunder, by the Obligor, the Owner or by any other Person with or without the consent of the Obligor or the Owner, to the Mortgagee, which is hereby authorized to receive any and all such property at any time and at all times to hold and apply the same subject to the terms hereof.

TO HAVE AND TO HOLD all the same with all privileges and appurtenances hereby conveyed and assigned or agreed or intended so to be to the Mortgagee and their successors and assigns forever;



THIS MORTGAGE secures the payment, performance and observance of the Obligations and shall continue in full force and effect until the Obligations shall be indefeasibly paid and satisfied in full or otherwise provided for in accordance with their respective terms.

THE OWNER AND THE OBLIGOR HEREBY represent, warrant, covenant and agree with the Mortgagee as set forth below (provided that the Owner and the Obligor represent, warrant, covenant and agree, as between the Owner and the Obligor, only with respect to the representations, warranties, covenants and agreements of each and not of the other):

Section 1. Representations and Warranties of the Obligor. (a) The Obligor represents and warrants that it is a limited partnership duly organized and validly existing and in good standing under the laws of the State, has power to enter into and perform this Mortgage and to own its property and assets, has duly authorized the execution and delivery of this Mortgage, and neither this Mortgage, the authorization, execution, delivery and performance hereof, the performance of the agreements herein contained nor the consummation of the transactions herein contemplated will violate any provision of law, any order of any court or agency of government, or any agreement, indenture or other instrument to which the Obligor is a party or by which it or any of its property is subject or bound, or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any indenture, agreement or other instrument or any provision of its certificate of limited partnership or partnership agreement or any other requirement of law.

(b) The Obligor represents and warrants that this Mortgage has been duly authorized, executed and delivered and constitutes the legal, valid and binding obligation of the Obligor enforceable against the Obligor in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, moratorium or insolvency or other laws affecting creditors' rights generally and is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

(c) The Obligor represents and warrants that the Owner is vested with good and valid title to the Facility Realty, subject to no mortgage, lien, charge, pledge, assignment, security interest, conditional sale agreement or encumbrance of any kind whatsoever, other than Permitted Encumbrances.

(d) The Obligor represents and warrants that (1) it is now, and after giving effect to all instruments evidencing or securing the Obligations will be, in a solvent condition, (2) the execution and delivery of this Mortgage does not constitute a "fraudulent conveyance" within the meaning of Title 11 of the United States Code as now constituted or under any other applicable law, and (3) no bankruptcy or insolvency proceedings are pending or contemplated by or, to the best knowledge of the Obligor, against the Obligor.

(e) The Obligor represents and warrants that this Mortgage does not give any Person other than the Mortgagee the right to payment of the Obligations.

Section 2. Representations and Warranties of the Owner. The Owner represents and warrants that it has power to enter into and perform this Mortgage, to create,

pledge and grant the mortgage, pledge, assignment and security interest in the Mortgaged Property as provided in this Mortgage and to own its property and assets, has duly authorized the execution and delivery of this Mortgage by proper corporate action, and neither this Mortgage, the authorization, execution, delivery and performance hereof, the performance of the agreements herein contained nor the consummation of the transactions herein contemplated will violate any provision of law, any order of any court or agency of government or any agreement, indenture or other instrument to which the Owner is a party or by which it or any of its property is subject or bound, or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any indenture, agreement or other instrument or any provision of its by-laws or any other requirement of law. This Mortgage constitutes the legal, valid and binding obligation of the Owner enforceable against the Owner in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, moratorium or insolvency or other laws affecting creditors' rights generally and is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

Section 3. Payment, Performance, Observance and Compliance. The Obligor agrees to pay, perform, observe and comply with such of the Obligations to which it shall be subject (including this Mortgage) upon the terms and provisions required of the Obligor therein. The Owner agrees to pay, perform, observe and comply with each of the Obligations to which it shall be subject (including this Mortgage) upon the terms and conditions required of the Owner therein, subject to the provisions of Section 4 hereof.

Section 4. Limitation on Owner Liability. With respect to the Owner, it is agreed that the Owner and its officers, members, employees, agents and directors shall have no personal liability hereunder, nor in their capacity as officers, members, employees, agents and directors. The Owner has executed this Mortgage to subject its interest in the Mortgaged Property to the lien of this Mortgage; however, the Mortgagee shall have no recourse to the Owner but shall have recourse against the Mortgaged Property. No provision, covenant or agreement contained in this Mortgage or any obligations herein imposed upon the Owner or the breach thereof shall constitute or give rise to or impose upon the Owner a pecuniary liability or a charge upon its general credit. In making the agreements, provisions and covenants set forth in this Mortgage, the Owner has not obligated itself except with respect to the Mortgaged Property.

All covenants, stipulations, promises, agreements and obligations of the Owner contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of the Owner and not of any member, director, officer, employee or agent (other than the Obligor) of the Owner in his individual capacity, and no recourse shall be had for the payment of the principal of any debt or interest thereon or any of the Obligations or for any claim based thereon or hereunder against any member, director, officer, employee or agent (other than the Obligor) of the Owner or any natural person executing this Mortgage. No covenant herein contained shall be deemed to constitute a debt of the State or of the County, and neither the State nor the County shall be liable on any covenant herein contained, nor shall the obligations secured by this Mortgage be payable out of any funds of the Owner other than those pledged therefor.

Any action required of the Owner under this Mortgage is specifically conditioned upon any costs and expenses of the Owner and its counsel, if any, being first paid or provided for to the Owner's satisfaction.

Section 5. Release of Property. Reference is made to the provisions of the Sale Agreement, including without limitation Section 4.2 thereof, whereby the Obligor may withdraw fixtures from the Facility Realty, all upon compliance with the terms and conditions of the Sale Agreement. Upon compliance with the provisions of the Sale Agreement, the Mortgagee (at the sole cost and expense of the Obligor) shall release from the lien and security interest of this Mortgage such property so withdrawn and shall confirm any such release.

Section 6. Performance of Covenants; Authority. The Owner covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Mortgage. The Owner covenants that it is duly authorized under the Constitution and laws of the State, including particularly and without limitation the Act, to execute this Mortgage, to sell the Facility to the Obligor pursuant to the Sale Agreement, and to mortgage and grant a security interest in the Mortgaged Property; and that all action on its part for the execution and delivery of this Mortgage has been duly and effectively taken.

Section 7. Creation of Liens; Indebtedness; Sale of Facility Realty. The Obligor represents and covenants that this Mortgage is and will be a first mortgage lien upon the Mortgaged Property, subject only to Permitted Encumbrances (other than the lien of each of the Sale Agreement, the Agency Mortgage and the Indenture, respectively). The liens of the Sale Agreement, the Agency Mortgage and the Indenture are subject and subordinate to the lien of this Mortgage. Neither the Owner nor the Obligor shall create or suffer to be created any lien or charge upon or pledge of the Mortgaged Property except the lien, charge and pledge created by this Mortgage, the Agency Mortgage and Permitted Encumbrances. The Owner and the Obligor further covenant and agree not to sell, convey, transfer, lease, mortgage or encumber their interest in the Facility Realty or any part of either thereof except as specifically permitted under the Indenture, the Sale Agreement, the Agency Mortgage, this Mortgage and Permitted Encumbrances, so long as any of the Obligations are unpaid.

The Owner and the Mortgagee agree that they will approve, execute, acknowledge and deliver such instruments as the Obligor may reasonably require to grant a Permitted Encumbrance pursuant to Section 6.4 of the Sale Agreement. The Obligor shall pay all costs and expenses incurred by the Owner and the Mortgagee in connection therewith.

Section 8. Ownership; Instruments of Further Assurance. At the written direction of the Mortgagee, the Obligor shall defend the title of the Owner and the Obligor in the Facility Realty and every part thereof for the benefit of the Mortgagee, and the Obligor agrees to warrant and defend such title, against the claims and demands of all persons whomsoever. The Owner and the Obligor covenant that (at the sole cost and expense of the Obligor) each (a) will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such supplements hereto and such further acts, instruments and transfers as the Mortgagee may reasonably require for (i) the better assuring, transferring, conveying, pledging, assigning and

confirming unto the Mortgagee all and singularly the property herein described, subject to the lien and security interest of this Mortgage and those revenues pledged hereby to the payment of the Obligations, (ii) carrying out the intention of or facilitating the performance of the provisions of this Mortgage, or (iii) filing, registering, or recording this Mortgage, and (b) on demand (but at the sole cost and expense of the Obligor) shall execute and/or deliver, and hereby authorize the Mortgagee to execute and/or deliver, in the name of the Owner or the Obligor to the extent the Mortgagee may lawfully do so, one or more financing statements, chattel mortgages or other comparable security instruments to evidence more effectively the lien hereof upon the Mortgaged Property. Any and all property hereafter acquired by the Owner or the Obligor that is of the kind or nature herein provided to be and become subject to the lien and security interest hereof shall ipso facto, and without any further conveyance, assignment or act on the part of the Owner, the Obligor or the Mortgagee, become and be subject to the lien and security interest of this Mortgage as fully and completely as though specifically described herein, but nothing in this sentence contained shall be deemed to modify or change the obligations of the Owner and the Obligor heretofore made by this Section. The Obligor shall pay all reasonable expenses incurred by the Mortgagee or the Owner in connection therewith.

Section 9. Recording and Filing. This Mortgage and all supplements hereto shall be recorded by the Obligor, as agent of the Owner, as a mortgage of real property in the appropriate office of the Clerk of the County, or in such other office as may be at the time provided by law as the proper place for the recordation thereof.

Subsequent to the initial recording of this Mortgage, the Obligor shall, from time to time, cause this Mortgage, and any other security instrument creating a lien or evidencing the lien hereof upon the Mortgaged Property and each instrument of further assurance, to be filed, registered, or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect, preserve and perfect the lien hereof upon, and the interest of the Mortgagee in, the Mortgaged Property. The Obligor shall pay, and shall hold harmless and indemnify the Owner and the Mortgagee and their respective successors and assigns against liability incurred by reason of, all filing, registration and recording fees and other charges, all recording taxes, all costs and expenses incident to the preparation, execution and acknowledgment of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property and any instrument of further assurance, and all Federal, state, county and municipal taxes, duties, imposts, assessments and other charges arising out of or in connection with the execution, delivery and/or filing or recording of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance; the foregoing shall apply regardless of the identity of the person causing any such instruments to be recorded, registered or otherwise filed.

Further, this Mortgage shall be re-recorded and re-indexed whenever in the reasonable opinion of the Mortgagee such action is necessary to preserve the lien and security interest hereof. Any said re-recordings, re-indexings, filings and re-filings shall be prepared by the Obligor and accompanied with any fees or requisite charges. All mortgage recording taxes and filing and recording charges and fees shall be payable by the Obligor.

Section 10. Protective Action. Upon the occurrence of an Event of Default, the Mortgagee may (without waiver of any of the rights of the Mortgagee hereunder) take such action as the Mortgagee deems appropriate to protect the Mortgaged Property or the status or priority of the lien of this Mortgage thereon, including, but not limited to, entry upon the Facility Realty to protect it from deterioration or damage or to cause the Mortgaged Property to be put in compliance with any governmental, insurance rating or contract requirements; payments of amounts due on liens having priority over this Mortgage; payment of any tax or charge for purposes of assuring the priority or enforceability of this Mortgage; and obtaining insurance on the Mortgaged Property or commencement or defense of any legal action or proceeding to assert or protect the validity or priority of the lien of this Mortgage. The Obligor agrees to reimburse the Mortgagee for all expenses reasonably incurred in taking any such action, on demand, with interest at a rate equal to two percent (2%) per annum above the prime rate of the Trustee (the "Post-Default Rate"), but in no event more than the highest rate permitted under the applicable usury law, and the amount thereof shall be secured by this Mortgage and shall, to the extent permitted by law, be in addition to the maximum amount of the Obligations heretofore stated.

Section 11. After-Acquired Property. All right, title and interest of the Owner in and to all improvements, betterments, renewals, substitutions and replacements of, and all additions, accessions and appurtenances to, the Mortgaged Property, or any part thereof, hereafter acquired, constructed, assembled or placed by or at the direction of the Owner or the Obligor on or in the Facility Realty, and all conversions and proceeds of the security constituted thereby, immediately upon such acquisition, construction, assembly, placement or conversion, as the case may be, and in each such case without any further mortgage, conveyance or assignment or other act of the Owner or the Obligor, shall become subject to the security and lien of this Mortgage as fully and completely, and with the same effect, as though now owned by the Owner or the Obligor and specifically described in the Granting Clauses hereof; but at any and all times the Owner (at the sole cost and expense of the Obligor) and the Obligor, on demand, will execute, acknowledge and deliver to the Mortgagee and the Obligor, and will cause to be recorded or filed as provided in Section 9 hereof, any and all such further assurances and mortgages, conveyances or assignments thereof as the Mortgagee may reasonably require for the purposes of expressly and specifically subjecting the same to the security interest and lien of this Mortgage.

Section 12. Benefit of §254 of the Real Property Law. Nothing herein contained shall be construed as depriving the Mortgagee of any right or advantage available under §254 of the Real Property Law of the State, but all covenants herein differing therefrom shall be construed as conferring additional and not substitute rights and advantages.

Section 13. Additional Taxes or Charges. (a) If any law or ordinance is enacted or adopted that imposes a tax (other than an income tax), either directly or indirectly, on this Mortgage, the Obligor will pay such tax with interest and penalties thereon, if any. 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 this Mortgage, the Obligor agrees to pay for the same with interest and penalties thereon, if any.

(b) 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 the amount of any lien or other encumbrance thereon or changing in any way the law governing the taxation of mortgages or debts secured by mortgages (including the manner of the collection of any such taxes), and imposing a tax, either directly or indirectly, on this Mortgage, the Obligations or any instruments evidencing the Obligations, the Obligor shall, if permitted by law, pay any tax imposed as a result of any such law within the statutory period or within thirty (30) days after demand by the Mortgagee, whichever is less; provided, however, that if, in the opinion of counsel for the Mortgagee, the Obligor is not permitted by law to pay such taxes, then the Mortgagee shall have the right, at its option, to declare that the Obligations then due and payable be paid on a date specified in a prior notice to the Owner and the Obligor of not less than ninety (90) days, and to the extent the Obligations are not Obligations then due and payable (but rather are contingent), to require the Obligor to furnish to the Mortgagee such alternative security for the Obligations in lieu of this Mortgage as the Mortgagee may reasonably require.

Section 14. Assignment of Leases and Rents. (a) The Obligor hereby irrevocably and unconditionally assigns to the Mortgagee all right, title and interest of the Obligor in and to (i) the rents, issues and profits of the Facility Realty (other than as derived pursuant to the Sale Agreement) and (ii) all lease agreements (the "Leases"), all as further security for the payment of the Obligations, and the Obligor grants to the Mortgagee the right to enter upon and to take possession of the Facility Realty for the purpose of collecting the same and to let the Facility Realty or any part of either thereof, and to apply the rents, issues and profits without any counter-claim or set-off against the Mortgagee on account of the Obligations. This assignment and grant shall continue in effect until the Obligations are paid in full. Nothing contained herein shall be construed to bind the Mortgagee to the performance of any of the covenants, conditions or provisions contained in any Lease or other document or otherwise to impose any obligation on the Mortgagee (including, without limitation, any liability under any covenant of quiet enjoyment contained in any Lease or in any law of the State in the event that any tenant shall have been joined as a party defendant in any action to foreclose this Mortgage and shall have been barred and foreclosed thereby of all right, title, interest and equity of redemption if, the Mortgaged Property), except that the Mortgagee shall be accountable for any money actually received pursuant to such assignment.

Neither the foregoing assignment of Leases, rents, issues and profits to Mortgagee nor the exercise by the Mortgagee of any of its rights or remedies hereunder shall be deemed to make the Mortgagee a "mortgagee-in-possession" or otherwise obligated, responsible or liable in any manner with respect to the Mortgaged Property or the use, occupancy, enjoyment or operation of all or any portion thereof. The Owner and the Obligor hereby further grant to the Mortgagee the right, after the occurrence of an Event of Default and subject to the provisions hereof, (i) to enter upon and take possession of the Mortgaged Property for the purpose of collecting the rents, issues and profits, (ii) to dispossess any tenant defaulting in the payment thereof to the Mortgagee, (iii) to let the Facility Realty or any part of either thereof, and (iv) to apply rents, issues and profits, after payment of all reasonable and necessary charges and expenses, on account of the Obligations. Such assignment and grant shall continue in effect until the Obligations are paid in full, the execution of this Mortgage constituting and evidencing the

consent of the Owner and the Obligor to the entry upon and taking possession of the Mortgaged Property by the Mortgagee pursuant to such grant, whether foreclosure has been instituted or not and without applying for a receiver.

Upon the occurrence and during the continuance of an Event of Default, the Obligor irrevocably authorizes and directs each space tenant under any Lease, upon receipt of written notice from the Mortgagee of the occurrence of an Event of Default and until directed otherwise by the Mortgagee, to pay directly to the Mortgagee, or as directed by the Mortgagee, all rents, issues and profits accruing or due under its Lease from and after the receipt of such notice.

The Obligor agrees that any and all tenants shall have the right to rely upon any such notice from the Mortgagee, and to pay such rents, issues and profits to or as directed by the Mortgagee without any obligation to inquire into the actual existence of any Event of Default claimed by the Mortgagee, and notwithstanding any notice from or contrary claim by the Obligor; and the Obligor shall have no right or claim against any tenant with respect to any rents, issues and profits so paid to the Mortgagee.

Notwithstanding the foregoing, until the occurrence of an Event of Default hereunder, the Mortgagee hereby waives the right to enter upon and to take possession of the Facility Realty for the purpose of collecting the rents, issues and profits, and the Obligor shall be entitled to collect and receive the rents, issues and profits and to apply same in payment of the amounts becoming due on the Obligations and operating expenses related to the Facility Realty, and to retain, use and enjoy the benefit of the Leases. Upon the occurrence of an Event of Default hereunder, in addition to the Mortgagee's other rights described in this Section, the Obligor will pay monthly in advance to the Mortgagee, or to any receiver appointed to collect the rents, issues and profits, the fair market rental value for the use and occupancy of the Facility Realty or of such part of either thereof as may be in the possession of the Obligor, and upon default in any such payment will vacate and surrender the possession of the Facility Realty to the Mortgagee or to such receiver, and in default thereof may be evicted by summary proceedings.

(b) The Obligor shall not, without the prior written consent of the Mortgagee, waive, release, reduce, discount, discharge or assign to any Person other than the Mortgagee the whole or any part of the rents, issues and profits of the Facility Realty, except for Permitted Encumbrances, without the prior written consent of the Mortgagee. The Mortgagee shall have all of the rights against lessees of the Mortgaged Property as set forth in Section 291-f of the Real Property Law of the State, and the Obligor shall cooperate with the Mortgagee to effect such rights. In respect of any Lease, the Obligor will (i) fulfill or perform each and every material provision thereof on its part to be fulfilled or performed, (ii) promptly send copies of all notices of default that it shall send or receive thereunder to the Mortgagee, and (iii) enforce, short of termination thereof, at the sole cost and expense of the Obligor, the performance or observance of the provisions thereof. Nothing contained in this Mortgage shall be deemed to impose on the Mortgagee any of the obligations of the lessor under the Leases.

(c) The Obligor shall include in all Leases provisions that the tenant thereunder shall pay to the Mortgagee all sums due under the Lease upon notice to the tenant

from the Mortgagee of the occurrence of an Event of Default, and that the Lease is subject and subordinate to the lien of this Mortgage.

(d) Upon the occurrence of an Event of Default under any of the Obligations, the Mortgagee may, without prejudice to any other available rights or remedies, at its option and to the extent permitted by law, cancel, enforce, renew or modify the Leases, make new Leases, obtain and evict tenants, fix or modify rents, take over and enjoy the benefits of the Leases, exercise the Obligor's rights thereunder and perform all acts in the same manner and to the same extent as the Obligor might do, which acts may be performed in the Obligor's name, and do any acts that the Mortgagee deems proper to protect the security hereof, either with or without taking possession of the Facility Realty and, in its own name, sue for or otherwise collect and receive such rents, issues and profits, including those past due and unpaid, and apply the same, less reasonable costs and expenses of operation and collection, including, without limitation, reasonable attorneys' fees and disbursements, upon the Obligations in such order as the Mortgagee may determine. The entering upon and taking possession of the Facility Realty, the exercise of the Mortgagee's rights under the Leases, the collection of such rents, issues and profits, and the application thereof as aforesaid shall not cure or waive any default or waive, modify or affect any notice of default given under any of the Obligations.

(e) Upon the occurrence of an Event of Default hereunder, the Obligor will furnish to the Owner and the Mortgagee, within fifteen (15) days after mailing to the Obligor of a written request therefor, a detailed statement in writing, duly sworn and covering the period of time specified in such request, showing all income derived from the operation of the Facility Realty and all disbursements made in connection therewith, and containing a list of (i) the names of all tenants of the Facility Realty and occupants other than those claiming possession through such tenants, the portion or portions of the Facility Realty occupied by such tenant and occupant, the rents, issues and profits and other charges payable under the terms of their Leases or other agreements, and the periods covered by such Leases or other agreements; and/or (ii) a complete list of all Leases entered into or obtained by the Obligor setting forth the parties, documents and other arrangements thereunder and the periods covered by such Leases.

Section 15. Usury Laws. This Mortgage and the Obligations are subject to the express condition that at no time shall the Owner or the Obligor be obligated or required to pay interest on the principal balance due under the Obligations at a rate that could subject the holder of the Obligations to either civil or criminal liability as a result of being in excess of the maximum interest rate that the Owner or the Obligor, as applicable, is permitted by law to contract or agree to pay, or subject the Mortgagee to forfeiture of any principal under the Obligations or prevent the Mortgagee from collecting same. If by the terms of this Mortgage or the Obligations, the Owner or the Obligor is at any time required or obligated to pay interest on the principal balance due under any Obligation at a rate in excess of such maximum rate, the rate of interest under such Obligation shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate.

Section 16. Limitation on Obligor Actions. If at any time the Obligor believes that the Mortgagee has not acted reasonably in granting or withholding any consent or approval,



making any other determination or taking or failing to take any other action under this Mortgage, or any other instrument now or hereafter executed and delivered pursuant to this Mortgage, as to which consent or approval, determination or other action 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, the Obligor'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 Obligor against the Mortgagee, and the Obligor shall have no claim or charge against the payment and performance of the Obligations.

Section 17. Recovery of Sums Required To Be Paid. The Mortgagee shall have the right from time to time to take action to recover any sum or sums that constitutes a part of the Obligations as the same becomes due, without regard to whether or not the balance of the Obligations shall be due, and without prejudice to the right of the Mortgagee thereafter to bring an action of foreclosure or any other action, for a default or defaults by the Owner or the Obligor existing at the time such earlier action was commenced.

Section 18. Events of Default. Each of the following events shall constitute an "Event of Default" hereunder: (i) failure of the Owner or the Obligor to pay any amount that has become due and payable hereunder within ten (10) Business Days after the giving of written notice thereof to the Owner or the Obligor, as the case may be, or (ii) failure of the Obligor to pay any amount that has become due under the PILOT Obligations (after the expiration of any applicable notice, cure or grace period set forth in the PILOT Agreement).

Section 19. Remedies. Upon the occurrence of an Event of Default hereunder, the Mortgagee may, in addition to any other rights or remedies available to it hereunder or elsewhere, take such action, without notice or demand, as it reasonably deems advisable to protect and enforce its rights against the Owner (subject to the provisions of Section 4 hereof), the Obligor and any other Persons in and to the Mortgaged Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as the Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of the Mortgagee:

- (a) enter into or upon the Mortgaged Property, either personally or by its agents, nominees or attorneys, and dispossess the Owner and the Obligor and their respective agents and servants therefrom, and thereupon the Mortgagee may:
  - (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Mortgaged Property and conduct business thereat and therewith;
  - (ii) complete any construction, renovation, rebuilding or repairing of the Mortgaged Property in such manner and form as the Mortgagee reasonably deems advisable;

(iii) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property necessary to maintain the property; and

(iv) exercise all rights and powers of the Owner and the Obligor with respect to the Mortgaged Property (subject, in the case of the Owner, to the terms and conditions of the Indenture relating to the "Agency's Reserved Rights"), whether in the name of the Owner or the Obligor or otherwise, including, without limitation, the right to make, cancel, enforce or modify leases, obtain and evict tenants, and demand, sue for, collect and receive all earnings, revenues, rents, issues, profits and other income of the Mortgaged Property and every part thereof;

(b) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Obligations then due and payable, subject to the continuing security and lien of this Mortgage for the balance of the Obligations not then due;

(c) institute proceedings to foreclose the lien of this Mortgage against all or, from time to time, against any part of the Mortgaged Property and to have the same sold under the judgment or decree of a court of competent jurisdiction to the highest bidder, at public or private sale, subject to statutory and other legal requirements, if any, including all right, title and interest, claim and demand therein and thereto and all right of redemption thereof;

(d) to sell, assign or transfer the Mortgaged Property or any part thereof and all estate, claim, demand, right, title and interest of the Owner and the Obligor therein and right of redemption thereof, pursuant to power of sale or otherwise, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law (provided that ten (10) days notice of sale of the Mortgaged Property shall be deemed reasonable notice) for such price and form of consideration as the Mortgagee may determine or as may be required by law;

(e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein;

(f) apply for the appointment of or appoint a trustee, receiver, liquidator or conservator of the Mortgaged Property, without regard for the adequacy of the security for the Obligations and without regard for the solvency of any Person liable for the payment of the Obligations whether or not in connection with an action to foreclose this Mortgage; or

(g) pursue such other remedies as the Mortgagee may have under applicable law.

Further, if there shall occur an Event of Default, then the Mortgagee may, in its discretion, remedy the default and for such purpose shall have the right to enter upon the Mortgaged Property or any portion thereof without thereby becoming liable to the Owner or the Obligor or any Person in possession thereof.

The Mortgagee shall have the right to appear in and defend any action or other proceeding brought with respect to the Mortgaged Property and to bring any action or other proceeding, in the name and on behalf of the Owner or the Obligor if and to the extent the Mortgagee so elects, that the Mortgagee, in its discretion, feels should be brought to protect the Mortgagee's interest in the Mortgaged Property.

If the Mortgagee shall remedy any such default or appear in, defend or bring any action or proceeding to protect its interest in the Mortgaged Property or to foreclose this Mortgage or collect the Obligations, all reasonable costs and expenses thereof (including reasonable attorneys' fees to the extent permitted by law), with interest calculated at the Post-Default Rate, shall be paid by the Obligor to the Mortgagee upon demand.

To the extent any such costs, expenses or other amounts paid by the Mortgagee after default (after any applicable grace period) by the Owner or the Obligor shall constitute payment of (1) taxes or payments-in-lieu-of-taxes, (2) premiums on insurance policies covering all or a part of the Mortgaged Property, (3) expenses incurred in upholding the lien of this Mortgage, including the costs and expenses of any litigation to collect the Obligations secured by this Mortgage or to prosecute, defend, protect or preserve the rights and the lien created by this Mortgage, or (4) any amount, cost or other charge to which the Mortgagee becomes subrogated, upon payment, whether under recognized principles of law or equity, or under express statutory authority; then, and in each such event, those costs, expenses and other amounts, together with interest thereon calculated at the Post-Default Rate, shall be added to the Obligations secured by this Mortgage and shall be an Obligation secured by this Mortgage.

Section 20. Appointment of a Receiver. Upon the occurrence of an Event of Default, the Mortgagee shall be entitled to the appointment of a receiver. The right to have a receiver appointed shall be a matter of strict right and without regard to the value or occupancy of the security, and such receiver may enter upon and take possession of the Mortgaged Property, collect the Rents therefrom and apply the same as the court may direct, such receiver to have all of the rights and powers as a receiver may have under the laws of the State. The expenses, including, without limitation, receiver's fees, counsel fees, costs and agent's commissions and compensation, incurred pursuant to the powers herein granted shall be added to the principal portion of the Obligations and secured hereby.

Section 21. Foreclosure. In the case of a foreclosure sale or pursuant to any order in any judicial proceeding or otherwise, the Mortgaged Property may be sold as an entirety in one parcel (or as one integrated unit) or separate parcels (or one or more of the interests comprising the Mortgaged Property separately from the others) in such manner or order as the Mortgagee in its sole and absolute discretion may elect.

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

(b) Upon the completion of any sale or sales made by the Mortgagee under or by virtue of this Mortgage, the Owner and the Obligor, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, granting, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold.

(c) In the event of any sale made under or by virtue of this Mortgage (whether made under the power of sale herein granted or under or by virtue of judicial proceedings or decree of foreclosure and sale), the entire amount of the Obligations, if not previously due and payable, immediately thereupon shall become due and payable.

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

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

Section 22. No Merger. It is the intention of this Mortgage that if the Mortgagee shall at any time hereafter acquire title to all or any portion of the Mortgaged Property, or any interest therein or lien thereon under any other mortgage or instrument, then, and until the Obligations have been paid in full or otherwise discharged or satisfied in accordance with their terms, the interest of the Mortgagee hereunder and the security interest created by this Mortgage shall not merge or become merged in or with the estate and interest of the Mortgagee as the holder of title to all or any portion of the Mortgaged Property, or in or with the interest of the Mortgagee under or the lien of such other mortgage or instrument, and that, until such payment, discharge or satisfaction, the estate of the Mortgagee in the Mortgaged Property and the security interest created by this Mortgage and the interest of the Mortgagee hereunder shall continue in full force and effect to the same extent as if the Mortgagee had not acquired title to all or any portion of the Mortgaged Property or any other interest therein or lien thereon. If, however, the Mortgagee shall consent to such merger or if such merger shall nevertheless occur without its consent, then this Mortgage shall attach to, and cover and be a conveyance of, the fee title or any other estate, title or interest in the Mortgaged Property acquired by the fee owner, and the same shall be considered as granted, released, assigned, transferred, pledged, conveyed and set over to the Mortgagee and this Mortgage spread to cover such estate with the same force and effect as though specifically herein granted, released, assigned, transferred, pledged, conveyed, set over and spread, provided, however, the Obligor shall pay any and all transfer, recording or other taxes in connection therewith.

Section 23. This Mortgage Constitutes a Commercial Transaction. THE OBLIGOR ACKNOWLEDGES THAT THE TRANSACTION OF WHICH THIS MORTGAGE IS A PART IS A COMMERCIAL TRANSACTION, AND HEREBY VOLUNTARILY AND KNOWINGLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ITS RIGHTS TO NOTICE AND HEARING AS ALLOWED UNDER ANY STATE OR FEDERAL LAW WITH RESPECT TO ANY PREJUDGMENT REMEDY OR OTHER RIGHT THAT THE MORTGAGEE MAY DESIRE TO USE.

Section 24. Non-Impairment. No provision of this Mortgage (1) is or shall be deemed to be a release or impairment of any of the Obligations, including this Mortgage, (2) shall preclude the Mortgagee, upon the occurrence of an Event of Default hereunder, from foreclosing this Mortgage or from otherwise enforcing its rights hereunder or under any other instrument governing or securing the Obligations, (3) shall preclude or bar the Mortgagee upon foreclosure from obtaining a deficiency judgment against the Obligor or against any subsequent owner of the Mortgaged Property who assumes the Obligations, (4) shall require the Mortgagee to accept a part of the Mortgaged Property (as distinguished from its entirety) as payment of the Obligations secured hereby, or shall compel the Mortgagee to accept or allow any apportionment of the Obligations secured hereby to or among any separate parts of the Mortgaged Property.

Section 25. No Remedy Exclusive. No remedy conferred upon or reserved to the Mortgagee hereunder is or shall be deemed to be exclusive of any other available remedy or remedies. Each such remedy shall be distinct, separate and cumulative, shall not be deemed to be inconsistent with or in exclusion of any other available remedy, may, to the fullest extent permitted by applicable law, be exercised in the discretion of the Mortgagee at any time, in any manner and in any order, and shall be in addition to and separate and distinct from every other remedy given the Mortgagee under this Mortgage or now or hereafter existing in favor of the Mortgagee at law or in equity or by statute. Without limiting the generality of the foregoing, the Mortgagee shall have the right to exercise any available remedy to recover any amount due and payable hereunder without regard to whether any other amount is due and payable, and without prejudice to the Mortgagee to exercise any available remedy for other Events of Default existing at the time the earlier action was commenced.

Section 26. Delay Not To Constitute Waiver. Any delay, omission or failure by the Mortgagee to insist upon the strict performance by the Owner and the Obligor of any of the covenants, conditions and agreements herein set forth to be exercised by them or to exercise any right or remedy available to it upon the occurrence of an Event of Default hereunder shall not impair any such right or remedy or be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce, by injunction or other appropriate legal or equitable remedy, strict compliance by the Owner (subject to the provisions of Section 4 hereof) and the Obligor with all of the covenants, conditions and agreements herein to be exercised by them, or of the right to exercise any such rights or remedies if such default by the Owner or the Obligor be continued or repeated. Any forbearance to exercise any remedy of the Mortgagee or any withdrawal or abandonment of the Mortgagee of any of its rights in any one circumstance shall not be construed as a waiver of any power, remedy or right of the Mortgagee hereunder. The rights and remedies of the Mortgagee expressed and contained in this Mortgage are

cumulative, and none of them shall be deemed to be exclusive of any other or of any right or remedy the Mortgagee may now or hereafter have in law or in equity. The election of any one or more remedies shall not be deemed to be an election of remedies under any statute, rule, regulation or case law. The covenants of this Mortgage shall run with the Mortgaged Property and other properties and the estates hereby mortgaged and shall bind the Owner and the Obligor and their respective assigns, legal representatives and successors and shall inure to the benefit of the Mortgagee, its successors and assigns.

Section 27. Effect of Discontinuance of Proceedings. In case any proceedings taken by the Mortgagee on account of any Event of Default hereunder shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Mortgagee, then and in every such case the Owner and the Obligor and the Mortgagee shall be restored, respectively, to their former positions and rights hereunder, and all rights, remedies, powers and duties of the Mortgagee shall continue as in effect prior to the commencement of such proceedings.

Section 28. Marshalling. The Owner and the Obligor waive and release any right to have the Mortgaged Property marshalled.

Section 29. Actions and Proceedings. The Mortgagee shall have the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding that the Mortgagee, in its discretion, reasonably determines to be brought to protect its interest in the Mortgaged Property. The Mortgagee shall further have the right, from time to time, to sue for any sums required to be paid under the terms of this Mortgage or any other mortgage to which this Mortgage is subordinate, as the same become due, without regard to whether or not the principal sums secured or any other sums secured by this Mortgage shall be due and without prejudice to the right of the Mortgagee thereafter to bring an action of foreclosure or any other action for a default or defaults by the Owner or the Obligor existing at the time such earlier action was commenced.

Section 30. Attorneys' Fees and Other Costs. The Obligor agrees to bear all reasonable costs, fees and expenses (including court costs and reasonable attorneys' fees and disbursements for legal services) of or incidental to the enforcement of any provisions hereof, or enforcement, compromise or settlement of any of the collateral pledged hereunder, or for the curing of any Event of Default, or defending or asserting the rights and claims of the Mortgagee in respect thereof, by litigation or otherwise, and, upon demand therefor, will pay to the Mortgagee any such expenses incurred, and such expenses shall be deemed part of the Obligations secured by this Mortgage and shall be collectible in like manner as the Obligations secured by this Mortgage, and from the date due until so paid shall bear interest at the Post-Default Rate. All rights and remedies of the Mortgagee shall be cumulative and may be exercised singly or concurrently.

Section 31. Consents. Wherever in this Mortgage the prior consent of the Mortgagee is required, the consent of the Mortgagee given as to one such transaction shall not be

deemed to be a waiver of the right to require such consent to future or successive transactions. Any such consents shall be in writing.

Section 32. No Additional Waiver Implied by One Waiver. In the event any covenant or agreement contained in this Mortgage should be breached by the Owner or the Obligor and thereafter waived by the Mortgagee, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver shall be binding unless it is in writing and signed by the Mortgagee. No course of dealing between the Owner and/or the Obligor and/or any other Person or any delay or omission on the part of the Mortgagee in exercising any rights hereunder shall operate as a waiver.

Section 33. Application of Proceeds and Limitation of Remedies. All proceeds derived through the exercise of any remedies or the commencement of any proceedings under this Mortgage or otherwise shall be applied, notwithstanding any provision of this Mortgage to the contrary, FIRST, to the payment of any amounts due and unpaid by the Obligor under the PILOT Agreement, and the balance shall be applied in accordance with the Indenture.

Section 34. Waiver of Notice. The Owner and the Obligor shall not be entitled to any notices of any nature whatsoever under this Mortgage 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 Owner or the Obligor, and the Owner and the Obligor hereby expressly waive 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 such notice.

Section 35. Notices. Any notice required to be sent to the Obligor or the Owner or any notice including process, pleadings or other papers served upon them shall, at the same time, be sent by registered or certified mail, postage prepaid, or sent by hand or by overnight mail, to the Owner at 1100 Franklin Avenue, Suite 300, Garden City, NY 11530, Attention: Executive Director, and to the Obligor c/o Omni New York LLC, 575 Lexington Avenue, New York, NY 10022 or to such other alternate address as may be furnished by the Owner or the Obligor to the Mortgagee in writing. Any notice, certificate or other communication hereunder shall, except as may expressly be provided herein, be deemed to have been delivered or given as of the date it shall have been received, or, if such receipt is rejected, the date of rejection.

Section 36. [Reserved.]

Section 37. Owner is Executing Mortgage at Obligor's Direction. The Obligor directs the Owner to execute and deliver this Mortgage to the Mortgagee, and further agrees to indemnify the Owner (and its members, officers, directors, agents, servants and employees) in connection with the execution, delivery, recording, performing and enforcing of this Mortgage.

Section 38. Mortgage for Benefit of Owner, Obligor and Mortgagee. The covenants and agreements contained in this Mortgage (including all indemnities set forth herein) shall run with the land and bind the Owner and the Obligor, and their respective heirs, executors, administrators, legal representatives, successors and assigns, and each Person constituting the

Owner or the Obligor, and all subsequent owners, encumbrances and tenants of the Mortgaged Property, or any part thereof, and shall inure solely to the benefit of the Owner and the Mortgagee, their respective successors and assigns, and all subsequent beneficial owners of this Mortgage, and to no other Persons, and survive the foreclosure of this Mortgage.

Section 39. Authorization. The execution of this Mortgage has been duly authorized by the members of the Owner and by the partners of the Obligor.

Section 40. Amendments and Modifications. This Mortgage shall be amended, modified or supplemented only by a written agreement executed by the Obligor, the Owner and the Mortgagee.

Section 41. Applicable Law. This Mortgage shall be governed by and construed in accordance with the laws of the State, as the same may be in effect from time to time, without regard to principles of conflicts of law.

Section 42. Date of Mortgage for Reference Purposes Only. The date of this Mortgage shall be for reference purposes only and shall not be construed to imply that this Mortgage was executed on the date first above written. This Mortgage was executed and delivered on the date of original issuance and delivery of the Bonds.

Section 43. Entire Agreement, Counterparts. This Mortgage constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof (other than any Security Documents) and may be executed simultaneously in several counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

Section 44. Severability. If any provision of this Mortgage shall be ruled invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect any of the remaining provisions hereof.

Section 45. Waiver of Jury Trial. THE PARTIES HERETO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY ANY PARTY HERETO AGAINST ANOTHER PARTY HERETO OR IN ANY COUNTERCLAIM ASSERTED BY THE MORTGAGEE AGAINST THE OBLIGOR OR IN ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS MORTGAGE OR THE OBLIGATIONS SECURED HEREBY.

Section 46. Notice of Event of Default. The Obligor shall immediately notify the Mortgagee in writing of any Event of Default. Any notice required to be given pursuant to this Section shall be signed by the Obligor and shall set forth a description of the default and the steps, if any, being taken to cure said default. If no steps have been taken to cure a default, the notice shall plainly state this fact.

Section 47. Non-Residential Property. This Mortgage does not cover real property principally improved by one or more structures containing in the aggregate six (6) or



fewer residential units having their own separate cooking facilities, and the Obligor so represents and warrants.

Section 48. References to Mortgagee. All references to the Mortgagee hereunder shall be deemed to be references to the County and shall confer rights upon it.

Section 49. Relationship; Nature of Documents. Nothing contained in this Mortgage or any other instrument now or hereafter executed and delivered in connection therewith or otherwise in connection with this transaction shall in any event or under any circumstance be construed as creating a partnership, joint venture, tenancy-in-common, joint tenancy or other similar relationship of any nature whatsoever among the Mortgagee, the Obligor and the Owner.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

**IN WITNESS WHEREOF**, the Owner and the Obligor have duly executed this Mortgage as of the date first above written.

NASSAU COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY


By:   
Joseph Gioino  
Executive Director

MILL RIVER RESIDENCES, L.P.

By: MILL RIVER DEVELOPERS, LLC, its  
General Partner

By: ONY MILL RIVER, LLC, its Manager

By: OMNI NEW YORK LLC, its Manager

By:   
Name: Eugene Schneur  
Title: Member

STATE OF NEW YORK )

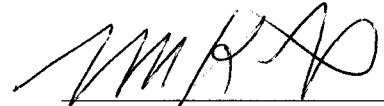
: ss.:

COUNTY OF NASSAU )

On the 19<sup>th</sup> day of December, in the year two thousand five, before me, the undersigned, a Notary Public in and for said State, personally appeared Joseph Gioino, 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 executed the instrument.

MILAN K. TYLER  
Notary Public, State of New York  
No. 24-4949790  
Qualified in Kings County  
Commission Expires ~~6/12/07~~

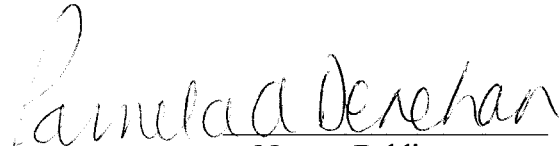
6/12/07

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

STATE OF NEW YORK )

                  New York : ss.:  
COUNTY OF NASSAU )

On the 20 day of December, in the year one thousand two thousand five, before me, the undersigned, a Notary Public in and for said State, personally appeared Eugene Schneur, 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 executed the instrument.

  
Notary Public

PAMELA A. DENEHAN  
Notary Public, State Of New York  
No. 01DE4641345  
Qualified In Suffolk County  
Commission Expires December 31, 2005

DESCRIPTION OF FACILITY REALTY

**As to Tax Lot 37:**

ALL that certain plot, piece or parcel of land, situate, lying and being in the Incorporated Village of Rockville Centre, Town of Hempstead, County of Nassau and State of New York, bounded and described as follows:

BEGINNING at a point on the West side of North Centre Avenue, said point being distant 100.00 feet Northerly from the corner formed by the intersection of the former North Side of Randall Avenue with the West side of North Centre Avenue:

RUNNING THENCE South 83 degrees 52 minutes 53 seconds West, 170.99 feet;

THENCE North 78 degrees 42 minutes 07 seconds West 488.88 feet to land now or formerly of Hempstead Lake State Park (formerly property of the City of New York);

THENCE North 06 degrees 07 minutes 07 seconds West, 190.23 feet;

THENCE South 74 degrees 47 minutes 28 seconds West, 14.60 feet;

THENCE North 11 degrees 22 minutes 36 seconds East, 75.01 feet;

THENCE South 78 degrees 42 minutes 07 seconds East, 579.44 feet to tax lot 36 land of the Inc. Village of Rockville Centre;

THENCE along aforesaid land South 6 degrees 27 minutes 07 seconds East 177.36 feet to Meehan Lane;

THENCE South 83 degrees 52 minutes 53 seconds West along said North line of Meehan Lane, 87.14 feet;

THENCE North 78 degrees 42 minutes 07 Seconds West, 378.55 feet;

THENCE Westerly along an arc having its center to the North, radius 20.00 feet, length 19.77 feet;

THENCE Westerly, Southerly and Easterly along an arc having its center to the South, radius 40.00 feet, length 207.08 feet;

THENCE Easterly along an arc having its center to the Southeast, radius 6.00 feet, length 6.28 feet;

THENCE South 78 degrees 42 minutes 07 seconds East along the South side of Meehan Lane 393.42 feet;

THENCE still along the South side of Meehan Lane, North 83 degrees 52 minutes 53 seconds East 167.01 feet to the West side of North Centre Avenue;

THENCE along the West side of North Centre Avenue, South 06 degrees 27 minutes 07 seconds East 25.00 feet to the point or place of BEGINNING.

**As to Tax Lot 20:**

ALL that certain plot, piece or parcel of land, situate, lying and being in the Incorporated Village of Rockville Centre, Town of Hempstead, County of Nassau and State of New York, bounded and described as follows:

BEGINNING at a point on the Southerly side of Maine Avenue, said point being distant 150.02 feet Westerly from the corner formed by the intersection of the Westerly side of North Centre Avenue with the Southerly side of Maine Avenue;

RUNNING THENCE South 05 degrees 42 minutes 53 seconds West, 110.00 feet;

THENCE North 84 degrees 17 minutes 07 seconds West, 380.83 feet;

THENCE North 03 degrees 59 minutes 16 seconds West, 111.60 feet to the Southerly side of Maine Avenue;

THENCE along the Southerly side of Maine Avenue, South 84 degrees 17 minutes 07 seconds East, 399.19 feet to the point or place of BEGINNING.