

PENALTY NOTE

\$100,000.00

Date:

Borrower

Borrower's Address

1. BORROWER'S PROMISE TO PAY

_____, with an address of _____ (the "Borrower" or the "Undersigned"), for value received, promises to pay to the order of **CITY OF HUDSON**, (hereinafter referred to as "CITY", "Lender" or "Note Holder") the sum of **ONE HUNDRED THOUSAND AND 00/100 DOLLARS (\$100,000.00)** (the "Principal") at 520 Warren Street, Hudson, New York, which shall be paid at such rate and in accordance with such terms as indicated below.

2. RATE

The Borrower shall pay interest at the rate indicated below (the "Interest Rate").

A fixed Interest Rate of Seven (7%) percent per annum.

3. REPAYMENT TERMS

The Borrower will repay this Note by paying the total principal due only upon default of the covenant in Paragraph 20, together with interest thereon from the date of this Note until the Principal is fully repaid. In addition, the Borrower also agrees to pay accrued interest on the unpaid Principal balance commencing on the date that demand for payment is made. This Note shall expire and no payments shall be due hereon if there has been no default of the covenants in this Penalty Note on or before_____.

4. BUSINESS LOAN

The Borrower represents and warrants that this Note evidences a loan for business or commercial purposes and is not a consumer transaction.

5. APPLICATION OF PAYMENTS

Each payment received on this Note shall be applied first to interest due and then to the outstanding principal balance. However, if there are any additional amounts due to CITY

hereunder, such as late charges, CITY may elect to apply any monies received for payment of such additional amounts due, prior to applying same toward payment of the principal balance.

6. COLLECTION OR ENFORCEMENT COSTS

If it is necessary for CITY to bring any action or proceeding in order to collect any amounts due hereunder or as a result of a breach of any of the terms or conditions herein, or if CITY is made a party to a lawsuit by virtue of this agreement, the Borrower shall be responsible for paying all costs, expenses and reasonable attorneys' fees incurred by CITY in such lawsuit, action or proceeding, and also for all costs, expenses and reasonable attorneys' fees incurred by CITY incidental to the care, preservation, processing and sale of the Collateral, or in any way relating to the rights of CITY hereunder. This includes, but is not limited to, a mortgage foreclosure proceeding.

7. BINDING AGREEMENT; GOVERNING LAW

The Note shall be binding upon the heirs, successors and assigns of the Borrower and CITY. It shall be interpreted and construed in accordance with the laws of New York State.

8. MORE THAN ONE SIGNER

If more than one person or entity signs this Note as a Borrower, the obligations contained herein shall be deemed joint and several and all references to "Borrower" shall apply to all persons signing this agreement both individually and jointly.

9. DEFAULT

The total unpaid balance of this Note shall become due and payable without notice or demand upon the occurrence of any one of the following "Events of Default"; (a) default in any payment of principal or interest when due under this Note; (b) failure to fulfill or perform any other term of this Note or to keep any promises made in this Note or related Term Loan Agreement and/or mortgage, including, but not limited to, the requirements of the Borrower as set forth in the Penalty Note referenced in paragraph 20 herein. Notwithstanding anything set forth herein to the contrary, the Lender shall provide 10 days written notice for any non-monetary default during which period the Borrower will have the right to cure.

10. WAIVER

The Borrower and all endorsers, sureties and guarantors hereof hereby jointly and severally waive presentment for payment, demand, notice of non-payment, notice of protest and/or notice of dishonor, and protest of this Note.

11. EXCESS INTEREST

At no time shall the Interest Rate exceed the highest rate allowed by law for this type of

loan. Should this occur or should the Lender ever erroneously collect interest at a rate which exceeds the applicable legal limit, such excess will be credited to principal. However, this shall not be grounds for voiding the Borrower's obligations hereunder and in such event, the Borrower's obligations shall be deemed to be automatically modified to conform with any such applicable legal limit.

12. GIVING OF NOTICES OR DEMANDS

Any notice or other formal communication given either by Borrower or by the Lender will be in writing, and shall be deemed sufficiently given if delivered by any one of the following methods: (i) personal delivery which, in case of notice to the Lender, shall be to an officer or principal thereof; (ii) certified or registered mail, return receipt requested, postage prepaid and properly addressed as set forth below; or (iii) Federal Express or other nationally recognized courier services providing written evidence of delivery. Addresses for receipt of notices are as follows:

To the Borrower:

To the City:

Hudson City Clerk
520 Warren Street
Hudson, New York 12534

Either party may change address for receipt of notices by written notice given to the other party in the manner provided above.

13. RIGHT TO TRANSFER

CITY may transfer or assign this Note and deliver all or any of its rights in the Collateral held as security therefor to another party or entity which shall thereupon become vested of all of the powers and rights given to CITY herein, and CITY shall thereafter be forever relieved and fully discharged of any liability or responsibility to the Borrower.

14. LATE CHARGES

In addition to any other payment required herein, the Borrower shall also be obligated to pay a late charge equal to the greater of five percent (5%) or twenty five dollars (\$25.00) Dollars, which ever amount is greater for any payment due hereunder which is received by CITY more than ten (10) days after such payment is due. This payment shall automatically be payable by the Borrower to CITY, without demand, and the failure to pay same shall constitute a default in accordance with paragraph "9" of this Note.

15. ALL MODIFICATIONS IN WRITING

No modification or waiver of any of the provisions of this Note shall be effective unless in writing, signed by an officer of CITY and only to the extent therein set forth, nor shall any such waiver be applicable, except in the specific instance for which given.

16. WAIVER OF JURY TRIAL AND SETOFFS

The Borrower hereby waives trial by jury and the right to interpose any setoffs of any kind in any litigation commenced by CITY relating to this Note or any Collateral security for this Note.

17. STRICT PERFORMANCE

The failure of CITY to immediately act with respect to any of its rights herein shall not be deemed to be a waiver on its part with respect to any such rights, and CITY shall have the right to so act with respect to any of its rights herein at any time thereafter.

18. CROSS-DEFAULT

The Borrower hereby covenants and agrees that any event constituting a default in the terms, covenants and conditions of any Notes, Mortgages, agreements or other obligations given to the Lender, or a default in the terms, covenants and conditions of any Notes, Mortgages, agreements or other obligations given to another Lender and secured by Collateral pledged to the Lender herein (including both real and personal property) shall be considered a default of the terms, covenants and conditions of this Note, and the Lender may take whatever action it deems necessary pursuant to said default. Furthermore, a default in the terms, covenants and/or conditions of this Note shall constitute a default in the terms, covenants and conditions of any other Notes, Mortgages, agreements or other obligations given by the Borrower to the Lender.

19. SECURED NOTE

In addition to the protections given to the Lender under this Note, the Borrower has also given the Lender a Mortgage on certain real property (the "Security Instrument") dated the same date as this Note, which provides the Lender with certain rights as set forth herein and also sets forth certain obligations on the part of the Borrower. A default in any of the provisions of the Security Instrument shall constitute a default with respect to this Note. By granting a security interest in this Collateral, Borrower intends to provide the Lender with security for payment of said Note and obligation, including any extensions, modifications or renewals thereof.

20. PAYMENT REQUIREMENTS PURSUANT TO THIS NOTE

Payments shall be required under this Note only upon the occurrence of the conditions below:

- (i) The sum of ONE HUNDRED THOUSAND and 00/100 DOLLARS (\$100,000.00)

evidenced by this Note is in the form of a penalty, and must be paid by the Borrower to the CITY under the following conditions:

- (a) Failure of the Borrower to construct, restore and/or renovate the subject premises at 427 Warren Street, Hudson, New York and obtain a certificate of occupancy for legal commercial use on the subject premises within three (3) years from the date of this Penalty Note, or;
- (b) The Borrower sells all or a portion of the subject premises within three (3) years from the date of this Penalty Note. A sale shall not be deemed to occur in the event of any transfer to a related corporation, limited liability company, partnership, trust or other legal entity (“acquiring entity”), provided the Borrower holds a majority ownership interest interest in said acquiring entity.

IN WITNESS WHEREOF, this Note has been signed by the Borrower at Hudson, New York on _____.

By:

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

On the ___th day of _____ in the year 2019 before me, the undersigned, personally appeared, _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Signature and Office of Individual
taking acknowledgment