

CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY

AND

44 RUNYON REALTY LLC

TAX AGREEMENT

Dated as of December 30, 2021

Affected Tax Jurisdictions:

**Westchester County
City of Yonkers**

Street Address:

40 and 44 Runyon Avenue
City of Yonkers
Westchester County, New York

Tax Map No.:

Section 3, Block 3112, Lots 55 and 56

TAX AGREEMENT

THIS TAX AGREEMENT (the “Agreement”), dated as of December 30, 2021, by and between **CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with its offices located at 470 Nepperhan Avenue, Suite 200, Yonkers, New York 10701 (the “Agency”) and **44 RUNYON REALTY LLC**, a New York limited liability company having offices 21 Park Avenue, Yonkers, New York 10701 (the “Company”).

W I T N E S S E T H :

WHEREAS, the Agency was created by Chapter 83 of the Laws of 1982 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the “Act”) as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Company, for itself or on behalf of an entity to be formed has submitted an application (the “Application”) to the Agency requesting the Agency's assistance with a certain project (the “Project”) consisting of: (i) the acquisition or retention of a certain 1.11 acres of land located at 40 and 44 Runyon Avenue, described on Exhibit A (the “Land”); (ii) the reconstruction and renovation of an approximately 30,000 square foot warehouse facility on the Land to include dry and cold storage, loading docks, executive offices, and light industrial manufacturing (the “Improvements”); and (iii) the acquisition and installation in and around the Land and Improvements of certain items of equipment and other tangible personal property (the “Equipment”, which together with the Land and Improvements are the “Facility”); and

WHEREAS, in order to induce the Company to develop the Facility, the Agency is willing to hold a leasehold interest in the Land, Improvements and Equipment constituting the Facility pursuant to the terms and conditions contained in that certain Lease Agreement, dated as of December 30, 2021, by and between the Agency and the Company (the “Lease Agreement”); and

WHEREAS, the Agency proposes to lease the Facility back to the Company, and the Company desires to rent the Facility from the Agency, upon the terms and conditions hereinafter set forth in that certain Leaseback Agreement, dated as of December 30, 2021, by and between the Agency and the Company (the “Leaseback Agreement”); and

WHEREAS, the Agency has determined that providing the Facility will accomplish, in part, its public purposes; and

WHEREAS, the Company has agreed with the Agency, on behalf of the Agency and as the Agency's agent, to acquire, construct and equip the Facility in accordance with the Application filed with the Agency; and

WHEREAS, pursuant to Section 874(1) of the Act, the Agency is exempt from the payment of taxes imposed upon real property and improvements owned by it or under its

jurisdiction, control or supervision, other than special charges as defined by Section 2.1 which shall be paid by the Company outside this Tax Agreement as billed by the respective third parties; and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into an agreement making provisions for payments in lieu of taxes by the Company to the Agency for the benefit of Westchester County and the City of Yonkers, inclusive of the City of Yonkers Dependent School District (collectively, the “Affected Tax Jurisdictions”); and

NOW, THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

Section I - Payment in lieu of Ad Valorem Taxes:

Section 1.1 Exemption Application. A.) Subject to the completion and filing by the Agency or its designee at the direction of the Agency on or before the taxable status date **October 15, 2022** (the “Taxable Status Date”) of New York State Form RP-412-a Application For Real Property Tax Exemption (the “Exemption Application”) under Section 412-a of the New York State Real Property Tax Law and Section 874 of the Act and the approval of the Exemption Application by the appropriate assessors or Board of Assessment Review, the Facility shall be exempt from Real Estate Taxes for the periods set forth in Section 1.3. For purposes of the foregoing, “Real Estate Taxes” means all general levy real estate taxes levied against the Facility by the County and City, including Real Estate Taxes levied by the City for its Dependent School District. The Company shall provide the Agency with the information necessary for the completion and filing of the Exemption Application and shall provide such additional information and take such actions as are required by the appropriate assessors or Board of Assessment Review to process and approve the Exemption Application. Notwithstanding anything contained herein or in the Leaseback Agreement to the contrary, in the event the exemption from Real Estate Taxes is denied for any reason, the Company shall pay (and hereby agrees to pay) all Real Estate Taxes levied upon the Facility as they become due, specifically including but not limited to Real Estate Taxes for years prior to and after the tax years covered by this Tax Agreement. After giving written notice to the Agency, the Company may in good faith contest the denial of the Exemption Application, provided that (i) the overall operating efficiency of the Facility is not impaired and the Facility continues to qualify as a “project” under the Act; (ii) neither the Facility nor any part of or interest in it would be in any danger of being sold, forfeited or lost; or (iii) neither the Company nor the Agency, as a result of such contest, shall be in any danger of any civil or criminal liability. The Company hereby waives any claim or cause of action against the Agency, and releases the Agency from any liability to the Company, arising from the denial of an exemption from Real Estate Taxes except to the extent that such denial results solely from the failure of the Agency to file the Exemption Application with the appropriate assessors or Board of Assessment Review by the Taxable Status Date.

B.) Agreement to Make Payments. The parties agree and acknowledge that payments made under this Agreement are for purposes of obtaining revenues for public purposes, and to provide a revenue source that the Affected Tax Jurisdictions would otherwise lose because

the subject parcels are exempt from the payment of real property taxes pursuant to Section 412-a of the Real Property Tax Law and Section 874 of the General Municipal Law. The Company shall pay to the Agency, on September 1 ("Payment Date") of each year beginning on September 1, 2023 (for the benefit of the Affected Tax Jurisdictions), as an in lieu of tax payment, an amount equal to the Tax Payments as set forth on Schedule A (the "Tax Payments") for the periods described in Section 1.3.

All Tax Payments shall be mailed to the Agency at: 470 Nepperhan Avenue, Suite 200, Yonkers, New York 10701, or as otherwise directed by the Agency. The Company hereby agrees to make all such Tax Payments without further notice or invoice from the Agency or the Affected Tax Jurisdictions. All checks shall be made payable as directed by the Agency from time to time.

(i) The Company hereby waives any and all rights it may have to any refund of prior tax payments for the periods prior to the periods described in Section 1.3.

(ii) The Agency and the Company intend to establish a fixed payment schedule of Tax Payments that are in lieu of real estate taxes with respect to the Facility that, absent a default by the Company or a change in law, shall provide tax certainty for the Company and revenue certainty for the Affected Tax Jurisdictions. The Company hereby agrees for the benefit of the Affected Tax Jurisdictions to not seek a refund of any taxes paid or to be paid for periods prior to the periods described in Section 1.3. The right of the Company to institute a grievance with respect to Real Estate Taxes shall be strictly limited by the terms of this Agreement; and, except as otherwise provided in Section 4.1, the Company shall only be entitled to institute a grievance which would cause an adjustment of the Special Charges (as defined in Section 2.1) and the Company shall be limited to the right to refunds related to grievances involving Special Charges. Except as otherwise provided in Section 4.1, the Tax Payments shall not be contested, grieved or refuted during and for the term of this Agreement and the Company shall not seek a refund of any Tax Payments or taxes paid or to be paid.

(iii) Allocation. The Agency shall remit to the Affected Tax Jurisdictions amounts received hereunder, if any, within thirty (30) days of receipt of said payment and shall allocate said payments among the Affected Tax Jurisdictions in the same proportion as taxes would have been allocated but for the Agency's involvement, unless the Affected Tax Jurisdictions have consented in writing to a specific allocation.

1.2 Valuation of Future Additions to the Facility: If there shall be a future addition to the Facility that has not been described in the Application constructed or added in any manner after the date of this Agreement, the Company shall notify the Agency of such future addition ("Future Addition"). The notice to the Agency shall contain a copy of the application for a building permit, plans and specifications, and any other relevant evidence that the Agency may thereafter request. Upon the earlier of substantial completion, or the issuance of a certificate of occupancy for any such Future Addition to the Facility, the Company shall become liable for payment of an increase in the Tax Payment. The Agency shall notify the Company of any proposed increase in the Tax Payment related to such Future Addition. If the Company shall

disagree with the determination of assessed value for any Future Additions made by the Agency, then and in that event that valuation shall be fixed by a court of competent jurisdiction. Notwithstanding any disagreement between the Company and the Agency, the Company shall pay the increased Tax Payment until a different Tax Payment shall be established. If a lesser Tax Payment is determined in any proceeding or by subsequent agreement of the parties, the Tax Payment shall be re-computed and any excess payment shall be refunded to the Company or, in the Agency's sole discretion, such excess payment shall be applied as a credit against the next succeeding Tax Payment(s).

1.3 Period of Benefits.

The tax benefits provided for herein shall be deemed to include: (i) the 2024 County tax year through the 2038 County tax year and (ii) the 2023-2024 City tax year through the 2037-2038 City tax year. **This Tax Agreement shall expire on December 31, 2038** (with the understanding that the Company will be making a payment hereunder for the 2039 County tax year and the 2038-2039 City tax year in the amounts as if the Agency were not in title on the tax lien date with respect to said tax years). In no event shall the Company be entitled to receive tax benefits relative to the Facility for more than the periods provided for herein, unless the period is extended by amendment to this Agreement executed by both parties after any applicable public hearings. The Company agrees that it will not seek any tax exemption for the Facility which could provide benefits for more than the periods provided for herein and specifically agrees that the exemptions provided for herein, to the extent actually received (based on the number of lease years elapsed), supersede and are in substitution of the exemptions provided by Section 485-b of the New York Real Property Tax Law ("RPTL"); provided, the foregoing shall not be interpreted to limit the Company and Agency from subsequently agreeing to additional benefits based upon commitments to make additional improvements or changes in use from time to time between the Agency and the Company. It is hereby agreed and understood that the Affected Tax Jurisdictions can rely upon and enforce the above waiver to the same extent as if they were signatories hereto.

Section II - Special District Charges, Special Assessments and other charges.

2.1 *Special District Charges and other payments:* Special district charges, special assessments, special ad valorem levies specifically including but not limited to charges imposed by the City of Yonkers for frontage feet ("CC001"); Housing Units ("CC002"); ETPA Charge ("CC003"); and a Safety Inspection Fee ("CC004") and district charges including but not limited to pure water charges and Westchester County sewer district charges (collectively the "Special Charges"), are not included in the amount of the Tax Payment and are to be paid in full in accordance with normal billing practices.

Section III - Transfer of Facility.

3.1 In the event this Agreement terminates and the property is not timely transferred back to the Company, the Company agrees to pay no later than the next tax lien date (plus any applicable grace period), to each of the Affected Tax Jurisdictions, an amount equal to the taxes and assessments which would have been levied on the Facility if the Facility had been classified

as fully taxable as of the date of transfer or loss of eligibility of all or a portion of the exemption described herein or date of termination.

Section IV - Assessment Challenges.

4.1 Notwithstanding any provision to the contrary, upon the issuance of a temporary certificate of occupancy, the Company shall have five (5) years to exercise its one (1) time right to institute a judicial or other review of the assessed value of the Facility, whether pursuant to the provisions of Article 7 of the RPTL or other applicable law, as the same may be amended from time to time; provided, however, that no such judicial or other review or settlement thereof shall have any effect on the Company's obligations under this Agreement, including, without limitation, the Company's obligation to make the Tax Payments when due. Such judicial or other review shall only be for purposes of setting the assessed value of the Facility as though the Facility was on the tax rolls of each Affected Tax Jurisdiction as taxable real property but shall have no effect on this Agreement or the tax-exempt status of the Facility during the term of this Agreement and the Company shall not seek a refund of any Tax Payments or taxes paid or to be paid and expressly waives and releases its right to seek such refund.

4.2 The Company shall have all of the rights and remedies of a taxpayer with respect to any Special Charges as if and to the same extent as if the Company were the owner of the Facility.

4.3 The Company shall file any accounts or tax returns required by the appropriate real estate tax assessment office and tax levy officers and provide information to the Agency as requested from time to time.

Section V - Changes in Law.

5.1 To the extent the Facility is declared to be subject to taxation or assessment by an amendment to the Act, other legislative change, or by final judgment of a Court of competent jurisdiction, the obligations of the Company hereunder shall, to such extent, be null and void.

Section VI - Events of Default.

6.1 The following shall constitute "Events of Default" hereunder. The failure by the Company to: (i) make the payments described in Section I within thirty (30) days of the Payment Date (the "Delinquency Date"); (ii) make any other payments described herein on or before the last day of any applicable cure period within which said payment can be made without penalty; or (iii) the occurrence and continuance of any events of default under the Leaseback Agreement after the expiration of any applicable cure periods. Upon the occurrence of any Event of Default hereunder, in addition to any other right or remedy the Agency and/or the Affected Tax Jurisdictions may have at law or in equity, the Agency and/or Affected Tax Jurisdictions may, immediately and without further notice to the Company (but with notice to the Agency with respect to actions maintained by the Affected Tax Jurisdictions) pursue any action in the courts to enforce payment or to otherwise recover directly from the Company any amounts so in

default. The Agency and the Company hereby acknowledge the right of the Affected Tax Jurisdictions to recover directly from the Company any amounts so in default pursuant to Section 874(6) of the General Municipal Law and the Company shall immediately notify the Agency of any action brought, or other measure taken, by any Affected Tax Jurisdiction to recover any such amount.

6.2 If payments pursuant to Section I herein are not made by the Delinquency Dates, or if any other payment required to be made hereunder is not made by the last day of any applicable cure period within which said payment can be made without penalty, the Company shall pay penalties and interest as follows. With respect to payments to be made pursuant to Section I herein, if said payment is not received by the Delinquency Date defined in Section 6.1 herein, Company shall pay, in addition to said payment, (i) a late payment penalty equal to five percent (5%) of the amount due and (ii) for each month, or any part thereof, that any such payment is delinquent beyond the first month, interest on the total amount due plus the late payment penalty, in an amount equal to one percent (1%) per month. With respect to all other payments due hereunder, if said payment is not paid within any applicable cure period, Company shall pay, in addition to said payment, the greater of the applicable penalties and interest or penalties and interest which would have been incurred had payments made hereunder been tax payments to the Affected Tax Jurisdictions.

6.3 Prior to exercising any remedy hereunder, any Mortgagee, as defined in the Leaseback Agreement dated the date hereof, between the Agency and the Company, shall be afforded notice and the cure rights set forth in such section, as if such section were set forth in full herein.

Section VII - Assignment.

7.1 No portion of any interest in this Agreement may be assigned by the Company, nor shall any person other than the Company be entitled to succeed to or otherwise obtain any benefits of the Company hereunder without the prior written consent of the Agency, which shall not be unreasonably withheld, conditioned, or delayed.

Section VIII – Miscellaneous.

8.1 This Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

8.2 Notices. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, or to a nationally recognized courier such as Federal Express, addressed as follows:

To the Agency: City of Yonkers Industrial Development Agency
 470 Nepperhan Avenue, Suite 200
 Yonkers, New York 10701
 Attention: President/CEO

With Copy To: Harris Beach PLLC
99 Garnsey Road
Pittsford, New York 14534
Attention: Shawn M. Griffin, Esq. and Michael V. Curti, Esq.

To the Company: 44 Runyon Realty, LLC
21 Park Avenue
Yonkers, New York 10701
Attention: Joseph D. Kenner

With Copy To: Veneruso, Curto, Schwartz & Curto, LLP
The Sterling Bank Building, Suite 400
35 East Grassy Sprain Road
Yonkers, New York 10710
Attention: James J. Veneruso, Esq.

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section. Any notice hereunder may be given by counsel for a party with the same force and effect as if given by such party.

8.3 This Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Westchester County, New York.

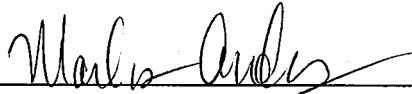
8.4 Notwithstanding any other term or condition contained herein, all obligations of the Agency hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Facility and paid to the Agency by the Company. Neither member of the Agency nor any person executing this Agreement on its behalf shall be liable personally under this Agreement. No recourse shall be had for the payment of the principal or interest on amounts due hereunder or for any claim based upon or in respect of any modification of or supplement hereto against any past, present or future member, officer, agent, servant, or employee, as such, of the Agency, or of any successor or political subdivision, either directly or through the Agency or any such successor, all such liability of such members, officer, agents, servants and employees being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this Agreement.

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[Signature Page to Tax Agreement]

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

**CITY OF YONKERS INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Name: Marlyn Anderson
Title: Secretary

44 RUNYON REALTY LLC

By: 104 Ashburton Property Corp.
a New York corporation
Its Managing Member

By: _____
Name: Joseph D. Kenner
Title: President/Chief Executive Officer

[Signature Page to Tax Agreement]

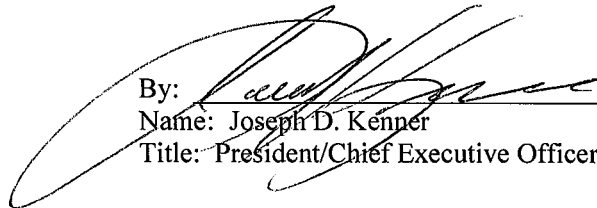
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

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DEVELOPMENT AGENCY**

By: _____
Name: Marlyn Anderson
Title: Secretary

44 RUNYON REALTY LLC

By: 104 Ashburton Property Corp.
a New York corporation
Its Managing Member

By:  _____
Name: Joseph D. Kenner
Title: President/Chief Executive Officer

Schedule A
SCHEDULE A

to
Tax Agreement
Dated as of December 30, 2021
by and between
City of Yonkers Industrial Development Agency
and 44 Runyon Realty LLC

Pursuant to the terms of Section 1.1 of this Tax Agreement, “Tax Payments” shall mean an amount per annum equal to the following amounts for the period designated:

City Tax Year	County Tax Year	Estimated PILOT Payments	Tax Agreement Year	Tax Agreement Payment *
2023-2024	2024	\$96,825	1	Full Taxes ¹
2024-2025	2025	\$97,825	2	95% of Full Taxes
2025-2026	2026	\$97,825	3	93% of Full Taxes
2026-2027	2027	\$97,825	4	92% of Full Taxes
2027-2028	2028	\$97,825	5	90% of Full Taxes
2028-2029	2029	\$97,825	6	88% of Full Taxes
2029-2030	2030	\$97,825	7	86% of Full Taxes
2030-2031	2031	\$97,825	8	85% of Full Taxes
2031-2032	2032	\$97,825	9	83% of Full Taxes
2032-2033	2033	\$97,825	10	81% of Full Taxes
2033-2034	2034	\$99,466	11	81% of Full Taxes
2034-2035	2035	\$101,455	12	81% of Full Taxes
2035-2036	2036	\$102,207	13	80% of Full Taxes

¹ Full Taxes shall mean all property taxes, not including Special District Charges, payable with respect to the Facility calculated in an amount equal to the amounts that would have been paid if the Agency were not in title and no exemption was available.

2036-2037	2037	\$104,251	14	80% of Full Taxes
2037-2038	2038	\$106,336	15	80% of Full Taxes

- The Agency interest in the Facility shall expire on **December 31, 2038**. The Company shall pay the 2039 County tax bill and the 2038-2039 City tax bill and tax bills for all subsequent tax years on the dates and in the amounts as if the Agency were not in title on the tax status date with respect to said tax years. Tax Payments shall be no less than the Full Taxes paid prior to the Tax Agreement. **Estimated PILOT Payments have been included for reference purposes only and are projections of what the PILOT Payments may be in the future and are not to be used to determine the actual PILOT Payments that are due and owing during the term of the Tax Agreement.**
- Does NOT include Special District Charges - City will send separate bill.

EXHIBIT A

Tax Lot 55:

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

BEGINNING at a point on the easterly side of Runyon Avenue distant as measured along the same southerly 450.11 feet from the point formed by the intersection of the said easterly side of Runyon Avenue with the northerly side of Potomac Street;

RUNNING THENCE North 77 degrees 16 minutes 20 seconds East 83.16 feet (deed) 83.328 feet (survey) to a corner and North 12 degrees 43 minutes 40 seconds West (deed) North 12 degrees 55 minutes 15 seconds West (survey) 50 feet to the northwest corner of premises being described herein;

RUNNING THENCE on a course, North 77 degrees 16 minutes 20 seconds East 28 feet to land now or formerly of Penn Central Railroad Company;

RUNNING THENCE along said land, South 12 degrees 53 minutes 30 seconds East 522.42 feet to the southeasterly corner of premises as being described herein;

RUNNING THENCE South 77 degrees 16 minutes 20 seconds West 48.50 feet to land now or formerly of S. & G. Warehouse Co., Inc.;

RUNNING THENCE along said land, North 12 degrees 43 minutes 40 seconds West 122.64 feet to a corner and continuing along said property on a course, South 77 degrees 16 minutes 20 seconds West 64.13 feet to the easterly side of Runyon Avenue;

RUNNING THENCE along the easterly side of Runyon Avenue, on a course, North 12 degrees 43 minutes 40 seconds West 394.87 feet to the point or place of BEGINNING.

Tax Lot 56:

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

BEGINNING at a point on the easterly side of Runyon Avenue distant as measured along the same southerly 405.11 feet from the point formed by the intersection of the said easterly side of Runyon Avenue with the northerly side of Potomac Street;

THENCE North 77 degrees 16 minutes 20 seconds East 36.00 feet;

THENCE North 12 degrees 43 minutes 40 seconds West 5.00 feet to the dividing line between the premises herein described and other premises of Herbert G. Martin, Inc.;

THENCE on a line, North 77 degrees 16 minutes 20 seconds East and along the dividing line between the premises herein described and other premises of Herbert G. Martin, Inc. 47.16 feet to the lands now or formerly of New York Central Railroad, Putnam Division (Conrail);

THENCE South 12 degrees 43 minutes 40 seconds East (deed) South 12 degrees 55 minutes 15 seconds East (survey) 50 feet;

THENCE South 77 degrees 16 minutes 20 seconds West (deed) 83.16 (survey) 83.328 feet to the easterly side of Runyon Avenue;

THENCE along the easterly side of Runyon Avenue North 12 degrees 43 minutes 40 seconds West 45.00 feet to the point of BEGINNING.

PERIMETER DESCRIPTION:

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

BEGINNING at a point on the easterly side of Runyon Avenue distant as measured along the same southerly 405.11 feet from the point formed by the intersection of the said easterly side of Runyon Avenue with the northerly side of Potomac Street;

THENCE North 77 degrees 16 minutes 20 seconds East 36.00 feet;

THENCE North 12 degrees 43 minutes 40 seconds West 5.00 feet to the dividing line between the premises herein described and other premises of Herbert G. Martin, Inc.;

THENCE on a line, North 77 degrees 16 minutes 20 seconds East 73.16 feet;

RUNNING THENCE South 12 degrees 53 minutes 30 seconds East 522.51 feet to the southeasterly corner of premises as being described herein;

RUNNING THENCE South 77 degrees 16 minutes 20 seconds West 48.50 feet to land now or formerly of S. & G. Warehouse Co., Inc.;

RUNNING THENCE along said land, North 12 degrees 43 minutes 40 seconds West 122.64 feet to a corner and continuing along said property on a course, South 77 degrees 16 minutes 20 seconds West 64.13 feet to the easterly side of Runyon Avenue;

RUNNING THENCE along the easterly side of Runyon Avenue, on a course, North 12 degrees 43 minutes 40 seconds West 394.87 feet to the point or place of BEGINNING.