
UNIFORM PROJECT AGREEMENT

by and between

NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY

and

45-18 COURT SQUARE OWNER, L.L.C.

Dated as of December 19, 2019

2019 45-18 Court Square Owner, L.L.C. Project

UNIFORM PROJECT AGREEMENT

This **UNIFORM PROJECT AGREEMENT**, dated as of December 19, 2019 (this “**Agreement**”), is by and between **NEW YORK CITY 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, having its principal office at One Liberty Plaza, New York, New York 10006 (the “**Agency**”), party of the first part, and **45-18 COURT SQUARE OWNER, L.L.C.**, a limited liability company organized and existing under the laws of the State of Delaware, having its principal office in New York City c/o GFP Real Estate, 125 Park Avenue, 14th floor, New York, New York 10017 (the “**Lessee**”) (capitalized terms used herein but not defined shall have the respective meanings assigned to such terms in the Agency Lease (as defined below)).

WITNESSETH:

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish land, any building or other improvement, and all real and personal properties, including machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial purposes, to the end that such agencies may be able to promote, develop, encourage, assist and advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their prosperity and standard of living; and

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act, the Agency was established by the Agency Act for the benefit of the City and the inhabitants thereof; and

WHEREAS, to accomplish the purposes of the Act, the Agency has entered into negotiations with the Lessee for a “project” within the meaning of the Act within the territorial boundaries of the City and located on the Land; and

WHEREAS, the Project will further the purposes of the Act and promote job opportunities for the benefit of the City and the inhabitants thereof; and

WHEREAS, to facilitate the Project, the Agency and the Lessee have entered into negotiations to enter into a Straight-Lease Transaction pursuant to which (i) the Lessee has subleased the Facility Realty to the Agency pursuant to the Company Lease, and (ii) the Agency will sub-sublease the Facility Realty, and lease the Facility Personalty, to the Lessee pursuant to this Agreement; and

WHEREAS, in furtherance of the Straight-Lease Transaction, the Agency adopted its Inducement Resolution and its Authorizing Resolution inducing and authorizing the undertaking of the Project and the Project Work, the sublease of the Facility Realty by the Lessee to the Agency,

and the sub-sublease of the Facility Realty and the lease of the Facility Personalty by the Agency to the Lessee; and

WHEREAS, the provision by the Agency of Financial Assistance to the Lessee through a Straight-Lease Transaction has been determined to be necessary to induce the Lessee to construct, renovate, furnish and equip the Facility for use by various tenants for lab, lab support, office space and other uses applicable to the life sciences industries; and if the Agency does not provide such Financial Assistance, the Lessee could not feasibly proceed with the Project; and if the Agency does not provide such Financial Assistance, the Lessee could not feasibly proceed with the Project;

WHEREAS, the cost of the Project is being financed in accordance with the Project Finance Plan;

NOW, THEREFORE, in consideration of the premises and the respective representations and agreements hereinafter contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND CONSTRUCTION

Section 1.1. Definitions. The following capitalized terms shall have the respective meanings specified for purposes of this Agreement. **Act** shall mean, collectively, the Enabling Act and the Agency Act.

Additional Improvements shall mean any buildings, structures, foundations, related facilities, fixtures, and other improvements constructed, erected, placed and/or installed on, under and/or above the Land, when such improvements are not part of the Project Work and are assessed by NYCDOF after the first assessment following the Construction Completion Date, including but not be limited to all replacements, improvements, additions, extensions and substitutions to the Existing Improvements and/or the Project Improvements but excluding (i) replacements and/or restorations of the Facility in connection with a Loss Event and (ii) any fit-out or other work within the Existing Improvements or Project Improvements that is not a Non-Qualified Use.

Agency Act shall mean Chapter 1082 of the 1974 Laws of New York, as amended.

Agency Lease shall mean the Agency Lease Agreement, dated as of December 1, 2019, between the Agency and the Lessee, as the same may be amended and supplemented in accordance with its terms and as permitted by the terms thereof.

Agent shall have the meaning set forth in Section 5.2(c) of the Agency Lease.

Agreement shall mean this Uniform Project Agreement, dated as of the date set forth in the first paragraph hereof, between the Agency and the Lessee, and shall include any and all amendments hereof and supplements hereto hereafter made in conformity herewith.

Application Date shall mean the date on which the Inducement Resolution was adopted with respect to the Lessee's application for Financial Assistance.

Approved Project Operations shall have the meaning set forth in the Agency Lease.

As-of-Right Benefit shall mean, for any period of determination, any as-of-right incentives that would otherwise be applied in the absence of the Agency's interest in the Facility Realty to reduce Real Estate Taxes applicable to the Facility Realty, including ICAP, and for which the Agency has been advised by NYCDOF that the Lessee has met all applicable application, eligibility and qualification requirements.

Authorized Representative shall mean, (i) in the case of the Agency, the Chairperson, Vice Chairperson, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary, Executive Director, Deputy Executive Director or General Counsel, or any other officer or employee of the Agency who is authorized to perform specific acts or to discharge specific duties, (ii) in the case of the Lessee, a person named in Exhibit C to the Agency Lease – “Authorized Representative”, or any other officer or employee of the Lessee who is authorized to perform specific duties hereunder or under any other Project Document and of whom another Authorized Representative of the Lessee has given written notice to the Agency and (iii) in the case of any Guarantor which shall constitute an Entity (other than the Lessee), a person named in Exhibit C of the Agency Lease – “Authorized Representative”, or any other officer or employee of such Guarantor who is authorized to perform specific duties hereunder or under any other Project Document and of whom another Authorized Representative of such Guarantor has given written notice to the Agency; provided, however, that in each case for which a certification or other statement of fact or condition is required to be submitted by an Authorized Representative to any Person pursuant to the terms of this Agreement or any other Project Document, such certificate or statement shall be executed only by an Authorized Representative in a position to know or to obtain knowledge of the facts or conditions that are the subject of such certificate or statement.

Authorizing Resolution shall mean the resolution of the Agency adopted on September 24, 2019 providing for Financial Assistance and authorizing the Project Documents to which the Agency is a party.

Benefits shall mean, collectively, (i) all PILOT Benefits realized by the Lessee on and after the PILOT Commencement Date; and (ii) all miscellaneous monetary benefits derived from the Agency's participation in the Project contemplated by this Agreement, including any exemption from any applicable Mortgage Recording Taxes, Sales and Use Taxes, and filing and recording fees.

City shall mean The City of New York, New York.

Commencement Date shall mean December 19, 2019, on which date this Agreement was executed and delivered.

Company Lease shall mean the Company Lease Agreement, dated as of December 1, 2019, between the Lessee, as landlord, and the Agency, as tenant, as the same may be amended and supplemented in accordance with its terms and as permitted by the terms thereof.

Construction Completion Date shall have the meaning set forth in the Agency Lease.

Eligible Items shall mean the following items of personal property and services, but excluding any Ineligible Items, with respect to which the Lessee and any Agent shall be entitled to claim a Sales Tax Exemption in connection with the Project:

- (i) purchases of materials, goods, personal property and fixtures and supplies that will be incorporated into and made an integral component part of the Facility Realty;
- (ii) purchases or leases of any item of materials, goods, machinery, equipment, furniture, furnishings, trade fixtures and other tangible personal property having a useful life of one year or more;
- (iii) with respect to the eligible items identified in (ii) above: purchases of freight, installation, maintenance and repair services required in connection with the shipping, installation, use, maintenance or repair of such items; provided that maintenance shall mean the replacement of parts or the making of repairs;
- (iv) purchases of materials, goods and supplies that are to be used and substantially consumed in the course of construction or renovation of the Facility Realty (but excluding fuel, materials or substances that are consumed in the course of operating machinery and equipment or parts containing fuel, materials or substances where such parts must be replaced whenever the substance is consumed); and
- (v) leases of machinery and equipment solely for temporary use in connection with the construction or renovation of the Facility Realty.

Enabling Act shall mean the New York State Industrial Development Agency Act, constituting Title I of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended.

Entity shall mean any of a corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, governmental authority or governmental instrumentality, but shall not include an individual.

Exempt Mortgage shall have the meaning set forth in the Agency Lease.

Existing Improvements shall mean, if any, all buildings, structures, foundations, related facilities, fixtures, and other improvements erected, placed and/or situated on, over and/or under the Land and existing on the Application Date, other than all or any part of the foregoing that (i) is intended to be demolished as part of the Project Work, and (ii) is in fact demolished by the Construction Completion Date.

Facility shall mean, collectively, the Facility Personalty and the Facility Realty.

Facility Personalty shall mean those Eligible Items consisting of personal property, together with all repairs, replacements, improvements, substitutions and renewals thereof

or therefor, and all parts, additions and accessories incorporated therein or affixed thereto. Facility Personalty shall, in accordance with the provisions of Sections 3.6 and 6.4 of the Agency Lease, include all property substituted for or replacing items of Facility Personalty and exclude all items of Facility Personalty so substituted for or replaced, and further exclude all items of Facility Personalty removed as provided in Section 3.6 of the Agency Lease.

Facility Realty shall mean, collectively, the Land and the Improvements.

Financial Assistance shall have the meaning assigned to that term in the Enabling Act.

General Municipal Law shall mean Chapter 24 of the Consolidated Laws of New York, as amended.

Guarantors shall mean, collectively, each Entity that shall be a Guarantor under the Guaranty Agreement, and their respective permitted estates, administrators, successors and assigns.

Guaranty Agreement shall mean the Guaranty Agreement, dated as of even date herewith, from the Guarantors to the Agency, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith.

Improvements shall mean, collectively, the Existing Improvements, the Project Improvements and any Additional Improvements, if any, and all other replacements, restorations and repairs to any of the foregoing.

Inducement Resolution shall mean the resolution of the Agency adopted on February 12, 2019 inducing the Project.

Ineligible Items shall mean the following items of personal property and services with respect to which the Lessee and any Agent shall not be entitled to claim a Sales Tax Exemption in connection with the Project:

- (i) vehicles of any sort, including watercraft and rolling stock;
- (ii) personalty having a useful life of one year or less;
- (iii) any cost of utilities, cleaning services or supplies or other ordinary operating costs;
- (iv) fine art and other similar decorative items;
- (v) plants, whether potted or landscaped;
- (vi) ordinary office supplies such as pencils, paper clips and paper;
- (vii) any materials or substances that are consumed in the operation of machinery;
- (viii) equipment or parts containing materials or substances where such parts

must be replaced whenever the substance is consumed; and

- (ix) maintenance of the type as shall constitute janitorial services.

Land shall mean that certain lot, piece or parcel of land in the Borough of Queens, identified on the City Tax Map as Block 84 and Lots 9 and 11, generally known by the street address 45-18 Court Square, Long Island City, New York 11101, all as more particularly described in Exhibit A - "Description of the Land" in the Agency Lease, together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto; but excluding, however, any real property or interest therein released pursuant to Section 8.10(c) of the Agency Lease.

Lessee shall mean 45-18 Court Square Owner, L.L.C., a limited liability company organized and existing under the laws of the State of Delaware, and its successors and assigns; provided, however, that nothing contained in this definition shall be deemed to limit or modify the obligations of the Lessee under Section 8.9 or 8.20 of the Agency Lease.

Maximum Sales Tax Savings Amount shall mean the aggregate maximum dollar amount of Sales Tax Savings that the Lessee and all Agents acting on behalf the Lessee are permitted to receive under the Agency Lease, which shall equal \$8,161,354, which shall be subject to adjustment in accordance with Section 5.5 of the Agency Lease Agreement.

Mortgage Recording Tax Exemption Amount shall mean an exemption amount equal to \$3,803,250 with respect to all or a portion of the Mortgage Recording Taxes that would have otherwise been payable with respect to the Exempt Mortgage in the absence of the Agency's exemption.

Mortgage Recording Taxes shall mean those taxes imposed by the City and the State upon the recording of mortgages against real property in the City.

Mortgages shall have the meaning set forth in the Agency Lease.

Net Present Value shall mean the net present value calculated as of the PILOT Commencement Date using a discount rate of 6.25%.

NYCDOF shall mean the New York City Department of Finance.

Person shall mean an individual or any Entity.

PILOT shall mean payments in lieu of Real Estate Taxes with respect to the Facility Realty.

PILOT Benefits shall mean, for any period of determination, the dollar amount of all benefits that accrued during such period due to the exemption from Real Estate Taxes resulting from the Agency's leasehold interest in the Facility Realty, such amount to be computed by subtracting (y) the aggregate amount of PILOT paid by the Lessee during such period from (z) Real Estate Taxes that would have been levied by the City on the Facility Realty, as reduced by As-of-Right Benefits, during such period in the absence of the Agency's leasehold interest in the Facility Realty.

PILOT Commencement Date shall mean July 1, 2020.

Project shall mean shall mean the construction, renovation, furnishing and equipping of an approximately 266,791 RSF office building on an approximately 36,875 square foot parcel of land located at the Facility Address, and the subleasing, occupancy, use and operation thereof, all for use as a commercial facility for the Approved Project Operations.

Project Application Information shall mean the eligibility application and questionnaire submitted to the Agency by or on behalf of the Lessee, for approval by the Agency of the Project and the providing of Financial Assistance by the Agency therefor, together with all other letters, documentation, reports and financial information submitted in connection therewith.

Project Completion Date shall mean the date which an Authorized Representative of the Lessee certifies to the Agency by signing and delivering to the Agency a certification substantially in the form set forth in Exhibit G-1 to the Agency Lease, together with all attachments required thereunder, that the Project Work has been finished and the Project Improvements and the Construction Milestones shall have been completed substantially in accordance with the plans and specifications therefor, and the Lessee shall have provided the Agency with a copy of a temporary certificate of occupancy issued by the New York City Department of Buildings.

Project Cost Budget shall mean that certain budget in form and substance acceptable to the Agency and delivered to the Agency by the Lessee on the Commencement Date.

Project Documents shall mean the Ground Lease, the Company Lease, the Agency Lease, the Project Agreement, the Guaranty Agreement, the Sales Tax Agent Authorization Letter, and each Exempt Mortgage.

Project Finance Plan shall mean the plan for financing of the costs of the Project set forth in Exhibit J to the Agency Lease – “Project Finance Plan”.

Project Improvements shall mean all buildings, structures, foundations, related facilities, fixtures and other improvements resulting from the Project Work.

Project Work shall mean the work required to complete the Project Construction as such work is further explained by reference to the Project Cost Budget.

Real Estate Taxes shall mean real property taxes levied by the City on real property within the City.

Sales and Use Taxes shall mean City and State sales and compensating use taxes and fees imposed pursuant to Article 28 or 28-A of the New York State Tax Law, as the same may be amended from time to time.

Sales Tax Agent Authorization Letter shall mean the Sales Tax Agent Authorization Letter, substantially in the form set forth in Exhibit H to the Agency Lease – “Form of Sales Tax Agent Authorization Letter” and to be delivered in accordance with Section 5.2(e) thereof.

Sales Tax Exemption shall mean an exemption from Sales and Use Taxes resulting from the Agency's participation in the Project.

Sales Tax Savings shall mean all Sales Tax Exemption savings realized by or for the benefit of the Lessee, including any savings realized by any Agent, pursuant to the Agency Lease and each Sales Tax Agent Authorization Letter issued in connection with the Project.

State shall mean the State of New York.

Straight-Lease Transaction shall have the meaning assigned to that term in the Enabling Act.

Section 1.2. Construction. In this Agreement, unless the context otherwise requires: The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement, and the term "hereafter" shall mean after the Commencement Date.

(b) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa.

(c) Words importing persons shall include firms, associations, partnerships (including limited partnerships and limited liability partnerships), trusts, corporations, limited liability companies and other legal entities, including public bodies, as well as natural persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

(e) Unless the context indicates otherwise, references to designated "Appendices," "Sections" and other subdivisions are to the designated Appendices, Sections and other subdivisions of or to this Agreement.

(f) The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation".

(g) The word "will" shall be construed to have the same meaning and effect as the word "shall".

(h) Any definition of or reference to any agreement, instrument or other document herein shall be construed to refer to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth therein or herein).

(i) Any reference to any Person, or to any Person in a specified capacity, shall be construed to include such Person's successors and assigns or such Person's successors in such capacity, as the case may be.

ARTICLE II

Section 2.1. Acknowledgments of the Lessee. The Lessee acknowledges that:

(a) In connection with the Project, the Lessee expects to receive the following types of Financial Assistance:

(i) PILOT Benefits with a maximum estimated Net Present Value of \$49,740,147, as more particularly set forth in Section 5.1 of the Agency Lease, attached hereto as Appendix A;

(ii) Exemption from Sales and Use Taxes on the purchase of Eligible Items in an amount equal to the Maximum Sales Tax Savings Amount, as more particularly set forth in Section 5.2 of the Agency Lease;

(iii) Reduction of Mortgage Recording Taxes in an amount equal to the Mortgage Recording Tax Exemption Amount, as more particularly set forth in Section 5.3 of the Agency Lease; and

(iv) Exemption from filing and recording fees with respect to the Agency Lease and the Company Lease.

(b) The Financial Assistance described herein is subject to suspension, modification, discontinuance and/or recapture, as more particularly set forth in Section 5.4 of the Agency Lease attached hereto as Appendix B, and as set forth in Section 5.1, 5.2, 5.3 and 5.5 of the Agency Lease.

(c) The description of the Project (as defined in Section 1.1 hereof) is true, correct and complete.

(d) Undertaking the Project is anticipated to serve the public purposes of the Act by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the State.

Section 2.2. Covenants and Certifications of the Lessee. The Lessee shall provide annually to the Agency on September 1 of each year commencing September 1, 2020, a certified statement and supporting documentation:

(i) enumerating the full time equivalent jobs retained and the full time equivalent jobs created as a result of the Financial Assistance described in Section 2.1(a) above, by category, including full time equivalent independent contractors or employees of independent contractors that work at the Facility; and

(ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that were provided in the Project Application Information are still accurate and, if not still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created, and an

explanation for why the averages or ranges provided in the Project Application Information are not still accurate.

(b) The Lessee hereby certifies, under penalty of perjury, that it is in substantial compliance with all local, state and federal tax, worker protection and environmental laws, rules and regulations.

ARTICLE III

Except for the Agency Lease and the Company Lease, this Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof, and all prior negotiations and agreements are merged in this Agreement. This Agreement shall only be changed, modified or discharged in whole or in part by a written instrument executed by the Lessee and the Agency.

ARTICLE IV

All notices, certificates or other communications hereunder shall be sufficient if sent (i) by registered or certified United States mail, return receipt requested and postage prepaid, (ii) by a nationally recognized overnight delivery service for overnight delivery, charges prepaid or (iii) by hand delivery, addressed, as provided in Section 11.5 of the Agency Lease.

ARTICLE V

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State, without regard or giving effect to the principles of conflicts of laws thereof.

The terms of this Agreement are and shall be binding upon and inure to the benefit of the Agency and the Lessee and their respective successors and assigns.

If any one or more of the provisions of this Agreement shall be ruled illegal or invalid by any court of competent jurisdiction, the illegality or invalidity of such provision(s) shall not affect any of the remaining provisions hereof, but this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

This Agreement shall completely and fully supersede all other prior understandings or agreements, both written and oral, between the Agency and the Lessee relating to the Facility, other than the Agency Lease, the Company Lease or any other Project Document.

ARTICLE VI

This Agreement shall become effective upon its delivery on the Commencement Date. It may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

ARTICLE VII

All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency, and not of any member, director, officer, employee or agent of the Agency in such person's individual capacity, and no recourse shall be had for any reason whatsoever hereunder against any member, director, officer, employee or agent of the Agency or any natural person executing this Agreement on behalf of the Agency. In addition, in the performance of the agreements of the Agency herein contained, any obligation the Agency may incur for the payment of money shall not subject the Agency to any pecuniary or other liability or create a debt of the State or the City, and neither the State nor the City shall be liable on any obligation so incurred and any such obligation shall be payable solely out of amounts payable to the Agency by the Lessee under the Agency Lease.

All covenants, stipulations, promises, agreements and obligations of the Lessee contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Lessee, and not of any director, officer, manager, partner, employee or agent of the Lessee in his individual capacity, and no recourse shall be had for the payment of any amounts hereunder against any director, officer, manager, partner, employee or agent of the Lessee.

ARTICLE VIII

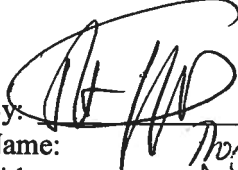
Each party acknowledges that this Agreement is a legally binding contract and that it was represented by legal counsel in connection with the drafting, negotiation and preparation of this Agreement. Each party acknowledges that it and its legal counsel has cooperated in the drafting, negotiation and preparation of this Agreement and agrees that this Agreement and any provision hereof shall be construed, interpreted and enforced without regard to any presumptions against the drafting party. Each party hereby agrees to waive any rule, doctrine or canon of law, including without limitation, the contra proferentem doctrine, that would require interpretation of any ambiguities in this Agreement against the party that has drafted it.

IN WITNESS WHEREOF the Agency has caused its corporate name to be hereunto subscribed by its duly authorized Chairman, Vice Chairman, Executive Director, Deputy Executive Director or General Counsel, and the Lessee has caused its name to be subscribed hereto by its Authorized Representative all being done as of the year and day first above written.

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Name: Krishna Omolade
Title: Executive Director

45-18 COURT SQUARE OWNER, L.L.C.,
a Delaware limited liability company

By: 
Name: Thomas Rayno.
Title: Authorized Signatory

Appendix A

Section 5.1 of the Agency Lease

Section 5.1 Payments in Lieu of Real Estate Taxes.

(a) Real Estate Taxes to be Paid Prior to PILOT Commencement Date. Until the PILOT Commencement Date (or such later date as the Facility Realty is determined to be exempt from Real Estate Taxes), the Lessee shall pay to the City all Real Estate Taxes in respect of the Facility Realty for the periods of time occurring prior to such date at such times, in such manner and in such amounts as would be applicable if the Facility Realty were not leased to the Agency.

(b) PILOT Generally.

(i) It is recognized that under the provisions of the Act the Agency is required to pay no Real Estate Taxes upon any of the property acquired by it or under its jurisdiction or control or supervision or upon its activities. The Agency and the Lessee agree, however, that the Lessee shall be required to pay PILOT with respect to the Facility Realty in accordance with the provisions of this Section 5.1.

(ii) The Agency makes no representation as to the availability of an exemption or abatement from Real Estate Taxes for the Facility Realty. The Lessee acknowledges that the Agency has not represented the availability of any such exemption or abatement for the Facility Realty, and the Lessee hereby releases the Agency from any claim arising from any loss of the Financial Assistance that was contemplated hereunder.

(iii) The Lessee acknowledges that PILOT will equal the Full PILOT Amount until such time as all Real Estate Taxes due prior to the PILOT Commencement Date are paid in full, including any interest that may be due thereon.

(iv) The Agency shall have no obligation to take any action to correct any defect or deficiency that may prevent the Facility Realty from being recognized as exempt from Real Estate Taxes by the City.

(v) The Agency, in its sole discretion and in furtherance of the purposes of the Act, may waive, in whole or in part, the payment of PILOT for good cause shown.

(vi) Notwithstanding any other provision of this Agreement, if a PILOT calculation results in a negative amount due for any period of calculation, PILOT shall be deemed to equal zero for such period and the Lessee shall not be entitled to any credit or refund.

(vii) The Lessee's ability to obtain the initial PILOT Abatement during the Initial Benefit Period as set forth in clause (c)(i) below shall be subject to compliance with the Facility Ownership Requirement and the other terms and conditions of this Agreement.

(viii) The Lessee's ability to obtain the Prorated PILOT Abatement during the Prorated Benefit Period as set forth in clause (c)(ii) below shall be subject to compliance with the Prorated Transaction Requirements and the other terms and conditions of this Agreement.

(c) PILOT. During the PILOT Term, the Lessee shall pay PILOT in the amounts described below, subject to adjustment pursuant to Section 5.1(d).

(i) During the Initial Benefit Period, for any period of calculation, PILOT shall equal (1) the Adjusted PILOT Amount minus (2) the Initial PILOT Abatement until the Maximum Initial Benefit Amount has been realized by the Lessee and thereafter PILOT shall equal the Adjusted PILOT Amount.

(ii) During the Prorated Benefit Period, for any period of calculation, PILOT shall equal (1) the Adjusted PILOT Amount minus (2) the Prorated PILOT Abatement.

(d) Additional Improvements PILOT. During the PILOT Term, the Lessee shall pay PILOT with respect to the Additional Improvements (the "Additional Improvements PILOT") as follows: for each semi-annual period occurring during the PILOT Term, the Additional Improvements PILOT shall equal the sum of (i) Real Estate Taxes applicable to such Additional Improvements that would have been levied by the City in the absence of the Agency's interest in the Additional Improvements, and (ii) a pro rata amount of Land taxes determined by multiplying (y) the total Real Estate Taxes on the Land that would have been levied by the City in the absence of the Agency's interest in the Land by (z) a fraction, the numerator of which is the RSF of the Additional Improvements and the denominator of which is the RSF for the Improvements, including the Additional Improvements, less any As-of-Right Benefits, if any, applicable to such Additional Improvements for such semi-annual period. Upon completion of Additional Improvements, if any, the Lessee shall promptly comply with the requirements of Section 3.5 and request the appropriate officers of the City to reassess the Improvements.

(e) Payment Provisions.

(i) The Lessee agrees to pay or cause all PILOT required to be paid under this Section 5.1 seven (7) Business Days prior to the commencement of the semi-annual period which relates to such PILOT (i.e., July 1 or January 1 (as the case may be)), in the amounts specified in PILOT Bills. The Lessee also agrees to pay or cause to be paid within seven (7) business days of receipt of a PILOT Bill from NYCDOF, any PILOT Reconciliation amount required to be paid by the Lessee in accordance with Section 5.1(g)(i). The Agency agrees to request appropriate officers of NYCDOF to provide the Lessee with PILOT Bills. The Lessee understands and agrees that the failure of NYCDOF to send the Lessee a PILOT Bill shall not relieve the Lessee of its obligation hereunder to pay the amount of PILOT required in accordance with this Section 5.1. The Lessee may send all inquiries concerning PILOT Bills to pilot1@finance.nyc.gov or: **PILOT Unit, NYC Department of Finance, 59 Maiden Lane, 22nd floor, New York, New York 10038.**

(viii) The Lessee's ability to obtain the Prorated PILOT Abatement during the Prorated Benefit Period as set forth in clause (c)(ii) below shall be subject to compliance with the Prorated Transaction Requirements and the other terms and conditions of this Agreement.

(c) PILOT. During the PILOT Term, the Lessee shall pay PILOT in the amounts described below, subject to adjustment pursuant to Section 5.1(d).

(i) During the Initial Benefit Period, for any period of calculation, PILOT shall equal (1) the Adjusted PILOT Amount minus (2) the Initial PILOT Abatement until the Maximum Initial Benefit Amount has been realized by the Lessee and thereafter PILOT shall equal the Adjusted PILOT Amount.

(ii) During the Prorated Benefit Period, for any period of calculation, PILOT shall equal (1) the Adjusted PILOT Amount minus (2) the Prorated PILOT Abatement.

(d) Additional Improvements PILOT. During the PILOT Term, the Lessee shall pay PILOT with respect to the Additional Improvements (the "Additional Improvements PILOT") as follows: for each semi-annual period occurring during the PILOT Term, the Additional Improvements PILOT shall equal the sum of (i) Real Estate Taxes applicable to such Additional Improvements that would have been levied by the City in the absence of the Agency's interest in the Additional Improvements, and (ii) a pro rata amount of Land taxes determined by multiplying (y) the total Real Estate Taxes on the Land that would have been levied by the City in the absence of the Agency's interest in the Land by (z) a fraction, the numerator of which is the RSF of the Additional Improvements and the denominator of which is the RSF for the Improvements, including the Additional Improvements, less any As-of-Right Benefits, if any, applicable to such Additional Improvements for such semi-annual period. Upon completion of Additional Improvements, if any, the Lessee shall promptly comply with the requirements of Section 3.5 and request the appropriate officers of the City to reassess the Improvements.

(e) Payment Provisions.

(i) The Lessee agrees to pay or cause all PILOT required to be paid under this Section 5.1 seven (7) Business Days prior to the commencement of the semi-annual period which relates to such PILOT (i.e., July 1 or January 1 (as the case may be)), in the amounts specified in PILOT Bills. The Lessee also agrees to pay or cause to be paid within seven (7) business days of receipt of a PILOT Bill from NYCDOF, any PILOT Reconciliation amount required to be paid by the Lessee in accordance with Section 5.1(g)(i). The Agency agrees to request appropriate officers of NYCDOF to provide the Lessee with PILOT Bills. The Lessee understands and agrees that the failure of NYCDOF to send the Lessee a PILOT Bill shall not relieve the Lessee of its obligation hereunder to pay the amount of PILOT required in accordance with this Section 5.1. The Lessee may send all inquiries concerning PILOT Bills to pilot1@finance.nyc.gov or: **PILOT Unit, NYC Department of Finance, 59 Maiden Lane, 22nd floor, New York, New York 10038.**

(ii) Until such time as the Agency may in writing require otherwise, the Lessee (or the Initial Mortgagee pursuant to Section 8.26) shall pay PILOT to the PILOT Depository and the Lessee shall make or cause to make such payments by certified check, or bank draft payable at a bank in New York, New York, wire transfer or electronic funds transfer; provided, however, that any single semi-annual payment of \$150,000 or more (i.e., \$300,000 or more annually) or any payment which is over thirty (30) days past due, must be made by either wire transfer or electronic funds transfer.

(iii) Upon the occurrence of a PILOT Payment Default, the amount of PILOT so in default shall continue as an obligation of the Lessee and the Lessee agrees to pay or cause to pay the same to the PILOT Depository, together with the lesser of (A) the maximum amount of interest permitted by law, and (B) the greater of (i) interest thereon at the same rate per annum and compounded at the same frequency as is charged from time to time by the City with respect to the delinquent payment of Real Estate Taxes, and (ii) a late payment fee of 5% of the amount of PILOT that was not paid when due and, for each month or part thereof that a payment is delinquent beyond the first month, an additional late payment fee of 1% per month assessed on (A) the original amount or portion thereof that was not paid when due that remains unpaid during such month or part thereof and (B) the 5% late payment penalty or portion thereof that remains unpaid during such month or part thereof.

(iv) Nothing contained herein shall limit or impair the Lessee's right, to the extent permitted by law, to do the following:

(1) to obtain reductions in the valuation of the Facility Realty;

or

(2) to apply for As-of-Right Benefits that would reduce Real Estate Taxes with respect to the Facility Realty (as if the Facility Realty were not exempt from Real Estate Taxes); provided, however, that the foregoing shall not be construed to reduce PILOT payable under this Section 5.1 except as expressly contemplated by the provisions of Section 5.1(c), (d), (e) and (f).

(f) Apportionment of Payments after Transfer.

(i) The Agency shall cause the appropriate officer or officers of the City to return the Facility Realty to the tax rolls as of the Cessation Date. During the City Tax Fiscal Year in which the Cessation Date occurs, the Lessee and/or other subsequent owner of the Facility Realty shall be responsible for paying the Real Estate Taxes due for the portion of such City Tax Fiscal Year that remains from and after the Cessation Date.

(ii) With respect to the semi-annual period of the City Tax Fiscal Year during which the Cessation Date occurs, the Agency shall cause the appropriate officer or officers of the City to apportion that part of PILOT previously remitted for such semi-annual period (if any), which is attributable to the period commencing on the Cessation Date and ending on the June 30 or December 31 following (as the case may be), as a credit against the Real Estate Taxes owed for such semi-annual period.

(g) PILOT Reconciliation; Reduction or Withdrawal of Financial Assistance; Loss of Exemption.

(i) *PILOT Reconciliation.* During the Prorated Benefit Period, the Lessee shall submit annually pursuant to Section 8.16(d) a certificate that includes a PILOT Reconciliation for the semi-annual period ending on the prior June 30th or December 31st. Any additional PILOT due as a result of the PILOT Reconciliation due to an increase in Non-Qualified RSF shall be payable within seven (7) business days of the issuance of a PILOT bill in accordance with Section 5.1(e). Any PILOT amounts to be credited as a result of the PILOT Reconciliation due to a reduction in Non-Qualified RSF shall be credited against the next PILOT payment due (or refunded if determined for the period ending on June 30, 2040). The Lessee shall prepare and submit the PILOT Reconciliation, which shall include the recalculation of the PILOT for such reported annual period pursuant to Section 5.1 (c) and (d) utilizing an adjusted Occupancy Rate based on a per diem calculation of actual Project RSF during the reported annual period (to determine this percentage, the numerator shall be the sum of the aggregate amount of Project RSF for each day during the reported semi-annual period divided by the number of days during such period and the denominator shall be the Total Improvements RSF). If the Prorated Benefit Period begins on a date that is not January 1st or July 1st, the Lessee shall pay additional PILOT due as a result of such reconciliation. Failure by the Lessee to submit a PILOT Reconciliation by the due date for the certification specified in Section 8.16(d) will result in the imposition of interest and fees specified in Section 5.1(e)(iii) for any PILOT Reconciliation amount otherwise due, and such interest and fees shall accrue from the required certification due date.

(ii) *Events of Default.* Upon the occurrence of an Event of Default, including but not limited to a PILOT Payment Default, the Agency may increase PILOT temporarily or permanently, in its sole discretion, and without notice other than the prior notice required for certain Events of Default, to an amount equal to the Full PILOT Amount as to the Land and the Improvements.

(iii) *Loss of Exemption.* Upon the occurrence of a Cessation Date, the Facility Realty shall be deemed automatically restored to the tax rolls, whether or not procedurally such restoration has in fact occurred, and the Lessee shall pay Real Estate Taxes with respect to the Facility Realty from and after such Cessation Date. The Lessee hereby agrees that in the event of, and notwithstanding, the termination of the Ground Lease upon the transfer the Ground Lessor's interest in the Facility Realty to the Lessee pursuant to Section 11.3, the Lessee, as owner of the Facility Realty, shall thereupon be deemed to recognize the Agency's leasehold interest in the Facility Realty under the Company Lease for the purpose of continuing the Agency's interest in, control of, and jurisdiction over the Facility Realty and maintaining exemption hereunder.

Appendix B

Section 5.4 Recapture of Benefits. It is understood and agreed by the parties to this Agreement that the Agency is entering into this Agreement in order to provide Financial Assistance to the Lessee for the Project and to accomplish the public purposes of the Act. In consideration therefor, the Lessee hereby agrees as follows:

(a) If there shall occur a Recapture Event during the Recapture Period, the Lessee shall pay to the Agency as a return of Financial Assistance conferred by the Agency, a recapture amount (the "Recapture Amount") equal to the product of (y) all Benefits realized by the Lessee prior to the Recapture Event (which shall not exceed the Maximum Initial Benefit Amount), and (z) the recapture percentage below (the "Recapture Percentage"), as determined by the Agency:

(i) If the Lessee fails to satisfy the Construction Requirements by the Construction Outside Completion Date, the Recapture Percentage shall be equal to one hundred percent (100%); or

(ii) If the Lessee fails to satisfy the Facility Ownership Requirement, the Recapture Percentage shall be equal to one hundred percent (100%).

(b) The Recapture Amount shall accrue interest from the date that the Recapture Event occurs until the date of repayment to the Agency of the amount due at a rate equal to the higher of nine percent (9%) per annum, to the extent permitted by law, or the amount of interest and penalties imposed by law.

(c) Notwithstanding the foregoing, for purposes of calculating the Recapture Amount (i) with respect to the PILOT Abatements, the amount to be recaptured shall not include any abatements that would otherwise be available under ICAP to the extent that the Lessee has applied for and would be eligible to receive such ICAP benefits in the absence of the Agency's exemption, and (ii) with respect to State Sales Tax Savings, the computation of the amount of State Sales Tax Savings to be recaptured shall equal the greater of the amount determined pursuant to this Section 5.4 and the amount due to the State pursuant to the Special Provisions.

(d) Upon the occurrence of a Recapture Event, the Agency may (i) terminate this Agreement and, (ii) the Lessee shall forfeit any unrealized Benefits, each subject to the survival of the obligations of the Lessee, including but not limited to the obligation to pay the Recapture Amount and indemnify the Agency with respect to any losses or claims arising in connection with the Project under this Agreement.

(e) For purposes of this Section 5.4, demand for payment by the Agency shall be made in accordance with the notice requirements of this Agreement and the due date for payment shall be not less than seven (7) Business Days from the date of the notice.

(f) The Lessee shall furnish the Agency with written notification of any Recapture Event within ten (10) days of its occurrence and shall subsequently provide to the Agency in writing any additional information that the Agency may request.

(g) The provisions of this Section 5.4 shall survive the termination of this Agreement for any reason whatsoever, notwithstanding any provision of this Agreement to the contrary.