
AMENDED AND RESTATED AGENCY LEASE AGREEMENT

Dated as of December 1, 2013

by and between

NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY

and

EXTELL GT LLC

a limited liability company organized and existing
under the laws of the State of Delaware, having its
principal office in New York City at 805 Third
Avenue, 7th Floor, New York, New York 10022, as
Lessee and Company

2013 Extell GT LLC Project

Affecting the Land located in the County of New York,
City and State of New York
as described in

Exhibit A to this Amended and Restated Agency Lease Agreement

Table of Contents

	Page
ARTICLE I DEFINITIONS AND CONSTRUCTION	2
Section 1.1 <u>Definitions</u>	2
Section 1.2 <u>Construction</u>	16
ARTICLE II REPRESENTATIONS AND WARRANTIES	17
Section 2.1 <u>Representations and Warranties by Agency</u>	17
Section 2.2 <u>Representations and Warranties by the Lessee</u>	17
ARTICLE III LEASEHOLD INTEREST CONVEYED TO THE AGENCY; THE PROJECT; MAINTENANCE; REMOVAL OF PROPERTY AND TITLE INSURANCE	21
Section 3.1 <u>The Company Lease</u>	21
Section 3.2 <u>Reserved</u>	21
Section 3.3 <u>Manner of Facility Completion</u>	21
Section 3.4 <u>Maintenance</u>	22
Section 3.5 <u>Alterations and Improvements</u>	22
Section 3.6 <u>Removal of Property of the Facility</u>	23
Section 3.7 <u>Implementation of Agency’s Interest in New Property</u>	24
Section 3.8 <u>Leasehold Title Insurance</u>	24
Section 3.9 <u>Reserved</u>	25
ARTICLE IV LEASE OF FACILITY AND RENTAL PROVISIONS.....	25
Section 4.1 <u>Lease of the Facility</u>	25
Section 4.2 <u>Duration of Term</u>	25
Section 4.3 <u>Rental Provisions</u>	25
Section 4.4 <u>Rental Payments Payable Absolutely Net</u>	25
Section 4.5 <u>Nature of Lessee’s Obligation Unconditional</u>	25
Section 4.6 <u>Reserved</u>	26
Section 4.7 <u>Advances by Agency</u>	26
Section 4.8 <u>No Warranty of Condition or Suitability</u>	26
ARTICLE V AGENCY FINANCIAL ASSISTANCE (PAYMENTS IN LIEU OF TAXES AND MORTGAGE RECORDING TAX EXEMPTION); RECAPTURE OF PUBLIC BENEFITS ...	27
Section 5.1 Real Estate Tax Benefits	27
Section 5.2 <u>No Sales Tax Exemption</u>	31
Section 5.3 <u>Mortgage Recording Tax Exemption</u>	31
Section 5.4 <u>Recapture of Public Benefits</u>	32
Section 5.5 <u>Escrow</u>	34
ARTICLE VI DAMAGE, DESTRUCTION AND CONDEMNATION.....	34
Section 6.1 <u>Damage, Destruction and Condemnation</u>	34
Section 6.2 <u>Loss Proceeds</u>	34
Section 6.3 <u>Election to Rebuild or Terminate</u>	35
Section 6.4 <u>Effect of Election to Build</u>	35
ARTICLE VII COVENANT OF THE AGENCY.....	36
Section 7.1 <u>Quiet Enjoyment</u>	36

Table of Contents (continued)

	Page
ARTICLE VIII COVENANTS OF THE LESSEE	37
Section 8.1 <u>Insurance</u>	37
Section 8.2 <u>Indemnity</u>	43
Section 8.3 <u>Compensation and Expenses of the Agency and Agency Administrative and Project Fees</u>	44
Section 8.4 <u>Reserved</u>	45
Section 8.5 <u>Reserved</u>	45
Section 8.6 <u>Environmental Matters</u>	45
Section 8.7 <u>Employment Matters</u>	45
Section 8.8 <u>Non-Discrimination</u>	46
Section 8.9 <u>Assignment, Sale or Sublease</u>	47
Section 8.10 <u>Retention of Title to or of Interest in Facility; Grant of Easements; Release of Portions of Facility</u>	49
Section 8.11 <u>Discharge of Liens</u>	51
Section 8.12 <u>Recording and Filing</u>	51
Section 8.13 <u>No Further Encumbrances Permitted</u>	51
Section 8.14 <u>Automatically Deliverable Documents</u>	51
Section 8.15 <u>Requested Documents</u>	52
Section 8.16 <u>Periodic Reporting Information for the Agency</u>	53
Section 8.17 <u>Taxes, Assessments and Charges</u>	54
Section 8.18 <u>Compliance with Legal Requirements</u>	55
Section 8.19 <u>Operation as an Approved Project and as a “Project”</u>	56
Section 8.20 <u>Restrictions on Transfer, Dissolution and Merger</u>	56
Section 8.21 <u>Reserved</u>	58
Section 8.22 <u>Further Assurances</u>	58
Section 8.23 <u>Benefit Verification</u>	58
Section 8.24 <u>Annual Testing Protocol</u>	59
Section 8.25 <u>Traffic Study</u>	60
Section 8.26 <u>Actions on Benefit Verification</u>	60
ARTICLE IX REMEDIES AND EVENTS OF DEFAULT	60
Section 9.1 <u>Events of Default</u>	60
Section 9.2 <u>Remedies on Default</u>	62
Section 9.3 <u>Remedies Cumulative</u>	63
Section 9.4 <u>No Additional Waiver Implied by One Waiver</u>	63
Section 9.5 <u>Effect on Discontinuance of Proceedings</u>	63
Section 9.6 <u>Agreement to Pay Fees and Expenses of Attorneys and Other Consultants</u>	64
Section 9.7 <u>Certain Continuing Representations</u>	64
Section 9.8 <u>Late Delivery Fees</u>	64
Section 9.9 <u>Mortgagee Rights</u>	65
ARTICLE X TERMINATION	65
Section 10.1 <u>Option to Terminate Company Lease and this Agreement</u>	65
Section 10.2 <u>Termination of Company Lease and this Agreement on Agency Notice</u>	65

Table of Contents (continued)

	Page
Section 10.3 <u>Actions Upon Termination</u>	66
Section 10.4 <u>Survival of Lessee Obligations</u>	66
ARTICLE XI MISCELLANEOUS	67
Section 11.1 <u>Force Majeure</u>	67
Section 11.2 <u>Priority</u>	67
Section 11.3 <u>Amendments</u>	67
Section 11.4 <u>Service of Process</u>	68
Section 11.5 <u>Notices</u>	68
Section 11.6 <u>Consent to Jurisdiction</u>	69
Section 11.7 <u>Prior Agreements Superseded</u>	70
Section 11.8 <u>Severability</u>	70
Section 11.9 <u>Effective Date; Counterparts</u>	70
Section 11.10 <u>Binding Effect</u>	70
Section 11.11 <u>Third Party Beneficiaries</u>	70
Section 11.12 <u>Law Governing</u>	70
Section 11.13 <u>Waiver of Trial by Jury</u>	70
Section 11.14 <u>Recourse Under This Agreement</u>	71
Exhibit A – Description of the Land	
Exhibit B – Project Completion Certificate	
Exhibit C – Authorized Representatives	
Exhibit D-1 – Principals	
Exhibit D-2 – Owners of the Lessee	
Exhibit E – Project Cost Budget	
Exhibit F – Form of Required Disclosure Statement	
Exhibit G – Benefit Percentage	
Exhibit H – Project Finance Plan	
Exhibit I – Form of Compliance Reporting Documentation	
Exhibit J – Form of Notice of Sale of Condominium Units	

AMENDED AND RESTATED AGENCY LEASE AGREEMENT

This **AMENDED AND RESTATED AGENCY LEASE AGREEMENT**, is made and entered into as of December 1, 2013 (this “**Agreement**”), 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 110 William Street, New York, New York 10038, party of the first part, and **EXTELL GT LLC**, a limited liability company organized and existing under the laws of the State of Delaware, having its principal address at 805 Third Avenue, 7th Floor, New York, New York 10022 (the “**Lessee**” and “**Company**”), party of the second part (capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in Section 1.1 of this Agreement), and amends and restates the Interim Agency Lease Agreement, dated as of September 1, 2012, between the Agency and the Company (the “**Interim Agency Lease**”);

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 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 described in Exhibit A — “Description of 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 entered into negotiations to enter into a Straight-Lease Transaction; and

WHEREAS, prior to entering into a full Straight-Lease Transaction, in order to provide certain interim mortgage recording tax benefits to the Lessee in order to facilitate the Project, the Agency and the Lessee entered into an interim leasing transaction, pursuant to which (i) the Lessee leased the Facility Realty to the Agency pursuant to the Interim Company Lease, and (ii)

the Agency subleased the Facility Realty to the Lessee pursuant to the Interim Agency Lease; and

WHEREAS, in order to provide the benefits related the full Straight Lease Transaction, the Agency and the Lessee entered into negotiations, pursuant to which (i) the Lessee leased the Facility Realty to the Agency pursuant to the Company Lease, and (ii) the Agency subleased the Facility Realty to the Lessee pursuant to this Agreement; and

WHEREAS, the Agency adopted its Inducement Resolution and its Authorizing Resolution inducing and authorizing the undertaking of the Project and the Facility Work, the lease of the Facility Realty by the Lessee to the Agency, and the sublease of the Facility Realty by the Agency to the Lessee; and

WHEREAS, the provision by the Agency of Financial Assistance to the Lessee has been determined to be necessary to induce the Lessee to continue to develop and complete the Facility; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants and representations hereinafter contained, the Company and the Agency hereto agree as follows:

ARTICLE I DEFINITIONS AND CONSTRUCTION

Section 1.1 Definitions. In addition to the definitions set forth in Sections 5.4 and 8.1(a), the following terms shall have the respective meanings in 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 Facility Work, including but not be limited to all replacements, improvements, additions, extensions and substitutions to the Existing Improvements and/or the Facility Improvements; provided that Additional Improvements shall not include any improvements made with respect to areas of the Project that are not part of the Facility and shall not include improvements which are made by condominium unit owners or Tenants, or tenants or subtenants of condominium unit owners.

Additional Rent shall have the meaning set forth in Section 4.3(b).

An **Affiliate** of a Person shall mean a Person that directly or indirectly through one or more intermediaries Controls, or is under common Control with, or is Controlled by, such Person.

Agency shall mean the New York City Industrial Development Agency, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State, duly organized and existing under the laws of the State, and any body, board, authority, agency or other governmental agency or instrumentality which shall hereafter succeed to the powers, duties, obligations and functions thereof.

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

Agency's Reserved Rights shall mean, collectively,

(i) the right of the Agency in its own behalf to receive all Opinions of Counsel, reports, financial statements, certificates, insurance policies, binders or certificates, or other notices or communications required to be delivered to the Agency under this Agreement;

(ii) the right of the Agency to grant or withhold any consents or approvals required of the Agency under this Agreement;

(iii) reserved;

(iv) the right of the Agency to enforce or otherwise exercise in its own behalf all agreements of the Lessee under this Agreement with respect to ensuring that the Project shall always constitute the Approved Project;

(v) the right of the Agency to recapture financial assistance in accordance with Article V;

(vi) the right of the Agency to receive all Rental Payments and payments in lieu of taxes;

(vii) All of the Agency's right, title and interest in and to the Escrow Agreement, any additional escrow agreements entered into by the Agency and the Lessee, and any funds held by or on behalf of the Agency pursuant to the Escrow Agreement and any additional escrow agreements;

(viii) the right of the Agency in its own behalf (or on behalf of the appropriate taxing authorities) to enforce, receive amounts payable under or otherwise exercise its rights under Sections 3.1, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 4.3, 4.4, 4.5, 4.7, 4.8, 5.1, 5.2, 5.3, 5.4, 5.5, 6.1, 6.2, 6.3, 6.4, 8.1, 8.2, 8.3, 8.5, 8.6, 8.7, 8.8, 8.9, 8.10, 8.11, 8.12, 8.13, 8.14, 8.15, 8.16, 8.17, 8.18, 8.19, 8.20, 8.22, 9.1, 9.2, 9.3, 9.4, 9.5, 9.6, 9.7, 9.8, 10.1, 10.2, 10.3, 10.4, 11.1, 11.2, 11.3, 11.4, 11.5, 11.6, 11.7, 11.11, 11.13 and 11.14; and

(ix) the right of the Agency in its own behalf to declare a default or an Event of Default with respect to any of the Agency's Reserved Rights and to exercise the remedies set forth in Section 9.2 upon the occurrence of an Event of Default with respect to any of the Agency's Reserved Rights.

Agreement shall mean this Amended and Restated Agency Lease Agreement, dated as of the date set forth in the first paragraph hereof, between the Agency and the Lessee, which amends and restates the Interim Agency Lease, and shall include any and all amendments hereof and supplements hereto hereafter made in conformity herewith.

Annual Administrative Fee shall mean that annual administrative fee equal to \$25,000.

Annual PILOT Benefit per RSF shall mean \$7.19; provided, that upon Benefit Verification, the Annual PILOT Benefit per RSF will be reduced to equal the lesser of (x) \$7.19 (nominal) and (y) the product of \$7.19 multiplied by the PILOT Reduction Percentage.

Approved Project shall mean the Project as occupied, used and operated by the Lessee or its agents, any sublessees and any condominium owners (or their lessees), substantially for the Approved Project Operations, including such other activities as may be substantially related to or substantially in support of such operations, all to be effected in accordance with this Agreement.

Approved Project Operations shall mean the use of the Project as a commercial facility, a significant portion of which shall be occupied by Jewelry Industry Participants.

Attraction Jewelry Industry Participant shall mean a person or entity that is a Jewelry Industry Participant and that, on its lease commencement date or date of purchase of a Unit, shall not have previously conducted operations in New York City either itself or through an Affiliate.

Attraction Jewelry Industry Participant Percentage shall mean, with respect to the date of the Benefit Verification, the percentage of Calculation Space that is either (i) occupied as of such date by persons or entities that are Attraction Jewelry Industry Participants who have purchased a Unit or have leased a Unit pursuant to a Qualified Lease, or (ii) Expansion Space.

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, General Counsel or Vice President for Legal Affairs, 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 – “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, (iii) in the case of any Guarantor which shall constitute an Entity (other than the Lessee), a person named in Exhibit C – “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, and (iv) in the case of any individual Guarantor, such individual Guarantor; 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 January 12, 2012 providing for Financial Assistance and authorizing the Project Documents to which the Agency is a party.

Base Rent shall mean the rental payment described in Section 4.3(a).

Benefit Percentage shall mean, as determined on each Test Date, the applicable amount set forth in Appendix G attached hereto.

Benefit Verification shall have the meaning set forth in Section 8.23.

Benefits shall have the meaning set forth in Section 5.4(a).

Business Day shall mean any day that shall not be:

- (i) a Saturday, Sunday or legal holiday;
- (ii) a day on which banking institutions in the City are authorized by law or executive order to close; or
- (iii) a day on which the New York Stock Exchange is closed.

Calculation Space shall have the meaning set forth in Section 8.23.

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

Claims shall have the meaning set forth in Section 8.2(a).

Closing Date shall mean the date on which the Parties enter into a Straight Lease Transaction and execute this Agreement and related agreements and documents.

Commencement Date shall mean September 28, 2012, on which date the Interim Agency Lease was executed and delivered.

Company Lease shall mean the Amended and Restated Company Lease Agreement, dated as of the date hereof, between the Lessee, as landlord, and the Agency, as tenant, which amends and restates the Interim Company Lease, and as the same may be amended and supplemented in accordance with its terms and as permitted by the terms thereof.

Completed Improvements RSF shall mean the RSF of the Improvements upon completion of the Facility Work, which is approximately 740,016 RSF.

Completion Date shall mean May 15, 2013.

Control or **Controls**, including the related terms “controlled by” and “under common control with”, shall mean the power to direct the management and policies of a Person (x) through the ownership, directly or indirectly, of not less than a majority of its voting securities, (y) through the right to designate or elect not less than a majority of the members of its board of directors or trustees or other Governing Body, or (z) by contract or otherwise.

DOL shall have the meaning set forth in Section 8.7(c).

Due Date shall have the meaning set forth in Section 9.8.

Employment Information shall have the meaning set forth in Section 8.7(c).

Enabling Act shall mean the New York State Industrial Development Agency Act, constituting Title 1 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.

Environmental Audit shall mean that certain Phase I Environmental Site Assessment Report dated October 23, 2006, prepared by the Environmental Auditor.

Environmental Auditor shall mean Langan Engineering and Environmental Services, Inc.

Escrow Agreement shall mean the Amended and Restated Escrow Agreement, dated December 10, 2013, between the Lessee and the NYCIDA, which amends and restates the Escrow Agreement, dated September 28, 2012, between the Lessee and the NYCIDA.

Event of Default shall have the meaning specified in Section 9.1.

Exempt Mortgage shall have the meaning specified in Section 5.3(a).

Existing Facility Property shall have the meaning set forth in Section 3.6(a).

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 Commencement Date other than all or any part of the foregoing that (i) is intended to be demolished as part of the Facility Work, and (ii) is in fact demolished by the Completion Date; provided that Existing Improvements shall not include any improvements to areas of the Project that are not part of the Facility.

Expansion Space shall mean space that is occupied by a Jewelry Industry Participant who has purchased a Unit or has leased a Unit pursuant to a Qualified Lease, but only to the extent that, on such Jewelry Industry Participant's lease commencement date or purchase date with respect to such Unit, such space, when added to all other space leased or owned and occupied by such Jewelry Industry Participant in New York City, exceeds the aggregate space leased or owned and occupied by such Jewelry Industry Participant in New York City immediately prior to such lease commencement date or purchase date.

Expiration Date shall mean the June 30 occurring immediately before the tenth anniversary of the PILOT Commencement Date; provided, however, that such date shall not be later than June 30, 2026 unless extended in accordance with Section 4.2 hereof.

Facility shall mean the Facility Realty.

Facility Improvements shall mean all buildings, structures, foundations, related facilities, fixtures and other improvements resulting from the Facility Work; provided that

Improvements shall not include any improvements made with respect to areas of the Project that are not part of the Facility.

Facility Realty shall mean, collectively, the Land and the Improvements; provided that to the extent any area of the Facility is sold as a condominium unit to a third party, such unit shall be automatically deleted from the Facility.

Facility Work shall mean the work required to complete the construction of the Facility, as such work is further explained by reference to the Project Cost Budget.

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

Fiscal Year shall mean a year of 365 or 366 days, as the case may be, commencing on January 1 and ending on December 31 of each calendar year, or such other fiscal year of similar length used by the Lessee for accounting purposes as to which the Lessee shall have given prior written notice thereof to the Agency at least ninety (90) days prior to the commencement thereof.

Fixed Date Deliverables shall have the meaning set forth in Section 9.8(a)(ii).

GAAP shall mean those generally accepted accounting principles and practices that are recognized as such by the American Institute of Certified Public Accountants or by the Financial Accounting Standards Board or through other appropriate boards or committees thereof, and that are consistently applied for all periods, after the Commencement Date, so as to properly reflect the financial position of the Lessee, except that any accounting principle or practice required to be changed by the Financial Accounting Standards Board (or other appropriate board or committee of the said Board) in order to continue as a generally accepted accounting principle or practice may be so changed.

Governing Body shall mean, when used with respect to any Person, its board of directors, board of trustees or individual or group of individuals by, or under the authority of which, the powers of such Person are exercised.

Guarantors shall mean, collectively, each Person as 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.

Hazardous Materials shall include any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 5101, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental law, ordinance, rule, or regulation.

Impositions shall have the meaning set forth in Section 8.17(a).

Improvements shall mean, collectively, the Existing Improvements, if any, and the Facility Improvements and any Additional Improvements. In the alternative, "Improvements" shall mean: (i) all buildings, structures, foundations, related facilities and other improvements existing on the Commencement Date and erected or situated on the Land, if any, and (ii) any other buildings, structures, foundations and related facilities and other improvements erected or constructed on the land throughout the term of this Agreement (including any improvements or demolitions made as part of the Facility Work pursuant to Section 3.3), and (iii) all other replacements, improvements, additions, extensions, substitutions, restorations and repairs to any of the foregoing; provided that Improvements shall not include any improvements made with respect to areas of the Project that are not part of the Facility.

Indemnification Commencement Date shall mean November 14, 2006, the date on which the Agency first adopted a resolution with respect to the Project.

Indemnified Parties shall have the meaning set forth in Section 8.2(a).

Independent Accountant shall mean an independent certified public accountant or firm of independent certified public accountants selected by the Lessee and approved by the Agency (such approval not to be unreasonably withheld or delayed).

Inducement Resolution shall mean the resolution of the Agency adopted on November 13, 2007 inducing the Project, as such resolution was amended pursuant to the Authorizing Resolution.

Information Recipients shall have the meaning set forth in Section 8.7(c).

Initial Annual Administrative Fee shall mean \$25,000.00, which amount was paid by the Lessee to the Agency on the Commencement Date.

Interim Agency Lease shall mean the Interim Agency Lease Agreement, dated as of September 1, 2012, between the Agency and the Lessee.

Interim Company Lease shall mean the Interim Company Lease Agreement, dated as of September 1, 2012, between the Lessee, as landlord, and the Agency, as tenant.

Jewelry Industry Participant shall mean a person or entity that is directly and primarily engaged in (a) operating a business in the diamond and jewelry industry (including, but not limited to, manufacturing, processing, sales and trading), (b) operating a diamond and jewelry-related association or membership-based group, (c) operating a museum, gallery or similar institution devoted to the study, presentation and promotion of the diamond and jewelry industry, (d) operating a training center for those engaged in, or who wish to be engaged in, the diamond and jewelry industry, (e) securely and specially transporting and shipping diamonds and jewelry, (f) publishing catalogues, books and other written materials for the diamond and jewelry industry, and/or (g) providing special security services to the diamond and jewelry industry. As used in this paragraph, the term "primarily" means that, with respect to any period, all or substantially all of the annual revenues of the applicable person or entity shall have been derived

from the lines of business described in the foregoing sentence (it being agreed that any certification by the Lessee to the Agency relating to the status of a person or entity as a “Jewelry Industry Participant” may be based on representations received and reasonably relied upon by the Lessee from each applicable person or entity, or may be based on any other information received by the Lessee from such person or entity, provided that the same is reasonably satisfactory to the Agency). In addition, in order to qualify as Jewelry Industry Participant, such person or entity must represent in the applicable lease or condominium sale agreement either of the following: (A) that such entity’s occupancy at the Project will not result in the removal of a plant or facility of such entity located outside of the City, but within the State, to the Project or in the abandonment of one or more such plants or facilities of such entity located outside of the City but within the State or (B) that such entity’s location at the Project is reasonably necessary to discourage such entity from removing its business to a location outside of the State or is reasonably necessary to preserve such entity’s competitive position in its industry, in each instance together with supporting information with respect to such representation which supporting information will be subject to review by the Agency and any non-acceptance of such information shall result in such entity not being deemed a Jewelry Industry Participant. In addition, for purposes of qualifying for any PILOT Credits, a Jewelry Industry Participant must have occupied the applicable RSF in a Unit for the 12-month period preceding the Test Date.

Jewelry Industry Participant Percentage shall mean, as determined on each Test Date, the percentage of Calculation Space occupied by persons or entities that are Jewelry Industry Participants, provided that such space shall include vacant space previously purchased or leased by Jewelry Industry Participants until such time as such space is sold, leased or occupied by a person or entity that is not a Jewelry Industry Participant, provided that the original Jewelry Industry Participant purchaser or lessee occupied all of the space within such Unit for a continuous period of not less than two (2) years prior to such vacancy.

Land shall mean that certain lot, piece or parcel of land in Block 1262, formerly known as Lots 11, 12, 13, 14, 15, 16, 59, 60, 62, and 162, generally known by the street address 55 West 46th Street and 50 West 47th Street, Manhattan, New York, all as more particularly described in Exhibit A – “Description of the Land”, together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto.

Land Square Footage shall mean approximately 24,000 square feet.

Legal Requirements shall mean the Constitutions of the United States and the State of New York and all laws, statutes, codes, acts, ordinances, resolutions, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, certificates of occupancy, directions and requirements (including zoning, land use, planning, environmental protection, air, water and land pollution, toxic wastes, hazardous wastes, solid wastes, wetlands, health, safety, equal opportunity, minimum wages, and employment practices) of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, including those of the City, foreseen or unforeseen, ordinary or extraordinary, that are applicable now or may be applicable at any time hereafter to (i) the Lessee, (ii) the Facility or any part thereof, or (iii) any use or condition of the Facility or any part thereof.

Lessee shall mean Extell GT LLC, a limited liability company organized and existing under the laws of the State of Delaware and authorized to transact business in the State of New York, 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. The Lessee may be more than one entity to the extent that the original Lessee transfers portions of the Facility to different sister entities which have the same ownership or control prior to the Completion Date, or in accordance with the requirements of Section 8.9 or 8.20 thereafter

Lessee's Property shall have the meaning specified in Section 3.5(d).

Liability shall have the meaning set forth in Section 8.2(a).

Liens shall have the meaning specified in Section 8.11(a).

Loss Event shall have the meaning specified in Section 6.1.

Major Tenant shall mean a Tenant subject to a Major Tenant Lease.

Major Tenant Lease shall mean any and all Tenant Leases that are for at least 50,000 square feet. For purposes of determining whether a Tenant Lease is a Major Tenant Lease, any expansion rights of the Tenant shall be taken into account as if exercised in determining the rentable area leased by such Tenant.

Merge shall have the meaning specified in Section 8.20(a)(v).

Mortgage shall mean (a) that certain \$125,662,220 Amended and Restated Acquisition Loan Fee, Leasehold and Subleasehold Mortgage, Security Agreement, Financing Statement, Fixture Filing and Assignment of Leases and Rents, dated September 28, 2012, made among the Lessee, as mortgagor, the Agency, and Deutsche Bank AG, New York Branch, as agent for the Lenders (as defined in the Mortgage), as mortgagee, (b) that certain \$31,480,637 Building Loan Fee, Leasehold and Subleasehold Mortgage, Security Agreement, Financing Statement, Fixture Filing and Assignment of Leases and Rents (IDA), dated September 28, 2012, made among the Lessee, as mortgagor, the Agency, and Deutsche Bank AG, New York Branch, as agent for the Lenders (as defined in the Mortgage), as mortgagee, (c) that certain \$18,500,000 Fee, Leasehold and Subleasehold Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents, dated September 28, 2012, made among the Lessee, as mortgagor, the Agency, and International Gem Towers Fund LLC, as mortgagee, (d) that certain \$18,000,000 Fee, Leasehold and Subleasehold Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents, dated December 12, 2012, made among the Lessee, as mortgagor, the Agency, and International Gem Towers Fund LLC, as mortgagee, (e) that certain \$9,500,000 Fee, Leasehold and Subleasehold Mortgage, Security Agreement, Financing Statement, Fixture Filing and Assignment of Leases and Rents, dated March 22, 2013, made among the Lessee, as mortgagor, the Agency, and International Gem Tower Fund LLC, as mortgagor, (f) that certain \$15,000,000 Fee, Leasehold and Subleasehold Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents, dated April 9, 2013, made among the Lessee, as mortgagor, the Agency, and International Gem Towers Fund II LLC, as mortgagee, (g) that certain \$4,000,000 Fee, Leasehold and Subleasehold Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents, dated April 29, 2013, made among the Lessee, as mortgagor, the Agency, and

International Gem Towers Fund LLC, as mortgagee, (h) that certain \$9,500,000 Fee, Leasehold and Subleasehold Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents, dated June 5, 2013, made among the Lessee, as mortgagor, the Agency, and International Gem Towers Fund II LLC, as mortgagee, (i) that certain \$500,000 Fee, Leasehold and Subleasehold Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents, dated June 13, 2013, made among the Lessee, as mortgagor, the Agency, and International Gem Towers Fund II LLC, as mortgagee, and (j) any other mortgage for which the Agency provides assistance pursuant to Section 5.3(d) hereof.

Mortgagee shall mean any mortgagee under a Mortgage.

Mortgage Note shall mean the mortgage note issued by the Lessee in connection with a Mortgage.

Mortgage Loan shall mean each loan provided by a Mortgagee or an Other Mortgagee to the Lessee, referred to in the Project Finance Plan.

Net Proceeds shall mean, when used with respect to any insurance proceeds or condemnation award, compensation or damages, the gross amount of any such proceeds, award, compensation or damages less all expenses (including reasonable attorneys' fees and any extraordinary expenses of the Agency or any Mortgagee or Other Mortgagee) incurred in the collection thereof.

Notification of Failure to Deliver shall have the meaning specified in Section 9.8(b).

NYCEDC shall mean New York City Economic Development Corporation, and any successor thereof.

NYCIDA shall mean the New York City Industrial Development Agency, and any successor thereof.

Opinion of Counsel shall mean a written opinion of counsel for the Lessee, any Guarantor or any other Person (which counsel shall be reasonably acceptable to the Agency) with respect to such matters as required under any Project Document or as the Agency may otherwise reasonably require, and which shall be in form and substance reasonably acceptable to the Agency.

Organizational Documents shall mean, (i) in the case of an Entity constituting a limited liability company, the articles of organization or certificate of formation, and the operating agreement of such Entity, (ii) in the case of an Entity constituting a corporation, the articles of incorporation or certificate of incorporation, and the by-laws of such Entity, and (iii) in the case of an Entity constituting a general or limited partnership, the partnership agreement of such Entity.

Other Mortgage shall mean (a) the \$55,605,691 Project Loan Fee and Subleasehold Mortgage, Security Agreement, Financing Statement, Fixture Filing and Assignment of Leases and Rents, dated September 28, 2012, made by the Lessee to Deutsche Bank AG, New York Branch, as agent for the Lenders (defined therein), (b) the \$87,251,452 Building Loan Fee and

Subleasehold Mortgage, Security Agreement, Financing Statement, Fixture Filing and Assignment of Leases and Rents (Non-IDA), dated September 28, 2012, made by the Lessee to Deutsche Bank AG, New York Branch, as agent for the Lenders (defined therein), and (c) any other mortgages executed and delivered by the Lessee for which mortgage recording tax has been paid or waived, by reason other than the participation of the Agency in the Straight Lease Transaction as described herein.

Other Mortgagee shall mean any mortgagee under an Other Mortgage.

Per Diem Fees shall mean, collectively, the Per Diem Late Fee and the Per Diem Supplemental Late Fee.

Per Diem Holdover Rental Amount shall mean that per diem rental amount established from time to time by the Agency's Board of Directors generally imposed upon Entities receiving or that have received Financial Assistance (subject to such exceptions from such general applicability as may be established by the Agency's Board of Directors) and that have failed to terminate the Company Lease and this Agreement within the ten (10) day period referred to in Section 10.2.

Per Diem Late Fee shall mean that per diem late fee established from time to time by the Agency's Board of Directors generally imposed upon Entities receiving or that have received Financial Assistance (subject to such exceptions from such general applicability as may be established by the Agency's Board of Directors) and that have not (x) paid to the Agency the Annual Administrative Fee on the date required under Section 8.3, (y) delivered to the Agency all or any of the Fixed Date Deliverables on the respective dates required under Section 8.14 or 8.16, and/or (z) delivered to the Agency all or any of the Requested Document Deliverables under Section 8.15 within five (5) Business Days of the Agency having made the request therefor.

Per Diem Supplemental Late Fee shall mean that supplemental per diem late fee established from time to time by the Agency's Board of Directors generally imposed upon Entities receiving or that have received Financial Assistance (subject to such exceptions from general applicability as may be established by the Agency's Board of Directors).

Permitted Encumbrances shall mean:

(i) this Agreement, the Company Lease, any Mortgage, and any Other Mortgage;

(ii) liens for real estate taxes, assessments, levies and other governmental charges, the payment of which is not yet due and payable;

(iii) any mechanic's, workmen's, repairmen's, materialmen's, contractors', warehousemen's, carriers', suppliers' or vendors' lien, security interest, encumbrance or charge or right in respect thereof, placed on or with respect to the Facility or any part thereof, if payment is not yet due and payable, or if such payment is being disputed pursuant to Section 8.11(b);

(iv) utility, access and other easements and rights of way, restrictions and exceptions that an Authorized Representative of the Lessee certifies to the Agency will not materially interfere with or impair the Lessee's use and enjoyment of the Facility as herein provided;

(v) such minor defects, irregularities, encumbrances, easements, rights of way and clouds on title as normally exist with respect to property similar in character to the Facility as do not, as set forth in a certificate of an Authorized Representative of the Lessee delivered to the Agency, either singly or in the aggregate, or materially impair the property affected thereby for the purpose for which it was acquired and held by the Agency hereunder or purport to impose liabilities or obligations on the Agency;

(vi) those exceptions to title to the Facility Realty enumerated in the title insurance policy delivered pursuant to Section 3.8 insuring the leasehold interest of the Agency in the Facility Realty, a copy of which is on file at the offices of the Agency;

(vii) liens arising by reason of good faith deposits with the Lessee in connection with the tenders, leases of real estate, bids or contracts (other than contracts for the payment of money), deposits by the Lessee to secure public or statutory obligations, or to secure, or in lieu of, surety, stay or appeal bonds, and deposits as security for the payment of taxes or assessments or other similar charges;

(viii) any lien arising by reason of deposits with, or the giving of any form of security to, any governmental agency or any body created or approved by law or governmental regulation for any purpose at any time as required by law or governmental regulation as a condition to the transaction of any business or the exercise of any privilege or license, or to enable the Lessee to maintain self-insurance or to participate in any funds established to cover any insurance risks or in connection with workmen's compensation, unemployment insurance, old age pensions or other social security, or to share in the privileges or benefits required for companies participating in such arrangements;

(ix) any judgment lien against the Lessee, so long as the finality of such judgment is being contested in good faith and execution thereon is stayed;

(x) any purchase money security interest in movable personal property, including equipment leases and financing;

(xi) liens on property due to rights of governmental entities or third party payors for recoupment of excess reimbursement paid;

(xii) a lien, restrictive declaration or performance mortgage with respect to the operation of the Facility arising by reason of a grant or other funding received by the Lessee from the City, the State or any governmental agency or instrumentality;

(xiii) any additional leasehold interest in the Facility or any portion thereof granted by the Lessee to the Agency and any sublease, sale, assignment or other transfer of such leasehold interest by the Agency to the Lessee or any trustee for bonds of the Agency;

(xiv) any lien or other right created by the condominium declaration and by-laws relating to the Facility; and

(xv) any lien, security interest, encumbrances or charge approved in writing by the Agency from time to time, in its sole discretion.

Person shall mean an individual or any Entity.

PILOT shall mean payments in lieu of City real estate taxes with respect to the Facility Realty.

PILOT Depository shall mean The Bank of New York Mellon, a banking corporation organized and existing under the laws of the State of New York, or its successors.

PILOT Reduction Percentage shall mean an amount equal to the RSF of the Calculation Space divided by 630,000.

Policy(ies) shall have the meaning set forth in Section 8.1(a)

Predecessor Lessee shall have the meaning set forth in Section 8.20(b)(ii).

Principals shall mean, with respect to any Entity, the most senior three officers of such Entity, any Person with a ten percent (10%) or greater ownership interest in such Entity, and any Person as shall have the power to Control such Entity, and “principal” shall mean any of such Persons.

Project shall mean the acquisition, construction, furnishing and equipping of a commercial facility, consisting of an approximately 740,016 square foot new building to be known as the 55 West 46th Street and 50 West 47th Street which shall include a portion to be known as the International Gem Tower that is expected to include up to 630,000 square feet of commercial condominium facilities to be constructed on an approximately 24,000 square foot parcel of land located on Block 1262, lots 11, 12, 13, 14, 15, 16, 59, 60, 62, and 162, for use as a state-of-the art diamond and jewelry exchange.

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 Cost shall mean approximately \$721,603,043.

Project Cost Budget shall mean that certain budget as set forth by the Lessee in Exhibit E — “Project Cost Budget”.

Project Counsel shall mean attorneys or a firm of attorneys that are recognized for their expertise in municipal finance law and are selected by the Agency to render legal advice to the Agency in connection with the transactions contemplated by this Agreement.

Project Documents shall mean the Company Lease, this Agreement, the Escrow Agreement, the Guaranty Agreement, each Mortgage and each Mortgage Note, if any.

Project Fee shall mean \$2,214,840; provided that (a) the application fee of \$15,000 shall be credited to such fee, (b) an amount equal to \$200,000 was paid by the Lessee to the Agency on the Commencement Date and shall be credited to such fee, and (c) the remainder of the fee, in the amount of \$1,999,840, shall be payable on the Closing Date.

Project Finance Plan shall mean the plan for financing of the costs of the Project set forth in Exhibit H – “Project Finance Plan”.

Project Payments shall have the meaning set forth in Section 10.1.

Qualified Lease shall have the meaning set forth in Section 8.23.

Recapture Event shall have the meaning set forth in Section 5.4(a).

Recapture Period shall have the meaning set forth in Section 5.4(a).

Reduced MRT Benefit shall have the meaning set forth within the definition of Mortgage Recording Taxes, set forth in Section 5.3.

Rental Payments shall mean, collectively, Base Rent and Additional Rent.

Requested Document Deliverables shall have the meaning set forth in Section 9.8(a).

Required Disclosure Statement shall mean that certain Required Disclosure Statement in the form of Exhibit F – “Form of Required Disclosure Statement”.

RSF shall mean rentable square feet, and all RSF measurements are to be determined based on the Real Estate Board of New York (“REBNY”) office building measurement standards (utilizing a loss factor of 27% applied to useable square footage as measured per REBNY standards) which shall be used in connection with final condominium plans of each Unit prepared by a licensed architect retained by the Lessee.

Sign shall have the meaning set forth in Section 8.5.

State shall mean the State of New York.

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

Successor Lessee shall have the meaning set forth in Section 8.20(b)(ii).

Tenant shall mean any Person who shall lease, use or occupy any portion of the Facility pursuant to a Tenant Lease.

Tenant Lease shall mean any lease or sublease by the Lessee (or by any other Person whose leasehold estate in the Facility or any portion thereof is derivative of the Lessee) of real or

personal property constituting all or any part of the Facility, any tenancy with respect to the Facility or any part thereof, whether or not in writing, any license or concession agreement and any other agreement, by whatever name called, involving a transfer or creation of possessory rights or similar rights of use or occupancy in the Facility or any part thereof without transfer of title, and any and all guarantees of any of the foregoing, whether now existing or hereafter made.

Termination Date shall mean such date on which this Agreement may terminate pursuant to its terms and conditions prior to the Expiration Date.

Test Date shall mean October 1 of each calendar year during the term of this Agreement, commencing on the October 1 following the PILOT Commencement Date.

Transfer shall have the meaning set forth in Section 8.20(a)(iv).

Unit(s) shall mean discrete units of the Project that are either sold as condominium units, leased to third parties, or retained by the Lessee.

Section 1.2 Construction. In this Agreement, unless the context otherwise requires:

(a) 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, and the term “heretofore” shall mean before, 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 content indicates otherwise, references to designated “Exhibits”, “Appendices,” “Schedules,” “Articles”, “Sections”, “Subsections”, “clauses” and other subdivisions are to the designated Exhibits, Appendices, Schedules, Articles, Sections, Subsections, clauses 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).

(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 REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties by Agency. The Agency makes the following representations and warranties:

(a) The Agency is 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.

(b) Assuming the accuracy of representations made by the Lessee, the Agency is authorized and empowered to enter into the transactions contemplated by this Agreement and any other Project Documents to which the Agency is a party and to carry out its obligations hereunder and thereunder.

(c) By proper action of its board of directors, the Agency has duly authorized the execution and delivery of this Agreement and each of the other Project Documents to which the Agency is a party.

Section 2.2 Representations and Warranties by the Lessee. The Lessee makes the following representations and warranties:

(a) The Lessee is an Entity of the type, and duly organized under the laws of the state, set forth on the cover page of this Agreement, is validly existing and in good standing under the laws of its state of organization, is duly qualified to do business and in good standing under the laws of the State, is not in violation of any provision of any of the Lessee's Organizational Documents, has the requisite power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Agreement and each other Project Document to which it is or shall be a party.

(b) This Agreement and the other Project Documents to which the Lessee is a party (x) have been duly authorized by all necessary action on the part of the Lessee, (y) have been duly executed and delivered by the Lessee, and (z) constitute the legal, valid and binding obligations of the Lessee, enforceable against the Lessee in accordance with their respective terms.

(c) The execution, delivery and performance of this Agreement and each other Project Document to which the Lessee is or shall be a party and the consummation of the transactions herein and therein contemplated will not (x) violate any provision of law, any order

of any court or agency of government, or any of the Lessee's Organizational Documents, or any indenture, agreement or other instrument to which the Lessee is a party or by which it or any of its property is bound or to which it or any of its property is subject, (y) be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument or (z) result in the imposition of any lien, charge or encumbrance of any nature whatsoever other than Permitted Encumbrances.

(d) There is no action or proceeding pending or, to the best of the Lessee's knowledge, after diligent inquiry, threatened, by or against the Lessee by or before any court or administrative agency that would adversely affect the ability of the Lessee to perform its obligations under this Agreement or any other Project Document to which it is or shall be a party.

(e) The Financial Assistance provided by the Agency to the Lessee through the Straight-Lease Transaction as contemplated by this Agreement is necessary to induce the Lessee to proceed with the Project.

(f) The transactions contemplated by this Agreement shall not result in the removal of any facility or plant of the Lessee or any other occupant or user of the Project from one area of the State outside of the City to within the City or in the abandonment of one or more facilities or plants of the Lessee or any other occupant or user of the Project located within the State, but outside of the City.

(g) 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.

(h) No funds of the Agency shall be used by the Lessee in connection with the transactions contemplated by this Agreement for the purpose of preventing the establishment of an industrial or manufacturing plant or for the purpose of advertising or promoting materials which depict elected or appointed government officials in either print or electronic media, nor shall any funds of the Agency be given hereunder to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State.

(i) The Project will be an Approved Project and a qualified "project" within the meaning of the Act.

(j) Except as permitted by Section 8.9, and except for any Permitted Sublessee, no Person other than the Lessee is or will be in use, occupancy or possession of any portion of the Facility.

(k) The Lessee has obtained all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by it as of the Closing Date in connection with the execution and delivery of this Agreement and each other Project Document to which it shall be a party or in connection with the performance of its obligations hereunder and under each of the Project Documents.

(l) The Facility has been designed, and the operation of the Facility will be, in compliance with all applicable Legal Requirements.

(m) The Lessee is in compliance, and will continue to comply, with all applicable Legal Requirements relating to the Facility, the Facility Work and the operation of the Facility.

(n) The Lessee has delivered to the Agency a true, correct and complete copy of the Environmental Audit, and a letter from the Environmental Auditor addressed to the Agency, stating that the Agency may rely upon the Environmental Audit as if it was prepared for the Agency in the first instance.

(o) The Lessee has not used Hazardous Materials on, from, or affecting the Facility in any manner that violates any applicable Legal Requirements governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and the Environmental Audit is the basis for the Lessee's representation that it has no knowledge relating to the use by a prior owner or occupant of the Facility of Hazardous Materials on, from, or affecting the Facility.

(p) The Project Cost Budget attached as Exhibit E– "Project Cost Budget" represents a true, correct and complete budget as of the Closing Date of the costs of the Project; the Project Cost is an accurate statement of the Project cost as of the Closing Date.

(q) The amounts provided by the Lessee, pursuant to the Mortgage Loans, if any, together with other moneys available to the Lessee, are sufficient to pay all costs in connection with the completion of the Facility.

(r) All of the Land comprises 10 complete tax lot(s) and no portion of any single tax lot(s).

(s) Subject to Section 3.6 and Article VI, no property constituting part of the Facility shall be located at any site other than at the Facility Realty.

(t) The Completed Improvements RSF is approximately 740,016 and the Land Square Footage is 24,000.

(u) The Fiscal Year is true and correct.

(v) None of the Lessee, the Principals of the Lessee, or any Person that directly or indirectly Controls, is Controlled by, or is under common Control with the Lessee:

(i) is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Agency or the City, unless such default or breach has been waived in writing by the Agency or the City, as the case may be;

(ii) has been convicted of a felony and/or any crime involving moral turpitude in the ten (10) preceding years;

(iii) has received written notice of default in the payment to the City of any taxes, sewer rents or water charges in excess of \$5,000 that has not been cured or satisfied, unless such default is then being contested with due diligence in proceedings in a court or other appropriate forum; or

(iv) has, at any time in the three (3) preceding years, owned any property which, while in the ownership of such Person, was acquired by the City by in rem tax foreclosure, other than a property in which the City has released or is in the process of releasing its interest to such Person pursuant to the Administrative Code of the City.

(w) The Project Application Information was true, correct and complete as of the date submitted to the Agency, and no event has occurred or failed to occur since such date of submission which would cause any of the Project Application Information to include any untrue statement of a material fact or omit to state any material fact required to be stated therein to make such statements not misleading.

(x) Information as to the Principals of the Lessee, and its ownership interests in the Lessee, as set forth in Exhibit D, is true, correct and complete.

(y) As of the Closing Date, Lessee is in compliance with all of its obligations set forth herein (as originally set forth in the Interim Agency Lease) and all Facility Work performed prior to the Closing Date was performed in accordance with the terms set forth herein (as originally set forth in the Interim Agency Lease).

(z) The transactions contemplated by this Agreement shall not provide Financial Assistance in respect of any project where facilities or property that are primarily used in making retail sales of goods or services to customers who personally visit such facilities constitute more than one-third of the total project costs except to the extent such facilities constitute a "tourism destination" as defined in the Act. For purposes of this Section 2.2(z), "retail sales" shall mean (i) sales by a registered vendor under article twenty-eight of the New York Tax Law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section eleven hundred one of the New York Tax Law, or (ii) sales of a service to such customers.

(aa) The Project was completed on the Completion Date.

(bb) The Lessee's net worth is no less than \$50,000,000 as of the Closing Date.

(cc) The Lessee certifies that it neither owns, hires, rents nor uses vehicles of any sort.

ARTICLE III
LEASEHOLD INTEREST CONVEYED TO THE AGENCY; THE PROJECT;
MAINTENANCE; REMOVAL OF PROPERTY AND TITLE INSURANCE

Section 3.1 The Company Lease.

(a) Pursuant to the Company Lease, the Lessee has leased to the Agency the Land, and all rights or interests therein or appertaining thereto, together with all Improvements existing thereon or therein as of the Commencement Date, free and clear of all liens, claims, charges, encumbrances, security interests and servitudes other than Permitted Encumbrances.

(b) A valid leasehold interest in all Improvements incorporated or installed in the Facility Realty as part of the Project shall vest in the Agency immediately upon (i) the Commencement Date with respect to all Improvements installed prior to the Commencement Date, (ii) delivery to or installation or incorporation into the Facility Realty or (iii) payment therefor, whichever shall occur first.

(c) The Lessee shall take all action necessary to so vest a valid leasehold interest in such Improvements in the Agency and to protect such leasehold interest and title claims against claims of any third parties.

Section 3.2 Reserved.

Section 3.3 Manner of Facility Completion.

(a) The Lessee represents that it has completed the Facility Work by the Completion Date, in a first class workmanlike manner, free of material defects in materials and workmanship (including, to the best of the Lessee's knowledge, latent defects).

(b) In undertaking the Facility Work, the Lessee shall take such action and institute such proceedings as shall be necessary to cause and require all contractors, manufacturers and suppliers to complete their agreements relating to the Facility Work in accordance with the terms of the contracts therefor including the correction of any defective work.

(c) The cost of the Project shall be financed substantially in accordance with the Project Finance Plan. In the event moneys derived from the Mortgage Loans, if any, are not sufficient to pay the costs necessary to complete the Project in full, the Lessee shall pay or cause to be paid that portion of such costs of the Project as may be necessary to complete the Project and shall not be entitled to any reimbursement therefor from the Agency, nor shall the Lessee be entitled to any diminution of the Rental Payments to be made under this Agreement.

(d) The Lessee shall pay (i) all of the costs and expenses in connection with the preparation of any instruments of conveyance, the delivery thereof and of any instruments and documents relating thereto and the filing and recording of any such instruments of conveyance or other instruments or documents, if required, (ii) all taxes and charges payable in connection with the vesting with the Agency of a leasehold estate in the Facility Realty, or

attributable to periods prior to such vesting, as set forth in Sections 3.1 and 3.2, and (iii) all shipping and delivery charges and other expenses or claims incurred in connection with the Facility Work.

(e) The Lessee will perform or cause to be performed the Facility Work in accordance with all applicable Legal Requirements and with the conditions and requirements of all policies of insurance with respect to the Facility and the Facility Work. Promptly upon finishing of the Facility Work and the completion of the Facility Improvements, the Lessee will obtain or cause to be obtained all required permits, authorizations and licenses from appropriate authorities, if any be required, authorizing the occupancy, operation and use of the Facility and shall furnish copies of same to the Agency immediately upon the Agency's demand therefor.

(f) As of the date of the execution and delivery of this Agreement, the Lessee has evidenced completion of the Project by delivering to the Agency a certificate of an Authorized Representative of the Lessee in substantially the form set forth in Exhibit B – "Form of Project Completion Certificate", together with all attachments required thereunder.

Section 3.4 Maintenance.

(a) During the term of this Agreement, the Lessee will:

(i) keep the Facility in good and safe operating order and condition, ordinary wear and tear excepted,

(ii) reserved, and

(iii) make or cause to be made all replacements, renewals and repairs thereto (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen) necessary to ensure that the operations of the Lessee at the Facility shall not be materially impaired or diminished in any way.

(b) All replacements, renewals and repairs shall be similar in quality, class and value to the original work and be made and installed in compliance with all applicable Legal Requirements.

(c) The Agency shall be under no obligation to replace, service, test, adjust, erect, maintain or effect replacements, renewals or repairs of the Facility, to effect the replacement of any inadequate, obsolete, worn out or unsuitable parts of the Facility, or to furnish any utilities or services for the Facility, and the Lessee hereby agrees to assume full responsibility therefor.

Section 3.5 Alterations and Improvements.

(a) The Lessee shall have the privilege from time to time of making Additional Improvements as it may determine in its discretion to be desirable for its uses and purposes, provided that:

(i) the usefulness, structural integrity or operating efficiency of the Facility is not materially impaired,

(ii) the Additional Improvements are effected with due diligence, in a good and workmanlike manner and in compliance with all applicable Legal Requirements,

(iii) the Additional Improvements are promptly and fully paid for by the Lessee in accordance with the terms of the applicable contract(s) therefor, and

(iv) the Additional Improvements do not change the nature of the Project so that it would not constitute the Approved Project and a qualified "project" within the meaning of the Act.

(b) All Additional Improvements shall constitute a part of the Facility, subject to the Company Lease, and this Agreement.

(c) Reserved.

(d) The Lessee, the condominium board of managers, Tenants and subtenants shall have the right to install or permit to be installed at the Facility Realty, machinery, equipment and other personal property at the Lessee's own cost and expense (the "**Lessee's Property**"). The Lessee's Property shall not be subject to the Company Lease or this Agreement nor constitute part of the Facility, provided that the same is not made fixtures appurtenant to the Facility Realty. The Lessee, the condominium board of managers, Tenants and subtenants shall have the right to create or permit to be created any mortgage, encumbrance, lien or charge on, or conditional sale or other title retention agreement with respect to, the Lessee's Property, without the consent of or notice to the Agency.

Section 3.6 Removal of Property of the Facility.

(a) The Lessee shall have the right from time to time to remove from the Facility any fixture that does not constitute a material portion of the Facility Realty (in any such case, "Existing Facility Property"), and thereby remove such Existing Facility Property from the leasehold estates of the Company Lease and this Agreement; provided however:

(i) such Existing Facility Property is substituted or replaced by property (y) having equal or greater fair market value, operating efficiency and utility and (z) free of all mortgages, liens, charges, encumbrances, claims and security interests other than Permitted Encumbrances, and

(ii) no such removal shall be effected if (w) such removal would change the nature of the Project as the Approved Project and a qualified "project" within the meaning of the Act, (x) such removal would materially impair the usefulness, structural integrity or operating efficiency of the Facility, (y) such removal would materially reduce the fair market value of the Facility below its value immediately before such removal, or (z) there shall exist and be continuing an Event of Default hereunder.

(b) Within thirty (30) days after receipt of written request of the Lessee, the Agency shall deliver to the Lessee appropriate documents conveying to the Lessee all of the Agency's right, title and interest in any property removed from the Facility pursuant to Section 3.6(a).

(c) The removal from the Facility of any Existing Facility Property pursuant to the provisions of Section 3.6(a) shall not entitle the Lessee to any abatement or reduction in the Rental Payments payable by the Lessee under this Agreement or under any other Project Document.

Section 3.7 Implementation of Agency's Interest in New Property.

(a) In the event of any Additional Improvements or substitution or replacement of property pursuant to Section 3.5 or 3.6, the Lessee shall deliver or cause to be delivered to the Agency any necessary documents conveying to the Agency a leasehold estate in any property installed or placed upon the Facility pursuant to such Section and subjecting such Additional Improvements or substitute or replacement property to the Company Lease and this Agreement.

(b) The Lessee agrees to pay all costs and expenses (including reasonable counsel fees) incurred by the Agency in subjecting to, or releasing from, the Company Lease and this Agreement any property installed or placed on, or removed from, the Facility as part of the Facility pursuant to Section 3.5 or 3.6.

(c) Reference is made to Section 8.15(d) and (e) pursuant to which the Lessee has agreed to furnish a report or certificate to the Agency of any action taken by the Lessee pursuant to the provisions of Section 3.5 or 3.6.

Section 3.8 Leasehold Title Insurance. The Lessee acknowledges that prior to the Commencement Date, the Lessee obtained and delivered to the Agency a leasehold title insurance policy insuring the Agency's leasehold interest under the Interim Company Lease in each of the Land and the Existing Improvements against loss as a result of defects in title, subject only to Permitted Encumbrances. The Lessee shall, on or prior to the Closing Date deliver either (i) an update showing there have been no material changes to such title policy insuring the Company Lease, or (ii) deliver a new title policy insuring the Agency's interest under the Company Lease. In the event a new title insurance policy is issued, it shall be subject only to Permitted Encumbrances and shall provide for, among other things, the following: (1) full coverage against mechanics' liens; (2) no exceptions other than those approved by the Agency; (3) an undertaking by the title insurer to provide the notice of title continuation; and (4) such other matters as the Agency shall request. Any proceeds of such leasehold title insurance shall be paid to the Lessee and applied by the Lessee to remedy the applicable defect in title in respect of which such proceeds shall be derived. If not so capable of being applied or if a balance remains after such application, the proceeds or the remaining balance of proceeds, as the case may be, derived from any such title insurance policy insuring the Agency's leasehold interest shall be applied to the payment of any Rental Payments then due hereunder; and any balance thereafter may be used by the Lessee for its authorized purposes.

Section 3.9 Reserved.

**ARTICLE IV
LEASE OF FACILITY AND RENTAL PROVISIONS**

Section 4.1 Lease of the Facility. The Agency hereby continues to sublease the Facility Realty to the Lessee, and the Lessee hereby continues to sublease the Facility Realty from the Agency, for and during the term herein and subject to the terms and conditions herein set forth. The Agency has delivered to the Lessee, and the Lessee has accepted sole and exclusive possession of the Facility.

Section 4.2 Duration of Term. The term of this Agreement commenced on the Commencement Date and shall expire at 11:58 p.m. (New York City time) on the earlier of the Expiration Date (without taking into account any extension described in this Section 4.2) or the Termination Date, if any; provided, however, that, if on such Expiration Date, the Lessee shall have PILOT credits that have not yet been applied and the Lessee shall notify the Agency in writing, then the term of this Agreement shall automatically extend for the number of years necessary to allow the Lessee to apply all such unused PILOT Credits earned pursuant to Section 8.24 but in no event shall such extension of the term of this Agreement exceed two (2) years.

Section 4.3 Rental Provisions.

(a) The Lessee shall pay Base Rent to the Agency, without demand or notice, on the Closing Date in the amount of \$1.00 (receipt of which is acknowledged by the Agency), which shall constitute the entire amount of Base Rent payable hereunder.

(b) Throughout the term of this Agreement, the Lessee shall pay to the Agency any additional amounts required to be paid by the Lessee to or for the account of the Agency hereunder, and any such additional amounts shall be paid as, and shall represent payment of, Additional Rent.

(c) In the event the Lessee should fail to make or cause to be made any Rental Payment, the item or installment not so paid shall continue as an obligation of the Lessee until the amount not so paid has been paid in full, together with interest thereon from the date due at the applicable interest rate stated in this Agreement where so provided, or if not so provided, at twelve percent (12%) per annum, compounded daily.

Section 4.4 Rental Payments Payable Absolutely Net. The obligation of the Lessee to pay Rental Payments shall be absolutely net to the Agency without any abatement, recoupment, diminution, reduction, deduction, counterclaim, set-off or offset whatsoever, so that this Agreement shall yield, net, to the Agency, the Rental Payments provided for herein, and all costs, expenses and charges of any kind and nature relating to the Facility, arising or becoming due and payable during or after the term of this Agreement, shall be paid by the Lessee and the Indemnified Parties shall be indemnified by the Lessee for, and the Lessee shall hold the Indemnified Parties harmless from, any such costs, expenses and charges.

Section 4.5 Nature of Lessee's Obligation Unconditional. The Lessee's obligations under this Agreement to pay Rental Payments shall be absolute, unconditional and general

obligations, irrespective of any defense or any rights of set-off, recoupment or counterclaim or deduction and without any rights of suspension, deferment, diminution or reduction it might otherwise have against the Agency or any other Person. Such obligations of the Lessee shall arise whether or not the Project or Facility has been completed as provided in this Agreement and whether or not any Mortgagee or Other Mortgagee shall be honoring its obligations under the related financing documents. The Lessee will not suspend or discontinue payment of any Rental Payment due and payable hereunder or terminate this Agreement (other than such termination as is provided for hereunder) or suspend the performance or observance of any covenant or agreement required on the part of the Lessee hereunder for any cause whatsoever, and the Lessee waives all rights now or hereafter conferred by statute or otherwise to quit, terminate, cancel or surrender this Agreement or any obligation of the Lessee under this Agreement except as provided in this Agreement or to any abatement, suspension, deferment, diminution or reduction in the Rental Payments hereunder.

Section 4.6 Reserved.

Section 4.7 Advances by Agency. In the event the Lessee fails to make any payment or to perform or to observe any obligation required of it under this Agreement, the Agency, after first notifying the Lessee in writing of any such failure on its part (except that no prior notification of the Lessee shall be required in the event of an emergency condition that, in the reasonable judgment of the Agency, necessitates immediate action, but the Agency shall provide notice of its intention to take such immediate action), may (but shall not be obligated to), and without waiver of any of the rights of the Agency under this Agreement or any other Project Document to which the Agency is a party, make such payment or otherwise cure any failure by the Lessee to perform and to observe its other obligations hereunder. All amounts so advanced therefor by the Agency shall become an additional obligation of the Lessee to the Agency, which amounts, together with interest thereon at the rate of twelve percent (12%) per annum, compounded daily, from the date advanced, the Lessee will pay upon demand therefor by the Agency. Any remedy herein vested in the Agency for the collection of Rental Payments or other amounts due hereunder shall also be available to the Agency for the collection of all such amounts so advanced.

Section 4.8 No Warranty of Condition or Suitability. THE AGENCY HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE FACILITY, OR THE SUITABILITY OF THE FACILITY FOR THE PURPOSES OR NEEDS OF THE LESSEE OR ANY SUBLESSEE OR THE EXTENT TO WHICH FUNDS AVAILABLE TO THE LESSEE WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE FACILITY. THE LESSEE ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE FACILITY PERSONALTY NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE LESSEE, ON BEHALF OF ITSELF AND ANY SUBLESSEE, IS SATISFIED THAT THE FACILITY IS SUITABLE AND FIT FOR PURPOSES OF THE LESSEE. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE LESSEE OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF

ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF THE FACILITY OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

ARTICLE V
AGENCY FINANCIAL ASSISTANCE
(PAYMENTS IN LIEU OF TAXES AND MORTGAGE RECORDING TAX
EXEMPTION);
RECAPTURE OF PUBLIC BENEFITS

Section 5.1 Real Estate Tax Benefits.

(a) Definitions. The following terms shall have the meaning specified below:

Cessation Date shall mean the date on which the Facility Realty is no longer exempt from Real Estate Taxes by operation of law including, but not limited to by means of the expiration (on the Expiration Date) or sooner termination of the Company Lease and the demise conveyed thereunder; and/or the expiration (on the Expiration Date) or sooner termination of this Agreement and the demise conveyed hereunder.

City Tax Fiscal Year shall mean each annual period commencing on July 1, and ending on the immediately succeeding June 30, or such other annual period as shall be established by lawful authority as the City's "tax fiscal year" or its equivalent.

NYCDOF shall mean the New York City Department of Finance.

PILOT Commencement Date shall be the July 1 occurring after the date that the Lessee satisfies the requirements set forth in Section 8.23, but shall not be later than July 1, 2016; provided that no Recapture Event has occurred prior to such date.

PILOT Payment Default shall mean that particular Event of Default described and set forth in Section 9.1(a).

PILOT Bill shall mean the semi-annual statement of account sent by NYCDOF for the payment of PILOT in respect of the Facility Realty.

PILOT Term shall mean the period commencing on the PILOT Commencement Date and ending on the Expiration Date.

Real Estate Taxes shall mean the general ad valorem real property taxes of the kind presently levied by the City by authority of the New York Real Property Tax Law and Title 11 of the Administrative Code and Charter of The City of New York or any other general tax on or with respect to real property that may hereafter be levied by the City in substitution for such general ad valorem real estate taxes.

(b) Description and Address of Project

The Project consists of the acquisition, construction, furnishing and equipping of a commercial facility, consisting of an approximately 740,016 square foot new building to be known as 55 West 46th Street and 50 West 47th Street which shall include a portion to be known as the International Gem Tower that is expected to include up to 630,000 square feet of commercial condominium facilities constructed on the Land, for use as a state-of-the art diamond and jewelry exchange.

(c) Payments 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 with respect to the Facility Realty at such times, in such manner and in such amounts as would be applicable if the Facility Realty were not leased to the Agency. The Lessee acknowledges and agrees that the Facility Realty shall not be exempt from Real Estate Taxes until the PILOT Commencement Date.

(d) 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 Real Estate Taxes prior to the PILOT Commencement Date and PILOT with respect to the Facility Realty in accordance with the provisions of this Section 5.1 and upon receipt by the Agency of the deliverables set forth in Section 8.24, as follows:

PILOT shall be equal to the difference between the Real Estate Taxes which would be due with respect to the Facility Realty for the payment period, minus the PILOT Credit (provided that the Lessee shall only be entitled to such PILOT Credit against Real Estate Taxes to the extent it complies with Section 8.24). The PILOT Credit calculation shall be performed each year pursuant to Section 8.24. PILOT shall never be less than zero; provided, that any unapplied PILOT Credit may be carried forward to the extent provided in Section 8.24.

(ii) The Agency makes no representation as to the availability of an exemption from Real Estate Taxes for the Facility Realty. The Lessee acknowledges that the Agency has not represented the availability of any such exemption 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 the PILOT Commencement Date will not be deferred notwithstanding any loss of Financial Assistance contemplated hereunder in the event that the City does not recognize the Agency's exemption from Real Estate Taxes on the PILOT Commencement Date.

(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.

(e) Payment Provisions.

(i) The Lessee agrees to pay all PILOT required to be paid under this Section 5.1, seven (7) Business Days prior to July 1 or January 1 (as the case may be), in the amounts specified in PILOT Bills. 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 the Agency may in writing require otherwise, the Lessee shall pay PILOT to the PILOT Depository and the Lessee shall make such payments by federal funds wire, certified check or by bank draft payable at a bank in New York, New York.

(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 same to the PILOT Depository, together with the lesser of (aa) the maximum amount of interest permitted by law, and (bb) 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 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 on the original amount or portion thereof that was not paid when due 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), and the Agency shall reasonably cooperate with the Lessee, at the sole cost and expenses of the Lessee, in connection with the application for statutory or regulatory as-of-right benefits.

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

(i) *Reserved.*

(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 (without notice other than the prior notice required for certain Events of Default) to an amount equal to full real estate taxes.

(h) *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.

(i) In the event that a Tenant Lease does not contain the provisions set forth in Section 8.9(e) hereof and such matter cannot be cured within thirty (30) days, or such longer period of time required to cure provided that the Lessee and/or the Tenant are pursuing such cure with diligence, or if the Tenant makes a misrepresentation with respect to any of the matters set forth in Section 8.9(e) hereof, then, (i) the Agency shall have the option, in its sole discretion, to notify the Lessee to remove from the Facility that portion of the Facility occupied by the Tenant (and the Lessee shall cooperate with the Agency in promptly amending this Agreement to effectuate such removal); (ii) no such Tenant shall thereafter qualify as Jewelry Industry Participant under this Agreement; and (iii) the Lessee shall not apply any portion of the PILOT Credit to that portion of the Facility occupied by the Tenant following the notification by the Agency described in clause (i) of this Section 5.1(i). The foregoing remedies shall be the sole remedies available to the Agency for a default under this Section 5.1(i), provided that (a) if as a result of the exercise of such remedies and the disqualification of a Tenant as a Jewelry Industry Participant, the Agency is entitled to exercise other remedies under this Agreement, nothing contained herein shall limit the Agency's rights to exercise such other remedies and (b) if the Lessee fails to comply with clause (i) of this Section 5.1(i), such failure shall be deemed a default under Section 9.1(f), which if not cured with the time period specified therein, shall entitle the Agency to the remedies specified in Section 9.2.

Section 5.2 No Sales Tax Exemption. Notwithstanding anything herein to the contrary, the parties acknowledge that the Lessee shall be responsible for the payment of all applicable sales taxes related to any element of the Facility or the Project during the term of this Agreement.

Section 5.3 Mortgage Recording Tax Exemption.

(a) For purposes of this Section 5.3, the following terms shall have the meanings specified below:

Exempt Mortgage(s) shall mean one or more Mortgage(s), the recording of which is exempt from Mortgage Recording Taxes by reason of the Agency being a mortgagor thereunder. As of the Closing Date, the Exempt Mortgages are (a) that certain \$31,480,637 Building Loan Fee, Leasehold and Subleasehold Mortgage, Security Agreement, Financing Statement, Fixture Filing and Assignment of Leases and Rents (IDA), dated September 28, 2012, made among the Lessee, as mortgagor, the Agency, and Deutsche Bank AG, New York Branch, as agent for the Lenders (as defined in the Mortgage), as mortgagee, (b) that certain \$18,500,000 Fee, Leasehold and Subleasehold Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents, dated September 28, 2012, made among the Lessee, as mortgagor, the Agency, and International Gem Towers Fund LLC, as mortgagee, (c) that certain \$18,000,000 Fee, Leasehold and Subleasehold Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents, dated December 12, 2012, made among the Lessee, as mortgagor, the Agency, and International Gem Towers Fund LLC, as mortgagee, (d) that certain \$9,500,000 Fee, Leasehold and Subleasehold Mortgage, Security Agreement, Financing Statement, Fixture Filing and Assignment of Leases and Rents, dated March 22, 2013, made among the Lessee, as mortgagor, the Agency, and International Gem Tower Fund LLC, as mortgagor, (e) that certain \$15,000,000 Fee, Leasehold and Subleasehold Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents, dated April 9, 2013, made among the Lessee, as mortgagor, the Agency, and International Gem Towers Fund II LLC, as mortgagee, (f) that certain \$4,000,000 Fee, Leasehold and Subleasehold Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents, dated April 29, 2013, made among the Lessee, as mortgagor, the Agency, and International Gem Towers Fund LLC, as mortgagee, (g) that certain \$9,500,000 Fee, Leasehold and Subleasehold Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents, dated June 5, 2013, made among the Lessee, as mortgagor, the Agency, and International Gem Towers Fund II LLC, as mortgagee, and (h) that certain \$500,000 Fee, Leasehold and Subleasehold Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents, dated June 13, 2013, made among the Lessee, as mortgagor, the Agency, and International Gem Towers Fund II LLC, as mortgagee.

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.

(b) The Lessee acknowledges that the Agency will assist the Lessee so as to exempt the payment of Mortgage Recording Taxes on the Exempt Mortgages.

(c) The Lessee acknowledges and agrees that the Agency is not obligated to exempt the payment of Mortgage Recording Taxes for the recording of any mortgage other than

the Exempt Mortgages; nor is the Agency obligated to exempt the payment of Mortgage Recording Taxes on any extension, modification or other amendment to, or any assignment, consolidation or restatement of, the Exempt Mortgages.

(d) The Lessee shall have the right to request that the Agency assist, and the Agency shall use good faith efforts to assist, in the granting of Mortgage Recording Tax benefits with respect to the recording of one or more mortgages (in addition to the current Exempt Mortgages) for construction or permanent financing of the Facility at any time until October 1, 2015; provided that the aggregate amount of Mortgage Recording Taxes which are exempt by virtue of the Agency's participation (relating to all Exempt Mortgages) shall not exceed \$8,800,000; provided further, that upon Benefit Verification, such maximum potential benefit will be reduced to equal the lesser of (x) \$8,800,000 (nominal) and (y) the product of \$8,800,000 multiplied by a percentage (the "MRT Reduction Percentage") equal to a fraction equal to the RSF of the Calculation Space divided by 630,000 (such reduced amount, the "Reduced MRT Benefit"). No real property tax exemption benefits will be conferred until any required amounts are so paid to the Agency.

Section 5.4 Recapture of Public 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) For purposes of this Section 5.4, the following terms shall have the meanings specified below:

Benefits shall mean, collectively, all miscellaneous benefits derived from the Agency's participation in the Straight-Lease Transaction contemplated by this Agreement, including any exemption from any applicable mortgage recording taxes, and filing and recording fees; provided that to the extent any mortgage recording taxes are paid by any condominium purchasers to the New York City Department of Finance, in accordance with Section 8.9(h), and a corresponding amount has been released to the Lessee pursuant to the Escrow Agreement, then such amount (other than applicable interest related thereto) shall be deducted from any calculation of "Benefits". Any PILOT benefits (i.e., any PILOT Credit against what actual Real Estate Taxes would have been on the Facility Realty) that the Lessee has received during the term of this Agreement to or on account of Jewelry Industry Participants shall not be included in Benefits.

All calculations related to the determination of Benefits shall be initially made by the Lessee and submitted within 30 days of each Test Date to the Agency, with certification as to the accuracy of all such calculations signed by an officer of the Lessee. The Agency shall, thereafter, be entitled to audit such calculations and the Lessee shall make its relevant books and records available to the Agency for such purposes. In the event that the Agency shall discover any underpayment of amounts owed by the Lessee in connection with any such audit, the amount of such underpayment, plus interest equal to 18% per annum (accruing from the date on which such underpaid amount was initially due and payable through the date of its payment in-full) shall immediately become due and payable by Lessee.

Recapture Event shall mean any one of the following events:

(i) If the Lessee fails to meet the requirements set forth in Section 8.23 or fails to provide evidence to the Agency on the date of Benefit Verification that at least 20% of the Calculation Space is owned and occupied by, and/or leased pursuant to a Qualified Lease and occupied by, Attraction Jewelry Industry Participants.

(ii) If upon Benefit Verification, the Lessee has realized in excess of the Reduced MRT Benefit.

(iii) If, on October 1 of any year, the Benefit Percentage is less than 100%.

(iv) Reserved.

(v) Except as permitted by written consent of the Agency pursuant to and in accordance with Section 8.20, the Lessee shall have liquidated all or substantially all of its operating assets.

(vi) The Project has ceased to be the Approved Project.

(vii) The Lessee shall have subleased all or part of the Facility Realty in violation of Section 8.9.

(viii) This Agreement shall be terminated for any reason prior to the Expiration Date.

Recapture Period shall mean the period of time commencing on the Commencement Date, and expiring on the Expiration Date.

(b) 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, the following amounts upon demand by the Agency: (i) all Benefits (except with respect to clauses (ii) and (iii) of the definition of Recapture Event in which event partial Benefits shall be recaptured), and (ii) interest described in Section 5.4(c); provided that (x) with respect to clause (ii) of the definition of Recapture Event, the amount recaptured shall be equal to the difference between the actual mortgage recording tax benefits realized, minus the Reduced MRT Benefit, plus interest on such amount in accordance with Section 5.4(c), and (y) with respect to clause (iii) of the definition of Recapture Event, the amount recaptured shall be equal to the actual mortgage recording tax benefits realized, multiplied by 100% minus the then applicable Benefit Percentage, plus interest on such amount in accordance with Section 5.4(c).

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.

(c) The principal of the Benefits to be recaptured shall bear interest at a rate equal to the lesser of (x) the maximum amount of interest permitted by law, and (y) seven and three quarters percent (7.75%), compounded daily, commencing from the date that any amount of Benefit principal has accrued to the Lessee, through and including the date such principal to

be recaptured is repaid in full; such that Benefit principal comprising mortgage recording taxes, or filing and recording fees, shall be deemed to have accrued to the Lessee on the date of filing of the Mortgage. The calculation of interest included in this Section shall include interest on amounts that are released, if any, to the Lessee pursuant to Section 8.9(h) herein and the Escrow Agreement, and such interest shall accrue during the period from the receipt of the Mortgage Recording Tax exemption until the date such amounts were paid to Lessee. The Lessee shall remain responsible for paying to the Agency the amount of any outstanding deficiency after the application of any funds paid pursuant to the Escrow Agreement described herein to satisfy the recapture obligation.

(d) 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.

(e) 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.

Section 5.5 Escrow. The Lessee shall make all escrow deposits required pursuant to the Escrow Agreement, and the Agency shall authorize all withdrawals of the escrow funds required pursuant to the Escrow Agreement. The parties hereto acknowledge that the escrow funds on deposit pursuant to the Escrow Agreement and not otherwise eligible for release as set forth therein shall remain on deposit therein until the Expiration Date as such Expiration Date may be extended pursuant to Section 4.2 hereof.

ARTICLE VI DAMAGE, DESTRUCTION AND CONDEMNATION

Section 6.1 Damage, Destruction and Condemnation. In the event that at any time during the term of this Agreement the whole or a material part of the Facility shall be damaged or destroyed, or taken or condemned by a competent authority for any public use or purpose, or by agreement to which the Lessee and those authorized to exercise such right are parties, or if the temporary use of the Facility shall be so taken by condemnation or agreement (a “**Loss Event**”):

(i) the Agency shall have no obligation to rebuild, replace, repair or restore the Facility,

(ii) there shall be no abatement, postponement or reduction in the Rental Payments payable by the Lessee under this Agreement or any other Project Document to which it is a party, and the Lessee hereby waives the provisions of Section 227 of the New York Real Property Law or any law of like import now or hereafter in effect, and

(iii) the Lessee will promptly give written notice of such Loss Event to the Agency, generally describing the nature and extent thereof.

Section 6.2 Loss Proceeds.

(a) The Agency and the Lessee shall cooperate and consult with each other in all matters pertaining to the settlement, compromise, arbitration or adjustment of any claim or demand on account of any Loss Event, and the settlement, compromise, arbitration or adjustment of any such claim or demand shall, as between the Agency and the Lessee, be subject to the written approval of the Lessee.

(b) The Lessee shall be entitled to the Net Proceeds of any insurance proceeds or condemnation award, compensation or damages attributable to the Lessee's Property, provided that nothing contained in this Agreement shall be deemed to modify the obligations of the Lessee pursuant to any Mortgage or Other Mortgage with respect to property insurance proceeds and condemnation awards. The obligations of the Lessee hereunder shall be independent of any such other obligations relating to insurance proceeds and condemnation awards.

Section 6.3 Election to Rebuild or Terminate.

(a) In the event a Loss Event shall occur, the Lessee shall either:

(i) at its own cost and expense (except to the extent paid from the Net Proceeds), promptly and diligently rebuild, replace, repair or restore the Facility to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, regardless of whether or not the Net Proceeds derived from the Loss Event shall be sufficient to pay the cost thereof, and the Lessee shall not by reason of payment of any such excess costs be entitled to any reimbursement from the Agency, or

(ii) exercise its option to terminate this Agreement as provided in Section 10.1; provided that if all or substantially all of the Facility shall be taken or condemned, or if the taking or condemnation renders the Facility unsuitable for use by the Lessee as contemplated hereby, the Lessee shall exercise its option to terminate this Agreement as provided in Section 10.1.

(b) As soon as practicable, the Lessee shall advise the Agency in writing of the action to be taken by the Lessee under this Section 6.3.

Section 6.4 Effect of Election to Build.

(a) All rebuilding, replacements, repairs or restorations of the Facility in respect of or occasioned by a Loss Event shall:

(i) automatically be deemed a part of the Facility and shall be subject to the Company Lease and this Agreement,

(ii) be effected only if such rebuilding, replacement, repair or restoration shall not change the nature of the Project as the Approved Project and a qualified "project" as defined in the Act,

(iii) be effected with due diligence in a good and workmanlike manner, in compliance with all applicable Legal Requirements and be promptly and fully paid for by or

on behalf of the Lessee substantially in accordance with the terms of the applicable contract(s) therefor,

(iv) restore the Facility to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent operating efficiency and function, and to a state and condition that will permit the use and occupancy of the Project as the Approved Project that will qualify as a qualified “project” as defined in the Act, and

(v) be effected only if the Lessee shall have complied with Section 8.1(c).

(b) The date of completion of the rebuilding, replacement, repair or restoration of the Facility shall be evidenced to the Agency by a certificate of an Authorized Representative of the Lessee stating (i) the date of such completion, (ii) that the Facility has been rebuilt, replaced, repaired or restored to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent operating efficiency and function, (iii) that the Agency has a good and valid leasehold interest in all property constituting part of the Facility Realty, and all property of the Facility is subject to the Company Lease and this Agreement, subject to Permitted Encumbrances, and (iv) that the restored Facility is ready for occupancy, use and operation for its intended purposes. Notwithstanding the foregoing, such certificate may state (x) that it is given without prejudice to any rights against third parties by the Lessee that exists at the date of such certificate or that may subsequently come into being, (y) that it is given only for the purposes of this Section and (z) that no Person other than the Agency may benefit therefrom.

(c) The certificate delivered pursuant to Section 6.4(b) shall be accompanied by (i) a certificate of occupancy (either temporary or permanent, provided that if it is a temporary certificate of occupancy, the Lessee will proceed with due diligence to obtain a permanent certificate of occupancy), if required, and any and all permissions, licenses or consents required of governmental authorities for the occupancy, operation and use of the Facility for the purposes contemplated by this Agreement; (ii) a certificate of an Authorized Representative of the Lessee that all costs of rebuilding, repair, restoration and reconstruction of the Facility have been paid in full; and (iii) a search prepared by a title company, or other evidence satisfactory to the Agency, indicating that there has not been filed with respect to the Facility any mechanic’s, materialmen’s or any other lien in connection with the rebuilding, replacement, repair and restoration of the Facility and that there exist no encumbrances or those encumbrances consented to by the Agency.

ARTICLE VII COVENANT OF THE AGENCY

Section 7.1 Quiet Enjoyment. The Agency covenants and agrees that, subject to the terms and provisions of the Permitted Encumbrances (and any other impairments of title whether or not appearing on the title insurance policy referred to in Section 3.8), so long as the Lessee shall pay the Rental Payments payable by it under this Agreement and shall duly observe all the covenants, stipulations and agreements herein contained obligatory upon it and an Event of Default shall not exist hereunder, the Agency shall take no action to disturb the peaceful, quiet

and undisputed possession of the Facility by the Lessee under this Agreement, and the Agency (at the sole cost and expense of the Lessee) shall from time to time take all necessary action to that end.

ARTICLE VIII COVENANTS OF THE LESSEE

Section 8.1 Insurance.

(a) Definitions. For purposes of this Section 8.1, the following terms shall have the meanings specified below:

Certificate means an ACORD certificate evidencing insurance.

CGL means commercial general liability insurance.

Contractor(s) means, individually or collectively, a contractor or subcontractor providing materials and/or labor and/or other services in connection with any Construction, but not including a GC, CM or any architect or engineer providing professional services.

CM means a construction manager providing construction management services in connection with any Construction.

Construction means any construction, reconstruction, restoration, renovation, alteration and/or repair on, in, at or about the Facility Realty, including the Facility Work or any other construction, reconstruction, restoration, alteration and/or repair required under this Agreement in connection with the Facility, provided, that, one or both of the following conditions applies to the foregoing: (i) the cost thereof, labor and materials combined, is \$500,000 or greater, or (ii) the work being performed, whether in whole or in part, is roof work or work that is performed at a height of more than eight (8) feet above the ground.

GC means any general contractor providing general contracting services in connection with any Construction.

Insured(s) means, the Lessee.

Insurer means any entity writing issuing a Policy.

ISO means the Insurance Services Office or its successor.

ISO Form CG-0001 means the CGL form published by ISO at the Commencement Date.

Policy(ies) means, collectively or individually, the policies required to be obtained and maintained pursuant to Section 8.1(b) and (c).

SIR means self-insured retention.

U/E means Umbrella or Excess Liability insurance.

Workers' Compensation means Workers' Compensation, disability and employer liability insurance.

(b) Required Insurance. Throughout the term of this Agreement, except during periods of Construction, each Insured shall obtain and maintain or cause to be obtained and maintained for itself as a primary insured the following insurance:

(i) CGL with \$1,000,000 minimum per occurrence and \$2,000,000 minimum in the aggregate, per-location aggregate, and on a per occurrence basis. This Policy shall contain coverage for contractual liability, premises operations, and products and completed operations.

(ii) U/E with \$4,000,000 minimum per occurrence on terms consistent with CGL. The excess coverage provided under U/E shall be incremental to the CGL to achieve minimum required coverage of \$5,000,000 per occurrence; such incremental coverage must also apply to auto liability (when such coverage applies; see Section 8.1(b)(iii)), whether auto liability coverage is provided by endorsement to the Insured's CGL or by a stand-alone policy.

(iii) Auto liability insurance with \$1,000,000 combined single limit and \$1,000,000 for uninsured or under-insured vehicles. If the Insured owns any vehicles, the Insured shall obtain auto liability insurance in the foregoing amounts for hired and non-owned vehicles. Notwithstanding, in the event that the Authorized Representatives for the Lessee deliver certificates to the Agency certifying that it neither owns, hires, rents nor uses a vehicle of any sort, the Agency shall deem such certifications to satisfy the requirements of this sub-section "iii."

(iv) Workers Compensation satisfying State statutory limits. Coverage for employer liability shall be in respect of any work or operations in, on or about the Facility Realty.

(v) Garage Keeper's Liability.

(c) Required Insurance During Periods of Construction. In connection with any Construction and throughout any period of such Construction, the Lessee shall cause the following insurance requirements to be satisfied:

(i) The Insured shall obtain and maintain or cause to be obtained and maintained for itself Policies in accordance with all requirements set forth in Section 8.1(b), except that CGL and U/E shall be in an aggregate minimum amount of \$10,000,000 per project aggregate.

(ii) Any GC or CM shall obtain and maintain for itself as a primary insured the following Policies:

(1) CGL and U/E in accordance with the requirements in Section 8.1(b), subject to the following modifications: (x) coverage shall be in an aggregate minimum amount of \$10,000,000 per project aggregate, and (y) completed operations coverage

shall extend (or be extended) for an additional five (5) years after completion of the Construction;

(2) Auto liability insurance in accordance with the requirements in Section 8.1(b); and

(3) Workers' Compensation in accordance with the requirements in Section 8.1(b).

(iii) Each Contractor shall obtain and maintain for itself as a primary insured the following insurance:

(1) CGL and U/E in accordance with the requirements in Section 8.1(b) except that, in addition, completed operations coverage shall extend (or be extended) for an additional five (5) years after completion of the Construction;

(2) Auto Liability insurance in accordance with the requirements in Section 8.1(b); and

(3) Workers' Compensation in accordance with the requirements in Section 8.1(b).

(iv) Garage Keeper's Liability.

(d) Required Policy Attributes. Except as the Agency shall expressly otherwise agree in writing in its sole and absolute discretion:

(i) The Lessee shall cause each Policy (other than Worker's Compensation insurance) to name the Agency as an additional insured on a primary and non-contributory basis as more particularly required in Section 8.1(f)(i).

(ii) No Policy shall have a deductible, except that the CGL may have a deductible of up to \$500,000 based on the representation by the Lessee that it has deposited 2/3 of such deductible amount with the applicable insurer and secured the remaining 1/3 with a letter of credit deposited with the insurer.

(iii) CGL shall not be subject to SIR; provided that the U/E may be subject to SIR in an amount not to exceed \$10,000.

(iv) CGL and Auto Liability shall be written on, respectively, ISO Form CG-0001 and ISO Form CA-0001, or on such other equivalent forms as same may be reasonably acceptable to the Agency but only if the substitute form being proposed as equivalent is provided to the Agency sixty (60) days prior to the intended effective date.

(v) The Lessee acknowledges that the Agency is materially relying upon the content of ISO Form CG-0001 (or its equivalent if applicable) to implement the Agency's insurance requirements under this Section 8.1; accordingly, the Lessee agrees that non-standard exclusions and other modifications to ISO Form CG-0001 (or to its equivalent if

applicable) are prohibited under the terms and conditions of this Section 8.1. By way of example and not limitation, no Policy delivered hereunder shall limit (whether by exception, exclusion, endorsement, script or other modification) any of the following coverage attributes:

(1) contractual liability coverage insuring the contractual obligations of the Insureds;

(2) the right of the Insured to name additional insureds including the Agency;

(3) the applicability of CGL coverage to the Agency as an additional insured in respect of liability arising out of any of the following claims: (x) claims against the Agency by employees of the Insured, or (y) claims against the Agency by any GC, CM, Contractor, architect or engineer or by the employees of any of the foregoing, or (z) claims against the Agency arising out of any work performed by a GC, CM, Contractor, architect or engineer.

(vi) U/E shall follow the form of CGL except that U/E may be broader.

(vii) The Policies for CGL and U/E shall each provide primary insurance and the issuing Insurer shall not have a right of contribution from any other insurance policy insuring the Agency.

(viii) In each Policy, the Insurer shall waive, as against any Person insured under such Policy including any additional insured, the following: (x) any right of subrogation, (y) any right to set-off or counterclaim against liability incurred by a primary insured or any additional insured, and (z) any other deduction, whether by attachment or otherwise, in respect of any liability incurred by any primary insured or additional insured.

(ix) The Agency shall not be liable for any insurance premium, commission or assessment under or in connection with any Policy.

(e) Required Insurer Attributes. All Policies must be issued by Insurers satisfying the following requirements:

(i) Insurers shall have a minimum AM Best rating of A minus.

(ii) Each Insurer must be an authorized insurer in accordance with Section 107(a) of the New York State Insurance Law.

(iii) Insurers must be admitted in the State; provided, however, that if an Insured requests the Agency to accept a non-admitted Insurer, and if the Agency reasonably determines that for the kind of operations performed by the Insured an admitted Insurer is commercially unavailable to issue a Policy or is non-existent, then the Agency shall provide its written consent to a non-admitted Insurer. For purposes of this paragraph, an "admitted" Insurer means that the Insurer's rates and forms have been approved by the State Insurance Department and that the Insurer's obligations are entitled to be insured by the State's insurance guaranty fund.

(f) Required Evidence of Compliance. The Lessee shall deliver or cause to be delivered, throughout the term of this Agreement, evidence of all Policies required hereunder as set forth in this Section 8.1(f):

(i) All Policies. With respect to all Policies on which the Insured is to be a primary insured, the Insured shall deliver to the Agency a Certificate or Certificates evidencing all Policies required by this Section 8.1: (x) at the Commencement Date, (y) prior to the expiration or sooner termination of Policies, and (z) prior to the commencement of any Construction. If the Certificate in question evidences CGL, such Certificate shall name the Agency as an additional insured in the following manner:

New York City Industrial Development Agency is an additional insured on a primary and non-contributory basis for both CGL and Umbrella/Excess. The referenced CGL is written on ISO Form CG-0001 without modification to the contractual liability or waiver-of-subrogation provisions therein, covering the following premises: 55 West 46th Street or 50 West 47th Street;

(ii) CGL. With respect to CGL on which an Insured is to be a primary insured, the Insured shall additionally deliver to the Agency the following:

(1) Prior to the Commencement Date the Insured shall deliver to the Agency the declarations page and the schedule of forms and endorsements pertinent thereto.

(2) Upon the expiration or sooner termination of any CGL, the Insured shall deliver to the Agency a declarations page and schedule of forms and endorsements pertinent to the new or replacement CGL.

(3) Prior to the commencement of any Construction, the Insured shall deliver to the Agency a declarations page and a schedule of forms and endorsements pertinent to the CGL under which the Insured is to be the primary insured during the period of such Construction.

(iii) Insurance to be obtained by GCs and CMs. Prior to the commencement of any Construction that entails the services of a GC or CM, the Lessee shall provide to the Agency, in a form satisfactory to the Agency, evidence that the GC or CM (as the case may be) has obtained the Policies that it is required to obtain and maintain in accordance with Section 8.1(c).

(iv) Insurance to be obtained by Contractors. In connection with any Construction, the Lessee shall, upon the written request of the Agency, cause any or all Contractors to provide evidence satisfactory to the Agency, that such Contractors have obtained and maintain the Policies that they are required to obtain and maintain in accordance with the requirements of Section 8.1(c).

(g) Required Notices. (i) The Lessee shall immediately give the Agency notice of each occurrence that is reasonably probable to give rise to a claim under the insurance

required to be maintained by this Section 8.1. (ii) The Lessee shall in writing immediately notify the Agency of the cancellation of any Policy. (iii) In the event that any of the Policies pertain to and cover properties other than the Facility Realty that are not disclosed in Sub-Section (h)(i) of this Section 8.1, the Lessee shall in writing notify the Agency of such additional properties.

(h) Miscellaneous.

(i) The Lessee represents that the Policies pertain to and cover the Project exclusively.

(ii) In the event that any of the Policies pertain to and cover properties (other than the Facility Realty) that are not set forth in sub-section "i" preceding, the Agency shall have the right to demand higher Policy amounts therefor provided that the incremental coverage demanded by the Agency is reasonably related to such additional or substitute properties and the operations carried out or to be carried out thereon.

(iii) If, in accordance with the terms and conditions of this Section 8.1, the Insured is required to obtain the Agency's consent, the Lessee shall request such consent in a writing provided to the Agency at least thirty (30) days in advance of the commencement of the effective period (or other event) to which the consent pertains.

(iv) Throughout the term of this Agreement, delivery by the Insured of a Certificate evidencing auto liability insurance for hired and non-owned vehicles shall, unless otherwise stated by the Lessee to the contrary, constitute a representation and warranty from the Insured to the Agency that the Insured does not own vehicles.

(v) The Insured shall neither do nor omit to do any act, nor shall it suffer any act to be done, whereby any Policy would or might be terminated, suspended or impaired.

(vi) If, throughout the term of this Agreement, insurance industry standards applicable to properties similar to the Facility Realty and/or operations similar to the operations of the Lessee, materially change; and if, as a consequence of such change, the requirements set forth in this Section 8.1 become inadequate in the reasonable judgment of the Agency for the purpose of protecting the Agency against third-party claims, then the Agency shall have the right to supplement and/or otherwise modify such requirements, provided, however, that such supplements or modifications shall be commercially reasonable.

(vii) Nothing contained in this Agreement shall be deemed to modify the obligations of the Lessee pursuant to any Mortgage or other Mortgage with respect to property insurance or the application of proceeds thereof and said Mortgage or Other Mortgage. The obligations of the Lessee hereunder shall be independent of any such other obligations relating to insurance.

(viii) The Agency, in its sole discretion and without obtaining the consent of any Mortgagee, Other Mortgagee or any Guarantor or any other party to the transactions contemplated by this Agreement, may waive particular requirements under this Section 8.1. Notwithstanding, the Lessee shall be estopped from claiming that the Agency has

made any such waiver unless the Agency has executed and delivered a written instrument for the purpose of effectuating such waiver.

(ix) THE AGENCY DOES NOT REPRESENT THAT THE INSURANCE REQUIRED IN THIS SECTION 8.1, WHETHER AS TO SCOPE OR COVERAGE OR LIMIT, IS ADEQUATE OR SUFFICIENT TO PROTECT THE INSURED AND ITS OPERATIONS AGAINST CLAIMS AND LIABILITY.

Section 8.2 Indemnity.

(a) The Lessee shall at all times indemnify, defend, protect and hold the Agency, and any director, member, officer, employee, servant, agent (excluding for this purpose the Lessee, which is not obligated hereby to indemnify its own employees, Affiliates or affiliated individuals) thereof and persons under the Agency's control or supervision (collectively, the "**Indemnified Parties**" and each an "**Indemnified Party**") harmless of, from and against any and all claims (whether in tort, contract or otherwise), taxes (of any kind and by whomsoever imposed), demands, penalties, fines, liabilities, lawsuits, actions, proceedings, settlements, costs and expenses, including attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses (collectively, "**Claims**") of any kind for losses, damage, injury and liability (collectively, "**Liability**") of every kind and nature and however caused (except, with respect to any Indemnified Party, Liability arising from the gross negligence or willful misconduct of such Indemnified Party), arising during the period commencing on the Indemnification Commencement Date, and continuing throughout the term of this Agreement, arising upon, about, or in any way connected with the Facility, the Project, or any of the transactions with respect thereto, including:

(i) the financing of the costs of the Facility or the Project,

(ii) the planning, design, acquisition, site preparation, Facility Work, construction, renovation, equipping, installation or completion of the Project or any part thereof or the effecting of any work done in or about the Facility, or any defects (whether latent or patent) in the Facility,

(iii) the maintenance, repair, replacement, restoration, rebuilding, construction, renovation, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Facility or any portion thereof,

(iv) the execution and delivery by an Indemnified Party, the Lessee or any other Person of, or performance by an Indemnified Party, the Lessee or any other Person, as the case may be, of, any of their respective obligations under, this Agreement or any other Project Document, or other document or instrument delivered in connection herewith or therewith or the enforcement of any of the terms or provisions hereof or thereof or the transactions contemplated hereby or thereby,

(v) any damage or injury to the person or property of any Person in or on the premises of the Facility,

(vi) any imposition arising from, burden imposed by, violation of, or failure to comply with any Legal Requirement, including failure to comply with the requirements of the City's zoning resolution and related regulations, or

(vii) the presence, disposal, release, or threatened release of any Hazardous Materials that are on, from, or affecting the Facility; any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials, and/or any violation of Legal Requirements, including demands of government authorities, or any policies or requirements of the Agency, which are based upon or in any way related to such Hazardous Materials.

(b) The Lessee releases each Indemnified Party from, and agrees that no Indemnified Party shall be liable to the Lessee or its Affiliates for, any Claim or Liability arising from or incurred as a result of action taken or not taken by such Indemnified Party with respect to any of the matters set forth in Section 8.2(a) including any Claim or Liability arising from or incurred as a result of the negligence or willful misconduct of such Indemnified Party, or at the direction of the Lessee or any Guarantor with respect to any of such matters above referred to.

(c) An Indemnified Party shall promptly notify the Lessee in writing of any claim or action brought against such Indemnified Party in which indemnity may be sought against the Lessee pursuant to this Section 8.2; such notice shall be given in sufficient time to allow the Lessee to defend or participate in such claim or action, but the failure to give such notice in sufficient time shall not constitute a defense hereunder nor in any way impair the obligations of the Lessee under this Section 8.2.

(d) Anything to the contrary in this Agreement notwithstanding, the covenants of the Lessee contained in this Section 8.2 shall be in addition to any and all other obligations and liabilities that the Lessee may have to any Indemnified Party in any other agreement or at common law, and shall remain in full force and effect after the termination of this Agreement until the later of (i) the expiration of the period stated in the applicable statute of limitations during which a claim or cause of action may be brought and (ii) payment in full or the satisfaction of such claim or cause of action and of all expenses and charges incurred by the Indemnified Party relating to the enforcement of the provisions herein specified.

Section 8.3 Compensation and Expenses of the Agency and Agency Administrative and Project Fees.

(a) The Lessee shall pay the fees, costs and expenses of the Agency together with any fees and disbursements incurred by lawyers or other consultants in performing services for the Agency in connection with this Agreement or any other Project Document.

(b) On the Closing Date, the Lessee shall pay to the Agency the following amounts: (i) the pro-rated Annual Administrative Fee equal to \$18,904.00, and (ii) the portion of the Project Fee equal to \$1,999,840.00, which reflects a deduction for previous payment of \$200,000 and \$15,000 of application fees.

(c) The Lessee further agrees to pay the Annual Administrative Fee to the Agency on each July 1 following the Closing Date commencing July 1, 2014 until the earlier of the Expiration Date or the Termination Date. In the event the Lessee shall fail to pay the Annual Administrative Fee on the date due, the Agency shall have no obligation to deliver notice of such failure to the Lessee.

Section 8.4 Reserved.

Section 8.5 Reserved.

Section 8.6 Environmental Matters.

(a) Reserved.

(b) The Lessee shall not cause or permit the Facility or any part thereof to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all applicable Legal Requirements, nor shall the Lessee cause or permit, as a result of any intentional or unintentional act or omission on the part of the Lessee or any occupant or user of the Facility, a release of Hazardous Materials onto the Facility or onto any other property.

(c) The Lessee shall comply with, and require and enforce compliance by, all occupants and users of the Facility with all applicable Legal Requirements pertaining to Hazardous Materials, whenever and by whomever triggered, and shall obtain and comply with, and ensure that all occupants and users of the Facility obtain and comply with, any and all approvals, registrations or permits required thereunder.

(d) The Lessee shall conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials, on, from, or affecting the Facility in accordance with all applicable Legal Requirements.

(e) The parties hereto agree that the reference in Section 2.2(o) to the Environmental Audit is not intended, and should not be deemed to intend, to modify, qualify, reduce or diminish the Lessee's obligations to carry out and perform all of the covenants stated throughout this Section 8.6 and in Section 8.2.

Section 8.7 Employment Matters.

(a) Except as is otherwise provided by collective bargaining contracts or agreements, new employment opportunities with the Lessee or its Affiliates or other sponsors of the Project created as a result of the Project shall be listed with the New York State Department of Labor Community Services Division, and with the administrative entity of the service delivery area created by the Workforce Investment Act of 1998 (29 U.S.C. §2801) in which the Facility Realty is located. Except as is otherwise provided by collective bargaining contracts or agreements, the Lessee agrees, where practicable, to consider first, and cause each of its Affiliates at the Facility to consider first, persons eligible to participate in the Workforce Investment Act of 1998 (29 U.S.C. §2801) programs who shall be referred by administrative

entities of service delivery areas created pursuant to such Act or by the Community Services Division of the New York State Department of Labor for such new employment opportunities.

(b) Upon the Agency's written request, the Lessee shall provide to the Agency any employment information in the possession of the Lessee which is pertinent to the Lessee and the employees of the Lessee to enable the Agency and/or NYCEDC to comply with its reporting requirements required by City Charter §1301 and any other applicable laws, rules or regulations.

(c) The Lessee hereby authorizes any private or governmental entity, including The New York State Department of Labor ("**DOL**"), to release to the Agency and/or NYCEDC, and/or to the successors and assigns of either (collectively, the "**Information Recipients**"), any and all employment information under its control and pertinent to the Lessee and the employees of the Lessee to enable the Agency and/or NYCEDC to comply with its reporting requirements required by City Charter §1301 and any other applicable laws, rules or regulations. Information released or provided to Information Recipients by DOL, or by any other governmental entity, or by any private entity, or by the Lessee, or any information previously released as provided by all or any of the foregoing parties (collectively, "**Employment Information**") may be disclosed by the Information Recipients in connection with the administration of the programs of the Agency, and/or NYCEDC, and/or the successors and assigns of either, and/or the City, and/or as may be necessary to comply with law; and, without limiting the foregoing, the Employment Information may be included in (x) reports prepared by the Information Recipients pursuant to City Charter §1301, (y) other reports required of the Agency, and (z) any other reports required by law. This authorization shall remain in effect throughout the term of this Agreement.

(d) Upon the request of the Agency, the Lessee shall cooperate with the Agency in the development of programs for the employment and/or training of members of minority groups in connection with performing work at the Facility.

(e) Nothing in this Section shall be construed to require the Lessee to violate any existing collective bargaining agreement with respect to hiring new employees.

Section 8.8 Non-Discrimination.

(a) At all times during the maintenance and operation of the Facility, the Lessee shall not discriminate nor permit any of its Affiliates to discriminate against any employee or applicant for employment because of race, color, creed, age, sex or national origin. The Lessee shall use its best efforts to ensure that employees and applicants for employment with any subtenant of the Facility are treated without regard to their race, color, creed, age, sex or national origin. As used herein, the term "treated" shall mean and include the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.

(b) The Lessee shall, in all solicitations or advertisements for employees placed by or on behalf of the Lessee state that all qualified applicants will be considered for employment without regard to race, color, creed or national origin, age or sex.

(c) The Lessee shall furnish to the Agency all information required by the Agency pursuant to this Section and will cooperate with the Agency for the purposes of investigation to ascertain compliance with this Section.

Section 8.9 Assignment, Sale or Sublease.

(a) The Lessee shall not at any time (x) except as permitted by Section 8.20, assign or transfer this Agreement, or (y) except as permitted by Section 8.9(e), sublet the whole or any part of the Facility, provided that:

(i) the Lessee shall remain primarily liable to the Agency for the payment of all Rental Payments hereunder and for the full performance of all of the terms, covenants and conditions of this Agreement and of any other Project Document to which it shall be a party;

(ii) any assignee or transferee of the Lessee shall have assumed in writing (and shall have executed and delivered to the Agency an instrument in form for recording) and have agreed to keep and perform all of the terms of this Agreement and each other Project Document on the part of the Lessee to be kept and performed, shall be jointly and severally liable with the Lessee for the performance thereof, shall be subject to service of process in the State, and, if a corporation, shall be qualified to do business in the State;

(iii) any assignee or transferee shall utilize or cause the Project to be utilized as the Approved Project and a qualified "project" within the meaning of the Act;

(iv) such assignment or transfer shall not violate any provision of this Agreement or any other Project Document;

(v) reserved;

(vi) such sublease shall in no way diminish or impair the Lessee's obligation to carry the insurance required under Section 8.1 and the Lessee shall furnish written evidence satisfactory to the Agency that such insurance coverage shall in no manner be diminished or impaired by reason of such assignment, transfer, or sublease;

(vii) any such assignee or transferee shall deliver to the Agency the Required Disclosure Statement in form and substance satisfactory to the Agency, provided that if any modification to the form of such Required Disclosure Statement is not acceptable to the Agency acting in its sole discretion, then the Lessee shall be in default under this Agreement;

(viii) reserved;

(ix) the Lessee shall furnish or cause to be furnished to the Agency a copy of any such assignment or transfer, in substantially final form at least fifteen (15) days prior to the date of execution thereof; and

(x) reserved.

(b) Any consent by the Agency to any act of assignment or transfer shall be held to apply only to the specific transaction thereby authorized. Such consent shall not be construed as a waiver of the duty of the Lessee, or the successors or assigns of the Lessee, to obtain from the Agency consent to any other or subsequent assignment or transfer, or as modifying or limiting the rights of the Agency under the foregoing covenant by the Lessee.

(c) If the Facility or any part thereof is sublet or occupied by any Person other than the Lessee, the Agency, in the event of the Lessee's default in the payment of Rental Payments hereunder may, and is hereby empowered to, collect Rental Payments from any sublessee or any occupant during the continuance of any such default but such rights of the Agency shall be subject to the rights and remedies of the Mortgagee and Other Mortgagee. In case of such events, the Agency may apply the net amount received by it to the Rental Payments herein provided, and no such collection shall be deemed a waiver of the covenant herein against assignment or transfer of this Agreement, or constitute the acceptance of the under tenant or occupant as tenant, or a release of the Lessee from the further performance of the covenants herein contained on the part of the Lessee.

(d) The limitations in this Section 8.9 on subletting in whole or in part of the Facility shall have equal application to any sub-subletting in whole or in part of the Facility.

(e) The Lessee hereby agrees that each Tenant Lease (or a side letter or agreement executed by the parties to such Tenant Lease) shall contain the information set forth in clause (i) below, and in addition, with respect to Major Tenant Leases, the information set forth in clause (ii) below:

(i) provisions requiring the Tenant to deliver to the Lessee, upon the Lessee's request, such information as the Lessee may need to enable the Lessee to submit to the Agency the subtenant information required herein, including the information described in Section 8.16;

(ii) a representation from the Major Tenant stating that neither the Major Tenant, nor any Principals of such Major Tenant, nor any Person that directly or indirectly Controls, is Controlled by, or is under common Control with such Major Tenant

- a. is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Agency or the City, unless such default or breach has been waived in writing by the Agency or the City, as the case may be;
- b. has been convicted of a misdemeanor related to truthfulness and/or business conduct in the past five (5) years;
- c. has been convicted of a felony in the past ten (10) years;
- d. has received formal written notice from a federal, state or local governmental agency or body that such Person is

currently under investigation for a felony criminal offense;
or

- e. has received written notice of default in the payment to the City of any taxes, sewer rents or water charges, which have not been paid, unless such default is currently being contested with due diligence in proceedings in court or other appropriate forum.

With respect to the foregoing representations in clause (ii), each Major Tenant Lease shall include the defined terms set forth in this Lease for each capitalized term used therein.

Upon the Agency's request, the Company shall deliver within ten (10) business days to the Agency a copy of the current form of any Tenant Lease.

(f) Reserved.

(g) Lessee shall have the right to sell condominium units with respect to any portion of the Facility; provided that (i) Lessee shall notify the Agency upon the closing of any condominium sale, (ii) Lessee shall execute and deliver a certification (the form of which is attached hereto as Exhibit J) within three days of the condominium sale confirming that the conveyed condominium unit shall be automatically deleted from the Project, shall no longer be a part of the leasehold estate pursuant to the Company Lease or this Agreement, and (iii) the Lessee and Agency shall cooperate with respect to appropriate documentation to facilitate any such sale, including documents necessary for recording; provided that the Lessee shall continue to be obligated to provide information to the Agency regarding the actual occupancy and usage of such areas. Any sale of a condominium unit shall in no way diminish or impair the Lessee's obligation to carry the insurance required under Section 8.1 and the Lessee shall furnish written evidence satisfactory to the Agency that such insurance coverage shall in no manner be diminished or impaired by reason of such sale.

(h) In addition to the requirements set forth in clause (g) above, in the event that the Lessee sells any condominium units, and a portion of the Mortgage (or any replacement mortgage, refinancing mortgage or other mortgage for which mortgage recording taxes were not paid as a result of the original exemption related to the Mortgage or any continuing exemption originally derived from the Mortgage) has been assigned to such purchaser's lender or satisfied or released in part, then (A) the purchaser of such condominium unit shall be required to pay the applicable mortgage recording taxes on the mortgage used to purchase its condominium unit to the New York Department of Finance, (B) the Lessee shall certify to the Agency that such mortgage recording taxes were so paid, and (C) the Lessee shall cause the title company involved with the condominium sale to certify to the Agency that such mortgage recording taxes were so paid, and in such event, an amount equal to such mortgage recording taxes (less applicable interest as set forth in the Escrow Agreement) shall be released to the Lessee in accordance with the Escrow Agreement.

Section 8.10 Retention of Title to or of Interest in Facility; Grant of Easements; Release of Portions of Facility.

(a) Neither the Lessee nor the Agency shall sell, assign, encumber (other than Permitted Encumbrances), convey or otherwise dispose of its respective title to or leasehold estate in the Facility, including the Improvements, or any part of the Facility or interest therein during the term of this Agreement, except as set forth in Sections 3.6, Article VI, 8.9 and 9.2 or in this Section, without the prior written consent of the other, and any purported disposition without such consent shall be void.

(b) The Lessee may, upon prior written notice to the Agency, so long as there exists no Event of Default hereunder, grant such rights of way or easements over, across, through or under, the Facility Realty, or grant such permits or licenses in respect to the use thereof, free from the leasehold estate of the Company Lease, and of this Agreement as shall be necessary or convenient in the opinion of the Lessee for the operation or use of the Facility, or required by any utility company for its utility business, provided that, in each case, such rights of way, easements, permits or licenses shall not adversely affect the use or operation of the Project as the Approved Project. The Agency agrees, at the sole cost and expense of the Lessee, to execute and deliver any and all instruments necessary or appropriate to confirm and grant any such right of way or easement or any such permit or license and to release the same from the leasehold estate of the Company Lease and of this Agreement.

(c) So long as there exists no Event of Default hereunder, the Lessee may from time to time request in writing to the Agency the release of and removal from the leasehold estate of the Company Lease, and of this Agreement of any unimproved part of the Land (on which none of the Improvements, including the buildings, structures, major appurtenances, fixtures or other property comprising the Facility Realty, is situated) provided that such release and removal will not adversely affect the use or operation of the Project as the Approved Project. Upon any such request by the Lessee, the Agency shall, at the sole cost and expense of the Lessee, execute and deliver any and all instruments necessary or appropriate to so release and remove such unimproved Land from the leasehold estates of the Company Lease, and of this Agreement, subject to the following: (i) any liens, easements, encumbrances and reservations to which title to said property was subject on the Commencement Date, (ii) any liens, easements and encumbrances created at the request of the Lessee or to the creation or suffering of which the Lessee consented; (iii) any liens and encumbrances or reservations resulting from the failure of the Lessee to perform or observe any of the agreements on its respective part contained in this Agreement or any other Project Document; (iv) Permitted Encumbrances (other than the liens of the Company Lease and of this Agreement); and (v) any liens for taxes or assessments not then delinquent; provided, however, no such release shall be effected unless there shall be delivered to the Agency a certificate of an Authorized Representative of the Lessee, dated not more than sixty (60) days prior to the date of the release, stating that, in the opinion of the Person signing such certificate, the unimproved Land and the release thereof so proposed to be made is not needed for the operation of the Facility, will not adversely affect the use or operation of the Project as the Approved Project and will not destroy the means of ingress thereto and egress therefrom.

(d) No conveyance or release effected under the provisions of this Section 8.10 shall entitle the Lessee to any abatement or diminution of the Rental Payments payable under Section 4.3 or any other payments required to be made by the Lessee under this Agreement or any other Project Document to which it shall be a party.

Section 8.11 Discharge of Liens.

(a) If any lien, encumbrance or charge is filed or asserted (including any lien for the performance of any labor or services or the furnishing of materials), or any judgment, decree, order, levy or process of any court or governmental body is entered, made or issued or any claim (such as liens, encumbrances, charges, judgments, decrees, orders, levies, processes and claims being herein collectively called “**Liens**”), whether or not valid, is made against the Facility or any part thereof or the interest therein of the Agency or the Lessee or against any of the Rental Payments payable under the Company Lease or under this Agreement or the interest of the Agency or the Lessee under the Company Lease or under this Agreement, other than Liens for Impositions not yet payable, Permitted Encumbrances, or Liens being contested as permitted by Section 8.11(b), the Lessee forthwith upon receipt of notice of the filing, assertion, entry or issuance of such Lien (regardless of the source of such notice) shall give written notice thereof to the Agency and take all action (including the payment of money and/or the securing of a bond) at its own cost and expense as may be necessary or appropriate to obtain the discharge in full thereof and to remove or nullify the basis therefor. Nothing contained in this Agreement shall be construed as constituting the express or implied consent to or permission of the Agency for the performance of any labor or services or the furnishing of any materials that would give rise to any Lien against the Agency’s interest in the Facility.

(b) The Lessee may at its sole cost and expense contest (after prior written notice to the Agency), by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Lien, if (i) such proceeding shall suspend the execution or enforcement of such Lien against the Facility or any part thereof or interest therein, or in the Company Lease or in this Agreement, of the Agency or the Lessee or against any of the Rental Payments payable under the Company Lease, under this Agreement, (ii) neither the Facility nor any part thereof or interest therein would be in any danger of being sold, forfeited or lost, (iii) neither the Lessee nor the Agency would be in any danger of any civil or any criminal liability, other than normal accrual of interest, for failure to comply therewith, and (iv) the Lessee shall have furnished such security, if any, as may be required in such proceedings or as may be reasonably requested by the Agency.

Section 8.12 Recording and Filing. A memorandum of this Agreement shall be recorded by the Lessee at its sole cost and expense in the appropriate office of the Register of The City of New York, or in such other office as may at the time be provided by law as the proper place for the recordation thereof.

Section 8.13 No Further Encumbrances Permitted. The Lessee shall not create, permit or suffer to exist any mortgage, encumbrance, lien, security interest, claim or charge against the Facility or any part thereof, or the interest of the Agency or the Lessee in the Facility or the Company Lease or this Agreement, except for Permitted Encumbrances.

Section 8.14 Automatically Deliverable Documents.

(a) The Lessee shall immediately notify the Agency of the occurrence of any Event of Default, or any event that with notice and/or lapse of time would constitute an Event of Default under any Project Document. Any notice required to be given pursuant to this

subsection shall be signed by an Authorized Representative of the Lessee and set forth a description of the default and the steps, if any, being taken to cure said default. If no steps have been taken, the Lessee shall state this fact on the notice.

(b) The Lessee shall promptly provide written notice to the Agency if any representation or warranty made by the Lessee pursuant to Section 2.2(v) would, if made on any date during the term of the Agreement and deemed made as of such date, be false, misleading or incorrect in any material respect.

(c) Within ten (10) Business Days after receipt from the Agency of any survey and questionnaire pertaining to the Project and related to Jewelry Industry Participants, the Lessee shall complete and execute such survey and questionnaire and return the same to the Agency, based in good faith upon information the Lessee has received from such Jewelry Industry Participants. The Agency shall be entitled to request such surveys no more often than two (2) times in any 12 month period.

(d) The Lessee shall deliver all insurance-related documents required by Sections 8.1(f) and 8.1(g).

(e) Within 120 days after the close of each Fiscal Year during which action was taken by the Lessee pursuant to Section 3.5, the Lessee shall deliver written notice of the Additional Improvement(s) to the Agency.

(f) If a removal involving property having a value in the aggregate exceeding \$250,000 was taken by the Lessee pursuant to Section 3.6(a), the Lessee shall deliver written notice of such removal to the Agency within five (5) Business Days following such removal.

(g) As of the date hereof, the Lessee shall deliver to the Agency the certificate as to Project completion in substantially the form set forth in Exhibit B – “Form of Project Completion Certificate”, together with all attachments required thereunder.

(h) If the Lessee shall request the consent of the Agency under Section 8.9 to any sublease in whole or in part of the Facility, or to any assignment or transfer of this Agreement, the Lessee shall submit such request to the Agency in the form prescribed by the Agency.

Section 8.15 Requested Documents. Upon request of the Agency, the Lessee shall deliver or cause to be delivered to the Agency within five (5) Business Days of the date so requested:

(a) a copy of the most recent annual audited financial statements of the Lessee and of its subsidiaries, if any (including balance sheets as of the end of the Fiscal Year and the related statement of revenues, expenses and changes in fund balances and, if applicable, income, earnings, and changes in financial position) for such Fiscal Year, certified by the Chief Financial Officer of the Lessee or its outside auditors;

(b) a certificate of an Authorized Representative of the Lessee that the insurance the Lessee maintains complies with the provisions of Section 8.1, that such insurance

has been in full force and effect at all times during the preceding Fiscal Year, and that duplicate copies of all policies or certificates thereof have been filed with the Agency and are in full force and effect and the evidence required by Section 8.1(f);

(c) copies of any (x) bills, invoices, spreadsheets or other evidences of cost as shall have been incurred in connection with the Project, and (y) permits, authorizations and licenses from appropriate authorities relative to the occupancy, operation and use of the Facility;

(d) if no action was taken by the Lessee pursuant to Section 3.5 or no action involving the removal of property having a value in the aggregate exceeding \$250,000 was taken by the Lessee pursuant to Section 3.6(a), a certificate of an Authorized Representative of the Lessee certifying to the fact that no such action was taken by the Lessee pursuant to such Section 3.5 or 3.6(a) during such preceding Fiscal Year;

(e) if action was taken by the Lessee pursuant to Section 3.5 or involving the removal of property having a value in the aggregate exceeding \$250,000 pursuant to Section 3.6(a), a written report of an Authorized Representative of the Lessee summarizing the action taken by the Lessee and stating that, in his/her opinion, such action complied with the provisions of Section 3.5 or 3.6(a), as applicable.

(f) a certificate of an Authorized Representative of the Lessee as to whether or not, as of the close of the immediately preceding Fiscal Year, and at all times during such Fiscal Year, the Lessee, to the best knowledge of the officers at the Lessee charged with responsibility for such matters, was in compliance with all the provisions that relate to the Lessee in this Agreement and in any other Project Document to which it shall be a party, and if such Authorized Representative shall have obtained knowledge of any default in such compliance or notice of such default, he shall disclose in such certificate such default or defaults or notice thereof and the nature thereof, whether or not the same shall constitute an Event of Default hereunder, and any action proposed to be taken by the Lessee with respect thereto;

(g) upon twenty (20) days prior request by the Agency, a certificate of an Authorized Representative of the Lessee either stating that to the knowledge of such Authorized Representative after due inquiry there is no default under or breach of any of the terms hereof that, with the passage of time or the giving of notice or both, would constitute an Event of Default hereunder, exists or specifying each such default or breach of which such Authorized Representative has knowledge;

(h) employment information requested by the Agency pursuant to Section 8.7(b); and

(i) information regarding non-discrimination requested by the Agency pursuant to Section 8.8.

Section 8.16 Periodic Reporting Information for the Agency.

(a) The Lessee shall not assert as a defense to any failure of the Lessee to deliver to the Agency any reports specified in this Section 8.16 that the Lessee shall not have timely received any of the forms from or on behalf of the Agency unless, (i) the Lessee shall

have requested in writing such form from the Agency prior to the date due, and (ii) the Lessee shall not have received such form from the Agency at least ten (10) Business Days prior to the due date. For purposes of this Section 8.16, the Lessee shall be deemed to have “received” any such form if it shall have been directed by the Agency to a website at which such form shall be available. In the event the Agency, in its sole discretion, elects to replace one or more of the reports required by this Agreement with an electronic or digital reporting system, the Lessee shall make its reports pursuant to such system.

(b) Annually, by August 1 of each year, commencing on the August 1 immediately following the Commencement Date, until the termination of this Agreement, the Lessee shall submit to the Agency the Annual Employment and Benefits Report with respect to the Lessee and the Jewelry Industry Participants relating to the period commencing July 1 of the previous year and ending June 30 of the year of the obligation of the filing of such report, in the form prescribed by the Agency, certified as to accuracy by an officer of the Lessee to the best knowledge of such officer so certifying. Upon termination of this Agreement, the Lessee shall submit to the Agency the Annual Employment and Benefits Report relating to the period commencing the date of the last such Report submitted to the Agency and ending on the last payroll date of the preceding month in the form prescribed by the Agency, certified as to accuracy by the Lessee. Nothing herein shall be construed as requiring the Lessee to maintain a minimum number of employees on its respective payroll. It is hereby agreed that the Project site for purposes of employment reporting is limited to the premises within the Facility leased or owned by Jewelry Industry Participants.

(c) Reserved.

(d) If there shall have been a subtenant, other than the Lessee with respect to all or part of the Facility, at any time during the immediately preceding calendar year, the Lessee shall file with the Agency by the next following February 1, a certificate of an Authorized Representative of the Lessee with respect to all subtenancies in effect at the Facility, in the form prescribed by the Agency.

(e) Reserved.

(f) Reserved.

(g) Reserved.

(h) The Lessee shall deliver to the Agency on August 1 of each year, commencing on the August 1 immediately following the Commencement Date, a completed location and contact information report in the form prescribed by the Agency.

Section 8.17 Taxes, Assessments and Charges.

(a) The Lessee shall pay when the same shall become due all taxes and assessments, other than real estate taxes to the extent the Facility Realty is subject to PILOT, general and specific, if any, levied and assessed upon or against the Facility Realty, the Company Lease, this Agreement, any ownership estate or interest of the Agency or the Lessee in the Facility, or the Rental Payments or other amounts payable under the Company Lease, hereunder

during the term of this Agreement, and all water and sewer charges, special district charges, assessments and other governmental charges and impositions whatsoever, foreseen or unforeseen, ordinary or extraordinary, under any present or future law, and charges for public or private utilities or other charges incurred in the occupancy, use, operation, maintenance or upkeep of the Facility Realty, all of which are herein called “**Impositions**”. The Lessee may pay any Imposition in installments if so payable by law, whether or not interest accrues on the unpaid balance. The Agency shall forward, as soon as practicable, to the Lessee any notice, bill or other statement received by the Agency concerning any Imposition.

(b) In the event the Facility Realty is exempt from Impositions solely due to the Agency’s leasehold estate in the Facility Realty, the Lessee shall pay all Impositions to the appropriate taxing authorities equivalent to the Impositions that would have been imposed on the Facility Realty if the Lessee were the owner of record of the Facility Realty and the Agency had no leasehold estate in the Facility Realty.

(c) The Lessee may at its sole cost and expense contest (after prior written notice to the Agency), by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Imposition, if (i) such proceeding shall suspend the execution or enforcement of such Imposition against the Facility or any part thereof or interest therein, or in the Company Lease or in this Agreement, of the Agency or the Lessee or against any of the Rental Payments payable under the Company Lease, under this Agreement, (ii) neither the Facility nor any part thereof or interest therein would be in any danger of being sold, forfeited or lost, (iii) neither the Lessee nor the Agency would be in any danger of any civil or any criminal liability, other than normal accrual of interest, for failure to comply therewith, and (iv) the Lessee shall have furnished such security, if any, as may be required in such proceedings or as may be reasonably requested by the Agency.

Section 8.18 Compliance with Legal Requirements.

(a) The Lessee shall not occupy, use or operate the Facility, or allow the Facility or any part thereof to be occupied, used or operated, for any unlawful purpose or in violation of any certificate of occupancy affecting the Facility or for any use which may constitute a nuisance, public or private, or make void or voidable any insurance then in force with respect thereto.

(b) Throughout the term of this Agreement and at its sole cost and expense, the Lessee shall promptly observe and comply with all applicable Legal Requirements, whether foreseen or unforeseen, ordinary or extraordinary, that shall now or at any time hereafter be binding upon or applicable to the Lessee, the Facility, any occupant, user or operator of the Facility or any portion thereof, and will observe and comply with all conditions, requirements, and schedules necessary to preserve and extend all rights, licenses, permits (including zoning variances, special exception and non-conforming uses), privileges, franchises and concessions. The Lessee will not, without the prior written consent of the Agency (which consent shall not be unreasonably withheld or delayed), initiate, join in or consent to any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses that may be made of the Facility or any part thereof.

(c) The Lessee may at its sole cost and expense contest in good faith the validity, existence or applicability of any of the matters described in Section 8.18(b) if (i) such contest shall not result in the Facility or any part thereof or interest therein being in any danger of being sold, forfeited or lost, (ii) such contest shall not result in the Lessee or the Agency being in any danger of any civil or any criminal liability for failure to comply therewith, and (iii) the Lessee shall have furnished such security, if any, as may be reasonably requested by the Agency for failure to comply therewith.

Section 8.19 Operation as an Approved Project and as a “Project”.

(a) The Lessee will not take any action, or suffer or permit any action, if such action would cause the Project not to be the Approved Project or a qualified “project” within the meaning of the Act.

(b) The Lessee will not fail to take any action, or suffer or permit the failure to take any action, if such failure would cause the Project not to be the Approved Project or a qualified “project” within the meaning of the Act.

(c) The Lessee will permit the Agency, or its duly authorized agent, upon reasonable notice, at all reasonable times, to enter the Facility, but solely for the purpose of assuring that the Lessee is operating the Project, or is causing the Project to be operated, as the Approved Project and a qualified “project” within the meaning of the Act consistent with this Agreement and with the public purposes of the Agency.

Section 8.20 Restrictions on Transfer, Dissolution and Merger.

(a) The Lessee covenants and agrees that at all times during the term of this Agreement, it will

(i) maintain its existence as the type of Entity set forth on the cover page of this Agreement,

(ii) continue to be subject to service of process in the State,

(iii) continue to be organized under the laws of, or qualified to do business in, the State,

(iv) not, as transferor, liquidate, wind-up, dissolve, transfer, assign or otherwise dispose of to another Entity all or substantially all of its property, business or assets, or this Agreement, including, without limitation (A) a transfer or assignment of all or any portion of its interest in this Agreement or the leasehold estate created hereby at a foreclosure sale or (B) an assignment in lieu of foreclosure of all or any portion of its interest in this Agreement or the leasehold estate created hereby (“**Transfer**”), except as provided in Section 8.20(b),

(v) not, as transferee, take title to all or substantially all of the property, business or assets (also “**Transfer**”) of and from another Entity, except as provided in Section 8.20(b),

(vi) not consolidate with or merge into another Entity or permit one or more Entities to consolidate with or merge into it (“**Merge**”), except as provided in Section 8.20(b), and

(vii) not change or permit the change of any Principal of the Lessee, or a change in the relative ownership and/or Control of the Lessee of any of the existing Principals; except as accepted by the Agency in accordance with Sections 8.20(c) and (d) below.

(b) With the prior written consent of the Agency, which may not be unreasonably withheld or delayed if Lessee has complied with the terms of this section, the Lessee may Merge or participate in a Transfer if the following conditions are satisfied on or prior to the Merger or Transfer, as applicable:

(i) when the Lessee is the surviving, resulting or transferee Entity,

(1) the Lessee shall have a net worth (as determined by an Independent Accountant in accordance with GAAP) at least equal to that of the Lessee as of the Closing Date,

(2) the Lessee shall deliver to the Agency a Required Disclosure Statement with respect to itself as surviving Entity in form and substance satisfactory to the Agency; and

(3) the Completion Date has occurred; or

(ii) when the Lessee is not the surviving, resulting or transferee Entity (the “**Successor Lessee**”) (except as provided in clause (iii) below),

(1) the predecessor Lessee (the “**Predecessor Lessee**”) shall not be, at the time of the Transfer or Merger, in default under this Agreement or under any other Project Document, unless such default is cured in connection with the Transfer or Merger,

(2) the Successor Lessee shall be solvent and subject to service of process in the State and organized under the laws of the State, or under the laws of any other state of the United States and duly qualified to do business in the State,

(3) the Successor Lessee shall have assumed in writing all of the obligations of the Predecessor Lessee contained in this Agreement and in all other Project Documents to which the Predecessor Lessee shall have been a party,

(4) the Successor Lessee shall have delivered to the Agency a Required Disclosure Statement in form and substance acceptable to the Agency acting in its sole discretion,

(5) each Principal of the Successor Lessee shall have delivered to the Agency a Required Disclosure Statement in form and substance acceptable to the Agency acting in its sole discretion,

(6) the Successor Lessee shall have delivered to the Agency, in form and substance acceptable to the Agency, an Opinion of Counsel to the effect that the Project Documents to which the Successor Lessee shall be a party will constitute the legal, valid and binding obligations of the Successor Lessee, and that such Project Documents are enforceable in accordance with their terms,

(7) the Successor Lessee shall have delivered to the Agency, in form and substance acceptable to the Agency, an opinion of an Independent Accountant to the effect that the Successor Lessee has a net worth (as determined in accordance with GAAP) after the Merger or Transfer at least equal to that of the Predecessor Lessee immediately prior to such Merger or Transfer, and

(8) the Completion Date has occurred; provided that if the Transfer is to an Affiliate of the Lessee, this sub clause (8) shall not apply, or

(iii) if the Successor Lessee is a Project lender (or its designee) pursuant to the lenders' exercise of remedies in accordance with its loan documents, then all of the conditions set forth in clause (ii) above shall apply except for sub clauses (1) and (8) which shall not apply; provided that any such Successor Lessee shall be obligated to cure any default existing at the time of the proposed Transfer.

(c) The Control of the Lessee shall not change prior to the Completion Date.

(d) After the Completion Date, if there is a change in Principals of the Lessee, or a change in the relative ownership and/or Control of the Lessee or any of the existing Principals, the Lessee shall deliver to the Agency prompt written notice thereof (including all details that would result in a change to Exhibit D – “Principals of Lessee”) to the Agency together with a Required Disclosure Statement in form and substance acceptable to the Agency acting in its sole discretion.

Section 8.21 Reserved.

Section 8.22 Further Assurances. The Lessee will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such further acts, instruments, conveyances, transfers and assurances, at the sole cost and expense of the Lessee, as the Agency deems reasonably necessary or advisable for the implementation, effectuation, correction, confirmation or perfection of this Agreement and any rights of the Agency hereunder and under any other Project Document.

Section 8.23 Benefit Verification. By October 1 of any year, if the Lessee desires the PILOT Commencement Date to occur on July 1 of the following year, but in any event, no later than October 1, 2015, the Lessee must complete the following items (the “Benefit Verification”): (i) inform the Agency, in writing, of the total RSF of Units within the Project that will be occupied by Jewelry Industry Participants and Attraction Jewelry Industry Participants during the term (the total RSF of all such Units on the date of Benefit Verification within the Project is hereinafter referred to as the “Calculation Space”); (ii) obtain a zero occupancy Temporary Certificate of Occupancy (“TCO”) for the initial Units comprising the Calculation Space, sufficient to permit the closing of the sale of a condominium unit prior to the commencement of

alterations by the unit owner or tenant to prepare the space for occupancy, and (iii) provide the Agency with documentation satisfactory to the Agency that evidences purchase and occupancy by, and/or the lease (with a lease term of not less than 5 years) (each, a “Qualified Lease”) and occupancy by, Jewelry Industry Participants of Units within the Calculation Space. There will be no minimum RSF for the Calculation Space. The maximum Calculation Space will be 630,000 RSF. The total RSF of the Calculation Space will be used throughout the term of this Agreement at each Test Date in order to determine whether or not Benefits are subject to recapture in accordance with Article V hereof. Although the RSF number included in the Calculation Space will remain the same throughout the term of this Agreement, the actual Units within the Project occupied by Jewelry Industry Participants for purposes of determining the Jewelry Industry Participant Percentage may change during the term. The calculation of the Attraction Jewelry Industry Participant Percentage shall be done only once, as part of the Benefit Verification.

Section 8.24 Annual Testing Protocol. The Lessee shall calculate the Jewelry Industry Participant Percentage and provide compliance reporting documentation from each Tenant (or Jewelry Industry Participant owning a unit or vacant unit described in the Jewelry Participant Percentage) to the Agency on each Test Date in the form attached hereto as Exhibit I (the “Compliance Reporting Documentation”). If Compliance Reporting Documentation for a particular Unit within the Calculation Space is not received by the Test Date of a given year it will be assumed that such Unit is not occupied by a Jewelry Industry Participant and not eligible for purposes of calculating real property tax exemption benefits to be received by the Lessee pursuant to Article V. Compliance Reporting Documentation shall include evidence satisfactory to the Agency that (i) each Jewelry Industry Participant, for which Benefits are claimed to be applicable, qualifies as a Jewelry Industry Participant, including evidence that such entity (or entities) has occupied the applicable RSF in a Unit for the 12-month period preceding the Test Date or (ii) the PILOT Credit is intended to relate to a vacant unit described in the Jewelry Industry Participant Percentage or the vacancy results from the sale or lease from one Jewelry Industry Participant to another, or (iii) a combination of clause (i) and clause (ii).

As part of such Compliance Reporting Documentation, the Lessee shall provide information to the Agency with respect to the calculation of the applicable dollar amount of PILOT benefits that Lessee is entitled to as a result of the calculation of the Jewelry Industry Participant Percentage. The Agency will, within 20 business days of receipt of such information from the Lessee (and with the cooperation of the Lessee) calculate the dollar amount of PILOT benefits that will be provided to the Lessee, in accordance with Article V. The Lessee will then provide no later than December 10th of such year, documentation reasonably acceptable to the Agency (including without limitation, signed receipts from each Jewelry Industry Participant) evidencing that the Lessee has paid to each eligible Jewelry Industry Participant an amount equal to the product of (x) the Annual PILOT Benefit per RSF, (y) the RSF occupied as of the Test Date in the Project by each such Jewelry Industry Participant (provided that the aggregate RSF that may qualify for the PILOT Credit shall not exceed the RSF of the Calculation Space) and (z) the Benefit Percentage (such amount, in the aggregate, the “PILOT Credit”). Upon receipt of the foregoing, the Agency will calculate the credit to be applied against PILOT due (which PILOT will equal actual Real Estate Taxes before taking into account such PILOT Credit) with respect to Units owned by the Lessee and leased to the Agency pursuant to the Company Lease. The PILOT Credit shall then be applied on the succeeding January 1st on a pro rata basis against PILOT on all Units then leased by the Agency under this Agreement based on the actual RSF of

each such Unit (and if the PILOT payable by the Lessee on January 1st is insufficient, against PILOT due on the succeeding July 1st or on subsequent January 1st and July 1st until all PILOT Credits are applied; provided that no PILOT Credits shall be applied after the Expiration Date as extended pursuant to Section 4.2 hereof), in order to reimburse the Lessee for amounts paid to Jewelry Industry Participants. PILOT Credit may only be earned for a maximum term of 10 years, starting on the PILOT Commencement Date (for example, if the Lessee receives the first PILOT Credits on January 1, 2017, it shall receive the final PILOT Credit on January 1, 2026 but they may be carried forward and applied until the Expiration Date as extended pursuant to Section 4.2 hereof). Notwithstanding any provision to the contrary herein, the Lessee will not receive a PILOT Credit with respect to any Unit owned or leased by Jewelry Industry Participant for any period during which such Unit has received an exemption from real property taxes by virtue of not-for-profit ownership and/or occupancy of such Unit.

Section 8.25 Traffic Study. Lessee shall deliver to the Agency by October 1, 2015 a traffic study related to the Project, and prepared by a qualified consultant, in a form acceptable to the Agency.

Section 8.26 Actions on Benefit Verification. On the date of Benefit Verification,

(a) the Agency and the Lessee will amend and restate this Agreement and the Company Lease to specify by unit and tax lot number the Units that will be subject to PILOT in the description of the Facility Realty and will confirm the termination of this Agreement and the Company Lease with respect to all Units which have been released hereof and thereof prior to such date;

(b) the Agency will send a directive to NYCDOF identifying the Units that will be exempt from Real Estate Taxes;

(c) the Lessee will provide a bring down of the title report and title insurance for those Units that will be exempt from Real Estate Taxes, such title insurance to be in the amount of \$500,000 and otherwise in accordance with the provisions of Section 3.8 hereof; and

(d) the Lessee will continue to have the ability to terminate this Agreement and the Company Lease with respect to specific Units that are subsequently sold in accordance with Section 8.9(g).

ARTICLE IX REMEDIES AND EVENTS OF DEFAULT

Section 9.1 Events of Default. Any one or more of the following events shall constitute an “**Event of Default**” hereunder:

(a) Failure of the Lessee to pay any amounts set forth in Article V, including PILOT in accordance with Section 5.1 on or before the due date provided in a PILOT Bill and in the amount required in a PILOT Bill;

(b) Failure of the Lessee to pay any Rental Payment (except as set forth in Section 9.1(a)) within fifteen (15) days of the due date thereof;

(c) The occurrence of a Recapture Event that requires all Benefits to be recaptured;

(d) Reserved;

(e) Failure of the Lessee to observe and perform any covenant or agreement on its part to be performed under Section 8.1, and continuance of such failure for a period of ten (10) days after receipt by the Lessee of written notice specifying the nature of such default from the Agency;

(f) Failure of the Lessee to observe and perform any covenant, condition or agreement on its part to be performed under Sections 5.1, 5.2, 5.3, 5.4, 8.2, 8.3, 8.8, 8.9, 8.11, 8.13, 8.17, 8.18, 8.20, 9.8, 11.2 or 11.3 or Article VI, and continuance of such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nature of such default from the Agency;

(g) Failure of the Lessee to observe and perform any covenant or agreement on its part to be performed under Section 4.7 or 9.7, and continuance of such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nature of such default from the Agency;

(h) Failure of the Lessee to observe and perform any covenant, condition or agreement hereunder on its part to be performed (except as set forth in Section 9.1(b), (c), (d), (e), (f) or (g)) and (i) continuance of such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nature of such failure from the Agency, or (ii) if by reason of the nature of such failure the same can be remedied, but not within the said thirty (30) days, the Lessee fails to commence and thereafter proceed with reasonable diligence after receipt of said notice to cure such failure or fails to continue with reasonable diligence its efforts to cure such failure;

(i) The Lessee or any Guarantor shall (i) apply for or consent to the appointment of or the taking of possession by a receiver, liquidator, custodian or trustee of itself or of all or a substantial part of its property, (ii) admit in writing its inability, or be generally unable, to pay its debts as such debts generally become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or adjustment of debts, (vi) fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against itself in an involuntary case under the Federal Bankruptcy Code, (vii) take any action for the purpose of effecting any of the foregoing, or (viii) be adjudicated a bankrupt or insolvent by any court;

(j) A proceeding or case shall be commenced, without the application or consent of the Lessee or any Guarantor in any court of competent jurisdiction, seeking, (i) liquidation, reorganization, dissolution, winding up or composition or adjustment of debts, (ii) the appointment of a trustee, receiver, liquidator, custodian or the like of the Lessee or any Guarantor or of all or any substantial part of its respective assets, or (iii) similar relief under any

law relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of ninety (90) days; or any order for relief against the Lessee or any Guarantor shall be entered in an involuntary case under the Federal Bankruptcy Code; the terms “dissolution” or “liquidation” of the Lessee or any Guarantor as used above shall not be construed to prohibit any action otherwise permitted by Section 8.20 or Section 3.6 of the Guaranty Agreement;

(k) Any representation or warranty made by the Lessee or any other Guarantor (i) in the application and related materials submitted to the Agency for approval of the Project or the transactions contemplated by this Agreement, (ii) herein or in any other Project Document, or (iii) by or on behalf of the Lessee or any other Person in any Required Disclosure Statement, or (iv) in any report, certificate, financial statement or other instrument furnished pursuant hereto or any of the foregoing, shall in any case prove to be false, misleading or incorrect in any material respect as of the date made;

(l) A transfer or assignment of all or any portion of the Lessee’s interest in this Agreement or the leasehold estate created hereby at a foreclosure sale, or an assignment in lieu of foreclosure of all or any portion of the Lessee’s interest in this Agreement or the leasehold estate created hereby;

(m) Any loss of the leasehold estate of the Agency in the Facility Realty;

(n) If any Required Disclosure Statement delivered to the Agency under any Project Document is not acceptable to the Agency acting in its sole discretion; or

(o) An “Event of Default” under the Guaranty Agreement shall occur and be continuing.

Section 9.2 Remedies on Default.

(a) Whenever any Event of Default referred to in Section 9.1 shall have occurred and be continuing, the Agency may take any one or more of the following remedial steps:

(i) Subject to the rights of the Lessee to cure as provided herein, the Agency may terminate this Agreement and the Company Lease (with the effect that the term of this Agreement shall be deemed to have expired on such date of termination as if such date were the original Expiration Date of this Agreement) in which case this Agreement and all of the estate, right, title and interest herein granted or vested in the Lessee shall cease and terminate, and convey all of the Agency’s right, title and interest in the Facility to the Lessee, which the Agency may accomplish by executing and recording, at the sole cost and expense of the Lessee, lease termination agreements to terminate the Company Lease and this Agreement of record as required by law and a bill of sale for the conveyance of the Facility personalty to the Lessee (to the extent of any interest, if any, of the Agency in the Facility personalty). The Lessee hereby waives delivery and acceptance of such termination agreements as a condition to their validity, and appoints the Agency its true and lawful agent and attorney-in-fact (which appointment shall

be deemed to be an agency coupled with an interest) with full power of substitution to file on its behalf all affidavits, questionnaires and other documentation necessary to accomplish the recording of such termination agreements;

(ii) The Agency may bring an action for damages, injunction or specific performance; and/or

(iii) The Agency may take whatever action at law or in equity as may appear necessary or desirable to collect the Rental Payments then due, or to enforce performance or observance of any obligations, agreements or covenants of the Lessee under this Agreement.

(b) No action taken pursuant to this Section 9.2 (including termination of this Agreement pursuant to this Section 9.2 or by operation of law or otherwise) shall, except as expressly provided herein, relieve the Lessee from the Lessee's obligations hereunder, including the obligations of the Lessee under Sections 5.2, 5.3, 5.4, 8.2, 9.2, 9.6, 9.7, 9.8, 11.4, 11.5, 11.6, 11.11, 11.13 and 11.14, all of which shall survive any such action.

(c) For avoidance of doubt, neither (i) the commencement of a foreclosure action against the Agency or the Lessee nor (ii) the exercise of any other rights or remedies against the Agency or the Lessee under the Mortgage or any Other Mortgage or any other action taken by the holder of the Mortgage or any Other Mortgage against the Agency or the Lessee shall limit or restrict in any respect whatsoever the rights and remedies of the Agency under this Agreement.

Section 9.3 Remedies Cumulative. The rights and remedies of the Agency under this Agreement shall be cumulative and shall not exclude any other rights and remedies of the Agency allowed by law with respect to any default under this Agreement. Failure by the Agency to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon default by the Lessee hereunder shall not be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce by mandatory injunction, specific performance or other appropriate legal remedy a strict compliance by the Lessee with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such default by the Lessee be continued or repeated.

Section 9.4 No Additional Waiver Implied by One Waiver. In the event any covenant or agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, 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 party making such waiver. No course of dealing between the Agency and the Lessee or any delay or omission on the part of the Agency in exercising any rights hereunder or under any other Project Document shall operate as a waiver.

Section 9.5 Effect on Discontinuance of Proceedings. In case any proceeding taken by the Agency under this Agreement or under any other Project Document on account of any Event of Default hereunder or thereunder shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Agency, then, and in every such case, the Agency shall be restored to its former position and rights hereunder and thereunder, and all

rights, remedies, powers and duties of the Agency shall continue as in effect prior to the commencement of such proceedings.

Section 9.6 Agreement to Pay Fees and Expenses of Attorneys and Other Consultants. In the event the Lessee should default under any of the provisions of this Agreement and the Agency should employ outside attorneys or other consultants or incur other out of pocket expenses for the collection of the Rental Payments payable hereunder or the enforcement of performance or observance of any obligation or agreement on the part of the Lessee herein contained or contained in any other Project Document, the Lessee agrees that it will on demand therefor pay to the Agency the reasonable fees and disbursements of such attorneys or other consultants and such other expenses so incurred.

Section 9.7 Certain Continuing Representations. If at any time during the term of this Agreement, any representation or warranty made by the Lessee pursuant to Section 2.2(v) would, if made on any date during the term of this Agreement and deemed made as of such date, be false, misleading or incorrect in any material respect, then, the Lessee shall be deemed to be in default under this Agreement unless the Agency shall, upon written request by the Lessee, either waive such default in writing or consent in writing to an exception to such representation or warranty so that such representation or warranty shall no longer be false, misleading or incorrect in a material respect.

Section 9.8 Late Delivery Fees.

(a) In the event the Lessee shall fail:

(i) to pay the Annual Administrative Fee on the date required under Section 8.3,

(ii) to file and/or deliver any of the documents required of the Lessee under Section 8.14 or Section 8.16 by the date therein stated (collectively, the “**Fixed Date Deliverables**”), or

(iii) to deliver to the Agency any of the documents as shall have been requested by the Agency of the Lessee under Section 8.15 within five (5) Business Days of the date so requested (collectively, the “**Requested Document Deliverables**”),

then the Agency may charge the Lessee on a daily calendar basis commencing with the day immediately following the date on which the payment, filing or delivery was due (the “**Due Date**”), the Per Diem Late Fee.

(b) If the Agency shall deliver written notice (a “**Notification of Failure to Deliver**”) to the Lessee of such failure to deliver on the Due Date the Annual Administrative Fee, a Fixed Date Deliverable and/or a Requested Document Deliverable, and such payment or document shall not be delivered to the Agency within ten (10) Business Days following delivery by the Agency to the Lessee of the Notification of Failure to Deliver, then, commencing from and including the eleventh (11th) Business Day following the delivery by the Agency to the Lessee of the Notification of Failure to Deliver, the Agency may charge the Lessee on a daily

calendar basis the Per Diem Supplemental Late Fee in respect of each noticed failure which shall be in addition to, and be imposed concurrently with, the applicable Per Diem Late Fee.

(c) The Per Diem Late Fee and the Per Diem Supplemental Late Fee shall each, if charged by the Agency, (i) accrue until the Lessee delivers to the Agency the Annual Administrative Fee, the Fixed Date Deliverable(s) and/or the Requested Document Deliverable(s), as the case may be, and (ii) be incurred on a daily basis for each such Annual Administrative Fee, Fixed Date Deliverable and/or Requested Document Deliverable as shall not have been delivered to the Agency on the Due Date.

(d) No default on the part of the Lessee under Section 8.3, 8.14, 8.15 or 8.16 to deliver to the Agency an Annual Administrative Fee, a Fixed Date Deliverable or a Requested Document Deliverable shall be deemed cured unless the Lessee shall have delivered same to the Agency and paid to the Agency all accrued and unpaid Per Diem Fees in connection with the default.

Section 9.9 Mortgagee Rights. The exercise by the Mortgagee or any Other Mortgagee of any rights or remedies pursuant to the Mortgage or an Other Mortgage shall not be a basis for an Event of Default, unless there is an independent Event of Default under the Project Documents, such as the Event of Default listed in Section 9.1(l) or a Transfer without Agency consent hereunder.

ARTICLE X TERMINATION

Section 10.1 Option to Terminate Company Lease and this Agreement. The Lessee shall have the option to terminate the Company Lease and this Agreement by paying all Rental Payments and any other amounts due and payable under this Agreement, including all recapture amounts (collectively, the "Project Payments"). The Lessee shall exercise such option by delivering to the Agency a written notice of an Authorized Representative of the Lessee to the Agency stating that the Lessee has elected to exercise its option under this Section 10.1 and the date on which such termination is to be effective (which date shall not be earlier than forty-five (45) days after the date of such notice). On a scheduled termination date, the Lessee shall take the actions required by Section 10.3(a). Such termination shall become effective on such scheduled termination date, subject, however, to Section 10.4.

Section 10.2 Termination of Company Lease and this Agreement on Agency Notice.

(a) On or after the Expiration Date (or earlier termination of this Agreement), upon receipt of ten (10) days prior written notice from the Agency directing termination of the Company Lease and this Agreement, the Lessee shall take the actions described in Section 10.3(a) and terminate the Company Lease and this Agreement.

(b) In the event the Lessee does not terminate the Company Lease and this Agreement (including taking all actions required to be taken by the Lessee pursuant to Section 10.3(a) within such ten (10) day period), then, commencing on the eleventh (11th) day after transmittal of the notice directing termination as provided in Section 10.2(a), the Lessee shall, in

addition to all other payment obligations due to the Agency hereunder, make rental payments to the Agency in the amount of the Per Diem Holdover Rental Amount until the Lessee shall have terminated the Company Lease and this Agreement in accordance with the provisions thereof and hereof.

Section 10.3 Actions Upon Termination.

(a) On the termination date provided for pursuant to Section 10.1 or 10.2, the Lessee shall:

(i) pay any and all other Project Payments then due plus one dollar (\$1.00),

(ii) perform all accrued obligations hereunder, and

(iii) deliver or cause to be delivered to the Agency with respect to the Mortgage, an executed release from such Mortgage in recordable form, executed by the Mortgagee.

(b) On the date of the termination of the Agency's interest in the Facility pursuant to Section 10.1 or 10.2, the Agency will, upon Lessee's performance of its obligations pursuant to Section 10.3(a), deliver or cause to be delivered to the Lessee:

(i) termination agreements and all other necessary documents confirming the release of the Agency's right, title and interest in and to the Facility Realty and terminating the Company Lease and this Agreement, and

(ii) all necessary documents releasing all of the Agency's rights and interests in and to any rights of action (other than as against the Lessee or any insurer of the insurance policies under Section 8.1), or any insurance proceeds (other than liability insurance proceeds for the benefit of the Agency) or condemnation awards, with respect to the Facility or any portion thereof.

(c) Upon termination of the Company Lease and this Agreement, the Agency, upon the written request and at the sole cost and expense of the Lessee, shall execute such instruments as the Lessee may reasonably request or as may be necessary to discharge this Agreement and the Company Lease as documents of record with respect to the Facility Realty, subject to Section 10.4.

Section 10.4 Survival of Lessee Obligations. Upon release of the Agency's interest in the Facility pursuant to Section 10.2 or 10.3, this Agreement and all obligations of the Lessee hereunder shall be terminated except the obligations of the Lessee under Sections 5.2, 5.3, 5.4, 8.2, 9.2, 9.6, 9.7, 9.8, 11.4, 11.5, 11.6, 11.11, 11.13 and 11.14 shall survive such termination.

ARTICLE XI MISCELLANEOUS

Section 11.1 Force Majeure. In case by reason of *force majeure* either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then except as otherwise expressly provided in this Agreement, if such party shall give notice and full particulars of such *force majeure* in writing to the other party within a reasonable time after occurrence of the event or cause relied on, the obligations of the party giving such notice (other than (i) the obligations of the Lessee to make the Rental Payments required under the terms hereof, or (ii) the obligations of the Lessee to comply with Sections 5.4, 8.1 or 8.2), so far as they are affected by such *force majeure*, shall be suspended during the continuance of the inability then claimed, which shall include a reasonable time for the removal of the effect thereof, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "*force majeure*" shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of any kind of the Government of the United States or of the State or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrest, restraining of government and people, war, terrorism, civil disturbances, explosions, partial or entire failure of utilities, shortages of labor, material, supplies or transportation, or any other similar or different cause not reasonably within the control of the party claiming such inability. Notwithstanding anything to the contrary herein, in no event shall the Lessee's financial condition or inability to obtain financing constitute a *force majeure*. It is understood and agreed that the requirements that any *force majeure* shall be reasonably beyond the control of the party and shall be remedied with all reasonable dispatch shall be deemed to be satisfied in the event of a strike or other industrial disturbance even though existing or impending strikes or other industrial disturbances could have been settled by the party claiming a *force majeure* hereunder by acceding to the demands of the opposing person or persons.

The Lessee shall promptly notify the Agency upon the occurrence of each *force majeure*, describing such *force majeure* and its effects in reasonable detail. The Lessee shall also promptly notify the Agency upon the termination of each such *force majeure*. The information set forth in any such notice shall not be binding upon the Agency, and the Agency shall be entitled to dispute the existence of any *force majeure* and any of the contentions contained in any such notice received from the Lessee.

Section 11.2 Priority. The Company Lease and this Agreement shall be subject and subordinate to any Mortgage and any Other Mortgage, to the terms and conditions thereof, and to the mortgage liens and security interests so created thereby; provided, however, that nothing in any Mortgage or Other Mortgage and no action taken by any Mortgagee or Other Mortgagee to enforce its rights or remedies under any Mortgage or Other Mortgage against the Agency or the Lessee shall impair any of the Agency's Reserved Rights or the Agency's ability to enforce its rights against the Lessee or any Guarantor, all of which shall be retained by the Agency and remain in full force and effect.

Section 11.3 Amendments. This Agreement may only be amended by a written instrument executed and delivered by the parties hereto.

Section 11.4 Service of Process. The Lessee represents that it is subject to service of process in the State and covenants that it will remain so subject until all obligations, covenants and agreements of the Lessee under this Agreement shall be satisfied and met. If for any reason the Lessee should cease to be so subject to service of process in the State, the Lessee hereby irrevocably consents to the service of all process, pleadings, notices or other papers in any judicial proceeding or action by designating and appointing Akerman Senterfitt LLP at 666 Fifth Avenue Madison Avenue, 20th Floor, New York, New York 10103, Attention: Michael Bailkin, Esq. as its agent upon whom may be served all process, pleadings, notices or other papers which may be served upon the Lessee as a result of any of its obligations under this Agreement. If such appointed agent shall cease to act or otherwise cease to be subject to service of process in the State, the Lessee hereby irrevocably designates and appoints the Secretary of State of the State of New York as its agent upon whom may be served all process, pleadings, notices or other papers which may be served upon the Lessee as a result of any of its obligations under this Agreement; provided, however, that the service of such process, pleadings, notices or other papers shall not constitute a condition to the Lessee's obligations hereunder.

For such time as any of the obligations, covenants and agreements of the Lessee under this Agreement remain unsatisfied, the Lessee's agent(s) designated in this Section 11.4 shall accept and acknowledge on the Lessee's behalf each service of process in any such suit, action or proceeding brought in any such court. The Lessee agrees and consents that each such service of process upon such agents and written notice of such service to the Lessee in the manner set forth in Section 11.5 shall be taken and held to be valid personal service upon the Lessee whether or not the Lessee shall then be doing, or at any time shall have done, business within the State and that each such service of process shall be of the same force and validity as if service were made upon the Lessee according to the laws governing the validity and requirements of such service in the State, and waives all claim of error by reason of any such service.

Such agents shall not have any power or authority to enter into any appearance or to file any pleadings in connection with any suit, action or other legal proceedings against the Lessee or to conduct the defense of any such suit, action or any other legal proceeding except as expressly authorized by the Lessee.

Section 11.5 Notices. 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 follows:

(1) if to the Agency, to

New York City Industrial Development Agency
110 William Street
New York, New York 10038
Attention: General Counsel (with a copy to the
Executive Director of the Agency at the
same address)

and

(2) if to the Lessee, to

Extell GT LLC
805 Third Avenue, 7th Floor
New York, New York 10022
Attention: Gary Barnett (with a copy to General Counsel
of the Lessee at the same address)

with a copy to

Akerman LLP
666 Fifth Avenue, 20th Floor
New York, New York 10103
Attention: Michael Bailkin, Esq.

The Agency shall deliver to any Mortgagee and Other Mortgagee (to the extent that the Lessee shall have delivered to the Agency the written notice address for such Mortgagee and/or Other Mortgagee) a copy of any notice of default or notice of its intent to convey its leasehold interest in the Facility to the Lessee that the Agency delivers to the Lessee. Such copies shall be delivered at the same time and in the same manner as such notice is required to be given to the Lessee.

The Agency and the Lessee may, by like notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice, certificate or other communication hereunder shall, except as may expressly be provided herein, be deemed to have been delivered or given (i) three (3) Business Days following posting if transmitted by mail, (ii) one (1) Business Day following sending if transmitted for overnight delivery by a nationally recognized overnight delivery service, or (iii) upon delivery if given by hand delivery, with refusal by an Authorized Representative of the intended recipient party to accept delivery of a notice given as prescribed above to constitute delivery hereunder.

Section 11.6 Consent to Jurisdiction. The Lessee irrevocably and unconditionally (i) agrees that any suit, action or other legal proceeding arising out of this Agreement or any other Project Document, the Facility, the Project, the relationship between the Agency and the Lessee, the Lessee's ownership, use or occupancy of the Facility and/or any claim for injury or damages may be brought in the courts of record of the State in New York County or the United States District Court for the Southern District of New York; (ii) consents to the jurisdiction of each such court in any such suit, action or proceeding; (iii) waives any objection which it may have to the venue of any such suit, action or proceeding in such courts; and (iv) waives and relinquishes any rights it might otherwise have (w) to move to dismiss on grounds of forum non conveniens, (x) to remove to any federal court other than the United States District Court for the Southern District of New York, and (y) to move for a change of venue to a New York State Court outside New York County.

If the Lessee commences any action against the Agency in a court located other than the courts of record of the State in New York County or the United States District Court for the Southern District of New York, the Lessee shall, upon request from the Agency, either consent to

a transfer of the action or proceeding to a court of record of the State in New York County or the United States District Court for the Southern District of New York, or, if the court where the action or proceeding is initially brought will not or cannot transfer the action, the Lessee shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of record of the State in New York County or the United States District Court for the Southern District of New York.

Section 11.7 Prior Agreements Superseded. 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 Company Lease or any other Project Document.

Section 11.8 Severability. 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.

Section 11.9 Effective Date; Counterparts. The date of this Agreement shall be for reference purposes only and shall not be construed to imply that this Agreement was executed on the date first above written. This Agreement was delivered on the Closing Date and amends and restates the Interim Agency Lease, which was delivered on the Commencement Date. This Agreement shall become effective upon its delivery on the Closing Date; provide that the obligations of the Lessee apply to the entire term of the Agreement (as set forth in Section 4.2) and such obligations commenced 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.

Section 11.10 Binding Effect. This Agreement shall inure to the benefit of the Agency, the Lessee and the Indemnified Parties, and shall be binding upon the Agency and the Lessee and their respective successors and assigns.

Section 11.11 Third Party Beneficiaries. It is the intention of the parties hereto that nothing contained herein is intended to be for, or to inure to, the benefit of any Person other than the parties hereto and the Indemnified Parties.

Section 11.12 Law Governing. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without regard or giving effect to the principles of conflicts of laws thereof.

Section 11.13 Waiver of Trial by Jury. The Lessee does hereby expressly waive all rights to a trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Agreement or any matters whatsoever arising out of or in any way connected with this Agreement, the Lessee's obligations hereunder, the Facility, the Project, the relationship between the Agency and the Lessee, the Lessee's ownership, use or occupancy of the Facility and/or any claim for injury or damages.

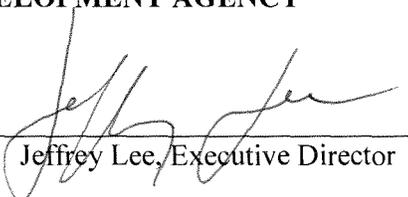
The provision of this Agreement relating to waiver of a jury trial and the right of re-entry or re-possession shall survive the termination or expiration of this Agreement.

Section 11.14 Recourse Under This Agreement. 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 or any natural person executing this Agreement on behalf 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 hereunder.

(Remainder of Page Intentionally Left Blank – Signature Page Follows)

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

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Jeffrey Lee, Executive Director

EXTELL GT LLC

By: _____
Marc Kwestel, Vice President

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

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**

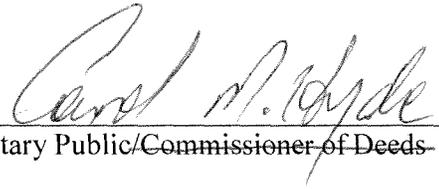
By: _____
Jeffrey Lee, Executive Director

EXTELL GT LLC

By:  _____
Marc Kwestel, Vice President

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

On the 5th day of December, in the year two thousand thirteen, before me, the undersigned, personally appeared **Jeffrey Lee** personally known to be 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/Commissioner of Deeds

CAROL M. HYDE
Notary Public, State of New York
No. 4977270
Qualified in Queens County
Commission Expires Jan. 23, 2015

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

On the 9th day of December in the year 2013, before me, the undersigned, personally appeared **Marc Kwestel**, personally known to me or proved to me on the basis of satisfactory evidence to me 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

MALYA SCHULMAN
Notary Public, State of New York
No. 01SC6259122
Qualified in New York County
Commission Expires April 9, 2016

APPENDICES

EXHIBIT A

DESCRIPTION OF THE LAND

SCHEDULE A

The Condominium Units (the "Units") in the Building known as The 50 West 47th Street Condominium (the "Building"), located at and known as and by Street Number 44-50 West 47th Street and 55 West 46th Street, New York, New York, designated and described as Unit No. (See Schedule A-1) in the Declaration establishing a plan for condominium ownership of said Building and the Land upon which it is situate (the "Land") under Article 9-B of the Real Property Law of the State of New York, dated 10/16/2012 and recorded on 11/26/2012 in the Office of the Register of the City of New York, County of New York under CRFN 2012000463223, as amended by First Amendment to Declaration, dated as of 12/17/2012 and recorded on 1/15/2013 under CRFN 2013000021064, Second Amendment to Declaration, dated as of 2/15/2013 and recorded on 4/16/2013 under CRFN 2013000150334, Third Amendment to Declaration, dated as of 5/5/2013 and recorded on 5/14/2013 under CRFN 2013000196425, Fourth Amendment to Declaration, dated as of 7/10/2013 and recorded on 7/31/2013 under CRFN 2013000301159, Fifth Amendment to Declaration, dated as of 5/5/2013 and recorded on 9/12/2013 under CRFN 2013000372741, said Unit is also being designated as Tax Lots (See Schedule A-1) in Block 1262 of Section 5 of the Borough of Manhattan, on the Tax Map of the Real Property Assessment Department of the City of New York and on the Floor Plans of the said Building filed in the Real Property Assessment Department of the City of New York as Condominium Plan No. 2361 and also filed in the City Register's Office on 11/26/2012 as Condominium Map filed under CRFN 2012000463224, as amended by Amended Floor Plans filed in the Real Property Assessment Department of the City of New York as Condominium Plan No. 2361-A and also filed in the City Register's Office on 1/15/2013 as Condominium Map filed under CRFN 2013000021065 and further amended by Amended Floor Plan No. 2361-B and filed in the Registers Office on 4/16/2013 under CRFN 2013000150335, amendment filed on 5/14/2013 under CRFN 2013000196426.

TOGETHER with an undivided (See Schedule A-1) percent interest in Common Elements of the Condominium as described in the Declaration.

The Land upon which the Building containing the Units is situate is described as follows:

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

BEGINNING at a point on the northerly side of West 46th Street, distant 260 feet 0 inches easterly from the corner formed by the intersection of the said northerly side of West 46th Street with the easterly side of Avenue of the Americas;

RUNNING THENCE northerly at right angles to the said northerly side of West 46th Street, 100 feet 5 inches;

THENCE easterly parallel with the said northerly side of West 46th Street, 21 feet 0 inches;

THENCE northerly at right angles to the southerly side of West 47th Street, 100 feet 5 inches to the said southerly side of West 47th Street;

THENCE easterly along the said southerly side of West 47th Street, 109 feet 0 inches;

THENCE southerly at right angles to the said southerly side of West 47th Street, 200 feet 10 inches to the aforementioned northerly side of West 46th Street;

SCHEDULE A - Continued

THENCE westerly along the said northerly side of West 46th Street, 130 feet 0 inches to the point or place of BEGINNING.

TOGETHER with the benefits of the Cantilever Easement set forth in Section II.A.3 of the Zoning Lot Development and Easement Agreement made by and between Lumig Enterprises Corporation and Extell Diamond Tower LLC dated as of 10/16/2008 and recorded 11/6/2008 under CRFN 2008000431667 as amended and restated by Amended and Restated Zoning Lot Development and Easement Agreement made by and between Lumig Enterprises Corporation and Extell GT LLC (f/k/a Extell Diamond Tower LLC) dated as of 9/4/2009 and recorded on 9/18/2009 under CRFN 2009000303251.

AND FURTHER TOGETHER

with the benefits of the (1) Easement for Light and Air over Tax Lot 117 in Block 1262 as is set forth in the Zoning Lot Development and Easement Agreement made by and between Joseph Wehbe and 47 West 46 LLC, dated as of 5/13/2002 and recorded 9/16/2002 in Reel 3609 Page 1615; (2) Easement for Light and Air over Tax Lot 9 in Block 1262 as is set forth in the Zoning Lot Development and Easement Agreement made by and between Wentworth Hotel Company and Extell Diamond Tower LLC, dated as of 5/2/2007 and recorded 5/10/2007 under CRFN 2007000244019; (3) Easement for Light and Air over Tax Lot 17 in Block 1262 as is set forth in the Zoning Lot Development and Easement Agreement made by and between 77NY@46 St., LLC and Extell Diamond Tower LLC, dated 6/28/2006 and recorded 7/28/2006 under CRFN 2006000430091; (4) Easement for Light and Air over Tax Lot 18 in Block 1262 as is set forth in the Zoning Lot Development and Easement Agreement made by Extell GT LLC, dated as of 4/8/2011 and recorded 4/19/2011 under CRFN 2011000141202, as corrected by Corrected Zoning Lot Development and Easement Agreement made by Extell GT LLC, dated as of 4/8/2011 and recorded 5/27/2011 under CRFN 2011000190990; (5) Easement for Light and Air over Tax Lot 19 in Block 1262 as is set forth in the Zoning Lot Development and Easement Agreement by and between Extell Diamond Tower LLC and Chun Bong Lee, Inc. dated as of 12/1/2006 and recorded on 12/11/2006 under CRFN 2006000679149; (6) Easement for Light and Air over Tax Lot 20 in Block 1262 as is set forth in the Zoning Lot Development Agreement made by and between ExtellGT LLC (f/k/a Extell Diamond Tower LLC) and 37 West 46th Street Realty Corp., dated as of 3/15/2007 and recorded 3/23/2007 under CRFN 2007000154033, as amended by Amended and Restated Zoning Lot Development and Easement Agreement made by and between 37 West 46th Street Realty Corp. and Extell GT LLC (f/k/a Extell Diamond Tower LLC), dated as of 11/30/2009 and recorded 12/1/2009 under CRFN 2009000392310; (7) Easement for Light and Air over Tax Lot 21 in Block 1262 as is set forth in the Zoning Lot Development and Easement Agreement made by Extell GT LLC(f/k/a Extell Diamond Tower LLC), in its capacity as developer and in its capacity as owner, dated as of 12/1/2009 and recorded 12/23/2009 under CRFN 2009000421910; (8) Easement for Light and Air over Tax Lot 23 in Block 1262 as is set forth in the Zoning Lot Development and Easement Agreement made by Extell GT LLC (f/k/a Extell Diamond Tower LLC), in its capacity as developer and in its capacity as owner, dated as of 11/12/2009 and recorded 11/30/2009 under CRFN 2009000391405, as amended by First Amendment to Zoning Lot Development and Easement Agreement made by Extell GT LLC (f/k/a Extell Diamond Tower LLC), in its capacity as developer and in its capacity as owner, dated as of 12/17/2009 and recorded 1/8/2010 under CRFN 2010000006815; (9) Easement for Light and Air over Tax Lot 123 in Block 1262 as is set forth in the Zoning Lot Development and Easement Agreement by and between Extell Diamond Tower LLC and 29 West 46th Street Associates, dated as of 3/15/2007 and recorded on 3/23/2007 under CRFN 2007000154038; (10) Easement for Light and Air over Tax Lot 52 in Block 1262 as is set forth in the Zoning Lot Development and Easement Agreement made by Extell GT LLC (f/k/a Extell Diamond Tower LLC), in its capacity as developer and in its capacity as owner, dated as of 12/22/2009 and recorded 1/5/2010 under CRFN 2010000001474; (11) Easement for Light and Air over Tax Lot 53 in Block 1262 as is set forth in the Zoning Lot Development and Easement Agreement made

SCHEDULE A - Continued

by and between Extell Diamond Tower LLC and 28 West 47th LLC dated as of 2/14/2007 and recorded on 2/21/2008 under CRFN 2008000070691; (12) Easement for Light and Air over Tax Lot 63 in Block 1262 as is set forth in the Zoning Lot Development and Easement Agreement made by and between Lumig Enterprises Corporation and Extell Diamond Tower LLC dated as of 10/16/2008 and recorded 11/6/2008 under CRFN 2008000431667, as amended and restated by Amended and Restated Zoning Lot Development and Easement Agreement made by and between Lumig Enterprises Corporation and Extell GT LLC (f/k/a Extell Diamond Tower LLC), dated as of 9/4/2009 and recorded 9/18/2009 under CRFN 2009000303251; (13) Easement for Light and Air over Tax Lot 54 in Block 1262 as is set forth in the Zoning Lot Development and Easement Agreement made by 30-34 West 47th Owner LLC and 30-34 West 47th Owner LLC dated as of 4/28/2009 and recorded on 4/29/2009 under CRFN 2009000126278, as amended by Amended and Restated Zoning Lot Development and Easement Agreement by and between JEMSA Realty LLC and Extell GT LLC dated as of 9/28/2012 and recorded on 11/7/2012 under CRFN 2012000437428; (14) Zoning Lot Development and Easement Agreement by and between Extell Diamond Tower LLC and 1049 RF LLC, dated as of 11/15/2007 and recorded on 12/13/2007 under CRFN 2007000610181.

(For Information Only: The Land described in this Schedule A consists of present Tax Lots 11, 12, 13, 14, 15, 16, 59, 60, 62, and 162 of Block 1262; the Easement Parcels described herein consist of present Tax Lots 117, 9, 17, 18, 19, 20, 21, 23, 123, 52, 53, 63 and 54 of Block 1262.)

*For conveyancing only
if intended to be conveyed.*

Together with all right, title and interest of, in and to any streets and roads abutting the above described premises, to the center line thereof.

SCHEDULE A-1

Block 1262

	Unit Designation	Tax Lot Number	% of Interest in Common Elements
1.	C3B	1702	0.0896%
2.	C1A	1703	0.5617%
3.	C1B	1704	0.3211%
4.	2A	1706	1.7141%
5.	2B	1707	1.2415%
6.	2C	1708	0.6513%
7.	3C/D	1711	0.7254%
8.	3F	1713	0.1276%
9.	9A	1715	0.6978%
10.	9C	1716	0.6901%
11.	9H	1717	0.7871%
12.	9M	1718	0.7963%
13.	10A	1719	0.7304%
14.	10C	1720	0.7238%
15.	10M	1724	0.7635%
16.	11A	1725	0.7000%
17.	11C	1726	0.6975%
18.	11H	1727	0.7902%
19.	11M	1728	0.7902%
20.	12A	1729	0.7004%
21.	12C	1730	0.6989%
22.	12H	1731	0.7098%
23.	12M	1732	0.7913%
24.	14ABS	1733	0.4092%
25.	14CD	1734	0.2593%
26.	14EFG	1735	0.5116%
27.	14HIJ	1736	0.7228%
28.	14MNO	1737	0.5003%
29.	14P	1738	0.1434%
30.	14Q	1739	0.2184%
31.	14R	1740	0.2192%
32.	15B	1742	0.1815%
33.	15CD	1743	0.2181%
34.	15EF	1744	0.5063%
35.	15L	1747	0.1834%
36.	15M	1748	0.2588%
37.	15N	1749	0.2210%
38.	16ABS	1751	0.5699%
39.	16CD	1752	0.4142%
40.	16EF	1753	0.2227%
41.	16GHI	1754	0.3708%
42.	16L	1756	0.2915%
43.	16PQR	1758	0.3749%
44.	17CDE	1761	0.4138%

SCHEDULE A-1 Continued

	Unit Designation	Tax Lot Number	% of Interest in Common Elements
45.	17FG	1762	0.2987%
46.	17N	1765	0.6626%
47.	17ST	1766	0.3711%
48.	18AT	1767	0.2908%
49.	18CDE	1769	0.4090%
50.	18F	1770	0.2195%
51.	18S	1774	0.1455%
52.	19H	1778	0.2198%
53.	19QR	1781	0.4049%
54.	20E	1785	0.2238%
55.	20OPQ	1791	0.2604%
56.	20S	1793	0.1484%
57.	21B	1795	0.2854%
58.	21CD	1796	0.7283%
59.	21E	1797	0.2999%
60.	OU	1798	39.3050%
61.	PUA	1799	3.6820%
62.	RUB	1806	0.1790%

**PROJECT COMPLETION CERTIFICATE OF LESSEE AS
REQUIRED BY SECTIONS 3.3(f) AND 8.14(g) OF THE LEASE AGREEMENT**

The undersigned, an Authorized Representative (as defined in the Lease Agreement referred to below) of Extell GT LLC, a limited liability company organized and existing under the laws of the State of Delaware (the "Lessee"), HEREBY CERTIFIES that this Certificate is being delivered in accordance with the provisions of Section 3.3(f) and 8.14(g) of that certain Agency Lease Agreement, dated as of December 1, 2013 (the "Lease Agreement"), between the New York City Industrial Development Agency (the "Agency") and the Lessee, and FURTHER CERTIFIES THAT (capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in the Lease Agreement):

(i) the Facility Work is finished and the Project has been completed substantially in accordance with the plans and specifications therefor and the date of completion of the Project was May 15, 2013; and

(ii) the Agency has a good and valid leasehold estate in the Facility Realty, and all property constituting the Facility is subject to the Company Lease, and the Lease Agreement, subject only to Permitted Encumbrances; and

(iii) attached hereto is one of the following (check only one and attach the indicated document):

- certificate of occupancy, or
- (zero occupancy) temporary certificate of occupancy, or
- amended certificate of occupancy, or
- letter of no objection;

(iv) in accordance with all applicable laws, regulations, ordinances and guidelines, the Facility is ready for occupancy, use and operation for its intended purpose under the Lease Agreement and such occupancy, use and operation has in fact commenced; and

(v) check as applicable:

- all costs for Facility Work have been paid, or
- all costs for Facility Work have been paid except for
 - amounts not yet due and payable (attach itemized list) and/or
 - amounts the payments for which are being contested in good faith (attach itemized list with explanations; and

(vi) releases of mechanics' liens have been obtained from the general contractor and from all contractors and materialmen who supplied work, labor, services, machinery, equipment, materials or supplies in connection with the Facility Work, except for releases-of-liens pertinent to (y) amounts not yet due and payable, or (z) any amount the payment of which is being contested in good faith; and

(vii) attached to this Certificate is evidence that all real property taxes and assessments, and payments in lieu of taxes, if any, due and payable under Article V and 8.17 of the Lease Agreement in respect of the Facility have been paid in full.

Notwithstanding anything herein or elsewhere that may be inferred to the contrary, the undersigned hereby understands and agrees on behalf of the Lessee as follows: (i) this Certificate shall be deemed incomplete if costs of the Facility Work are due, unpaid, and not being contested in good faith; and (ii) this Certificate shall be deemed incomplete if, in the Agency's reasonable discretion, the Lessee is not contesting in good faith the payment of the cost of work when such payment is otherwise due.

This Certificate is given without prejudice to any rights of the Lessee against third parties existing on the date hereof or which may subsequently come into being and no Person other than the Agency may benefit from this Certificate.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this _____ day of _____, _____.

EXTELL GT LLC

By: _____

Name:

Title:

EXHIBIT C

AUTHORIZED REPRESENTATIVE

(i) of the Lessee:

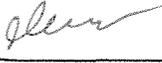
<u>Name</u>	<u>Title</u>	<u>Signature</u>
Gary Barnett	President	 _____
Marc Kwestel	Vice President	 _____

EXHIBIT D-1

Principals

Lessee:

Name

Title

Gary Barnett

President

Marc Kwestel

Vice President

EXHIBIT D-2

OWNERS OF THE LESSEE

INDIVIDUAL OWNERS	
Name	% Ownership or Control of the Lessee
NONE	NONE

ENTITY OWNERS	
Name	% Ownership or Control of the Lessee
Extell GT Member LLC	pass through
Extell GT Associates LLC	100%
Diamond Investor LLC	0.3224% of Extell GT Associates LLC
Extell Jewelry Member LLC	11.9650% of Extell GT Associates LLC
Meridian DTA Direct Member LLC	87.7126% of Extell GT Associates LLC

OWNERS of those ENTITIES that own or control more than 10% of the Lessee ("10% Entities")		
10% ENTITY (name and actual %)	INDIVIDUAL AND ENTITY OWNERS	% Ownership or Control
Extell Jewelry Member LLC	GB 47 LLC	93%
	Lipton 47 Holdings LLC	7%
Meridian DTA Direct Member, LLC	Meridian DTA Member, LLC	100%

EXHIBIT E
PROJECT COST BUDGET

	<u>Mortgage Loan</u>	<u>Funds of Lessee</u>	<u>Total</u>
Land and Building Acquisition	\$125,662,220	\$58,177,758	\$183,839,978
Renovation/Building Improvements	\$193,732,089	\$175,628,004	\$369,360,093
Equipment	-----	-----	
Fees/Other Soft Costs	<u>\$55,605,691</u>	<u>\$112,797,281</u>	<u>\$168,402,972</u>
Total	\$375,000,000	\$346,603,043	\$721,603,043

EXHIBIT F

[FORM OF REQUIRED DISCLOSURE STATEMENT]

The undersigned, an authorized representative of _____, a _____ organized and existing under the laws of the State of _____, DOES HEREBY CERTIFY, REPRESENT AND WARRANT to the New York City Industrial Development Agency (the "Agency") pursuant to [Section 8.20] [Section 8.9] of that certain Agency Lease Agreement, dated as of _____ 1, 20____, between the Agency and _____, a _____ organized and existing under the laws of the State of _____ (the "Lease Agreement") THAT:

[if being delivered pursuant to 8.20 of the Lease Agreement] None of the surviving, resulting or transferee Entity, any of the Principals of such Entity, or any Person that directly or indirectly Controls, is Controlled by, or is under common Control with such Entity:

[if being delivered pursuant to 8.9 of the Lease Agreement] Neither the above-referenced Entity, nor any of the Principals of such Entity, nor any Person that directly or indirectly Controls, is Controlled by, or is under common Control with such Entity:

(1) is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Agency or the City, unless such default or breach has been waived in writing by the Agency or the City, as the case may be;

(2) has been convicted of a felony and/or any crime involving moral turpitude in the preceding ten (10) years;

(3) has received written notice of default in the payment to the City of any taxes, sewer rents or water charges in excess of \$5,000 that has not been cured or satisfied, unless such default is then being contested with due diligence in proceedings in a court or other appropriate forum; or

(4) has, at any time in the three (3) preceding years, owned any property which, while in the ownership of such Person, was acquired by the City by in rem tax foreclosure, other than a property in which the City has released or is in the process of releasing its interest to such Person pursuant to the Administrative Code of the City.

As used herein, the following capitalized terms shall have the respective meanings set forth below:

"City" shall mean The City of New York.

"Control" or "Controls" shall mean the power to direct the management and policies of a Person (x) through the ownership, directly or indirectly, of not less than a majority of its voting securities, (y) through the right to designate or elect not less than a majority of the members of its board of directors or trustees or other Governing Body, or (z) by contract or otherwise.

“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.

“Governing Body” shall mean, when used with respect to any Person, its board of directors, board of trustees or individual or group of individuals by, or under the authority of which, the powers of such Person are exercised.

“Person” shall mean an individual or any Entity.

“Principal(s)” shall mean, with respect to any Entity, the most senior three officers of such Entity, any Person with a ten percent (10%) or greater ownership interest in such Entity, and any Person as shall have the power to Control such Entity, and “principal” shall mean any of such Persons.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this ____ day of _____, 20__.

[NAME OF CERTIFYING ENTITY]

By: _____

Name:

Title:

EXHIBIT G

BENEFIT PERCENTAGE¹

Category	Calculations	Benefit Percentage
1	<ul style="list-style-type: none">• The Jewelry Industry Participant Percentage shall be greater than 85.00%; AND• The Attraction Jewelry Industry Participant Percentage shall be greater than 50.00%	100%
2	If Category 1 shall not apply, AND: <ul style="list-style-type: none">• The Jewelry Industry Participant Percentage shall be greater than 78.34%; AND• The Attraction Jewelry Industry Participant Percentage shall be greater than 40.00%	90.0%
3	If neither Category 1 nor 2 shall apply, AND: <ul style="list-style-type: none">• The Jewelry Industry Participant Percentage shall be greater than 71.67%; AND• The Attraction Jewelry Industry Participant Percentage shall be greater than 30.00%	80.0%
4	If neither Category 1, 2 nor 3 shall apply, AND: <ul style="list-style-type: none">• The Jewelry Industry Participant Percentage shall be greater than 65.00%; AND• The Attraction Jewelry Industry Participant Percentage shall be greater than 20.00%	70%
5	If neither Category 1, 2, 3 nor 4 shall apply	0%

¹ Note that the Attraction Jewelry Industry Participant Percentage is only tested once, on the date of Benefit Verification.

EXHIBIT H

PROJECT FINANCE PLAN

	Total	Non IDA	IDA – Exempt	IDA – Non Exempt
Acquisition Loan	125,662,220			125,662,220
IDA Portion of DB Building Loan	31,480,637		31,480,637	
Portion of DB Building Loan that IDA isn't a part of DB Project Loan	87,251,452	87,251,452		
Subtotal Deutsche Bank Senior EB-5	300,000,000	142,857,143	31,480,637	125,662,220
Total	375,000,000	142,857,143	106,480,637	125,662,220

FORM OF COMPLIANCE REPORTING DOCUMENTATION

Annual Tenant / Owner Questionnaire
For the period ending October 1, 20[]

Name (the "Company"): _____

Address: _____

Contact Person: _____

Telephone number: _____

Email: _____

Principal(s) (ownership of 10% or more of the Company): _____

Please describe the Company's legal structure:

Please describe the nature of the Company's business operations: _____

Please provide the Company's EIN: _____

Please provide the NAICS code for the Company's business: _____

Unit designation (the "Unit"): _____

Tax Lot Number of the Unit: _____

Total number of Rentable Square Feet of the Unit: _____

Total number of Rentable Square Feet in the Unit occupied by the Company continuously for a 12-month period ending on October 1, 20[]: _____

Please indicate whether the Company owns or rents the Unit that it occupies: _____

Rent []

Lease Commencement Date: _____ Lease Termination Date: _____

Landlord name: _____

Own [] Date of purchase: _____

List any other Tenants / Owners / Occupants that have occupied the Unit during the 12 month period ending October 1, 20[]: _____

Name of Occupant: _____

Contact Person: _____

Telephone Number: _____

Please indicate whether you have any subtenants in the Unit: [] yes [] no

If yes, please provide each subtenant with a blank copy of this questionnaire.

Name of Subtenant, if applicable: _____

Contact person: _____

Telephone number: _____

[Attach a rider with this information if you have more than one subtenant]

Sublease Commencement Date: _____ Sublease Termination
Date: _____

Within 60 days after completion and submission of this form, if you are a qualified Jewelry Industry Participant, you will be asked to sign a statement confirming that you have received a payment from Extell GT LLC, the amount of such payment and the rentable square feet occupied by the Company in the Unit over the 12 months ending on the preceding October 1st.

In accordance with Local Law 62 (2010), please complete the questionnaire attached as Exhibit A (as such form may be amended from time to time by the Agency) and please collect completed questionnaires from any subtenants and provide them to:

Extell GT LLC
805 Third Avenue, 4TH Floor
New York, NY 10022

Certification: I, the undersigned, an authorized officer or principal owner of the Company, hereby certify to the best of my knowledge and belief that all information contained in this report is true and complete. This form and information provided pursuant hereto may be disclosed to the New York City Economic Development Corporation ("NYCEDC"), New York City Industrial Development Agency ("NYCIDA") and may be disclosed by NYCEDC or NYCIDA in connection with the administration of the programs of NYCEDC, NYCIDA and/or the City of New York; and, without limiting the foregoing, such information may be included in (x) reports prepared by NYCEDC pursuant to New York City Charter Section 1301 et. Seq., (y) other reports required of NYCIDA or NYCEDC, and (z) any other reports or disclosure required by law.

Company

Name: _____

Date: _____

By: _____

(print name): _____

Title: _____

Exhibit A
Employment and Benefits Questionnaire

EXHIBIT J

FORM OF NOTICE OF SALE OF CONDOMINIUM UNIT

EXTELL GT LLC
805 Third Avenue, 7th Fl
New York, NY 10022

[DATE]

New York City Industrial Development Agency
110 William Street
New York, NY 10038
Attention: Executive Director

- Re: (1) Amended and Restated Company Lease Agreement made by Extell GT LLC, as landlord, and New York City Industrial Development Agency, as tenant, dated as of 12/1/2013, a memorandum of which was recorded under CRFN 2013 _____ in the Office of the City Register, New York County ("Company Lease")
- (2) Amended and Restated Agency Lease Agreement made by New York City Industrial Development Agency, as sublandlord, and Extell GT LLC, as subtenant, dated as of 12/1/2013, a memorandum of which was recorded under CRFN 2013 _____ in the Office of the City Register, New York County ("Agency Lease")

Gentlemen:

Reference is made to the Company Lease and the Agency Lease described above and the proposed sale of Unit _____ in the 50 West 47th Street Condominium also known as International Gem Tower. This will confirm that _____ is acquiring Unit _____ by deed dated _____ for its own use. Accordingly, this letter agreement shall confirm that Unit _____ upon such conveyance is not a part of the Project (as defined in the Agency Lease) and that the conveyance of Unit _____ by Extell GT LLC is not subject to either the Company Lease or the Agency Lease.

Please confirm your agreement by countersigning in the space provided below.

Very truly yours,
EXTELL GT LLC

By: _____
Name:
Title:

Accepted and Agreed:
NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY

By: _____
Name:
Title: