

**SEVERED AGENCY LEASE AGREEMENT (PE 1 UNIT)**

Dated as of May 1, 2019

by and between

**NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY**

and

**HUDSON YARDS NORTH TOWER TENANT LLC,**  
a limited liability company organized and existing under the laws of the  
State of Delaware, having its principal office at c/o The Related  
Companies, L.P., 60 Columbus Circle, New York, New York 10023,  
as Lessee

2014 ERY Tenant LLC Project – PE 1 Unit

Affecting the Facility Realty located at the northeast corner of the  
Eastern Rail Yard Section of the John D. Caemmerer West Side Yard,  
between West 30<sup>th</sup> and 33<sup>rd</sup> Streets and between 10<sup>th</sup> and 11<sup>th</sup> Avenues,  
PE 1 Unit, 20-30 Hudson Yards Condominium  
30 Hudson Yards (a/k/a 500 West 33<sup>rd</sup> Street), New York, New York 10001  
Manhattan Block 702, Lot 1306  
(formerly part of Lot 125, which was formerly known as Lot 9111)  
on the Official Tax Map of New York County  
in the County of New York, City and State of New York  
as more particularly described in Exhibit A hereto  
File No. 389205.8

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## SEVERED AGENCY LEASE AGREEMENT (PE 1 UNIT)

This **SEVERED AGENCY LEASE AGREEMENT (PE 1 UNIT)**, dated as of May 1, 2019 (this “**Agreement**”), is by and between **NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York, having its principal office at 110 William Street, New York, New York 10038 (the “**Agency**”), and **HUDSON YARDS NORTH TOWER TENANT LLC**, a limited liability company duly organized and existing under the laws of the State of Delaware (the “**Lessee**”). Capitalized terms used herein shall have the respective meanings assigned to such terms throughout this Agreement.

### 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 and to promote job opportunities for the benefit of the City and the inhabitants thereof, on March 17, 2014, the Agency and ERY Tenant LLC, a limited liability company duly organized and existing under the laws of the State of Delaware, having its principal office at c/o The Related Companies, L.P., 60 Columbus Circle, New York, New York 10023 (“**Original Lessee**”) entered into a Straight-Lease Transaction in respect of (i) the construction by the Original Lessee of a platform deck over the existing railyards located on the Eastern Rail Yard of Hudson Yards, which is between West 30<sup>th</sup> and 33<sup>rd</sup> Streets between 10<sup>th</sup> and 11<sup>th</sup> Avenues, in New York, New York (the “**Eastern Rail Yard**”), (ii) the performance by the Original Lessee of other preliminary site improvements to the Eastern Rail Yard and (iii) the construction, furnishing and equipping by the Original Lessee of an approximately 3,830,000 gross square foot, LEED certified, class-A office building, which will include approximately 1,100,000 gross square feet of retail space, to be located within airspace having an approximately 198,898 square foot footprint within the Eastern Rail Yard, which airspace constituted Borough of Manhattan, Block 702 and Lot 125 (formerly Lot 9111), and was generally known by the street address of 500 West 33<sup>rd</sup> Street (a/k/a 20 and 30 Hudson Yards), New York, New York 10001 (the real property described in this clause (iii), and as defined as the “**Facility Realty**” in the Original Agency Lease, is referred to herein as the “**Original Facility Realty**”) (the project described by clauses (i) through (iii) above, and as defined as the “**Project**”



in the Original Agency Lease (defined below), is referred to herein as the “**Original Project**”); and

**WHEREAS**, on March 17, 2014, the Metropolitan Transportation Authority (the “**MTA**”), the fee owner of the Original Facility Realty, ground leased the Original Facility Realty to the Original Lessee pursuant to that certain Agreement of Lease (Eastern Rail Yard Section of the John D. Caemmerer West Side Yard – Tower A/Retail Parcel), dated as of March 17, 2014 (the “**Original Ground Lease**”), by and between the MTA as landlord and the Original Lessee as tenant, all as more particularly described in that certain Memorandum of Agreement of Lease, dated as of March 17, 2014, and recorded in the City Register’s Office on April 8, 2014 as CRFN 2014000117753; and

**WHEREAS**, to effect, and in furtherance of, the Straight-Lease Transaction in respect of the Original Project, (i) the Original Lessee subleased the Original Facility Realty to the Agency pursuant to a Company Lease Agreement, dated as of March 1, 2014 (the “**Original Company Lease**”), which was recorded in the City Register’s Office on April 8, 2014 as CRFN 2014000117754, and (ii) the Agency sub-subleased the Original Facility Realty to the Original Lessee pursuant to an Agency Lease Agreement, dated as of March 1, 2014, by and between the Agency and the Original Lessee (the “**Original Agency Lease**”), a memorandum of which was recorded in the City Register’s Office on April 8, 2014 as CRFN 2014000117755; and

**WHEREAS**, pursuant to that certain Declaration, dated as of September 10, 2015, and recorded in the City Register’s Office on December 9, 2015 at CRFN No. 2015000436062 (the “**Original Declaration**”); and the condominium created by the Original Declaration, the “**Condominium**”), made by the MTA, as declarant, a plan for condominium ownership has been adopted for the Original Facility Realty in accordance with Article 9-B of the Real Property Law of the State of New York (the “**Condominium Act**”), pursuant to which the Original Facility Realty was divided into the “Common Elements”, the “Retail Unit”, the “Time Warner Unit”, the “Office Unit” and the “Ob Deck Unit” (each as defined in the Original Declaration); and

**WHEREAS**, pursuant to Section 11.3 of the Original Agency Lease and Article VII of the Original Company Lease, the Agency acknowledged that the Original Lessee may subject the Original Facility Realty to a condominium regime (the “**First Severance**”) and that promptly upon the request of the Original Lessee, the Original Lessee and the Agency would amend, modify and/or restate the project documents in respect of the Original Project and enter into new severed lease agreements and project documents as necessary to effect such First Severance; and

**WHEREAS**, the First Severance was effected on the 2015 Commencement Date (as hereinafter defined) in accordance with that certain Severance Transaction Agreement, dated as of December 11, 2015 (as amended, restated, supplemented or otherwise modified from time to time, the “**First Severance Transaction Agreement**”), by and among the Agency, Hudson Yards Infrastructure Corporation (“**HYIC**”), the Original Lessee, Lessee and ERY Retail Podium LLC (the “**Retail Lessee**”); and

**WHEREAS**, on the 2015 Commencement Date and in accordance with the First Severance Transaction Agreement, the Original Lessee ground leased from the MTA the “**Land**”

as defined in the 2015 Tower A Agency Lease (defined below), pursuant to that certain Agreement of Severed Parcel Lease (Eastern Rail Yard Section of the John D. Caemmerer West Side Yard), dated as of the 2015 Commencement Date, as severed by that certain Severance of Lease (OX Unit and Time Warner Unit), dated as of the Second Severance Date (as defined herein), as amended by that certain Amendment to Agreement of Severed Parcel Lease (Eastern Rail Yard Section of the John D. Caemmerer West Side Yard), dated as of the Second Severance Date, as further severed by the Severance Agreement (as defined herein), dated as of the Commencement Date (as defined herein) and as further amended by the Second Amendment to Ground Lease (as defined herein), dated as of the Commencement Date (as amended, restated, supplemented and otherwise modified from time to time, the “**Ground Lease**”), a memorandum of which was recorded in the City Register’s Office on January 8, 2016 as CRFN 2016000007895; and

**WHEREAS**, on the 2015 Commencement Date and in accordance with the First Severance Transaction Agreement, the Original Lessee subleased the “**Facility Realty**” as defined in the Tower A Agency Lease (the “**Tower A Facility Realty**”) to the Agency pursuant to that certain Severed Company Lease Agreement (Tower A), dated as of December 1, 2015 (as amended, restated, supplemented and otherwise modified from time to time, the “**2015 Tower A Company Lease**”), between the Original Lessee and the Agency, which was recorded in the City Register’s Office on January 8, 2016 as CRFN 2016000007896; and

**WHEREAS**, on the 2015 Commencement Date and in accordance with the First Severance Transaction Agreement, the Agency sub-subleased the Tower A Facility Realty to the Original Lessee pursuant to that certain Severed Agency Lease Agreement (Tower A), dated as of December 1, 2015 (the “**2015 Tower A Agency Lease**”), a memorandum of which was recorded in the City Register’s Office on January 8, 2016 as CRFN 2016000007897; and

**WHEREAS**, immediately after the transactions described above, the Original Lessee assigned to the Lessee all of its rights, title, estates, interest, liabilities, duties, covenants, obligations and agreements in, to and under the Ground Lease, the 2015 Tower A Company Lease and the 2015 Tower A Agency Lease; and

**WHEREAS**, by providing for the First Severance in the Original Agency Lease and the Original Company Lease, and by consummating the transactions contemplated in the First Severance Transaction Agreement, the Agency has, following the date of the First Severance, continuously exercised jurisdiction, control and supervision over such severed portion of the Original Facility Realty for purposes of Section 874(1) of Article 18-A of the General Municipal Law of the State of New York; and

**WHEREAS**, pursuant to that certain Amended and Restated Declaration, dated as of December 12, 2018, and recorded in the City Register’s Office on April 15, 2019 as CRFN 2019000118977 (as may be further amended, restated, supplemented and otherwise modified from time to time, the “**Amended and Restated Declaration**”; and together with the Original Declaration, collectively, the “**Declaration**”; the Declaration and By-Laws of the Condominium from time to time are hereinafter referred to as the “**Condominium Documents**”), made by the MTA, as declarant, an amended and restated plan for condominium ownership has been adopted for the Original Facility Realty in accordance with the Condominium Act, pursuant to which the Original Facility Realty has been divided into the “**Common Elements**”, the “**Retail Unit**”, the

“**Time Warner Unit**”, the “**RHY Unit**”, the “**OX Unit**”, the “**WF Unit**”, the “**PE 1 Unit**”, the “**PE 2 Unit**” and the “**Ob Deck Unit**” (each as defined in the Declaration); and

WHEREAS, on April 15, 2019 (the “**Second Severance Date**”), the Lessee and the Agency entered into that certain (i) Amended and Restated Severed Company Lease Agreement (Tower A), dated as of April 1, 2019 but effective as of the Second Severance Date (the “**Tower A Company Lease**”), which was recorded in the City Register’s Office on May 9, 2019 as CRFN 2019000148862, pursuant to which the 2015 Tower A Company Lease was amended and restated in its entirety, and (ii) Amended and Restated Severed Agency Lease Agreement (Tower A), dated as of April 1, 2019 but effective as of the Second Severance Date (the “**Tower A Agency Lease**”), which was recorded in the City Register’s Office on May 9, 2019 as CRFN 2019000148863, pursuant to which the 2015 Tower A Agency Lease was amended and restated in its entirety; and

WHEREAS, on the Second Severance Date, the Lessee and the Agency entered into that certain (i) Severance Transaction Agreement (Time Warner Unit), dated as of the Second Severance Date (as amended, restated, supplemented or otherwise modified from time to time, the “**TW Severance Transaction Agreement**”), by and among the Agency, HYIC, the Lessee, and TW NY Properties LLC, a Delaware limited liability company, and (ii) that certain Severance Transaction Agreement (OX Unit), dated as of the Second Severance Date (as amended, restated, supplemented or otherwise modified from time to time, the “**OX Severance Transaction Agreement**”), by and among the Agency, HYIC, the Lessee, and HY30-67 Owner LP, a Delaware limited partnership (together, the TW Severance Transaction Agreement and the OX Severance Transaction Agreement are collectively referred to as the “**Second Severance Transaction Agreement**”; the transactions contemplated by the Second Severance Transaction Agreement are collectively referred to as the “**Second Severance**”); and

WHEREAS, by providing for the Second Severance in the 2015 Tower A Agency Lease and the 2015 Tower A Company Lease, and by consummating the transactions contemplated in the Second Severance Transaction Agreement, the Agency has, following the date of the Second Severance, continuously exercised jurisdiction, control and supervision over such severed portion of the Original Facility Realty for purposes of Section 874(1) of Article 18-A of the General Municipal Law of the State of New York; and

WHEREAS, pursuant to Section 11.3(b) of the Tower A Agency Lease and Article VII of the Tower A Company Lease, the Agency acknowledged that Lessee may further sever the Facility Realty (as defined below) from the Tower A Agency Lease (the “**Severance**”, and each severed unit of the Facility Realty, a “**Severed Unit**”) and that promptly upon the request of the Lessee, the Lessee and the Agency would amend, modify and/or restate the project documents in respect of the Project and enter into new severed lease agreements and project documents as necessary to effect such Severance; and

WHEREAS, the Severance is being effected on the Commencement Date (as hereinafter defined) in accordance with that certain Severance Transaction Agreement, dated as of the Commencement Date (as amended, restated, supplemented or otherwise modified from time to time, the “**Severance Transaction Agreement**”), by and among the Agency, HYIC, Lessee and KKR HY Owner LLC (“**New Fee Purchase Unit Owner**”); and



**WHEREAS**, on the Commencement Date and in accordance with the Severance Transaction Agreement, the Lessee and the MTA will enter into that certain Severance of Lease (PE 1 Unit, PE 2 Unit and WF Unit) (the “**Severance Agreement**”), which will be recorded, prior to the recordation of a memorandum of this Agreement, in the City Register’s Office, and which Severance Agreement will (i) sever the Ground Lease to release the Facility Realty from the demise thereof; and (ii) give effect to a new severed ground lease, between the MTA and the Lessee, with respect to the Facility Realty (the “**Severed Ground Lease**”); and

**WHEREAS**, on the Commencement Date and in accordance with the Severance Transaction Agreement, the Lessee and the MTA will enter into that certain Second Amendment to Agreement of Severed Parcel Lease (Eastern Rail Yard Section of the John D. Caemmerer West Side Yard), dated as of the Commencement Date (the “**Second Amendment to Ground Lease**”), to amend the Ground Lease to release the Facility Realty from the demise thereof, a memorandum of which will be recorded, prior to the recordation of a memorandum of this Agreement, in the City Register’s Office; and

**WHEREAS**, on the Commencement Date and in accordance with the Severance Transaction Agreement, the Lessee will lease the Facility Realty to the Agency pursuant to that certain Severed Company Lease Agreement (PE 1 Unit), dated as of May 1, 2019 (as amended, restated, supplemented and otherwise modified from time to time, the “**Severed Company Lease**”), between the Lessee and the Agency, which will be recorded, prior to the recordation of a memorandum of this Agreement, in the City Register’s Office; and

**WHEREAS**, the Agency is sub-subleasing the Facility Realty to the Lessee pursuant to this Agreement, and a memorandum of this Agreement will be recorded in the City Register’s Office; and

**WHEREAS**, immediately after the transactions described above, the Lessee will assign to New Fee Purchase Unit Owner all of Lessee’s rights, title, estates, interest, liabilities, duties, covenants, obligations and agreements in, to and under the Severed Company Lease and this Agreement; immediately thereafter the MTA will convey the fee interest in and to the Facility Realty to New Fee Purchase Unit Owner (the “**Fee Conversion**”); and

**WHEREAS**, by providing for the Severance in the Tower A Agency Lease and the Tower A Company Lease, and by consummating the transactions contemplated in the order specified in Section 3 of the Severance Transaction Agreement, the Agency will continuously exercise jurisdiction, control and supervision over each Severed Unit of the Facility Realty for purposes of Section 874(1) of Article 18-A of the General Municipal Law of the State of New York; and

**WHEREAS**, the provision by the Agency of Financial Assistance to the Original Lessee through a Straight-Lease Transaction was determined to be necessary to induce the Original Lessee to complete the Original Project, and that if the Agency did not provide such Financial Assistance, the Original Lessee could not feasibly proceed with the Original Project as contemplated; and

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

## ARTICLE I

### DEFINITIONS AND CONSTRUCTION

Section 1.1. Definitions. In addition to the definitions set forth in Sections 5.1(a), 5.2(a) and 8.1(a) and the other Sections of this Agreement, the following terms shall have the respective meanings specified:

**2015 Commencement Date** shall mean December 11, 2015, on which date the 2015 Tower A Agency Lease was executed and delivered by the parties thereto.

**2015 Tower A Agency Lease** shall have the meaning set forth in the recitals to this Agreement.

**2015 Tower A Company Lease** shall have the meaning set forth in the recitals to this Agreement.

**Act** shall mean, collectively, the Enabling Act and the Agency Act.

**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 Project Fee** shall mean the \$750,000 fee paid to the Agency on the Original Commencement Date.

**Agency's Reserved Rights** shall mean all rights of the Agency under this Agreement, including, without limitation, the right of the Agency to amend this Agreement, but excluding (a) all right, title and interest of the Agency to receive the PILOT Amounts, the PILOMRT payments and similar payments made and to be made by the Lessee under Sections 5.1 and 5.2, (b) the present and continuing right to make claim for, collect and receive the PILOT Amounts, the PILOMRT payments and similar payments made and to be made by the Lessee under Sections 5.1 and 5.2 and the right to bring actions and receive proceeds for the enforcement of such payments, and (c) the right of the Agency to amend Sections 5.1 or 5.2 in a manner that would adversely affect or diminish the PILOT Amounts, the PILOMRT payments or any other similar payments under Sections 5.1 and 5.2 or the payment or the enforcement of payment of such amounts. For the avoidance of doubt, the parties hereto intend that (i) the Agency's Reserved Rights may be enforced by the Agency and any assignee of the Agency (including, without

limitation, HYIC), jointly or severally, and (ii) the Agency's reservation of rights under the Assignment and the PILOT Assignment and Agreement shall not diminish or impair (A) the duties, obligations, liabilities, covenants and agreements of the Lessee hereunder that that are owed to HYIC (as assignee pursuant to the Assignment) or to U.S. Bank National Association as bond trustee (as collateral assignee of HYIC pursuant to that certain Collateral Assignment, dated as of the Commencement Date, from HYIC to U.S. Bank National Association as bond trustee or that certain Subordinate Collateral Assignment, dated as of the Commencement Date, from HYIC to U.S. Bank National Association as bond trustee) or (B) the rights and remedies of HYIC or U.S. Bank National Association as bond trustee against Lessee under this Agreement or the Guaranty Agreement.

**Agreement** shall mean this Severed Agency Lease Agreement (PE 1 Unit), dated as of the date set forth in the first paragraph hereof, by and between the Agency and the Lessee, and shall include any and all amendments hereof and supplements hereto hereafter made in conformity herewith.

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

**Approved Facility** shall mean the Facility Realty as occupied, used, operated or leased by the Lessee 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 use of the Facility Realty by the Lessee for its use and/or for sublease to various office and commercial tenants.

**Assignment** shall mean the Assignment, dated on or about the Commencement Date, by and among the Agency, The City of New York, HYIC, Lessee and New Fee Purchase Unit Owner.

**Assignment of PILOT Mortgages** shall mean, collectively, the Assignment of Fee and Leasehold PILOT Mortgage No. 1 (PE 1 Unit), dated as of the Commencement Date, from the Agency to HYIC, the Assignment of Fee and Leasehold PILOT Mortgage No. 2 (PE 1 Unit), dated as of the Commencement Date, from Agency to HYIC, and the Assignment of Fee and Leasehold PILOT Mortgage No. 3 (PE 1 Unit), dated as of the Commencement Date, from Agency to HYIC.

**Authorized Representative** shall mean, (i) in the case of the Agency, the Chairman, Vice Chairman, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary, Executive Director, Deputy Executive Director or General Counsel, or any other officer or employee of the Agency who is authorized to perform specific acts or to discharge specific duties, (ii) in the case of the Lessee, a person named in Exhibit B-1 – “Authorized Representatives of the Lessee”, 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 from time to time, and (iii) in the case of the New Fee Purchase Unit Owner (including in its capacity as the Guarantor), a person



named in Exhibit B-2 – “Authorized Representatives of the New Fee Purchase Unit Owner”, 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 from time to time; 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 October 15, 2013 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).

**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.

**Capital Improvements** shall mean any structures, related facilities, fixtures, and other improvements constructed, erected, placed and/or installed within the Facility Realty, when such improvements are not part of the Project Improvements, including but not limited to all replacements, improvements, additions, extensions and substitutions to the Project Improvements following the Construction Period (as defined in Section 5.2(a)) (except to the extent any of the foregoing are performed in the ordinary course of business, such as work done to reconfigure space or for Tenant fit-out, whether performed by Lessee or a Tenant, or are otherwise required by this Agreement).

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

**City Tax Fiscal Year** shall mean every twelve (12) consecutive month period, all or any part of which shall occur during the Term, commencing each July 1 or such other date as shall be the first day of the fiscal tax year of the City or other governmental agency responsible for the collection of substantially all Real Property Taxes.

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

**Commencement Date** shall mean May \_\_\_\_, 2019, on which date this Agreement was executed and delivered by the parties hereto.

**Company Lease (also defined as the “Severed Company Lease” in the recitals hereto)** shall mean the Severed Company Lease Agreement (PE 1 Unit), dated as of the date

hereof, by and between the Lessee and the Agency, as the same may be amended, restated, supplemented or otherwise modified from time to time in accordance with its terms and as permitted by the terms thereof.

**Control or Controls**, including the related terms “controlled by” and “under common control with”, shall mean the power to direct the day-to-day 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.

**Declaration** shall have the meaning set forth in the recitals to this Agreement.

**Declaration of Easements** shall mean that certain ERY Declaration of Easements (Eastern Rail Yard Section of the John D. Caemmerer West Side Yard), dated as of May 26, 2010, and recorded at CRFN No. 2010000194078 in the City Register, made by MTA, as declarant, as amended by that certain First Amendment to the Declaration of Easements (Eastern Rail Yard Section of the John D. Caemmerer West Side Yard), dated as of April 10, 2013, and recorded at CRFN No. 2013000276090 in the City Register, made by MTA, as declarant, as supplemented by that certain Supplement to Declaration of Easements (Eastern Rail Yard Section of the John D. Caemmerer West Side Yard), dated as of November 16, 2015, and recorded at CRFN No. 2015000410387 in the City Register, made by MTA, as declarant, as corrected by that certain Second Supplement to Declaration of Easements (Eastern Rail Yard Section of the John D. Caemmerer West Side Yard), dated as of April 15, 2019, and recorded in the City Register, made by MTA, as declarant, as the same has been and may be amended, modified or supplemented from time to time in accordance with the terms thereof.

**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.

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

**Exempt Mortgage** shall have the meaning specified in Section 5.1(a).

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

**Expiration Date** shall mean June 30, 2044 (from the Commencement Date to such date, the “Initial Term”), with annual automatic extensions thereof for a term of one (1) year, unless within sixty (60) days preceding the expiration of the then current term, the Agency provides written notice of termination to the Lessee; provided that after the Initial Term this Agreement shall automatically terminate within sixty (60) days after the repayment in full or defeasance of all Hudson Yards revenue bonds issued by HYIC for which an assignment of the PILOT Amounts payable under this Agreement is used to repay the bondholders.

**Facility Realty** shall mean, collectively, (i) that certain condominium unit designated and defined as the “PE 1 Unit” in the Declaration, together with a corresponding undivided interest in the “Common Elements” (as defined in the Declaration), being Borough of Manhattan, Block 702, Lot 1306 (formerly part of Lot 125, which was formerly known as Lot 9111) on the tax maps of the City, and generally known by the street address of PE 1 Unit, 20-30 Hudson Yards Condominium, 30 Hudson Yards (a/k/a 500 West 33rd Street), New York, New York 10001, all as more particularly described in Exhibit A - “Description of the Unit” attached hereto, together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto; but excluding, however, any real property or interest therein released pursuant to Section 8.10(c) of the Agency Lease, and (ii) the Improvements located therein, as modified from time to time in accordance with this Agreement.

**FASPOA Declaration** shall mean that certain Amended and Restated Declaration Establishing the ERY Facility Airspace Parcel Owners’ Association and of Covenants, Conditions, Easements and Restrictions dated as of December 7, 2015, made by the MTA as declarant as the same has been or may be amended, supplemented or otherwise modified from time to time.

**Fee Conversion** shall have the meaning set forth in the recitals to this Agreement.

**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 Original 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 through which, or under the authority of which, the powers of such Person are exercised.

**Guarantor** shall mean the New Fee Purchase Unit Owner and its permitted successors and assigns.

**Guaranty Agreement** shall mean the Guaranty Agreement (PE 1 Unit), dated as of even date herewith, by and between the Guarantor and 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.

**HYIC** shall mean Hudson Yards Infrastructure Corporation, a not-for-profit local development corporation formed under Section 1411 of the Not-for-Profit Corporation Law of the State.

**HYIC PILOMRT Amount** shall have the meaning set forth in Section 5.1(a).

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

**Improvements** shall mean, collectively, the Project Improvements and any Capital Improvements located in or on the Facility Realty.

**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, conditioned or delayed).

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

**Institutional Lender** shall mean (a) a savings bank, a savings and loan association, a commercial bank or trust company (whether acting individually or in a fiduciary capacity), an investment bank, a real estate investment trust, an insurance company organized and existing under the laws of the United States or any state thereof or any jurisdiction outside the United States, a not-for-profit religious, educational or eleemosynary institution, an employee welfare, benefit, pension or retirement fund or pension advisory firm, a mutual fund, a governmental authority or entity (or subsidiary thereof), a commercial credit corporation, a credit union, an endowment fund, or any combination of the foregoing, provided, that any Person referred to in this clause (a), other than a governmental authority or Qualified Trustee acting as a conduit issuer of securities, satisfies



the Eligibility Requirements (as hereinafter defined); (b) an investment company, a money management firm, a “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional “accredited investor” within the meaning of Regulation D under the Securities Act of 1933, as amended, provided that any Person referred to in this clause (b) satisfies the Eligibility Requirements; (c) an institution substantially similar to any of the entities described in clauses (a) or (b) above or clause (f) below that satisfies the Eligibility Requirements; (d) any entity controlled by any of the entities described in clauses (a), (b) or (c) above or clause (f) below; (e) a Qualified Trustee (as hereinafter defined) in connection with a securitization of, or the creation of collateralized debt or loan obligations (a “CDO”) or commercial mortgage backed securities secured by, or financing through an “owner trust” of, a loan to finance the Project or an Improvement or any interest in any such loan (including, in the case of a CDO, an entity which assigns or pledges such loan or any participation or other interest therein to a Qualified Trustee)(collectively, “Securitization Vehicles”), so long as (i) in the case of a Securitization Vehicle other than a CDO, the special servicer or manager of such Securitization Vehicle at the time of the closing of the related securitization or other transaction has the Required Special Servicer Rating (as hereinafter defined) from at least one of the rating agencies, and (ii) in the case of a CDO Securitization Vehicle, the asset manager managing or administering such loan (or any interest therein) as an underlying asset of such Securitization Vehicle (or, if applicable, as an asset of an intervening trust vehicle or other Person which holds such loan (or any interest therein) as collateral securing (in whole or in part) any obligation or security held by such Securitization Vehicle as collateral for the CDO) is an Institutional Lender under clauses (a), (b), (c) or (d) of this definition; (f) an investment fund, limited liability company, limited partnership or general partnership (i) of which one or more Institutional Lenders under clauses (a), (b), (c) or (d) of this definition either acts as the general partner, managing member or fund manager or owns, directly or indirectly, at least fifty percent (50%) or more of the equity interest or (ii) which, or the general partner, managing member or fund manager of which, has been in the business of investment banking, private investing or private equity for at least five (5) years and satisfies the Eligibility Requirements (including, for purposes of the asset test, assets of an Affiliate or unconditional capital commitments), or is a manager of investment funds investing in debt or equity interests in commercial real estate; (g) any entity that is an Institutional Lender under clauses (a), (b), (c), (d) or (f) of this definition but is acting in any agency capacity in connection with a lending syndicate; (h) any other Person approved by the Agency as an Institutional Lender; or (i) with respect to any Mortgage Loan or Mezzanine Loan made by one or more Institutional Lenders under any of the foregoing clauses (a)-(h), the successors and assigns thereof that from time to time hold such Mortgage Loan or Mezzanine Loan or any interest therein or portion thereof. For the purpose of this definition, (w) the “Required Threshold” means, in the case of (A) an Institutional Lender providing a construction loan, Five Hundred Million and 00/100 Dollars (\$500,000,000.00) and (B) an Institutional Lender providing a permanent loan or mezzanine financing, Two Hundred Million and 00/100 Dollars (\$200,000,000.00), provided that if an Institutional Lender is composed of more than one Person, the Required Threshold shall be the combined assets of all such Persons; (x) the “Eligibility Requirements” mean, with respect to any Person, that such Person (A) consents to or is subject to the jurisdiction of the courts of the State of New York and (B) has assets of not less than the Required Threshold; (y) “Qualified Trustee” means (A) a corporation, national bank, national banking association or trust company, organized and doing business under the laws of the United States of America or any state thereof, authorized under such laws to exercise corporate trust powers and to accept the trust conferred, subject to

supervision or examination by federal or state regulatory authority, and having a combined capital and surplus of at least \$50,000,000, (B) an institution insured by the Federal Deposit Insurance Corporation and having a combined capital and surplus of at least \$50,000,000, or (C) an institution whose long-term senior unsecured debt is rated in either of the top two rating categories then in effect of Standard & Poor's (together with any successor-in-interest, "S&P"), Moody's Investors Services, Inc. (together with any successor-in-interest, "Moody's"), Fitch, Inc. (together with any successor-in-interest, "Fitch"), or any other nationally recognized statistical rating agency; and (z) "Required Special Servicer Rating" means (A) in the case of Fitch, a rating of "CSS3", (B) in the case of S&P, being on the list of approved special servicers or select servicer list and (C) in the case of Moody's, acting as special servicer in a commercial mortgage loan securitization that was rated within the twelve (12) month period prior to the date of determination, provided that Moody's has not downgraded or withdrawn the then-current rating on any class of commercial mortgage securities or placed any class of commercial mortgage securities on watch citing the continuation of such special servicer as special servicer of such commercial mortgage securities as the reason for such downgrade or withdrawal. Notwithstanding anything to the contrary in this definition, in the event that an Institutional Lender consists of more than one Person, such Institutional Lender shall designate by written notice to the Agency a single Person with full authority to act on behalf of such Institutional Lender for the purposes of this Agreement, and any notice delivered to, or consent or approval obtained from, such Person shall be deemed to have been delivered to, or obtained from, such Institutional Lender for the purposes of this Agreement. An amendment of such written notice may be delivered from time to time to the Agency designating a new Person with full authority to act on behalf of such Institutional Lender.

**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 wage, prevailing wage, sick leave, healthcare benefits 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 Realty or any part thereof, or (iii) any use or condition of the Facility Realty or any part thereof.

**Lessee** shall mean Hudson Yards North Tower Tenant LLC, a limited liability company organized and existing under the laws of the State of Delaware, and its successors and assigns.

**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 that is (i) the Tenant under a Tenant Lease for not less than a full floor of office space, (ii) the Tenant under a Tenant Lease for retail space at fair

market rental, (iii) the Tenant under a Tenant Lease for other space at fair market rental, or (iv) any other Tenant so designated by the Agency, in its reasonable discretion.

**Maximum Zoning Square Footage** shall have the meaning specified in Section 5.2(a).

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

**Mezzanine Lender** shall mean each Institutional Lender, if any, who shall be a lender or an agent for lenders under a Mezzanine Loan.

**Mezzanine Loan** shall mean financing secured by the equity interests in Lessee (and not by a lien on the Facility Realty).

**Mortgage Loan** shall mean financing secured by a Mortgage.

**Mortgage Notes** shall mean each mortgage note, if any, secured by a Mortgage, together with any subsequent mortgage notes provided to a Mortgagee.

**Mortgage Recording Taxes** shall have the meaning set forth in Section 5.1(a).

**Mortgagees** shall mean each Person, if any, who shall be the mortgagee under a Mortgage.

**Mortgage(s)** shall mean (i) each mortgage, if any, encumbering all or any portion of the Facility Realty, and each subsequent new, gap, consolidated, amended, restated or other mortgage creating a lien upon the Facility Realty which is provided by an Institutional Lender or (ii) the Commencement Date Exempt Mortgage. For the avoidance of doubt, however, none of the PILOT Mortgages shall constitute a Mortgage.

**MTA** means the Metropolitan Transportation Authority, a public benefit corporation of the State of New York.

**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) incurred in the collection thereof.

**New Fee Purchase Unit Owner** shall mean KKR HY Owner LLC, a limited liability company organized and existing under the laws of the State of Delaware, together with its successors and assigns.

**Non-Qualified USF** shall mean the sum of (i) the Usable Square Footage of the Improvements that are occupied by Tenants and/or sublessees in violation of Section 8.9(f) and (ii) the Usable Square Footage of the Facility Realty that constitutes retail space that is in excess of zero (0) Usable Square Feet.



**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.

**Opinion of Counsel** shall mean a written opinion of counsel for the Lessee or any other Person (which counsel shall be reasonably acceptable to the Agency) with respect to such matters as required under any Project Document, 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.

**Original Agency Lease** shall have the meaning specified in the recitals to this Agreement.

**Original Commencement Date** shall mean March 17, 2014, on which date the Original Agency Lease was executed and delivered.

**Original Company Lease** shall have the meaning specified in the recitals to this Agreement.

**Original Facility Realty** shall mean the "Facility Realty" (as defined in the Original Agency Lease, as in effect prior to the effectiveness of this Agreement).

**Original Project** shall have the meaning specified in the recitals to this Agreement.

**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, provided that such amount shall not be more than the fair market rental value of the Facility Realty.

**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 on the date required under Section 8.15, provided that such Per Diem Late Fee shall not exceed \$500.

**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) provided that such Per Diem Supplemental Late Fee shall not exceed \$500.

**Permitted Encumbrances** shall mean:

(i) the Declaration, the Declaration of Easements, the FASPOA Declaration, the Restrictive Declarations, the Zoning Lot Development Agreement, this Agreement, the Company Lease, the Mortgages and the PILOT Mortgages;

(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 Realty 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 Realty 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 Realty 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, render title to the Facility Realty unmarketable 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 mortgagee title insurance policy delivered to the Agency pursuant to Section 3.8, 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 Realty 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 Realty 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 Tenant Leases;

(xv) revocable consents, maintenance agreements or any other agreements entered into with various City, State, federal and/or quasi-governmental agencies, including, but not limited to, the New York City Department of Transportation, with respect to certain improvements, including without limitation, distinctive sidewalks, planters, security structures and similar improvements, that encumber or will encumber the Facility Realty or adjoining property;

(xvi) any easement agreements, permits, revocable consents, or other agreements entered into with respect to any pedestrian tunnels or bridges that encumber or connect or will encumber or connect to the Facility Realty or adjoining property;

(xvii) any easement agreements, maintenance agreements, management agreements or other agreements granting any rights to the Operator, the Association or another FASP Owner (as each such term is defined in the FASPOA Declaration), in connection with the operation, management or maintenance of the Facility Realty and/or adjoining property (including any improvements located thereon), or for improvements or structures that will be located on more than one FAS Parcel (including way-finding or telecommunication services) that encumber or will encumber the Facility Realty or adjoining property; and

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

**Person** shall mean an individual or any Entity.

**PILOMRT** shall have the meaning set forth in Section 5.1(a).

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

**PILOT Assignment and Agreement** shall mean the Amended and Restated PILOT Assignment and Agreement, dated as of December 1, 2006 and amended and restated as of May 1, 2017, by and among, the Agency, the City and HYIC attached hereto as Exhibit I-4, as it may be amended and supplemented in conformity therewith (it being agreed that the Agency shall provide a copy to Lessee of any such amendment or supplement).

**PILOT Mortgages** shall mean, collectively, the Fee and Leasehold PILOT Mortgage No. 1 (PE 1 Unit), dated as of the Commencement Date, from New Fee Purchase Unit Owner and the Agency, as mortgagors, to the Agency and HYIC, as mortgagees, in the aggregate principal amount of \$2,640,000.00, the Fee and Leasehold PILOT Mortgage No. 2 (PE 1 Unit), dated as of the Commencement Date, from New Fee Purchase Unit Owner and the Agency, as mortgagors, to the Agency and HYIC, as mortgagees, in the aggregate principal amount of \$52,800,000.00, and the Fee and Leasehold PILOT Mortgage No. 3 (PE 1 Unit), dated as of the Commencement Date, from New Fee Purchase Unit Owner and the Agency, as mortgagors, to the Agency and HYIC, as mortgagees, in the aggregate principal amount of \$52,800,000.00, and any and all amendments thereof and supplements thereto hereafter made in conformity therewith and any additional PILOT Mortgages required to be delivered in accordance with the provisions of such PILOT Mortgages or Section 8.5 hereof, including all amendments thereof and supplements thereto.

**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).

**Prevailing Wage Law** means Section 6-130 of the New York City Administrative Code, as amended, supplemented or otherwise modified from time to time, and all rules and regulations promulgated thereunder.

**Principals** shall mean, with respect to any Entity, (i) the most senior three officers of such Entity, (ii) any Person with a ten percent (10%) or greater ownership interest in such Entity (except that if such Entity is listed on any national or regional stock exchange, including electronic exchanges, then the "Principals" of such Entity will not include any such Person unless they are also a Principal by virtue of clause (i) or clause (iii) hereof), and (iii) any Person as shall have the power to Control such Entity, and "Principal" shall mean any of such Persons.

**Project** shall mean the use and occupancy by the Lessee of the Facility Realty.

**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 Severance Transaction Agreement, the Guaranty Agreement, the Mortgages, the Mortgage Notes, the PILOT Mortgages, the Assignment of PILOT Mortgages, the Assignment, each Subordination Agreement and each Subordination, Non-Disturbance and Attornment Agreement.

**Project Improvements** shall mean the portion of all buildings, structures, foundations, related facilities, fixtures and other improvements comprising the initial construction of the PE 1 Unit.

**Project Payments** shall have the meaning set forth in Section 10.2.

**PW Term** means the period commencing on the Commencement Date and ending on the later to occur of (a) the date on which the Lessee is no longer receiving financial assistance under this Agreement (for purposes hereof, such date is deemed to be the end of Year 19 after the Construction Period, unless this Agreement is earlier terminated) or (b) the date that is ten (10) years after the building located at the Facility Realty commences operations.

**Qualified USF** shall mean the Usable Square Footage of the Improvements other than the Non-Qualified USF.

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

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

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

**Restrictive Declarations** shall mean, collectively, the Restrictive Declaration (Zoning Resolution Section 93-70 Certification), dated April 10, 2013, by Original Lessee and Legacy Yards Tenant LLC, and the Restrictive Declaration, dated April 10, 2013 for the Eastern Rail Yard, by Original Lessee and Legacy Yards Tenant LLC (“**Legacy Yards Tenant**”), as amended by the First Amendment to Restrictive Declaration (Zoning Resolution 93-70 Certification), dated March 17, 2015, by Original Lessee, Legacy Yards Tenant and ERY CS Parcel LLC (“**CS Tenant**”), as further amended by the Second Amendment to Restrictive Declaration (Zoning Resolution 93-70 Certification), dated March 27, 2015, by Original Lessee, Legacy Yards Tenant and CS Tenant, as further amended by the Third Amendment to Restrictive Declaration (Zoning Resolution 93-70 Certification), dated March 18, 2016, by Original Lessee, Legacy Yards Tenant, CS Tenant, ERY South Residential LLC, Retail Lessee and Lessee, as may be further supplemented, amended or modified from time to time, provided that if any modification materially adversely affects the Facility Realty, then the consent of the Agency shall be required (such consent not to be unreasonably withheld or delayed).



**Retail Agency Lease** shall mean that certain Amended and Restated Agency Lease Agreement (Retail Podium), dated as of December 1, 2015, by and between the Agency and Original Lessee, and assigned to Retail Lessee, as amended, restated, supplemented or otherwise modified from time to time.

**Retail Lessee** shall mean ERY Retail Podium LLC, a Delaware limited liability company.

**Severance Transaction Agreement** shall have the meaning specified in the recitals to this Agreement.

**Severed Ground Lease** shall have the meaning specified in the recitals to this Agreement.

**State** shall mean the State of New York.

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

**Subordination Agreement** shall mean each subordination agreement to be executed by and among a Mortgagee, the Agency, HYIC and New Fee Purchase Unit Owner, substantially in the form of Exhibit I-2 attached hereto.

**Subordination, Non-Disturbance and Attornment Agreement** shall mean each subordination, non-disturbance and attornment agreement to be executed by and among a Mortgagee, the Agency and New Fee Purchase Unit Owner, substantially in the form of Exhibit I-1 attached hereto.

**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 Realty 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 Realty or any portion thereof is derivative of the Lessee) of real property constituting all or any part of the Facility Realty, any tenancy with respect to the Facility Realty 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 Realty or any part thereof without transfer of title, and any and all guarantees of any of the foregoing, whether now existing or hereafter made.

**Tenant Lease Subordination, Non-Disturbance and Attornment Agreement** shall mean each subordination, non-disturbance and attornment agreement to be executed by and between HYIC and a Major Tenant, substantially in the form of Exhibit I-3 attached hereto.

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

**Tower A Agency Lease** shall have the meaning specified in the recitals to this Agreement.

**Tower A Company Lease** shall have the meaning specified in the recitals to this Agreement.

**Tower A Facility Realty** shall have the meaning specified in the recitals to this Agreement.

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

**Usable Square Footage** or **Usable Square Feet** shall mean revenue generating, above-grade, square footage within the Improvements, excluding all vertical penetrations through the floors of the Improvements (e.g., elevator shafts, public stairs, public common areas, HVAC facilities, fire towers, and public washrooms). The Real Estate Board of New York (REBNY) method of measurement shall be used to determine Usable Square Footage.

**UTEP** shall mean that certain Third Amended and Restated Uniform Tax Exemption Policy of the Agency, as approved by the Board of Directors of the Agency on August 3, 2010, as amended by that certain First Amendment to Third Amended and Restated Uniform Tax Exemption Policy of the Agency, as approved by the Board of Directors of the Agency on November 9, 2010.

**Zoning Lot Development Agreement** shall mean, collectively, the Zoning Lot Development Agreement (Eastern Rail Yard Section of the John D. Caemmerer West Side Yard), dated as April 10, 2013, by the MTA, as supplemented by Supplemental ZLDA No. 1 (Tower A/Retail), dated as of the Original Commencement Date, by the MTA, as further supplemented by Supplemental ZLDA No. 2 (Tower D), dated as of November 23, 2015, by the MTA, as further supplemented by Supplemental ZLDA No. 3 (Tower A, Retail, Pavilion), dated as of the 2015 Commencement Date, by the MTA, as further supplemented by Supplemental ZLDA No. 4, dated as of July 12, 2016, by the MTA, as further supplemented by Supplemental ZLDA No. 5 (Tower E), dated as of July 27, 2016, by the MTA, as further supplemented by Supplemental ZLDA No. 6 (Open Space), dated as of December 7, 2018, by the MTA, as further supplemented by Supplemental ZLDA No. 7 (Open Space and Tower D), dated as of December 8, 2018, by the MTA and as further supplemented by Supplemental ZLDA No. 8 (Open Space, Tower A, Retail, Pavilion), dated as of March 25, 2019 and as further supplemented by Supplemental ZLDA No. 9 (Open Space/Tower A/Retail/Pavilion), dated as of May \_\_\_, 2019, as each may be further supplemented, amended or modified from time to time, provided that if any modification materially adversely affects the Facility Realty, then the consent of the Agency shall be required (such consent not to be unreasonably withheld or delayed).

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 or herein).

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

(j) The Recitals to this Agreement are hereby incorporated by reference as if more fully set forth herein.

## 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.

(d) To the Agency's knowledge as of the Commencement Date, the Lessee is not in default under the Original Agency Lease or the "Project Documents" (as defined in the Original Agency Lease) as of the Commencement Date. To the Agency's knowledge as of the Commencement Date, there are no due but unpaid obligations of the Lessee owed to the Agency or HYIC under the Original Agency Lease or the "Project Documents" (as defined in the Original Agency Lease) as of the Commencement Date.

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) As of the Commencement Date, there is no action or proceeding pending or, to Lessee's knowledge, 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 transactions contemplated by this Agreement shall not result in the removal of any Facility Realty or plant of the Lessee or any other occupant or user of the Facility Realty 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 user of the Facility Realty located within the State, but outside of the City.

(f) 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.

(g) The Facility Realty will be an Approved Facility and a qualified "project" within the meaning of the Act.

(h) The Lessee has obtained all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by it as of the Commencement 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 to which it is or shall be a party following the other transactions occurring on the Commencement Date, as described more particularly in the Severance Transaction Agreement.

(i) The operation of the Facility Realty will be in compliance with all applicable Legal Requirements.

(j) The Lessee shall not use Hazardous Materials on, from, or affecting the Facility Realty in any manner that violates any applicable Legal Requirements governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials.

(k) Subject to Section 11.3, the Facility Realty comprises one (1) complete tax lot and no portion of any single tax lot.

(l) Reserved.

(m) The Fiscal Year is true and correct.

(n) None of the Lessee, the Principals of the Lessee, or, as of the Commencement Date, any Person that directly or indirectly Controls or is Controlled by 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 misdemeanor related to truthfulness and/or business conduct in the past five (5) years;

(iii) has been convicted of a felony in the past ten (10) years;

(iv) 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

(v) has received written notice of default in the payment of 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.

(o) The Required Disclosure Statement 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 part of the Required Disclosure Statement 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, unless the same has been submitted to the Agency in writing.

(p) Information as to the Principals of New Fee Purchase Unit Owner, and the ownership interests in New Fee Purchase Unit Owner, as set forth in Exhibit C-2 and Exhibit D-2, is true, correct and complete.

## 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 Facility Realty, and all rights or interests therein or appertaining thereto, together with all improvements existing thereon or therein as of the date thereof, 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 shall vest in the Agency immediately upon delivery to or installation or incorporation into the Facility Realty or 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. Fee Conversion. Upon the consummation of the Fee Conversion, (i) the MTA shall cease to own fee title to the Facility Realty; (ii) the Severed Ground Lease shall automatically terminate, without any action on the part of the MTA or the Lessee, (iii) the Company Lease shall cease to be a sublease and shall be a lease, and (iv) this Agreement shall cease to be a sub-sublease and shall be a sublease.

#### Section 3.3. Project.

(a) 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 Section 3.1, and (iii) all shipping and delivery charges and other expenses or claims incurred in connection with the Project.

(b) The Lessee will use the Facility Realty in accordance with all Legal Requirements.

(c) Until the twentieth (20<sup>th</sup>) anniversary of the expiration of the Construction Period, the Lessee will not permit the zoning square footage of the Facility Realty to exceed the Maximum Zoning Square Footage.

(d) Until the twentieth anniversary of the expiration of the Construction Period, the Lessee will not permit the Usable Square Footage of the Facility Realty that constitutes retail space to exceed zero (0) Usable Square Feet.

#### Section 3.4. Maintenance.

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

(i) keep the Facility Realty in good and safe operating order and condition, ordinary wear and tear excepted (or, to the extent that the same is the obligation of the Board of Managers of the Condominium or Tower Section (as defined in the Condominium Documents) under the Condominium Documents, to vote in favor of causing the applicable Board of Managers to do the same), and

(ii) occupy, use and operate the Facility Realty, or cause the Facility Realty to be occupied, used and operated, as the Approved Facility.

(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 Realty, to effect the replacement of any inadequate, obsolete, worn out or unsuitable parts of the Facility Realty, or to furnish any utilities or services for the Facility Realty, and the Lessee hereby agrees to assume full responsibility therefor.

#### Section 3.5. Capital Improvements.

(a) The Lessee shall have the right from time to time to make Capital Improvements to the Facility Realty as it may determine in its discretion to be desirable for its uses and purposes, provided that:

(i) as a result of the such Capital Improvements, the fair market value of the Facility Realty is not materially reduced below its value immediately before the Capital Improvements are made and the usefulness, structural integrity or operating efficiency of the Facility Realty is not materially impaired,

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

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

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

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

(c) If at any time after the Construction Period, the Lessee shall make any Capital Improvements (excluding Capital Improvements to the interior of the Facility Realty performed by Lessee or a Tenant, such as fit-out work), the Lessee shall notify an Authorized



Representative of the Agency of such Capital Improvements by delivering written notice thereof within thirty (30) days after the completion of the Capital Improvements.

(d) Capital Improvements shall be subject to PILOT equal to Other Improvements Taxes in accordance with Section 5.2(a).

Section 3.6. Removal of Property of the Facility Realty.

(a) Subject to the rights of Tenants under their respective Tenant Leases, the Lessee shall have the right from time to time to remove from the Facility Realty any fixture constituting part of the Facility Realty (the "Existing Facility Realty Property"), and thereby remove such Existing Facility Realty Property from the leasehold estates of the Company Lease and this Agreement; provided however:

(i) such Existing Facility Realty Property is substituted or replaced by property having equal or greater fair market value, operating efficiency and utility, and

(ii) no such removal shall be effected if (w) such removal would change the nature of the Facility Realty as the Approved Facility 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 Realty, (y) such removal would materially reduce the fair market value of the Facility Realty 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 terminating all of the Agency's right, title and interest in any property removed from the Facility Realty pursuant to Section 3.6(a).

(c) The removal from the Facility Realty of any Existing Facility Realty 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.

(d) Notwithstanding anything to the contrary in this Section 3.6, the Lessee shall not be required to replace any Existing Facility Realty Property that performed a function that has become obsolete or is otherwise no longer necessary or desirable in connection with the use and operation of the Facility Realty.

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

(a) In the event of any Capital Improvements or substitution or replacement of property pursuant to Sections 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 Realty pursuant to such Section and subjecting such Capital 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 Realty pursuant to Sections 3.5 or 3.6.

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

Section 3.8. Leasehold Title Insurance and Mortgagee Title Insurance. (a) On or prior to the Commencement Date, the Lessee will obtain and deliver to the Agency a leasehold title insurance policy (in form and substance acceptable to the Agency) in the amount of \$500,000 insuring the Agency's leasehold interest under the Company Lease against loss as a result of defects in title, subject only to Permitted Encumbrances. The title insurance policies 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; and (3) 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.

(b) On the Commencement Date, the Lessee will obtain and deliver to the Agency a mortgagee title insurance policy in the amount of \$2,640,000 insuring the Agency's and HYIC's interests under the most senior PILOT Mortgage as holder of a first mortgage lien(s) on the Company Lease and the Agency Lease, subject only to Permitted Encumbrances. The title insurance policy 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; and (3) such other matters as the Agency or HYIC shall reasonably request. Any proceeds of such mortgagee title insurance shall be paid to the Agency or HYIC, as applicable and applied to remedy the applicable defect in title in respect of which such proceeds shall be derived (including the reimbursement to the Lessee for any costs incurred by the Lessee in remedying such defect in title).

## ARTICLE IV

### LEASE OF FACILITY REALTY AND RENTAL PROVISIONS

Section 4.1. Lease of the Facility Realty. The Agency hereby subleases its interest in the Facility Realty to the Lessee, and the Lessee hereby subleases such interest in the Facility Realty from the Agency, for and during the term herein specified and subject to the terms and conditions herein set forth. The Agency hereby delivers to the Lessee, and the Lessee hereby accepts sole and exclusive possession of the Facility Realty.

Section 4.2. Duration of Term. The term of this Agreement shall commence on the Commencement Date and shall expire at 11:58 p.m. (New York City time) on the earlier of the Expiration Date or the Termination Date, if any.

Section 4.3. Rental Provisions.

(a) The Lessee shall pay Base Rent to the Agency, without demand or notice, on the Commencement 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 Realty, 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 any 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. 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), 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 4.7. 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 REALTY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE FACILITY REALTY, OR THE SUITABILITY OF THE FACILITY REALTY FOR THE PURPOSES OR NEEDS OF THE LESSEE. THE LESSEE IS SATISFIED THAT THE FACILITY REALTY 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 REALTY 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**  
**PAYMENT – IN – LIEU OF MORTGAGE RECORDING TAXES;**  
**PAYMENT – IN – LIEU OF REAL PROPERTY TAXES;**

Section 5.1. Payment-in-Lieu of Mortgage Recording Taxes

(a) For purposes of this Section 5.1, the following terms shall have the meanings specified below:

**Commencement Date Exempt Mortgage** shall mean that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of the Commencement Date, by New Fee Purchase Unit Owner and the Agency, as mortgagors, to Deutsche Bank AG, New York Branch, as mortgagee, which encumbers both the PE 1 Unit and the PE 2 Unit, in the aggregate principal amount of up to \$490,000,000.

**Exempt Mortgage** shall mean the Commencement Date Exempt Mortgage and any subsequent Mortgages, the recording of which are exempt from Mortgage Recording Taxes by reason of the Agency being a mortgagor thereunder.

**Mortgage Date** shall mean, with respect to any Exempt Mortgage, the date upon which such Exempt Mortgage is executed and delivered by the Agency to be recorded against the Facility Realty.

**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.

**PILOMRT** shall mean payment(s) in lieu of Mortgage Recording Taxes as such payments are calculated using the mortgage recording tax rate in effect at time of recording.

(b) With respect to each Exempt Mortgage, the Lessee shall pay on the respective Mortgage Date to HYIC, a PILOMRT in the amount of 100% of the exempt amount of the Mortgage Recording Taxes that would have been due had such Exempt Mortgage not been exempt from all or a portion (as applicable) of the Mortgage Recording Taxes by reason of the Agency being a mortgagor thereunder (the “**HYIC PILOMRT Amount**”). For the Commencement Date Exempt Mortgage (with respect to both the PE 1 Unit and the PE 2 Unit, in the aggregate), the HYIC PILOMRT Amount payable by the Lessee to HYIC on the Commencement Date is \$12,250,000.

(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 an Exempt Mortgage; 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, an Exempt Mortgage.

(d) To the extent that the Lessee has paid a full PILOMRT on an Exempt Mortgage (each such Exempt Mortgage, an “**Original Mortgage**”) recorded against the Facility Realty, and such Original Mortgage is later assigned to a new lender and thereafter modified and recorded (each such mortgage, a “**Modified Mortgage**”), if the Lessee would have been entitled, under then existing law, to an as-of-right exemption from Mortgage Recording Taxes with respect

to the recording of such Modified Mortgage if it had paid Mortgage Recording Taxes rather than PILOMRT on the Original Mortgage, then the Agency will provide an exemption affidavit to exempt such Modified Mortgage, provided that (i) the Company Lease is then in full force and effect, and (ii) such exemption shall only be available to the extent that such Modified Mortgage does not create any new lien other than the lien created by the corresponding Original Mortgage or secure any new indebtedness other than the unpaid balance of the corresponding Original Mortgage.

Section 5.2. Payment-in-Lieu of Real Property Taxes.

(a) For purposes of this Section 5.2, the following terms shall have the meaning specified below:

**CCP Improvements** means the Project Improvements.

**CCP PILOT** means, with respect to any City Tax Fiscal Year, the amount of the payment in lieu of Real Property Taxes payable for such City Tax Fiscal Year in respect of the CCP Improvements and the Facility Realty, as calculated in accordance with the PILOT Calculation Table.

**CCP Taxes** means, with respect to any City Tax Fiscal Year, an amount equal to the Real Property Taxes for such City Tax Fiscal Year in respect of the CCP Improvements and the Facility Realty that would otherwise be payable in the absence of any Real Property Taxes exemption made available by reason of the Agency's leasehold interest therein.

**Cessation Date** shall mean the date on which the Agency no longer has a nominal leasehold interest in the Facility Realty or the date on which the Facility Realty is no longer under the jurisdiction, control or supervision of the Agency, 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.

**Construction Period** means the period commencing on the PILOT Commencement Date and ending on the June 30th of the last City Tax Fiscal Year for which the CCP Improvements can be assessed as a "qualifying commercial building in the course of construction" (as defined in Section 11-209 of the NYC Administrative Code) by the NYCDOF in accordance with applicable real property tax assessment procedures.

**Maximum Zoning Square Footage** means 223,279 zoning square feet (as determined by reference to the "floor area" as such term is defined in the Zoning Resolution of the City of New York), of the Facility Realty, or if the following conditions are satisfied, such other amount specified as the new "Maximum Zoning Square Footage" under this Agreement in a joint written notice signed by an Authorized Representative of each of the Lessee, the lessee under another agency lease for a portion of the Tower A Facility Realty (each, a "Tower A Unit Lessee") and/or the Retail Lessee and delivered to the Agency: (i) such notice shall have been delivered to the Agency in accordance with the notice provisions hereof, (ii) such notice shall have specified the new "Maximum Zoning Square Footage" under this Agreement, (iii) such notice shall have specified the new "Maximum Zoning Square Footage" under the Retail Agency Lease if the other

party submitting the joint notice is the Retail Lessee or under the applicable agency lease for the Tower A Unit Lessee submitting the joint notice, (iv) the sum of (x) the new “Maximum Zoning Square Footage” under this Agreement, (y) the new “Maximum Zoning Square Footage” under the Retail Agency Lease (if the Retail Lessee is submitting the joint notice), and (z) the aggregate “Maximum Zoning Square Footage” under the agency leases for each other Tower A Unit Lessee at the time such notice is delivered shall not exceed 3,056,000 zoning square feet, (v) the re-allocation of 3,056,000 zoning square feet between the Facility Realty under this Agreement and the Facility Realty under and as defined in the Retail Agency Lease (if the Retail Lessee delivers the joint notice) or the agency lease of the applicable Tower A Unit Lessee (if such Tower A Unit Lessee delivers the joint notice) shall have been based on the zoning square footage numbers specified in the architect’s certificates submitted pursuant to Section 3.3(i)(y) of the Retail Agency Lease (if the Retail Lessee delivers the joint notice), (vi) after such re-allocation, the Lessee shall be in compliance with the covenants herein contained, including, without limitation, Section 3.3 of this Agreement, (vii) after such re-allocation, the Retail Lessee shall be in compliance with the covenants contained in the Retail Agency Lease (if the Retail Lessee delivers the joint notice) or Tower A Unit Lessee (if such Tower A Unit Lessee delivers the joint notice) shall be in compliance with the covenants contained under such Tower A Unit Lessee’s agency lease, including, without limitation, Section 3.3 thereof, and (viii) the Lessee, the Retail Lessee or the applicable Tower A Unit Lessee, as applicable, shall have provided to the Agency any other information reasonably requested by the Agency in respect of such re-allocation.

**NYCDOF** means the New York City Department of Finance.

**Other Improvements Taxes** means, with respect to any City Tax Fiscal Year, an amount equal to the Real Property Taxes for such City Tax Fiscal Year in respect of the Capital Improvements that would otherwise be payable in the absence of any Real Property Taxes exemption made available by reason of the Agency’s leasehold interest therein.

**PILOT Amount** shall mean, with respect to any City Tax Fiscal Year, the sum of (i) the CCP PILOT for such City Tax Fiscal Year and (ii) Other Improvements Taxes for such City Tax Fiscal Year.

**PILOT Bill** shall mean the semi-annual statement of account sent by NYCDOF for the payment of PILOT in respect of the Facility Realty. For purposes of clarification, the amount specified in a PILOT Bill as being due and payable relates to a semi-annual period, whereas the “PILOT Amount” is the total annual PILOT due in respect of a City Tax Fiscal Year. The amount specified in a PILOT Bill as being due and payable relates to the immediately succeeding semi-annual period (e.g., a PILOT Bill received in June 2019 relates to the semi-annual period commencing on July 1, 2019 and ending on December 31, 2019). The amount specified in a PILOT Bill as being due and payable is due seven (7) Business Days prior to the commencement of the semi-annual period to which the PILOT Bill relates (e.g., a PILOT Bill in respect of the semi-annual period of July 1, 2019 to December 31, 2019 is due June 20, 2019). NYCDOF will send PILOT Bills to the Lessee prior to the due dates therefor, but failure to receive a PILOT Bill shall not relieve, or otherwise affect, the Lessee of its obligation to pay any PILOT Amount required under this Agreement.

**PILOT Calculation Table** means the table set forth in Section 5.2(d) below.



**PILOT Commencement Date** shall mean July 1, 2015.

**PILOT Financial Assistance Term** means the period commencing on the PILOT Commencement Date and ending on the Expiration Date.

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

**Real Property Taxes** shall mean (a) general ad valorem real estate 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 (b) 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) Reserved.

(c) PILOT Generally.

(i) It is recognized that under the provisions of the Act the Agency is required to pay no Real Property 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 the PILOT Amounts with respect to the Facility Realty in accordance with the provisions of this Section 5.2. The Agency and the Lessee further agree that in the event the Facility Realty is deemed exempt by virtue of the MTA's ownership thereof, that for purposes of this Agreement (including, without limitation, this Section 5.2), the Facility Realty shall nonetheless be deemed to be subject to Real Property Taxes but for the exemption provided by the Agency.

(ii) The Agency makes no representation as to the availability of an exemption from Real Property 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 Property 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 Property 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.

(d) Payments During the PILOT Financial Assistance Term. The Lessee shall pay a PILOT Amount in respect of each City Tax Fiscal Year occurring during the PILOT



Financial Assistance Term in accordance with the PILOT Calculation Table below and in accordance with the remainder of this Section 5.2; provided, however, that (i) the amount of the CCP PILOT for a given City Tax Fiscal Year shall never exceed the CCP Taxes for such City Tax Fiscal Year and (ii) the determination of CCP Taxes and Other Improvements Taxes in respect of a given City Tax Fiscal Year shall be based on actual Real Property Taxes for such City Tax Fiscal year.

| <u>For each City Tax Fiscal Year occurring within:</u> | <u>CCP PILOT for such City Tax Fiscal Year:</u>              | <u>PILOT Amount for such City Tax Fiscal year:</u>   |
|--|--|--|
| Construction Period                                    | 100% of CCP Taxes for such City Tax Fiscal Year              | CCP PILOT for such City Tax Fiscal Year <u>plus</u> Other Improvements Taxes for such City Tax Fiscal Year |
| Year 1 after Construction Period                       | 60% of CCP Taxes for such City Tax Fiscal Year               | CCP PILOT for such City Tax Fiscal Year <u>plus</u> Other Improvements Taxes for such City Tax Fiscal Year |
| Year 2 after Construction Period                       | 60% of CCP Taxes for such City Tax Fiscal Year               | CCP PILOT for such City Tax Fiscal Year <u>plus</u> Other Improvements Taxes for such City Tax Fiscal Year |
| Year 3 after Construction Period                       | 60% of CCP Taxes for such City Tax Fiscal Year               | CCP PILOT for such City Tax Fiscal Year <u>plus</u> Other Improvements Taxes for such City Tax Fiscal Year |
| Year 4 after Construction Period                       | 60% of CCP Taxes for such City Tax Fiscal Year               | CCP PILOT for such City Tax Fiscal Year <u>plus</u> Other Improvements Taxes for such City Tax Fiscal Year |
| Year 5 after Construction Period                       | 103% of the CCP PILOT for "Year 4 after Construction Period" | CCP PILOT for such City Tax Fiscal Year <u>plus</u> Other Improvements Taxes for such City Tax Fiscal Year |
| Year 6 after Construction Period                       | 103% of the CCP PILOT for "Year 5 after Construction Period" | CCP PILOT for such City Tax Fiscal Year <u>plus</u> Other Improvements Taxes for such City Tax Fiscal Year |
| Year 7 after Construction Period                       | 103% of the CCP PILOT for "Year 6 after Construction Period" | CCP PILOT for such City Tax Fiscal Year <u>plus</u> Other Improvements Taxes for such City Tax Fiscal Year |
| Year 8 after Construction Period                       | 103% of the CCP PILOT for "Year 7 after Construction Period" | CCP PILOT for such City Tax Fiscal Year <u>plus</u> Other Improvements Taxes for such City Tax Fiscal Year |

|                                   |   |  |
|-----------------------------------|---|--|
| Year 9 after Construction Period  | 103% of the CCP PILOT for “Year 8 after Construction Period”  | CCP PILOT for such City Tax Fiscal Year <u>plus</u> Other Improvements Taxes for such City Tax Fiscal Year |
| Year 10 after Construction Period | 103% of the CCP PILOT for “Year 9 after Construction Period”  | CCP PILOT for such City Tax Fiscal Year <u>plus</u> Other Improvements Taxes for such City Tax Fiscal Year |
| Year 11 after Construction Period | 103% of the CCP PILOT for “Year 10 after Construction Period”   | CCP PILOT for such City Tax Fiscal Year <u>plus</u> Other Improvements Taxes for such City Tax Fiscal Year |
| Year 12 after Construction Period | 103% of the CCP PILOT for “Year 11 after Construction Period”   | CCP PILOT for such City Tax Fiscal Year <u>plus</u> Other Improvements Taxes for such City Tax Fiscal Year |
| Year 13 after Construction Period | 103% of the CCP PILOT for “Year 12 after Construction Period”   | CCP PILOT for such City Tax Fiscal Year <u>plus</u> Other Improvements Taxes for such City Tax Fiscal Year |
| Year 14 after Construction Period | 103% of the CCP PILOT for “Year 13 after Construction Period”   | CCP PILOT for such City Tax Fiscal Year <u>plus</u> Other Improvements Taxes for such City Tax Fiscal Year |
| Year 15 after Construction Period | 103% of the CCP PILOT for “Year 14 after Construction Period”   | CCP PILOT for such City Tax Fiscal Year <u>plus</u> Other Improvements Taxes for such City Tax Fiscal Year |
| Year 16 after Construction Period | Greater of (a) 103% of the CCP PILOT for “Year 15 after Construction Period” and (b) 68% of CCP Taxes for such City Tax Fiscal Year | CCP PILOT for such City Tax Fiscal Year <u>plus</u> Other Improvements Taxes for such City Tax Fiscal Year |
| Year 17 after Construction Period | Greater of (a) 103% of the CCP PILOT for “Year 16 after Construction Period” and (b) 76% of CCP Taxes for such City Tax Fiscal Year | CCP PILOT for such City Tax Fiscal Year <u>plus</u> Other Improvements Taxes for such City Tax Fiscal Year |
| Year 18 after Construction Period | Greater of (a) 103% of the CCP PILOT for “Year 17 after Construction Period” and (b) 84% of CCP Taxes for such City Tax Fiscal Year | CCP PILOT for such City Tax Fiscal Year <u>plus</u> Other Improvements Taxes for such City Tax Fiscal Year |
| Year 19 after Construction Period | Greater of (a) 103% of the CCP PILOT for “Year 18 after Construction Period”  | CCP PILOT for such City Tax Fiscal Year <u>plus</u> Other  |

|  |  |   |
|--|--|---|
|  | and (b) 92% of CCP Taxes for such City Tax Fiscal Year | Improvements Taxes for such City Tax Fiscal Year  |
| The remainder of the PILOT Financial Assistance Term | CCP Taxes for such City Tax Fiscal Year                | CCP PILOT for such City Tax Fiscal Year plus Other Improvements Taxes for such City Tax Fiscal Year |

(e) Payment Provisions.

(i) The Lessee agrees to pay all PILOT required to be paid under this Section 5.2 on or prior to the respective due dates therefor, it being acknowledged and agreed by the Lessee that (A) PILOT Amounts are annual amounts in respect of a given City Tax Fiscal Year, but PILOT is due and payable on a semi-annual basis, (B) the amount specified in a PILOT Bill as being due and payable relates to the immediately succeeding semi-annual period (e.g., a PILOT Bill received in June 2014 relates to the semi-annual period commencing on July 1, 2014 and ending on December 31, 2014), (D) the amount specified in a PILOT Bill as being due and payable is due seven (7) Business Days prior to the commencement of the semi-annual period to which the PILOT Bill relates (e.g., a PILOT Bill in respect of the semi-annual period of July 1, 2015 to December 31, 2015 is due June 22, 2015), and (E) the Agency agrees to request appropriate officers of NYCDOF to provide the Lessee with PILOT Bills, but failure to receive a PILOT Bill shall not relieve the Lessee of its obligation, or otherwise affect the obligation of the Lessee, to pay any PILOT Amount required under this Agreement. The Lessee may send all inquiries concerning PILOT Bills to pilot1@finance.nyc.gov or: **PILOT Unit, NYC Department of Finance, 59 Maiden Lane, 22<sup>nd</sup> floor, New York, New York 10038.**

(ii) Pursuant to the PILOT Assignment and Agreement, the Agency and the City have assigned their respective interests in the PILOT Amounts to HYIC. Until such time that the Agency and/or HYIC may in writing require otherwise, the Lessee shall pay all PILOT Amounts to HYIC or its designee and the Lessee shall make such payments by wire transfer to US Bank (ABA 091000022), 60 Livingston Avenue, St. Paul, Minnesota 55107, BNF Boston Incoming Wire DDA, A/C 173103321092, OBI Corporate Trust, REF# Hudson Yards 108133001, Attention: Debra Rucker.

(iii) Upon the occurrence of a PILOT Payment Default, the portion of the PILOT Amount so in default shall continue as an obligation of the Lessee and the Lessee agrees to pay the same to the HYIC or its designee, 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 of Real Property Taxes, and (ii) a late payment fee of 5% of the portion of the PILOT Amount 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 obtain reductions in the assessed valuation of the Facility Realty. If any such tax reduction or other action or proceeding shall result in a final determination in Lessee's favor (A) Lessee shall be entitled to a credit against future PILOT Amounts due hereunder to the extent, if any, that a previously paid PILOT Amount exceeds the PILOT Amount that should have been charged pursuant to such final determination, and (B) if such final determination is made in respect of a City Tax Fiscal Year for which PILOT has not yet been paid, then the PILOT Amount for such City Tax Fiscal Year shall be adjusted based on such final determination. If Lessee is entitled to receive any credit as described in clause (A) of the preceding sentence, and if at that time the City is paying interest on refunds of Real Property Taxes, then Lessee's credit shall include interest at the rate then being paid by the City on such refunds of Real Property Taxes. In no event, however, shall Lessee be entitled to any refund of any such excess from the Agency or any other Person. Notwithstanding the immediately preceding sentence, if no PILOT Amount is or will subsequently become due, the Lessee shall have the option to have such overpayment credit applied toward Real Property Taxes for the Facility Realty that become due after the Expiration Date.

(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 all Real Property Taxes due on the Facility Realty 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 the PILOT Amount 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 the Cessation Date (as the case may be), as a credit against the Real Property Taxes owed for such semi annual period.

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

(i) *Events of Default.*

(a) Upon the occurrence and continuance of an Event of Default (other than an Event of Default arising under Section 8.9(f), Section 3.3(c) or Section 3.3(d) hereof), the Agency may, in its sole discretion, increase the PILOT due in respect of the Facility Realty for the period commencing on the date that such Event of Default occurs and ending on the date such Event of Default is no longer continuing, in an amount equal to the difference between (x) the PILOT due in respect of the Facility Realty for such period as calculated in accordance with Section 5.2(d) and (y) actual Real Property Taxes for such period in respect of the



Facility Realty that would otherwise be due in the absence of any Real Property Taxes exemption provided by the Agency.

(b) Upon the occurrence and continuance of an Event of Default arising under Sections 3.3(d) and/or 8.9(f) hereof, the Agency shall, as its sole and exclusive remedy, increase PILOT on that portion of the Facility Realty that is in violation of Section 3.3(d) and/or on that portion of the Facility Realty that is occupied by a Tenant in violation of Section 8.9(f), as applicable, up to (but not more than) actual Real Property Taxes on such portion of the Facility Realty that would otherwise be due in the absence of any Real Property Taxes exemption provided by the Agency in accordance with this subsection (b). During a period of time in which an Event of Default arising under Section 3.3(d) and/or Section 8.9(f) hereof shall have occurred and is continuing, the PILOT due in respect of the Facility Realty for such period of time shall equal the sum of (1) the Daily Qualified USF Amounts (as defined below) for each day during such period and (2) the Daily Non-Qualified USF Amounts (as defined below) for each day during such period.

(A) **“Daily Qualified USF Amount”** means, with respect to any day during such period, an amount equal to the product of (i) the PILOT Amount applicable to the City Tax Fiscal Year in which such day occurs (as determined by reference to Section 5.2(d) hereof), divided by (ii) 365 (or 366 if such City Tax Fiscal Year is a leap year), multiplied by (iii) a fraction, the numerator of which is Qualified USF of the Improvements, and the denominator of which is the Usable Square Footage of the Improvements.

(B) **“Daily Non-Qualified USF Amount”** means, with respect to any day during such period, an amount equal to the product of (i) actual Real Property Taxes in respect of the Facility Realty that would otherwise be payable for such day but for the exemption provided by the MTA or the Agency (i.e., a daily amount), multiplied by (ii) a fraction, the numerator of which is Non-Qualified USF of the Improvements, and the denominator of which is the Usable Square Footage of the Improvements.

(c) Upon the occurrence and continuance of an Event of Default arising under Section 3.3(c) hereof, the Agency shall, as its sole and exclusive remedy, increase PILOT on that portion of the CCP Improvements that is in excess of the Maximum Zoning Square Footage up to (but not more than) actual Real Property Taxes in respect of such portion that would otherwise be due in the absence of any Real Property Taxes exemption provided by the Agency in accordance with this subsection (c). During a period of time in which an Event of Default arising under Section 3.3(c) hereof shall have occurred and is continuing, the PILOT due in respect of the Facility Realty for such period of time shall equal the sum of (1) the Daily Qualified ZSF Amounts (as defined below) for each day during such period and (2) the Daily Non-Qualified ZSF Amounts (as defined below) for each day during such period.

(A) **“Daily Qualified ZSF Amount”** means, with respect to any day during such period, an amount equal to the product of (i) the PILOT Amount applicable to the City Tax Fiscal Year in which such day occurs (as determined by reference to Section 5.2(d) hereof), divided by (ii) 365 (or 366 if such City Tax Fiscal Year is a leap year), multiplied by (iii) a fraction, the numerator of which is the Maximum Zoning Square Footage, and the denominator of which is the actual zoning square footage of the CCP Improvements.

(B) **“Daily Non-Qualified ZSF Amount”** means, with respect to any day during such period, an amount equal to the product of (i) actual Real Property Taxes in respect of the Facility Realty that would otherwise be payable for such day but for the exemption provided by the MTA or the Agency (i.e., a daily amount), multiplied by (ii) a fraction, the numerator of which is the amount by which the actual zoning square footage of the CCP Improvements exceeds the Maximum Zoning Square Footage, and the denominator of which is the actual zoning square footage of the CCP Improvements.

(ii) *Loss of Exemption.* Upon the occurrence of the Cessation Date, the Facility Realty shall be deemed automatically restored to the tax rolls, whether or not procedurally such restoration has in fact occurred. From and after the Cessation Date, the Lessee shall pay Real Property Taxes in respect of the Facility Realty (and not the PILOT Amount).

(h) Calculation of PILOT Amounts.

(i) Commencing on June 1, 2019 and on every June 1 and December 1 occurring thereafter during the term of this Agreement, the Lessee shall tentatively calculate the portion of the PILOT Amount due on the next succeeding July 1 or January 1, as applicable, in accordance with the provisions of this Section 5.2. On each such date, the Lessee shall deliver to the Agency, HYIC and NYCDOF a written statement, signed and certified by an Authorized Representative of the Lessee as being made to the best of his or her knowledge as being materially true and correct, that sets forth (A) the Lessee’s initial calculation of the portion of the PILOT Amount (including separate calculations of the CCP PILOT and Other Improvements Taxes that are components of such portion of the PILOT Amount) that will be due on the next succeeding July 1 or January 1, as applicable, (B) Qualified USF, Non-Qualified USF and Usable Square Footage as of the date of such written statement, (C) if Section 5.2(g)(i)(b) is applicable, the Daily Qualified USF Amount and the Daily Non-Qualified USF Amount, and (D) if Section 5.2(g)(i)(c) is applicable, the Daily Qualified ZSF Amount and the Daily Non-Qualified ZSF Amount.

(ii) Should NYCDOF determine that there is a deficiency in any payment of PILOT made by Lessee, the Lessee shall pay such deficiency no later than fifteen (15) days following receipt of an invoice from NYCDOF for such deficiency, and any amounts unpaid after such fifteen (15) day period shall accrue interest in accordance with Section 5.2(e)(iii) hereof. Should NYCDOF determine that Lessee has made an

overpayment of PILOT, the Lessee shall be entitled to a credit against the next PILOT payment that is or will subsequently become due hereunder. Notwithstanding the immediately preceding sentence, if no PILOT is or will subsequently become due, the Lessee shall have the option to have such overpayment applied toward Real Property Taxes for the Facility Realty that become due after the Expiration Date. Lessee shall have the right to contest the amount of PILOT included in a PILOT Bill by providing written notice to NYCDOF (with a copy to HYIC and the Agency) of the contested amount(s), provided that the Lessee shall not withhold any payment of such PILOT. In the event that the Lessee withholds any payments hereunder, the amount of PILOT so in default, if any, shall accrue interest in accordance with Section 5.2(e)(iii) 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 material part of the Facility Realty 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 Realty 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 Realty,

(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. 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 (and the Lessee shall be entitled to all of the Loss Proceeds, the same being waived by the Agency). The obligations of the Lessee hereunder shall be independent of any such other obligations relating to insurance proceeds and condemnation awards.

#### Section 6.3. Obligation to Restore.

(a) In the event a Loss Event shall occur, the Lessee shall 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 Realty to substantially its condition immediately prior to the Loss Event, or to a condition of at least substantially 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.

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

(c) Notwithstanding anything to the contrary in this Section 6.3, in the event that the condemnation of the Facility Realty is of a substantial nature such that the restoration thereof will no longer allow Lessee to operate the Facility Realty for its intended uses and maintain a reasonable rate of return, then Lessee may elect by notice to the Agency to terminate this



Agreement and the other Project Documents. Upon the receipt of such notice, the Agency shall cooperate in the termination of all such Project Documents and the Facility Realty shall thereafter be subject to Real Property Taxes.

Section 6.4. Effect of Restoration of Facility Realty.

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

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

(ii) be effected so that such rebuilding, replacement, repair or restoration shall not change the nature of the Facility Realty as the Approved Facility 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 the Lessee in accordance with the terms of the applicable contract(s) therefor,

(iv) restore the Facility Realty to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, and to a state and condition that will permit the Lessee to use and operate the Facility Realty as the Approved Facility 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 Realty 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 all labor, services, machinery, equipment, materials and supplies used therefor and all costs and expenses in connection therewith have been paid for or arrangement for payment, reasonably satisfactory to the Agency, has been made (iii) that the Facility Realty 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 value, operating efficiency and function, (iv) 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 Realty is subject to the Company Lease and this Agreement, subject to Permitted Encumbrances, and (v) that the restored Facility Realty 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 exist 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 Realty 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 Realty have been paid in full, together with releases of mechanics' liens by all contractors and materialmen who supplied work, labor, services, materials or supplies in connection with the rebuilding, repair, restoration and reconstruction of the Facility Realty (or, to the extent that any such costs shall be the subject of a bona fide dispute, evidence to the Agency that such costs have been appropriately bonded or that the Lessee shall have posted a surety or security at least equal to the amount of such costs); 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 Realty any mechanic's, materialmen's or any other lien in connection with the rebuilding, replacement, repair and restoration of the Facility Realty and that there exist no encumbrances (other than Permitted Encumbrances) or those encumbrances consented to by the Agency.

Section 6.5. Effect of Restoration on PILOT.

(a) All improvements to the Facility Realty that rebuild, replace, repair or restore the Project Improvements following a Loss Event in accordance with Section 6.4 will be treated as Project Improvements for purposes of Section 5.2.

(b) All improvements to the Facility Realty that rebuild, replace, repair or restore the CCP Improvements following a Loss Event in accordance with Section 6.4 will be treated as CCP Improvements for purposes of Section 5.2.

(c) All improvements to the Facility Realty that rebuild, replace, repair or restore any Capital Improvements following a Loss Event in accordance with Section 6.4 will be treated as Capital Improvements for purposes of Section 5.2.

Section 6.6. Declaration and Mortgage Override. Notwithstanding anything to the contrary in this Agreement: (a) for so long as the Declaration is in full force and effect, the applicable provision in the Declaration concerning restoration obligations upon a casualty or condemnation shall control in lieu of the provisions in this Article 6 (excluding Section 6.5 hereof); and (b) in the event that the Declaration is no longer in full force and effect but there is a Mortgage in full force and effect, then the applicable provisions in the Mortgage concerning restoration obligations upon a casualty or condemnation shall control in lieu of the provisions in this Article 6 (excluding Section 6.5 hereof).

## 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, unless the same are caused by the acts or omissions of the Agency), 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 Realty 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 performed by or on behalf of Lessee (other than interior improvements, fit-out or any other work performed by or on behalf of Tenants), including any construction, reconstruction, restoration, alteration and/or repair required under this Agreement in connection with the Facility Realty, provided, that, one or both of the following conditions applies to the foregoing: (i) the cost thereof, labor and materials combined, is \$5,000,000 or greater, (ii) the work being performed, whether in whole or in part, is roof work or work that is performed to the exterior of the building 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** means the Lessee.

**Insurer** means any entity writing or issuing a Policy.

**ISO** means the Insurance Services Office or its successor.

**ISO Form CG-0001** means the CGL form published by ISO as of the Commencement Date.

**Policy(ies)** means, collectively or individually, the policies required to be obtained and maintained pursuant to Sections 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, the Insured shall obtain and maintain 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 on terms consistent with CGL. The excess coverage provided under U/E shall be incremental to the CGL to achieve minimum required coverage of \$100,000,000 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 does not own any vehicles, the Insured shall obtain auto liability insurance in the foregoing amounts for hired and non-owned vehicles. Notwithstanding, in the event that an Authorized Representative of the Lessee delivers a certificate 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 subsection (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.

(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 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 \$100,000,000 per location aggregate.

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

(A) 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 \$100,000,000 per project aggregate, and (y) completed operations coverage shall extend (or be extended) for an additional three (3) years after completion of the Construction;

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

(C) 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:

(A) 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 three (3) years after completion of the Construction;

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

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

(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 as set forth on Schedule 8.1.

(iii) CGL shall not be subject to SIR.

(iv) CGL and Auto liability insurance shall be written on, respectively, ISO Form CG-0001 and ISO Form CA-0001, or on such other equivalent forms as may be reasonably acceptable to the Agency but only if the substitute form being proposed as an 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:

(A) contractual liability coverage insuring the contractual obligations of the Insured;

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

(C) 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 an 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) on 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: PE 1 Unit, 20-30 Hudson Yards Condominium, 30 Hudson Yards (a/k/a 500 West 33<sup>rd</sup> Street), New York, NY 10001;*

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

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

(B) 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.

(C) 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 and the PE 2 Unit) that are not disclosed in Section 8.1(h)(i) below, the Lessee shall in writing notify the Agency of such additional properties.

(h) Miscellaneous.

(i) The Lessee represents that, except as set forth on Schedule 8.1, the Policies pertain to and cover the Facility Realty and the PE 2 Unit exclusively.

(ii) In the event that any of the Policies pertain to and cover properties (other than the Facility Realty and the PE 2 Unit) 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, an 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 an 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) An 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 with respect to property insurance or the application of proceeds thereof and said 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 or the 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 THEIR OPERATIONS AGAINST CLAIMS AND LIABILITY.

(i) The Lessee may provide CGL, U/E and Workers' Compensation required by this Section 8.1 through an Owner Controlled Insurance Program, provided the insurance coverages under such program are consistent in all respects with the requirements of this Section 8.1, except that CGL and U/E need not be on a "per project" basis if the aggregate minimum amount of CGL and U/E coverage under such program is in excess of Five Hundred Million Dollars (\$500,000,000) during the initial period of Construction.

#### Section 8.2. Indemnity.

(a) Except as set forth below, 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, and the PILOT Depository (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 Commencement Date, and continuing throughout the term of this Agreement, arising upon, about, or in any way connected with the Facility Realty or any of the transactions with respect thereto, including:

- (i) the financing of the costs of the Facility Realty,
- (ii) the renovation, equipping or fit-out of the Facility Realty or any part thereof or the effecting of any work done in or about the Facility Realty, or any defects (whether latent or patent) in the Facility Realty,
- (iii) the maintenance, repair, replacement, restoration, rebuilding, construction, renovation, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Facility Realty 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 Realty,

(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 Realty; 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.

Notwithstanding anything to the contrary contained herein, in no event shall Lessee be liable for any consequential, special or punitive damages to the Agency or any other Indemnified Party for Claims or Liability asserted directly against the Lessee by the Agency and/or any other Indemnified Party in connection with this Agreement.

(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 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 Original Commencement Date, the Lessee paid to the Agency the initial Annual Administrative Fee in respect of the Original Project and the Agency Project Fee. On the Original Commencement Date, the Lessee paid to HYIC the HYIC Project Fee. On the Commencement Date, the Lessee shall pay to the Agency the initial Annual Administrative Fee in respect of the Project.

(c) On each Mortgage Date, the Lessee shall pay to HYIC, the applicable HYIC PILOMRT Amount.

(d) The Lessee further agrees to pay the Annual Administrative Fee to the Agency on each July 1 following the Commencement Date until the earlier of the Expiration Date or the Termination Date. In the event that 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. Anti-Raiding Prohibition. If the Lessee shall, with respect to any proposed Tenant Lease for industrial or manufacturing space, request the Agency to determine whether (i) such Tenant's location at the Facility Realty is reasonably necessary to discourage such Tenant from removing its industrial or manufacturing plant or facility to a location outside of the State or (ii) such Tenant's location at the Facility Realty is reasonably necessary to preserve such Tenant's competitive position in its industry or (iii) neither "(i)" or "(ii)" is the case, the Agency shall, upon receipt of such request, make a determination within thirty (30) days and such determination shall be evidenced by a certificate of an Authorized Representative of the Agency.

Section 8.5. Additional PILOT Mortgages. Upon a foreclosure of a PILOT Mortgage by the mortgagee thereunder, the Lessee shall execute and deliver an additional or replacement PILOT Mortgage within twenty (20) Business Days following receipt of the form of such additional or replacement PILOT Mortgage from such mortgagee. Such additional or replacement PILOT Mortgage shall be properly notarized and otherwise in recordable form and, within twenty (20) Business Days following receipt of the form of such additional or replacement PILOT Mortgage from the mortgagee under the foreclosed PILOT Mortgage, the Lessee shall, at its sole cost and expense, (a) cause such additional or replacement PILOT Mortgage to be recorded in the appropriate office of the Register of The City of New York, (b) deliver to the mortgagee under such additional or replacement PILOT Mortgage an updated title search showing the Facility Realty to be free from liens except for Permitted Encumbrances and (c) in the case of a foreclosure of Fee and Leasehold PILOT Mortgage No. 1, deliver to the mortgagee under such additional or replacement PILOT Mortgage a mortgagee title insurance policy in an amount not less than \$2,640,000 insuring such mortgagee's interests under such PILOT Mortgage as holder of a first mortgage lien on the Company Lease and this Agreement, subject only to Permitted Encumbrances, which policy shall include such endorsements (including a so-called



“last dollar” endorsement) as such mortgagee may request and shall provide for, among other things, the following: (1) full coverage against mechanics’ liens; (2) no exceptions other than those approved by such mortgagee; and (3) such other matters as such mortgagee shall request.

Section 8.6. Environmental Matters.

(a) The Lessee shall not cause or permit the Facility Realty 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 Realty, a release of Hazardous Materials onto the Facility Realty or onto any other property.

(b) The Lessee shall comply with, and require and enforce compliance by, all occupants and users of the Facility Realty 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 Realty obtain and comply with, any and all approvals, registrations or permits required thereunder.

(c) 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 Realty in accordance with all applicable Legal Requirements.

Section 8.7. Employment Matters.

(a) Except as is otherwise provided by collective bargaining contracts or agreements, new employment opportunities 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 Realty 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 Workforce Investment 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 use commercially reasonable efforts to cooperate with the Agency in the development of programs for the employment and/or training of members of minority groups in connection with any Capital Improvements at the Facility Realty.

(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 Realty, the Lessee shall not discriminate against any employee or applicant for employment in connection with the Project because of race, color, creed, age, sex or national origin. The Lessee shall use commercially reasonable efforts to ensure that employees and applicants for employment with any subtenant of the Facility Realty 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 reasonably required by the Agency pursuant to this Section and will cooperate with reasonable request of the Agency for the purposes of investigation to ascertain compliance with this Section.

Section 8.9. Assignment or Sublease.

(a) The Lessee may, without the consent of the Agency, (y) assign this Agreement and the other Project Documents or (z) sublet all or substantially all of the Facility Realty; provided that:

(i) in the case of an assignment of this Agreement and the other Project Documents:

(1) Except in the case of an assignment or severance in connection with Sections 8.20 or 11.3 of this Agreement or where the assignee otherwise assumes all of the Lessee's obligations under this Agreement and the other Project Documents (in which event after such assignment and assumption, the Lessee will be relieved of any obligations or liabilities hereunder, except for those accruing prior to the date of the assignment and assumption (unless the assignee expressly assumes the same)), 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;

(2) any assignee of this Lease 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 subject to service of process in the State, and, if a corporation, shall be qualified to do business in the State;

(ii) any assignee, transferee or sublessee shall utilize the Facility Realty as the Approved Facility and a qualified "project" within the meaning of the Act;

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

(iv) in the case of a sublease of all or substantially all of the Facility Realty; 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;

(v) for either an assignment of this Agreement or sublease of all or substantially all of the Facility Realty (not including Tenant Leases);

(1) any assignee or sublessee shall utilize the Facility Realty as the Approved Facility and a qualified "project" within the meaning of the Act;

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

(3) any such assignee or sublessee shall deliver to the Agency the Required Disclosure Statement in form and substance satisfactory to the Agency;

(4) the Lessee shall furnish or cause to be furnished to the Agency a copy of any such assignment or sublease in substantially final form at least ten (10) days prior to the date of execution thereof; and

(5) the assignee or sublessee and the Principals thereof shall not:

(A) be 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) have been convicted of a misdemeanor related to truthfulness and/or business conduct in the past five (5) years;

(C) have been convicted of a felony in the past ten (10) years;

(D) have 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) have 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.

(b) Upon the request of the Lessee, the Agency shall execute any amendments, modifications and/or restatements of this Agreement, the Company Lease and the other Project Documents as shall be reasonably required in connection with any assignment. Any consent by the Agency to any act of assignment or sublease of all or substantially all of the Facility Realty 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 sublease, or as modifying or limiting the rights of the Agency under the foregoing covenant by the Lessee.

(c) If all or substantially all of the Facility Realty 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 such sublessee during the continuance of any such Event of Default. 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 sublease of all or substantially all of the Facility Realty or a release of the Lessee from the further performance of the covenants herein contained on the part of the Lessee.

(d) The Lessee covenants and agrees that it shall not, without providing prior notice to the Agency, amend, modify, terminate or assign, or suffer any amendment, modification, termination or assignment of, any sublease of all or substantially all of the Facility Realty entered into in accordance with this Section (not including Tenant Leases for individual condominium units).

(e) For purposes of this Section 8.9, any license or other right of possession or occupancy granted by the Lessee with respect to all or substantially all the Facility Realty (not including Tenant Leases for individual condominium units) shall be deemed a sublease subject to the provisions of this Section 8.9.



(f) Tenant Leases.

(i) The Lessee shall have the right to enter into Tenant Leases from time to time without the consent of the Agency, provided that the Lessee hereby agrees that each Tenant Lease (or a side letter or agreement executed by the parties to such Tenant Lease) shall contain:

(1) 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 (Periodic Reporting Information for the Agency);

(2) a representation from the Tenant stating either of the following: (A) that such Tenant's occupancy at the Facility Realty will not result in the removal of an industrial or manufacturing plant or facility of such Tenant located outside of the City, but within the State, to the Facility Realty or in the abandonment of one or more such industrial or manufacturing plants or facilities of such Tenant located outside of the City but within the State or (B) that such Tenant's location at the Facility Realty is reasonably necessary to discourage such Tenant from removing its industrial or manufacturing plant or facility to a location outside of the State or is reasonably necessary to preserve such Tenant's competitive position in its industry; and

(3) a representation from the Tenant stating that neither Tenant, nor any Principals of 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.

(4) a covenant from the Tenant stating that at all times during the Tenant's occupancy of the Facility Realty, the Tenant shall ensure that employees and applicants for employment with the Tenant 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

With respect to the foregoing representations required by this clause (i), each Tenant Lease shall include the defined terms set forth in this Agreement for each capitalized term used in such Tenant Lease.

(ii) 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.

(iii) In the event that a Tenant Lease does not contain the foregoing provisions or if the Tenant makes a misrepresentation with respect any of the foregoing matters 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, then, at the Agency's option, in its sole discretion, PILOT on that portion of the Facility Realty occupied by the Tenant shall be adjusted in accordance with Section 5.2(g)(i)(b) hereof.

(g) Mortgages and Mezzanine Loans. Notwithstanding anything to the contrary herein, Lessee shall have the right, without the consent of the Agency, to (A) mortgage, pledge or otherwise hypothecate Lessee's interest in this Agreement and the other Project Documents, and (B) to pledge the direct or indirect equity interests in Lessee, in each case to a Mortgagee or Mezzanine Lender. Upon the request of Lessee, the Agency shall execute and deliver a Subordination, Non-Disturbance and Attornment Agreement substantially in the form of Exhibit I-1. In addition, without limiting the provisions of a Subordination, Non-Disturbance and Attornment Agreement, nothing herein shall restrict the right of a Mortgagee to foreclose on Lessee's interest in this Agreement and other Project Documents or a Mezzanine Lender to foreclose on the equity interest in Lessee, and in each case, to subsequently assign such interests to a designee, provided the Agency receives notice of such foreclosure event as well as the identity and ownership of the designee. Agency acknowledges and agrees that neither any foreclosure of any Mortgage Loan or Mezzanine Loan nor any acquisition of the Facility Realty or any direct or indirect interest in the Lessee pursuant to or in lieu of such foreclosure shall constitute a Default or Event of Default under this Agreement or entitle the Agency to terminate this Agreement.

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

(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 Realty, including the Improvements, or any part of the Facility Realty or interest therein during the term of this Agreement, except as set forth in Sections 3.6, Article VI, 8.9, 8.20,

9.2 and 11.3 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, 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 Realty, 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 Facility Realty as the Approved Facility. 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. Any such right of way, easement, permit or license shall be deemed a Permitted Encumbrance.

(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 any unimproved part of the Facility Realty (on which none of the Improvements, including the 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 Facility Realty as the Approved Facility. 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 or such area from the leasehold estates of the Company Lease and of this Agreement (as well as release of the leasehold estate of the Agency under the Company Lease and the leasehold estate of the Lessee under this Agreement with respect to such unimproved Land and/or such area from the lien of the PILOT Mortgage and any other Project Documents encumbering such Land and/or area), 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, this Agreement, the PILOT Mortgages and the other Project Documents); 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 thirty (30) days prior to the date of the release, stating that, in the opinion of the Person signing such certificate, the unimproved Land and/or area and the release thereof so proposed to be made is not needed for the operation of the Facility Realty, will not adversely affect the use or operation of the Facility Realty as the Approved Facility 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), other than a Permitted Encumbrance, or any judgment, decree, order, levy or process of any court or governmental body is entered, made or issued or any claim (such liens, encumbrances, charges, judgments, decrees, orders, levies, processes and claims being herein collectively called “**Liens**”), whether or not valid, is made against the Facility Realty or any part thereof or the interest therein of the Agency, the Lessee or against any of the Rental Payments payable under the Company Lease and 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 Realty.

(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 Realty 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 or under this Agreement, (ii) neither the Facility Realty 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. This Agreement, as originally executed, or a memorandum hereof, 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. Except as expressly permitted herein, the Lessee shall not create, permit or suffer to exist any mortgage, encumbrance, lien, security interest, claim or charge against the Facility Realty or any part thereof, or the interest of the Agency or the Lessee in the Facility Realty or the Company Lease or this Agreement, except for Permitted Encumbrances.

Section 8.14. Automatically Deliverable Documents.



(a) The Lessee shall promptly 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(n) 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 thirty (30) Business Days after receipt from the Agency of any subtenant survey and questionnaire pertaining to the Facility Realty, the Lessee shall complete and execute such survey and questionnaire and return the same to the Agency.

(d) The Lessee shall deliver or cause to be delivered 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 Capital Improvement(s) to the Agency.

(f) Intentionally omitted.

(g) Intentionally omitted.

(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 Realty, 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 fifteen (15) Business Days of the date (or such longer period if reasonably required to satisfy the request) so requested in writing:

(a) a copy of the most recent annual audited financial statements of the Lessee and of their 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, and certified by an Independent Accountant;

(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 or other evidences of cost as shall have been incurred in connection with the Project Improvements, and (y) permits, authorizations and licenses from appropriate authorities relative to the occupancy, operation and use of the Facility Realty by Lessee, as opposed to any Tenant;

(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 \$2,500,000 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 \$2,500,000 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, to such Authorized Representative's knowledge, the Lessee 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 not more than thirty (30) Business Days nor less than fifteen (15) Business Days prior to the date due, and (ii) the Lessee shall not have received such form from the Agency within five (5) Business Days thereafter. 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 solely to the Lessee 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. Upon termination of this Agreement, the Lessee shall submit to the Agency the Annual Employment and Benefits Report with respect solely to the Lessee 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.

(c) With respect to each Tenant occupying all or part of the Facility Realty, 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 Realty, in the form prescribed by the Agency.

(d) With respect to each Tenant occupying all or part of the Facility Realty, at any time during the twelve-month period terminating on the immediately preceding June 30, the Lessee shall use commercially reasonable efforts to deliver to the Agency by the next following August 1, a completed Subtenant's Employment and Benefits Report with respect to such twelve-month period, in the form prescribed by the Agency.

(e) 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 solely with respect to the Lessee.

Section 8.17. Taxes, Assessments and Charges. (a) The Lessee shall pay when the same shall become due all taxes (other than those taxes for which PILOT or PILOMRT is payable) and assessments, 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 Realty, 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 (other than Real Property Taxes in respect of which PILOT or PILOMRT is payable) 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 (including PILOT, Real Property Taxes and PILOMRT), if (i) neither the Facility Realty nor any part thereof or interest therein would be in any danger of being sold, forfeited or lost, (ii) 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 (iii) 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 Realty, or allow the Facility Realty 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 Realty 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 Realty, any occupant, user or operator of the Facility Realty 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.

(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 Realty 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 Approved Facility and as a "Project".

(a) The Lessee will not take any action, or suffer or permit any action, if such action would cause the Facility Realty not to be the Approved Facility 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 (in each case, within the reasonable power of Lessee), if such failure would cause



the Facility Realty not to be the Approved Facility 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 Realty, but solely for the purpose of assuring that the Lessee is operating the Facility Realty, or is causing the Facility Realty to be operated, as the Approved Facility and a qualified “project” within the meaning of the Act consistent with the Approved Project Operations and with the public purposes of the Agency.

Section 8.20. Restrictions on Dissolution and Merger.

(a) Except as expressly provided herein, 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 or otherwise dispose of to another Entity all or substantially all of its property, business or assets (“**Transfer**”) remaining after the Commencement Date, 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).

(b) Without the prior written consent of the Agency, 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 immediately prior to such Merger or Transfer, or otherwise satisfactory to the Agency in its reasonable discretion, and

(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; or

(ii) when the Lessee is not the surviving, resulting or transferee Entity (the “**Successor Lessee**”),

(1) the predecessor Lessee (the “**Predecessor Lessee**”) shall not have been in default under this Agreement or under any other Project Document (unless such default is cured by the transaction),

(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 reasonably 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, and

(7) the Successor Lessee shall have delivered to the Agency, in form and substance reasonably 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, or otherwise satisfactory to the Agency in its reasonable discretion.

Section 8.21. Further Assurances. The Lessee and the Agency 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 requesting party, as such requesting party 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 8.22. Prevailing Wage.

(a) The Lessee acknowledges and agrees that it is a "covered developer" under and as defined in the Prevailing Wage Law. The Lessee agrees to comply with all applicable requirements of the Prevailing Wage Law.

(b) Annually, by August 1 of each year during the PW Term, commencing on August 1, 2020, the Lessee submit to the Agency and the Comptroller the annual certification required under Section 6-130(c) of the Prevailing Wage Law.

Section 8.23. Condominium Documents. Lessee shall not permit, or suffer to exist, the Condominium Documents (i) to increase the obligations or reduce the rights of the Agency or HYIC under the Project Documents, or (ii) to decrease the obligations or increase the rights of the Lessee under the Project Documents, including without limitation with respect to insurance requirements.

## 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 upon the receipt by Lessee of written notice thereof from the Agency specifying in reasonable detail the nature of such Event of Default:

(a) Failure of the Lessee to pay PILOT in accordance with Section 5.2 or failure of the Lessee to pay all Real Property Taxes in respect of the Facility Realty as required by, and in accordance with, Section 5.2(b);

(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) Failure of the Lessee to observe and perform any covenant or agreement on its part to be performed under Section 8.9, 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;

(d) Failure of the Lessee to observe and perform any covenant or agreement on its part to be performed under Section 8.1, 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;

(e) Failure of the Lessee to observe and perform any covenant, condition or agreement on its part to be performed under Sections 3.3, 5.1, 8.2, 8.3, 8.4, 8.5, 8.8, 8.11, 8.13, 8.17, 8.18, 8.20, 9.8, 11.2 or 11.3 or Article VI, 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;

(f) Failure of the Lessee to observe and perform any covenant or agreement on its part to be performed under Sections 4.6 or 9.7, 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;

(g) 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 Sections 9.1(a), (b), (c), (d), (e) or (f)) 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;

(h) The Lessee 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;

(i) A proceeding or case shall be commenced, without the application or consent of the Lessee or the 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 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 the Guarantor shall be entered in an involuntary case under the Federal Bankruptcy Code;

(j) Any representation or warranty made by the Lessee (i) herein or in any other Project Document, or (ii) by or on behalf of the Lessee in any Required Disclosure Statement, or (iii) 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;

(k) The commencement of proceedings to appoint a receiver or to foreclose any mortgage lien on or security interest in the Facility Realty;

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

(m) If Lessee shall fail to comply with the representations contained in Section 2.2(n); or

(n) An "Event of Default" the Guaranty Agreement shall occur and be continuing.

Section 9.2. Remedies on Default. (i) Whenever any Event of Default referred to in Section 9.1 shall have occurred and be continuing, the Agency may terminate this Agreement (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) by delivery of written notice to Lessee specifying the date of termination (which in no event may be less than

ten (10) days or more than sixty (60) days from the date of the notice) in which case, so long as the applicable Event of Default is continuing on the date of termination, 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 Realty 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, this Agreement and the other Project Documents of record as required by law. 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.

(b) Whenever any Event of Default referred to in Section 9.1 shall have occurred and be continuing during the Initial Term, the Agency may take any one or more of the following remedial steps in addition to the remedy provided in Section 9.2(a):

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

(ii) The Agency may increase the amount of PILOT payable under Section 5.2 to actual Real Property Taxes that would otherwise be payable in the absence of any Real Property Taxes exemption provided by the Agency in accordance with Section 5.2(g)(i); 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.

(c) 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 5.1, 5.2, 9.6, 11.4, 11.5, 11.6, 11.11, 11.13 and 11.14, all of which shall survive any such action.

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; provided that after the Initial Term, the Agency's sole and exclusive remedy shall be as set forth in Section 9.2(a). 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 that a court of competent jurisdiction shall have determined that the Lessee has defaulted under any of the provisions of this Agreement and the Agency or HYIC 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 and HYIC the reasonable fees and disbursements of their respective attorneys or other consultants.

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(n) 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 either (i) the Lessee shall cure such default within thirty (30) days of the receipt of written notice of such default (or such longer period if reasonably required to cure the same and Lessee is diligently pursuing such cure to completion), or (ii) 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 by the date therein stated after so requested in writing (collectively, the “**Requested Document Deliverables**”),

then the Agency shall not deem such failure an Event of Default, but rather 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 (11<sup>th</sup>) 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 Protective Provisions.

(a) The Agency shall give to each Mortgagee, at the address of such Mortgagee set forth in a notice from such Mortgagee or from Lessee, a copy of each notice given by the Agency to Lessee hereunder (including Default and Event of Default notices) at the same time as and whenever any such notice shall thereafter be given by the Agency to the Lessee, and no such notice by the Agency shall be deemed to have been duly given to the Lessee (and no grace or cure period shall be deemed to have commenced) unless and until a copy thereof shall have been given to each such Mortgagee. Each Mortgagee (i) shall thereupon have a period of ten (10) days more in the case of a Default in the payment of PILOT, a Rental Payment or other monetary obligation (each, a “**Monetary Default**”) and thirty (30) days more in the case of any other Default (or in the case of a non-Monetary Default which shall require more than thirty (30) days to cure using due diligence, then such longer period of time as shall be necessary so long as such Mortgagee shall have commenced to cure (or caused to be commenced such cure) within such thirty (30) day period and continuously prosecutes or causes to be prosecuted the same to completion with reasonable diligence), after the applicable period afforded Lessee for remedying the Default or causing the



same to be remedied has expired and (ii) shall, within such period and otherwise as herein provided, have the right (but not the obligation) to remedy such Default or cause the same to be remedied. The Agency shall accept performance by or on behalf of a Mortgagee of any covenant, condition or agreement on the Lessee's part to be performed hereunder with the same force and effect as though performed by the Lessee, so long as such performance is made in accordance with the terms and provisions of this Agreement. The Agency shall not object to any entry onto the Facility Realty by or on behalf of a Mortgagee to the extent necessary to effect such Mortgagee's cure rights, provided such entry is in compliance with applicable law.

(b) No non-Monetary Default by Lessee shall be deemed to exist as long as a Mortgagee, in good faith, (i) shall have commenced to cure (or caused to be commenced such cure) such Default within thirty (30) days after the expiration of the applicable period afforded to Lessee for remedying such Default, and continuously prosecutes or causes to be prosecuted the same to completion with reasonable diligence or (ii) if possession of the Facility Realty or any part thereof is required in order to cure such Default, and Mortgagee shall have notified the Agency within thirty (30) days after the expiration of the applicable period afforded to Lessee for remedying the Default of its intention to institute foreclosure proceedings to obtain possession directly or through a receiver, and thereafter commences such foreclosure proceedings, prosecutes such proceedings with all reasonable diligence and continuity and, upon obtaining such possession, commences promptly to cure the Default and prosecutes the same to completion with all reasonable diligence and continuity. Notwithstanding anything to the contrary contained herein, no Monetary Default shall be deemed to exist, and the Agency shall not exercise remedies under this Agreement (including any increase in PILOT or PILOT Amounts pursuant to Section 9.2 of this Agreement), unless and until notice thereof has been given by the Agency to each Mortgagee and Mezzanine Lender and the applicable time periods for cure thereof by each Mortgagee and each Mezzanine Lender under this Section 9.9 (including any applicable extended cure periods provided in this Section 9.9 and any time period for obtaining a new Agency Lease under Section 9.9(h) of this Agreement) have expired and the remedies of the Agency under this Agreement do not include an acceleration of future PILOT or PILOT Amounts, and upon any termination of this Agreement (whether on the Expiration Date or otherwise) the only surviving obligation with respect to PILOT shall be the Lessee's obligation to pay unpaid PILOT Amounts due on or prior to the Termination Date.

(c) A Mortgagee, successor leasehold owner, assignee or transferee gaining possession of the Facility Realty pursuant to a foreclosure or transfer in lieu of foreclosure shall not be bound by any deadline for completion of any construction or alterations required of Lessee under this Agreement; provided, however, that such Mortgagee, successor leasehold owner, assignee or transferee shall with all reasonable diligence and continuity prosecute completion of same. Notwithstanding anything in this Agreement to the contrary, a Mortgagee, successor leasehold owner, assignee or transferee shall not be required to cure any non-Monetary Defaults of Lessee that are not capable of being cured by such Mortgagee, successor leasehold owner, assignee or transferee, and if any Mortgagee, successor leasehold owner, assignee or transferee shall acquire the Facility Realty pursuant to a foreclosure or transfer in lieu of foreclosure, then any such non-Monetary Default by Lessee that is not capable of being cured shall no longer be deemed a Default.

(d) With respect to any non-Monetary Default, so long as a Mortgagee shall be diligently exercising its cure rights under this Section 9.9, the Agency shall not (i) re-enter the Facility Realty, (ii) serve a termination notice, or (iii) bring a proceeding on account of such Default. Nothing in the protections to Mortgagees provided in this Agreement shall be construed to require such Mortgagee to cure any non-Monetary Default by Lessee that is not capable of being cured as a condition to preserving this Agreement or to such Mortgagee obtaining a new Agreement as provided in Section 9.9(h).

(e) Notwithstanding anything to the contrary herein, the exercise of any rights or remedies of a Mortgagee under a Mortgage, including the consummation of any foreclosure or transfer in lieu of foreclosure, shall not constitute a Default under this Agreement nor require the consent of the Agency.

(f) No Mortgagee shall become liable under the provisions of this Agreement unless and until such time as it becomes, and then only for so long as it remains, the owner of the leasehold estate created hereby and no performance by or on behalf of a Mortgagee of the Lessee's obligations hereunder shall cause such Mortgagee to be deemed to be a "mortgagee in possession" unless and until such Mortgagee shall take control or possession of the Facility Realty.

(g) If there is more than one Mortgagee, the rights and obligations afforded by this Section 9.9 to a Mortgagee shall be exercisable only by the party whose collateral interest in the Facility Realty is senior in lien (or which has obtained the consent of any Mortgagees that are senior to such Mortgagee). For avoidance of doubt, the holder of the PILOT Mortgages shall not be deemed a Mortgagee for purposes of this Section 9.9(g).

(h) New Agreement.

(i) In the event of a termination of this Agreement, prior to the Expiration Date, whether by summary proceedings to dispossess, service of notice to terminate, or otherwise, due to an Event of Default or for any other reason, or in the event of or following the rejection of this Agreement (or the Company Lease) by Lessee in a bankruptcy or other insolvency proceeding, including, without limitation, pursuant to Section 365 of Title 11 of the Federal Bankruptcy Code (as amended and recodified from time to time), the Agency shall serve upon each Mortgagee, written notice of such termination promptly following the same, together with a statement of any and all sums which would at that time be due under this Agreement but for such termination, and of all other Defaults, if any, under this Agreement then known to the Agency. Subject to clause (ii) of this Section 9.9(h), the Mortgagees shall thereupon have the option to obtain a new Agreement in accordance with and upon the following terms and conditions:

(1) Upon the written request of such Mortgagee, served upon the Agency forty-five (45) days after service upon the Mortgagee of notice of termination by the Agency, the Agency shall enter into a new Agreement with such Mortgagee or its designee.

(2) The new Agreement shall be effective as of the date of termination of this Agreement and shall be for the remainder of the term and upon

all the agreements, terms, covenants and conditions hereof. Upon the execution of such new Agreement, the new Lessee shall pay any and all sums which would at the time of the execution thereof be due under this Agreement but for its termination, and shall otherwise with reasonable diligence commence to remedy any non-Monetary Defaults under this Agreement.

(3) As between the Agency and the new Lessee, any new Agreement, and the leasehold estate created thereby, subject to the same conditions contained in this Agreement, shall continue to maintain the same priority as this Agreement with regard to any Mortgage or PILOT Mortgage or any other lien, charge or encumbrance whether or not the same shall then be in existence.

(4) Upon the execution and delivery of a new Agreement, all Tenant Leases which theretofore may have been assigned to or recognized by the Agency shall be assigned and transferred, without recourse, by the Agency to the new Lessee. Between the date of termination of this Agreement and the date of execution and delivery of the new Agreement, if a Mortgagee shall have requested such new Agreement as provided herein, the Agency shall not enter into any new Tenant Leases, cancel or modify in any material respect any then-existing Tenant Leases or accept any cancellation, termination or surrender thereof (unless such termination shall be effected as a matter of law on the termination of this Agreement) without the written consent of the Mortgagee, not to be unreasonably withheld or delayed, except as permitted in the Tenant Leases.

(ii) If there is more than one Mortgagee, the Agency shall enter into a new Agreement with the Mortgagee whose Mortgage is senior in lien (or which has obtained the consent of any Mortgagees that are senior to such Mortgagee) as the Mortgagee entitled to the rights afforded by this Section 9.9(h).

Section 9.10. Additional Mortgagee Protective Clauses. In addition to the other rights, notices and cure periods afforded to Mortgagees, the Agency further agrees that:

(a) without the prior written consent of each Mortgagee, the Agency will neither agree to any modification or amendment of this Agreement which would have an adverse effect on such holder, nor accept a surrender or cancellation of this Agreement;

(b) the Agency shall consider in good faith any modification to this Agreement or the Subordination, Non-Disturbance and Attornment Agreement requested by a Mortgagee as a condition or term of granting financing to Lessee, provided that the same does not materially increase the Agency's obligations or diminish the Agency's rights and immunities hereunder (and is otherwise consistent with the Act);

(c) at the request of the Lessee from time to time, the Agency shall execute and deliver an instrument addressed to the holder of any Mortgage confirming that such holder is a Mortgagee or Mezzanine Lender and entitled to the benefit of all provisions contained in the Agreement which are expressly stated to be for the benefit of Mortgagees.

(d) Notwithstanding anything to the contrary contained herein, the Agency and the Lessee hereby confirm and agree for the benefit of each Mortgagee and each Mezzanine Lender that each Mortgagee and each Mezzanine Lender are entitled to all of the benefits of all provisions of this Agreement which are stated in this Agreement to be for the benefit of Mortgagees (including, without limitation, those set forth in Sections 6.6, 8.9(g), 9.9, 9.10 and 11.5 of this Agreement).



## ARTICLE X

### TERMINATION

#### Section 10.1. Termination of Company Lease and this Agreement on Agency Notice.

(a) On or after the Expiration Date, upon receipt of ten (10) days prior written notice from either party directing termination of the Company Lease, this Agreement and the Project Documents, the parties shall take the actions described in Section 10.2(a) and terminate the Company Lease, this Agreement and the Project Documents.

(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 10.2(a) within such ten (10) day period), then, commencing on the eleventh (11<sup>th</sup>) day after transmittal of the notice directing termination as provided in Section 10.1(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.

(c) In the event the Agency does not terminate the Company Lease, this Agreement and the other Project Documents as set forth in Section 10.2, then the Lessee may commence an action for specific performance of such Agency obligations.

#### Section 10.2. Actions Upon Termination.

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

- (i) pay any amounts due and payable pursuant to Section 5.2 hereof,
- (ii) pay any and all other Rental Payments and any other amounts due and payable under this Agreement (collectively, the “**Project Payments**”) then due plus one dollar (\$1.00), and
- (iii) perform all accrued monetary obligations hereunder.

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

- (i) fully executed termination agreements and all other necessary documents in recordable form confirming the release of the Agency’s right, title and interest in and to the Facility Realty and terminating the Company Lease, this Agreement and the other Project Documents, 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 Realty or any portion thereof.

(c) Upon termination of the Company Lease, this Agreement and the other Project Documents, 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 10.3.

Section 10.3. Survival of Lessee Obligations. Upon release of the Agency's interest in the Facility Realty pursuant to Sections 10.1 or 10.2, this Agreement and all obligations of the Lessee hereunder shall be terminated except the obligations of the Lessee under Sections 5.1, 5.2, 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 5.2, 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 resulting in the 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; Tenant Recognition.

(a) Upon the execution and delivery of each Mortgage and PILOT Mortgage entered into after the Commencement Date, (i) the Lessee shall deliver or cause the Mortgagee to deliver to the Agency a Subordination, Non-Disturbance and Attornment Agreement and the Subordination Agreement in the forms attached hereto as Exhibit I-1 and Exhibit I-2 and (ii) the Agency shall deliver a counterpart of such documents, together with any affidavits or other documents required to record the same.

(b) In connection with a Tenant Lease with a Major Tenant, within ten (10) Business Days following the request of Lessee, the Agency shall obtain from HYIC and provide

to the Lessee a Tenant Lease Subordination, Non-Disturbance and Attornment Agreement in the form attached hereto as Exhibit I-3.

Section 11.3. Amendments.

(a) This Agreement may only be amended by a written instrument executed and delivered by the parties hereto, subject to the written consent of a Mortgagee to the extent required under such Mortgagee's loan documents, not to be unreasonably withheld, conditioned or delayed.

(b) The parties acknowledge that the Lessee has the option to sever this Agreement into one or more severed leases in connection with the sale of fee title to all or a portion of the Facility Realty (each of the foregoing a "**Future Severance**" and the severed portion of the Facility Realty, a "**Severed Portion**"). Notwithstanding anything to the contrary herein, in connection with a Future Severance, promptly upon the request of the Lessee, the Lessee and the Agency shall amend, modify and/or restate the Project Documents (including, without limitation, severing this Agreement, the Company Lease and the other Project Documents so that it applies to and encumbers each Severed Portion separately, and simultaneously releasing and/or amending the applicable Project Documents to confirm the same) so that (i) such Project Documents continue to encumber the Facility Realty, including each Severed Portion, in the manner contemplated by this Agreement and the other Project Documents (and with Real Property Taxes and PILOT assessed against each Severed Portion separately); (ii) a new or severed company lease agreement, agency lease agreement and other project documents be executed in substantially the same form as this Agreement, the Company Lease and the other Project Documents except that each such agreement shall then spread or apply to and encumber the Severed Portion and the ownership thereof, and (iii) the Usable Square Footage of the Project Improvements that constitutes retail space and the Maximum Zoning Square Footage under this Agreement will be divided and allocated to each Severed Portion. Following such Future Severance, the obligations of each Lessee under the applicable Agreement, Company Lease and other Project Documents shall be exclusive with respect to such Lessee's Severed Portion, and there shall be no cross-default or similar obligations with respect to any another Severed Portion. Promptly upon the request of the Lessee, the Agency shall reasonably cooperate with the Lessee at the sole cost and expense of the Lessee in connection with the execution and delivery of such amendments and/or restatements of the Project Documents or delivery of additional documents or instruments that the Lessee or the Mortgagee may reasonably request in connection with such Future Severance, including without limitation, severance agreements, spreader agreements, releases and amended and restated Project Documents (collectively, the "**Additional Project Documents**"), provided that such Additional Project Documents (i) do not increase the obligations or reduce the rights of the Agency under the Project Documents, (ii) do not decrease the obligations or increase the rights of the Lessee under the Project Documents, and (iii) are in a form reasonably acceptable to the Agency. The Agency shall deliver such affidavits and other documents reasonably requested by a title company to accomplish the Future Severances contemplated by this Agreement and to exempt the recording of any new or restated PILOT Mortgages from Mortgage Recording Taxes

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 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  
Deputy Executive Director of the Agency at the  
same address)

(2) if to the Lessee, to

Hudson Yards North Tower Tenant LLC  
c/o The Related Companies, L.P.  
60 Columbus Circle  
New York, New York 10023  
Attention: President (with a copy to the General  
Counsel at the same address)

with a copy to

Fried, Frank, Harris, Shriver & Jacobson LLP  
One New York Plaza  
New York, NY 10004-1980  
Attention: Tal Golomb, Esq.,

(3) if to the Mortgagee, to

Deutsche Bank AG, New York Branch  
60 Wall Street, 10th Floor  
New York, NY 10005  
Attention: Robert W. Pettinato, Jr.  
Facsimile No.: (212) 797-4489

with a copy to:

Sidley Austin LLP  
One South Dearborn  
Chicago, IL 60603  
Attention: Charles Schrank, Esq.  
Facsimile No.: (312) 853-7036

and

(4) if to the New Fee Purchase Unit Owner, to  
KKR HY Owner LLC  
9 West 57<sup>th</sup> Street, Suite 4200  
New York, New York 10019  
Attention: James Rudy  
Email: James.Rudy@kkcr.com

with a copy to

KKR HY Owner LLC  
9 West 57<sup>th</sup> Street, Suite 4200  
New York, New York 10019  
Attention: General Counsel  
Email: general.counsel@kkcr.com

The Agency shall deliver to any Mortgagee (to the extent that the Lessee shall have delivered to the Agency the written notice address for such Mortgagee) a copy of any notice of default or notice of its intent to convey its leasehold interest in the Facility Realty 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 Realty, the Project, the relationship between the Agency and the Lessee, the Lessee's ownership, use or occupancy of the Facility Realty 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. Reserved.

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 Commencement Date. This Agreement shall become effective upon its delivery on the Commencement Date. It may be

simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

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, HYIC and the Indemnified Parties and their respective successors and permitted assigns.

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 conflict of laws thereof (except Sections 5-1401 and 5-1402 of the General Obligations Law of the State).

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 Realty, the Project, the relationship between the Agency and the Lessee, the Lessee's ownership, use or occupancy of the Facility Realty 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.

(a) 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.

(b) None of the members, managers, trustees, directors, officers, employees, agents or servants of the Lessee, or of any Person who has at any time acted as Lessee hereunder, or any Affiliates of either, shall have any liability (personal or otherwise) hereunder, and no property or assets of any such Affiliates or such members, managers, trustees, directors, officers, employees, agents or servants shall be subject to levy, execution or other enforcement procedure for the satisfaction of the Agency's or any Indemnified Party's remedies hereunder.



Section 11.15. Estoppel Certificates. At any time, and from time to time, upon not less than ten (10) days' notice by Lessee, the Agency shall execute, acknowledge and deliver to the Lessee and to any other party specified by the Lessee a statement certifying: (a) that the Company Lease, this Agreement and any other applicable Project Document is unmodified and in full force and effect (or, if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications), (b) the amount of all Rental Payments, PILOT and PILOMRT paid to such date by the Lessee to the Agency and (c) stating whether or not, to the best knowledge of the Agency, Lessee is in default in performance of any covenant, agreement or condition contained in this Agreement or other Project Document, and, if so, specifying each such default of which the Agency may have knowledge.

Section 11.16. Confidentiality. The Agency acknowledges that the Lessee has provided and will be hereafter providing confidential information, including trade secrets and proprietary information, the disclosure of which may be harmful to the Lessee's or its Tenants' competitive position. Accordingly, the Agency agrees that, if disclosure requests are received by the Agency pursuant to the Freedom of Information Law or any judicial or legislative subpoena, requesting any financial information concerning the Lessee, its Principals or a Tenant or its Principals, or any trade secret or proprietary information provided to the Agency by the Lessee or its Tenants, the Agency shall give the Lessee notice prior to providing such information.

Section 11.17. Legal Counsel; Mutual Drafting. Each party acknowledges that this Agreement is a legally binding contract and that it was represented by legal counsel in connection with the drafting, negotiation and preparation of this Agreement. Each party acknowledges that it and its legal counsel has cooperated in the drafting, negotiation and preparation of this Agreement and agrees that this Agreement and any provision hereof shall be construed, interpreted and enforced without regard to any presumptions against the drafting party. Each party hereby agrees to waive any rule, doctrine or canon of law, including without limitation, the *contra preferentum* doctrine, that would require interpretation of any ambiguities in this Agreement against the party that has drafted it.

Section 11.18. Assignment. Immediately after the execution and delivery of the Company Lease and a memorandum of this Agreement, the Lessee will assign to the New Fee Purchase Unit Owner all of Lessee's rights, title, estates, interest, liabilities, duties, covenants, obligations and agreements in, to and under this Agreement, the Company Lease and the other Project Documents, and the New Fee Purchase Unit Owner will accept and assume all of the Lessee's rights, title, estates, interest, liabilities, duties, covenants, obligations and agreements, in, to and under this Agreement, the Company Lease and the other Project Documents.

[Signature Pages Follow]

IN WITNESS WHEREOF, each of the Agency and the Lessee has caused its name to be subscribed unto this Severed Agency Lease Agreement (PE 1 Unit) by its duly Authorized Representative, all being done as of the Commencement Date.

NEW YORK CITY INDUSTRIAL  
DEVELOPMENT AGENCY, as the Agency

By: *Krishna Omolade*  
Name: Krishna Omolade  
Title: Deputy Executive Director

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

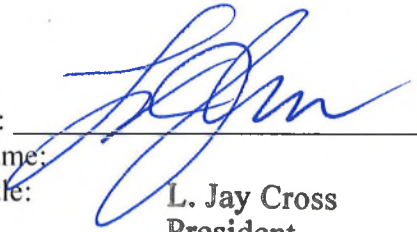
On the 13 day of May in the year 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared Krishna Omolade, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

*Arthur Hauser*  
Notary Public

[Signatures Continue on Following Page]


Arthur Hauser  
Notary Public, State of New York  
NO. 01HA6276327  
Qualified in Kings County  
Certificate Filed in New York County  
Commission Expires 2/11/2021

HUDSON YARDS NORTH TOWER  
TENANT LLC, a Delaware limited liability  
company

By:   
Name: \_\_\_\_\_  
Title: **L. Jay Cross  
President**

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

On the 20<sup>th</sup> day of May in the year 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared L. JAY CROSS, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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

SHANNON COLLEEN VOLZ  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01VO6361982  
Qualified In Suffolk County  
My Commission Expires 07-24-2021

## **APPENDICES**



**EXHIBIT A**

**DESCRIPTION OF THE UNIT**

Attached.

The condominium unit (the "Unit") in the building known as 20-30 HUDSON YARDS CONDOMINIUM (the "Building"), located at and known as and by street number 500 West 33<sup>rd</sup> Street, New York, New York designated and described as the PE 1 Unit in the Declaration, as amended, 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 as of September 10, 2015 and recorded on December 9, 2015 in the Office of the Register of the City of New York, County of New York (the "Register's Office") under CRFN 2015000436062, as amended and restated pursuant to that certain Amended and Restated Declaration, dated as of December 12, 2018 and recorded on April 15, 2019 in the Register's Office under CRFN 2019000118977 and re-recorded on May 15, 2019 in the Register's Office under CRFN 2019000154326, said PE 1 Unit also being designated as Tax Lot 1306, in Block 702 of the Borough of Manhattan on the Tax Map of the Real Property Assessment Department of the City of New York (the "Assessment Department") and on the Floor Plans of said Building filed in the Assessment Department as Condominium Plan No. 2639 and also filed in the Register's Office on December 9, 2015 as Condominium Map filed under CRFN 2015000436063, as amended on the Floor Plans of said Building filed in the Assessment Department as Condominium Plan No. 2639-A and also filed in the Register's Office on April 15, 2019 as Condominium Map filed under CRFN 2019000118978 and re-filed in the Register's Office on May 15, 2019 as Condominium Map filed under CRFN 2019000154327.

**TOGETHER** with an undivided 7.03% interest in the Common Elements (as such term is defined in the Declaration).

**TOGETHER** with the benefits of those certain easements appurtenant to the Building, granted by the Declaration, the Condominium By-Laws and the Tower Section By-Laws (each as defined in the Declaration).

**TOGETHER** with the benefits of those certain easements appurtenant to the Unit, if any, granted by the Declaration, the Condominium By-Laws and the Tower Section By-Laws (each as defined in the Declaration).

The Land on which the Building containing the Unit is situate is bounded and described as follows:

**Southeast Lobby Level:**

All of the lands at or above a lower limiting plane of elevation 15.67 feet (Manhattan Borough Datum) within the following horizontal boundary:

Commencing at a point formed by the intersection of the westerly line of Tenth Avenue (100' R.O.W.), and the southerly line of West 33rd Street (60' R.O.W.); and running the following course and distance to the Point of Beginning;

- A. Along said westerly line of Tenth Avenue, South 00°03'07" West, a distance of 373.00 feet to the Point of Beginning; and running thence
  - 1. Along said westerly line of Tenth Avenue, South 00°03'07" West, a distance of 147.33 feet to a point; thence

2. Leaving Tenth Avenue, North 89°56'53" West, a distance of 75.20 feet to a point; thence
3. North 00°03'07" East, a distance of 3.02 feet to a point; thence
4. North 73°49'29" East, a distance of 45.37 feet to a point; thence
5. North 00°03'07" East, a distance of 21.47 feet to a point; thence
6. South 89°56'53" East, a distance of 13.21 feet to a point; thence
7. North 00°03'07" East, a distance of 30.41 feet to a point; thence
8. North 89°54'32" West, a distance of 13.73 feet to a point; thence
9. North 00°03'07" East, a distance of 79.75 feet to a point; thence
10. South 89°56'53" East, a distance of 32.16 feet to the Point of Beginning.

**Retail Loading Dock Support Level:**

All of the lands at or above a lower limiting plane of elevation 18.17 feet (Manhattan Borough Datum) within the following horizontal boundary:

Commencing at a point formed by the intersection of the westerly line of Tenth Avenue (100' R.O.W.), and the southerly line of West 33rd Street (60' R.O.W.); and running the following course and distance to the Point of Beginning;

- A. Along said westerly line of Tenth Avenue, South 00°03'07" West, a distance of 256.75 feet to the Point of Beginning; and running thence
  1. Along said westerly line of Tenth Avenue, South 00°03'07" West, a distance of 86.17 feet to a point; thence
  2. Leaving Tenth Avenue, North 89°56'53" West, a distance of 3.14 feet to a point; thence
  3. South 00°03'07" West, a distance of 0.33 feet to a point; thence
  4. North 89°56'53" West, a distance of 28.58 feet to a point; thence
  5. North 00°03'07" East, a distance of 19.50 feet to a point; thence
  6. North 89°56'53" West, a distance of 1.58 feet to a point; thence
  7. North 00°03'07" East, a distance of 11.33 feet to a point; thence
  8. South 89°56'53" East, a distance of 13.50 feet to a point; thence

9. North 00°03'07" East, a distance of 30.67 feet to a point; thence
10. North 89°56'53" West, a distance of 28.42 feet to a point; thence
11. North 00°03'07" East, a distance of 25.00 feet to a point; thence
12. South 89°56'53" East, a distance of 48.22 feet to the Point of Beginning.

**Retail Loading Dock BOH Level:**

All of the lands at or above a lower limiting plane of elevation 22.25 feet (Manhattan Borough Datum) within the following horizontal boundary:

Commencing at a point formed by the intersection of the westerly line of Tenth Avenue (100' R.O.W.), and the southerly line of West 33rd Street (60' R.O.W.); and running the following course and distance to the Point of Beginning;

- A. Along said westerly line of Tenth Avenue, South 00°03'07" West, a distance of 130.99 feet to the Point of Beginning; and running thence
  1. Along said westerly line of Tenth Avenue, South 00°03'07" West, a distance of 125.76 feet to a point; thence
  2. Leaving Tenth Avenue, North 89°56'53" West, a distance of 48.22 feet to a point; thence
  3. South 00°03'07" West, a distance of 53.50 feet to a point; thence
  4. North 89°56'53" West, a distance of 89.42 feet to a point; thence
  5. North 00°03'07" East, a distance of 30.00 feet to a point; thence
  6. North 89°56'53" West, a distance of 30.00 feet to a point; thence
  7. North 00°03'07" East, a distance of 76.15 feet to a point; thence
  8. North 82°34'00" East, a distance of 60.52 feet to a point; thence
  9. North 00°03'07" East, a distance of 56.55 feet to a point; thence
  10. South 89°56'53" East, a distance of 89.33 feet to a point; thence
  11. North 00°03'07" East, a distance of 8.68 feet to a point; thence
  12. South 89°56'53" East, a distance of 18.30 feet to the Point of Beginning.

**Tenth Avenue Entry 01 Level:**



All of the lands at or above a lower limiting plane of elevation 25.08 feet (Manhattan Borough Datum) within the following horizontal boundary:

Commencing at a point formed by the intersection of the westerly line of Tenth Avenue (100' R.O.W.), and the southerly line of West 33rd Street (60' R.O.W.); and running the following course and distance to the Point of Beginning;

- A. Along said westerly line of Tenth Avenue, South 00°03'07" West, a distance of 80.58 feet to the Point of Beginning; and running thence
  - 1. Along said westerly line of Tenth Avenue, South 00°03'07" West, a distance of 29.94 feet to a point; thence
  - 2. Leaving Tenth Avenue, North 89°56'53" West, a distance of 18.30 feet to a point; thence
  - 3. North 00°03'07" East, a distance of 12.19 feet to a point; thence
  - 4. North 89°56'53" West, a distance of 1.75 feet to a point; thence
  - 5. North 00°03'07" East, a distance of 17.75 feet to a point; thence
  - 6. South 89°56'53" East, a distance of 20.05 feet to the Point of Beginning.

**Tenth Avenue Entry 02 Level:**

All of the lands at or above a lower limiting plane of elevation 26.08 feet (Manhattan Borough Datum) within the following horizontal boundary:

Commencing at a point formed by the intersection of the westerly line of Tenth Avenue (100' R.O.W.), and the southerly line of West 33rd Street (60' R.O.W.); and running the following course and distance to the Point of Beginning;

- A. Along said westerly line of Tenth Avenue, South 00°03'07" West, a distance of 54.67 feet to the Point of Beginning; and running thence
  - 1. Along said westerly line of Tenth Avenue, South 00°03'07" West, a distance of 25.92 feet to a point; thence
  - 2. Leaving Tenth Avenue, North 89°56'53" West, a distance of 20.05 feet to a point; thence
  - 3. North 00°03'07" East, a distance of 25.92 feet to a point; thence
  - 4. South 89°56'53" East, a distance of 20.05 feet to the Point of Beginning.

**Tenth Avenue Entry 03 Level:**

All of the lands at or above a lower limiting plane of elevation 26.08 feet (Manhattan Borough Datum); within the following horizontal boundary:

Commencing at a point formed by the intersection of the westerly line of Tenth Avenue (100' R.O.W.), and the southerly line of West 33rd Street (60' R.O.W.); and running the following course and distance to the Point of Beginning;

- A. Along said westerly line of Tenth Avenue, South 00°03'07" West, a distance of 110.52 feet to the Point of Beginning; and running thence
  - 1. Along said westerly line of Tenth Avenue, South 00°03'07" West, a distance of 20.47 feet to a point; thence
  - 2. Leaving Tenth Avenue, North 89°56'53" West, a distance of 18.30 feet to a point; thence
  - 3. North 00°03'07" East, a distance of 20.47 feet to a point; thence
  - 4. South 89°56'53" East, a distance of 18.30 feet to the Point of Beginning.

**Northeast Lobby Level:**

All of the lands at or above a lower limiting plane of elevation 26.67 feet (Manhattan Borough Datum) within the following horizontal boundary:

Beginning at a point formed by the intersection of the westerly line of Tenth Avenue (100' R.O.W.), and the southerly line of West 33rd Street (60' R.O.W.); and running thence;

- 1. Along said westerly line of Tenth Avenue, South 00°03'07" West, a distance of 54.67 feet to a point; thence
- 2. Leaving Tenth Avenue, North 89°56'53" West, a distance of 115.65 feet to a point; thence
- 3. North 00°03'07" East, a distance of 54.67 feet to a point; thence
- 4. South 89°56'53" East, a distance of 115.65 feet to the Point of Beginning.

**Retail Loading Apron Level:**

All of the lands at or above a lower limiting plane of elevation 26.67 feet (Manhattan Borough Datum) within the following horizontal boundary:

Commencing at a point formed by the intersection of the westerly line of Tenth Avenue (100' R.O.W.), and the southerly line of West 33rd Street (60' R.O.W.); and running the following courses and distances to the Point of Beginning;

- A. Along said westerly line of Tenth Avenue, South 00°03'07" West, a distance of 130.99 feet to a point; thence

- B. Leaving Tenth Avenue and following the dividing line between Block 702 Lot 125, Tenth Avenue Entry 03 Level and Block 702 Lot 125, Retail Loading Dock BOH Level, North  $89^{\circ}56'53''$  West, a distance of 18.30 feet to a point on the easterly line of Block 702 Lot 125, Retail Loading Apron Level; thence
- C. Along said easterly line of Block 702 Lot 125, Retail Loading Apron Level, South  $00^{\circ}03'07''$  West, a distance of 8.68 feet to the Point of Beginning; and running thence
1. North  $89^{\circ}56'53''$  West, a distance of 89.33 feet to a point; thence
  2. South  $00^{\circ}03'07''$  West, a distance of 56.55 feet to a point; thence
  3. South  $82^{\circ}34'00''$  West, a distance of 60.52 feet to a point; thence
  4. South  $00^{\circ}03'07''$  West, a distance of 76.15 feet to a point; thence
  5. South  $89^{\circ}56'53''$  East, a distance of 30.00 feet to a point; thence
  6. South  $00^{\circ}03'07''$  West, a distance of 30.00 feet to a point; thence
  7. South  $89^{\circ}56'53''$  East, a distance of 89.42 feet to a point; thence
  8. North  $00^{\circ}03'07''$  East, a distance of 28.50 feet to a point; thence
  9. South  $89^{\circ}56'53''$  East, a distance of 28.42 feet to a point; thence
  10. South  $00^{\circ}03'07''$  West, a distance of 30.67 feet to a point; thence
  11. North  $89^{\circ}56'53''$  West, a distance of 13.50 feet to a point; thence
  12. South  $00^{\circ}03'07''$  West, a distance of 11.33 feet to a point; thence
  13. South  $89^{\circ}56'53''$  East, a distance of 1.58 feet to a point; thence
  14. South  $00^{\circ}03'07''$  West, a distance of 19.50 feet to a point; thence
  15. North  $89^{\circ}56'53''$  West, a distance of 196.42 feet to a point; thence
  16. North  $00^{\circ}03'07''$  East, a distance of 61.50 feet to a point; thence
  17. South  $89^{\circ}56'53''$  East, a distance of 30.00 feet to a point; thence
  18. North  $00^{\circ}03'07''$  East, a distance of 20.99 feet to a point; thence
  19. South  $89^{\circ}56'53''$  East, a distance of 2.25 feet to a point; thence
  20. North  $00^{\circ}03'07''$  East, a distance of 57.36 feet to a point; thence
  21. South  $89^{\circ}56'53''$  East, a distance of 27.75 feet to a point; thence

22. North 00°03'07" East, a distance of 88.28 feet to a point; thence
23. South 78°33'05" East, a distance of 31.11 feet to a point; thence
24. North 00°03'07" East, a distance of 22.94 feet to a point; thence
25. South 89°56'53" East, a distance of 119.33 feet to a point; thence
26. South 00°03'07" West, a distance of 41.33 feet to the Point of Beginning.

**Retail Support Space Level:**

All of the lands at or above a lower limiting plane of elevation 27.83 feet (Manhattan Borough Datum) within the following horizontal boundary:

Commencing at a point formed by the intersection of the westerly line of Tenth Avenue (100' R.O.W.), and the southerly line of West 33rd Street (60' R.O.W.); and running the following courses and distances to the Point of Beginning;

- A. Along said southerly line of West 33rd Street, North 89°56'53" West, a distance of 365.64 feet to a point on the dividing line between Block 702 Lot 125, Northwest Lobby & Loading Dock Level and Block 125 Lot 175; thence
- B. Leaving West 33rd Street and following said dividing line, South 03°42'15" West, a distance of 168.86 feet to the Point of Beginning; and running thence
  1. South 89°56'53" East, a distance of 179.26 feet to a point; thence
  2. South 00°03'07" West, a distance of 42.87 feet to a point; thence
  3. South 89°56'53" East, a distance of 0.75 feet to a point; thence
  4. South 00°03'07" West, a distance of 57.36 feet to a point; thence
  5. North 89°56'53" West, a distance of 2.25 feet to a point; thence
  6. South 00°03'07" West, a distance of 20.99 feet to a point; thence
  7. North 89°56'53" West, a distance of 30.00 feet to a point; thence
  8. South 00°03'07" West, a distance of 21.63 feet to a point; thence
  9. North 89°56'53" West, a distance of 13.43 feet to a point; thence
  10. South 63°48'29" West, a distance of 19.59 feet to a point; thence
  11. South 00°03'07" West, a distance of 19.71 feet to a point; thence
  12. South 89°56'53" East, a distance of 31.00 feet to a point; thence



13. South 00°03'07" West, a distance of 11.50 feet to a point; thence
14. North 89°56'53" West, a distance of 91.75 feet to a point; thence
15. South 00°03'07" West, a distance of 59.50 feet to a point; thence
16. North 89°56'53" West, a distance of 71.47 feet to a point; thence
17. North 03°42'15" East, a distance of 242.71 feet to the Point of Beginning.

**Northwest Lobby & Loading Dock Level:**

All of the lands at or above a lower limiting plane of elevation 28.17 feet (Manhattan Borough Datum) within the following horizontal boundary:

Commencing at a point formed by the intersection of the westerly line of Tenth Avenue (100' R.O.W.), and the southerly line of West 33rd Street (60' R.O.W.); and running the following course and distance to the Point of Beginning;

- A. Along said southerly line of West 33rd Street, North 89°56'53" West, a distance of 115.65 feet to the Point of Beginning; and running thence
  1. Leaving said southerly line of West 33rd Street, South 00°03'07" West, a distance of 54.67 feet to a point; thence
  2. North 89°56'53" West, a distance of 21.98 feet to a point; thence
  3. South 00°03'07" West, a distance of 66.61 feet to a point; thence
  4. North 78°33'05" West, a distance of 31.11 feet to a point; thence
  5. South 00°03'07" West, a distance of 88.28 feet to a point; thence
  6. North 89°56'53" West, a distance of 28.50 feet to a point; thence
  7. North 00°03'07" East, a distance of 42.87 feet to a point; thence
  8. North 89°56'53" West, a distance of 179.26 feet to a point on the dividing line between Block 702 Lot 125 and Block 702 Lot 175; thence
  9. Along said dividing line, North 03°42'15" East, a distance of 160.86 feet to a point on the aforementioned southerly line of West 33rd Street; thence
  10. Along said southerly line of West 33rd Street, South 89°56'53" East, a distance of 44.94 feet to a point; thence
  11. Leaving West 33rd Street, South 00°03'07" West, a distance of 25.59 feet to a point; thence

12. South 89°56'53" East, a distance of 9.39 feet to a point; thence
13. North 00°03'07" East, a distance of 12.92 feet to a point; thence
14. North 89°56'53" West, a distance of 1.67 feet to a point; thence
15. North 00°03'07" East, a distance of 12.67 feet to a point on the aforementioned southerly line of West 33rd Street; thence
16. Along said southerly line of West 33rd Street, South 89°56'53" East, a distance of 197.33 feet, to the Point of Beginning.

**MOE Roof Level:**

All of the lands at or above a lower limiting plane of elevation 39.17 feet (Manhattan Borough Datum) within the following horizontal boundary:

Commencing at a point formed by the intersection of the westerly line of Tenth Avenue (100' R.O.W.), and the southerly line of West 33rd Street (60' R.O.W.); and running the following course and distance to the Point of Beginning;

- A. Along said westerly line of Tenth Avenue, South 00°03'07" West, a distance of 342.92 feet to the Point of Beginning; and running thence
  1. Along said westerly line of Tenth Avenue, South 00°03'07" West, a distance of 30.08 feet to a point; thence
  2. Leaving Tenth Avenue, North 89°56'53" West, a distance of 32.16 feet to a point; thence
  3. South 00°03'07" West, a distance of 79.75 feet to a point; thence
  4. South 89°54'32" East, a distance of 13.73 feet to a point; thence
  5. South 00°03'07" West, a distance of 30.41 feet to a point; thence
  6. North 89°56'53" West, a distance of 13.21 feet to a point; thence
  7. South 00°03'07" West, a distance of 21.47 feet to a point; thence
  8. South 73°49'29" West, a distance of 45.37 feet to a point; thence
  9. South 00°03'07" West, a distance of 3.02 feet to a point on the dividing line between Block 702 Lot 125 and Block 702 Lot 10; thence
  10. Along said dividing line, North 89°56'53" West, a distance of 323.66 feet to a point on the dividing line between Block 702 Lot 125 and Block 702 Lot 175; thence

11. Along said dividing line, North  $03^{\circ}42'15''$  East, a distance of 117.82 feet to a point; thence
12. Leaving said dividing line, South  $89^{\circ}56'53''$  East, a distance of 71.47 feet to a point; thence
13. North  $00^{\circ}03'07''$  East, a distance of 59.50 feet to a point; thence
14. South  $89^{\circ}56'53''$  East, a distance of 316.75 feet to a point; thence
15. North  $00^{\circ}03'07''$  East, a distance of 0.33 feet to a point; thence
16. South  $89^{\circ}56'53''$  East, a distance of 3.14 feet to the Point of Beginning.

**Substation Roof Level:**

All of the lands at or above a lower limiting plane of elevation 40.17 feet (Manhattan Borough Datum) within the following horizontal boundary:

Commencing at a point formed by the intersection of the westerly line of Tenth Avenue (100' R.O.W.), and the southerly line of West 33rd Street (60' R.O.W.); and running the following courses and distances to the Point of Beginning;

- A. Along said westerly line of Tenth Avenue, South  $00^{\circ}03'07''$  West, a distance of 54.67 feet to a point; thence
- B. Leaving Tenth Avenue, along the dividing line between Block 702 Lot 125, Northeast Lobby Level and Block 702 Lot 125, Tenth Avenue Entry 02 Level, North  $89^{\circ}56'53''$  West, a distance of 20.05 feet to the Point of Beginning; and running thence
  1. South  $00^{\circ}03'07''$  West, a distance of 43.67 feet to a point; thence
  2. North  $89^{\circ}56'53''$  West, a distance of 117.58 feet to a point; thence
  3. North  $00^{\circ}03'07''$  East, a distance of 43.67 feet to a point; thence
  4. South  $89^{\circ}56'53''$  East, a distance of 117.58 feet to the Point of Beginning.

**Control Tower Roof Level:**

All of the lands at or above a lower limiting plane of elevation 40.17 feet (Manhattan Borough Datum) within the following horizontal boundary:

Commencing at a point formed by the intersection of the westerly line of Tenth Avenue (100' R.O.W.), and the southerly line of West 33rd Street (60' R.O.W.); and running the following courses and distances to the Point of Beginning;

- A. Along said westerly line of Tenth Avenue, South  $00^{\circ}03'07''$  West, a distance of 342.92 feet to a point; thence

- B. Leaving Tenth Avenue, along the dividing line between Block 702 Lot 125, Retail Loading Dock Support Level and Block 702 Lot 125, MOE Roof Level, North 89°56'53" West, a distance of 20.05 feet to a point; thence
- C. Along the same, South 00°03'07" West, a distance of 0.33 feet to a point; thence
- D. Along the same and following the dividing line between Block 702 Lot 125, Retail Loading Apron Level and Block 702 Lot 125, MOE Roof Level, North 89°56'53" West, a distance of 225.00 feet to a point on the dividing line between said Retail Loading Apron Level and Block 702 Lot 125, Retail Support Space Level; thence
- E. Along the same, North 00°03'07" West, a distance of 11.50 feet to the Point of Beginning; and running thence
  - 1. North 89°56'53" West, a distance of 31.00 feet to a point; thence
  - 2. North 00°03'07" East, a distance of 19.71 feet to a point; thence
  - 3. North 63°48'29" East, a distance of 19.59 feet to a point; thence
  - 4. South 89°56'53" East, a distance of 13.43 feet to a point; thence
  - 5. South 00°03'07" West, a distance of 28.38 feet to the Point of Beginning.

**L.I.R.R. Emergency Egress Stair Level:**

All of the lands at or above a lower limiting plane of elevation 48.83 feet (Manhattan Borough Datum) within the following horizontal boundary:

Commencing at a point formed by the intersection of the westerly line of Tenth Avenue (100' R.O.W.), and the southerly line of West 33rd Street (60' R.O.W.); and running the following course and distance to the Point of Beginning;

- A. Along said southerly line of West 33rd Street, North 89°56'53" West, a distance of 312.98 feet, to the Point of Beginning; and running thence
  - 1. Leaving West 33rd Street, South 00°03'07" West, a distance of 12.67 feet; thence
  - 2. South 89°56'53" East, a distance of 1.67 feet; thence
  - 3. South 00°03'07" West, a distance of 12.92 feet; thence
  - 4. North 89°56'53" West, a distance of 9.39 feet; thence
  - 5. North 00°03'07" East, a distance of 25.59 feet, to a point on the aforementioned southerly line of West 33rd Street; thence



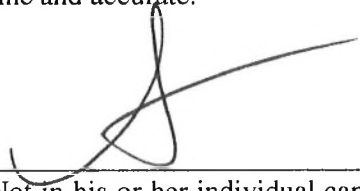
6. Along said southerly line of West 33rd Street, South  $89^{\circ}56'53''$  East, a distance of 7.72 feet to the Point of Beginning.

**AUTHORIZED REPRESENTATIVES OF LESSEE**

(See attached Certificate of Incumbency)

Certificate of Incumbency

I, Alexis Kremen, Vice President of Hudson Yards North Tower Tenant LLC, a Delaware limited liability company (the "**Company**"), on this 20<sup>th</sup> day of May, 2019, hereby certifies that: (1) L. Jay Cross is the President of Hudson Yards North Tower Tenant LLC and (2) the signature of L. Jay Cross set forth on the Certificate of Incumbency attached hereto is genuine and accurate.



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Not in his or her individual capacity, but solely in his or her capacity as Vice President of Hudson Yards North Tower Tenant LLC

**Exhibit A**


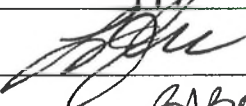
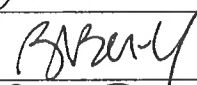


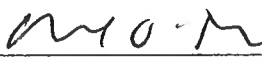





*(attached hereto)*



**CERTIFICATE OF INCUMBENCY**

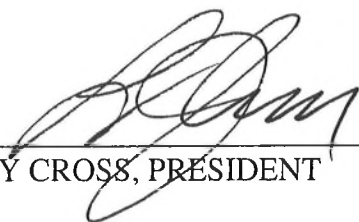
I, L. Jay Cross, President of Hudson Yards North Tower Tenant LLC, a Delaware limited liability company (the “**Company**”), hereby certify as follows:

1. That the following persons are duly elected and qualified officers of the Company and hold the offices set forth below and opposite their name are the genuine signatures of such officers and that the following persons are Authorized Representatives of the Company.

| <u>Name:</u>          | <u>Title:</u>            | <u>Signature:</u>   |
|-----------------------|--------------------------|---|
| Jeff T. Blau          | Chief Executive Officer  |    |
| L. Jay Cross          | President                |     |
| Bruce A. Beal, Jr.    | Executive Vice President |    |
| David Zussman         | Executive Vice President |    |
| Philippe Visser       | Executive Vice President |    |
| Neil Jacob            | Executive Vice President |   |
| David DiStaso         | Senior Vice President    |   |
| Dean Jonathan Shapiro | Senior Vice President    |   |
| Kevin P. Egan         | Senior Vice President    |   |
| Richard O’Toole       | Vice President           |  |
| Amy Arentowicz        | Vice President           |   |
| Emad Lotfalla         | Vice President           |   |
| Michael Smilow        | Vice President           |   |
| Alexis Kremen         | Vice President           |   |
| Jennifer McCool       | Secretary                |   |
| Alysha Valenti        | Assistant Secretary      |   |
| Tara Herrera          | Treasurer                |   |

*[Remainder of Page Intentionally left blank]*

IN WITNESS WHEREOF, I have hereunto set my hand this 20<sup>th</sup> day of May, 2019.

A handwritten signature in black ink, appearing to read "L. Jay Cross", written over a horizontal line.


L. JAY CROSS, PRESIDENT

AUTHORIZED REPRESENTATIVES OF NEW FEE PURCHASE UNIT OWNER

(See attached Certificate of Incumbency)

Certificate of Incumbency

I, Billy Butcher, Vice President of KKR HY OWNER LLC, a Delaware limited liability company (the "**Company**"), on this 20<sup>th</sup> day of May, 2019, hereby certify that: (1) William Janetschek is the Chief Financial Officer of KKR HY OWNER LLC and (2) the signature of William Janetschek set forth on the Certificate of Incumbency attached hereto is genuine and accurate.



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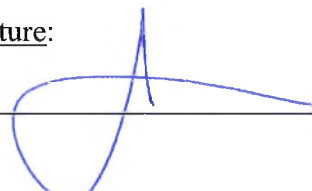
Not in his individual capacity, but solely in his  
capacity as Vice President of KKR HY OWNER  
LLC



**CERTIFICATE OF INCUMBENCY**

I, William Janetschek, Chief Financial Officer of KKR HY OWNER LLC, a Delaware limited liability company (the “**Company**”), hereby certify as follows:

1. That the following persons are duly elected and qualified officers of the Company and hold the offices set forth below and opposite their name are the genuine signatures of such officers and that the following persons are Authorized Representatives of the Company.

| <u>Name:</u>       | <u>Title:</u>               | <u>Signature:</u>  |
|--------------------|-----------------------------|--|
| William Janetschek | Chief Financial Officer     |  |
| David Sorkin       | General Counsel & Secretary |  |
| James Rudy         | Treasurer                   |  |
| Christopher Lee    | Assistant Secretary         |  |
| Ralph Rosenberg    | Vice President              |  |
| Billy Butcher      | Vice President              |  |
| Susan Murphy       | Assistant Treasurer         |  |
| Stephen Jordan     | Assistant Treasurer         |  |

*[Remainder of Page Intentionally left blank]*

**CERTIFICATE OF INCUMBENCY**

I, William Janetschek, Chief Financial Officer of KKR HY OWNER LLC, a Delaware limited liability company (the “**Company**”), hereby certify as follows:

1. That the following persons are duly elected and qualified officers of the Company and hold the offices set forth below and opposite their name are the genuine signatures of such officers and that the following persons are Authorized Representatives of the Company.

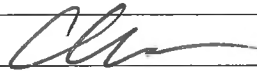
| <u>Name:</u>       | <u>Title:</u>               | <u>Signature:</u>  |
|--------------------|-----------------------------|--|
| William Janetschek | Chief Financial Officer     | <hr/>  |
| David Sorkin       | General Counsel & Secretary |  <hr/> |
| James Rudy         | Treasurer                   | <hr/>  |
| Christopher Lee    | Assistant Secretary         | <hr/>  |
| Ralph Rosenberg    | Vice President              | <hr/>  |
| Billy Butcher      | Vice President              | <hr/>  |
| Susan Murphy       | Assistant Treasurer         | <hr/>  |
| Stephen Jordan     | Assistant Treasurer         | <hr/>  |

*[Remainder of Page Intentionally left blank]*

**CERTIFICATE OF INCUMBENCY**

I, William Janetschek, Chief Financial Officer of KKR HY OWNER LLC, a Delaware limited liability company (the “**Company**”), hereby certify as follows:

1. That the following persons are duly elected and qualified officers of the Company and hold the offices set forth below and opposite their name are the genuine signatures of such officers and that the following persons are Authorized Representatives of the Company.

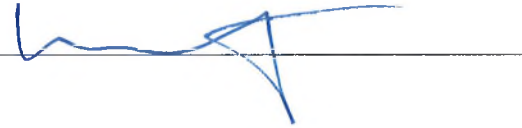
| <u>Name:</u>       | <u>Title:</u>                  | <u>Signature:</u>  |
|--------------------|--------------------------------|--|
| William Janetschek | Chief Financial Officer        | _____  |
| David Sorkin       | General Counsel &<br>Secretary | _____  |
| James Rudy         | Treasurer                      | _____  |
| Christopher Lee    | Assistant Secretary            | _____  |
| Ralph Rosenberg    | Vice President                 | _____  |
| Billy Butcher      | Vice President                 | _____  |
| Susan Murphy       | Assistant Treasurer            | _____  |
| Stephen Jordan     | Assistant Treasurer            | _____  |

*[Remainder of Page Intentionally left blank]*

**CERTIFICATE OF INCUMBENCY**

I, William Janetschek, Chief Financial Officer of KKR HY OWNER LLC, a Delaware limited liability company (the “**Company**”), hereby certify as follows:

1. That the following persons are duly elected and qualified officers of the Company and hold the offices set forth below and opposite their name are the genuine signatures of such officers and that the following persons are Authorized Representatives of the Company.

| <u>Name:</u>       | <u>Title:</u>               | <u>Signature:</u>   |
|--------------------|-----------------------------|---|
| William Janetschek | Chief Financial Officer     | _____   |
| David Sorkin       | General Counsel & Secretary | _____   |
| James Rudy         | Treasurer                   | _____   |
| Christopher Lee    | Assistant Secretary         | _____   |
| Ralph Rosenberg    | Vice President              | _____   |
| Billy Butcher      | Vice President              |  |
| Susan Murphy       | Assistant Treasurer         | _____   |
| Stephen Jordan     | Assistant Treasurer         | _____   |

*[Remainder of Page Intentionally left blank]*



IN WITNESS WHEREOF, I have hereunto set my hand this 20 day of May, 2019.

**KKR HY OWNER LLC,**  
a Delaware limited liability company

By: 

Name: William Janetschek

Title: Chief Financial Officer

PRINCIPALS OF THE LESSEE

i.

|                    |                          |
|--------------------|--------------------------|
| Jeff T. Blau       | Chief Executive Officer  |
| L. Jay Cross       | President                |
| Bruce A. Beal, Jr. | Executive Vice President |

ii.

|                                       |            |
|---------------------------------------|------------|
| Hudson Yards North Tower Holdings LLC | 100% Owner |
|---------------------------------------|------------|

iii.

|                                    |
|------------------------------------|
| ERY North Tower Related Member LLC |
|------------------------------------|

PRINCIPALS OF KKR HY OWNER LLC

i.

|   |  |
|---|--|
| William Janetschek<br>David Sorkin  | Chief Financial Officer<br>General Counsel & Secretary   |
| James Rudy<br>Christopher Lee<br>Ralph Rosenberg<br>Billy Butcher<br>Susan Murphy<br>Stephen Jordan | Treasurer<br>Assistant Secretary<br>Vice President<br>Vice President<br>Assistant Treasurer<br>Assistant Treasurer |

ii.

|                     |            |
|---------------------|------------|
| KKR HY Holdings LLC | 100% Owner |
|---------------------|------------|

**EXHIBIT D-1**

**OWNERS OF THE LESSEE**

| <b>INDIVIDUAL OWNERS OF THE LESSEE</b> |   |
|--|---|
| <b>Name</b>                            | <b>% Ownership or Control of the Lessee</b> |
| N/A                                    | N/A   |

| <b>ENTITY OWNERS OF THE LESSEE</b>    |   |
|---------------------------------------|---|
| <b>Name</b>                           | <b>% Ownership or Control of the Lessee</b> |
| Hudson Yards North Tower Holdings LLC | 100%  |

| <b>OWNERS of those ENTITIES that own or control more than 10% of the Lessee ("10% Entities")</b> |   |                               |
|--|---|-------------------------------|
| <b>10% ENTITY<br/>(name and actual %)</b>  | <b>INDIVIDUAL AND ENTITY<br/>OWNERS</b> | <b>% Ownership or Control</b> |
| Hudson Yards North Tower<br>Holdings LLC   | EVEREN Capital Corporation              | 41.39%                        |
|  | ERY North Tower Related Member<br>LLC   | 21.53%                        |
|  | KKR HY LLC                              | 28.51%                        |

**OWNERS OF KKR HY OWNER LLC**

| <b>INDIVIDUAL OWNERS OF KKR HY OWNER LLC</b> |   |
|--|---|
| <b>Name</b>                                  | <b>% Ownership or Control of KKR HY Owner LLC</b> |
| N/A  | N/A   |

| <b>ENTITY OWNERS OF KKR HY OWNER LLC</b> |   |
|--|---|
| <b>Name</b>                              | <b>% Ownership or Control of KKR HY Owner LLC</b> |
| KKR HY Holdings LLC                      | 100%  |

| <b>OWNERS of those ENTITIES that own or control more than 10% of KKR HY Owner LLC ("10% Entities")</b> |                                     |                                |
|--|-------------------------------------|--------------------------------|
| <b>10% ENTITY (name and actual %)</b>  | <b>INDIVIDUAL AND ENTITY OWNERS</b> | <b>% Ownership or Control</b>  |
| KKR HY Holdings LLC (100%)   | KKR Alternative Assets L.P.         | 99.75% Ownership; 100% Control |
|  | KKR HY Co-Holdings LLC              | 0.25% Ownership; 0% Control    |



**EXHIBIT E**

**RESERVED**

[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 Severed Agency Lease Agreement (PE 1 Unit), dated as of May 1, 2019 (the “Lease Agreement”), between the Agency and KKR HY OWNER LLC, a limited liability company organized and existing under the laws of the State of Delaware (as assignee of Hudson Yards North Tower Tenant LLC) 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 misdemeanor related to truthfulness and/or business conduct in the past five (5) years;

(3) has been convicted of a felony in the past ten (10) years;

(4) 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

(5) 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.

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.

**“Principals”** shall mean, with respect to any Entity, (i) the most senior three officers of such Entity, (ii) any Person with a ten percent (10%) or greater ownership interest in such Entity (except that if such Entity is listed on any national or regional stock exchange, including electronic exchanges, then the “Principals” of such Entity will not include any such Person unless they are also a Principal by virtue of clause (i) or clause (iii) hereof), and (iii) any Person as shall have the power to Control such Entity, and “Principal” shall mean any of such Persons.

*(signature page follows)*

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this \_\_\_\_ day  
of \_\_\_\_\_, 2019.

**KKR HY OWNER LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Title:

(Required Disclosure Statement – PE 1 Unit)

**EXHIBIT G**

**RESERVED**



**EXHIBIT H**

**RESERVED**

FORM OF SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT  
AGREEMENT

=====

**SUBORDINATION, NON-DISTURBANCE  
AND ATTORNMENT AGREEMENT**

by and between

DEUTSCHE BANK AG, NEW YORK BRANCH  
as **Administrative Agent**,

and

**NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY**

and

**KKR HY OWNER LLC**

Dated: May \_\_\_\_, 2019

2014 ERY Tenant LLC Project

Affecting the Facility Realty located at the northeast corner of the area between West 30<sup>th</sup> and  
33<sup>rd</sup> Streets between 10<sup>th</sup> and 11<sup>th</sup> Avenues  
PE 1 Unit, 20-30 Hudson Yards Condominium, 30 Hudson Yards (a/k/a 500 West 33<sup>rd</sup> Street),  
New York, New York 10001

Section 3, Block 702, Lot 1306 (formerly part of Lot 125, which was formerly known as  
Lot 9111) on the Official Tax Map of New York County

in the County of New York, City and State of New York  
as more particularly described in Exhibit A hereto

Please record and return to:

**KATTEN MUCHIN ROSENMAN LLP**  
575 Madison Avenue  
New York, New York 10022  
Attention: Patricia A. Mollica, Esq.  
File No. 389205-00008

=====

## SUBORDINATION NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this “Agreement”) made as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between **DEUTSCHE BANK AG, NEW YORK BRANCH**, whose address for notice under this Agreement is 60 Wall Street, 10<sup>th</sup> Floor, New York, New York 10005, acting on behalf of the Lenders (as defined below) (in such capacity, “Administrative Agent”), **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, whose address for notice under this Agreement is 110 William Street, New York, New York 10038 (the “Agency”), and KKR HY OWNER LLC, a Delaware limited liability company, whose address for notice under this Agreement is 9 West 57<sup>th</sup> Street, Suite 4200, New York, New York 10019 (the “Company”).

### Introductory Provisions

A. The Company, as grantee, is the fee owner of the “PE 1 Unit” together with its undivided interest in the common elements, as described on Exhibit A (the “Unit”), together with certain improvements located in or on the Unit (the “Improvements” and, together with the Unit, the “Property”).

B. The Agency is the tenant under that certain Severed Company Lease Agreement (PE 1 Unit), dated as of May 1, 2019 (the “Lease Date”) (as the same may be amended, restated, supplemented and otherwise modified from time to time, the “Company Lease”), between the Company (as successor in interest to Hudson Yards North Tower Tenant LLC pursuant to that certain Assignment and Assumption Agreement dated as of the Lease Date), as landlord, and the Agency, as tenant, pursuant to which the Company leases the Property (the “Leased Premises”) to the Agency. The Company holds all rights of landlord under the Company Lease.

C. The Company is the subtenant under that certain Severed Agency Lease Agreement (PE 1 Unit), dated as of the Lease Date (as the same may be amended, restated, supplemented and otherwise modified from time to time, the “Agency Lease”), between the Agency, as sublandlord, and the Company (as successor in interest to Hudson Yards North Tower Tenant LLC pursuant to that certain Assignment and Assumption Agreement dated as of the Lease Date), as subtenant, pursuant to which the Agency subleases the Property (the “Subleased Premises”) to the Company. The Agency holds all rights of sublandlord under the Agency Lease.

D. Deutsche Bank AG, London Branch (together with its successors and assigns, collectively, the “Lender”) has agreed to make loans to the Company, which will be secured by, among other things, that certain Consolidated, Amended and Restated Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of even date herewith (as amended, restated, supplemented and otherwise modified from time to time, the “Security Instrument”), executed and delivered by Administrative Agent, the Company and the Agency, which Security Instrument covers, among other things, the interest of (1) the Company in (a) the Property and (b) the Subleased Premises under the Agency Lease, and (2) the Agency in the Leased Premises under the Company Lease.

E. The parties are now entering into this Agreement for the purpose of confirming their understandings and agreements with respect to each of the Company Lease, the Agency Lease and the Security Instrument.

NOW, THEREFORE, the parties hereto, in consideration of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby agree as follows:

Section 1. Company Lease. Subject to Sections 2 and 3 of this Agreement, the parties hereto hereby confirm that the Company Lease, as the same may hereafter be modified, amended or extended and all of the rights, title and interest of the Agency in and to the Leased Premises under the Company Lease are and shall at all times continue to be subject and subordinate in all respects to the lien of the Security Instrument, with the same force and effect as if the Security Instrument had been executed, delivered and recorded prior to the execution and delivery of the Company Lease.

Section 2. Agency Lease. The parties acknowledge and confirm that (a) the Security Instrument encumbers the interest of Company under the Agency Lease and the interest of the Company in and to the Property; and (b) any action or proceeding to foreclose the Security Instrument or to enforce any other rights or remedies of the Administrative Agent under the Security Instrument with respect to the fee interest of the Company in and to the Property shall not extinguish the Agency Lease.

Section 3. Non-Disturbance. Administrative Agent agrees that no action or proceeding to foreclose the Security Instrument or to enforce any other rights or remedies of the Administrative Agent under the Security Instrument shall extinguish the Company Lease. Administrative Agent further agrees that if any action or proceeding is commenced by Administrative Agent for the foreclosure of the Security Instrument, the Agency shall not be named as a party therein unless such joinder shall be required by law, provided, however, such joinder shall not result in the termination of the Company Lease or disturb the Agency's possession or use of the premises demised thereunder, and the sale of the Property in any such action or proceeding and the exercise by Administrative Agent of any of its other rights under the Security Instrument shall be made subject to all rights of the Agency under the Company Lease.

Section 4. Agreement of the Agency to Attorn; Recognition of the Agency as Tenant under the Company Lease. If Administrative Agent or a Company Lease Assignee (as defined herein) shall succeed to the rights of the Company under the Company Lease or shall acquire fee title to the Company's interest in the Property upon any foreclosure of the lien of the Security Instrument with respect to the interest of the Company in the Property and sale of the interest of the Company in the Property or deed in lieu of foreclosure of the interest of the Company in the Property or other exercise of its rights and remedies under the Security Instrument, then at the request of Administrative Agent or a Company Lease Assignee, as applicable, the Agency shall attorn to and recognize Administrative Agent or a Company Lease Assignee, as applicable, as the landlord or lessor under the Company Lease. Upon such attornment, the Company Lease shall continue in full force and effect as, or as if it were, a direct lease between Administrative Agent or a Company Lease Assignee, as applicable, and the Agency upon all of the terms, covenants, provisions and conditions set forth in the Company Lease, and Administrative Agent or a Company

Lease Assignee, as applicable, will accept the attornment of the Agency. Such attornment will be effective and self-operative without the execution of any further instrument. As used herein, "Company Lease Assignee" means any successor or assign of Administrative Agent including, without limitation, any purchaser of the interest of the Company in and to the Property upon or following a foreclosure of the Security Instrument with respect to the interest of the Company in the Property (or delivery of a deed in lieu of foreclosure of the interest of the Company in the Property).

Section 5. Recognition of Administrative Agent and Agency Lease Assignees.

If Administrative Agent or an Agency Lease Assignee (as defined herein) shall succeed to the rights of the Company under the Agency Lease upon any foreclosure of the liens of the Security Instrument with respect to the subleasehold interest of the Company in and to the Subleased Premises under the Agency Lease and sale of the subleasehold interest of the Company in and to the Subleased Premises under the Agency Lease, or deed or assignment in lieu of foreclosure of the subleasehold interest of the Company in and to the Subleased Premises under the Agency Lease, or other exercise of its rights and remedies under the Security Instrument, then the Agency shall recognize the rights of Administrative Agent or such Agency Lease Assignee, as applicable, and the Agency Lease shall continue in full force and effect as, or as if it were a direct lease between Administrative Agent or Agency Lease Assignee, as applicable, and the Agency upon all of the terms, covenants, provisions and conditions set forth in the Agency Lease. Such recognition will be effective and self-operative without the execution of any further instrument. As used herein, "Agency Lease Assignee" means any successor or assign of Administrative Agent including, without limitation, any purchaser of the subleasehold estate of the Company in and to the Subleased Premises under the Agency Lease upon or following a foreclosure of the Security Instrument with respect to the subleasehold interest of the Company in and to the Subleased Premises under the Agency Lease (or delivery of an assignment of the Agency Lease in lieu of foreclosure).

Section 6. Delivery of Notices under Company Lease and Agency Lease.

The Company hereby agrees to deliver to Administrative Agent a copy of any notice of default delivered by the Company to the Agency under the Company Lease or the Agency Lease. The Agency hereby agrees to deliver to Administrative Agent a copy of any notice of default delivered by the Agency to the Company under the Company Lease or the Agency Lease. Such copies will be given concurrently with the notice of default and no such notice of default shall be effective unless such copies are given.

Section 7. Liability of Administrative Agent and Lender.

Nothing in this Agreement shall impose upon Administrative Agent or Lender any liability for the obligations of landlord under the Company Lease unless and until Administrative Agent or Lender takes title to the Property. Nothing in this Agreement shall impose upon Administrative Agent or Lender any liability for the obligations of tenant under the Agency Lease unless and until Administrative Agent or Lender takes subleasehold title to the Subleased Premises under the Agency Lease.

Section 8. Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute and be construed as one and the same instrument.



Section 9. Notices. All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given if (a) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested; (b) by delivering same in person to the intended addressee; or (c) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee. Notice so mailed shall be effective upon its deposit with the United States Postal Service or any successor thereto; notice sent by a commercial delivery service shall be effective upon delivery to such commercial delivery service; notice given by personal delivery shall be effective only if and when received by the addressee; and notice given by other means shall be effective only if and when received at the office or designated address of the intended addressee. For purposes of notice, the addresses of the parties shall be set forth below; provided, however, that every party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other parties in the manner set forth herein:

if to the Company at:

KKR HY Owner LLC  
9 West 57<sup>th</sup> Street, Suite 4200  
New York, New York 10019  
Attention: James Rudy  
Email: James.Rudy@kkcr.com

with a copy to:

KKR HY Owner LLC  
9 West 57<sup>th</sup> Street, Suite 4200  
New York, New York 10019  
Attention: General Counsel  
Email: general.counsel@kkcr.com

if to the Agency at:

New York City Industrial Development Agency  
110 William Street  
New York, New York 10038  
Attention: General Counsel (with a copy to the Deputy Executive  
Director at the same address)  
Facsimile: (212) 312-3912

with a copy to:

Hudson Yards Infrastructure Corporation  
255 Greenwich Street  
New York, New York 10007  
Attn: General Counsel (with a copy to the Deputy Executive Director  
at the same address)

Facsimile: (212) 788-9197

if to Administrative Agent, to it at:

Deutsche Bank AG, New York Branch  
60 Wall Street, 10th Floor  
New York, NY 10005  
Attention: Robert W. Pettinato, Jr.  
Facsimile No.: (212) 797-4489

with a copy to:

Sidley Austin LLP  
One South Dearborn  
Chicago, IL 60603  
Attention: Charles Schrank, Esq.  
Facsimile No.: (312) 853-7036

Section 10. Governing Law. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of New York, without reference to the conflict of laws principles thereof.

Section 11. Successors and Assigns. This Agreement shall apply to, bind and inure to the benefit of the parties hereto and their respective successors and assigns. As used herein "Administrative Agent" and "Lender" shall include any subsequent holder of the Security Instrument or Mortgage Loan, and any affiliate or successor or assignee of Administrative Agent or Lender or a transferee of Administrative Agent's or Lender's title in and to the Property by or following Administrative Agent's exercise of its rights and remedies under the Security Instrument (including, but not limited to, a purchaser following a foreclosure of the Security Instrument or delivery of a deed or assignment of lease in lieu of foreclosure).

Section 12. Jurisdiction. The parties hereto hereby irrevocably and unconditionally submit to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court thereof, in any action or proceeding arising out of or relating to this Agreement or any agreement, instrument or document executed and delivered pursuant to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

Section 13. Administrative Agent. Deutsche Bank AG, New York Branch shall only be responsible under this Agreement during the time that Deutsche Bank AG, New York

Branch is the administrative agent under the Security Instrument or holds an ownership interest in and to the Property following the exercise of its rights and remedies under the Security Instrument (including, but not limited to, a purchase following a foreclosure of the Security Instrument or delivery of a deed or assignment of lease in lieu of foreclosure).

Section 14. Entire Agreement. This Agreement contains all the promises, agreements, conditions, inducements and understandings between the parties hereto and there are no promises, agreements, conditions, understandings, inducements, warranties, or representations, oral or written, expressed or implied, between them other than as herein or therein set forth and other than as may be expressly contained in any written agreement between the parties executed simultaneously herewith.

*The remainder of this page is blank. The signature pages follow.*

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

**ADMINISTRATIVE AGENT:**

DEUTSCHE BANK AG, NEW YORK  
BRANCH, individually and as Administrative  
Agent for one or more Lenders

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

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

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

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

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

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

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

*[Signatures continue on following page]*

**AGENCY:**

**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

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

Name:

Title:

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

On the \_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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

*[Signatures continue on following page]*



**COMPANY:**

KKR HY OWNER LLC, a Delaware limited liability company

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

Name:

Title:

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

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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

**EXHIBIT A**  
**LEGAL DESCRIPTION**

**FORM OF SUBORDINATION AGREEMENT**

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**SUBORDINATION AGREEMENT**

made by

**HUDSON YARDS INFRASTRUCTURE CORPORATION,**

as Senior Creditor,

**DEUTSCHE BANK AG, NEW YORK BRANCH**

as Agent, as Junior Creditor,

**KKR HY OWNER LLC,**

a Delaware limited liability company,

as Obligor,

and

**NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY,**

a New York public benefit corporation,

as NYCIDA

Dated as of [\_\_\_\_\_]

2014 ERY Tenant LLC Project – PE 1 Unit

Affecting the Facility Realty located at the northeast corner of the area between West 30th and  
33rd Streets between 10th and 11th Avenues

PE 1 Unit, 20-30 Hudson Yards Condominium, 30 Hudson Yards (a/k/a 500 West 33rd Street),  
New York, New York 10001

Section 3, Block 702, Lot 1306 (formerly part of Lot 125, which was formerly known as  
Lot 9111) on the Official Tax Map of New York County

in the County of New York,  
City and State of New York  
as more particularly described in  
Exhibit A hereto

Please record and return to:

**KATTEN MUCHIN ROSENMAN LLP**

575 Madison Avenue

New York, New York 10022

Attention: Patricia A. Mollica, Esq.

File No. 389205-00008

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## SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT, dated as of \_\_\_\_\_, \_\_\_\_\_ (this "Agreement"), is entered into among HUDSON YARDS INFRASTRUCTURE CORPORATION ("HYIC" and, together with its successors and/or assigns, "Senior Creditor"), DEUTSCHE BANK AG, NEW YORK BRANCH, as Agent for Junior Lender (as hereinafter defined) ("Junior Creditor"), KKR HY OWNER LLC, a Delaware limited liability company ("Obligor"), and New York City Industrial Development Agency, a New York public benefit corporation ("NYCIDA").

WHEREAS, Obligor owns fee title in and to the "PE 1 Unit" together with its undivided interest in the common elements, as described on Exhibit A attached hereto (the "Unit");

WHEREAS, pursuant to that certain Company Lease Agreement, dated as of May 1, 2019 (the "Lease Date") (as the same may be amended, restated, supplemented and otherwise modified from time to time, the "Company Lease"), between Obligor (as successor-in-interest to Hudson Yards North Tower Tenant LLC pursuant to that certain Assignment and Assumption Agreement dated as of the Lease Date), as landlord, and NYCIDA, as tenant, Obligor leases the Unit to NYCIDA;

WHEREAS, pursuant to that certain Agency Lease Agreement, dated as of the Lease Date (as the same may be amended, restated, supplemented and otherwise modified from time to time, the "Agency Lease"), between NYCIDA, as sublandlord, and Obligor (as successor-in-interest to Hudson Yards North Tower Tenant LLC pursuant to that certain Assignment and Assumption Agreement dated as of the Lease Date), as subtenant, NYCIDA subleases the Unit to Obligor. All capitalized terms used but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agency Lease;

WHEREAS, pursuant to the Agency Lease, Obligor is obligated to pay NYCIDA certain payments in lieu of taxes and assessments (the "PILOTs"), as more particularly described in the Agency Lease;

WHEREAS, Obligor's obligation to pay the PILOTs is secured by those certain mortgages described on Schedule 1 hereto (collectively, together with all amendments, restatements, supplements and modifications thereof, and including any Replacement PILOT Mortgage (as defined herein), the "PILOT Mortgages"), made by Obligor and NYCIDA in favor of NYCIDA, as initial mortgagee, which PILOT Mortgages encumber, among other things, the right, title and interest of Obligor in the Unit granted pursuant to the Indenture and the Agency Lease, and the right, title and interest of NYCIDA in the Unit granted pursuant to the Company Lease;

WHEREAS, pursuant to the terms and conditions of an Assignment, dated as of even date herewith, among New York City, Obligor, NYCIDA and HYIC, NYCIDA has assigned to Senior Creditor its right to receive payments in lieu of taxes under the Agency Lease;

WHEREAS, NYCIDA has assigned to Senior Creditor its interest as mortgagee under the PILOT Mortgages pursuant to those certain assignments more particularly described on Schedule 1 hereto;

WHEREAS, Junior Lender has agreed to make a mortgage loan (the “Mortgage Loan”) to Obligor pursuant to that certain Loan Agreement, dated as of the date hereof (as the same may be amended, restated, supplemented and otherwise modified from time to time, the “Mortgage Loan Agreement”), among Junior Creditor, Junior Lender and Obligor;

WHEREAS, Obligor’s obligations under the Mortgage Loan Agreement are secured by (among other things) that certain Consolidated Amended and Restated Mortgage, Assignment of Leases and Rents and Security Agreement, dated as of [\_\_\_\_\_] (as amended, restated, supplemented and otherwise modified from time to time, the “Junior Mortgage”), made by and among Obligor, NYCIDA and Junior Creditor, which Junior Mortgage encumbers, among other things, the right, title and interest of Obligor in the Unit, the interest of NYCIDA in the Company Lease and the interest of Obligor in the Agency Lease;

WHEREAS, a condition to the effectiveness of the Agency Lease is the execution and delivery by the parties hereto of this Agreement;

NOW, THEREFORE, in consideration of the promises and mutual agreements herein contained, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Definitions. Capitalized terms used in this Agreement but not defined elsewhere herein shall be defined as set forth below.

“Collateral” means the PILOT Collateral and the Junior Collateral.

“Junior Collateral” means the right, title and interest of Obligor in the Unit, all improvements in and to the Unit, and all other real and personal property subject to the Junior Mortgage.

“Junior Lender” means Deutsche Bank AG, London Branch, its successors and/or assigns.

“Junior Obligations” means all obligations of Obligor to Junior Creditor under the Mortgage Loan Agreement and the instruments and documents executed in connection therewith.

“Party” means any of Obligor, Senior Creditor or Junior Creditor.

“Person” means any individual or any partnership, corporation, joint venture, limited liability company or other unincorporated organization or entity or any association, trust, or governmental unit.

“PILOT Collateral” means the right, title and interest of Obligor and NYCIDA in the Unit, all improvements in and to the Unit and all other real and personal property subject to the PILOT Mortgages.

“PILOT Obligations” means all obligations of Obligor (and any successor or assign of Obligor, including, without limitation, any subsequent holder of the interest of Obligor in the Unit or the Agency Lease) to make payments in lieu of real property taxes, including any interest or penalties payable in connection therewith, to Senior Creditor under the Agency Lease and the PILOT Mortgages.



“Replacement PILOT Mortgage” means a mortgage securing the PILOT Obligations delivered by Obligor (or any successor or assign of Obligor, including, without limitation, any subsequent holder of the interest of Obligor in the Unit) and NYCIDA to Senior Creditor following the date hereof, including any such mortgage delivered following the completion of a foreclosure (or deed or assignment in lieu thereof) under a PILOT Mortgage or following a Severance (as defined in the Agency Lease) permitted pursuant to Section 11.3 of the Agency Lease.

2. Subordination of Junior Mortgage.

2.01 Junior Creditor hereby agrees that any and all security interests, assignments, pledges and other liens, charges or encumbrances now existing or hereafter created or arising in favor of Junior Creditor in the Collateral, whether granted under the Junior Mortgage or otherwise, are expressly junior in priority, operation and effect to any and all security interests, assignments, pledges and other secured claims, liens, charges or encumbrances now existing or hereafter created or arising in favor of Senior Creditor with respect to the security interests and liens in the Collateral, granted under the PILOT Mortgages, notwithstanding anything to the contrary contained in any agreement or filing to which any Party may now or hereafter be a party, and irrespective of the time, order or method of attachment or perfection of any financing statements or other security interests, assignments, pledges and other liens, charges or encumbrances or any defect or deficiency or alleged defect or deficiency in any of the foregoing. In furtherance of the foregoing, Junior Creditor hereby subordinates the Junior Mortgage, and the liens and security interests granted thereunder, to each of the PILOT Mortgages and the liens and security interests granted thereunder. Junior Creditor further agrees that the lien and security interests of the PILOT Mortgages shall be and are in all respects prior and superior to the lien and security interests of the Junior Mortgage, and that any renewals or extensions of the PILOT Obligations and/or the PILOT Mortgages shall be and remain a lien or charge on the Collateral, prior and superior to the lien, security interest or charge of the Junior Mortgage, notwithstanding the time or sufficiency of the recordation of the PILOT Mortgages.

2.02 Junior Creditor agrees that, if a Replacement PILOT Mortgage is recorded, the lien, security interest and charge of the Junior Mortgage and the security interest of Junior Creditor in the Collateral shall be subordinate to the lien, security interest and charge of the Replacement PILOT Mortgage and the security interest of Senior Creditor in the Collateral, regardless of the date of grant or recordation. Junior Creditor agrees, upon the request of Senior Creditor, to execute and deliver such additional agreements as may be reasonably required by Senior Creditor to fully subordinate the lien, security interest and charge of the Junior Mortgage and the security interest of Junior Creditor in the Collateral to the lien, security interest and charge of the Replacement PILOT Mortgage and the security interest of Senior Creditor in the Collateral.

3. Foreclosure.

3.01 Junior Creditor agrees that, in the event Junior Creditor elects to foreclose (or accepts a deed or assignment in lieu thereof) the liens granted under the Junior Mortgage, Junior Creditor shall foreclose (or accept a deed or assignment in lieu thereof) on all of the rights of Obligor in the Collateral encumbered by Junior Mortgage, regardless of whether such rights are granted under the Agency Lease.

3.02 Junior Creditor agrees that, notwithstanding anything to the contrary contained in the Junior Mortgage, Junior Creditor will not have any right to institute or maintain a foreclosure upon or against the interest of NYCIDA under the Company Lease.

3.03 Section 14 of the PILOT Mortgage is hereby incorporated by reference.

3.04 Obligor and NYCIDA agree that, upon completion of a foreclosure of a PILOT Mortgage by Senior Creditor, Obligor (or any successor or assign of Obligor, including, without limitation, any subsequent holder of the interest of Obligor in the Unit or the Agency Lease), NYCIDA and Senior Creditor shall execute and deliver a replacement PILOT Mortgage (which shall constitute a Replacement PILOT Mortgage) within twenty (20) business days following receipt of the form of such Replacement PILOT Mortgage from Senior Creditor. Such Replacement PILOT Mortgage shall be properly notarized and otherwise in recordable form and, within twenty (20) business days following receipt of the form of such Replacement PILOT Mortgage, Obligor (or any successor or assign of Obligor, including, without limitation, any subsequent holder of the interest of Obligor in the Unit or the Agency Lease) shall, at its sole cost and expense, (i) cause such Replacement PILOT Mortgage to be recorded in the appropriate office of the Register of The City of New York, and (ii) (A) if the lien of the PILOT Mortgage that was the subject of the foreclosure was not insured under a mortgagee title insurance policy, Obligor (or any successor or assign of Obligor, including, without limitation, any subsequent holder of the interest of Obligor in the Unit or the Agency Lease) shall deliver to Senior Creditor an updated title search showing the Unit to be free from liens, except for Permitted Encumbrances or (B) if the lien of the PILOT Mortgage that was the subject of the foreclosure was insured under a mortgagee title insurance policy, Obligor (or any successor or assign of Obligor, including, without limitation, any subsequent holder of the interest of Obligor in the Unit or the Agency Lease) shall deliver to Senior Creditor a mortgagee title insurance policy in the amount of \$[ ] insuring Senior Creditor's interests under such Replacement PILOT Mortgage as a first mortgage lien on the Unit, the Company Lease and the Agency Lease (if, and to the extent that the Company Lease and the Agency Lease remain in effect following such foreclosure) subject only to Permitted Encumbrances, which policy shall include such endorsements (including a so-called "last dollar" endorsement) as Senior Creditor may request and shall provide for, among other things, the following: (1) full coverage against mechanics' liens; (2) no exceptions other than those approved by Senior Creditor; and (3) such other matters as Senior Creditor shall reasonably request. Any proceeds of such mortgagee title insurance shall be paid to Senior Creditor and applied to remedy the applicable defect in title in respect of which such proceeds shall be derived (including the reimbursement to Obligor (or any successor or assign of Obligor, including, without limitation, any subsequent holder of the interest of Obligor in the Unit or the Agency Lease) for any costs incurred by Obligor (or any successor or assign of Obligor, including, without limitation, any subsequent holder of the interest of Obligor in the Unit or the Agency Lease) in remedying such defect in title).

#### 4. Representations and Warranties.

4.01. Senior Creditor and Junior Creditor each represents and warrants to the other that:

1. each has the legal right to execute and deliver and to perform its obligations under this Agreement;

2. this Agreement has been duly executed and delivered by such Party and constitutes a legal, valid and binding obligation of such Party, enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law);

3. the execution, delivery and performance of this Agreement will not violate any provision of any requirement of law applicable to such Party or of any contractual obligation of such Party; and

4. no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or regulatory body or governmental authority and no consent of any other Person, is required in connection with the execution, delivery, performance, validity or enforceability of this Agreement.

5. Waiver of Claims; Waivers and Consents.

5.01 To the maximum extent permitted by law, Junior Creditor waives any claim it might have against Senior Creditor with respect to, or arising out of, any action or failure to act or any error of judgment, negligence, or mistake or oversight whatsoever on the part of Senior Creditor or its directors, officers, employees or agents with respect to any exercise of rights or remedies or any transaction relating to any PILOT Collateral.

5.02 Junior Creditor agrees that, without the necessity of any reservation of rights against it, and without notice to or further assent by it, any demand for payment by Senior Creditor may be rescinded in whole or in part by such Person, and any PILOT Obligation may be continued, and the PILOT Obligations, or the liability of Obligor upon or for any part thereof, or any collateral or guarantee therefor or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, extended, modified, accelerated, compromised, waived, surrendered, increased, decreased, or released by Senior Creditor, in each case without notice to or further assent by Junior Creditor, which will remain bound under this Agreement and without impairing, abridging, releasing or affecting the subordination provided for herein.

5.03 Junior Creditor waives any and all notice of the creation, renewal, extension or accrual of any of the PILOT Obligations and notice of or proof of reliance by Senior Creditor upon this Agreement. Junior Creditor acknowledges and agrees that Senior Creditor has relied upon the subordination provided for herein in consenting to the subordinated liens in support of the Junior Obligations. Junior Creditor waives notice of or proof of reliance on this Agreement and protest, demand for payment and notice of default (except as provided in Section 14 of the PILOT Mortgages).

5.04 Each of Senior Creditor and Junior Creditor hereby waives any duty on the part of the other to disclose to Junior Creditor or Senior Creditor, as the case may be, any fact known or hereafter known to such Person relating to the operation or financial condition of Obligor or its business. Each of Senior Creditor and Junior Creditor enter into this Agreement based solely upon their independent knowledge of Obligor's financial condition and business and each assumes full



responsibility for obtaining any further or future information with respect to Obligor or its financial condition or business.

5.05 Each of Senior Creditor and Junior Creditor acknowledges and agrees that the other has made no express or implied representation or warranty (other than those expressly made in Section 4 hereof), including, without limitation, with respect to the execution, validity, legality, completeness, collectability or enforceability of the PILOT Obligations or the Junior Obligations.

6. Miscellaneous.

6.01 Each of Senior Creditor and Junior Creditor, at its own expense and at any time from time to time, upon the reasonable, written request of the other will promptly and duly execute and deliver such further instruments and documents and take such further actions as the other may reasonably request as being necessary for the purposes of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted.

6.02 This Agreement is intended solely for the purpose of defining the relative rights of Senior Creditor and Junior Creditor and their respective successors and/or assigns, and no other Person shall have any right, benefit or other interest under this Agreement. No lien in any Collateral for the benefit of any Person is created by or intended to be created by this Agreement.

6.03 All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until the applicable PILOT Obligations are paid in full in cash.

6.04 All notices, requests and demands to or upon any party hereto shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

if to Obligor, to them at:

KKR HY Owner LLC  
9 West 57<sup>th</sup> Street, Suite 4200  
New York, New York 10019  
Attention: James Rudy  
Email: James.Rudy@kkcr.com

with a copy to:

KKR HY Owner LLC  
9 West 57<sup>th</sup> Street, Suite 4200  
New York, New York 10019  
Attention: General Counsel  
Email: general.counsel@kkcr.com

if to Senior Creditor, to it at:

Hudson Yards Infrastructure Corporation

255 Greenwich Street, New York, New York 10007  
Attn: General Counsel (with a copy to the Executive Director at the  
same address)  
Facsimile: (212) 788-9197

with a copy 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)  
Facsimile: (212) 312-3912

if to Junior Creditor, to it at:

Deutsche Bank AG, New York Branch  
60 Wall Street  
New York, New York 10005  
Attention: Robert W. Pettinato, Jr.  
Facsimile No. (212) 797-4489

With copies to:

Sidley Austin LLP  
One South Dearborn  
Chicago, Illinois  
Attention: Charles Schrank, Esq.  
Facsimile No. (312) 853-7036

Any Party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

6.05 This Agreement may be executed by one or more of the parties in any number of separate counterparts, each of which shall constitute an original but all of which taken together shall be deemed to constitute but one instrument.

6.06 Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.



6.07 This Agreement represents the agreement of NYCIDA, Obligor, Senior Creditor and Junior Creditor with respect to the subject matter hereof and there are no promises or representations by Obligor, Senior Creditor or Junior Creditor relative to the subject matter hereof not reflected herein (other than in the documentation evidencing and/or securing the PILOT Obligations and the Junior Obligations).

6.08 None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except by a written instrument executed by all of the parties hereto.

6.09 No failure to exercise, nor any delay in exercising, on the part of Senior Creditor or Junior Creditor, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

6.10 The section headings used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

6.11 This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of each of the Parties hereto, all holders of the PILOT Mortgages and all holders of the Junior Mortgage.

6.12 This Agreement shall be construed in accordance with and governed by the law of the State of New York, without reference to the conflict of laws principles thereof. The parties hereto hereby irrevocably and unconditionally submit to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court thereof, in any action or proceeding arising out of or relating to this Agreement or any agreement, instrument or document executed and delivered pursuant to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

6.13 Each party hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in Section 6.12. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

6.14 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE

MORTGAGE LOAN AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 6.14.

[Remainder of page intentionally left blank; signatures begin on following page.]

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

**“SENIOR CREDITOR”:**

**HUDSON YARDS INFRASTRUCTURE CORPORATION**, as assignee of New York City Industrial Development Agency

By: \_\_\_\_\_  
Name:  
Title:

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

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

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

*[Signatures continue on following page]*

**“JUNIOR CREDITOR”:**

**DEUTSCHE BANK AG, NEW YORK BRANCH**, a branch of Deutsche Bank AG, a German Bank, individually and as Agent for one or more Lenders

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

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

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

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

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

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

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

*[Signatures continue on following page]*

**“OBLIGOR”:**

**KKR HY OWNER LLC**, a Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Title:

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

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

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

*[Signatures continue on following page]*



“NYCIDA”:

**NEW YORK CITY INDUSTRIAL  
DEVELOPMENT AGENCY**, a New York  
public benefit corporation

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

Name: Krishna Omolade

Title: Deputy Executive Director

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

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

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

**EXHIBIT A**

**DESCRIPTION OF THE UNIT**

## SCHEDULE 1

### PILOT MORTGAGES

Fee and Leasehold PILOT Mortgage No. 1 (PE 1 Unit) dated as of May 20, 2019, by and between New York City Industrial Development Agency and KKR HY Owner LLC, as mortgagors, to New York City Industrial Development Agency and Hudson Yards Infrastructure Corporation, as mortgagees, to secure the obligation of KKR HY Owner LLC to make PILOT Payments in an amount not to exceed \$2,640,000 (Mortgage Tax Exempt), as assigned by New York City Industrial Development Agency to Hudson Yards Infrastructure Corporation pursuant to that certain Assignment of Fee and Leasehold PILOT Mortgage No. 1 (PE 1 Unit), dated as of May 20, 2019.

Fee and Leasehold PILOT Mortgage No. 2 (PE 1 Unit), dated as of May 20, 2019, by and between New York City Industrial Development Agency and KKR HY Owner LLC, as mortgagors, to New York City Industrial Development Agency, and Hudson Yards Infrastructure Corporation, as mortgagees, to secure the obligation of KKR HY Owner LLC to make PILOT Payments in an amount not to exceed \$52,800,000 (Mortgage Tax Exempt), as assigned by New York City Industrial Development Agency to Hudson Yards Infrastructure Corporation pursuant to that certain Assignment of Fee and Leasehold PILOT Mortgage No. 2 (PE 1 Unit), dated as of May 20, 2019.

Fee and Leasehold PILOT Mortgage No. 3 (PE 1 Unit), dated as of May 20, 2019, by and between New York City Industrial Development Agency and KKR HY Owner LLC, as mortgagors, to New York City Industrial Development Agency, and Hudson Yards Infrastructure Corporation, as mortgagees, to secure the obligation of KKR HY Owner LLC to make PILOT Payments in an amount not to exceed \$52,800,000 (Mortgage Tax Exempt), as assigned by New York City Industrial Development Agency to Hudson Yards Infrastructure Corporation pursuant to that certain Assignment of Fee and Leasehold PILOT Mortgage No. 3 (PE 1 Unit), dated as of May 20, 2019.

FORM OF TENANT LEASE SUBORDINATION NON-DISTURBANCE AND  
ATTORNMEN T AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN T AGREEMENT (this "Agreement") made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between HUDSON YARDS INFRASTRUCTURE CORPORATION, a local development corporation duly organized and existing under the Not-For-Profit Corporation Law of the State of New York, whose address for notice under this Agreement is 225 Greenwich Street, New York, New York 10007 (the "Mortgagee"), and \_\_\_\_\_, a \_\_\_\_\_, whose address for notice under this Agreement is \_\_\_\_\_ (the "Tenant").

RECITALS:

A. KKR HY OWNER LLC (the "Company" or "Landlord") is the fee owner of the "PE 1 Unit" together with its undivided interest in the common elements, as described on Exhibit A attached hereto (the "Unit"), together with certain improvements located in or on the Unit (the "Improvements" and, together with the Unit, the "Property"), pursuant to an Indenture dated as of May \_\_\_, 2019, from the Metropolitan Transportation Authority, as grantor, to the Company, as grantee.

B. The Agency is the tenant under that certain Severed Company Lease Agreement (PE 1 Unit), dated as of May 1, 2019 (as the same may be amended, restated, supplemented and otherwise modified from time to time, the "Company Lease"), between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company leases the Property (the "Leased Premises") to the Agency. The Company holds all rights of landlord under the Company Lease.

C. The Company is the subtenant under that certain Severed Agency Lease Agreement (PE 1 Unit), dated as of May 1, 2019 (as the same may be amended, restated, supplemented and otherwise modified from time to time, the "Agency Lease"), between the Agency, as sublandlord, and the Company, as subtenant, pursuant to which the Agency subleases the Property (the "Subleased Premises") to the Company. The Agency holds all rights of sublandlord under the Agency Lease.

D. Tenant has executed that certain lease dated \_\_\_\_\_ (the foregoing, the "Tenant Lease"), with the Company, as landlord, covering the premises described in the Tenant Lease consisting of approximately a \_\_\_\_\_ square foot space (the "Premises") in that certain building located at the Property.

E. Pursuant to the Agency Lease, the Company is obligated to make payments in lieu of taxes and assessments ("PILOT Payments") to the Agency as further described in the Agency Lease.

F. The obligation of the Company to make PILOT Payments to the Agency under the Agency Lease will be secured by, among other things, a leasehold mortgage, assignment of leases and rents, security agreement and fixture filing (as the same may be amended, restated,

supplemented and otherwise modified from time to time, the “Security Instrument”) made by the Agency and the Company for the benefit of Agency, covering the interest of the Company in (1) the Property and (2) the Subleased Premises under the Agency Lease and the interest of the Agency in the Leased Premises under the Company Lease.

G. The Security Instrument will be assigned by the Agency to the Mortgagee.

H. The parties are now entering into this Agreement for the purpose of confirming their understandings and agreements with respect to each of the Tenant Lease and the Security Instrument.

NOW, THEREFORE, in consideration of the covenants, terms, conditions, and agreements contained herein, the parties hereto agree as follows:

1. The Tenant Lease and any extensions, modifications or renewals thereof, including but not limited to any option to purchase, right of first refusal to purchase or right of first offer to purchase the Premises or any portion thereof, if any, is and shall continue to be subject and subordinate in all respects to the Security Instrument and the lien created thereby.

2. Tenant agrees to deliver to Mortgagee, contemporaneously with sending the same to Landlord and in the manner set forth in Paragraph 13 of this Agreement, a copy of any notice of default sent to Landlord by Tenant. If Landlord fails to cure such default within the time provided in the Tenant Lease, Mortgagee shall have the right, but not the obligation, to cure such default on behalf of Landlord within thirty (30) calendar days after the time provided for Landlord to cure such default in the Tenant Lease (it being agreed that if the Tenant Lease does not have such a time period, it shall be deemed to be (i) ten (10) days in the case of a monetary default and (ii) 30 days in the case of a non-monetary default) or, if such default cannot be cured within that time, within a reasonable period provided Mortgagee is proceeding with due diligence to cure such default. If any non-monetary default requires possession and control of the Property, then, provided Mortgagee undertakes by written notice to Tenant to exercise reasonable efforts to cure or cause to be cured by a receiver such non-monetary default within the period permitted by this paragraph, Mortgagee’s cure period shall continue for such additional time as Mortgagee may reasonably require to either: (A) obtain possession and control of the Property with reasonable diligence and thereafter cure the default with reasonable diligence and continuity or (B) obtain the appointment of a receiver and give such receiver a reasonable period of time in which to cure such non-monetary default. In such event, Tenant shall not terminate the Tenant Lease while such curative action is being diligently pursued by Mortgagee. Further, Tenant shall not terminate the Tenant Lease on the basis of any default by Landlord which is incurable by Mortgagee (such as, for example, the bankruptcy of Landlord or breach of any representation by Landlord), provided Mortgagee is proceeding with due diligence to commence an action to appoint a receiver or to obtain possession of the Premises by foreclosure, deed in lieu of foreclosure, or otherwise (collectively, “Foreclosure”). Tenant hereby agrees that no action taken by Mortgagee to enforce any rights under the Security Instrument or related security documents, by reason of any default thereunder (including, without limitation, the appointment of a receiver, any Foreclosure or any demand for rent under any assignment of rents or leases) shall give rise to any right of Tenant to terminate the Tenant Lease nor shall such action invalidate or constitute a breach of any of the terms of the Tenant Lease.



3. So long as Tenant is not in default under the Tenant Lease and the Tenant Lease is otherwise in full force and effect (collectively, the “Non-Disturb Conditions”), Mortgagee agrees as follows:

i. Mortgagee shall not, in any Foreclosure (A) disturb, interfere with, or deprive Tenant (or, with respect to any person or entity claiming through or under Tenant, such person or entity) of its possession or its right to possession of the Premises (or any part thereof) under or by virtue of the Tenant Lease, or any right or privilege granted to or inuring to the benefit of Tenant (and any such person or entity claiming through or under Tenant) under or by virtue of the Tenant Lease (including, without limitation, all rights, privileges, easements, renewal or expansion options and licenses granted to or inuring to the benefit of Tenant (or any such person or entity) under or by virtue of the Tenant Lease) or (B) terminate Tenant’s (or any such person or entity’s) possession of the Premises under the Tenant Lease, except in accordance with the express terms of the Tenant Lease and this Agreement; and

ii. Mortgagee shall not name or join Tenant (or, with respect to any person or entity claiming through or under Tenant, such person or entity) as a defendant in any exercise of Mortgagee’s rights and remedies arising upon a default under the Security Instrument unless applicable law requires Tenant (or any such person or entity claiming through or under Tenant) to be made a party thereto as a condition to proceeding against Landlord or prosecuting such rights and remedies. In the latter case, Mortgagee may join Tenant (or any such person or entity claiming through or under Tenant) as a defendant in such action only for such purpose and not to terminate the Tenant Lease or otherwise diminish, interfere or otherwise adversely affect Tenant’s rights under the Tenant Lease or this Agreement in such action.

4. If Mortgagee or its nominee or designee, or another purchaser of the Property (or any portion thereof that includes the Premises) upon a Foreclosure (any such person or entity, a “Successor Owner”) succeeds to the interest of Landlord under the Tenant Lease, subject to Tenant’s performance of its obligations under the Tenant Lease, the Tenant Lease will continue in full force and effect as a direct lease between Successor Owner and Tenant, and Successor Owner shall be subject to the provisions of the Tenant Lease with the same force and effect as if the Tenant Lease were a direct lease between Successor Owner and Tenant. Thereupon, Successor Owner shall recognize the Tenant Lease and Tenant’s rights thereunder and Tenant shall make full and complete attornment to Successor Owner as substitute landlord upon the same terms, covenants and conditions as provided in the Tenant Lease, including, but not limited to, any option to purchase, right of first refusal to purchase or right of first offer to purchase the Premises as may be provided in the Tenant Lease, with the same force and effect as if Successor Owner were Landlord under the Tenant Lease, such recognition and attornment to be effective as of the time Successor Owner succeeds to the interest of Landlord under the Tenant Lease. Notwithstanding the foregoing, Tenant agrees that any such option, right of first refusal or right of first offer to purchase the Premises or any portion thereof, as may be provided in the Tenant Lease shall not apply to any Foreclosure, as defined herein, and shall not apply to any transfer of the Property (or any portion thereof that includes the Premises) by Successor Owner following such Foreclosure. In consideration of the foregoing, Mortgagee agrees that any such option, right of first refusal or

right of first offer shall not be terminated by any Foreclosure or conveyance of the Property (or any portion thereof that includes the Premises) by Successor Owner following such Foreclosure; rather, any such option, right of first refusal or right of first offer shall remain as an obligation of any party acquiring the Property (or any portion thereof that includes the Premises) following the conveyance of the Property (or any portion thereof that includes the Premises) by Successor Owner following such Foreclosure. Furthermore, Tenant expressly confirms to Mortgagee that any acquisition of title to all or any portion of the Premises pursuant to Tenant's exercise of any option, right of first refusal or right of first offer contained in the Tenant Lease shall result in Tenant taking title subject to the lien of the Security Instrument. Mortgagee and Tenant agree, each at its own expense, to execute and deliver, at any time and from time to time upon request of either party, any agreement reasonably satisfactory to such party that may reasonably be necessary or appropriate to evidence such attornment and recognition provided that such agreement does not diminish or increase any of either party's obligations or adversely affect any of either party's rights.

5. Tenant agrees that, if Successor Owner shall succeed to the interest of Landlord under the Tenant Lease, Successor Owner shall not be:

(a) liable for any prior act or omission of Landlord or any prior landlord except to the extent such act or omission continues after the date that Successor Owner succeeds to the interest of Landlord under Tenant Lease or consequential damages arising therefrom; or

(b) subject to any offsets or defenses which Tenant might have as to Landlord or any prior landlord (except defenses which Tenant might have to claims that accrued and that relate solely to a period prior to the date on which Successor Owner succeeded to the interest of Landlord under the Tenant Lease and then only to the extent the related prior claim is pursued by Successor Owner); or

(c) required or obligated to credit Tenant with any rent or additional rent for any rental period beyond the then current month which Tenant might have paid Landlord, except to the extent any such payments are turned over to Successor Owner; or

(d) bound by any amendments or modifications of the Tenant Lease made without Mortgagee's or Successor Owner's prior written consent;

(e) bound by any obligation to make any payment to Tenant except with respect to (A) any amount payable from a fund, reserve, deposit, credit, receipt or other amount if actually held or received by the Mortgagee or Successor Owner for such purpose, or (B) any obligation which arises after attornment;

(f) bound by any covenant to undertake or complete any construction (other than normal maintenance and repair or in connection with a casualty or condemnation, subject to clauses (h) and (i) below);

(g) liable for any asbestos or other hazardous or toxic substance present either at the demised premises or at any other structure constructed by or on behalf of any prior landlord;

(h) in the event of a casualty, obligated to repair or restore the demised premises or any portion thereof beyond such repair or restoration as may be reasonably accomplished from the net insurance proceeds actually made available to the Mortgagee or Successor Owner;

(i) in the event of a partial condemnation, obligated to repair or restore the demised premises or any part thereof beyond such repair or restoration as may be reasonably accomplished from the net proceeds of any award actually made available to the Mortgagee or Successor Owner;

(j) subject to any right of cancellation or termination which requires payment by the landlord thereunder of a charge, fee or penalty for such cancellation or termination, except if landlord thereunder voluntarily exercises such right of cancellation or termination other than as a result of a casualty or condemnation; or

(k) be obligated to give Tenant all or any portion of any insurance proceeds or condemnation awards payable to the Mortgagee or Successor Owner as a result of a casualty or condemnation other than for trade fixtures and personalty (such as inventory) of Tenant or capital improvements constructed by or on behalf of Tenant.

6. Tenant agrees that, without the prior written consent of Mortgagee in each case, Tenant shall not (a) amend, modify, terminate or cancel the Tenant Lease or any extensions or renewals thereof, or tender a surrender of the Tenant Lease (except in each case that, upon a default by Landlord under the Tenant Lease, Tenant may exercise its rights under the Tenant Lease after giving to Mortgagee the notice and cure period required by this Agreement), (b) make a prepayment of any rent or additional rent more than one (1) month in advance of the due date thereof, or (c) subordinate or permit the subordination of the Tenant Lease to any lien subordinate to the Security Instrument, except to the extent provided by the Tenant Lease. Any such purported action without such consent shall be void as against the holder of the Security Instrument and Successor Owner.

7. To the extent that the Tenant Lease shall entitle Tenant to notice of the existence of any Security Instrument and the identity of any mortgagee or any ground lessor, this Agreement shall constitute such notice to Tenant with respect to the Security Instrument and Mortgagee.

8. Upon and after the occurrence of a default under the Security Instrument, which is not cured after any applicable notice and/or cure periods, Mortgagee shall be entitled, but not obligated, to require that Tenant pay all rent under the Tenant Lease as directed in writing by Mortgagee (a "Rent Payment Notice"). In the event Tenant receives a Rent Payment Notice from Mortgagee or from a receiver for the Property, Tenant shall pay all rent and other monies due or to become due to Landlord under the Tenant Lease as directed in the Rent Payment Notice, notwithstanding any contrary instruction, direction, or assertion of any prior landlord (including Landlord). Landlord hereby expressly and irrevocably directs and authorizes Tenant to comply with any Rent Payment Notice, notwithstanding any contrary instruction, direction or assertion of Landlord, and Landlord hereby releases and discharges Tenant of and from any liability to Landlord on account of such payments. The delivery by Mortgagee or the receiver to Tenant of a



Rent Payment Notice, or Tenant's compliance therewith, shall not be deemed to relieve Landlord of any obligations under the Tenant Lease. Tenant shall be entitled to rely on any Rent Payment Notice. Tenant's compliance with a Rent Payment Notice shall not be a default under or otherwise be a violation of the Tenant Lease. Tenant shall be entitled to full credit under the Tenant Lease for any rent or other charges paid as directed pursuant to a Rent Payment Notice to the same extent as if such rent or other charges were paid directly to Landlord. Tenant shall not be in default under the Tenant Lease if, after receipt of any Rent Payment Notice, Tenant delivers payments of Rent and other sums due under the Tenant Lease in accordance with the directions set forth in such Rent Payment Notice, notwithstanding any dispute between Landlord and Mortgagee which may arise as to the existence or non-existence of a default under the Security Instrument or as to Mortgagee's authority to deliver such Rent Payment Notice to Tenant. Landlord agrees to hold Tenant harmless with respect to any such payments made by Tenant as directed in a Rent Payment Notice.

9. Nothing in this Agreement shall impose upon Mortgagee any liability for the obligations of Landlord under the Tenant Lease unless and until Mortgagee takes title to the Landlord's interest in the Property or the portion thereof containing the Premises. Anything herein or in the Tenant Lease to the contrary notwithstanding, in the event that a Successor Owner shall acquire title to the Landlord's interest the Property or the portion thereof containing the Premises, Successor Owner shall have no obligation, nor incur any liability, beyond Successor Owner's then interest, if any, in the Property, and Tenant shall look exclusively to such interest, if any, of Successor Owner in the Property for the payment and discharge of any obligations imposed upon Successor Owner hereunder or under the Tenant Lease, and Successor Owner is hereby released or relieved of any other liability hereunder and under the Tenant Lease. Tenant agrees that, with respect to any money judgment which may be obtained or secured by Tenant against Successor Owner, Tenant shall look solely to the estate or interest owned by Successor Owner in the Property, and Tenant will not collect or attempt to collect any such judgment out of any other assets of Successor Owner.

10. Except as specifically provided in this Agreement, Mortgagee shall not, by virtue of this Agreement, the Security Instrument or any other instrument to which Mortgagee may be party, be or become subject to any liability or obligation to Tenant under the Tenant Lease or otherwise.

11. EACH OF TENANT, MORTGAGEE AND LANDLORD HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

12. The provisions of the Agreement shall be binding upon and insure to the benefit of the parties hereto and their respective successors and assigns. The words, "Mortgagee", "Landlord" and "Tenant" shall include their respective heirs, legatees, executors, administrators, beneficiaries, successors and assigns.

13. All notices and all other communication with respect to this Agreement shall be directed as follows: if to Mortgagee, 255 Greenwich Street, New York, New York 10007, Attn: General Counsel (with a copy to the Executive Director at the same address), or such other address as Mortgagee may designate in writing to Tenant; and, if to Tenant, at the address set forth

in the Tenant Lease or at such other address as tenant may designate in writing to Mortgagee. All notices shall be in writing and shall be (a) hand-delivered, (b) sent by United States express mail or by private overnight courier, or (c) served by certified mail postage prepaid, return receipt requested, to the appropriate address set forth above. Notices served as provided in (a) and (b) shall be deemed to be effective upon delivery or upon refusal thereof. Any notice served by certified mail shall be deposited in the United States mail with postage thereon fully prepaid and shall be deemed effective on the day of actual delivery as shown by the addressee's return receipt or the expiration of three business days after the date of mailing, whichever is earlier in time.

14. This Agreement contains the entire agreement between the parties and no modifications shall be binding upon any party hereto unless set forth in a document duly executed by or on behalf of such party.

15. Mortgagee agrees that the Security Instrument shall not cover or be construed as subjecting in any manner to the lien thereof, any trade fixtures, signs or other personal property at any time furnished or installed by or for Tenant or its subtenants or licensees on or within the Premises, regardless of the manner or mode of attachment thereof.

16. This Agreement may be executed in multiple counterparts, all of which shall be deemed originals and with the same effect as if all parties had signed the same document. All of such counterparts shall be construed together and shall constitute one instrument.

**[no further text this page]**



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

**MORTGAGEE:**

**HUDSON YARDS INFRASTRUCTURE CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

**TENANT**

[\_\_\_\_\_]

By: \_\_\_\_\_  
Name:  
Title:

**AGREED AND CONSENTED TO:**

**KKR HY OWNER LLC**

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

**PILOT ASSIGNMENT AND AGREEMENT**

[to be attached]

**AMENDED AND RESTATED PILOT ASSIGNMENT AND AGREEMENT**

**by and among**

**NEW YORK CITY INDUSTRIAL  
DEVELOPMENT AGENCY, as Assignor**

**and**

**THE CITY OF NEW YORK, as Co-assignor**

**and**

**HUDSON YARDS INFRASTRUCTURE  
CORPORATION, as Assignee**

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*Dated as of December 1, 2006  
Amended and Restated as of May 1, 2017*

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## AMENDED AND RESTATED PILOT ASSIGNMENT AND AGREEMENT

**AMENDED AND RESTATED PILOT ASSIGNMENT AND AGREEMENT**, dated as of December 1, 2006 and amended and restated as of May 1, 2017, by and among **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, as assignor (the “**Agency**”), **THE CITY OF NEW YORK**, a municipal corporation and political subdivision of the State of New York, as co–assignor (the “**City**”), and **HUDSON YARDS INFRASTRUCTURE CORPORATION**, a New York local development corporation created pursuant to the Not–For–Profit Corporation Law of the State of New York, as assignee (the “**Corporation**”).

**WHEREAS**, the City desires to promote the development of the geographic area within the City in the Borough of Manhattan known as the “Hudson Yard Financing District” and described in Resolution No. 547 of 2006 adopted by the City Council of the City on October 11, 2006 (the “**Project Area**”); and

**WHEREAS**, in furtherance of and to support such development, certain infrastructure improvements and public amenities will be undertaken, including but not limited to, the (i) the extension of the Number 7 subway line to a terminus in the southwestern end of the Project Area, with a station located at West 34<sup>th</sup> Street and 11<sup>th</sup> Avenue, (ii) the acquisition of an interest in certain development rights appurtenant to the portion of the Project Area referred to as the “Eastern Rail Yards,” and (iii) the development of public parks and a pedestrian boulevard and the installation of other public amenities throughout the Project Area, including public parking facilities, all of which is more particularly described in Exhibit A annexed hereto and is hereinafter referred to as the “**Project**”; and

**WHEREAS**, the Corporation has been organized and created by the City as a local development corporation to further the development of the Project through, *inter alia* the issuance of its bonds, notes and other evidences of indebtedness (the “**Bonds**”), including pursuant to a Trust Indenture, dated as of December 1, 2006, by and between the Corporation and U.S. Bank National Association (as from time to time amended and supplemented, the “**First Indenture**”), and a Second Trust Indenture, dated as of May 1, 2017, by and between the Corporation and U.S. Bank National Association (as from time to time amended and supplemented, the “**Second Indenture**”; and, together with the First Indenture, the “**Indentures**”), and the application of the proceeds thereof to the payment of “**Project Costs**,” as such term is more particularly hereinafter defined, including the payment of the costs and expenses of Hudson Yards Development Corporation, a local development corporation organized and created by the City (“**HYDC**”), to coordinate and oversee the planning, design and construction of the Project; and

**WHEREAS**, the Agency was created pursuant to Title 1 of Article 18–A of the General Municipal Law of the State of New York (the “**General Municipal Law**”) and Section 917 of Title 2 of Article 18–A of the General Municipal Law (as added thereto by Chapter 1082 of the Laws of 1974) (collectively, hereinafter defined as the “**Enabling Acts**”), *inter alia*, to promote the economic welfare of the inhabitants of the City and to actively promote, attract,

encourage and develop economically sound commerce and industry through governmental action for the purpose of preventing unemployment and economic deterioration; and

**WHEREAS**, the Project will further the purposes of the Agency by promoting and encouraging the development of commercial facilities within that portion of the Project Area hereinafter referred to as the Hudson Yards UTEP Area and more particularly defined in Section 1.01 hereof and Exhibit D hereto; and

**WHEREAS**, to further promote and attract such development to the Hudson Yards UTEP Area, the Agency originally adopted on August 8, 2006, pursuant to Section 874(4)(a) of the General Municipal Law, an amendment to its Uniform Tax Exemption Policy, which Uniform Tax Exemption Policy was amended and restated by the Agency on December 12, 2006, amended by the Agency on July 28, 2009, further amended and restated by the Agency on August 3, 2010 and amended by the Agency on November 9, 2010, in order to, among other things, establish policies and requirements for the provisions and recapture of “financial assistance” as defined in the Enabling Acts (“**Financial Assistance**”), for qualified commercial projects within the Hudson Yards UTEP Area; and

**WHEREAS**, the owners and developers of qualified commercial projects within the Hudson Yards UTEP Area that receive such Financial Assistance from the Agency have entered into and are contemplated to continue to enter into agreements with the Agency to make “payments in lieu of taxes” pursuant to Section 858(15) of the General Municipal Law; and

**WHEREAS**, the City and the Agency, by entering into this Agreement, desire to encourage and induce the Corporation to undertake the financing of the Project through the issuance of its Bonds and payment of the Project Costs from the proceeds thereof, and to pay the costs and expenses of HYDC; and

**WHEREAS**, pursuant to Section 858(15) of the General Municipal Law, the Agency has the power to enter into this Agreement and agreements requiring payments in lieu of taxes, including agreements for payments in lieu of taxes in connection with property located within the Hudson Yards UTEP Area, and, unless otherwise agreed by the Agency and the City, to remit to the City its allocable share of any payments made in lieu of taxes as determined in accordance with Section 858(15) of the General Municipal Law; and

**WHEREAS**, pursuant to the authority vested in the Mayor under Section 8 of the New York City Charter (the “**City Charter**”) and the Enabling Acts, the Mayor, acting on behalf of the City, has the power to (i) enter into an agreement with the Agency, (ii) forgo, waive and surrender the City’s right to receive all or any portion of the PILOT Assets, as such term is defined in Section 1.01 hereof and (iii) assign, transfer and convey to the Corporation all of the City’s right, title and interest in and to the PILOT Assets; and

**WHEREAS**, the City, acting through its City Council, by Resolution No. 1214 of 2005 and Resolution No. 547 of 2006 duly adopted by the City Council on October 27, 2005 and October 11, 2006, respectively, and through its Mayor, has determined that, rather than receive and deposit all of the PILOT Assets into its general fund, it is appropriate for the City and the

Agency to assign such PILOT Assets to the Corporation for the purpose of supporting the financing of the Project, as permitted under the City Charter and the Enabling Acts; and

**WHEREAS**, the City desires to enter into this Agreement pursuant to which it agrees to forgo, waive and surrender the City’s right to receive all or any portion of the PILOT Assets and assigns, transfers and conveys all of its rights in and to the PILOT Assets; and

**WHEREAS**, the Agency desires to enter into this Agreement in order to assign, transfer and convey to the Corporation all of its rights, title and interest in the PILOT Assets; and

**WHEREAS**, the Corporation, in order to secure its notes, bonds and other obligations, will pursuant to and in accordance with the First Indenture and the Second Indenture pledge and further assign its interest in the PILOT Assets; and

**WHEREAS**, the Corporation, in consideration of the agreements of the City and the Agency will agree to develop the Project or cause it to be developed and, so long as it has access to capital markets upon reasonable borrowing terms and rates, to finance the costs of the Project through the issuance of its notes, bonds or other obligations;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

**SECTION 1.01. Definitions.** (a) All capitalized terms used herein and not otherwise defined herein shall: (i) when used in connection with the First Indenture or First Indenture Bonds, have the same respective meanings as such terms are given in the First Indenture; and (ii) when used in connection with the Second Indenture or Second Indenture Bonds, have the same respective meanings as such terms are given in the Second Indenture.

(b) In addition, as used herein, unless a different meaning clearly appears from the context:

“**Agency**” has the meaning given to such term in the initial paragraph of this Agreement.

“**Agency’s Board of Directors**” means the board of directors of the Agency as constituted in accordance with Section 917 of Article 18–A of the General Municipal Law.

“**Agency’s Reserved Rights**” means, when used with respect to any particular PILOT Agreement, the “Agency’s Reserved Rights” reserved by the Agency in such PILOT Agreement, but the Agency’s Reserved Rights shall not include a right of the Agency to receive amounts that constitute any part of the PILOT Payments or PILOMRT Payments.

“**Agreement**” means this Amended and Restated PILOT Assignment and Agreement, as the same may be further amended or supplemented and in effect from time to time.

“**Assignment Consideration**” means the consideration required to be performed by the Corporation as set forth in Section 2.04 hereof.

“**Bonds**” has the meaning given to such term in the recitals to this Agreement.

“**City**” has the meaning given to such term in the initial paragraph of this Agreement.

“**City Charter**” has the meaning given to such term in the recitals to this Agreement.

“**Closing Date**” means the first date on which the Corporation issues any Bonds.

“**Corporation**” has the meaning given to such term in the initial paragraph of this Agreement.

“**Enabling Acts**” has the meaning given to such term in the recitals to this Agreement.

“**Financial Assistance**” has the meaning given to such term in the recitals to this Agreement.

“**Financing Costs**” means (i) all costs, fees, credit and liquidity enhancement fees, legal fees, financial advisory fees, transaction structuring and underwriting fees, costs of issuance (including Costs of Issuance as defined in the Indentures) and other expenses of any kind whatsoever of the Corporation, and (ii) the funding of reserve funds and other funds pledged to the First Indenture Trustee from the proceeds of the First Indenture Bonds or the Second Indenture Trustee from the proceeds of the Second Indenture Bonds.

“**First Indenture**” has the meaning given such term in the recitals to this Agreement.

“**First Indenture Bonds**” means, as of any particular date of calculation, bonds issued under the First Indenture that are then outstanding under and within the meaning of the First Indenture, other than Funded Bonds.

“**First Indenture Trustee**” means U.S. Bank National Association, in its capacity as trustee under the First Indenture, or any successor trustee under the First Indenture.

“**General Municipal Law**” has the meaning given to such term in the recitals to this Agreement.

“**Hudson Yards UTEP Area**” means the geographic area within the Project Area more particularly described in Exhibit D annexed hereto



“**HYDC**” has the meaning given to such term in the recitals to this Agreement.

“**Indentures**” has the meaning given to such term in the recitals to this Agreement.

“**Lien**” means a security interest, lien, charge, pledge, equity interest or encumbrance of any kind.

“**Net Proceeds**” means the proceeds of the sale of Bonds remaining after deducting therefrom interest accrued therein prior to their date of initial issuance, the amount of proceeds set aside for the payment of interest to accrue on such Bonds from and after their date of initial issuance, and all Financing Costs paid or to be paid therefrom (including costs and expenses of the Agency, the City, HYDC or the Corporation which under the terms of this Agreement or of the Indentures are permitted to be paid or reimbursed from the proceeds of the Bonds).

“**PILOMRT Payment**” means each payment in lieu of mortgage recording taxes made pursuant to a PILOT Agreement.

“**PILOT Agreement**” means each agreement entered into by the Agency on or after the Closing Date pursuant to Section 858(15) of the General Municipal Law with the developer of a commercial facility or other facility permitted under the Enabling Acts within the Hudson Yards UTEP Area that provides for payments in lieu of *ad valorem* real property taxes or mortgage recording taxes, or both, to be made to the Agency in accordance with the UTEP–Hudson Yards, which agreements are in such form as may be consented to by the Corporation.

“**PILOT Assets**” means (i) with respect to the City, all of the City’s right, title and interest in the PILOT Payments and PILOMRT Payments, including the City’s right, title and interest in and to the PILOT Payments and the PILOMRT Payments pursuant to Sections 858(15) and 874(3) of the General Municipal Law; (ii) with respect to the Agency, all of the Agency’s right, title and interest (excluding the Agency’s Reserved Rights) in and to the PILOT Payments, the PILOMRT Payments, the PILOT Agreements and the PILOT Mortgages, and (iii) with respect to the Corporation, all of the Corporation’s right, title and interest in and to the PILOT Payments, the PILOMRT Payments, the PILOT Agreements, and PILOT Mortgages pursuant to the Transaction Documents, and, in each case, the right to enforce the same and the proceeds of such rights.

“**PILOT Mortgage**” means a mortgage on the real property and improvements thereon, or on the leasehold estate therein, securing the obligation of any person to make PILOT Payments.

“**PILOT Payment**” means each payment in lieu of *ad valorem* real property taxes made pursuant to a PILOT Agreement.

“**Project**” has the meaning given to such term in the recitals to this Agreement.

“**Project Area**” has the meaning given to such term in the recitals to this Agreement.

**“Project Costs”** has the meaning given to such term in the Indentures.

**“Second Indenture”** has the meaning given such term in the recitals to this Agreement.

**“Second Indenture Bonds”** means, as of any particular date of calculation, bonds issued under the Second Indenture that are then outstanding under and within the meaning of the Second Indenture, other than Funded Bonds.

**“Second Indenture Trustee”** means U.S. Bank National Association, in its capacity as trustee under the Second Indenture, or any successor trustee under the Second Indenture.

**“State”** means The State of New York.

**“Support Agreement”** means the Amended and Restated Hudson Yards Support and Development Agreement, dated as of December 1, 2006 and amended and restated as of May 1, 2017, by and among the City, HYDC and the Corporation, as from time to time further amended and supplemented.

**“Transaction Documents”** mean this Agreement, each PILOT Agreement, each PILOT Mortgage and each instrument of assignment executed by the Agency and the City pursuant to Section 2.04 of this Agreement.

**“Uniform Tax Exemption Policy”** or **“UTEP”** means the Agency’s Third Amended and Restated Uniform Tax Exemption Policy attached hereto as Exhibit B, adopted by the Agency on August 3, 2010 pursuant to Section 1 of Chapter 444 of the Laws of 1997, amending the General Municipal Law, as such Uniform Tax Exemption Policy may from time to time be amended or modified by the Agency, including as amended by the First Amendment to Third Amended and Restated Uniform Tax Exemption Policy, adopted by the Agency on November 9, 2010.

**“UTEP–Hudson Yards”** means those provisions of the UTEP that establish policies and requirement for the provision and recapture of Financial Assistance for qualifying commercial projects within the Hudson Yards UTEP Area, as the same were originally adopted by the Agency on August 8, 2006, pursuant to Section 874(a) of the General Municipal Law, and as amended and restated by the Agency on December 12, 2006, and as the same may be further amended or modified from time to time in accordance with this Agreement.

**SECTION 1.02. Other Definitional Provisions.** (a) All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein.

(b) As used in this Agreement and in any certificate or other document made or delivered pursuant hereto or thereto, accounting terms not defined in this Agreement or in any such certificate or other document, and accounting terms partly defined in this Agreement or in any such certificate or other document to the extent not defined, shall have the respective meanings given to them under generally accepted accounting principles. To the extent that the

definitions of accounting terms in this Agreement or in any such certificate or other document are inconsistent with the meanings of such terms under generally accepted accounting principles, the definitions contained in this Agreement or in any such certificate or other document shall control.

(c) The words “hereof,” “herein,” “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement; Article and Section references contained in this Agreement are references to Articles and Sections in or to this Agreement unless otherwise specified; and the term “including” shall mean “including without limitation.”

(d) The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms.

(e) Any agreement, instrument or statute defined or referred to herein or in any instrument or certificate delivered in connection herewith means such agreement, instrument or statute as from time to time amended, modified or supplemented and includes (in the case of agreements or instruments) references to all attachments thereto and instruments incorporated therein; references to a person are also to its permitted successors and assigns.

(f) The phrases “to the knowledge,” “to the best knowledge” or other similar phrases used herein or in any certificate delivered pursuant hereto, shall mean that an Authorized Officer of the party to which such phrase relates had actual knowledge with respect to the information referred to in connection with such phrase.

## ARTICLE II

### ASSIGNMENT OF PILOT ASSETS

**SECTION 2.01. City Surrender, Etc., and Assignment of Rights.** Effective on the Closing Date, the City pursuant to Section 858(15) of the General Municipal and Section 8 of the City Charter, hereby irrevocably, absolutely and unconditionally (i) waives, surrenders and agrees to forgo all of its rights in and to the PILOT Assets and (ii) assigns, transfers, sets over and otherwise conveys to the Corporation without recourse (except for recourse against the City for the City’s failure to perform its continuing obligations hereunder) all of the City’s right, title and interest in and to the PILOT Assets.

**SECTION 2.02. Agency Assignment of PILOT Assets.** Effective on the Closing Date, the Agency hereby irrevocably, absolutely and unconditionally assigns, transfers, sets over and otherwise conveys to the Corporation, without recourse (except for recourse against the Agency for the Agency’s failure to perform its continuing obligations hereunder), all of the Agency’s right, title and interest in the PILOT Assets and the Agency’s rights thereunder, (with the exception of the Agency’s Reserved Rights), including the right to enforce the same and to receive the PILOT Payments and the PILOMRT Payments made and to be made thereunder, and the proceeds of such rights.

**SECTION 2.03. Nature and Effect of Assignments.** (a) The assignments, transfers and conveyances made hereby are intended to be effective without further act, but the Agency and the City shall, as soon as practicable after the Agency enters into a PILOT Agreement, each execute and deliver to the Corporation an instrument of assignment in the form annexed hereto as Exhibit C, and, if requested by the Corporation, provide any other appropriate instrument or instruments to evidence such assignment, sale, transfer, setting over and conveyance to the Corporation. The PILOT Assets so assigned shall be free and clear of Liens. The Agency and the City hereby acknowledge that from and after the Closing Date, the PILOT Assets shall be the property of the Corporation and its successors and assigns for all purposes, and except as specifically provided herein, neither the Agency nor the City shall have any right to control or direct the use and application or sale, further assignment, transfer, conveyance or other disposition of the PILOT Assets by the Corporation or its successors and assigns. The Agency and the City hereby consent to any pledge of, further assignment of and grant of security interest in any or all right, title and interest of the Corporation in, to and under the PILOT Assets, and the assignment of any or all of the Corporation's rights under the Transaction Documents, to the First Indenture Trustee and/or the Second Indenture Trustee for the benefit of the Bondholders, but such consent is not intended to imply a limitation on the right of the Corporation to otherwise assign, sell, transfer, convey or dispose of the PILOT Assets in accordance with the Transaction Documents.

(b) In the event the Agency or the City shall receive any payments or other funds constituting PILOT Assets after the Closing Date, the Agency and the City will promptly disburse the same to the Corporation or, so long as Bonds are outstanding under the First Indenture, the First Indenture Trustee or, once Bonds are no longer outstanding under the First Indenture and for so long as Bonds are outstanding under the Second Indenture, the Second Indenture Trustee, as directed in writing by an Authorized Officer of the Corporation. The Agency shall, promptly after a PILOT Agreement is entered into, execute and deliver to each other party to such PILOT Agreement a notice of the assignment made hereby and instructions to make the PILOT Payments and the PILOMRT Payments payable thereunder to the Corporation or, upon the order of the Corporation, so long as Bonds are outstanding under the First Indenture, to the First Indenture Trustee or, once Bonds are no longer outstanding under the First Indenture and for so long as Bonds are outstanding under the Second Indenture, to the Second Indenture Trustee.

**SECTION 2.04. Assignment Consideration.** In consideration of the assignments, transfers and conveyances made by the City and the Agency pursuant to Sections 2.01 and 2.02 hereof and the City's waiver, surrender and agreement to forgo its interest in the PILOT Assets pursuant to Sections 2.01 hereof, the Corporation does hereby agree, from time to time and in such amounts as may be required to pay the Project Costs as such costs are incurred, to issue its Bonds and to apply the Net Proceeds to pay the Project Costs, and does further agree to pay in accordance with the Support Agreement the costs and expenses of HYDC.

**SECTION 2.05. Limited Liability of Corporation.** Nothing contained herein is intended to require the Corporation to pay or to provide for the payment of the Project Costs from any source of funds other than the Net Proceeds.

**SECTION 2.06. Reimbursement of Expenses.** As soon as practicable after the issuance of Bonds the Corporation shall reimburse the Agency and the City for or pay directly any costs and expenses incurred by either of them in connection with the assignment of the PILOT Assets, the establishment and organization of the Corporation, this Agreement, the Indentures, and the transactions contemplated hereby. The Agency and the City each agree to itemize such costs for which it seeks reimbursement in a certificate of an Authorized Officer delivered to the Corporation on or prior to the date on which Bonds are issued. The Corporation shall reimburse the City and the Agency for or pay such costs and expenses from the proceeds of the Bonds and the same shall be deemed to be Financing Costs.

**SECTION 2.07. Agency and City Not Liable on Bonds.** It is the intention of the Agency, the City and the Corporation, and they do agree, that the Bonds shall not be a debt of the Agency or the City and neither the Agency nor the City will have any obligation or liability on the Bonds.

**SECTION 2.08. Agency Not Obligated to Execute PILOT Agreements.** The parties hereto acknowledge that the Agency is under no obligation to enter into any PILOT Agreement or PILOT Mortgage and nothing herein is intended to or shall be construed to create such obligation; and, further, that a PILOT Agreement may not be executed by the Agency until its execution is approved by the Agency's Board of Directors for the purpose of inducing a "project", as such term is defined in the Enabling Acts, and only after all other applicable requirement of the Enabling Acts that are conditions precedent to the Agency's right or power to approve and execute such PILOT Agreement or PILOT Mortgage have been satisfied.

### **ARTICLE III**

#### **REPRESENTATIONS AND WARRANTIES**

The Agency and the City make the following respective representations and warranties on which the Corporation is deemed to have relied in acquiring the PILOT Assets and in undertaking the development and financing of the Project. The representations and warranties speak as of the Closing Date and as of the date of amendment and restatement of this Agreement. In addition, each representation shall be deemed to have been made on, and speak as of, each date on which (i) the Corporation issues Bonds (subject to the delivery of the certificate referred to in the last sentence of this paragraph), (ii) the Agency enters into a PILOT Agreement and (iii) the Agency or the City execute an assignment in the form annexed hereto as Exhibit C in connection with a PILOT Agreement as required by Section 2.03 hereof. As a condition to the execution and delivery of certificates referred to above, the Agency shall have received an opinion of the City's Corporation Counsel in form and substance consistent with the opinion delivered to the Agency upon and in connection with the execution and delivery of this Agreement. The Agency agrees, at the Corporation's request made in connection with the issuance of Bonds of the Corporation or the execution of an assignment in the form annexed hereto as Exhibit C, to deliver to the Corporation a certificate to the effect that the representation made by it in this Article III are true and correct on the date such Bonds are issued or such assignment is executed as if made on such date.



**SECTION 3.01. Representations of the Agency.** The Agency makes the representations and warranties set forth below.

(a) **Power and Authority.** 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, and is authorized and empowered to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. By proper action of the Agency's Board of Directors the Agency has duly authorized the execution and delivery of this Agreement.

(b) **Binding Obligation.** This Agreement has been duly executed and delivered by the Agency and, assuming the due authorization, execution and delivery of this Agreement by the City and the Corporation, constitutes a legal, valid and binding obligation of the Agency enforceable in accordance with its terms.

(c) **Enforceability.** This Agreement constitutes a legal, valid and binding obligation of the Agency enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights and general principles of equity.

(d) **Bankruptcy Ineligibility.** The Agency does not qualify to be a debtor under Chapter 9 of the United States Bankruptcy Code.

(e) **No Consents.** No consent, approval, authorization, order or qualification of or with any court or governmental agency or body is required for the consummation of the transactions contemplated by this Agreement, except for those which have been obtained and are in full force and effect.

(f) **No Violation.** The execution, delivery and performance of this Agreement and each other Transaction Document to which the Agency is a party and the fulfillment of the terms hereof and thereof do not, to the Agency's knowledge, in any material way conflict with, result in any material breach by the Agency of any of the material terms and provisions of, nor constitute (with or without notice or lapse of time) a material default by the Agency under any indenture, agreement or other contract to which the Agency is a party or by which it shall be bound; nor violate any provision of law or, to the Agency's knowledge, any order, rule or regulation applicable to the Agency of any court or of any federal or state regulatory body, administrative agency or other governmental instrumentality having jurisdiction over the Agency or any of its property.

(g) **No Proceedings.** There are no material proceedings or investigations pending or, to the Agency's knowledge, threatened against the Agency, before or by any court, regulatory body, administrative agency or other governmental instrumentality having jurisdiction over the Agency: (i) asserting the invalidity of any of the Transaction Documents, (ii) seeking to prevent the issuance of the Bonds or impair in any material respect the Agency's ability to perform its obligations hereunder, or (iii) seeking any determination or ruling that would materially and adversely affect the validity or enforceability of any of the Transaction Documents, the Bonds, the Enabling Acts or this Agreement.

(h) **Title to PILOT Assets.** From and after the assignment of the PILOT Assets made hereby by the Agency and the City, the Agency will have no right, title or interest in or charge or lien on the PILOT Assets. Prior to the assignments made hereby by the Agency and the City, the Agency had, subject to the City's rights under Sections 858(15) and 874(3) of the General Municipal Law, the right, title and interest to the PILOT Assets that it purports to assign, transfer and convey pursuant to Section 2.02 hereof.

(i) **Absence of Liens.** The Agency has not sold, transferred, assigned, set over or otherwise conveyed any right, title or interest of any kind whatsoever in all or any portion of the PILOT Assets, nor has the Agency created, or to its knowledge permitted the creation or suffered the existence of, any Lien thereon.

(j) **UTEP.** The UTEP has been duly adopted by the Agency, is in full force and effect, has not been rescinded and is permitted by and consistent with the laws of the State. Except as permitted hereby, the UTEP–Hudson Yards has not been amended or modified in any respect.

**SECTION 3.02. Representations of the City.** The City, as Co-assignor, makes the following representations and warranties:

(a) **Power and Authority.** The City has full power and authority to execute and deliver this Agreement and to carry out its terms; the City has full power, authority and legal right to waive, surrender, agree to forgo, and to assign, transfer and convey to the Corporation its rights in and to the PILOT Assets; and the City has duly authorized such waiver, surrender, agreement to forgo and assignment, transfer and conveyance by all necessary action; and the execution, delivery and performance of this Agreement has been duly authorized by the City by all necessary action. Pursuant to the Enabling Acts and the City Charter, the Mayor of the City has full power and authority to determine the terms and conditions of this Agreement and the related documents and agreements and to execute and deliver the same.

(b) **Binding Obligation.** This Agreement has been duly executed and delivered by the Mayor [or his designee] on behalf of and in the name of the City and, assuming the due authorization, execution and delivery of this Agreement by the Agency and the Corporation, constitutes a legal, valid and binding obligation of the City enforceable in accordance with its terms.

(c) **No Consents.** No consent, approval, authorization, order or qualification of or with any court or governmental agency or body is required for the consummation of the transactions contemplated by this Agreement, except for those which have been obtained and are in full force and effect.

(d) **No Violation.** The consummation of the transactions contemplated by the Transaction Documents to which the City is a party and the fulfillment of the terms hereof and thereof do not, to the City's knowledge, in any material way conflict with, result in any material breach by the City of any of the material terms and provisions of, nor constitute (with or without notice or lapse of time) a material default by the City under any indenture, agreement or other contract to which the City is a party or by which it shall be bound; nor violate any law or, to the

City's knowledge, any order applicable to the City of any court having jurisdiction over the City or any of its property.

(e) **No Proceedings.** There are no material proceedings or investigations pending or, to the City's knowledge, threatened against the City, before or by any court, regulatory body, administrative agency or other governmental instrumentality having jurisdiction over the City: (i) asserting the invalidity of any of the Transaction Documents or the Bonds, (ii) seeking to prevent the issuance of the Bonds or to impair in any material respect the City's ability to perform its obligations hereunder, or (iii) seeking any determination or ruling that would materially and adversely affect the validity or enforceability of any of the Transaction Documents, the Bonds, the Enabling Acts or this Agreement.

(f) **Title to PILOT Assets.** From and after the assignment of the PILOT Assets made hereby by the City and the Agency, the City will have no right, title or interest in or charge or lien on the PILOT Assets, and payment of the PILOT Payments and PILOMRT Payments to the Corporation will not be subject to or dependent or conditioned on an appropriation by the City of the PILOT Payments or the PILOMRT Payments for such payment. Prior to the assignments made hereby by the City and the Agency and the City's waiver, surrender and agreement to forgo receipt of PILOT Payments and PILOMRT Payments made by the City, the City had such right, title and interest to the PILOT Payments and PILOMRT Payments as provided in Sections 858(15) and 874(3) of the Enabling Acts.

(g) **Absence of Liens.** The City has not sold, transferred, assigned, set over or otherwise conveyed any right, title or interest of any kind whatsoever in all or any portion of the PILOT Assets, nor has the City created, or to its knowledge permitted the creation or suffered the existence of, any Lien therein.

## ARTICLE IV

### COVENANTS OF THE AGENCY AND THE CITY

**SECTION 4.01. Covenants of the Agency and City.** The Agency for and on behalf of itself and the City for and on behalf of itself do hereby covenant as follows:

(a) **Protection of Title.** It shall, at the request of the Corporation and at the expense of the Corporation, take all actions as may be required by law fully to preserve, maintain, defend, protect and confirm the Agency's and the City's assignment of its interest in the PILOT Assets to the Corporation. It will not take any action that will adversely affect the validity or enforceability of the Transaction Documents, nor will it assert or claim any right, title or interest to or in the PILOT Assets that is inconsistent with the Transaction Documents.

(b) **Protection of Transaction Documents.** It will, at the request of the Corporation and at the expense of the Corporation, and subject to the City's obligation to represent the Agency pursuant to Section 5.03 of this Agreement, join in any action or proceeding at law or in equity before any court, regulatory body, administrative agency or other governmental instrumentality in which the Corporation is a party: (i) asserting the invalidity of any of the Transaction Documents to which it is a party, (ii) seeking to prevent the

consummation in accordance with its terms of any Transaction Document to which it is a party, or (iii) seeking any determination or ruling that would materially and adversely affect the validity or enforceability of any of the Transaction Documents to which it is a party.

(c) **Further Actions and Assurances.** It, at any and all times, shall at the request of the Corporation and at the expense of the Corporation, in so far as it may be authorized by law, pass, make, do, execute, acknowledge and deliver all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable for the better assuring, conveying, granting, assigning and confirming all and singular the rights and assignments hereby made or created or intended to be made or created, or which it is or may hereafter become bound to assign, or as may be reasonably necessary or proper to carry out more effectively the purposes of this Agreement.

(d) **Information Reporting.** It will provide to the Corporation at any time and from time to time such information as the Corporation may reasonably request in order to fulfill the Corporation's obligations under the First Indenture and the Second Indenture, and any obligations it may undertake in connection with the Bonds to provide information to the Rating Services, and any continuing disclosure undertaking in connection with the Bonds.

(e) **Settlement, Compromise, Etc.** It will not, without the prior written consent of the Corporation and the City, settle, stipulate or otherwise waive or compromise any right or claim or any action or proceeding to which it is a party if the same would have the effect of: (A) agreeing that the Enabling Acts, or any provision thereof material to the transactions contemplated by any of the Transaction Documents, are in conflict with or violate the constitution of the State or any provision of the statutory law of the State, (B) agreeing that any provision of a Transaction Document to which it is a party is void, voidable or unenforceable; (C) agreeing to (1) a reduction in one or more PILOT Payments or PILOMRT Payments to be made under a PILOT Agreement, (2) delay any date by which one or more PILOT Payments are required to be made under a PILOT Agreement, or (3) shorten the period over which the PILOT Payments are to be made under a PILOT Agreement; or (D) acquiescing in any of the foregoing.

#### **SECTION 4.02. Additional Agency Covenants.**

(a) **Protection of Enabling Acts.** The Agency shall cooperate and assist the City in connection with the City's performance of its obligations under Section 4.03(a) hereof.

(b) **Conformity with UTEP–Hudson Yards.** Each PILOT Agreement shall, unless the Corporation otherwise agrees in writing, conform to the UTEP–Hudson Yards and be in such form as to which the Corporation shall have given its prior written consent.

(c) **Amendment, etc. of UTEP–Hudson Yards.** The Agency shall not directly or indirectly rescind, amend, modify or deviate from the UTEP–Hudson Yards in any respect without the prior written consent of the Corporation; *provided, however*, that the Agency may, without the consent of the Corporation, amend or modify the UTEP–Hudson Yards if (i) as a result of a change in State law, the UTEP–Hudson Yards is no longer consistent therewith, (ii) such amendment or modification is required in order for the UTEP–Hudson Yards to conform to the applicable State laws, (iii) the Agency, not less than 30 days prior to it taking any action to

amend or modify the UTEP–Hudson Yards, delivered to the Corporation a copy of the proposed amendment or modification of the UTEP–Hudson Yards and (iv) the Agency certified to the Corporation, in writing, that such amendment or modification is solely required in order for the UTEP–Hudson Yards to conform to the applicable State law.

(d) **PILOT Agreements and Mortgages.** The Agency shall not provide any Financial Assistance for a qualifying commercial project within the Hudson Yards UTEP Area unless the owner of such project has executed a PILOT Agreement and a PILOT Mortgage securing its obligations to the Agency under the PILOT Agreement. The Agency shall require each owner, at such owner’s cost, to provide a mortgagee title insurance policy insuring that such PILOT Mortgage constitutes a first mortgage lien on the property described therein, subject only to such Liens as have been consented to by the Agency and the Corporation.

(e) **Extension of PILOT Agreements.** The Agency agrees that so long as any Bonds remain Outstanding it will, at the request of the Corporation, exercise any right the Agency may have under each PILOT Agreement to extend the term of such PILOT Agreement.

#### **SECTION 4.03. Additional City Covenants.**

(a) **Protection of Enabling Acts.** The City shall defend the Agency against any legal challenge arising in connection with the transactions contemplated by any of the Transaction Documents that asserts that (A) the Enabling Acts, or any provision thereof material to the transactions contemplated by any of the Transaction Documents, are in conflict with or violate the constitution of the State or any provision of the statutory law of the State, or (B) any provision of a Transaction Document to which the Agency is a party is void, voidable or unenforceable as currently in effect.

(b) **Tax Exemption.** The City shall at all times do and perform all acts and things permitted by law and necessary or desirable to assure that interest paid by the Corporation on Tax–Exempt Bonds shall be excludable from gross income for federal income tax purposes pursuant to Section 103(a) of the Code; and no funds of it shall at any time be used directly or indirectly to acquire securities, obligations or investment property the acquisition or holding of which would cause any Tax–Exempt Bond to be an arbitrage bond as defined in the Code and any applicable regulations issued thereunder and in furtherance of such covenant shall execute and comply with the tax certificate provided by Bond Counsel.

(c) **Non–Impairment.** The City shall not take any action that would limit or alter the rights vested in the Corporation under or pursuant to the Transaction Documents or in and to the PILOT Assets; nor shall the City take any action that would in any way impair the rights and remedies of the holders or the security for the Bonds.

### **ARTICLE V**

#### **MISCELLANEOUS**

**SECTION 5.01. Amendment.** No agreement or other instrument purporting (i) to amend, change, modify, or terminate this Agreement or any provision hereof or (ii) to waive any provision thereof, shall have any force or effect unless approved by the Agency’s Board of



Directors, in the case of the Agency, the Mayor [or his designee], in the case of the City, and the Board of Directors of the Corporation, in the case of the Corporation, and executed and delivered by an Authorized Officer of the party against whom asserted; nor, so long as any Bonds remain outstanding, shall it have any force or effect unless made in conformity with the provisions of this Section 5.01.

**SECTION 5.02. Breach of Representation or Warranty.** The Agency and the City each acknowledge that the Corporation will assign to the First Indenture Trustee and/or the Second Indenture Trustee for the benefit of the Bondholders all of its rights and remedies hereunder with respect to the breach of any representations and warranties of each of them under Article III of this Agreement. Upon discovery by any party hereto of a breach of any of the foregoing representations and warranties that materially and adversely affects the value of the PILOT Assets, the party discovering such breach shall give prompt written notice to the other parties hereto.

Neither the Agency nor the City shall be liable to the First Indenture Trustee, the Second Indenture Trustee or the Bondholders for any loss, cost or expense resulting solely from the failure of the First Indenture Trustee or the Second Indenture Trustee to promptly notify the Agency or the City upon the discovery by an Authorized Officer of the First Indenture Trustee or the Second Indenture Trustee of a breach of any representation or warranty contained herein.

**SECTION 5.03. Liability of Agency or City; Indemnities.** The Agency and the City shall be liable in accordance herewith only to the extent of the respective obligations specifically undertaken by each of them under this Agreement. In no event, however, shall the Agency be liable for monetary damages and the Corporation and its assigns shall be limited, upon a breach by the Agency, to specific performance or other compulsory relief in the nature of mandamus, injunctive relief, and other equitable remedies as may be available. To the extent permitted by law, the City shall indemnify, defend and hold harmless the Corporation and its respective officers, directors, employees and agents from and against any and all costs, expenses, losses, claims, damages and liabilities to the extent that such cost, expense, loss, claim, damage or liability arose out of, or was imposed upon any such person through, the negligence, willful misfeasance or bad faith of the Agency or the City in the performance of their respective duties under this Agreement or by reason of reckless disregard of their respective obligations and duties under this Agreement. To the extent permitted by law, the City shall indemnify, defend and hold harmless the Agency and its respective officers, directors, employees and agents from and against any and all costs, expenses, losses, claims, damages and liabilities to the extent that such cost, expense, loss, claim, damage or liability arose out of, or was imposed upon any such person (i) in connection with the performance of such person's obligations under the Transaction Documents and not otherwise paid or reimbursed by the Corporation, (ii) in connection with or arising out of the transfer to or ownership by the Agency of fee title to any real property relating to any project that is subject to a PILOT Agreement, (iii) through, the negligence, willful misfeasance or bad faith of the City or the Corporation in the performance of their respective duties under this Agreement, by reason of reckless disregard of their respective obligations and duties under this Agreement, or (iv) arising from any representation or warranty made by the Agency, or its directors, officers, employees or agents pursuant to any Transaction Document or any certificate, notice or agreement delivered in connection herewith or therewith.

At the option of the City and absent any conflict of interest, any indemnified party shall be represented by the Corporation Counsel of the City or special counsel retained by the City with respect to any litigation brought by or against such indemnified party or its officers, directors or employees with respect to any claims, damages, judgments, liabilities or causes of action to which such persons may be subject and to which they are entitled to be indemnified hereunder. Indemnification under this Section shall survive the termination of this Agreement, the First Indenture and the Second Indenture, and shall include reasonable fees and expenses of counsel and expenses of litigation. If the City shall have made any indemnity payments pursuant to this Section and the person to or on behalf of whom such payments are made thereafter shall collect any of such amounts from others, such person shall promptly repay such amounts to the City without interest.

**SECTION 5.04. Limitation on Liability.** The Agency and the City and any officer or employee or agent of the Agency or the City may rely in good faith on the advice of counsel or on any document of any kind, prima facie properly executed and submitted by any person respecting any matters arising hereunder. Neither the Agency nor the City shall be under any obligation to appear in, prosecute or defend any legal action that shall not be related to its obligations under this Agreement, and that in its opinion may involve it in any expense or liability. The City shall not be required to indemnify any person for a claim settled without the prior consent of the Mayor.

Neither the Agency, the City nor any of their officers or employees or agents shall be under any liability to the Corporation, except as provided under this Agreement, for any action taken or for refraining from the taking of any action pursuant to this Agreement or for errors in judgment; but this sentence shall not protect the Agency, the City or any such person against any liability that would otherwise be imposed by reason of willful misfeasance, bad faith or negligence in the performance of duties or by reason of reckless disregard of obligations and duties under this Agreement; *provided, however*, that neither the Agency nor the officers, employees or agents of the City or the Agency, shall be liable for monetary damages and the Corporation shall be limited in its remedies against such persons to seeking specific performance, injunctive or other compulsory relief in the nature of mandamus or other equitable remedies.

Notwithstanding anything contained herein to the contrary, neither the Agency, nor its directors, officers, employees or agents shall have any liability for the representations, warranties, covenants, agreements or other obligations of the City hereunder or in any of the certificates, notices or agreements delivered pursuant hereto, or for any representation or warranty made by the Agency, or its directors, officers, employees or agents in reliance upon the Opinion pursuant to any Transaction Document or any certificate, notice or agreement delivered in connection therewith, as to all of which recourse shall be had solely to the City.

**SECTION 5.05. Notices.** All demands, notices and communications upon or to the Agency, the City, the Corporation, the First Indenture Trustee or the Second Indenture Trustee under this Agreement shall be in writing, personally delivered or mailed by certified mail, return receipt requested, and shall be deemed to have been duly given upon receipt: (a) in the case of the Corporation, to it to the attention of the Corporation's President with a copy to the Corporation's Secretary, at 255 Greenwich Street, New York, New York 10007; (b) in the case

of the First Indenture Trustee, addressed to it at the principal corporate trust office of the First Indenture Trustee at the address of such principal corporate trust office; (c) in the case of the Second Indenture Trustee, addressed to it at the principal corporate trust office of the Second Indenture Trustee at the address of such principal corporate trust office; (d) in the case of the City, addressed to it to the attention of the City's Director of Management and Budget, at 255 Greenwich Street, New York, New York 10007, with a copy to (i) the City's Corporation Counsel, at 100 Church Street, New York, New York 10007, and (ii) the City's Comptroller, at Municipal Building, Room 517, One Centre Street, New York, New York 10007; (e) in the case of the Agency, addressed to it to the attention of the Agency's General Counsel, with a copy to the Agency's Executive Director, at 110 William Street, New York, New York 10038; or, (f) in each case, to such other individual and at such other address as the person to be notified shall have specified by notice to the other persons.

**SECTION 5.06. Successors and Assigns.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; *provided, however*, that this Agreement may not be assigned by any party hereto without the prior written consent of the other parties hereto, *except* that the Corporation may assign the Agreement to the First Indenture Trustee and/or the Second Indenture Trustee without the consent of any other party hereto.

**SECTION 5.07. Limitations on Rights of Others.** The provisions of this Agreement are solely for the benefit of the Agency, the City, the Corporation, the First Indenture Trustee, the Second Indenture Trustee and the Bondholders, and nothing in this Agreement, whether express or implied, shall be construed to give to any other person any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

**SECTION 5.08. Separate Counterparts.** This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

**SECTION 5.09. Headings.** The headings of the various Articles and Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

**SECTION 5.10. Governing Law.** This Agreement shall be construed in accordance with the laws of the State, without reference to its conflict of law provisions, and the obligations, rights and remedies of the parties hereunder shall be determined in accordance with such laws.

**SECTION 5.11. Termination of Certain Provisions.** To the extent any covenant, representation, obligation or consent requirement herein is said to be for the benefit of the Bondholders or of the First Indenture Trustee or the Second Indenture Trustee, such provision shall, with respect to such Bondholders or the First Indenture Trustee or the Second Indenture Trustee, be deemed to terminate upon the payment of all Outstanding Bonds under the First Indenture, the payment of all Outstanding Bonds under the Second Indenture and the

termination of the First Indenture and the Second Indenture; whereupon the Corporation, by appropriate instruments, shall reassign, retransfer and reconvey the respective PILOT Assets to the Agency and the City and, upon such reassignment, retransfer and reconveyance this Agreement shall terminate. Notwithstanding the foregoing, the provisions of Sections 5.03 and 5.04 shall survive the termination of this agreement.

[Remainder of page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers as of the day and year first above written.

SEAL

**NEW YORK CITY INDUSTRIAL  
DEVELOPMENT AGENCY, assignor**

Attest:

By: Arthur Hauser  
Title: Assistant Secretary

By: [Signature]  
Name: Johan Salen  
Title: Executive Director

**APPROVED AS TO FORM:**

**THE CITY OF NEW YORK, co-assignor**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Acting Corporation Counsel

By: \_\_\_\_\_  
Name: Alicia Glen  
Title: Deputy Mayor for Housing and Economic  
Development

SEAL

**HUDSON YARDS INFRASTRUCTURE  
CORPORATION, as assignee**

Attest:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Alan L. Anders  
Title: President

(Signature Page to Amended and Restated PILOT Assignment and Agreement)



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers as of the day and year first above written.

SEAL

**NEW YORK CITY INDUSTRIAL  
DEVELOPMENT AGENCY, assignor**

Attest:

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

By: \_\_\_\_\_  
Name: Johan Salen  
Title: Executive Director

**APPROVED AS TO FORM:**

**THE CITY OF NEW YORK, co-assignor**

By: Albert Rodriguez  
Name: \_\_\_\_\_  
Title: Acting Corporation Counsel

By: Alicia Glen  
Name: Alicia Glen  
Title: Deputy Mayor for Housing and Economic  
Development

SEAL

**HUDSON YARDS INFRASTRUCTURE  
CORPORATION, as assignee**

Attest:

By: Prescott Ulrey  
Name: \_\_\_\_\_  
Title: Secretary

By: Alan L. Anders  
Name: Alan L. Anders  
Title: President

(Signature Page to Amended and Restated PILOT Assignment and Agreement)

**PROJECT DESCRIPTION**

**PUBLIC AMENITIES**

The Public Amenities include the construction of the first phase of a system of parks, public open spaces, and streets in the Project Area, including the first portion of a mid-block boulevard and park between Tenth and Eleventh Avenues, and between West 33<sup>rd</sup> Street and West 36<sup>th</sup> Street.

At the discretion of the Corporation, in the future the Public Amenities may also include additional portions of the mid-block boulevard and park north of West 36<sup>th</sup> Street, as well as a below-grade parking garage to be located beneath the mid-block boulevard and park between West 34<sup>th</sup> Street and West 36<sup>th</sup> Streets from Tenth to Eleventh Avenues.

**SUBWAY EXTENSION**

The No. 7 subway line will be extended approximately two miles from its current terminus on West 41st Street between Seventh and Eighth Avenues westward under West 41st Street to Eleventh Avenue and then southward under Eleventh Avenue. The Subway Extension includes the construction of a terminal station at West 34th Street and Eleventh Avenue and the shell of an intermediate station at Tenth Avenue and West 41st Street. The subway tracks will extend beyond the terminal station to West 25th Street and Eleventh Avenue to permit the storage of six subway trains to enhance operational reliability.

At the discretion of the Corporation, in the future the Project could include the completion of the intermediate station at Tenth Avenue and West 41<sup>st</sup> Street, including the platform, systems, entrances/exits, and finishings (tiles, lights, etc.).

**PURCHASE OF TDRs**

The Corporation will acquire, pursuant to the MTA Agreement, from the Triborough Bridge and Tunnel Authority, an affiliate of the MTA, certain transferable development rights appurtenant to the property within the Project Area designated as the “Eastern Rail Yards,” as defined in the MTA Agreement.

**EXHIBIT B**

**UTEP**

**FIRST AMENDMENT**

**To**

**Third Amended and Restated  
Uniform Tax Exemption Policy of the  
New York City Industrial Development Agency**  
as approved on August 3, 2010 by the  
Board of Directors of the  
New York City Industrial Development Agency

As approved by the Board of Directors of the  
New York City Industrial Development Agency  
on November 9, 2010

THIRD AMENDED AND RESTATED UNIFORM TAX EXEMPTION POLICY, approved by the Board of Directors of the New York City Industrial Development Agency on August 3, 2010 (“UTEF”), IS HEREBY AMENDED by this FIRST AMENDMENT (this “Amendment”) as follows:

## **SECTION I. DEFINITIONS AND USAGE**

Terms used in this Amendment but not defined herein shall have the meanings ascribed to them in UTEF; otherwise, terms used in this Amendment will have the meanings respectively provided below in this Section I. The use in this Amendment of terms like “Project” or “Financial Assistance” shall be deemed to refer to or be in connection with “Industrial Projects.” References in this Amendment to any period of years or a partial year or any date shall be deemed to refer to a period of years or a partial year or a date within a Financial Assistance Term.

*Differential Product* means, when the Original Product is greater than a Subsequent Product, the amount of such difference.

*ELT or Equivalent Land Tax* means real property taxes that would be applicable to Project Land were the Project Land not exempt.

*LTA or Land Tax Abatement* means the amount by which ELT is reduced to arrive at the amount of land PILOT applicable to the period of time in question.

*LTA Adjustment Dates* means the five-year anniversary of the PILOT Commencement Date and every five-year anniversary thereafter.

*LTA Implementation Date* means the January 1 following the first LTA Adjustment Date and every January 1 thereafter excepting the last one.

*Original Employee Number* means the following: for Industrial Projects that are on-going operations, the number of employees employed by the Recipient at time of application provided that all such employees are employed (or will be employed after transfer) at the Project Facility; and for Industrial Projects that are start-up operations, the number of employees, as projected by the Recipient at time of Closing, to be employed at the Project Facility once operations thereat have commenced.

*Original Product* means the product achieved by multiplying the Original Employee Number by \$500.

*Subsequent Product* means the product achieved by multiplying the Subsequent Employee Number by \$500.



*Subsequent Employee Number* means an employee-count based upon employees employed at the Project Facility over all of or part of the preceding five-year period just ended before a LTA Adjustment Date.

## **SECTION II. LAND PILOTS FOR INDUSTRIAL PROJECT FACILITIES NOT LOCATED IN A ZONE.**

1. From the PILOT Commencement Date up to the first LTA Implementation Date.

For the five and one-half-year period commencing on the PILOT Commencement Date and ending on the December 31 preceding the first LTA Implementation Date, the LTA shall equal the Original Product and land PILOT shall equal ELT less such LTA; provided, however, that land PILOT shall never be less than zero.

2. From the first LTA Implementation Date up to the fourth LTA Implementation Date.

Following the first, second, third and fourth LTA Adjustment Dates, Subsequent Products shall be determined for the respective five-year periods commencing on the respective LTA Implementation Dates. The LTA for any five-year period commencing shall equal the Subsequent Product applicable to such five-year period and land PILOT shall equal ELT less such LTA; provided, however, that land PILOT shall never be less than zero.

Notwithstanding the foregoing, if a Subsequent Product is equal to or greater than both ELT and the Original Product, land PILOT shall equal zero for the five-year period commencing. If a Subsequent Product is equal to or greater than ELT but less than the Original Product, land PILOT shall equal the Differential Product.

3. For the last four and one-half years of the Financial Assistance Term.. Land PILOT for the last four and one-half years of the Financial Assistance Term shall be the same as the land PILOT for the preceding five years subject to increases in accordance with the “burn-off” schedule prescribed in Section II.A.1.b.(i) of UTEP.

## **SECTION III. LAND PILOTS FOR INDUSTRIAL FACILITIES LOCATED IN A ZONE**

1. From the PILOT Commencement Date up to the first LTA Implementaion Date.

For the five and one-half-year period commencing on the PILOT Commencement Date and ending on the December 31 preceding the first LTA Implementation Date, land PILOT shall equal zero.

2. From the first LTA Implementation Date up to the fourth LTA Implementation Date.

Following the first, second, third and fourth LTA Adjustment Dates, Subsequent Employee Numbers shall be determined for the respective five-year periods commencing on the respective LTA Implementation Dates. Land PILOT shall be determined for such five-year periods as follows:

- a. If the Subsequent Employee Number is equal to or greater than the Original Employee Number, land PILOT shall equal zero.
  - b. If the Subsequent Employee Number is less than the Original Employee Number, land PILOT shall equal the Differential Product.
3. The last four and one-half years of the Financial Assistance Term.. Land PILOT for the last four and one-half years of the Financial Assistance Term shall be the same as the land PILOT for the preceding five years subject to increases in accordance with the “burn-off” schedule prescribed in Section II.A.1.b.(i) of UTEP.

#### **SECTION IV. MISCELLANEOUS**

Provisions in this Amendment that are conflict or that are inconsistent with provisions of UTEP are intended to replace the latter. Otherwise, UTEP remains unmodified and unamended.

**AS APPROVED BY THE BOARD OF DIRECTORS OF THE NEW YORK CITY  
INDUSTRIAL DEVELOPMENT AGENCY ON NOVEMBER 9, 2010**

**THIRD AMENDED AND RESTATED  
UNIFORM TAX EXEMPTION POLICY  
OF THE  
NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY**

Approved by the Board of Directors of the New York City Industrial  
Development Agency on August 3, 2010



**THIRD AMENDED AND RESTATED  
UNIFORM TAX EXEMPTION POLICY<sup>1</sup>**

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<sup>1</sup> *Uniform Tax Exemption Policy*, approved December, 1994; *First Amended and Restated Uniform Tax Exemption Policy* approved March 30, 1999; amendments thereto approved August 13, 2002, November 9, 2005, August 8, 2006, and December 12, 2006; *Second Amended and Restated Uniform Tax Exemption Policy*, approved December 12, 2006; amendments thereto approved July 28, 2009.

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## **I. PRINCIPLES OF GENERAL APPLICATION**

**A. Requirements of Law; Previous Policies Superseded.** Effective August 3, 2010, this Policy supersedes previous policies relating to the subject matter of this Policy.

**B. Financial Assistance as Discretionary.** The provision of Financial Assistance in accordance with this Policy to a Recipient for the Recipient's Project shall be a discretionary act on the part of the Board, notwithstanding the occasional use in this Policy of directive phrases such as "...the Agency shall provide..." or absolute phrases such as "...shall be exempt..."

In making the discretionary decision to provide Financial Assistance, first the Staff, and then the Board, shall consider, variously, the following:

- the extent to which a proposed Project will create or retain permanent, private-sector jobs
- whether Financial Assistance is required to induce the Project (see subdivision "C.1." below)
- the estimated value of the Financial Assistance to be provided to the Recipient
- the estimated value of any other benefits that the City may be providing
- the financial feasibility of the Project
- the environmental impact of the Project
- the amount of private-sector investment to be generated by the proposed Project
- public support for, or opposition to, the proposed Project
- the likelihood of timely accomplishment
- whether the Project involves an industry or activity which the City seeks to retain and foster
- the extent to which the proposed Project will create additional sources of revenue for the City
- whether the Project will use an apprenticeship program approved by the New York State Department of Labor

**C. Conditions to receiving Financial Assistance.** The following are conditions to providing Financial Assistance to any Recipient:

1. Inducement.

Unless elsewhere specified in this Policy, “inducement” by the Agency means that but for the Financial Assistance being offered by the Agency to a Recipient for the Recipient’s Project, such Project would most likely not be undertaken by the Recipient; or, if undertaken at all by such Recipient, the Project might occur at a substantially reduced level or it might occur outside of the State. The action by which a specific Project is induced is the adoption by the Board of an inducement resolution.

a. *For Industrial Projects, Commercial Growth Projects, Hudson Yards Commercial Construction Projects, Governmental Bond Projects, and Industrial Developer Projects located in a Zone.* Except as set forth in “c,” “d” and “e” below, for Industrial Projects, Commercial Growth Projects, Hudson Yards Commercial Construction Projects, Governmental Bond Projects, and Industrial Developer Projects located in a Zone, applicable “inducement” is described in the foregoing introduction to this subdivision “1.”

b. *For Civic Facility Projects.* For all Civic Facility Projects, “inducement” is the fulfillment of the *Not-for-Profit Guidelines* through operation of the Project Facility. For Civic Facility Projects that are Private Schools, “inducement” additionally includes the fulfillment of the Agency's *Compliance Criteria for Private Schools*.

*See Appendix B, annexed hereto, for Not-for-Profit Guidelines and Appendix C, annexed hereto, for Compliance Criteria for Private Schools.*

c. *For Liberty Bond Projects.* For Liberty Bond Projects, “inducement” is the fulfillment of the *Selection Criteria and Requirements* of the *New York Liberty Bond Program*.

*See Appendix D, annexed hereto, for Selection Criteria and Requirements of the New York Liberty Bond Program.*

d. *For ARRA Bond Projects.* An ARRA Bond Project is a Project that qualifies for financing with ARRA Bonds and for which “inducement” is the following: (i) fulfillment of the *Threshold Requirements*; and (ii) fulfillment of the *Selection Criteria*; and (iii) in the case of a Project Facility to be located in the Hudson Yards UTEP Area and for which the Project as proposed will also qualify as a Hudson Yards Commercial Construction Project, the consent of the Hudson Yards Infrastructure Corporation. By way of clarification rather than limitation, for purposes of “iii” preceding, if the ARRA Bond Project in question involves Recovery Zone Facility Bonds, the requirement for consent will apply regardless of whether the Hudson Yards UTEP Area is a Recovery Zone, or lies within a Recovery Zone, or is in part a Recovery Zone.

*See Appendix E, annexed hereto, for Threshold Requirements and Selection Criteria.*

e. *PlaNYC Energy Program Projects.* A PlaNYC Energy Program Project consists of the acquisition, construction, equipping, furnishing and/or installation of a Peaking Unit. For a PlaNYC Energy Program Project, “inducement” consists of the following:

(i) the proposed Peaking Unit will use natural gas, or a demonstrably cleaner fuel, as its primary fuel; and (ii) the proposed Peaking Unit will have a full-load heat rate not exceeding either (aa) 7,850 btuLHV/kwh (ISO 59°, 60% RH, zero losses, sea level) as measured at generator terminals, or (bb) 8,250 btuLHV/kwh (9,150 btuHHV/kwh) as measured net of power plant parasitic loads; and (iii) nitrogen oxide (NOx) emissions from the Peaking Unit will not exceed the lesser of (aa) 25 ppm, or (bb) the then-applicable air-emissions limit as set for the City by the air-emissions permitting agency or agencies having jurisdiction; and (iv) the proposed Peaking Unit will be electrically interconnected to the City’s electrical grid; and (v) the proposed Peaking Unit will satisfy either (aa) a future reliability need as identified by any one of NYISO, the transmission owner, or the City, or (bb) an environmental need identified by the City. For purposes of this Policy: “NYISO” means the New York Independent System Operator; “transmission owner” means the owner of local facilities for the transmission of electricity within the City; and “Peaking Unit” means a facility for the generation of electricity that conforms to at least one of the following: (aa) the definition applicable on the date hereof (August 3, 2010) for a “peaking unit” as provided in NYISO Services Tariff, Section 5.14.bl<sup>2</sup>; or (bb) for a period to which a particular cost-of-entry analysis (i.e., a “CONE”) applies, the electricity-generating facility on which NYISO has based such CONE; or (cc) at any point in time, a facility that is generally recognized in the industry as being a “peaking unit.” As defined herein, a Peaking Unit shall not include the land upon which it is situated.

f. *For Commercial Growth Projects, Hudson Yards Commercial Construction Projects, and Governmental Bond Projects.* For Commercial Growth Projects, Hudson Yards Commercial Construction Projects, and Governmental Bond Projects, the inducement criteria described in the introduction to this subdivision “1” may apply, and, in addition, “inducement” may also mean (within the discretion of the Staff and upon approval of the Board) that, but for the Financial Assistance, (i) a Recipient would either not retain and/or attract a specified number of employees or a business function or unit for a specified period of time within the City, and/or (ii) the loss of a vital service to the City might occur, and/or (iii) a vital City-supported project or initiative may be delayed or otherwise adversely affected.

2. Financial Assistance to Apply to Project Property. For the Staff and the Board to make a finding of inducement, the proposed Financial Assistance must apply to the property which is the subject of the Project. An applicant may not apply for Financial Assistance for one location when intended Project activities are to occur at another.

3. Capital Asset. The proposed Project must involve one or more of the following activities on the part of the Recipient in respect of a capital asset:

- Acquisition of title to, or equivalent ownership in, or leasehold interest in, tangible property which has a useful life of one year or more; and/or
- Renovation of Improvements; and/or
- Construction of New Improvements; and/or

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<sup>2</sup> “...a peaking unit is defined as the unit with technology that results in the lowest fixed costs and highest variable costs among all other units’ technology that are economically viable.”

- Refunding or refinancing of conduit-issued debt originally issued for the purpose of financing any of the foregoing activities.

4. Agency Relationship to Project Property. The Agency shall have such interest in or control over a Project Facility, for such duration of time, as may be necessary under requirements of law to provide Financial Assistance; and the choice of interest in, or, in the alternative, the assertion of control over, Project property for this purpose shall be in the sole discretion of the Agency.

5. Statutory Requirements. The Agency and the Recipient shall satisfy and fulfill all requirements set forth in the Statute for providing Financial Assistance.

**D. Applicability of Exemption from Taxes.** The failure of this Policy (or a deviation in accordance with Article IV of this Policy) to explicitly exempt a Project Facility, or any portion thereof, or any Personal Property related thereto, or any Project activity, from a particular tax or other imposition shall be deemed to mean that such property or activity shall not be exempt and that the tax or imposition in question shall remain payable. In the absence of the circumstance described in “I” immediately below or failing satisfaction of the requirements set forth in “II” immediately below, the Agency’s mere acquisition of an interest in or control over property will not be sufficient to exempt such property or Project activities related to such property from any tax or imposition.

*Exemption from a particular tax shall only occur if “I” or “II” following applies, and if “I” does apply, “II” shall not (i.e., the tax exemption in question will not be made available through the Agency or by any of its actions):*

I. the property is exempt from the tax in question under law other than the Statute;

**OR**

II. all of the following conditions for exemption through the Agency are satisfied with respect to the tax in question:

- the Statute, or the Statute as interpreted, authorizes or otherwise permits exemption from the tax, and/or the Agency’s interest in, or control over, or involvement with, the Project property provides a sufficient basis for exemption; and
- this Policy authorizes or otherwise permits exemption from the tax; and
- the Agency has (y) delivered an instrument by which tax exemption may be effectuated, and/or (z) agreed to exempt the tax in question by agreement set forth in a Project Document; and
- in the case of real property taxes, the New York City Department of Finance has taken the ministerial action of removing the Project Facility

from the tax rolls and thereby designating such property as exempt from the City's real property taxes.

**E. Governing Procedures.** In all matters relating to the applicability, calculation, billing, collection and payment of PILOT, including but not limited to the determination of Assessed Valuation, the Agency may rely upon and use, or cause to be used, the methods and procedures customarily employed, and the determinations customarily made, by the New York City Department of Finance.

**F. Financial Assistance in the Form of Bond Financings.** This Policy authorizes the Agency to provide Financial Assistance in the form of all conduit-issued bonds and any other form of conduit-issued debt provided that (i) such obligations are authorized to be issued under law or are permitted to be issued under law, and (ii) such obligations are issued in accordance with all requirements of law, and (iii) the issuance of such obligations has been authorized by the Board in respect of a specific Project.

**G. Exclusivity.** A Project Facility located in the New York Liberty Zone that does not qualify as a Liberty Bond Project, may nevertheless receive Financial Assistance if it qualifies under another category of Project described in this Policy. A Project Facility located in the Hudson Yards UTEP Area that does not qualify as a Hudson Yards Commercial Construction Project may not receive Financial Assistance under another category of Project described in this Policy, provided that the foregoing shall not preclude the Agency from providing Financial Assistance limited to exemptions from City and State sales and use taxes on purchases and leases of Personal Property for tenant improvements in connection with a Commercial Growth Project that involves a Project Facility located in the Hudson Yards UTEP Area but which does not qualify as a Hudson Yards Commercial Construction Project.

**H. Overlapping Project Categories.** If a Project Facility falls under more than one of the Project categories described in this Policy, and should the Agency accept the applicant in connection with such Project Facility for the purpose of providing Financial Assistance to the applicant (as a Recipient) and its related Project, then, it shall be in the Agency's sole discretion as to which Project category (or Project categories) and related Financial Assistance shall apply to that Project. Notwithstanding the foregoing, where a Project Facility is located in the Hudson Yards UTEP Area, neither such Project Facility nor its related Project shall be provided with any Financial Assistance other than (i) the Financial Assistance provided for in *Appendix F*, and (ii) Financial Assistance limited to exemptions from sales and use taxes on purchases and leases of personal property for tenant-improvements in connection with Commercial Growth Projects. For purposes of this Subdivision "H," "personal property" may include building materials, fixtures, furnishings and equipment, as well as certain services that may relate to any of the foregoing, all as further provided (by the Staff in its sole discretion) in the forms of sales-tax exemption letters used by the Agency.

**I. Transferability of the Project.** If, after completing Project construction, reconstruction and/or renovation, a Recipient requests that its right to receive Financial Assistance continue for the balance of the applicable Financial Assistance Term notwithstanding (y) sale, lease or other disposition of the Recipient's Project Facility, and/or (z) change in the ownership of or control over the Recipient, *then*, under either (or both) of such circumstances,



the decision whether or not to consent to such request shall be made in the sole discretion of the Staff. If, before completing Project construction, reconstruction and/or renovation, a Recipient makes such request under the same circumstances, such consent may be provided only upon approval by the Board.

**J. Amendment.** This Policy may be further amended from time to time by action of the Board after public hearing and published notice of such hearing.

## II. TAX EXEMPTION POLICIES

### A. Industrial Projects.

The Agency may provide Financial Assistance to Industrial Projects in the form of the tax exemptions described in this subdivision “A.”

#### 1. Exemption from Real Property Taxes; PILOT.

a. During the Financial Assistance Term, a Project Facility, to which an Industrial Project applies, may be exempted from Current Taxes; and a PILOT shall be payable with respect to such Project Facility once it so exempted.

b. Throughout the Financial Assistance Term, PILOT payable with respect to a Project Facility (to which an Industrial Project applies) shall consist of Land PILOT and Improvements PILOT, as described below.

(i) *Land PILOT.* With respect to Project Land, there shall be payable Land PILOT in an amount equal to Current Taxes less the sum of (aa) the Abatement Amount, and (bb) any decrease in Current Taxes arising from an applicable As-of-Right Benefit for which either Existing Improvements or Additional Improvements have qualified; *provided, however,* that Land PILOT shall be increased in years 22, 23, 24 and 25 of the Financial Assistance Term by, respectively, 20%, 40%, 60% and 80% of the difference between Current Taxes (as same may be decreased under “bb” preceding) and Land PILOT. Notwithstanding anything that may be to the contrary herein, Land PILOT shall never be less than zero.

(ii) *Improvements PILOT.* Improvements PILOT shall consist of the following:

- *Existing Improvements.* With respect to Existing Improvements there shall be payable PILOT in an amount equal to the Current Taxes attributable, at Closing, to such Existing Improvements; *provided however* that such Current-Tax amount is (aa) decreased as a result of any As-of-Right Benefit for which either Existing Improvements or Additional Improvements have qualified, and (bb) increased in years 22, 23, 24 and 25 of the Financial Assistance Term by, respectively, 20%, 40%, 60% and 80% of the difference between Current Taxes (as same may be decreased under “aa” preceding) and Existing Improvements PILOT.

- *Project Improvements PILOT.* With respect to Project Improvements, PILOT shall equal zero and such PILOT shall remain at zero notwithstanding any non-physical increase in the Assessed Valuation attributable to such Project Improvements during the Financial Assistance Term. Notwithstanding anything that may be to the contrary herein, no As-of-Right Benefit resulting from Project Improvements shall be applied to decrease Existing Improvements PILOT.
- *Additional Improvements PILOT.* With respect to Additional Improvements, there shall be payable PILOT in an amount equal to Current Taxes attributable to such Additional Improvements less any decrease arising from any applicable As-of-Right Benefit for which such Additional Improvements have qualified. Notwithstanding anything that may be to the contrary herein, no As-of-Right Benefit resulting from Project Improvements shall be applied to decrease Additional Improvements PILOT.

Notwithstanding the foregoing, Improvements PILOT shall, during the Financial Assistance Term, equal the lesser of Improvements PILOT as hereinabove described and Current Taxes as reduced by any applicable As-of-Right Benefits other than those resulting from Project Improvements.

2. Exemption from Recording Fees. Project Documents shall be exempt from recording fees.

3. Exemption from Mortgage Recording Taxes. With respect to Project Mortgages (on Project Facilities to which an Industrial Project applies), the Agency shall, subject to subdivisions “a” and “b” hereinbelow, exempt City and State mortgage recording taxes but shall do so only once and upon the following conditions: (a) aggregate Project expenditures must at a minimum equal the amount of the Project Mortgage for which exemption is being provided by the Agency; and (b) if the maturity of the indebtedness secured by a Project Mortgage extends beyond expiration or sooner termination of the Financial Assistance Term, the Recipient shall remit a PILOMRT to the Agency. In addition (and notwithstanding the foregoing), the following shall apply to the exemption of City and State mortgage recording taxes by the Agency:

a. The Agency may exempt Project Mortgages from City and State mortgage recording taxes for a second time if the first exemption is in connection with construction financing and the second exemption is in connection with permanent financing.

b. If, in connection with the refinancing of a Project Mortgage during the Financial Assistance Term, the Recipient is able, without assistance from the Agency, to continue the mortgage-recording-tax exemption (either because the same lender is refinancing or by assignment-of-mortgage from the old lender to the new lender), the Agency will not object to such assignment (and the continued exemption that it facilitates) subject to the following:

- If the indebtedness secured by the refinancing mortgage is greater than the unamortized principal of the Project Mortgage being refinanced (i.e., there is “new money”), the Recipient shall remit a PILOMRT to the Agency; and
- if the maturity of the indebtedness secured by the refinancing mortgage extends beyond the Financial Assistance Term, the Recipient shall remit a PILOMRT to the Agency.

Notwithstanding the use of the term “exemption” in this subdivision “3,” it is the general intent of this Policy (as evidenced by the aforementioned PILOMRTs) to defer mortgage recording taxes rather than to permanently exempt them. If however a Project Mortgage is fully amortized before the expiration or sooner termination of the applicable Financial Assistance Term, no PILOMRT shall be due.

4. Exemption from Sales and Use Taxes. The purchase of Personal Property, to be incorporated in or otherwise related to a Project Facility to which an Industrial Project applies, shall be exempt from City and State sales and use taxes for the period commencing with Closing and terminating on the date specified in the Project Documents for completing Project Improvements.

**B. Civic Facility Projects.**

The Agency may provide Financial Assistance to Civic Facility Projects in the form of the tax exemptions described in this subdivision “B.”

1. Exemption from Recording Fees. Project Documents shall be exempt from recording fees.

2. Exemption from Mortgage Recording Taxes. Project Mortgages on a Project Facility to which a Civic Facility Project applies, shall be exempt from City and State mortgage recording taxes in the same manner and to the same extent as Project Mortgages in connection with Industrial Projects; *provided, however,* that Recipients in Civic Facility Projects shall not be obligated to make PILOMRTs.

(In connection with this exemption, please see Subdivision “IV” of *Appendix C, Compliance Criteria for Private Schools.*)

**C. Industrial Developer Projects Located in a Zone.**

The Agency may provide Financial Assistance in the form of tax exemptions described in this subdivision “C” to Project Facilities located in a Zone to which an Industrial Developer Project applies.

1. Exemption from Recording Fees. Project Documents shall be exempt from recording fees.

2. Exemption from Mortgage Recording Taxes. Project Mortgages on a

Project Facility located in a Zone to which an Industrial Developer Project applies, shall be exempt from City and State mortgage recording taxes in the same manner and to the same extent as Project Mortgages in connection with Industrial Projects; and the obligation to pay PILOMRTs shall likewise be the same.

3. Exemption from Sales and Use Taxes. The purchase of Personal Property, to be incorporated in or otherwise related to a Project Facility located in a Zone and to which an Industrial Developer Project applies, shall be exempt from City and State sales and use taxes for the period commencing at Closing and expiring on the date provided in Project Documents for the completion of Project Improvements.

#### **D. Commercial Growth Projects; Governmental Bond Projects; Hudson Yards Commercial Construction Projects.**

The Agency may provide Financial Assistance to the below-mentioned Projects in the form of the tax exemptions described.

1. Commercial Growth Projects and Governmental Bond Projects. Project Facilities to which Commercial Growth Projects or Governmental Bond Projects apply, shall receive such tax exemptions as the Staff determines in its sole discretion upon approval of the Board.

2. Hudson Yards Commercial Construction Projects. Project Facilities to which Hudson Yards Commercial Construction Projects apply, shall receive tax exemptions in the manner and to the extent prescribed in *Appendix F*.

#### **E. PlaNYC Energy Program Projects.**

From August 3, 2010 through December 31, 2017, the Agency may enter into Project Documents to provide Financial Assistance to PlaNYC Energy Program Projects in the form of the tax exemptions described below. Closings for PlaNYC Energy Program Projects may not occur after December 31, 2017; and the tax exemptions described below will only be available for the duration of Financial Assistance Terms which have commenced on or before December 31, 2017.

1. Exemption from Real Property Taxes; PILOT. During the Financial Assistance Term, a Peaking Unit may be exempted from Current Taxes and a PILOT shall be payable with respect to such Peaking Unit once it so exempted; and such PILOT shall equal zero and shall remain at zero notwithstanding any non-physical increase in the Assessed Valuation attributable to the Peaking Unit during the Financial Assistance Term. If the Peaking Unit may not be so exempted from Current Taxes without also exempting the land upon which it is situated, then such land shall be additionally exempted from Current Taxes and the PILOT payable with respect to it shall equal what Current Taxes would have been had such land remained on the tax rolls.

2. Exemption from Recording Taxes. Project Documents shall be exempt from recording fees.

3, Exemption from Mortgage Recording Taxes. Project Mortgages on Peaking Units shall be exempt from City and State mortgage recording taxes in the same manner and to the same extent as Project Mortgages in connection with Industrial Projects; and the obligation to pay PILOMRTs shall like-wise be the same. Notwithstanding, the following limitations shall apply:

- *Limitation as to Rate.* The amount of Financial Assistance provided hereinabove shall be limited as to tax rate to the aggregate mortgage recording tax rate in effect on August 3, 2010 – i.e., 2.8%. In the event such aggregate rate increases, Recipient shall at Closing make a PILOMRT equal to the mortgage recording tax amount resulting from the difference between the then-current aggregate rate and 2.8%.
- *Limitation as to Mortgage Amount.* The amount of Financial Assistance provided hereinabove shall be limited as to mortgage principal to an amount which shall be no greater than 50% of total Project cost. In the event mortgage principal exceeds 50% of such total Project cost, Recipient shall at Closing make a PILOMRT equal to the mortgage recording taxes applicable to such excess principal.

4. Exemption from Sales and Use Taxes. Subject to the additional limitations set forth below in this subdivision “4,” the purchase of Personal Property, to be incorporated in or otherwise related to a Peaking Unit, shall be exempt from City and State sales and use taxes for the period commencing at Closing and expiring on the date provided in the Project Documents for the completion of the Peaking Unit. .

- *Limitation as to Rate.* The Financial Assistance provided hereinabove shall be limited as to tax rate to the aggregate sales-and-use tax rate in effect on August 3, 2010 – i.e., 8.875%. In the event such aggregate rate increases, Recipient shall at Closing make a payment in lieu of sales-and-use taxes in an amount equal to the sales-and-use tax amount resulting from the difference between the then-current aggregate rate and 8.875%.
- *Limitation as to Aggregate Principal.* The Financial Assistance provided hereinabove shall be limited as to aggregate expenditure-principal to an amount which shall be no greater than 50% of total estimated expenditures as estimated and represented by Recipient to the Agency at or before Closing. If and when expenditure principal exceeds 50% of such estimated amount, the exemption hereinabove provided shall no longer apply.

### III. DEVIATIONS

#### A. Requirements for Deviation.

1. Statute. The Agency may deviate from the provisions of this Policy, provided that each such deviation (except as provided in subdivision “B.2.” below) shall be in



accordance with the requirements of this Article III and the requirements of Subdivision 874(4)(b) of the Statute.

2. Board Approval. The Staff must obtain the Board's approval for all deviations, and, in order to provide a basis for deliberating the necessity and advisability of a proposed deviation, the Staff must present to the Board, in writing, the following information and conclusions for its consideration:

- the content of the deviation,
- the reason why the deviation is needed, and
- the disadvantage to the City if the Project should not proceed.

#### **B. Deviation from this Policy.**

1. Generally. A deviation from this Policy is a substantive departure from any one or more of the following standards set forth in this Policy:

- the requirements and conditions for obtaining Financial Assistance;
- the extent to which Financial Assistance is available and its amount;
- the kinds of Projects for which Financial Assistance generally (or categories of Financial Assistance specifically) is available.

2. Deviations Not Subject to this Article III. Staff in its sole discretion may, without fulfilling the requirements of this Article III, cause the Agency to deviate from the recapture requirements of Article IV when the deviation in question is (i) necessitated by law, or (ii) minor in nature, or (iii) necessary to avoid undue hardship to the Recipient.

3. Diminished Financial Assistance Not a Deviation. Notwithstanding anything that may be to the contrary herein, offering Financial Assistance which is less than what is available under this Policy, shall not constitute a deviation from this Policy.

4. Additional Conditions Not a Deviation. Notwithstanding anything that may be to the contrary herein, imposing conditions to the receipt of Financial Assistance that are in addition to those explicitly imposed by this Policy shall not constitute a deviation from this Policy.

5. Increased Recapture Not a Deviation. Notwithstanding anything that may be to the contrary herein, none of the following shall constitute a deviation from this Policy: (x) any increase in the amount of principal of Financial Assistance to be recaptured; or (y) any increase in the amount of interest to be accrued on such principal over and above the principal and interest provided for in Article IV; or (z) any increase in the duration of the recapture period as provided for in Article IV.

## IV. RECAPTURE OF FINANCIAL ASSISTANCE

### A. General.

Upon the occurrence of a recapture event occurring during a recapture period, there shall occur recapture of Financial Assistance by the Agency; and, in addition, the Recipient shall pay interest with respect to the principal of such recaptured Financial Assistance.

### B. Recapture Period.

1. For Commercial Growth Projects, Governmental Bond Projects, and Hudson Yards Commercial Construction Projects. For Commercial Growth Projects and Governmental Bond Projects, the recapture period shall be determined by the Staff in its sole discretion upon approval by the Board. For Hudson Yards Commercial Construction Projects, the recapture period shall be determined in accordance with *Appendix F*.

2. For Industrial Projects, Industrial Developer Projects Located in a Zone, and Civic Facility Projects. For Industrial Projects, Industrial Developer Projects located in a Zone, and Civic Facility Projects, the recapture period shall commence at Closing and shall expire on the tenth anniversary of the Operations Commencement Date.

### C. Recapture Events.

1. For Industrial Projects and Civic Facility Projects. For Industrial Projects and Civic Facility Projects, the following shall constitute recapture events:

- failure to complete Project Improvements.
- subject to the bullet immediately following, liquidation of substantially all of the Recipient's operating assets at the Project Facility and/or cessation of substantially all of the Recipient's operations at the Project Facility;
- relocation of all or substantially all of Recipient's operations at the Project Facility to another site, or the sale, lease or other disposition of all or substantially all of the Project Facility; *subject, however, to the following:*
  - If the Recipient relocates its operations at the Project Facility to a site located within the City, such relocation shall not be a recapture event if (i) the Recipient maintains, for the balance remaining of the recapture period, an employment level equal to at least 90% of the number of employees employed by the Recipient before the time it relocated its operations, and (ii) the Recipient satisfies such other additional conditions as the Agency may in writing impose.

- Whether the aforementioned 90%-employment condition has been and continues to be satisfied shall be a determination made by the Agency in its sole discretion.
- transfer of a substantial number of the Recipient's jobs from the Project Facility out of the City;
- sublease of all or part of the Project Facility in violation of Project Documents; or
- substantial change in the scope and nature of the Recipient's operations at the Project Facility.

2. For Commercial Growth Projects. For Commercial Growth Projects, the Staff in its sole discretion, upon approval by the Board, shall determine the nature of recapture events.

3. For Industrial Developer Projects Located in a Zone. For Industrial Developer Projects located in a Zone, failure to complete the Project Improvements by the date specified in the Project Documents (as such date may be extended by the Staff in its sole discretion) shall be a recapture event. In addition, failure during the Financial Assistance Term to maintain Industrial Tenant occupancy of at least 75% of the Project Facility's rentable square feet shall be an additional recapture event; subject, however, to reasonable allowances, as determined in the sole discretion of the Staff, for vacancies during Project construction, initial Project rent-up, casualty events, and reasonable interims between the expiration of an Industrial Tenant's lease and its replacement with another.

4. For Governmental Bond Projects. Recapture events for Governmental Bond Projects, shall be determined by the Staff in its sole discretion upon approval by the Board.

5. For Hudson Yards Commercial Construction Projects. Recapture events for Hudson Yards Commercial Construction Projects shall be those specified in *Appendix F*, and, to the extent not specified in *Appendix F*, they shall be determined by Staff in its sole discretion.

#### **D. Financial Assistance to be Recaptured.**

With respect to all Projects, the Financial Assistance to be recaptured by the Agency upon the occurrence of a recapture event during a recapture period shall be an amount equal to all or part of the difference between (i) Current Taxes (as reduced by As-of-Right Benefits arising from Existing Improvements and/or Additional Improvements that have qualified for such As-of-Right Benefits) or other taxes that the Recipient would have paid with respect to Project property had such taxes not been exempted through the Agency, and (ii) the PILOT which the Recipient in fact did pay (if any) in substitution for such Current Taxes or other taxes.

For purposes of this Policy, it is presumed that tax-exempt conduit debt financing,

while included by the Statute within the definition of Financial Assistance, does not provide a benefit that is amenable to recapture and therefore, under this Policy, the income tax revenues lost to taxing jurisdictions because of the tax-exempt status of collected interest will not be included in the Financial Assistance principal that may be recaptured.

**E. Amount of Financial Assistance to be Recaptured and Interest to be Applied.**

1. For Civic Facility Projects, Industrial Projects, and Industrial Developer Projects located in a Zone. Upon the occurrence of a recapture event with respect to a Civic Facility Project, an Industrial Project, or an Industrial Developer Project located in a Zone, the Agency shall cause the Recipient to pay the following amounts as recapture:

*I. Financial Assistance to be recaptured by the Agency and paid by Recipient:*

- For years 1 through 6 of the recapture period, the Agency shall recapture 100% of the Financial Assistance which it has provided to the Recipient;
- During year 7 of the recapture period, the Agency shall recapture Financial Assistance as reduced, cumulatively, by 1.666% each month, so that by the twelfth month of year 7, the Agency shall recapture 80% of Financial Assistance;
- During year 8 of the recapture period, the Agency shall recapture Financial Assistance as reduced, cumulatively, by 1.666% each month, so that by the twelfth month of year 8, the Agency shall recapture 60% of Financial Assistance;
- During year 9 of the recapture period, the Agency shall recapture Financial Assistance as reduced, cumulatively, by 1.666% each month, so that by the twelfth month of year 9, the Agency shall recapture 40% of Financial Assistance;
- During year 10 of the recapture period, the Agency shall recapture Financial Assistance as reduced, cumulatively, by 1.666% each month, so that by the twelfth month of year 10, the Agency shall recapture 20% of Financial Assistance;

*II. Interest to be paid by the Recipient to the Agency with respect to the principal of recaptured Financial Assistance:*

- From the date of receipt of Financial Assistance to the date on which recapture is due pursuant to Agency demand, interest shall accrue at the statutory judgment rate<sup>3</sup> applicable on the date of the Agency's demand, compounded daily, but in no event shall the resulting effective rate of interest exceed the maximum interest rate permitted by law.<sup>4</sup>

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<sup>3</sup> 9% at the time of the approval of this Policy.

<sup>4</sup> 16% at the time of the approval of this Policy.

- If Recipient fails to pay the recapture principal of Financial Assistance and the accrued interest thereon (collectively, the “aggregate amount”) on or before the date when such amounts are due, then, from such due date, interest on the aggregate amount shall accrue at a rate set by Staff in its sole discretion, but in no event shall such interest be less than the effective interest rate resulting from the statutory rate compounded daily.

2. For Commercial Growth Projects and Governmental Bond Projects. Upon the occurrence of a recapture event in respect of a Commercial Growth Project or a Governmental Bond Project, the Agency shall recapture such Financial Assistance, together with such interest, as Staff determines in its sole discretion upon approval by the Board.

3. For Hudson Yards Commercial Construction Projects. Upon the occurrence of a recapture event in respect of a Hudson Yards Commercial Construction Project, the Agency shall recapture Financial Assistance, together with interest, in the manner and to the extent set forth in *Appendix F*.



## APPENDIX A

### DEFINITIONS

“**Abatement Amount**” means, as applicable, the following:

I. *For all Project Facilities to which an Industrial Project applies and which are located in a Zone*, an amount equal to 100% of the Current Taxes applicable to the Project Land.

II. *For all other Project Facilities to which an Industrial Project Applies*: an amount equal to the following:

A. For Project Facilities at which all of the employees will be new hires, an amount equal to the product of \$500 and the number of employees that the Recipient reasonably intends to hire at the new Project Facility at time of Closing; provided, however, that on the July 1 following the second anniversary of commencement of operations at the new Project Facility, and for every twelve-month period thereafter during the Financial Assistance Term (including any partial twelve-month period at the end thereof), the “Abatement Amount” shall be the lesser of (aa) the original Abatement Amount, and (bb) the actual number of employees employed by the Recipient at the Project Facility on such July 1; or

B. For Project Facilities at which at least a majority of the employees to be employed by the Recipient are employees already employed by the Recipient at the time of application, an amount equal to the product of \$500 and the number of such employees at the time of its application to the Agency for Financial Assistance.

For purpose of this definition, an “employee” means one full-time employee or two part-time employees, each working 20 hours per week.

“**Additional Improvements**” means improvements that increase the Assessed Valuation of the Project Facility and for which all of the following conditions have been met: (i) such improvements were not included in the Recipient’s Project budget as presented to the Staff; and (ii) such improvements were not induced by action of the Board; and (iii) such improvements were completed after the agreed-upon completion date (as same may be extended within the sole discretion of the Staff) for the Project Improvements.

“**Agency**” means the New York City Industrial Development Agency.

“**ARRA Bonds**” means the bonds authorized to be issued by the American Recovery and Reinvestment Act of 2009 and including, but not limited to, Recovery Zone Facility Bonds.

“**ARRA Bond Project**” has the meaning provided in subdivision I.C.1.d of this Policy.

“**Assessed Valuation**” means, with respect to any fiscal year of the City, the final value ascribed to land and/or improvements or other defined real property (as the context requires) located in the City, by the New York City Department of Finance or any of its successor agencies, including, without limitation, increases arising from market re-evaluations.

**“As-of-Right Benefit”** means, pursuant to any non-discretionary, statutory program, the reduction of Current Taxes for qualifying improvements, including but not limited to reductions resulting from the abatement of Current Taxes and/or the exemption of Assessed Valuation from the imposition of Current Taxes.

**“Board”** means the Board of Directors of the Agency.

**“City”** means The City of New York.

**“Civic Facility Project(s)”** has the same meaning as the definition provided in the Statute for the term, “civic facility.”

**“Closing”** means the date on which the Agency and the Recipient enter into the Project Documents.

**“Commercial Project(s)”** means a Project where the capital asset or assets, which are the subject of the Project, are intended for commercial use as “commercial use” is determined by the Staff in its sole discretion from time to time. As defined herein, “Commercial Project” shall not include: Industrial Projects; Governmental Bond Projects; Liberty Bond Projects; Industrial Developer Projects located in a Zone; ARRA Bond Projects; Hudson Yards Commercial Construction Projects; or PlaNYC Energy Program Projects.

**“Commercial Growth Project(s)”** means a Commercial Project for which the availability of Financial Assistance is subject to at least one of the following conditions: (i) maintenance of a specified number of existing employees in the City; or (ii) the employment in the City of a specified number of additional employees and/or employees of a certain type; or (iii) the transfer into the City of a specified number of employees and/or employees of a certain type from employment locations outside of the State; or (iv) the maintenance of corporate headquarters in the City; or (v) the maintenance of a specified business or operating unit (other than headquarters) in the City; or (vi) such other condition relating to the Recipient’s employment and/or operations as the Board may approve from time to time.

**“Construction of New Improvements”** means the acquisition, construction, equipping, furnishing and/or installation of new improvements, including demolition of any existing improvements, the aggregate cost of which equals the greater of

- \$1,000,000 in 2006 dollars as inflated by the Engineering News-Record Building Cost Index or any successor index, OR
- 25% of the combined Assessed Valuation of Project Land and Existing Improvements.

Without limiting the foregoing, “Construction of New Improvements” may include the acquisition, construction, equipping, furnishing and/or installation of a Peaking Unit or the acquisition, construction, equipping, furnishing and/or installation of a dock or wharf.

Notwithstanding anything that may be to the contrary in this definition, if a Project includes demolition, the cost of such demolition may be included in the “Cost of New Improvements” (as defined herein) only to the extent that such cost, in the sole determination of the Staff, is less than substantial when compared to the aggregate cost of the Project.

“**Current Taxes**” means, at any point in time, City real property taxes equal to the product of the then-current Assessed Valuation and the applicable then-current tax rate, all as applied to (as the context requires) land, improvements, or other property defined as real property by the City’s Department of Finance. As defined and used herein, the term “Current Taxes” shall not include or give effect to As-of-Right Benefits.

“**Existing Improvements**” means improvements existing on Project Land at time of Recipient’s application, including but not limited to foundations and partial foundations. Notwithstanding the forgoing, if Recipient, as part of its Project, demolishes improvements, such demolished improvements shall not be deemed “Existing Improvements” as defined herein.

“**Financial Assistance**” has the same meaning as is provided for the term “financial assistance” in the Statute<sup>5</sup>.

“**Financial Assistance Term**” means, subject to earlier termination in accordance with Project Documents, the following periods of time:

- for Industrial Projects (other than Industrial Developer Projects located in a Zone), a period commencing on Closing and expiring twenty-five years after the PILOT Commencement Date;
- for all bond financings other than those financing Industrial Projects, a period commencing at Closing and expiring upon the maturity, or redemption in whole or sooner retirement of the Agency’s bond financing;
- for Commercial Growth Projects, a period determined by the Staff and approved by the Board;
- for Industrial Developer Projects located in a Zone, a period commencing on Closing and expiring ten years thereafter.
- for Hudson Yards Commercial Construction Projects, the period provided in *Appendix F*.
- for PlaNYC Energy Program Projects, a period commencing on Closing and expiring twelve years after the PILOT Commencement Date.

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<sup>5</sup> “Financial Assistance shall mean the proceeds of bonds issued by an agency, straight-leases, or exemptions from taxation claimed by a project occupant as a result of an agency taking title, possession or control (by lease, license or otherwise) to the property or equipment of such project occupant or of such project occupant acting as an agent of an agency.” Subdivision 854(14) of the Statute.

**“Governmental Bond Project(s)”** means a Project that is a governmental bond within the meaning of Subdivision 103 and 141 of the Internal Revenue Code of 1986, as amended.

**“Hudson Yards Commercial Construction Project(s)”** has the meaning provided in *Appendix F*.

**“Industrial Developer Project”** means a real estate development intended primarily for rent-up (as opposed to owner occupancy) in which Industrial Tenants rent (or will rent following completion of Project Improvements) at least 75% of the Project Facility’s rentable square feet. Liberty Bond Projects, Governmental Bond Projects and Hudson Yards Commercial Construction Projects are excluded from this definition.

**“Industrial Project(s)”** means a Project in which the Project Facility is intended for use by the owners or lessees of the Project Facility (and/or by affiliates of such owners or lessees) in the pursuit of one or more of the following activities: (i) manufacturing, assembling, processing, recycling, disposing, warehousing and/or distributing of tangible property, including (but not limited to) waste materials; and/or (ii) the creation of an intangible. As used herein, an “intangible” means any patent, copyright, formula, process, design, pattern, knowhow, format, or other similar item.

**“Industrial Tenant”** means an entity that leases a portion of a Project Facility for its own use and occupancy and for purposes that are consistent with the operation of an Industrial Project.

**“Liberty Bond Project(s)”** means a Project that qualifies for tax-exempt bond financing under Subdivision 1400L(d) of the Internal Revenue Code of 1986, as amended.

**“Operations Commencement Date”** means the date by which the Recipient has demonstrated to the satisfaction of the Staff in its sole discretion that the Recipient has (i) commenced use and occupancy of the Project Facility for the operations intended under the Project Documents, and (ii) completed the Project Improvements.

**“Peaking Unit”** has the meaning provided in sub-division I.C.1.e of this Policy.

**“Personal Property”** means materials, fixtures, furnishings, machinery and/or equipment, as well as certain services that may relate to the installation of any of the foregoing.

**“PILOMRT(s)”** means a payment in lieu of City and State mortgage recording taxes in connection with a Project Mortgage or the refinancing of a Project Mortgage. If a PILOMRT is applicable to a Project Mortgage, it shall be payable on the date the Project Mortgage is delivered; if applicable to a mortgage refinancing a Project Mortgage, the PILOMRT shall be payable on the date the refinancing mortgage is delivered. PILOMRTs shall equal the following (as applicable):

- *For a Project Mortgage whose term, at Closing, extends beyond the applicable Financial Assistance Term, PILOMRT shall equal the net present value of the product of (a) the unamortized principal upon expiration of the Financial*

Assistance Term, and (b) the aggregate mortgage recording tax rate in effect at Closing.

- *For a Project Mortgage whose term extends beyond the Financial Assistance Term because the Financial Assistance Term has terminated before its expiration, PILOMRT shall equal the product of (a) the unamortized principal, and (b) the aggregate mortgage recording tax rate in effect at the time of such early termination of the Financial Assistance Term.*
- *For a Project Mortgage in connection with a PlaNYC Energy Program Project, PILOMRT shall equal the amounts specified in Subdivision II.E.3 of this Policy.*
- *For a mortgage refinancing a Project Mortgage, PILOMRT shall equal the following, as applicable:*
  - *the product of (a) the amount by which the principal of the refinancing mortgage exceeds the unamortized principal of the Project Mortgage - i.e., “new money,” and (b) the aggregate mortgage recording tax rate in effect at the time the refinancing mortgage is delivered; **PLUS***
  - *the net present value of the product of (a) the unamortized principal of the refinancing mortgage at expiration of the Financial Assistance Term, and (b) the aggregate mortgage recording tax rate in effect at the time the refinancing mortgage is delivered; **BUT LESS***
  - *any PILOMRTs previously remitted other than PILOMRTs in connection with “new money.”*

For purposes of this definition, “net present value” shall be determined in accordance with such discount rate as the Staff, in its sole discretion, shall establish from time to time;

“**PILOT**” means payments-in-lieu of taxes.

“**PILOT Commencement Date**” means the date on which the Project Facility becomes exempt from Current Taxes and subject to PILOT; and such date shall never be earlier than the July 1 following the January 5 that follows the Closing.

“**PlaNYC Energy Program Project**” means a Project satisfying the requirements set forth in Subdivision I.C.1.e of this Policy.

“**Policy**” means this Uniform Tax Exemption Policy.

“**Private Schools**” means private, not-for-profit elementary and/or secondary schools providing education for any or all of grades kindergarten through 12, but not including those schools where at least 85% of tuition and/or costs are reimbursed by the New York City Department of Education and/or the New York State Education Department.



**“Project(s)”** means, as the context requires, one or more of the following:

- a facility described in the definition of “project” as the term “project” is defined in the Statute,

**AND/OR**

- one or more of the following activities, provided such activity or activities is in connection with a “project” as defined in the Statute, and further provided that the Board has adopted a resolution inducing such activity or activities:
  - ◆ the acquisition of title to, or equivalent ownership in, or leasehold interest in, a capital asset, together with activities ancillary thereto, and/or
  - ◆ the Renovation of Improvements, together with activities ancillary thereto, and/or
  - ◆ the Construction of New Improvements, together with activities ancillary thereto, and/or
  - ◆ the refunding or refinancing of conduit-issued debt originally issued for the purpose of financing any of the foregoing activities.

**AND/OR**

- a Project Facility.

**“Project Document(s)”** means the documents and instruments necessary to provide Financial Assistance to a Recipient and to satisfy all conditions and requirements of the Statute and other relevant law.

**“Project Facility”** means, as the context may require, any of or all of the following: (a) Project Land; and/or (b) Existing Improvements; and/or (c) Project Improvements; and/or (d) Personal Property incorporated in or otherwise related to Project Improvements; and/or (e) Additional Improvements. Without limiting the foregoing, a “Project Facility” may include a dock or wharf or a Peaking Unit.

**“Project Improvements”** means improvements situated on Project Land that are induced by Financial Assistance and that additionally satisfy the threshold requirements provided in “Construction of New Improvements” or “Renovation of Improvements,” as applicable.

**“Project Land”** means the site within the City that is the subject of the Recipient’s application to the Agency for Financial Assistance; specifically, the premises on which the Recipient’s intended Project is to occur. Without limiting the foregoing, “Project Land” may include lands under water.

**“Project Mortgage”** means a mortgage on a Project Facility the proceeds of which are used to finance the cost, or part of the cost, of the Project Improvements.

**“Recovery Zone”** means zones designated within the City in accordance with requirements of the American Recovery and Reinvestment Act of 2009 in connection with Recovery Zone Facility Bonds.

**“Recipient”** means a person or entity that has applied to the Agency, and has been approved by the Board, to receive Financial Assistance in connection with the Recipient's proposed Project.

**“Renovation of Improvements”** means the renovation, repair, reconstruction, furnishing, equipping or partial demolition of, and/or the making of an installation on or within, and/or the making of other improvements to Existing Improvements, the aggregate cost of which equals the greater of:

- \$1,000,000 in 2006 dollars as inflated by the Engineering News-Record Building Cost Index or any successor index OR
- 25% of the combined Assessed Valuation of the Project Land and Existing Improvements.

Notwithstanding anything that may be to the contrary in this definition, if a Project includes partial demolition, the cost of such partial demolition may be included in the “Renovation of Improvements” (as defined herein) only to the extent that such cost, in the sole determination of the Staff, is less than substantial when compared to the aggregate cost of the Project.

**“Staff”** means staff of the New York City Economic Development Corporation or of any successor thereto that has entered into an annual contract with the Agency for the purpose of providing to the Agency administrative and operating services.

**“State”** means the State of New York.

**“Statute”** means 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, together with Subdivision 917 of the General Municipal Law, as amended.

**“Zone(s)”** means, as the context may require, any of or all of the following: Empowerment Zones, Recovery Zones, Industrial Business Zones, and/or any other area or areas created by or pursuant to law within the City for a specified statutory purpose. Neither the “Hudson Yards UTEP Area,” as that term is defined in *Appendix F*, nor the New York Liberty Zone, shall qualify as a “Zone” (as defined herein) except to the extent that a duly designated Zone (as defined in the previous sentence) includes all or part of the Hudson Yards UTEP Area or the New York Liberty Zone.

## APPENDIX B

### NOT-FOR-PROFIT GUIDELINES

The Agency will consider providing Financial Assistance to a not-for-profit applicant if the applicant's proposed Project meets all of the following criteria:

1. But for the availability of tax-exempt financing through the Agency, the Project would either not proceed as structured, or resources of the applicant otherwise available for continued or enhanced services would instead be applied to the Project.
2. The Project will either:
  - a. retain or create jobs;
  - b. continue or augment services to a needy population;
  - c. promote a purpose that would not be feasible if undertaken on a for-profit basis;
  - d. provide a service that will reduce the City's cost of providing that service, thus promoting efficiency and resulting in cost savings to the City;
  - e. continue or enhance the quality of cultural life in the City; OR
  - f. encourage substantial employment and capital investment in geographic areas in which the City seeks to promote economic development.

If the Project qualifies under Subdivisions 2 c or e above (but under no other provision of Subdivision 2), the applicant must demonstrate that it has provided or will commit to provide services, assistance and/or access to its facilities to disadvantaged City residents. Such community service must be meaningful and ongoing in the judgment of the Board and may be rendered through the applicant's principal or ancillary operations.

3. The applicant must demonstrate that it is expected to be able to service the proposed debt.
4. Except to the extent permitted by law, the applicant shall not discriminate on the basis of race, color, religion, sex, age, national or ethnic origin, or disabilities in employment matters, the providing of services, or otherwise in the administration of its programs and operations.
5. If the proposed Project is for a Private School, then, in addition to satisfying the foregoing requirements set forth in Subdivisions 1, 2, 3 and 4 above, the applicant shall additionally demonstrate that it satisfies and/or will satisfy the requirements set forth in *Appendix C, Compliance Criteria for Private Schools*.

## APPENDIX C

### COMPLIANCE CRITERIA FOR PRIVATE SCHOOLS

To receive Financial Assistance, a Private School must meet the following criteria:

- I. At least 20 percent of the total enrollment of the Private School must consist of New York City residents.
- II. Without in any way limiting the application and generality of Subdivision 4 of *Appendix B, Not-for-Profit Guidelines*, the Private School shall not discriminate in admissions, hiring, the granting of scholarships or loans, or the administration of educational policies generally.
- III. A Private School providing education to grades 9 through 12 must be registered with the New York State Department of Education and, in addition, if such Private School is formed under the Education Law of the State of New York, it must also be chartered by the New York Board of Regents. A Private School providing education to any of grades “K” through 8 must either be (i) registered with the New York State Department of Education, or (ii) evaluated by an independent professional (acceptable to the Staff in its sole discretion) as providing an education equivalent to that provided by public schools in the State of New York.
- IV. In those instances where a Private School (i) requests the Agency to encumber the Project premises with one or more mortgages to secure Project financing, and (ii) records such mortgage(s), and (iii) has net assets per student of more than \$20,000 (at time of application as determined by the Private School’s last financial statements), then, such Private School shall pay to the Agency a fee equal to 2.55 percent of the aggregate amount of the Project Mortgage(s); provided, however, if such aggregate mortgage amount is less than \$500,000, the fee payable to the Agency shall be 2.05 percent of such aggregate mortgage amount.

Any Private School whose maximum tuition is equal to or greater than 75 percent of the Agency Average Maximum Tuition (AAMT)<sup>6</sup>, must satisfy the requirements described in paragraphs V, VI, VII and VIII following:

- V. A. Financial aid equal to at least 10 percent of the Private School’s gross tuition revenues must be made available to and used by students who are New York City residents; and

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<sup>6</sup> The “AAMT” or “average annual maximum tuition” for Private Schools shall be calculated annually for each, upcoming academic year by September 1, based upon the tuitions of Private Schools for which the Agency had issued bonds through the end of the preceding fiscal year ending on June 30. For September 1, 2006 through August 31, 2007, 75% of AAMT has been calculated to be \$20,184.

- B. At least 10 percent of students who are both New York City residents and recipients of financial aid, must each receive financial aid equal to or greater than 50 percent of tuition.
- VI. The Private School must provide, prior to authorization by the Board, a written plan that demonstrates an existing or planned commitment to aid the public school system through the sharing of its facilities with public schools in the City.
- VII. A. The Private School’s board of directors (or trustees) shall have adopted, or shall directed staff to develop and present for adoption, a program of community service in addition to the activities described in Subdivision VI. The program of community service shall be carried out by some combination of the Board members, administrators, faculty, parents, and students. Where, appropriate, the plan should include quantifiable objectives.
- OR**
- B. The Private School must have on staff a full-time paid staff member to coordinate its community service activities and the activities in Subdivision VI above. Where appropriate, quantifiable objectives should be stated for all activities.
- VIII. If the Private School is not in compliance with the requirements of Subdivision V, it must agree in writing to meet those requirements within 5 years following the first academic year in which substantial occupancy<sup>7</sup> of the Project Facility is achieved.
- IX. The applicant must, in the Project Documents, agree to fulfill these Criteria throughout the Financial Assistance Term.

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<sup>7</sup> “Substantial occupancy” means the first academic year when the Project Facility is opened for use and made available to at least 50 percent of the student enrollment intended to occupy the Project Facility.



## APPENDIX D

### New York Liberty Bond Program

#### SELECTION REQUIREMENTS and CRITERIA

##### *For the Selection of Projects for Liberty Bond Financing*

#### A. *Requirements and Criteria for all Projects, whether inside or outside of the Liberty Zone.*

To be selected for Liberty Bond financing, a project must *satisfy* all of the following requirements :

- **Adherence to applicable *Program Principles*. The *Program Principles* are :**

*To fulfill the vision of lower Manhattan as a 24/7, mixed-use, diversified community and support the City's broader revitalization, the Program seeks to:*

- Repair and replace damaged and destroyed commercial space and improve lower quality commercial space;
  - Create additional multifamily residential rental and complementary retail development in Lower Manhattan;
  - Provide modern office space for displaced and decentralizing businesses in central business districts throughout the City;
  - Attract new residents and employers to the City;
  - Encourage environmentally responsible design and construction.
- **Submission of a complete application together with application fee**
  - **Satisfaction of statutory requirements for an “eligible” facility**
  - **Liberty Bond proceeds may *not* be used for costs of repair and replacement already covered by insurance proceeds, except when such insurance proceeds are applied to the satisfaction of existing mortgage indebtedness on the damaged premises, and such application does not affect the tax-exempt status of the Liberty Bonds.**

#### B. *Additional Requirements and Criteria for Projects located outside the Liberty Zone.*

1. In addition to fulfilling the requirements and criteria set forth in “A”above, in order to be selected for Liberty Bond financing, projects outside of the Liberty Zone *must* satisfy the following additional criterion:

- **Demonstrated contribution to the economic recovery and/or expansion of a region<sup>8</sup> within the City or of the City as a whole;** *consistent with the purpose of the federal legislation that enables Liberty Bond financings, it is presumed that the development of commercial office space will be the highest priority.*
2. In addition to fulfilling the criterion immediately preceding, projects located outside the Liberty Zone are more likely to be selected if they are qualitatively distinguished.
- **Some example indicia of qualitative distinction follow:**
    - Creating or retaining a significant number of jobs;
    - Incorporating environmentally responsible design;
    - Providing public amenities;
    - Providing goods or services not generally available in the region.

**C. *Special Requirements and Criteria for Industrial Projects outside of the Liberty Zone.***

Manufacturing, warehousing, distribution and other industrial facilities, tend to be capital intensive with only modest job creation potential. While for the most part the law would allow these facilities to be financed with Liberty Bonds, industrial uses tend to fall outside of the central principles for Liberty Bond financing, which are to replace lost commercial office space and lost residential and retail space. In addition, generous incentive programs are already in place to support the development of such facilities. Nevertheless, since industrial facilities are an important part of New York City’s economy, the City and State will entertain applications for financing industrial projects located outside of the Liberty Zone, provided such facilities satisfy *all* of the requirements and criteria provided below (in addition to the general project requirements specified in “A” and “B” above):

- Project development cost for the facility shall equal at least \$20,000,000 dollars.
- The Project Facility will either...
  - create new jobs and retain existing jobs in the minimum aggregate amount of 200, or
  - create a minimum of 50 new jobs within twelve months of project completion.
- The operation of the Project Facility, or its particular location (in the area outside of the Liberty Zone), serves, supports or complements, in an essential way, an economic sector of the City, or attracts new economic participants to that sector.
- The Project Facility will have a significant “spin-off” or multiplier effect on the City’s economy.

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<sup>8</sup> For purposes of this criterion, a “region” could be any of the five Boroughs, or any significant area within the City but not necessarily limited to the boundaries of a specific Borough.

The applicant for Liberty Bond financing for an industrial project may not also apply under the Industrial Incentive Program or the Small Industry Incentive Program of the New York City Industrial Development Agency.

**D. *Special Requirements and Criteria for Energy Projects outside of the Liberty Zone.***

It is recognized that a reliable and competitively priced energy supply is essential to the health of the City's economy; and, in particular, to the economic recovery of lower Manhattan within the Liberty Zone. Accordingly, merchant power projects - for either generation or transmission of electricity - that are proposed to be located outside the Liberty Zone, will be considered for Liberty Bond financing, but only if the following requirements are met (in addition to the general project requirements specified in "A" and "B" above):

- The facility proposed to be constructed will not, once operational, be a public utility subject to cost-of-service regulation or be owned, in whole or in part, by a public authority; and
- The facility proposed to be constructed will have the capacity to significantly enhance the City's energy infrastructure by (i) increasing energy transmission to, or the generation of energy within, the City by a minimum of 75 megawatts ("MW")(developers submitting projects smaller than 75 MW can aggregate their projects to reach the 75 MW minimum), and (2) demonstrating that Liberty Bond financing will make the construction of the independent power or transmission project possible and/or that the project will provide discounted electricity to or funding to other initiatives designed to lower the price of electricity in, lower Manhattan; and
- The facility has progressed sufficiently in development that a bond issuance will be possible prior to the conclusion of the Liberty Bond program; e.g., developers of power plant projects subject to Article X of the Public Service Law should have submitted an application that has received a completeness determination from the New York State Siting Board; developers of power plant projects exempt from Article X should have submitted a sufficiently completed Environmental Assessment Statement such that the New York City Department of Environmental Protection is able to issue a Notice of Intent to Conduct an Environmental Review pursuant to the State Environmental Quality Review Act (SEQRA); and transmission line developers should have submitted an application pursuant to Article VII of the New York State Public Service Law that has received a completeness determination from the New York State Public Service Commission.

**E. *Special Requirements and Criteria for Parking Facilities outside of the Liberty Zone.***

In addition to the general project criteria specified in "A" and "B" above, a project that is proposed to be located outside of the Liberty Zone and which consists exclusively of or contains parking facilities, must meet all four of the criteria below before it may be authorized for Liberty Bonds.

- 1) If a separate facility, the proposed parking facility should be part of an overall redevelopment/revitalization plan for the area. If part of a larger project, the parking facility must be an integral part of such project.
- 2) A study conducted independently of the Liberty Bond analysis identifies (through means acceptable to the NYCIDA or NYLDC) parking as a barrier to development/revitalization for the area where the project will be located.
- 3) The parking facility has a direct impact or direct nexus on economic development of the area.
- 4) The proposed parking facility would likely not be built without Liberty Bonds.

## APPENDIX E

### ARRA BONDS – THRESHOLD REQUIREMENTS AND SELECTION CRITERIA

- **Threshold Requirements:**

- Projects must be located in a Recovery Zone
- Closings must occur in a timely manner during the Authorized Period or risk forfeiture
- The underwriters or placement agent, and bond purchaser(s), must all be in place at time of submission of the “long” or final application for Program Bond financing
- All permits and approvals must be obtained
- Financing amounts must be in the \$20,000,000 to \$100,000,000 range; *notwithstanding*, projects below \$20,000,000 may in the Agency’s discretion be considered if fulfillment of Selection Criteria by the proposed project is expected to be particularly significant

- **Selection Criteria:**

- Ability to proceed with a successful financing
- Inapplicability of “as-of-right” or other discretionary programs for purposes of assisting the project
- Project’s contribution to the diversification of the City’s economy by job-type
- Diversification of the neighborhood in which the project is to be located
- On-going project employment after construction (length, quality and type)
- Construction employment (length, quality and type)
- On-going contribution to the City’s quality of life
- Economic contribution to the neighborhood in which the project is to be located
- Environmental contribution and on-going contribution to sustainable development in the City



## APPENDIX F<sup>9</sup>

### TAX EXEMPTION POLICY FOR THE HUDSON YARDS UTEP AREA

#### I. Certain Definitions

Capitalized Terms used and not otherwise defined herein shall have the meanings set forth in *Appendix A* to this Policy.

“CCP”, “Hudson Yards CCP” or “Hudson Yards Commercial Construction Project” means a project, including real property that is (y) located within the Hudson Yards UTEP Area, and (z) is eligible for Financial Assistance in accordance with Subdivision III of this *Appendix F*.

"CCP Improvements" means, for each Hudson Yards CCP, improvements authorized by the Agency and constructed as part of such Hudson Yards CCP.

"CCP PILOT" means, for any fiscal year, the amount of the payment in lieu of real property taxes payable as calculated in accordance with clause a) of the applicable PILOT formula for such year set forth below in the PILOT Calculation Tables in this *Appendix F*.

“CCP Taxes” means, for each Hudson Yards CCP, the real property taxes that would be payable during the applicable fiscal year, in the absence of any real property tax exemption made available by reason of the Agency’s interest, in respect of CCP Improvements and the land on which such CCP is located.

“Construction Period” means, for each Hudson Yards CCP, the period from the PILOT Commencement Date to the first June 30 after the date on which all CCP Improvements are fully assessed by the Department of Finance of the City in accordance with applicable real property tax assessment procedures or such later date as determined by the Agency in its sole discretion.

“Hudson Yards UTEP Area” means the area of Manhattan bounded by a line beginning at the intersection of Eleventh Avenue and West 30<sup>th</sup> Street, then running along West 30<sup>th</sup> Street to the intersection with Ninth Avenue, then northward to the intersection with West 31<sup>st</sup> Street, then eastward to the intersection with Seventh Avenue, then northward to the intersection with West 33<sup>rd</sup> Street, then westward to the intersection with Eighth Avenue, then northward to the intersection with West 35<sup>th</sup> Street, then westward to a point 150 feet west of the centerline of Eighth Avenue, then northward to the intersection with West 39<sup>th</sup> Street, then eastward to the intersection with Eighth Avenue, then northward to the intersection with West 40<sup>th</sup> Street, then westward to the intersection with Ninth Avenue, then northward to the intersection with West 41<sup>st</sup> Street, then eastward to a point 297 feet distant from the centerline of Ninth Avenue, then northward to the intersection with West 42<sup>nd</sup> Street, then eastward to a point 150 feet west of the centerline of Ninth Avenue, then northward 100 feet, then westward 100 feet, then southward to the intersection with West 42<sup>nd</sup> Street, then westward to the intersection with Tenth Avenue, then northward to the intersection with West 43<sup>rd</sup> Street, then westward to the intersection with Route

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<sup>9</sup> In the event of any conflict between the provisions of this *Appendix E* and any other provisions of this Policy, the provisions of this *Appendix E* shall govern and control.

9A, then south-westward to the intersection with West 42<sup>nd</sup> Street, then south to the intersection with West 41<sup>st</sup> Street, then eastward to the intersection with Eleventh Avenue, then southward to the intersection with West 30<sup>th</sup> Street.

“Other Improvements Taxes” means, for each Hudson Yards CCP, the real property taxes that would be payable during the applicable fiscal year, in the absence of any Financial Assistance, in respect of any assessable real property improvements that are in addition to the CCP Improvements.

"PILOT Amount" shall mean, for any fiscal year, the PILOT amount payable according to the PILOT Calculation Tables below.

“PILOT Commencement Date” means the July 1<sup>st</sup> following the January 5<sup>th</sup> which follows the closing at which the Agency enters into the documents and instruments necessary to provide Financial Assistance in connection with a Hudson Yards CCP.

“PILOT Financial Assistance Term” means, for a Hudson Yards CCP, a minimum period of 35 years and a maximum period of 99 years from the PILOT Commencement Date, as determined by the Staff and approved by the Board.

## II. Financial Assistance Available

- a. Real Property Tax Exemption; Payment in Lieu of Real Property Tax ("PILOT"). From the PILOT Commencement Date to the termination of the PILOT Financial Assistance Term, the real property that comprises a Hudson Yards CCP shall be exempt from real property taxes, and the recipient of Financial Assistance shall pay a PILOT in the amount determined in accordance with the PILOT Calculation Tables set forth in this *Appendix F*.
- b. Sales Tax Exemption; Payments in Lieu of Sales Tax ("PILOST"). The sales tax exemption benefits for Hudson Yards CCPs (i) shall be for a term ending on the earlier of (x) 3 years from the commencement of construction of the CCP Improvements or (y) completion of construction of core and shell of the CCP Improvements, and (ii) shall provide savings of up to 100% of the sales and use taxes on construction materials for the CCP Improvements that would otherwise be due in the absence of exemption through the Agency, unless it is determined on a case by case basis by the Board that no exemption is appropriate. PILOST may be payable, as determined on a case by case basis by the Board, in an amount up to 100% of the sales and use taxes that would otherwise be due in the absence of Financial Assistance.
- c. Mortgage Recording Tax Exemption; Payments in Lieu of Mortgage Recording Tax ("PILOMRT"). The mortgage recording tax exemption for Hudson Yards CCPs shall be for the mortgages securing construction and permanent financing for a Hudson Yards CCP in an amount not to exceed the development costs of the

Hudson Yards CCP. However, the recipient of such Financial Assistance shall be required to make PILOMRT in an amount equal to 100% of the mortgage recording taxes that would otherwise be due. In addition, all mortgages securing the payment of PILOTs in connection with Hudson Yards CCPs shall be exempt from mortgage recording taxes and no payments in-lieu of mortgage recording taxes shall be due in respect thereto.

- d. Continuation of Benefits. In the event that a Hudson Yards CCP is transferred, sold or assigned, the Financial Assistance for such CCP shall remain in effect and be available to the transferees, buyers or assignees of the CCP (including but not limited to transferees in foreclosure), subject to their compliance with the applicable Project Documents and Agency requirements. The original project developer or principal and any transferees, buyers, or assignees of the Hudson Yards CCP shall be jointly and severally responsible for any benefits recapture obligations with respect to benefits realized in connection with the Hudson Yards CCP.
- e. Benefit Recapture and Termination of Eligibility. If a Hudson Yards CCP is not commenced or completed by the applicable dates specified in (or permitted under) the Project Documents, any sales tax exemption benefits received shall be subject to recapture and the project's status as a Hudson Yards CCP shall be subject to termination, in the Agency's discretion.

### **III. Eligibility for Financial Assistance**

- a. In order to qualify as a Hudson Yards CCP, a project must satisfy each of the following criteria:
  - (i) Hudson Yards UTEP Area. The project must be located within the Hudson Yards UTEP Area.
  - (ii) Commercial Use. The project must consist of new construction of non-residential, commercial facilities either by a developer for leasing to commercial tenants, or by or on behalf of a principal for its own use, of which commercial tenants or such principal, as applicable, shall use and occupy not less than 75% of the usable space for the following uses:
    - 1. as Class A office space and ancillary support space, and/or
    - 2. in furtherance of "commercial purposes" as determined in the sole discretion of the Staff.
  - (iii) Size and Density. The project must satisfy size and density requirements as follows:

1. The project shall be deemed to be of sufficient size and density if the zoning square footage of the project shall equal or exceed 90% of the zoning square footage that is available for commercial use at the site of the project, according to the City's Zoning Resolution, assuming that all floor area bonuses and transfers available under the Zoning Resolution will be utilized; but in no event will any project be less than 1 million zoning square feet if it is to qualify as a CCP.
2. If the project does not satisfy the size and density standard set forth in subparagraph (iii)(1) above, it shall be in the Agency's sole discretion to determine whether the project is of sufficient size and density to qualify as a Hudson Yards CCP, except that the Agency will not consider projects of less than one million zoning square feet. The primary factor for the Agency's determination under this subparagraph shall be whether the proposed project will result in new construction that significantly furthers the objectives of the Agency to assist in the economic development of the City and spur job creation.

#### **IV. Guidelines for PILOT Calculations for Hudson Yards Commercial Construction Projects**

As provided herein, the real property that comprises a Hudson Yards Commercial Construction Project shall be exempt from real property taxes for the PILOT Financial Assistance Term and the recipient of Financial Assistance shall pay a CCP PILOT in the amount determined in accordance with the PILOT Calculation Tables provided below

For purposes of the PILOT calculations, the determination of CCP Taxes (as hereinafter defined) and Other Improvements Taxes (as hereinafter defined) in each fiscal year shall be based on actual real property taxes in such fiscal year. For all Hudson Yards Commercial Construction Projects, the CCP PILOT amount for a particular fiscal year shall never exceed CCP Taxes for such fiscal year.

**PILOT CALCULATION TABLES**

| <b>Zone 1 – All Hudson Yards Commercial Construction Projects within the subdivision of the Hudson Yards UTEP Area that is east of the center line of Eighth Avenue</b> |   |
|---|---|
| <b><i>Year of PILOT Agreement</i></b>   | <b><i>PILOT Amount</i></b>  |
| Each fiscal year during the Construction Period   | a) CCP Taxes plus, b) Other Improvements Taxes  |
| Years 1-4 after Construction Period   | a) CCP Taxes plus, b) Other Improvements Taxes  |
| Years 5-19 after Construction Period  | a) 103% of the CCP PILOT for the previous fiscal year plus, b) Other Improvements Taxes |
| Each fiscal year during the remainder of PILOT Financial Assistance Term  | a) CCP Taxes plus, b) Other Improvements Taxes  |

| <b>Zone 2 - All Hudson Yards Commercial Construction Projects within the subdivision of the Hudson Yards UTEP Area that is between the center line of Eighth Avenue and the centerline of Tenth Avenue</b>  |   |
|---|---|
| <b><i>Year of PILOT Agreement</i></b>   | <b><i>PILOT Amount</i></b>  |
| <b>Hudson Yards CCPs in Zone 2 shall be eligible to receive the Financial Assistance described below until the total square footage of Agency-authorized Hudson Yards CCPs in Zone 3 and Zone 3 Adjacent Developments equals ten million zoning square feet.</b>            |   |
| Each fiscal year during the Construction Period   | a) CCP Taxes plus, b) Other Improvements Taxes  |
| Years 1-4 after Construction Period   | a) 75% of CCP Taxes, plus b) Other Improvements Taxes   |
| Years 5-15 after Construction Period  | a) 103% of the CCP PILOT for the previous fiscal year, plus b) Other Improvements Taxes                             |
| Year 16 after Construction Period   | a) Greater of 103% of CCP PILOT for the previous fiscal year and 80% of CCP Taxes, plus b) Other Improvements Taxes |
| Year 17 after Construction Period   | a) Greater of 103% of CCP PILOT for the previous fiscal year and 85% of CCP Taxes, plus b) Other Improvements Taxes |
| Year 18 after Construction Period   | a) Greater of 103% of CCP PILOT for the previous fiscal year and 90% of CCP Taxes plus b) Other Improvements Taxes  |
| Year 19 after Construction Period   | a) Greater of 103% of CCP PILOT for the previous fiscal year and 95% of CCP Taxes, plus b) Other Improvements Taxes |
| Each fiscal year during the remainder of PILOT Financial Assistance Term  | a) CCP Taxes, plus b) Other Improvements Taxes  |
| <b>Thereafter, Hudson Yards CCPs in Zone 2 shall be eligible to receive the Financial Assistance described below until the total square footage of Agency-authorized Hudson Yards CCPs in Zone 3 and Zone 3 Adjacent Developments equals 15 million zoning square feet.</b> |   |
| Each fiscal year during the Construction Period   | a) CCP Taxes plus, b) Other Improvements Taxes  |

|  |   |
|--|---|
| Years 1-4 after Construction Period  | a) 80% of CCP Taxes, plus b) Other Improvements Taxes   |
| Years 5-15 after Construction Period   | a) 103% of the CCP PILOT for the previous fiscal year, plus b) Other Improvements Taxes                             |
| Year 16 after Construction Period  | a) Greater of 103% of CCP PILOT for the previous fiscal year and 84% of CCP Taxes, plus b) Other Improvements Taxes |
| Year 17 after Construction Period  | a) Greater of 103% of CCP PILOT for the previous fiscal year and 88% of CCP Taxes, plus b) Other Improvements Taxes |
| Year 18 after Construction Period  | a) Greater of 103% of CCP PILOT for the previous fiscal year and 92% of CCP Taxes, plus b) Other Improvements Taxes |
| Year 19 after Construction Period  | a) Greater of 103% of CCP PILOT for the previous fiscal year and 96% of CCP Taxes, plus b) Other Improvements Taxes |
| Each fiscal year during the remainder of PILOT Financial Assistance Term   | a) CCP Taxes plus, b) Other Improvements Taxes  |
| <b>Thereafter, Hudson Yards CCPs in Zone 2 shall be eligible to receive the financial Assistance described below until the total square footage of Agency-authorized Hudson Yards CCPs in Zone 3 and Zone 3 Adjacent Developments equals 20 million square feet.</b> |   |
| Each fiscal year during the Construction Period  | a) CCP Taxes plus, b) Other Improvements Taxes  |
| Years 1-4 after Construction Period  | a) 85% of CCP Taxes, plus b) Other Improvements Taxes   |
| Years 5-15 after Construction Period   | a) 103% of the CCP PILOT for the previous fiscal year, plus b) Other Improvements Taxes                             |
| Year 16 after Construction Period  | a) Greater of 103% of CCP PILOT for the previous fiscal year and 88% of CCP Taxes, plus b) Other Improvements Taxes |
| Year 17 after Construction Period  | a) Greater of 103% of CCP PILOT for the previous fiscal year and 91% of CCP Taxes, plus b) Other Improvements Taxes |
| Year 18 after Construction Period  | a) Greater of 103% of CCP PILOT for the previous fiscal year and 94% of CCP Taxes, plus b) Other Improvements Taxes |
| Year 19 after Construction Period  | a) Greater of 103% of CCP PILOT for the previous fiscal year and 97% of CCP Taxes, plus b) Other Improvements Taxes |
| Each fiscal year during the remainder of PILOT Financial Assistance Term   | a) CCP Taxes, plus b) Other Improvements Taxes  |



**Zone 3 – All Hudson Yards Commercial Construction Projects within the subdivision of the Hudson Yards UTEP Area that is west of the center line of Tenth Avenue**

“Zone 3 Adjacent Developments” means development(s) that have been authorized or approved by the Metropolitan Transportation Authority or any of its affiliates or the Empire State Development Corporation or any of its subsidiaries in the areas bounded by (i) West 30<sup>th</sup> and West 34<sup>th</sup> Streets and 11<sup>th</sup> and 12<sup>th</sup> Avenues, and (ii) West 30<sup>th</sup> and West 33<sup>rd</sup> Streets and 10<sup>th</sup> and 11<sup>th</sup> Avenues (collectively, “Zone 3 Adjacent Developments”)

For Zone 3, the following shall apply:

(a) Hudson Yards CCPs in Zone 3 shall be eligible to receive the Financial Assistance described in Category A until the total square footage of Agency authorized Hudson Yards CCPs in Zone 3 and Zone 3 Adjacent Developments equals five million zoning square feet.

(b) After eligibility for Category A has been exhausted, Hudson Yards CCPs in Zone 3 shall be eligible to receive the Financial Assistance described in Category B until the total square footage of Agency authorized Hudson Yards CCPs in Zone 3 and Zone 3 Adjacent Developments equals ten million zoning square feet.

(c) After eligibility for Category B has been exhausted, Hudson Yards CCPs in Zone 3 shall be eligible to receive the Financial Assistance described in Category C until the total square footage of Agency authorized Hudson Yards CCPs in Zone 3 and Zone 3 Adjacent Developments equals fifteen million zoning square feet.

(d) After eligibility for Category C has been exhausted, Hudson Yards CCPs in Zone 3 shall be eligible to receive the Financial Assistance described in Category D until the total square footage of Agency authorized Hudson Yards CCPs in Zone 3 and Zone 3 Adjacent Developments equals twenty million zoning square feet.

(e) If at the time that a Zone 3 Hudson Yards CCP is authorized by the Agency, there is insufficient remaining eligibility in the Zone 3 Category to cover the entire zoning square footage of the CCP, then such CCP shall be treated as partially eligible for such Category and partially eligible for the next Category, and the Zone 3 PILOT for such CCP shall be the total of (X) and (Y) below:

(X) the percentage of the CCP, measured by zoning square footage, that is covered by the remaining eligibility in the Zone 3 Category, multiplied by the applicable PILOT Amount for that Category PLUS

(Y) the percentage of the CCP, measured by zoning square footage, that is not covered by the remaining eligibility in the Zone 3 Category, multiplied by the applicable PILOT Amount for the next Category

| <b>ZONE 3- CATEGORY A</b>  |   |
|--|---|
| <b><u>Year of PILOT Agreement</u></b>                                    | <b><u>PILOT Amount</u></b>  |
| Each fiscal year during the Construction Period                          | a) CCP Taxes, plus b) Other Improvements Taxes  |
| Years 1-4 after Construction Period                                      | a) 60% of CCP Taxes, plus b) Other Improvements Taxes   |
| Years 5-15 after Construction Period                                     | a) 103% of the CCP PILOT for the previous fiscal year, plus b) Other Improvements Taxes                             |
| Year 16 after Construction Period  | a) Greater of 103% of CCP PILOT for the previous fiscal year and 68% of CCP Taxes, plus b) Other Improvements Taxes |
| Year 17 after Construction Period  | a) Greater of 103% of CCP PILOT for the previous fiscal year and 76% of CCP Taxes, plus b) Other Improvements Taxes |
| Year 18 after Construction Period  | a) Greater of 103% of CCP PILOT for the previous fiscal year and 84% of CCP Taxes, plus b) Other Improvements Taxes |
| Year 19 after Construction Period  | a) Greater of 103% of CCP PILOT for the previous fiscal year and 92% of CCP Taxes, plus b) Other Improvements Taxes |
| Each fiscal year during the remainder of PILOT Financial Assistance Term | a) CCP Taxes, plus b) Other Improvements Taxes  |

| <b>ZONE 3- CATEGORY B</b>  |   |
|--|---|
| <b><u>Year of PILOT Agreement</u></b>                                    | <b><u>PILOT Amount</u></b>  |
| Each fiscal year during the Construction Period                          | a) CCP Taxes plus, b) Other Improvements Taxes  |
| Years 1-4 after Construction Period                                      | a) 75% of CCP Taxes, plus b) Other Improvements Taxes   |
| Years 5-15 after Construction Period                                     | a) 103% of the CCP PILOT for the previous fiscal year, plus b) Other Improvements Taxes                             |
| Year 16 after Construction Period  | a) Greater of 103% of CCP PILOT for the previous fiscal year and 80% of CCP Taxes, plus b) Other Improvements Taxes |
| Year 17 after Construction Period  | a) Greater of 103% of CCP PILOT for the previous fiscal year and 85% of CCP Taxes, plus b) Other Improvements Taxes |
| Year 18 after Construction Period  | a) Greater of 103% of CCP PILOT for the previous fiscal year and 90% of CCP Taxes, plus b) Other Improvements Taxes |
| Year 19 after Construction Period  | a) Greater of 103% of CCP PILOT for the previous fiscal year and 95% of CCP Taxes, plus b) Other Improvements Taxes |
| Each fiscal year during the remainder of PILOT Financial Assistance Term | a) CCP Taxes, plus b) Other Improvements Taxes  |

| <b>ZONE 3- CATEGORY C</b>  |   |
|--|---|
| <b><u>Year of PILOT Agreement</u></b>                                    | <b><u>PILOT Amount</u></b>  |
| Each fiscal year during the Construction Period                          | a) CCP Taxes plus, b) Other Improvements Taxes  |
| Years 1-4 after Construction Period                                      | a) 80% of CCP Taxes, plus b) Other Improvements Taxes   |
| Years 5-15 after Construction Period                                     | a) 103% of the CCP PILOT for the previous fiscal year, plus b) Other Improvements Taxes                             |
| Year 16 after Construction Period  | a) Greater of 103% of CCP PILOT for the previous fiscal year and 84% of CCP Taxes, plus b) Other Improvements Taxes |
| Year 17 after Construction Period  | a) Greater of 103% of CCP PILOT for the previous fiscal year and 88% of CCP Taxes, plus b) Other Improvements Taxes |
| Year 18 after Construction Period  | a) Greater of 103% of CCP PILOT for the previous fiscal year and 92% of CCP Taxes, plus b) Other Improvements Taxes |
| Year 19 after Construction Period  | a) Greater of 103% of CCP PILOT for the previous fiscal year and 96% of CCP Taxes, plus b) Other Improvements Taxes |
| Each fiscal year during the remainder of PILOT Financial Assistance Term | a) CCP Taxes plus, b) Other Improvements Taxes  |

| <b>ZONE 3- CATEGORY D</b>  |   |
|--|---|
| <b><u>Year of PILOT Agreement</u></b>                                    | <b><u>PILOT Amount</u></b>  |
| Each fiscal year during the Construction Period                          | a) CCP Taxes plus, b) Other Improvements Taxes  |
| Years 1-4 after Construction Period                                      | a) 85% of CCP Taxes, plus b) Other Improvements Taxes   |
| Years 5-15 after Construction Period                                     | a) 103% of the CCP PILOT for the previous fiscal year, plus b) Other Improvements Taxes                             |
| Year 16 after Construction Period  | a) Greater of 103% of CCP PILOT for the previous fiscal year and 88% of CCP Taxes, plus b) Other Improvements Taxes |
| Year 17 after Construction Period  | a) Greater of 103% of CCP PILOT for the previous fiscal year and 91% of CCP Taxes, plus b) Other Improvements Taxes |
| Year 18 after Construction Period  | a) Greater of 103% of CCP PILOT for the previous fiscal year and 94% of CCP Taxes, plus b) Other Improvements Taxes |
| Year 19 after Construction Period  | a) Greater of 103% of CCP PILOT for the previous fiscal year and 97% of CCP Taxes, plus b) Other Improvements Taxes |
| Each fiscal year during the remainder of PILOT Financial Assistance Term | a) CCP Taxes, plus b) Other Improvements Taxes  |

**FORM OF ASSIGNMENT**

## ASSIGNMENT

This ASSIGNMENT is made as of [DATE], by and among the **NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY** (the “**Agency**”), a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, **THE CITY OF NEW YORK** (the “**City**” and, collectively with the Agency, the “**Assignors**” and each, an “**Assignor**”), a municipal corporation of the State of New York, **HUDSON YARDS INFRASTRUCTURE CORPORATION** (“**Assignee**”), a local development corporation organized and existing under the Not-For-Profit Corporation Law of the State of New York, having its principal place of business at 255 Greenwich Street, New York, New York 10007, [NAME OF COMPANY] (the “**Company**”), a [type of entity] organized and existing under the laws of the State of [\_\_\_\_], having its principal office at [\_\_\_\_\_].

**SECTION 1. Definitions.** Unless otherwise specified herein, capitalized terms used but not defined in this Assignment shall have the respective meanings given to those terms in the Amended and Restated PILOT Assignment and Agreement, dated as of December 1, 2006 and amended and restated as of May 1, 2017, by and among the Agency, the City and the Assignee, as amended, restated, supplemented or otherwise modified from time to time (the “**PILOT Assignment**”).

**SECTION 2. Assignment.** Assignors, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, do hereby absolutely and irrevocably assign, transfer, convey and deliver to Assignee, and its successors and assigns, all of their respective rights, title and interests in and to the following (collectively, the “**Assigned Assets**”): (a) those certain PILOT Assets (as defined in the PILOT Assignment), which include, without limitation, all right, title and interest of the Assignors to receive the PILOT Amounts (as defined in the Agency Lease Agreement, dated as of [DATE], by and between the Agency and the Company, as amended, restated, supplemented or otherwise modified from time to time (the “**Agency Lease Agreement**”)), the PILOMRT (as defined in the Agency Lease Agreement) payments and similar payments made and to be made by the Company under Sections 5.1 and 5.2 of the Agency Lease Agreement, (b) the Agency’s right, title and interest in the Guaranty Agreement (as defined in the Agency Lease Agreement), to the extent that the obligations guaranteed thereunder relate to the payment of the PILOT Amounts, the PILOMRT payments and similar payments made and to be made by the Company under Sections 5.1 and 5.2 of the Agency Lease Agreement, and (c) the present and continuing right to make claim for, collect and receive the PILOT Amounts, the PILOMRT payments and similar payments made and to be made by the Company under Sections 5.1 and 5.2 of the Agency Lease Agreement and the right to bring actions and receive proceeds for the enforcement of such payments.

**SECTION 3. Representations and Warranties.** The Agency and the City represent and warrant to the Assignee as of the date hereof as follows:

- (a) The Assigned Assets are free and clear of Liens; and

(b) The PILOT Assignment, the Agency Lease Agreement and the Guaranty Agreement remain unmodified and all provisions of the PILOT Assignment, the Agency Lease Agreement and the Guaranty Agreement are in full force and effect; and

(c) Neither the Agency nor the City has any existing defenses against the enforcement of the PILOT Assignment, the Agency Lease Agreement, the Guaranty Agreement or the other Transaction Documents.

**SECTION 4. No Other Encumbrances.** The Agency and the City covenant that, except as otherwise provided in the PILOT Assignment, neither will sell, convey, mortgage, encumber or otherwise dispose of any of the Assigned Assets.

**SECTION 5. Further Assurances.** The Agency and the City covenant that they each will execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such additional and supplemental agreements, instruments and documents, and make such further transfers as may be necessary to effectuate the assignment and transfers contemplated by the PILOT Assignment.

**SECTION 6. Acknowledgement by Company.** The Company acknowledges the assignment of the Assigned Assets set forth herein, and the Company agrees to make all payments of the PILOT Amounts and the PILOMRT payments to (or at the direction of) the Assignee. The Company agrees, for the benefit of the Assignee, to perform its obligations under (a) Sections 5.1 and 5.2 of the Agency Lease Agreement and (b) the Guaranty Agreement, to the extent the same relates to the payment of the PILOT Amounts, the PILOMRT payments and similar payments made and to be made under the Agency Lease Agreement.

**SECTION 7. Counterparts.** This Assignment may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

**SECTION 8. Headings.** The headings of the various Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

**SECTION 9. Governing Law.** This Assignment shall be construed in accordance with the laws of the State of New York, without reference to its conflict of law provisions (except Sections 5-1401 and 5-1402 of the General Obligations Law of the State of New York), and the obligations, rights and remedies of the parties hereunder shall be determined in accordance with such laws.

**SECTION 10. Successors and Assigns.** The provisions of this Assignment are solely for the benefit of the Agency, the City, the Assignee, U.S. Bank National Association in its capacity as First Indenture Trustee and U.S. Bank National Association in its capacity as Second Indenture Trustee; *provided, however*, that this Assignment may not be assigned by any party hereto without the prior written consent of the other parties hereto, *except* that (i) the consent of the Company shall not be required in connection with an assignment by any other party hereto and (ii) the Assignee may assign this Assignment to the First Indenture Trustee and/or the Second Indenture Trustee without the consent of any other party hereto.



**IN WITNESS WHEREOF**, the parties hereto have caused this Assignment to be duly executed by their respective officers as of the day and year first above written.

**APPROVED AS TO FORM:**

**THE CITY OF NEW YORK**, as Assignor

By: \_\_\_\_\_  
Name: James McSpiritt  
Title: Acting Corporation Counsel

By: \_\_\_\_\_  
Name: Alicia Glen  
Title: Deputy Mayor for Housing and Economic  
Development

**NEW YORK CITY INDUSTRIAL  
DEVELOPMENT AGENCY**, as Assignor

By: \_\_\_\_\_  
Name: Johan Salen  
Title: Executive Director

**HUDSON YARDS INFRASTRUCTURE  
CORPORATION**, as Assignee

By: \_\_\_\_\_  
Name: Alan Anders  
Title: President

(Signature Page to Assignment)

Acknowledged and agreed to with respect to Section 6 only:

[COMPANY NAME], as Company

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

Name:

Title:

(Signature Page to Assignment)

Acknowledgements

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

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_, before me, the undersigned, personally appeared **Alicia Glen**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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

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

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_, before me, the undersigned, personally appeared **Johan Salen**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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

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

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_, before me, the undersigned, personally appeared **Alan Anders**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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

(Notary Page to Assignment)

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

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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

**HUDSON YARDS UTEP AREA DESCRIPTION**

**“Hudson Yards UTEP Area”** means the area of Manhattan bounded by a line beginning at the intersection of Eleventh Avenue and West 30<sup>th</sup> Street, then running along West 30<sup>th</sup> Street to the intersection with Ninth Avenue, then northward to the intersection with West 31<sup>st</sup> Street, then eastward to the intersection with Seventh Avenue, then northward to the intersection with West 33<sup>rd</sup> Street, then westward to the intersection with Eighth Avenue, then northward to the intersection with West 35<sup>th</sup> Street, then westward to a point 150 feet west of the centerline of Eighth Avenue, then northward to the intersection with West 39<sup>th</sup> Street, then eastward to the intersection with Eighth Avenue, then northward to the intersection with West 40<sup>th</sup> Street, then westward to the intersection with Ninth Avenue, then northward to the intersection with West 41<sup>st</sup> Street, then eastward to a point 297 feet distant from the centerline of Ninth Avenue, then northward to the intersection with West 42<sup>nd</sup> Street, then eastward to a point 150 feet west of the centerline of Ninth Avenue, then northward 100 feet, then westward 100 feet, then southward to the intersection with West 42<sup>nd</sup> Street, then westward to the intersection with Tenth Avenue, then northward to the intersection with West 43<sup>rd</sup> Street, then westward to the intersection with Route 9A, then south-westward to the intersection with West 42<sup>nd</sup> Street, then south to the intersection with West 41<sup>st</sup> Street, then eastward to the intersection with Eleventh Avenue, then southward to the intersection with West 30<sup>th</sup> Street.