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**AGENCY LEASE AGREEMENT**

Dated as of April 1, 2015

by and between

**NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY**

and

**BOP NE TOWER LESSEE LLC,**

a limited liability company organized and existing under the laws of the  
State of Delaware, having its principal office at c/o  
Brookfield Office Properties, 250 Vesey Street, 15<sup>th</sup>  
Floor, New York, New York 10281, as Lessee

2015 BOP NE Tower Lessee LLC Project

Affecting the Land located at the northeast corner of the area between 31<sup>st</sup> and 33<sup>rd</sup> Streets  
and between 9<sup>th</sup> and 10<sup>th</sup> Avenues and known by the street address  
401 9<sup>th</sup> Avenue, New York, New York 10001  
Borough of Manhattan, Block 729 and Lot 60

in the County of New York,  
City and State of New York  
as more particularly described in  
Exhibit A to this Agency Lease Agreement  
on the Official Tax Map of New York County

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## **AGENCY LEASE AGREEMENT**

This **AGENCY LEASE AGREEMENT**, dated as of April 1, 2015 (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, party of the first part, and **BOP NE TOWER LESSEE LLC**, a limited liability company duly organized and existing under the laws of the State of Delaware (the “**Lessee**”), party of the second part (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, the Agency has entered into negotiations with the Lessee for a “project” within the meaning of the Act within the territorial boundaries of the City and located on the Land described in Exhibit A — “Description of the Land”; and

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

**WHEREAS**, to facilitate the Project, the Agency and the Lessee have entered into negotiations to enter into a Straight-Lease Transaction in connection with the construction, furnishing and equipping, by the Lessee, of an approximately 2,000,000 gross square foot, class-A office building, which may include up to approximately 100,000 gross square feet of retail space, to be located on an approximately 65,034 square foot parcel of land located at the northeast corner of the area between 31<sup>st</sup> and 33<sup>rd</sup> Streets and between 9<sup>th</sup> and 10<sup>th</sup> Avenues and generally known by the street address of 401 9<sup>th</sup> Avenue, New York, New York 10001; and

**WHEREAS**, in connection with the Straight-Lease Transaction, (i) the Lessee has leased the Facility Realty to the Agency pursuant to the Company Lease and (ii) the Agency will sublease the Facility Realty to the Lessee pursuant to this Agreement; and

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

**WHEREAS**, the provision by the Agency of Financial Assistance to the Lessee through a Straight-Lease Transaction has been determined to be necessary to induce the Lessee to complete the Project, which will generate approximately 4,590 direct construction jobs and, at full occupancy, it is estimated that over 6,000 people will be employed at the Facility Realty in office, retail and building services and that, if the Agency does not provide such Financial Assistance, the Lessee could not feasibly proceed with the Project as contemplated; and

**WHEREAS**, the cost of construction of the Project is being financed in accordance with the Project Finance Plan.

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

## **ARTICLE I**

### **DEFINITIONS AND CONSTRUCTION**

**Section 1.1. Definitions.** The following capitalized terms shall have the respective meanings specified for purposes of this Agreement:

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

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

An **Affiliate** means, with respect to a given Person, any other Person that directly or indirectly through one or more intermediaries Controls, is Controlled by, or is under common Control with such given 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 \$750,000.

**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.

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

**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, retail and commercial tenants.

**Assignment** shall mean the Assignment, dated as of the Commencement Date, by and among the Agency, the City, HYIC and the Lessee.

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

**Authorized Representative** shall mean, (i) in the case of the Agency, the Chairperson, Vice Chairperson, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs, or any other officer or employee of the Agency who is authorized to perform specific acts or to discharge specific duties, and (ii) in the case of the Lessee (including in its capacity as the Guarantor), a person named in Exhibit B – “Authorized Representative 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; 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.

**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 buildings, structures, foundations, related facilities, fixtures, and other improvements constructed, erected, placed and/or installed on, under and/or above the Land, when such improvements are not part of the Project Work, including but not limited to all

replacements, improvements, additions, extensions and substitutions to the Project Improvements other than by space Tenants following the Construction Period (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 April 14, 2015, on which date this Agreement was executed and delivered.

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

**Completion Deadline** shall mean April 14, 2020.

**Construction Development Agreement** shall have the meaning set forth in Section 8.10(e).

**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.

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

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

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

**Enabling Act** shall mean the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended.

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

**Environmental Audit** shall mean that certain Phase I Environmental Site Assessment Report dated January 12, 2015 prepared by the Environmental Auditor.

**Environmental Auditor** shall mean Cardno ATC.



**Estimated Project Cost** shall mean \$2,180,000,000.

**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, 2045 (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, the Land and the Improvements, as modified from time to time in accordance with this Agreement.

**Final Project Cost Budget** shall mean that certain budget of costs paid or incurred for the Project to be submitted by the Lessee pursuant to Section 3.3(f) upon completion of the Project.

**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).

**Foreclosure Transferee** shall have the meaning set forth in Section 11.3(c).

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

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

**Ground Lease** shall mean that certain Ground Lease, dated on or about the date hereof, by and between the Ground Lessor, as landlord, and the Lessee, as tenant, as the same may be supplemented, amended or modified from time to time.

**Ground Lease Termination** shall have the meaning set forth in Section 11.3(c).

**Ground Lessor** shall mean BOP NE LLC, a Delaware limited liability company, and its successor and assigns.

**Guarantor** shall mean the Lessee and its permitted successors and assigns.

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

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

**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 Project Fee** shall mean the fee payable to HYIC in the amount of \$2,703,482.

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

**Improvements** shall mean, collectively, the Project Improvements and any Capital Improvements.

**Indemnification Commencement Date** shall mean February 10, 2015, the date on which the Agency adopted the Inducement/Authorizing Resolution with respect to the Project.

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

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

**Inducement/Authorizing Resolution** shall mean the resolution of the Agency adopted on February 10, 2015, inducing the Project and providing for Financial Assistance and authorizing the Project Documents to which the Agency is a party.

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

**Initial Mortgagee** shall mean (A) HSBC Bank USA, National Association, and its successors and assigns, under (i) that certain Project Loan Mortgage, Assignment of Leases and Rents and Security Agreement, dated as of January 14, 2013 (“HSBC Project Mortgage”), made by BOP West 31st Street LLC and Brookfield Properties W 33rd Co. L.P. to HSBC Bank USA, National Association (the “HSBC Project Loan Agreement”) and (ii) Consolidated, Amended and Restated Senior Loan Mortgage, Assignment of Leases and Rents and Security Agreement, dated as of January 14, 2013 (“HSBC Building Mortgage”), made by BOP West 31st Street LLC and Brookfield Properties W 33rd Co. L.P. to HSBC Bank USA, National Association, as administrative agent for the Lenders (as defined in the HSBC Project Loan Agreement) and, after the satisfaction of the HSBC Project Mortgage and the HSBC Building

Mortgage, (B) Wells Fargo, National Association, at such time that Lessee executes (a) that certain Fee and Leasehold Building Loan Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing made by the BOP NE Tower Lessee LLC, BOP NE LLC and the Agency in favor of Wells Fargo Bank, National Association, and (b) that certain Fee and Leasehold Project Loan Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the “WF Project Loan Agreement”) made by Lessee, Ground Lessor and the Agency in favor of Wells Fargo Bank, National Association, as administrative agent for the Lenders (as defined in the WF Project Loan Agreement).

**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, a not-for-profit religious, educational or eleemosynary institution, an employee welfare, benefit, pension or retirement fund, a governmental authority (or subsidiary thereof), 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 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) that satisfies the Eligibility Requirements; (d) any entity controlled by any of the entities described in clauses (a), (b) or (c) above; (e) a Qualified Trustee (as hereinafter defined) in connection with a securitization of, or the creation of collateralized debt obligations or commercial mortgage backed securities (“CDO”) secured by, or financing through an “owner trust” of, a loan to finance the Project or an Improvement (collectively, “Securitization Vehicles”), so long as (i) the special servicer or manager of such Securitization Vehicle has the Required Special Servicer Rating (as hereinafter defined), (ii) in the case of a Securitization Vehicle other than a CDO Securitization Vehicle, the entire “controlling class” of such Securitization Vehicle is held by one or more entities that are otherwise Institutional Lenders under clauses (a), (b), (c) or (d) of this definition and (iii) in the case of a CDO Securitization Vehicle, the operative documents of such Securitization Vehicle require that the “equity interest” in such Securitization Vehicle is owned by one or more entities that are Institutional Lenders under clauses (a), (b), (c) or (d) of this definition (provided, that if any trustee, special servicer or manager fails to meet the requirements of this clause (e), such Person must be replaced by a Person meeting the requirements of this clause (e) within thirty (30) days); (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 acts as the general partner, managing member or fund manager and 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 (g) an investment fund, limited liability company, limited partnership or general partnership which is substantially comprised (other than the manager) of non-U.S. Persons making an investment to qualify for the United States EB-5 Immigrant Investor Program. 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) 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 the Required Threshold, (B) an institution insured by the Federal Deposit Insurance Corporation and having a combined capital and surplus of at least the Required Threshold, 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 ("S&P"), Moody's Investors Services, Inc. ("Moody's"), Fitch, Inc. ("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 "CSSI", (B) in the case of S&P, being on the list of approved special servicers 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. In all of the above cases, any Person shall qualify as an Institutional Lender only if it shall (I) be subject (X) by law or by consent to service of process within the State of New York and (Y) to the supervision of (1) the Comptroller of the Currency or the Department of Labor of the United States or the Federal Home Loan Bank Board or the Department of Financial Services or the Comptroller of the State of New York, or the Board of Regents of the University of the State of New York, or the Comptroller of New York City or any successor to any of the foregoing agencies or officials, or (2) any agency or official exercising comparable functions on behalf of any other state within the United States, or (3) in the case of a commercial credit corporation, the laws and regulations of the state of its incorporation, or (4) any federal, state or municipal agency or public benefit corporation or public authority advancing or insuring mortgage loans or making payments that, in any manner, assist in the financing, development, operation and maintenance of improvements, and (II) have individual or combined assets, as the case may be, of not less than the Required Threshold. 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.

**Land** shall mean that certain lot, piece or parcel of land located at the northeast corner of the area between 31<sup>st</sup> and 33<sup>rd</sup> Streets and between 9<sup>th</sup> and 10<sup>th</sup> Avenues in the Borough of Manhattan, Block 729 and Lot 60, generally known as 401 9<sup>th</sup> Avenue, New York, New York 10001, all as more particularly described in Exhibit A - "Description of the Land", together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto; but excluding, however, any real property or interest therein released pursuant to Section 8.10(c).

**Land Square Footage** shall mean approximately 65,034 square feet.

**Legal Requirements** shall mean the Constitutions of the United States and the State of New York and all laws, statutes, codes, acts, ordinances, resolutions, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, certificates of occupancy, directions and requirements (including zoning, land use, planning, environmental protection, air, water and land pollution, toxic wastes, hazardous wastes, solid wastes, wetlands, health, safety, equal opportunity, minimum wage, living 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 BOP NE Tower Lessee 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 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 Loans** shall mean each Mortgage Loan, if any, referred to in the Project Finance Plan, together with any subsequent mortgage loan provided by a Mortgagee.

**Mortgage Notes** shall mean each mortgage note, if any, referred to in the Project Finance Plan, together with any subsequent mortgage notes provided by 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.

**Mortgages** shall mean each mortgage, if any, referred to in the Project Finance Plan, 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. For the avoidance of doubt, however, the PILOT Mortgages shall not constitute a Mortgage.

**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) incurred in the collection thereof.

**Non-Qualified USF** shall mean the Usable Square Footage of the Improvements that are occupied by Tenants and/or sublessees in violation of Section 8.9(f).

**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.

**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 Ground Lease, 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 and any modifications thereto, and the ZLDA and the POA and any modifications thereto, that, in each case, 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 (it being agreed that the Agency will provide, and request HYIC to provide, any consents or waivers in recordable form that are required to execute the same);

(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; and

(xv) any other lien, security interest, encumbrances or charge approved in writing by the Agency from time to time, in its reasonable discretion, including, without limitation, any Construction Development Agreement approved in accordance with Section 8.10(e).

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

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

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

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

**PILOT Assignment and Agreement** shall mean the PILOT Assignment and Agreement, dated as of December 1, 2006, 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, Fee and Leasehold PILOT Mortgage No. 1, dated the Commencement Date, from the Lessee, the Ground Lessor and the Agency, as mortgagors, to the Agency, as mortgagee, in the aggregate principal amount of \$25,000,000, Fee and Leasehold PILOT Mortgage No. 2, dated the Commencement Date, from the Lessee, the Ground Lessor and the Agency, as mortgagors, to the Agency, as mortgagee, in the aggregate principal amount of \$402,000,000, and Fee and Leasehold PILOT Mortgage No. 3, dated the Commencement Date, from the Lessee, the Ground Lessor and the Agency, as mortgagors, to the Agency, as mortgagee, in the aggregate principal amount of \$402,000,000, 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.

**POA** shall mean that certain Declaration Establishing the Manhattan West Owners Association and of Covenants, Conditions, Easements and Restrictions, dated as of December 18, 2014.

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

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

**Principals** shall mean, with respect to any Entity, (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. Notwithstanding the foregoing, a Principal shall not be deemed to include, solely in the case of a partnership engaged in the provision of professional



services (e.g., law firms, accounting firms or similar professional partnerships), any of such partnership's partners (including equity and "non-equity" partners), shareholders, members or other holders of a beneficial interest therein.

**Project** shall mean the construction of the Project Improvements by the Lessee.

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

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

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

**Project Documents** shall mean the Company Lease, this Agreement, the 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 Finance Plan** shall mean the plan for financing of the costs of the Project set forth in Exhibit H – "Project Finance Plan".

**Project Improvements** shall mean all buildings, structures, foundations, related facilities, fixtures and other improvements comprising the initial construction of an approximately 2,000,000 gross square foot, Class A office building, which may include up to approximately 100,000 gross square feet of retail space.

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

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

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

**Qualified Workforce Program** means a training or workforce development program that serves youth, disadvantaged populations or traditionally hard-to-employ populations and that has been determined to be a Qualified Workforce Program by the Director of the Mayor's Office of Workforce Development.

**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".

**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 Lessee, 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 Lessee, 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.

**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.

**ZLDA** shall mean that certain Amended and Restated Zoning Lot Development Agreement made between BOP West 31st Street LLC and Brookfield Properties W 33rd Co. L.P., dated as of December 15, 2014.

**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.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

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

(a) The Agency is a corporate governmental agency constituting a body corporate and politic and a public benefit corporation duly organized and existing under the laws of the State.

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

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

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

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

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

(c) The execution, delivery and performance of this Agreement and each other Project Document to which the Lessee is or shall be a party and the consummation of the transactions herein and therein contemplated will not (x) violate any provision of law, any order of any court or agency of government, or any of the Lessee's Organizational Documents, or any indenture, agreement or other instrument to which the Lessee is a party or by which it or any of its property is bound or to which it or any of its property is subject, (y) be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument or (z) result in the imposition of any lien, charge or encumbrance of any nature whatsoever other than Permitted Encumbrances.

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

(f) The transactions contemplated by this Agreement shall not result in the removal of any Facility 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.

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

(h) No funds of the Agency shall be used by the Lessee in connection with the transactions contemplated by this Agreement for the purpose of preventing the establishment of an industrial or manufacturing plant or for the purpose of advertising or promoting materials which depict

elected or appointed government officials in either print or electronic media, nor shall any funds of the Agency be given hereunder to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State.

(i) The Facility Realty will be an Approved Facility and a qualified “project” within the meaning of the Act.

(j) 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.

(k) The Project will be designed, and the operation of the Facility Realty will be, in compliance with all applicable Legal Requirements.

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

(m) The Lessee has delivered to the Agency a true, correct and complete copy of the Environmental Audit.

(n) The Lessee has not used 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, and except as set forth in the Environmental Audit, to Lessee’s knowledge, no prior owner or occupant of the Facility Realty has used Hazardous Materials on, from, or affecting the Facility Realty in any manner that violates any applicable Legal Requirements.

(o) The Project Cost Budget attached as Exhibit E – “Project Cost Budget” represents a true, correct and complete budget as of the Commencement Date of the proposed costs of the Project; the Estimated Project Cost is a fair and accurate estimate of the Project Cost as of the Commencement Date; and that portion of the Estimated Project Cost as shall not derive from Mortgage Loans shall be provided from the sources set forth on Exhibit E - “Project Cost Budget”. The Lessee has no reason to believe as of the Commencement Date that funds or financing sufficient to complete the Project will not be obtainable.

(p) The amounts provided or to be provided to the Lessee pursuant to the Mortgage Loans, together with other moneys available to the Lessee, are anticipated as of the Commencement Date to be sufficient to pay all costs in connection with the completion of the Project.

(q) Subject to Section 11.3, all of the Land comprises one (1) complete tax lot and no portion of any single tax lot(s).

(r) The Land Square Footage is true and correct.

(s) Upon completion of the Project Improvements, the zoning square footage of the Project Improvements will exceed 1,000,000 zoning square feet (as determined by reference to the “floor area” of such Project Improvements as such term is defined in the Zoning Resolution of the City of New York).

(t) The Fiscal Year is true and correct.

(u) 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.

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

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

(x) Upon completion of the Project Work, the zoning square footage of the Project Improvements will not exceed the Maximum Zoning Square Footage. Upon completion of the Project Work, the gross square footage of the Project Improvements constituting retail space shall not exceed 100,000 gross square feet. Lessee hereby acknowledges that the Agency and HYIC materially relied on the foregoing representations in determining the amounts of the Agency Project Fee and the HYIC Project Fee.

### **ARTICLE III**

#### **LEASEHOLD INTEREST CONVEYED TO THE AGENCY; THE PROJECT; MAINTENANCE; REMOVAL OF PROPERTY AND TITLE INSURANCE**

##### **Section 3.1. The Company Lease.**

(a) Pursuant to the Company Lease, the Lessee has leased to the Agency the Land, and all rights or interests therein or appertaining thereto, together with all improvements existing thereon or therein as of the 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 as part of the Project 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. Intentionally Omitted.**

**Section 3.3. Manner of Project Completion.**

(a) The Lessee shall (i) complete, or cause to be completed, at least twenty percent (20%) of the Project Work (calculated based on actual expenditures of hard costs of the Project) within two (2) years after the Commencement Date, and (ii) complete the Project Work, or cause the Project Work to be completed, by the Completion Deadline, in each case, subject to delays in the Project Work (A) caused by “*force majeure*”, as such term is defined in Section 11.1 hereof and/or (B) in connection with any default by Lessee hereunder, subject to diligent proceedings to cure such default and to complete the Project Work by any lender or mortgagee of Lessee or any joint venture partner of the direct and/or indirect owners of Lessee; provided, however, that subject to the provisions of Section 3.3(h) hereof, the Lessee may revise the scope of the Project Work in the ordinary course of construction.

(b) Intentionally omitted.

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

(d) The Lessee shall pay (i) all of the costs and expenses in connection with the preparation of any instruments of conveyance, the delivery thereof and of any instruments and documents relating thereto and the filing and recording of any such instruments of conveyance or other instruments or documents, if required, (ii) all taxes and charges payable in connection with the vesting with the Agency of a leasehold estate in the Facility Realty or attributable to periods prior to such vesting, as set forth in Section 3.1, and (iii) all shipping and delivery charges and other expenses or claims incurred in connection with the Project Work.

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

(f) Upon completion of the Project Work, the Lessee shall (y) deliver to the Agency the Final Project Cost Budget, which budget will include a comparison with the Project Cost Budget, and indicate the source of funds (i.e., borrowed funds, equity, etc.) for each cost item and (z) evidence completion of the Project by delivering to the Agency a certificate of an Authorized Representative of the

Lessee in substantially the form set forth in Exhibit G – “Form of Project Completion Certificate”, together with all attachments required thereunder.

(g) Upon request by the Agency (which request shall be limited to once per quarter), the Lessee shall make available to the Agency copies of any bills, invoices or other evidences of costs as shall have been incurred in the effectuation of the Project Work.

(h) In the event that the aggregate costs of the Project Work upon the completion thereof shall be significantly different from the estimated costs thereof set forth in the Project Cost Budget (i.e., more than a ten percent (10%) difference in either total Project costs or in major categories of Project Work cost), on request of the Agency, the Lessee shall provide evidence to the reasonable satisfaction of the Agency as to the reason for such discrepancy, and that the scope of the Project Work as originally approved by the Agency has not been modified in a material manner without the prior written consent of the Agency.

(i) Upon substantial completion of the Project Work, the Lessee shall deliver to the Agency (x) certified architectural plans showing the Usable Square Footage of the Project Improvements and (y) an architect’s certification of the zoning square feet of the Project Improvements (as determined by reference to the “floor area” of such Project Improvements as such term is defined in the Zoning Resolution of the City of New York), based upon the final plans and specifications for the Project as submitted to the New York City Department of Buildings. If the Lessee makes Capital Improvements, the Lessee shall within twenty (20) business days of completion of the Capital Improvements deliver to the Agency revised certified architectural plans showing the updated Usable Square Footage of the Improvements.

(j) Until the twentieth anniversary of the expiration of the Construction Period, the Lessee will not permit the zoning square footage of the Project Improvements to exceed the Maximum Zoning Square Footage.

(k) Until the twentieth anniversary of the expiration of the Construction Period, the Lessee will not permit the gross square footage of the Project Improvements that constitutes retail space to exceed 100,000 gross 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, 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 following the Completion Deadline 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 (as defined in Section 5.2(a)), 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 (y) 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 which for purposes of this Section 3.8 will only include in subsection (i) of the definition of Permitted Encumbrances (as set forth in Section 1.1 above) the Mortgages which are subject and subordinate to the PILOT Mortgages, and (z) a current or updated survey of the Land certified to the Lessee, the title company issuing such title insurance policy and the Agency. The title insurance policies shall be subject only to Permitted Encumbrances as defined in the previous sentence hereof 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 \$25,000,000 insuring the Agency's and HYIC's interests under the most senior PILOT Mortgage as holder of a first mortgage lien(s) on the Facility Realty, the Ground Lease, the Company Lease and this Agreement, subject only to Permitted

Encumbrances as defined in subsection (a) above. The title insurance policy shall be subject only to Permitted Encumbrances as defined in subsection (a) above 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 the Project has been completed as provided in this Agreement and 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 OR THE EXTENT TO WHICH FUNDS AVAILABLE TO THE LESSEE WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE PROJECT. 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) The following capitalized terms shall have the respective meanings specified below:

**Exempt Mortgage** shall mean any Mortgages, the recording of which is 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 Mortgage Recording Taxes that would have been due had such Exempt Mortgage not been exempt from Mortgage Recording Taxes by reason of the Agency being a mortgagor thereunder (the “**PILOMRT Amount**”).

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

**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 1,750,000 zoning square feet (as determined by reference to the "floor area" of the Project Improvements as such term is defined in the Zoning Resolution of the City of New York).

**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 2016 relates to the semi-annual period commencing on July 1, 2016 and ending on December 31, 2016). 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, 2016 to December 31, 2016 is due June 22, 2016). 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, 2016.

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

(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.

(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.

<b><u>For each City Tax Fiscal Year occurring within:</u></b>	<b><u>CCP PILOT for such City Tax Fiscal Year:</u></b>	<b><u>PILOT Amount for such City Tax Fiscal year:</u></b>
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	75% 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	75% 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	75% 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	75% 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) 80% of CCP Taxes	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) 85% of CCP Taxes	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) 90% of CCP Taxes	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 and (b) 95% of CCP Taxes	CCP PILOT for such City Tax Fiscal Year <u>plus</u> Other 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 <u>plus</u> Other Improvements Taxes for such City Tax Fiscal Year
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(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 2016 relates to the semi-annual period commencing on July 1, 2016 and ending on December 31, 2016), (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, 2016 to December 31, 2016 is due June 22, 2016), 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](mailto: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) or Section 3.3(j) 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 Section 8.9(f) hereof, the Agency may as its sole and exclusive remedy for such Event of Default (but not precluding the Agency from exercising any other remedies if there is an Event of Default arising under any other section of this Agreement), increase PILOT on that portion of the Facility Realty occupied by a Tenant in violation of Section 8.9(f) 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 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 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(j) hereof, the Agency may as its sole and exclusive remedy for such Event of Default (but not precluding the Agency from exercising any other remedies if there is an Event of Default arising under any other section of this Agreement), 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(j) 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 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, 2016 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 a 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 the Approved Project Operations. 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. Mortgage Override.** Notwithstanding anything to the contrary in this Agreement, in the event that 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 VI (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.** The following capitalized terms shall have the respective meanings specified below:

**Certificate** means an ACORD certificate evidencing insurance.

**CGL** means commercial general liability insurance.

**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), 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, and/or (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.

**Construction Required Amount** means, with respect to any Construction, an amount equal to twice the cost of such Construction, up to a total amount of \$50,000,000.

**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.

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



**Initial Construction** means the initial construction of 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 the Project Work or any other construction, reconstruction, restoration, alteration and/or repair required under this Agreement in connection with the Facility Realty.

**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.

**OCIP/CCIP** means an owner-controlled or contractor-controlled insurance program consented to by the Agency, which consent shall not be unreasonably withheld so long as the coverage provided under such owner-controlled or contractor-controlled insurance program meets the requirements of this Section 8.1. The Agency may consider the total number of projects being insured under an OCIP/CCIP in connection with consenting to such OCIP/CCIP.

**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, 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 \$150,000,000 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, which shall include coverage 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 the foregoing, 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 certification 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 Initial Construction and Periods of Construction. In connection with the Initial Construction or any Construction and throughout any period of the Initial Construction or Construction, the Lessee shall cause the following insurance requirements to be satisfied:

(i) Subject to Section 8.1(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 for the Initial Construction and the Required Construction Amount during any period of Construction, in each case, per project 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 for the Initial Construction and the Required Construction Amount during any period of Construction, in each case per project aggregate, and (y) completed operations coverage shall extend (or be extended) for an additional five (5) 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(c)(ii);

(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) The deductible for each Policy shall be commercially reasonable.

(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) employer's liability coverage;

(C) coverage for claims arising under New York Labor Law;

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

(E) 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 the Agency as an 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 Department of Financial Services 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) at the Commencement Date, (y) prior to the expiration or sooner termination of Policies, and (z) prior to the commencement of any Construction. If the Certificate in question evidences CGL or U/E, 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, employer’s liability or waiver-of-subrogation provisions thereof, and contains no endorsement limiting or excluding coverage for claims arising under New York Labor Law, covering the following premises: 401 9<sup>th</sup> Avenue, New York, New York 10001;*

(ii) CGL and U/E. With respect to CGL or U/E 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 an insurance company binder that includes the schedule of forms and endorsements pertinent thereto, provided that the Insured shall deliver any applicable endorsements evidencing the satisfaction of the requirements of this Section 8.1 to the Agency within thirty (30) days after the delivery of such insurance company binder.

(B) Upon the expiration or sooner termination of any CGL or U/E, the Insured shall deliver to the Agency an insurance company binder that includes the schedule of forms and endorsements pertinent to the new or replacement Policy, provided that the Insured shall deliver any applicable endorsements evidencing the satisfaction of the requirements of this Section 8.1 to the Agency within thirty (30) days after the delivery of such insurance company binder.

(C) Prior to the commencement of any Construction, the Insured shall deliver to the Agency an insurance company binder that includes the schedule of forms and endorsements pertinent to the relevant Policies under which the Insured is to be the primary insured during the period of such Construction, provided that the Insured shall deliver any applicable endorsements evidencing the satisfaction of the requirements of this Section 8.1 to the Agency within thirty (30) days after the delivery of such insurance company binder.

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

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

(iii) If, in accordance with the terms and conditions of this Section 8.1, 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 INSUREDS AND THEIR OPERATIONS AGAINST CLAIMS AND LIABILITY.

(i) The Lessee may provide the CGL, U/E and Workers' Compensation coverage required by this Section 8.1 through an OCIP/CCIP, provided that the insurance coverages under such program are consistent in all respects with the requirements of this Section 8.1.

## **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 (collectively, the "**Indemnified Parties**" and each an "**Indemnified Party**") harmless of, from and against any and all claims (whether in tort, contract or otherwise), taxes (of any kind and by whomsoever imposed), demands, penalties, fines, liabilities, lawsuits, actions, proceedings, settlements, costs and expenses, including attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses (collectively, "**Claims**") of any kind for losses, damage, injury and liability (collectively, "**Liability**") of every kind and nature and however caused (except, with respect to any Indemnified Party, Liability arising from the gross negligence or willful misconduct of such Indemnified Party), arising during the period commencing on the Indemnification Commencement Date, and continuing throughout the term of this Agreement, arising upon, about, or in any way connected with the Facility Realty, the Project, or any of the transactions with respect thereto, including:

- (i) the financing of the costs of the Facility Realty or the Project,
- (ii) the planning, design, acquisition, site preparation, Project Work, construction, renovation, equipping, installation or completion of the Project or any part thereof

or the effecting of any work done in or about the Facility 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 Commencement Date, the Lessee shall pay (i) to the Agency, the initial Annual Administrative Fee and the Agency Project Fee, and (ii) to HYIC, the HYIC Project Fee.

(c) On each Mortgage Date, the Lessee shall pay to HYIC the applicable 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 Land 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 \$25,000,000 insuring such mortgagee's interests under such PILOT Mortgage as holder of a first mortgage lien on the Facility Realty, the Ground Lease, the Company Lease and this Agreement, subject only to Permitted Encumbrances as defined in Section 3.8(a) above, 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) On or before the Commencement Date, the Lessee shall provide to the Agency a letter from the Environmental Auditor addressed to the Agency, stating that the Agency may rely upon the Environmental Audit as if it was prepared for the Agency in the first instance.

(b) 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.

(c) 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.

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

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

**Section 8.7. Employment Matters.**

(a) Except as is otherwise provided by collective bargaining contracts or agreements, new employment opportunities 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 the initial construction of the Project Improvements and 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 any reasonable request of the Agency for the purposes of investigation to ascertain compliance with this Section.

#### **Section 8.9. Assignment or Sublease.**

(a) Prior to the date that the Project Work is completed (as evidenced by the Agency’s receipt of the certificate delivered by the Lessee pursuant to Section 3.3(f)), the Lessee may not transfer or assign its interest under this Agreement without the written consent of the Agency, except (w) as set forth in Section 8.9(g) hereof or (x) to an entity that is Controlled by Brookfield Office Properties Inc., so long as the Specified Conditions (as defined below) are satisfied. The Lessee may, without the consent of the Agency, (y) assign this Agreement, the Ground Lease, and the other Project Documents from and after the date that the Project Work is completed (as evidenced by the Agency’s receipt of the certificate delivered by the Lessee pursuant to Section 3.3(f)) or (z) sublet all or substantially all of the Facility Realty, provided that in either case the following conditions (collectively, the “**Specified Conditions**”) are satisfied:

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

(1) Except in the case of an assignment 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 original 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 Agreement 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, the Ground Lease, 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, the Ground Lease, 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 for individual condominium units);

(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, the Ground Lease, 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 (which may be redacted to maintain the confidentiality of financial and other sensitive terms).

(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 the Agency may, as its sole and exclusive remedy (but not precluding the Agency from exercising any other remedies if there is an Event of Default arising under any other section of this Agreement), adjust 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, the Lessee shall have the right, without the consent of the Agency, to (A) mortgage, pledge or otherwise hypothecate the Lessee's interest in this Agreement and the other Project Documents, and (B) to pledge the direct or indirect equity interests in the Lessee, in each case to a Mortgagee or Mezzanine Lender. Upon the request of the 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 the Lessee's interest in this Agreement and other Project Documents or a Mezzanine Lender to foreclose on the equity interest in the 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.

**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 Land (on which none of the Improvements, including the buildings, structures, major appurtenances, fixtures or other property comprising the Facility Realty, is situated), provided that such release and removal will not adversely affect the use or operation of the 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.

(e) In addition, the Agency hereby acknowledges and agrees that, notwithstanding anything to the contrary contained in this Agreement or any other Project Document, the Lessee may enter into, amend, restate, supplement or otherwise modify and record certain construction development agreements and similar documents with the City Register against the Manhattan West Development, including, without limitation, the Facility Realty (each, a "Construction Development Agreement") with the Agency's prior approval; provided, that the Agency shall not unreasonably withhold, condition or delay its approval of any such document so long as it is substantially consistent with the parameters set forth on Exhibit K attached hereto.

#### **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(u) 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 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) Promptly following completion of the Project, but no later than twenty (20) Business Days following the receipt of a temporary or permanent certificate of occupancy with respect to the Facility Realty, the Lessee shall deliver to the Agency the certificate as to Project completion in substantially the form set forth in Exhibit G – “Form of Project Completion Certificate”.

(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 (other than the sublease of an individual condominium unit), 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 Work, 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 Ground Lease, 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 (including, without limitation, the Fair Wages for New Yorkers Act, constituting Section 6-134 of the New York City Administrative Code, the Earned Sick Time Act, constituting Chapter 8 of Title 20 of the New York City Administrative Code, and Section 6-130 of the New York City Administrative Code), 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) After the Completion Deadline, and 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, 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, the Ground Lease, 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, the Ground Lease, 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 Ground Lease and 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 Ground Lease and 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.

(c) The Control of the Lessee shall not change prior to the Completion Deadline, without the prior written consent of the Agency, except in connection with the exercise of remedies against Lessee by any lender or mortgagee of Lessee or any joint venture partner of the direct and/or indirect owners of Lessee.

**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. Signage at Facility Realty.** Upon commencement of the initial construction of the Project Improvements at the Facility Realty (including the commencement of any demolition and/or excavation), the Lessee shall erect on the Facility Realty, at its own cost and expense, within easy view of passing pedestrians and motorists, a large and readable sign with the following information upon it (hereinafter, the “Sign”):

*FINANCIAL ASSISTANCE PROVIDED  
THROUGH THE  
NEW YORK CITY INDUSTRIAL  
DEVELOPMENT AGENCY  
Mayor Bill de Blasio*

In addition, the Sign shall satisfy the following requirements: (x) format and appearance generally shall be as stipulated by the Agency in writing or electronically; (y) the minimum size of the Sign shall be four (4) feet by eight (8) feet; and (z) the Sign shall have no other imprint upon it other than that of the Agency. The Sign shall remain in place at the Facility Realty until completion of the initial construction. The Lessee may erect other signs in addition to the Sign.

**Section 8.23. Living Wage/Prevailing Wage.**

(a) Lessee acknowledges and agrees that it has received “financial assistance” as defined in the LW Law and agrees that it is a “covered developer” under and as defined in the Prevailing Wage Law. Lessee agrees to comply with all applicable requirements of the LW Law and the Prevailing Wage Law. Lessee acknowledges that the terms and conditions set forth in this Section 8.23 are intended to implement the Mayor’s Executive Order No. 7 dated September 30, 2014.

(b) The following capitalized terms shall have the respective meanings specified below for purposes hereof.

“Asserted Cure” has the meaning specified in Section 8.23(k)(i).

“Asserted LW Violation” has the meaning specified in Section 8.23(k)(i).

“Comptroller” means the Comptroller of The City of New York or his or her designee.

“Covered Counterparty” means a Covered Employer whose Specified Contract is directly with Lessee or one of its Site Affiliates to lease, occupy, operate or perform work at the Facility Realty.

“Covered Employer” means any of the following Persons: (a) Lessee, (b) a Site Affiliate, (c) a tenant, subtenant, leaseholder or subleaseholder of Lessee or of an Affiliate of Lessee that leases any portion of the Facility Realty (or an Affiliate of any such tenant, subtenant, leaseholder or subleaseholder if such Affiliate has one or more direct Site Employees), (d) a concessionaire that operates on any portion of the Facility Realty, and (e) a Person that contracts or subcontracts with any Covered Employer described in clauses (a), (b), (c) or (d) above to perform work for a period of more than ninety days on any portion of the Facility Realty, including temporary services or staffing agencies, food service contractors, and other on-site service contractors; provided, however, that the term “Covered Employer” shall not include (i) a Person of the type described in Section 6-134(d)(2), (3), (4) or (5) of the New York City Administrative Code, (ii) a Person that has annual consolidated gross revenues that are less than the Small Business Cap unless the revenues of the Person are included in the consolidated gross revenues of a Person having annual consolidated gross revenues that are more than the Small Business Cap, in each case calculated based on the fiscal year preceding the fiscal year in which the determination is being made, and in each calculated in accordance with generally accepted accounting principles, (iii) any otherwise covered Person operating on any portion of the Facility Realty if residential units comprise more than 75% of the total Facility Realty area and all of the residential units are subject to rent regulation, (iv) any otherwise covered Person that the Agency has determined (in its sole and absolute discretion) in writing to be exempt on the basis that it works significantly with a Qualified Workforce Program, (v) a Person whose Site Employees all are paid wages determined pursuant to a collective bargaining or labor agreement, (vi) a Person that is a “building services contractor” (as defined in the LW Law) so long as such Person is paying its “building service employees” (as defined in the Prevailing Wage Law) no less than the applicable “prevailing wage” (as defined in the Prevailing Wage Law), or (vii) a Person exempted by a Deputy Mayor of the City of New York in accordance with the Mayor’s Executive Order No. 7 dated September 30, 2014.

“DCA” means the Department of Consumer Affairs of the City of New York, acting as the designee of the Mayor of The City of New York, or such other agency or designee that the Mayor of The City of New York may designate from time to time.

“LW” has the same meaning as the term “living wage” as defined in Section 6-134(b)(9) of the New York City Administrative Code and shall be adjusted annually in accordance therewith, except that as of April 1, 2015, the “living wage rate” component of the LW shall be eleven dollars and sixty-five cents per hour (\$11.65/hour) and the “health benefits supplement rate” component of the LW shall be one dollar and sixty-five cents per hour (\$1.65/hour). The annual adjustments to the “living wage rate” and “health benefits supplement rate” will be announced on or around January 1 of each year by the DCA and will go into effect on April 1 of such year.

“LW Agreement” means, with respect to any Covered Counterparty, an enforceable agreement in the form attached hereto as Exhibit J (except only with such changes as are necessary to make such Covered Counterparty the obligor thereunder).

“LW Agreement Delivery Date” means, with respect to any Covered Counterparty, the later of (a) the effective date of such Covered Counterparty’s Specified Contract and (b) the date that such Covered Counterparty becomes a Covered Employer at the Facility Realty.

“LW Law” means the Fair Wages for New Yorkers Act, constituting Section 6-134 of the New York City Administrative Code, as amended, supplemented or otherwise modified from time to time, and all rules and regulations promulgated thereunder.

“LW Term” means the period commencing on the Commencement Date and ending on the later to occur of (a) the date on which 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 years after the building located at the Facility Realty commences operations.

“LW Violation Final Determination” has the meaning specified in Section 8.23(k)(i)(1), Section 8.23(k)(i)(2)(A) or Section 8.23(k)(i)(2)(B), as applicable.

“LW Violation Initial Determination” has the meaning specified in Section 8.23(k)(i)(2).

“LW Violation Notice” has the meaning specified in Section 8.23(k)(i).

“LW Violation Threshold” means \$100,000 multiplied by  $1.03^n$ , where “n” is the number of full years that have elapsed since January 1, 2015.

“Owed Interest” means the interest accruing on Owed Monies, which interest shall accrue from the relevant date(s) of underpayment to the date that the Owed Monies are paid, at a rate equal to the interest rate then in effect as prescribed by the superintendent of banks pursuant to Section 14-a of the New York State Banking Law, but in any event at a rate no less than six percent per year.

“Owed Monies” means, as the context shall require, either (a) the total deficiency of LW required to be paid by Lessee or a Site Affiliate in accordance with this Section 8.23 to Lessee’s or its Site Affiliate’s (as applicable) direct Site Employee(s) after taking into account the wages actually paid (which shall be credited towards the “living wage rate” component of the LW), and the monetary value of health benefits actually provided (which shall be credited towards the “health benefits supplement rate” component of the LW), to such direct Site Employee(s), all as calculated on a per pay period basis; or (b) if Lessee or its Site Affiliate failed to obtain a LW Agreement from a Covered Counterparty as required under Section 8.23(f) below, the total deficiency of LW that would have been required to be paid under such Covered Counterparty’s LW Agreement to its direct Site Employee(s) after taking into account the wages actually paid (which shall be credited towards the “living wage rate” component of the LW), and the monetary value of health benefits actually provided (which shall be credited towards the “health benefits supplement rate” component of the LW), to such direct Site Employee(s), all as calculated on a per pay period basis, during the period commencing on the LW Agreement Delivery Date applicable to such Covered Counterparty and ending immediately prior to the execution and delivery by such Covered Counterparty of its LW Agreement (if applicable).

“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.



“Qualified Workforce Program” means a training or workforce development program that serves youth, disadvantaged populations or traditionally hard-to-employ populations and that has been determined to be a Qualified Workforce Program by the Director of the Mayor’s Office of Workforce Development.

“Site Affiliates” means, collectively, all Affiliates of Lessee that lease, occupy, operate or perform work at the Facility Realty and that have one or more direct Site Employees.

“Site Employee” means, with respect to any Covered Employer, any natural person who works at the Facility Realty and who is employed by, or contracted or subcontracted to work for, such Covered Employer, including all employees, independent contractors, contingent workers or contracted workers (including persons made available to work through the services of a temporary services, staffing or employment agency or similar entity) that are performing work on a full-time, part-time, temporary or seasonal basis; provided that the term “Site Employee” shall not include any natural person who works less than seventeen and a half (17.5) hours in any consecutive seven day period at the Facility Realty unless the primary work location or home base of such person is at the Facility Realty (for the avoidance of doubt, a natural person who works at least seventeen and a half (17.5) hours in any consecutive seven day period at the Facility Realty shall thereafter constitute a Site Employee).

“Small Business Cap” means three million dollars; provided that, beginning in 2015 and each year thereafter, the Small Business Cap shall be adjusted contemporaneously with the adjustment to the “living wage rate” component of the LW using the methodology set forth in Section 6-134(b)(9) of the New York City Administrative Code.

“Specified Contract” means, with respect to any Person, the principal written contract that makes such Person a Covered Employer hereunder.

(c) During the LW Term, Lessee shall pay each of its direct Site Employees no less than an LW. During the LW Term, Lessee shall cause each of its Site Affiliates to pay their respective Site Employees no less than an LW.

(d) During the LW Term, Lessee shall, on or prior to the day on which each direct Site Employee of Lessee or of a Site Affiliate begins work at the Facility Realty, (i) post a written notice detailing the wages and benefits required to be paid to Site Employees under this Section 8.23 in a conspicuous place at the Facility Realty that is readily observable by such direct Site Employee and (ii) provide such direct Site Employee with a written notice detailing the wages and benefits required to be paid to Site Employees under this Section 8.23. Such written notice shall also provide a statement advising Site Employees that if they have been paid less than the LW they may notify the Comptroller and request an investigation. Such written notice shall be in English and Spanish.

(e) During the LW Term, neither Lessee nor any of its Site Affiliates shall take any adverse employment action against any Site Employee for reporting or asserting a violation of this Section 8.23.

(f) During the LW Term, Lessee shall cause each Covered Counterparty to execute an LW Agreement on or prior to the LW Agreement Delivery Date applicable to such Covered

Counterparty. Lessee shall deliver a copy of each Covered Counterparty's LW Agreement to the Agency, the DCA and the Comptroller at the notice address specified in Section 11.5 and promptly upon written request. Lessee shall retain copies of each Covered Counterparty's LW Agreement until six (6) years after the expiration or earlier termination of such Covered Counterparty's Specified Contract.

(g) During the LW Term, in the event that an individual with managerial authority at Lessee or at a Site Affiliate receives a written complaint from any Site Employee (or such individual otherwise obtains actual knowledge) that any Site Employee has been paid less than an LW, Lessee shall deliver written notice to the Agency, the DCA and the Comptroller within 30 days thereof.

(h) Lessee hereby acknowledges and agrees that the City, the DCA and the Comptroller are each intended to be third party beneficiaries of the terms and provisions of this Section 8.23. Lessee hereby acknowledges and agrees that the DCA, the Comptroller and the Agency shall each have the authority and power to enforce any and all provisions and remedies under this Section 8.23 in accordance with paragraph (k) below. Lessee hereby agrees that the DCA, the Comptroller and the Agency may, as their sole and exclusive remedy for any violation of Lessee's (or any Site Affiliate's) obligations under this Section 8.23, bring an action for damages (but not in excess of the amounts set forth in paragraph (k) below), injunctive relief or specific performance or any other non-monetary action at law or in equity, in each case subject to the provisions of paragraph (k) below, as may be necessary or desirable to enforce the performance or observance of any obligations, agreements or covenants of Lessee (or of any Site Affiliate) under this Section 8.23. Notwithstanding anything in this Agreement to the contrary, no Event of Default under this Agreement shall occur by reason of Lessee's (or of any Site Affiliate's) default under this Section 8.23. The agreements and acknowledgements of Lessee set forth in this Section 8.23 may not be amended, modified or rescinded by Lessee without the prior written consent of the Agency or the DCA.

(i) No later than 30 days after Lessee's receipt of a written request from the Agency, the DCA and/or the Comptroller, Lessee shall provide to the Agency, the DCA and the Comptroller (i) a certification stating that all of the direct Site Employees of Lessee and its Site Affiliates are paid no less than an LW and stating that Lessee and its Site Affiliates are in compliance with this Section 8.23 in all material respects, (ii) a written list of all Covered Counterparties, together with the LW Agreements of such Covered Counterparties, (iii) certified payroll records in respect of the direct Site Employees of Lessee or of any Site Affiliate, and/or (iv) any other documents or information reasonably related to the determination of whether Lessee or any Site Affiliate is in compliance with their obligations under this Section 8.23.

(j) Annually, by August 1 of each year during the LW Term, Lessee shall (i) submit to the Agency a written report in respect of employment, jobs and wages at the Facility Realty as of June 30 of such year, in a form provided by the Agency to all projects generally, (ii) submit to the Agency and the Comptroller the annual certification required under Section 6-134(f) of the LW Law, and (iii) submit to the Agency and the Comptroller the annual certification required under Section 6-130(c) of the Prevailing Wage Law.

(k) Violations and Remedies.

(i) If a violation of this Section 8.23 shall have been alleged by the Agency, the DCA and/or the Comptroller, then written notice will be provided to Lessee for such alleged violation (an "LW Violation Notice"), specifying the nature of the alleged violation in such reasonable detail as is known to the Agency, the DCA and the Comptroller (the "Asserted LW Violation") and specifying the remedy required under Section 8.23(k)(ii), (iii), (iv), (v) and/or (vi) (as applicable) to cure the Asserted LW Violation (the "Asserted Cure"). Upon Lessee's receipt of the LW Violation Notice, Lessee may either:

(1) Perform the Asserted Cure no later than 30 days after its receipt of the LW Violation Notice (in which case a "LW Violation Final Determination" shall be deemed to exist), or

(2) Provide written notice to the Agency, the DCA and the Comptroller indicating that it is electing to contest the Asserted LW Violation and/or the Asserted Cure, which notice shall be delivered no later than 30 days after its receipt of the LW Violation Notice. Lessee shall bear the burdens of proof and persuasion and shall provide evidence to the DCA no later than 45 days after its receipt of the LW Violation Notice. The DCA shall then, on behalf of the City, the Agency and the Comptroller, make a good faith determination of whether the Asserted LW Violation exists based on the evidence provided by Lessee and deliver to Lessee a written statement of such determination in reasonable detail, which shall include a confirmation or modification of the Asserted LW Violation and Asserted Cure (such statement, a "LW Violation Initial Determination"). Upon Lessee's receipt of the LW Violation Initial Determination, Lessee may either:

(A) Accept the LW Violation Initial Determination and shall perform the Asserted Cure specified in the LW Violation Initial Determination no later than 30 days after its receipt of the LW Violation Initial Determination (after such 30 day period has lapsed, but subject to clause (B) below, the LW Violation Initial Determination shall be deemed to be a "LW Violation Final Determination"), or

(B) Contest the LW Violation Initial Determination by filing in a court of competent jurisdiction or for an administrative hearing no later than 30 days after its receipt of the LW Violation Initial Determination, in which case, Lessee's obligation to perform the Asserted Cure shall be stayed pending resolution of the action. If no filing in a court of competent jurisdiction or for an administrative hearing is made to contest the LW Violation Initial Determination within 30 days after Lessee's receipt thereof, then the LW Violation Initial Determination shall be deemed to be a "LW Violation Final Determination". If such a filing is made, then a "LW Violation Final Determination" will be deemed to exist when the matter has been finally adjudicated. Lessee shall perform the Asserted Cure (subject to the judicial decision) no later than 30 days after the LW Violation Final Determination.

(ii) For the first LW Violation Final Determination imposed on Lessee or any Site Affiliate in respect of any direct Site Employees of Lessee or of a Site Affiliate, at the direction of the Agency or the DCA (but not both), (A) Lessee shall pay the Owed Monies and Owed Interest in respect of such direct Site Employees of Lessee or of a Site Affiliate to such

direct Site Employees; and/or (B) in the case of a violation that does not result in monetary damages owed by Lessee, Lessee shall cure, or cause the cure of, such non-monetary violation.

(iii) For the second and any subsequent LW Violation Final Determinations imposed on Lessee or any Site Affiliate in respect of any direct Site Employees of Lessee or of a Site Affiliate, at the direction of the Agency or the DCA (but not both), (A) Lessee shall pay the Owed Monies and Owed Interest in respect of such direct Site Employees of Lessee or of a Site Affiliate to such direct Site Employees, and Lessee shall pay fifty percent (50%) of the total amount of such Owed Monies and Owed Interest to the DCA as an administrative fee; and/or (B) in the case of a violation that does not result in monetary damages owed by Lessee, Lessee shall cure, or cause the cure of, such non-monetary violation.

(iv) For the second and any subsequent LW Violation Final Determinations imposed on Lessee or any Site Affiliate in respect of any direct Site Employees of Lessee or of a Site Affiliate, if the aggregate amount of Owed Monies and Owed Interest paid or payable by Lessee in respect of the direct Site Employees of Lessee or of a Site Affiliate is in excess of the LW Violation Threshold for all past and present LW Violation Final Determinations imposed on Lessee or any Site Affiliate, then in lieu of the remedies specified in subparagraph (iii) above and at the direction of the Agency or the DCA (but not both), Lessee shall pay (A) two hundred percent (200%) of the Owed Monies and Owed Interest in respect of the present LW Violation Final Determination to the affected direct Site Employees of Lessee or of a Site Affiliate, and (B) fifty percent (50%) of the total amount of such Owed Monies and Owed Interest to the DCA as an administrative fee.

(v) If Lessee fails to obtain an LW Agreement from its Covered Counterparty in violation of paragraph (f) above, then at the discretion of the Agency or the DCA (but not both), Lessee shall be responsible for payment of the Owed Monies, Owed Interest and other payments described in subparagraphs (ii), (iii) and (iv) above (as applicable) as if the direct Site Employees of such Covered Counterparty were the direct Site Employees of Lessee.

(vi) Lessee shall not renew the Specified Contract of any specific Covered Counterparty or enter into a new Specified Contract with any specific Covered Counterparty if both (A) the aggregate amount of Owed Monies and Owed Interest paid or payable by such Covered Counterparty in respect of its direct Site Employees for all past and present LW Violation Final Determinations (or that would have been payable had such Covered Counterparty entered into an LW Agreement) is in excess of the LW Violation Threshold and (B) two or more LW Violation Final Determinations against such Covered Counterparty (or in respect of the direct Site Employees of such Covered Counterparty) occurred within the last 6 years of the term of the applicable Specified Contract (or if the term thereof is less than 6 years, then during the term thereof); provided that the foregoing shall not preclude Lessee from extending or renewing a Specified Contract pursuant to any renewal or extension options granted to the Covered Counterparty in the Specified Contract as in effect as of the LW Agreement Delivery Date applicable to such Covered Counterparty.

(vii) It is acknowledged and agreed that (A) other than as set forth in Section 8.2, the sole monetary damages that Lessee may be subject to for a violation of this Section 8.23 are as set forth in this paragraph (k), and (B) in no event will the Specified Contract between Lessee and a given Covered Counterparty be permitted to be terminated or rescinded by the Agency, the DCA or the Comptroller by virtue of violations by Lessee or another Covered Counterparty.

(l) The terms and conditions set forth in this Section 8.23 shall survive the expiration or earlier termination of this Agreement.

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

(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(u);

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

(o) A default which after expiration of any notice and cure periods under the Ground Lease shall occur and be continuing.

**Section 9.2. Remedies on Default.** (a) Whenever any Event of Default referred to in Section 9.1 shall have occurred and be continuing, the Agency may 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, 8.23, 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(U) 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.

(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 following the rejection of this Agreement by the Lessee 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 Mortgage 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.

## 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, 8.23, 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 foreseeable and that is 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, (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 fifteen (15) 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; Conversion to Condominium Form of Ownership; Termination of Ground Lease.**

(a) This Agreement may only be amended by a written instrument executed and delivered by the parties hereto, subject to the consent of the Initial Mortgagee, not to be unreasonably withheld, conditioned or delayed.

(b) The parties acknowledge the Lessee may subject the Facility Realty to a condominium regime (a “**Severance**” and the severed portion of the Facility Realty, a “**Severed Portion**”). Notwithstanding anything to the contrary herein, in connection with a 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); and (ii) a new or severed Agreement, Company Lease 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. Following such 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 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 Severances contemplated by this Agreement and to exempt the recording of any new or restated PILOT Mortgages from Mortgage Recording Taxes.

(c) Notwithstanding anything contained herein to the contrary, (x) upon 30 days advance written notice to the Agency and HYIC, the Ground Lessor may and shall be authorized to transfer the Ground Lessor’s interest in the Mortgaged Property to the Lessee, following which the fee and leasehold estates may merge and the Lessee may terminate the Ground Lease and/or (y) on or after the date of any foreclosure or transfer in lieu of foreclosure pursuant to which any Mortgagee or any nominee or assignee thereof (a “Foreclosure Transferee”) acquires title to the Ground Lessor’s fee estate in the real property upon which the Project is located, such Foreclosure Transferee may, upon written

notice to the Agency and HYIC, terminate the Ground Lease (any such termination under the foregoing clause (x) or (y), the “Ground Lease Termination”), provided that (i) the validity of the Company Lease and this Agreement shall remain in full force and effect (the parties acknowledging that the Company Lease shall be a direct lease from the Lessee (or Foreclosure Transferee, as applicable) to the Agency, and this Agreement shall be a direct sublease from the Agency to the Lessee (or Foreclosure Transferee, as applicable)) and said Ground Lease Termination shall not affect the rights or obligations of the parties under the Company Lease and this Agreement; (ii) the validity of the PILOT Mortgages and the lien, security interest and charges as well as the priority of such PILOT Mortgages shall remain in full force and effect and their priority as being first and senior to all other Mortgages shall not be impaired and the rights of the mortgagee under such PILOT Mortgages shall not be impaired and the PILOT Mortgages shall continue to cover and secure all of the obligations secured thereby prior to such Ground Lease Termination; (iii) the PILOT Mortgages shall, ipso facto, without the necessity of any further conveyance, simultaneously with the Ground Lease Termination, attach to and cover the fee title or any other estate, title or interest in the Mortgaged Property acquired or transferred to the Lessee (or Foreclosure Transferee, as applicable), and the same shall be considered as granted, released, assigned, transferred, pledged, conveyed and set over to the Lessee (or Foreclosure Transferee, as applicable), and the PILOT Mortgages shall be spread to cover such estate with the same force and effect as though specifically herein granted, released, assigned, transferred, pledged, conveyed, set over and spread; (iv) the Lessee (or Foreclosure Transferee, as applicable) shall pay any and all transfer, recording or other taxes in connection therewith; (v) counsel to the Lessee (or Foreclosure Transferee, as applicable) shall provide an opinion addressed to the Agency and HYIC to such effect and in form and substance reasonably acceptable to the Agency and HYIC; (vi) the Lessee (or Foreclosure Transferee, as applicable) at its sole cost and expense shall obtain title insurance coverage for the benefit of the Agency and HYIC with respect to and confirming the foregoing requirements; and (vii) the Ground Lessor shall waive and renounce any and all right, title or interest in and to the Mortgaged Property and any and all rights of redemption now or hereafter operable under any law with respect thereto. Upon the request of the Agency or HYIC, the Ground Lessor and the Lessee (or Foreclosure Transferee, as applicable) (and such other parties as may be reasonably required) shall execute any instruments reasonably required by the Agency or HYIC to confirm that the Ground Lease Termination shall not affect the rights and obligations of the parties to the Company Lease, this Agreement and the PILOT Mortgages.

**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  
Executive Director of the Agency at the  
same address)

- (2) if to the Lessee, to

BOP NE Tower Lessee LLC  
c/o Brookfield Office Properties  
250 Vesey Street, 15<sup>th</sup> Floor  
New York, New York 10281  
Attention: General Counsel

with copies to

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

- (3) if to the Initial Mortgagee, to

HSBC Bank USA, National Association  
545 Washington Boulevard, 10th Floor  
Jersey City, New Jersey 07310  
Attention: Commercial Mortgage Servicing Department  
Facsimile: (212) 704-8499

with a copy to:

HSBC Bank USA, National Association  
452 Fifth Avenue, 4th Floor  
New York, New York 10018  
Attention: Commercial Mortgage Servicing Department  
Facsimile: (212) 525-1152



(4) If to the DCA, to

Department of Consumer Affairs of the City of New York  
42 Broadway  
New York, NY, 10004  
Attention: Living Wage Division

(5) If to the Comptroller, to

Office of the Comptroller of the City of New York  
One Centre Street  
New York, NY 10007  
Attention: Chief, Bureau of Labor Law

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. Prior Agreements Superseded.** This Agreement shall completely and fully supersede all other prior understandings or agreements, both written and oral, between the Agency and the Lessee relating to the Facility Realty, other than the Company Lease, any other Project Document or that certain letter agreement dated as of April 14, 2015, by the Deputy Mayor for Housing and Economic Development and the Agency for the benefit of Lessee and the other Covered Employers.

**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 and the Indemnified Parties.

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

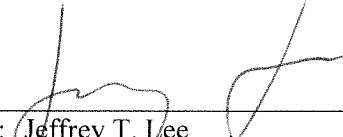
**Section 11.16. Confidentiality.** The Agency acknowledges that the Lessee has provided and will be hereafter providing confidential information, including trade secrets and proprietary information, the disclosure of which may be harmful to the Lessee's or its Tenants' competitive position. Accordingly, 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.

[Signature Page Follows]

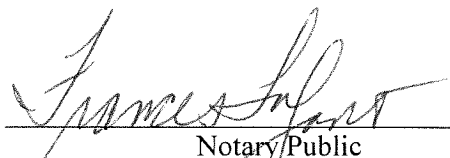
**IN WITNESS WHEREOF**, the Agency has caused its corporate name to be subscribed unto this Agency Lease Agreement by its duly authorized Chairman, Vice Chairman, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs and the Lessee has caused its name to be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

**NEW YORK CITY INDUSTRIAL  
DEVELOPMENT AGENCY**

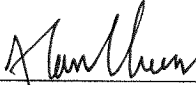
By:   
Name: Jeffrey T. Lee  
Title: Executive Director

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

On the 13 day of April, in the year 2015, before me, the undersigned, personally appeared **Jeffrey T. Lee**, 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.

  
\_\_\_\_\_  
Notary Public  
FRANCES TUFANO  
Notary Public, State of New York  
No. 01TUS080131  
Qualified in Queens County  
Commission Expires June 16, 2015

**BOP NE TOWER LESSEE LLC,**  
a Delaware limited liability company

By:   
Name: Alan Chun  
Title: Senior Vice President, Development

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

On the 7<sup>th</sup> day of April, in the year 2015, before me, the undersigned, personally appeared Alan Chun, personally known to me or proved to me on the basis of satisfactory evidence to me the individual whose name is subscribed to the within instrument and acknowledged to me that he/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

MARGARET GORDON  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01G06104465  
Qualified in Nassau County  
My Commission Expires January 20, 2016

Signature Page 2 of 2  
Agency Lease Agreement

## **APPENDICES**

**EXHIBIT A**

**DESCRIPTION OF THE LAND**

Legal Description.

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

Beginning at the corner formed by the intersection of the Southerly side of W. 33rd Street and the Westerly side of Ninth Avenue:

Running thence from said point of Beginning Southerly along the Westerly side of Ninth Avenue a distance of 202' 10 1/2";

Thence Westerly and parallel with W. 33rd Street along a line dividing Lot 60 and Lot 51 / Lot 50 a distance of 353' 8 1/4";

Thence Northerly and parallel with Ninth Avenue along a line dividing Lot 60 and Lot 61 a distance of 68' 1 1/2";

Thence Westerly and parallel with W. 33rd Street along a line dividing Lot 60 and Lot 61 a distance of 46' 3 3/4";

Thence Northerly and parallel with Ninth Avenue along a line dividing Lot 60 and Lot 61 a distance of 36' 0";

Thence Easterly and parallel with W. 33rd Street along a line dividing Lot 60 and Lot 163 a distance of 131' 3";

Thence Northerly and parallel with Ninth Avenue along a line dividing Lot 60 and Lot 163 a distance of 98' 9";

Thence Easterly along the Southerly line of W. 33rd Street a distance of 268' 9" to the corner first mentioned and the point or place of Beginning.

EXCEPTING, however, from the above described land the portion thereof described as follows:

All that certain plot, piece or parcel of land being below an Upper Plane Elevation of 312.00 as defined by the Penn Tunnel Datum, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

Commencing at the corner formed by the intersection of the Southerly side of W. 33rd Street and the Westerly side of Ninth Avenue, thence running Southerly along the Westerly side of Ninth Avenue a distance of 117' 9" to the point or place of Beginning:

Running thence from said point of Beginning Southerly along the Westerly side of Ninth Avenue a distance of 85' 1 1/2";

Thence Westerly and parallel with W. 33rd Street along a line dividing Lot 8060 and Lot 8051 / Lot 8050 a distance of 353' 8 1/4";



Thence Northerly and parallel with Ninth Avenue along a line dividing Lot 8060 and Lot 8061 a distance of 68' 1 1/2";

Thence Westerly and parallel with W. 33rd Street along a line dividing Lot 8060 and Lot 8061 a distance of 46' 3 3/4";

Thence Northerly and parallel with Ninth Avenue along a line dividing Lot 8060 and Lot 8061 a distance of 17' 0";

Thence Easterly and parallel with W. 33rd Street a distance of 136' 0";

Thence Southerly and parallel with Ninth Avenue a distance of 12' 4";

Thence Easterly and parallel with W. 33rd Street a distance of 186' 0";

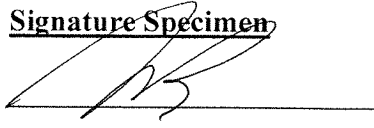
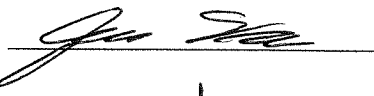

Thence Northerly and parallel with Ninth Avenue a distance of 12' 4";

Thence easterly and parallel with W. 33rd Street a distance of 78' 0" to the point or place of Beginning. Said lot being further limited to an Upper Plane Elevation of 312.00 as defined by the Penn Tunnel Datum.

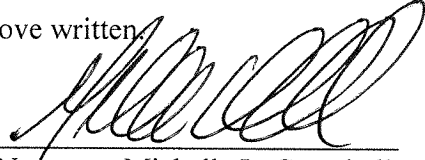
**EXHIBIT B**

**AUTHORIZED REPRESENTATIVES**

(See attached Incumbency Certificate)

<u>Name</u>	<u>Office</u>	<u>Signature Specimen</u>
G. Mark Brown	Global Chief Investment Officer	
Jason Kirschner	Senior Vice President, Finance	
Jonathan Kramer	Vice President & Associate Counsel	

I have executed this certificate on the date first above written

  
 Name: Michelle L. Campbell  
 Title: Vice President, Counsel and Secretary

The undersigned hereby certifies that he is the duly elected, qualified and acting Global Chief Investment Officer of the Company, and hereby further certifies that Michelle L. Campbell is the duly elected, qualified and acting Vice President, Counsel and Secretary of the Company and that the above signature is her genuine signature.

  
 Name: G. Mark Brown  
 Title: Global Chief Investment Officer

**PRINCIPALS OF THE LESSEE**

G. Mark Brown	Global Chief Investment Officer
Alan Chun	Senior Vice President, Development
Dennis Friedrich	CEO
BOP NE Tower Lessee Member	100% Owner

**EXHIBIT D**

**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>
BOP NE Tower Lessee Member LLC	100%

<b>OWNERS of those ENTITIES that own or control more than 10% of the Lessee ("10% Entities")</b>		
<b>10% ENTITY (name and actual %)</b>	<b>INDIVIDUAL AND ENTITY OWNERS</b>	<b>% Ownership or Control</b>
BOP NE Tower Lessee Member LLC	BOP Manhattan West REIT LLC	100%

**EXHIBIT E**

**PROJECT COST BUDGET<sup>1</sup>**

<b><u>Uses</u></b>	<b><u>\$ mil</u></b>	<b><u>Sources</u></b>	<b><u>\$ mil</u></b>
Land Acquisition	\$580	Construction Loan	\$1,250
New Construction	\$1,038	Equity	\$929
Soft Costs	\$446		
Capitalized Interest	\$114		
<b>Total</b>	<b>\$2,179</b>	<b>Total</b>	<b>\$2,179</b>

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<sup>1</sup> All amounts are approximate.

**[FORM OF REQUIRED DISCLOSURE STATEMENT]**

The undersigned, an authorized representative of \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_, DOES HEREBY CERTIFY, REPRESENT AND WARRANT to the New York City Industrial Development Agency (the “Agency”) pursuant to [Section 8.20] [Section 8.9] of that certain Agency Lease Agreement, dated as of April 1, 2015, between the Agency and BOP NE Tower Lessee LLC, a limited liability company organized and existing under the laws of the State of Delaware (the “Lease Agreement”) THAT:

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

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

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

(2) has been convicted of a 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.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**[NAME OF CERTIFYING ENTITY]**

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



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

The undersigned, an Authorized Representative (as defined in the Lease Agreement referred to below) of BOP NE Tower Lessee LLC, a limited liability company organized and existing under the laws of the State of Delaware (the “Lessee”), HEREBY CERTIFIES that this Certificate is being delivered in accordance with the provisions of Section 3.3(f) and 8.14(g) of that certain Agency Lease Agreement, dated as of April 1, 2015 (the “Lease Agreement”), between the New York City Industrial Development Agency (the “Agency”) and the Lessee, and FURTHER CERTIFIES THAT (capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in the Lease Agreement):

(i) the Project Work is finished and the Project Improvements have been completed substantially in accordance with the plans and specifications therefor and the date of completion of the Project Improvements was \_\_\_\_\_; and

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

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

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

(iv) other than as provided pursuant to “iii” preceding, there is no certificate, license, permit, written approval or consent, or other document required to permit the occupancy, operation and use of the Facility Realty as contemplated under the Lease Agreement; and

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

(vi) check as applicable:

- all costs for Project Work have been paid, or
- all costs for Project Work have been paid except for
  - amounts not yet due and payable (attach itemized list) and/or

- amounts the payments for which are being contested in good faith (attach itemized list with explanations; and

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

**[ATTACH to this Certificate copies of all such releases of liens.]**

(vii) attached to this Certificate is evidence that all real property taxes and assessments, and payments in lieu of taxes, if any, due and payable under the Section 5.2 of the Lease Agreement in respect of the Facility Realty have been paid in full;

(x) attached hereto is a current schedule of the aggregate Usable Square Footage for the Improvements and the aggregate Usable Square Footage for each floor of the Improvements;

(xi) the gross square footage of the Project Improvements constituting retail space does not exceed 100,000 gross square feet; and

(xii) the zoning square footage of the Project Improvements equals 1,750,000 zoning square feet (as determined by reference to the "floor area" of such Project Improvements as such term is defined in the Zoning Resolution of the City of New York).

***Notwithstanding anything herein or elsewhere that may be inferred to the contrary, the undersigned hereby understands and agrees on behalf of the Lessee as follows:*** (i) the Agency does not waive its right to require delivery of releases-of-liens in connection with the Cost of Work; and (ii) the Agency does not waive its right under the Lease Agreement to demand the discharge of mechanics' and materialmens' liens encumbering the Facility Realty, whether by bond or otherwise; and (iii) this Certificate shall be deemed incomplete if costs of the Project Work are due, unpaid, and not being contested in good faith; and (iv) this Certificate shall be deemed incomplete if, in the Agency's sole discretion, the Lessee is not contesting in good faith the payment of the Cost of Work when such payment is otherwise due; and (v) the Certificate shall be deemed incomplete if, in the Agency's sole discretion, the Lessee has unreasonably failed to bond or otherwise discharge the Cost of Work when payment for same is due.

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

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

BOP NE Tower Lessee LLC,  
a Delaware limited liability company

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

**PROJECT FINANCE PLAN**

The plan for financing the costs of the Project, which the Lessee estimates to be approximately \$2.18 billion, will come from the following sources:

- (i) a mortgage loan in the aggregate principal amount of \$1.25 billion to the Lessee as evidenced by certain project and building loan agreements dated on or about the date hereof entered into by Lessee, Wells Fargo Bank, N.A. as Administrative Agent, and those certain lenders a party thereto; and
- (ii) equity from the Lessee or its affiliates in the amount of approximately \$929 million.

**FORM OF SUBORDINATION NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this “Agreement”) made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between [\_\_\_\_\_] , whose address for notice under this Agreement is [\_\_\_\_\_] , acting on behalf of the Lenders (as defined below) (in such capacity, “Administrative Agent”), **NEW YORK CITY INDUSTRIAL AND 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 BOP NE Tower Lessee LLC, a Delaware limited liability company, whose address for notice under this Agreement is c/o Brookfield Office Properties, 250 Vesey Street, 15<sup>th</sup> Floor, New York, New York 10281 (the “Company”).

**Introductory Provisions**

A. The Company is a tenant under that certain Ground Lease, dated as of April 14, 2015 (as the same may be amended, restated, supplemented and otherwise modified from time to time, the “Ground Lease”), between the BOP NE LLC, as landlord, and the Company, as tenant, pursuant to which the Company leases all of the real property described on Exhibit A (the “Land”). Pursuant to the Ground Lease, the Company will construct certain improvements located on the Land (the “Improvements” and, together with the Land, the “Property”).

B. The Agency is the subtenant under that certain Company Lease Agreement, dated as of April 1, 2015 (as the same may be amended, restated, supplemented and otherwise modified from time to time, the “Company Lease”), between the Company, as sublandlord, and the Agency, as subtenant, pursuant to which the Company subleases the Property (the “Subleased Premises”) to the Agency.

The Company holds all rights of sublandlord under the Company Lease.

C. The Company is the sub-subtenant under that certain Agency Lease Agreement, dated as of April 1, 2015 (as the same may be amended, restated, supplemented and otherwise modified from time to time, the “Agency Lease”), between the Agency, as sub-sublandlord, and the Company, as sub-subtenant, pursuant to which the Agency sub-subleases the Property (the “Sub-subleased Premises”) to the Company.

The Agency holds all rights of sub-sublandlord under the Agency Lease.

D. [\_\_\_\_\_] (together with its successors and assigns, “Note A-1 Lender”) and [\_\_\_\_\_] (together with its successors and assigns, “Note A-2 Lender”, and together with Note A-1 Lender, collectively, the “Lenders”) have agreed to make loans to the Company, which will be secured by, among other things, that certain [\_\_\_\_\_] , dated as of even date herewith (as amended, restated, supplemented and otherwise modified from time to time, the “Building Loan Mortgage”), made by the Company and the Agency in favor of Administrative Agent, and that certain [\_\_\_\_\_] , dated as of even date herewith (as amended, restated, supplemented and otherwise modified from time to time, the “Project Loan Mortgage”, and together with the Building Loan Mortgage, collectively, the “Security Instruments”) made by the Company and the Agency in favor of Administrative Agent, which Security Instruments cover, among other things, the interest of (1) the

Company in (a) the Property and (b) the Sub-Subleased Premises under the Agency Lease, and (2) the Agency in the Subleased 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 Instruments.

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 Subleased Premises under the Company Lease are and shall at all times continue to be subject and subordinate in all respects to the liens of the Security Instruments, with the same force and effect as if the Security Instruments 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 Instruments encumber the interest of Company under the Ground Lease and the Agency Lease; and (b) any action or proceeding to foreclose the Security Instruments or to enforce any other rights or remedies of the Administrative Agent under the Security Instruments with respect to the interest of the Company under the Ground Lease shall not extinguish the Agency Lease.

Section 3. Non-Disturbance. Administrative Agent agrees that no action or proceeding to foreclose the Security Instruments or to enforce any other rights or remedies of the Administrative Agent under the Security Instruments 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 Instruments, 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 Instruments 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 upon any foreclosure of the liens of the Security Instruments with respect to the leasehold interest of the Company in the Property under the Ground Lease and sale of the leasehold interest of the Company in the Property under the Ground Lease or deed or assignment in lieu of foreclosure of the leasehold interest of the Company in the Property under the Ground Lease or other exercise of its rights and remedies under the Security Instruments, 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 sublease 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 leasehold

estate of the Company in and to the Property under the Ground Lease upon or following a foreclosure of the Security Instruments with respect to the interest of the Company under the Ground Lease (or delivery of an assignment of the Ground Lease in lieu of foreclosure).

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 Instruments with respect to the sub-subleasehold interest of the Company in the Sub-Subleased Premises under the Agency Lease and sale of the sub- subleasehold interest of the Company in the Sub-Subleased Premises under the Agency Lease or other exercise of its rights and remedies under the Security Instruments, 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 Sub-Subleased Premises under the Agency Lease upon or following a foreclosure of the Security Instruments with respect to the sub-subleasehold interest of the Company in and to the Sub-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 the Administrative Agent a copy of any notice of default delivered by the Agency to the Company under the Company Lease or the Agency Lease.

Section 7. Liability of Administrative Agent. Nothing in this Agreement shall impose upon Administrative Agent any liability for the obligations of landlord under the Company Lease unless and until Administrative Agent takes leasehold title to the Property under the Ground Lease. Nothing in this Agreement shall impose upon Administrative Agent any liability for the obligations of tenant under the Agency Lease unless and until Administrative Agent takes sub-subleasehold title to the Sub-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 as set forth above; 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.

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.

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” shall include any subsequent holder of the Security Instruments, and any affiliate or successor or assignee of Administrative Agent or a transferee of Administrative Agent’s or Landlord’s title in and to the Property by or following Administrative Agent’s exercise of its rights and remedies under the Security Instruments (including, but not limited to, a purchaser following a foreclosure of the Security Instruments or delivery of a deed or assignment of lease in lieu of foreclosure).

*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:**

[ \_\_\_\_\_ ], a  
[ \_\_\_\_\_ ]

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

**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:

**COMPANY:**

**BOP NE TOWER LESSEE LLC**,  
a Delaware limited liability company

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



**EXHIBIT A**

**LEGAL DESCRIPTION**

**FORM OF SUBORDINATION AGREEMENT**

THIS SUBORDINATION AGREEMENT, dated as of \_\_\_\_\_, 20\_\_ (this "Agreement"), is entered into among HUDSON YARDS INFRASTRUCTURE CORPORATION ("HYIC" and, together with its successors and/or assigns, "Senior Creditor"), [\_\_\_\_\_], a [\_\_\_\_\_], as Administrative Agent on behalf of the Lenders (defined below) ("Junior Creditor"), BOP NE TOWER LESSEE LLC, a Delaware limited liability company ("Obligor"), and New York City Industrial Development Agency, a New York public benefit corporation ("NYCIDA").

WHEREAS, pursuant to that certain Ground Lease, dated as of April 14, 2015 (as the same may be amended, restated, supplemented and otherwise modified from time to time, the "Ground Lease"), between BOP NE LLC, as landlord (the "Ground Lessor"), and Obligor, as tenant, Obligor leases all of the real property described on Exhibit A (the "Land");

WHEREAS, pursuant to that certain Company Lease Agreement, dated as of April 1, 2015 (as the same may be amended, restated, supplemented and otherwise modified from time to time, the "Company Lease"), between Obligor, as sublandlord, and NYCIDA, as subtenant, Obligor subleases the Land to NYCIDA;

WHEREAS, pursuant to that certain Agency Lease Agreement, dated as of April 1, 2015 (as the same may be amended, restated, supplemented and otherwise modified from time to time, the "Agency Lease"), between NYCIDA, as sub-sublandlord, and Obligor, as sub-subtenant, NYCIDA sub-subleases the Land to Obligor;

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, Ground Lessor and NYCIDA in favor of NYCIDA, as initial mortgagee, which PILOT Mortgages encumber, among other things, the right, title and interest of Ground Lessor in the Land, Obligor in the Land (including, without limitation, the rights granted pursuant to the Ground Lease and the Agency Lease), and the right, title and interest of NYCIDA in the Land granted pursuant to the Company Lease;

WHEREAS, pursuant to the terms and conditions of an Assignment, dated as of even date herewith, among The City of New York, 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, pursuant to the terms of that certain Building Loan and Security Agreement dated as of the date hereof (as amended, supplemented, increased, extended or otherwise modified from time to time, the "Building Loan Agreement"), among Obligor, [\_\_\_\_\_] (together with its successors and assigns, the "Note A-1 Lender"), [\_\_\_\_\_] (together with its successors and assigns, the "Note A-2 Lender"), and together with Note A-1 Lender, collectively, the "Lenders"), and Junior Creditor, and that certain Project Loan and Security Agreement dated as of the date hereof (as amended, supplemented, increased, extended or otherwise modified from time to time, the "Project Loan Agreement"), and together with the Building Loan Agreement, collectively, the "Credit

Agreements”), among Obligor, the Lenders and Junior Creditor, the Lenders have agreed to make loans to Obligor;<sup>2</sup>

WHEREAS, Obligor’s obligations under the Building Loan Agreement are secured by that certain [\_\_\_\_\_], dated as of the date hereof (as amended, restated, supplemented and otherwise modified from time to time, the “Building Loan Mortgage”), made by Obligor and NYCIDA in favor of Junior Creditor, and Obligor’s obligations under the Project Loan Agreement are secured by that certain [\_\_\_\_\_], dated as of the date hereof (as amended, restated, supplemented and otherwise modified from time to time, the “Project Loan Mortgage”, and together with the Building Loan Mortgage, collectively, the “Junior Mortgages”) made by Obligor and NYCIDA in favor of Junior Creditor, which Junior Mortgages encumber, among other things, the right, title and interest of Obligor in the Land and the interest of Obligor and NYCIDA 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 Land, all improvements to the Land, and all other real and personal property subject to the Junior Mortgages.

“Junior Obligations” means all obligations of Obligor to Junior Creditor under the Credit Agreements.

“Party” means any of Obligor, Ground Lessor, 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, Ground Lessor and NYCIDA in the Land, all improvements to the Land and all other real and personal property subject to the PILOT Mortgages.

“PILOT Obligations” means all obligations to make payments in lieu of real property taxes, including any interest or penalties payable in connection therewith of Obligor (and any successor or assign of Obligor, including, without limitation, any subsequent holder of the interest of Obligor in the Land or the Agency Lease) 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 Land), Ground Lessor (or any successor or assign of Ground Lessor, including, without limitation, any subsequent holder of the interest of Ground Lessor in the Land) and NYCIDA to Senior Creditor following the date hereof, including any such mortgage delivered following the completion of a foreclosure (or deed 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.

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<sup>2</sup> Revise as appropriate based upon structure.

2. Subordination of Junior Mortgages.

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 Mortgages 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 Mortgages, 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 Mortgages, 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 Mortgages, 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 Mortgages 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 Mortgages 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 Mortgages, 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 Mortgages, regardless of whether such rights are granted under the Ground Lease or the Agency Lease

3.02 Junior Creditor agrees that, notwithstanding anything to the contrary contained in the Junior Mortgages, 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, Ground Lessor and NYCIDA agree that, upon a foreclosure of a PILOT Mortgage by Senior Creditor, Obligor, Ground Lessor and NYCIDA 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 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 shall deliver to Senior Creditor an updated title search showing the Land 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 shall deliver to Senior Creditor a mortgagee title insurance policy in an amount not less than \$25,000,000 insuring Senior Creditor's interests under such Replacement PILOT Mortgage as a first mortgage lien on the Land, the Ground Lease, 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" endorsements) 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 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 the Obligor for any costs incurred by the Obligor 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:

(a) each has the legal right to execute and deliver and to perform its obligations under this Agreement;

(b) 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);

(c) 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

(d) 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 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 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 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:

- (a) if to Obligor, to them at:

BOP NE Tower Lessee LLC  
c/o Brookfield Office Properties  
250 Vesey Street, 15<sup>th</sup> Floor  
New York, New York 10281

Attention: General Counsel  
Facsimile: (\_\_\_\_) \_\_\_\_\_

with a copy to:

Fried Frank Harris Shriver and Jacobson LLP  
One New York Plaza  
New York, New York 10004  
Attention: Tal Golomb, Esq.

(b) if to Ground Lessor, to them at:

BOP NE LLC  
c/o Brookfield Office Properties  
250 Vesey Street, 15<sup>th</sup> Floor  
New York, New York 10281  
Attention: Alan Chun  
Facsimile: (\_\_\_\_) \_\_\_\_\_

with a copy to:

Fried Frank Harris Shriver and Jacobson LLP  
One New York Plaza  
New York, New York 10004  
Attention: Tal Golomb, Esq.

(c) if to Senior Creditor, to it at:

Hudson Yards Infrastructure Corporation  
255 Greenwich Street, NY, NY 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

(d) if to Junior Creditor, to it at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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 Obligor, Ground Lessor, Senior Creditor and Junior Creditor with respect to the subject matter hereof and there are no promises or representations by Obligor, Ground Lessor, 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 Senior Creditor and Junior Creditor.

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 Mortgages.



6.12 This Agreement shall be construed in accordance with and governed by the law of the State of New York. 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 Eastern 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 CREDIT AGREEMENTS 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:

**“JUNIOR CREDITOR”:**

\_\_\_\_\_, a \_\_\_\_\_

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

**“OBLIGOR”:**

**BOP NE TOWER LESSEE LLC**, a Delaware limited liability company

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

**“GROUND LESSOR”:**

**BOP NE LLC**, a Delaware limited liability company

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

**“NYCIDA”:**

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

By: \_\_\_\_\_  
Name: Jeffrey T. Lee  
Title: Executive Director

Exhibit A  
Description of the Land

Schedule 1

PILOT MORTGAGES

Fee and Leasehold PILOT Mortgage No. 1 dated as of April 14, 2015, by and among New York City Industrial Development Agency, BOP NE LLC and BOP NE Tower Lessee LLC, as mortgagors, to New York City Industrial Development Agency, as mortgagee, to secure the obligation of BOP NE Tower Lessee LLC to make PILOT Payments in an amount not to exceed \$25,000,000 (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, dated as of April 14, 2015.

Fee and Leasehold PILOT Mortgage No. 2, dated as of April 14, 2015, by and among New York City Industrial Development Agency, BOP NE LLC and BOP NE Tower Lessee LLC, as mortgagors, to New York City Industrial Development Agency, as mortgagee, to secure the obligation of BOP NE Tower Lessee LLC to make PILOT Payments in an amount not to exceed \$402,000,000 (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, dated as of April 14, 2015.

Fee and Leasehold PILOT Mortgage No. 3, dated as of April 14, 2015, by and among New York City Industrial Development Agency, BOP NE LLC and BOP NE Tower Lessee LLC, as mortgagors, to New York City Industrial Development Agency, as mortgagee, to secure the obligation of BOP NE Tower Lessee LLC to make PILOT Payments in an amount not to exceed \$402,000,000 (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, dated as of April 14, 2015.

**FORM OF TENANT LEASE SUBORDINATION NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between HUDSON YARDS INFRASTRUCTURE CORPORATION, a \_\_\_\_\_ corporation, whose address for notice under this Agreement is \_\_\_\_\_ (the "Mortgagee"), and \_\_\_\_\_, a \_\_\_\_\_, whose address for notice under this Agreement is \_\_\_\_\_ (the "Tenant").

**RECITALS:**

A. **BOP NE TOWER LESSEE LLC**, a Delaware limited liability company (the "Company"), is the tenant under that certain Ground Lease, dated April 14, 2015 (as the same may be amended, restated, supplemented and otherwise modified from time to time, the "Ground Lease"), between BOP NE LLC, a landlord (the "Ground Lessor"), pursuant to which the Company leases all of the real property described on Exhibit A (the "Land"). Pursuant to the Ground Lease, the Company will construct certain improvements located on the Land (the "Improvements" and, together with the Land, the "Property").

B. The Agency is the subtenant under that certain Company Lease Agreement, dated as of April 1, 2015 (as the same may be amended, restated, supplemented and otherwise modified from time to time, the "Company Lease"), between the Company, as sublandlord, and the Agency, as subtenant, pursuant to which the Company subleases the Property (the "Subleased Premises") to the Agency. The Company holds all rights of sublandlord under the Company Lease.

C. The Company is the sub-subtenant under that certain Agency Lease Agreement, dated as of April 1, 2015 (as the same may be amended, restated, supplemented and otherwise modified from time to time, the "Agency Lease"), between the Agency, as sub-sublandlord, and the Company, as sub-subtenant, pursuant to which the Agency sub-subleases the Property (the "Sub-Subleased Premises") to the Company. The Agency holds all rights of sub-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, the Ground Lessor and the Company for the benefit of Agency, covering the interest of (1) the Ground Lessor in the Property, (2) the Company in (x) the Property under the Ground Lease, and (y) the Sub-Subleased Premises under the Agency Lease, and (3) the Agency in the Subleased 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 unless Mortgagee has failed to cure any default by Landlord as herein provided, and, in that event, only such offsets and defenses as shall have accrued from and after the date Successor Owner shall have succeeded to the interest of Landlord under the Tenant Lease (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) 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:**

**BOP NE TOWER LESSEE LLC**

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

STATE OF NEW YORK        )

: ss.:

COUNTY OF                    )

On the \_\_\_\_ day of \_\_\_\_\_, 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(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity(ies), and that by his/her signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

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

**EXHIBIT A**

**Legal Description of Property**

**PILOT ASSIGNMENT AND AGREEMENT**

**FORM OF LW AGREEMENT**

LIVING WAGE AGREEMENT

This LIVING WAGE AGREEMENT (this “Agreement”) is made as of [\_\_\_\_], by [\_\_\_\_] (“Obligor”) in favor of Lessee, the Agency, the City, the DCA and the Comptroller (each as defined below) (each, an “Obligee”). In consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Obligor hereby covenants and agrees as follows:

1. Definitions. As used herein the following capitalized terms shall have the respective meanings specified below.

“Affiliate” means, with respect to a given Person, any other Person that directly or indirectly through one or more intermediaries Controls, is Controlled by, or is under common Control with such given Person.

“Agency” means 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, having its principal office at 110 William Street, New York, New York 10038.

“Asserted Cure” has the meaning specified in paragraph 10(a).

“Asserted LW Violation” has the meaning specified in paragraph 10(a).

“City” means The City of New York.

“Comptroller” means the Comptroller of The City of New York or his or her designee.

“Control” or “Controls”, including the related terms “Controlled by” and “under common Control with”, means the power to direct the management and policies of a Person (a) through the ownership, directly or indirectly, of not less than a majority of its voting equity, (b) through the right to designate or elect not less than a majority of the members of its board of directors, board of managers, board of trustees or other governing body, or (c) by contract or otherwise.

“Covered Counterparty” means a Covered Employer whose Specified Contract is directly with Obligor or an Affiliate of Obligor to lease, occupy, operate or perform work at the Obligor Facility.

“Covered Employer” means any of the following Persons: (a) Obligor, (b) a tenant, subtenant, leaseholder or subleaseholder of Obligor that leases any portion of the Obligor Facility (or an Affiliate of any such tenant, subtenant, leaseholder or subleaseholder if such Affiliate has one or more direct Site Employees), (c) a concessionaire that operates on any portion of the Obligor Facility, and (d) a Person that contracts or subcontracts with any Covered Employer described in clauses (a), (b) or (c) above to perform work for a period of more than ninety days on any portion of the Obligor Facility, including temporary services or staffing agencies, food service contractors, and other on-site service contractors; provided, however, that the term “Covered Employer” shall not include (i) a Person of the type described in Section 6-134(d)(2),

(3), (4) or (5) of the New York City Administrative Code, (ii) a Person that has annual consolidated gross revenues that are less than the Small Business Cap unless the revenues of the Person are included in the consolidated gross revenues of a Person having annual consolidated gross revenues that are more than the Small Business Cap, in each case calculated based on the fiscal year preceding the fiscal year in which the determination is being made, and in each calculated in accordance with generally accepted accounting principles, (iii) any otherwise covered Person operating on any portion of the Obligor Facility if residential units comprise more than 75% of the total Facility area and all of the residential units are subject to rent regulation, (iv) any otherwise covered Person that the Agency has determined (in its sole and absolute discretion) in writing to be exempt on the basis that it works significantly with a Qualified Workforce Program, (v) a Person whose Site Employees all are paid wages determined pursuant to a collective bargaining or labor agreement, (vi) a Person that is a “building services contractor” (as defined in the LW Law) so long as such Person is paying its “building service employees” (as defined in the Prevailing Wage Law) no less than the applicable “prevailing wage” (as defined in the Prevailing Wage Law), or (vii) a Person exempted by a Deputy Mayor of the City of New York in accordance with the Mayor’s Executive Order No. 7 dated September 30, 2014.

“DCA” means the Department of Consumer Affairs of the City of New York, acting as the designee of the Mayor of The City of New York, or such other agency or designee that the Mayor of The City of New York may designate from time to time.

“Facility” means an approximately 2,000,000 gross square foot, class-A office building, which may include up to approximately 100,000 gross square feet of retail space, to be located on an approximately 65,034 square foot parcel of land located at the northeast corner of the area between 31st and 33rd Streets and between 9th and 10th Avenues and generally known by the street address of 401 9th Avenue, New York, New York 10001.

“Lessee” means BOP NE Tower Lessee LLC, a limited liability company organized and existing under the laws of the State of Delaware, having its principal office at c/o Brookfield Office Properties, 250 Vesey Street, 15th Floor, New York, New York 10281, or its permitted successors or assigns as Lessee under the Project Agreement.

“LW” has the same meaning as the term “living wage” as defined in Section 6-134(b)(9) of the New York City Administrative Code and shall be adjusted annually in accordance therewith, except that as of April 1, 2015, the “living wage rate” component of the LW shall be eleven dollars and sixty-five cents per hour (\$11.65/hour) and the “health benefits supplement rate” component of the LW shall be one dollar and sixty-five cents per hour (\$1.65/hour). The annual adjustments to the “living wage rate” and “health benefits supplement rate” will be announced on or around January 1 of each year by the DCA and will go into effect on April 1 of such year.

“LW Agreement” means, with respect to any Covered Counterparty, an enforceable agreement in the form attached hereto as Attachment 1 (except only with such changes as are necessary to make such Covered Counterparty the obligor thereunder).

“LW Agreement Delivery Date” means, with respect to any Covered Counterparty, the later of (a) the effective date of such Covered Counterparty’s Specified Contract and (b) the date that such Covered Counterparty becomes a Covered Employer at the Obligor Facility.

“LW Law” means the Fair Wages for New Yorkers Act, constituting Section 6-134 of the New York City Administrative Code, as amended, supplemented or otherwise modified from

time to time, and all rules and regulations promulgated thereunder.

“LW Term” means the period commencing on the date of this Agreement and ending on the date that is the earlier to occur of: (a) the later to occur of (i) the date on which Lessee is no longer receiving financial assistance under the Project Agreement (for purposes hereof, such date is deemed to be the end of Year 19 after the Construction Period (as defined in the Project Agreement), unless the Project Agreement is earlier terminated) or (ii) the date that is ten years after the Facility commences operations; or (b) the end of the term of Obligor’s Specified Contract (including any renewal or option terms pursuant to any exercised options), whether by early termination or otherwise.

“LW Violation Final Determination” has the meaning specified in paragraph 10(a)(i), paragraph 10(a)(ii)(1) or paragraph 10(a)(ii)(2), as applicable.

“LW Violation Initial Determination” has the meaning specified in paragraph 10(a)(ii).

“LW Violation Notice” has the meaning specified in paragraph 10(a).

“LW Violation Threshold” means \$100,000 multiplied by 1.03<sup>n</sup>, where “n” is the number of full years that have elapsed since January 1, 2015.

“Obligor Facility” means the applicable portion of the Facility covered by the Specified Contract of Obligor.

“Operational Date” means the date that Obligor commences occupancy, operations or work at the Obligor Facility.

“Owed Interest” means the interest accruing on Owed Monies, which interest shall accrue from the relevant date(s) of underpayment to the date that the Owed Monies are paid, at a rate equal to the interest rate then in effect as prescribed by the superintendent of banks pursuant to Section 14-a of the New York State Banking Law, but in any event at a rate no less than six percent per year.

“Owed Monies” means, as the context shall require, either (a) the total deficiency of LW required to be paid by Obligor in accordance with this Agreement to its direct Site Employee(s) after taking into account the wages actually paid (which shall be credited towards the “living wage rate” component of the LW), and the monetary value of health benefits actually provided (which shall be credited towards the “health benefits supplement rate” component of the LW), to such direct Site Employee(s), all as calculated on a per pay period basis; or (b) if Obligor failed to obtain a LW Agreement from a Covered Counterparty as required under paragraph 5 below, the total deficiency of LW that would have been required to be paid under such Covered Counterparty’s LW Agreement to its direct Site Employee(s) after taking into account the wages actually paid (which shall be credited towards the “living wage rate” component of the LW), and the monetary value of health benefits actually provided (which shall be credited towards the “health benefits supplement rate” component of the LW), to such direct Site Employee(s), all as calculated on a per pay period basis, during the period commencing on the LW Agreement Delivery Date applicable to such Covered Counterparty and ending immediately prior to the execution and delivery by such Covered Counterparty of its LW Agreement (if applicable).

“Person” means any natural person, sole proprietorship, partnership, association, joint venture, limited liability company, corporation, governmental authority, governmental agency,



governmental instrumentality or any form of doing business.

“Pre-Existing Covered Counterparty” has the meaning specified in paragraph 5.

“Pre-Existing Specified Contract” has the meaning specified in paragraph 5.

“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.

“Project Agreement” means that certain Agency Lease Agreement, dated as of April 1, 2015, between the Agency and the Lessee (as amended, restated, supplemented or otherwise modified from time to time), pursuant to which Lessee has or will receive financial assistance from the Agency.

“Qualified Workforce Program” means a training or workforce development program that serves youth, disadvantaged populations or traditionally hard-to-employ populations and that has been determined to be a Qualified Workforce Program by the Director of the Mayor’s Office of Workforce Development.

“Site Employee” means, with respect to any Covered Employer, any natural person who works at the Obligor Facility and who is employed by, or contracted or subcontracted to work for, such Covered Employer, including all employees, independent contractors, contingent workers or contracted workers (including persons made available to work through the services of a temporary services, staffing or employment agency or similar entity) that are performing work on a full-time, part-time, temporary or seasonal basis; provided that the term “Site Employee” shall not include any natural person who works less than seventeen and a half (17.5) hours in any consecutive seven day period at the Obligor Facility unless the primary work location or home base of such person is at the Obligor Facility (for the avoidance of doubt, a natural person who works at least seventeen and a half (17.5) hours in any consecutive seven day period at the Obligor Facility shall thereafter constitute a Site Employee).

“Small Business Cap” means three million dollars; provided that, beginning in 2015 and each year thereafter, the Small Business Cap shall be adjusted contemporaneously with the adjustment to the “living wage rate” component of the LW using the methodology set forth in Section 6-134(b)(9) of the New York City Administrative Code.

“Specified Contract” means (a) in the case of Obligor, the [\_\_\_\_], dated as of [\_\_\_\_], by and between Obligor and [\_\_\_\_], or (b) in the case of any other Person, the principal written contract that makes such Person a Covered Employer hereunder.

2. Commencing on the Operational Date and thereafter during the remainder of the LW Term, if and for so long as Obligor is a Covered Employer, Obligor shall pay each of its direct Site Employees no less than an LW.
3. Commencing on the Operational Date and thereafter during the remainder of the LW Term, if and for so long as Obligor is a Covered Employer, Obligor shall, on or prior to the day on which each direct Site Employee of Obligor begins work at the Obligor Facility, (a) post a written notice detailing the wages and benefits required to be paid to Site Employees under this Agreement in a conspicuous place at the Obligor Facility that is readily observable by such direct Site Employee and (b) provide such direct Site Employee with a written notice detailing the wages and benefits required to be paid to

Site Employees under this Agreement. Such written notice shall also provide a statement advising Site Employees that if they have been paid less than the LW they may notify the Comptroller and request an investigation. Such written notice shall be in English and Spanish.

4. Commencing on the Operational Date and thereafter during the remainder of the LW Term, if and for so long as Obligor is a Covered Employer, Obligor shall not take any adverse employment action against any Site Employee for reporting or asserting a violation of this Agreement.
5. During the LW Term, Obligor shall cause each Covered Counterparty to execute an LW Agreement on or prior to the LW Agreement Delivery Date applicable to such Covered Counterparty; provided that Obligor shall only be required to use commercially reasonable efforts (without any obligation to commence any action or proceedings) to obtain an LW Agreement from a Covered Counterparty whose Specified Contract with Obligor was entered into prior to the date hereof (a “Pre-Existing Covered Counterparty” and a “Pre-Existing Specified Contract”). Prior to the renewal or extension of any Pre-Existing Specified Contract (or prior to entering into a new Specified Contract with a Pre-Existing Covered Counterparty), Obligor shall cause or otherwise require the Pre-Existing Covered Counterparty to execute an LW Agreement, provided that the foregoing shall not preclude Obligor from renewing or extending a Pre-Existing Specified Contract pursuant to any renewal or extension options granted to the Pre-Existing Covered Counterparty in the Pre-Existing Specified Contract as such option exists as of the date hereof. Obligor shall deliver a copy of each Covered Counterparty’s LW Agreement to the Agency, the DCA and the Comptroller at the notice address specified in paragraph 12 below and promptly upon written request. Obligor shall retain copies of each Covered Counterparty’s LW Agreement until six (6) years after the expiration or earlier termination of such Covered Counterparty’s Specified Contract.
6. Commencing on the Operational Date and thereafter during the remainder of the LW Term, in the event that an individual with managerial authority at Obligor receives a written complaint from any Site Employee (or such individual otherwise obtains actual knowledge) that any Site Employee has been paid less than an LW, Obligor shall deliver written notice to the Agency, the DCA and the Comptroller within 30 days thereof.
7. Obligor hereby acknowledges and agrees that the Agency, the City, the DCA and the Comptroller are each intended to be direct beneficiaries of the terms and provisions of this Agreement. Obligor hereby acknowledges and agrees that the DCA, the Comptroller and the Agency shall each have the authority and power to enforce any and all provisions and remedies under this Agreement in accordance with paragraph 10 below. Obligor hereby agrees that the DCA, the Comptroller and the Agency may, as their sole and exclusive remedy for any violation of Obligor’s obligations under this Agreement, bring an action for damages (but not in excess of the amounts set forth in paragraph 10 below), injunctive relief or specific performance or any other non-monetary action at law or in equity, in each case subject to the provisions of paragraph 10 below, as may be necessary or desirable to enforce the performance or observance of any obligations, agreements or covenants of Obligor under this Agreement. The agreements and acknowledgements of Obligor set forth in this Agreement may not be amended, modified or rescinded by Obligor without the prior written consent of the Agency or the DCA.
8. No later than 30 days after Obligor’s receipt of a written request from the Agency, the DCA and/or the Comptroller, Obligor shall provide to the Agency, the DCA and the Comptroller (a) a written list of all Covered Counterparties, together with the LW Agreements of such Covered Counterparties. From and after the Operational Date, no later than 30 days after Obligor’s receipt of a written request from the Agency, the DCA and/or the Comptroller, Obligor shall provide to the Agency, the DCA and the Comptroller (b) a certification stating that all of the direct Site Employees of Obligor are paid

no less than an LW and stating that Obligor is in compliance with this Agreement in all material respects, (c) certified payroll records in respect of the direct Site Employees of Obligor, and/or (d) any other documents or information reasonably related to the determination of whether Obligor is in compliance with its obligations under this Agreement.

9. From and after the Operational Date, Obligor shall, annually by August 1 of each year during the LW Term, submit to Lessee such data in respect of employment, jobs and wages at the Obligor Facility as of June 30 of such year that is needed by Lessee for it to comply with its reporting obligations under the Project Agreement.

10. Violations and Remedies.

(a) If a violation of this Agreement shall have been alleged by the Agency, the DCA and/or the Comptroller, then written notice will be provided to Obligor for such alleged violation (an "LW Violation Notice"), specifying the nature of the alleged violation in such reasonable detail as is known to the Agency, the DCA and the Comptroller (the "Asserted LW Violation") and specifying the remedy required under paragraph 10(b), (c), (d), (e) and/or (f) (as applicable) to cure the Asserted LW Violation (the "Asserted Cure"). Upon Obligor's receipt of the LW Violation Notice, Obligor may either:

(i) Perform the Asserted Cure no later than 30 days after its receipt of the LW Violation Notice (in which case a "LW Violation Final Determination" shall be deemed to exist), or

(ii) Provide written notice to the Agency, the DCA and the Comptroller indicating that it is electing to contest the Asserted LW Violation and/or the Asserted Cure, which notice shall be delivered no later than 30 days after its receipt of the LW Violation Notice. Obligor shall bear the burdens of proof and persuasion and shall provide evidence to the DCA no later than 45 days after its receipt of the LW Violation Notice. The DCA shall then, on behalf of the City, the Agency and the Comptroller, make a good faith determination of whether the Asserted LW Violation exists based on the evidence provided by Obligor and deliver to Obligor a written statement of such determination in reasonable detail, which shall include a confirmation or modification of the Asserted LW Violation and Asserted Cure (such statement, a "LW Violation Initial Determination"). Upon Obligor's receipt of the LW Violation Initial Determination, Obligor may either:

(1) Accept the LW Violation Initial Determination and shall perform the Asserted Cure specified in the LW Violation Initial Determination no later than 30 days after its receipt of the LW Violation Initial Determination (after such 30 day period has lapsed, but subject to clause (2) below, the LW Violation Initial Determination shall be deemed to be a "LW Violation Final Determination"), or

(2) Contest the LW Violation Initial Determination by filing in a court of competent jurisdiction or for an administrative hearing no later than 30 days after its receipt of the LW Violation Initial Determination, in which case, Obligor's obligation to perform the Asserted Cure shall be stayed pending resolution of the action. If no filing in a court of competent jurisdiction or for an administrative hearing is made to contest the LW Violation Initial Determination within 30 days after Obligor's receipt

thereof, then the LW Violation Initial Determination shall be deemed to be a “LW Violation Final Determination”. If such a filing is made, then a “LW Violation Final Determination” will be deemed to exist when the matter has been finally adjudicated. Obligor shall perform the Asserted Cure (subject to the judicial decision) no later than 30 days after the LW Violation Final Determination.

- (b) For the first LW Violation Final Determination imposed on Obligor in respect of any direct Site Employees of Obligor, at the direction of the Agency or the DCA (but not both), (i) Obligor shall pay the Owed Monies and Owed Interest in respect of such direct Site Employees of Obligor to such direct Site Employees; and/or (ii) in the case of a violation that does not result in monetary damages owed by Obligor, Obligor shall cure, or cause the cure of, such non-monetary violation
- (c) For the second and any subsequent LW Violation Final Determinations imposed on Obligor in respect of any direct Site Employees of Obligor, at the direction of the Agency or the DCA (but not both), (i) Obligor shall pay the Owed Monies and Owed Interest in respect of such direct Site Employees of Obligor to such direct Site Employees, and Obligor shall pay fifty percent (50%) of the total amount of such Owed Monies and Owed Interest to the DCA as an administrative fee; and/or (ii) in the case of a violation that does not result in monetary damages owed by Obligor, Obligor shall cure, or cause the cure of, such non-monetary violation.
- (d) For the second and any subsequent LW Violation Final Determinations imposed on Obligor in respect of any direct Site Employees of Obligor, if the aggregate amount of Owed Monies and Owed Interest paid or payable by Obligor in respect of its direct Site Employees is in excess of the LW Violation Threshold for all past and present LW Violation Final Determinations imposed on Obligor, then in lieu of the remedies specified in subparagraph (c) above and at the direction of the Agency or the DCA (but not both), Obligor shall pay (i) two hundred percent (200%) of the Owed Monies and Owed Interest in respect of the present LW Violation Final Determination to the affected direct Site Employees of Obligor, and (ii) fifty percent (50%) of the total amount of such Owed Monies and Owed Interest to the DCA as an administrative fee.
- (e) If Obligor fails to obtain an LW Agreement from its Covered Counterparty in violation of paragraph 5 above, then at the discretion of the Agency or the DCA (but not both), Obligor shall be responsible for payment of the Owed Monies, Owed Interest and other payments described in subparagraphs (b), (c) and (d) above (as applicable) as if the direct Site Employees of such Covered Counterparty were the direct Site Employees of Obligor.
- (f) Obligor shall not renew the Specified Contract of any specific Covered Counterparty or enter into a new Specified Contract with any specific Covered Counterparty if both (i) the aggregate amount of Owed Monies and Owed Interest paid or payable by such Covered Counterparty in respect of its direct Site Employees for all past and present LW Violation Final Determinations (or that would have been payable had such Covered Counterparty entered into an LW Agreement) is in excess of the LW Violation Threshold and (ii) two or more LW Violation Final Determinations against such Covered Counterparty (or in respect of the direct Site Employees of such Covered Counterparty) occurred within the last 6 years of the term of the applicable Specified Contract (or if the term thereof is less than 6 years, then during the term thereof); provided that the foregoing shall not preclude Obligor from extending or renewing a Specified Contract pursuant to any renewal or

extension options granted to the Covered Counterparty in the Specified Contract as in effect as of the LW Agreement Delivery Date applicable to such Covered Counterparty.

- (g) It is acknowledged and agreed that (i) the sole monetary damages that Obligor may be subject to for a violation of this Agreement are as set forth in this paragraph 10, and (ii) in no event will the Specified Contract between Obligor and a given Covered Counterparty be permitted to be terminated or rescinded by the Agency, the DCA or the Comptroller by virtue of violations by Obligor or a Covered Counterparty.

11. Obligor acknowledges that the terms and conditions of this Agreement are intended to implement the Mayor's Executive Order No. 7 dated September 30, 2014.
12. All notices under this Agreement shall be in writing and shall be delivered by (a) return receipt requested or registered or certified United States mail, postage prepaid, (b) a nationally recognized overnight delivery service for overnight delivery, charges prepaid, or (c) hand delivery, addressed as follows:
  - (a) If to Obligor, to [Obligor's Name], [Street Address], [City], [State], [Zip Code], Attention: [Contact Person].
  - (b) If to the Agency, to New York City Industrial Development Agency, 110 William Street, New York, NY, 10038, Attention: General Counsel, with a copy to New York City Industrial Development Agency, 110 William Street, New York, NY, 10038, Attention: Executive Director.
  - (c) If to the DCA, to Department of Consumer Affairs of the City of New York, 42 Broadway, New York, NY, 10004, Attention: Living Wage Division.
  - (d) If to the Comptroller, to Office of the Comptroller of the City of New York, One Centre Street, New York, NY 10007, Attention: Chief, Bureau of Labor Law.
13. This Agreement shall be governed by, and shall be construed and enforced in accordance with, the laws of the State of New York.
14. Obligor hereby irrevocably and unconditionally (a) agrees that any suit, action or other legal proceeding arising out of this Agreement may be brought in the courts of record of the State of New York in New York County or the United States District Court for the Southern District of New York; (b) consents to the jurisdiction of each such court in any such suit, action or proceeding; (c) waives any objection which it may have to the venue of any such suit, action or proceeding in such courts; and (d) waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of forum non conveniens, (ii) to remove to any federal court other than the United States District Court for the Southern District of New York, and (iii) to move for a change of venue to a New York State Court outside New York County.
15. Notwithstanding any other provision of this Agreement, in no event shall the partners, members, counsel, directors, shareholders or employees of Obligor have any personal obligation or liability for any of the terms, covenants, agreements, undertakings, representations or warranties of Obligor contained in this Agreement.

IN WITNESS WHEREOF, Obligor has executed and delivered this Agreement as of the date first written above.

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

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

Name:

Title:

**ATTACHMENT 1**  
**FORM OF LW AGREEMENT**

LIVING WAGE AGREEMENT

This LIVING WAGE AGREEMENT (this “Agreement”) is made as of [\_\_\_\_], by [\_\_\_\_] (“Obligor”) in favor of Lessee, the Agency, the City, the DCA and the Comptroller (each as defined below) (each, an “Obligee”). In consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Obligor hereby covenants and agrees as follows:

1. Definitions. As used herein the following capitalized terms shall have the respective meanings specified below.

“Agency” means 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, having its principal office at 110 William Street, New York, New York 10038.

“Asserted Cure” has the meaning specified in paragraph 9(a).

“Asserted LW Violation” has the meaning specified in paragraph 9(a).

“City” means The City of New York.

“Comptroller” means the Comptroller of The City of New York or his or her designee.

“Covered Employer” means Obligor; provided, however, that the term “Covered Employer” shall not include (i) a Person of the type described in Section 6-134(d)(2), (3), (4) or (5) of the New York City Administrative Code, (ii) a Person that has annual consolidated gross revenues that are less than the Small Business Cap unless the revenues of the Person are included in the consolidated gross revenues of a Person having annual consolidated gross revenues that are more than the Small Business Cap, in each case calculated based on the fiscal year preceding the fiscal year in which the determination is being made, and in each calculated in accordance with generally accepted accounting principles, (iii) any otherwise covered Person operating on any portion of the Obligor Facility if residential units comprise more than 75% of the total Facility area and all of the residential units are subject to rent regulation, (iv) any otherwise covered Person that the Agency has determined (in its sole and absolute discretion) in writing to be exempt on the basis that it works significantly with a Qualified Workforce Program, (v) a Person whose Site Employees all are paid wages determined pursuant to a collective bargaining or labor agreement, (vi) a Person that is a “building services contractor” (as defined in the LW Law) so long as such Person is paying its “building service employees” (as defined in the Prevailing Wage Law) no less than the applicable “prevailing wage” (as defined in the Prevailing Wage Law), or (vii) a Person exempted by a Deputy Mayor of the City of New York in accordance with the Mayor’s Executive Order No. 7 dated September 30, 2014.

“DCA” means the Department of Consumer Affairs of the City of New York, acting as the designee of the Mayor of The City of New York, or such other agency or designee that the Mayor of The City of New York may designate from time to time.

“Facility” means an approximately 2,000,000 gross square foot, class-A office building, which may include up to approximately 100,000 gross square feet of retail space, to be located on an approximately 65,034 square foot parcel of land located at the northeast corner of the area between 31st and 33rd Streets and between 9th and 10th Avenues and generally known by the street address of 401 9th Avenue, New York, New York 10001.

“Lessee” means BOP NE Tower Lessee LLC, a limited liability company organized and existing under the laws of the State of Delaware, having its principal office at c/o Brookfield Office Properties, 250 Vesey Street, 15th Floor, New York, New York 10281, or its permitted successors or assigns as Lessee under the Project Agreement.

“LW” has the same meaning as the term “living wage” as defined in Section 6-134(b)(9) of the New York City Administrative Code and shall be adjusted annually in accordance therewith, except that as of April 1, 2015, the “living wage rate” component of the LW shall be eleven dollars and sixty-five cents per hour (\$11.65/hour) and the “health benefits supplement rate” component of the LW shall be one dollar and sixty-five cents per hour (\$1.65/hour). The annual adjustments to the “living wage rate” and “health benefits supplement rate” will be announced on or around January 1 of each year by the DCA and will go into effect on April 1 of such year.

“LW Law” means the Fair Wages for New Yorkers Act, constituting Section 6-134 of the New York City Administrative Code, as amended, supplemented or otherwise modified from time to time, and all rules and regulations promulgated thereunder.

“LW Term” means the period commencing on the date of this Agreement and ending on the date that is the earlier to occur of: (a) the later to occur of (i) the date on which Lessee is no longer receiving financial assistance under the Project Agreement (for purposes hereof, such date is deemed to be the end of Year 19 after the Construction Period (as defined in the Project Agreement), unless the Project Agreement is earlier terminated) or (ii) the date that is ten years after the Facility commences operations; or (b) the end of the term of Obligor’s Specified Contract (including any renewal or option terms pursuant to any exercised options), whether by early termination or otherwise.

“LW Violation Final Determination” has the meaning specified in paragraph 9(a)(i), paragraph 9(a)(ii)(1) or paragraph 9(a)(ii)(2), as applicable.

“LW Violation Initial Determination” has the meaning specified in paragraph 9(a)(ii).

“LW Violation Notice” has the meaning specified in paragraph 9(a).

“LW Violation Threshold” means \$100,000 multiplied by 1.03<sup>n</sup>, where “n” is the number of full years that have elapsed since January 1, 2015.

“Obligor Facility” means the applicable portion of the Facility covered by the Specified Contract of Obligor.

“Operational Date” means the date that Obligor commences occupancy, operations or work at the Obligor Facility.

“Owed Interest” means the interest accruing on Owed Monies, which interest shall accrue from the relevant date(s) of underpayment to the date that the Owed Monies are paid, at a rate equal to the interest rate then in effect as prescribed by the superintendent of banks pursuant to



Section 14-a of the New York State Banking Law, but in any event at a rate no less than six percent per year.

“Owed Monies” means the total deficiency of LW required to be paid by Obligor in accordance with this Agreement to its direct Site Employee(s) after taking into account the wages actually paid (which shall be credited towards the “living wage rate” component of the LW), and the monetary value of health benefits actually provided (which shall be credited towards the “health benefits supplement rate” component of the LW), to such direct Site Employee(s), all as calculated on a per pay period basis.

“Person” means any natural person, sole proprietorship, partnership, association, joint venture, limited liability company, corporation, governmental authority, governmental agency, governmental instrumentality or any form of doing business.

“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.

“Project Agreement” means that certain Agency Lease Agreement, dated as of April 1, 2015, between the Agency and the Lessee (as amended, restated, supplemented or otherwise modified from time to time), pursuant to which Lessee has or will receive financial assistance from the Agency.

“Qualified Workforce Program” means a training or workforce development program that serves youth, disadvantaged populations or traditionally hard-to-employ populations and that has been determined to be a Qualified Workforce Program by the Director of the Mayor’s Office of Workforce Development.

“Site Employee” means any natural person who works at the Obligor Facility and who is employed by, or contracted or subcontracted to work for, Obligor, including all employees, independent contractors, contingent workers or contracted workers (including persons made available to work through the services of a temporary services, staffing or employment agency or similar entity) that are performing work on a full-time, part-time, temporary or seasonal basis; provided that the term “Site Employee” shall not include any natural person who works less than seventeen and a half (17.5) hours in any consecutive seven day period at the Obligor Facility unless the primary work location or home base of such person is at the Obligor Facility (for the avoidance of doubt, a natural person who works at least seventeen and a half (17.5) hours in any consecutive seven day period at the Obligor Facility shall thereafter constitute a Site Employee).

“Small Business Cap” means three million dollars; provided that, beginning in 2015 and each year thereafter, the Small Business Cap shall be adjusted contemporaneously with the adjustment to the “living wage rate” component of the LW using the methodology set forth in Section 6-134(b)(9) of the New York City Administrative Code.

“Specified Contract” means (a) in the case of Obligor, the [\_\_\_\_], dated as of [\_\_\_\_], by and between Obligor and [\_\_\_\_], or (b) in the case of any other Person, the principal written contract that makes such Person a Covered Employer hereunder.

2. Commencing on the Operational Date and thereafter during the remainder of the LW Term, if and for so long as Obligor is a Covered Employer, Obligor shall pay each of its direct Site Employees no less than an LW.

3. Commencing on the Operational Date and thereafter during the remainder of the LW Term, if and for so long as Obligor is a Covered Employer, Obligor shall, on or prior to the day on which each direct Site Employee of Obligor begins work at the Obligor Facility, (a) post a written notice detailing the wages and benefits required to be paid to Site Employees under this Agreement in a conspicuous place at the Obligor Facility that is readily observable by such direct Site Employee and (b) provide such direct Site Employee with a written notice detailing the wages and benefits required to be paid to Site Employees under this Agreement. Such written notice shall also provide a statement advising Site Employees that if they have been paid less than the LW they may notify the Comptroller and request an investigation. Such written notice shall be in English and Spanish.
4. Commencing on the Operational Date and thereafter during the remainder of the LW Term, if and for so long as Obligor is a Covered Employer, Obligor shall not take any adverse employment action against any Site Employee for reporting or asserting a violation of this Agreement.
5. Commencing on the Operational Date and thereafter during the remainder of the LW Term, in the event that an individual with managerial authority at Obligor receives a written complaint from any Site Employee (or such individual otherwise obtains actual knowledge) that any Site Employee has been paid less than an LW, Obligor shall deliver written notice to the Agency, the DCA and the Comptroller within 30 days thereof.
6. Obligor hereby acknowledges and agrees that the Agency, the City, the DCA and the Comptroller are each intended to be direct beneficiaries of the terms and provisions of this Agreement. Obligor hereby acknowledges and agrees that the DCA, the Comptroller and the Agency shall each have the authority and power to enforce any and all provisions and remedies under this Agreement in accordance with paragraph 9 below. Obligor hereby agrees that the DCA, the Comptroller and the Agency may, as their sole and exclusive remedy for any violation of Obligor's obligations under this Agreement, bring an action for damages (but not in excess of the amounts set forth in paragraph 9 below), injunctive relief or specific performance or any other non-monetary action at law or in equity, in each case subject to the provisions of paragraph 9 below, as may be necessary or desirable to enforce the performance or observance of any obligations, agreements or covenants of Obligor under this Agreement. The agreements and acknowledgements of Obligor set forth in this Agreement may not be amended, modified or rescinded by Obligor without the prior written consent of the Agency or the DCA.
7. From and after the Operational Date, no later than 30 days after Obligor's receipt of a written request from the Agency, the DCA and/or the Comptroller, Obligor shall provide to the Agency, the DCA and the Comptroller (a) a certification stating that all of the direct Site Employees of Obligor are paid no less than an LW and stating that Obligor is in compliance with this Agreement in all material respects, (b) certified payroll records in respect of the direct Site Employees of Obligor, and/or (c) any other documents or information reasonably related to the determination of whether Obligor is in compliance with its obligations under this Agreement.
8. From and after the Operational Date, Obligor shall, annually by August 1 of each year during the LW Term, submit to its counterparty to its Specified Contract such data in respect of employment, jobs and wages at the Obligor Facility as of June 30 of such year that is needed by Lessee for it to comply with its reporting obligations under the Project Agreement.

9. Violations and Remedies.

- (a) If a violation of this Agreement shall have been alleged by the Agency, the DCA and/or the Comptroller, then written notice will be provided to Obligor for such alleged violation (an “LW Violation Notice”), specifying the nature of the alleged violation in such reasonable detail as is known to the Agency, the DCA and the Comptroller (the “Asserted LW Violation”) and specifying the remedy required under paragraph 9(b), (c) and/or (d) (as applicable) to cure the Asserted LW Violation (the “Asserted Cure”). Upon Obligor’s receipt of the LW Violation Notice, Obligor may either:
- (i) Perform the Asserted Cure no later than 30 days after its receipt of the LW Violation Notice (in which case a “LW Violation Final Determination” shall be deemed to exist), or
  - (ii) Provide written notice to the Agency, the DCA and the Comptroller indicating that it is electing to contest the Asserted LW Violation and/or the Asserted Cure, which notice shall be delivered no later than 30 days after its receipt of the LW Violation Notice. Obligor shall bear the burdens of proof and persuasion and shall provide evidence to the DCA no later than 45 days after its receipt of the LW Violation Notice. The DCA shall then, on behalf of the City, the Agency and the Comptroller, make a good faith determination of whether the Asserted LW Violation exists based on the evidence provided by Obligor and deliver to Obligor a written statement of such determination in reasonable detail, which shall include a confirmation or modification of the Asserted LW Violation and Asserted Cure (such statement, a “LW Violation Initial Determination”). Upon Obligor’s receipt of the LW Violation Initial Determination, Obligor may either:
    - (1) Accept the LW Violation Initial Determination and shall perform the Asserted Cure specified in the LW Violation Initial Determination no later than 30 days after its receipt of the LW Violation Initial Determination (after such 30 day period has lapsed, but subject to clause (2) below, the LW Violation Initial Determination shall be deemed to be a “LW Violation Final Determination”), or
    - (2) Contest the LW Violation Initial Determination by filing in a court of competent jurisdiction or for an administrative hearing no later than 30 days after its receipt of the LW Violation Initial Determination, in which case, Obligor’s obligation to perform the Asserted Cure shall be stayed pending resolution of the action. If no filing in a court of competent jurisdiction or for an administrative hearing is made to contest the LW Violation Initial Determination within 30 days after Obligor’s receipt thereof, then the LW Violation Initial Determination shall be deemed to be a “LW Violation Final Determination”. If such a filing is made, then a “LW Violation Final Determination” will be deemed to exist when the matter has been finally adjudicated. Obligor shall perform the Asserted Cure (subject to the judicial decision) no later than 30 days after the LW Violation Final Determination.
- (b) For the first LW Violation Final Determination imposed on Obligor in respect of any direct Site Employees of Obligor, at the direction of the Agency or the DCA (but not both), (i) Obligor shall pay the Owed Monies and Owed Interest in respect of such direct Site Employees of Obligor to such direct Site Employees; and/or (ii) in the case of a

violation that does not result in monetary damages owed by Obligor, Obligor shall cure, or cause the cure of, such non-monetary violation.

- (c) For the second and any subsequent LW Violation Final Determinations imposed on Obligor in respect of any direct Site Employees of Obligor, at the direction of the Agency or the DCA (but not both), (i) Obligor shall pay the Owed Monies and Owed Interest in respect of such direct Site Employees of Obligor to such direct Site Employees, and Obligor shall pay fifty percent (50%) of the total amount of such Owed Monies and Owed Interest to the DCA as an administrative fee, and/or (ii) in the case of a violation that does not result in monetary damages owed by Obligor, Obligor shall cure, or cause the cure of, such non-monetary violation.
- (d) For the second and any subsequent LW Violation Final Determinations imposed on Obligor in respect of any direct Site Employees of Obligor, if the aggregate amount of Owed Monies and Owed Interest paid or payable by Obligor in respect of its direct Site Employees is in excess of the LW Violation Threshold for all past and present LW Violation Final Determinations imposed on Obligor, then in lieu of the remedies specified in subparagraph (c) above and at the direction of the Agency or the DCA (but not both), Obligor shall pay (i) two hundred percent (200%) of the Owed Monies and Owed Interest in respect of the present LW Violation Final Determination to the affected direct Site Employees of Obligor, and (ii) fifty percent (50%) of the total amount of such Owed Monies and Owed Interest to the DCA as an administrative fee.
- (e) It is acknowledged and agreed that the sole monetary damages that Obligor may be subject to for a violation of this Agreement are as set forth in this paragraph 9.

10. Obligor acknowledges that the terms and conditions of this Agreement are intended to implement the Mayor's Executive Order No. 7 dated September 30, 2014.

11. All notices under this Agreement shall be in writing and shall be delivered by (a) return receipt requested or registered or certified United States mail, postage prepaid, (b) a nationally recognized overnight delivery service for overnight delivery, charges prepaid, or (c) hand delivery, addressed as follows:

- (e) If to Obligor, to [Obligor's Name], [Street Address], [City], [State], [Zip Code], Attention: [Contact Person].
- (f) If to the Agency, to New York City Industrial Development Agency, 110 William Street, New York, NY, 10038, Attention: General Counsel, with a copy to New York City Industrial Development Agency, 110 William Street, New York, NY, 10038, Attention: Executive Director.
- (g) If to the DCA, to Department of Consumer Affairs of the City of New York, 42 Broadway, New York, NY, 10004, Attention: Living Wage Division.
- (h) If to the Comptroller, to Office of the Comptroller of the City of New York, One Centre Street, New York, NY 10007, Attention: Chief, Bureau of Labor Law.

12. This Agreement shall be governed by, and shall be construed and enforced in accordance with, the laws of the State of New York.

13. Obligor hereby irrevocably and unconditionally (a) agrees that any suit, action or other legal proceeding arising out of this Agreement may be brought in the courts of record of the State of New York in New York County or the United States District Court for the Southern District of New York; (b) consents to the jurisdiction of each such court in any such suit, action or proceeding; (c) waives any objection which it may have to the venue of any such suit, action or proceeding in such courts; and (d) waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of forum non conveniens, (ii) to remove to any federal court other than the United States District Court for the Southern District of New York, and (iii) to move for a change of venue to a New York State Court outside New York County.
14. Notwithstanding any other provision of this Agreement, in no event shall the partners, members, counsel, directors, shareholders or employees of Obligor have any personal obligation or liability for any of the terms, covenants, agreements, undertakings, representations or warranties of Obligor contained in this Agreement.

IN WITNESS WHEREOF, Obligor has executed and delivered this Agreement as of the date first written above.

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

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

**CONSTRUCTION DEVELOPMENT AGREEMENT PARAMETERS**

1. Construction Obligations: Each Manhattan West Owner will be obligated to complete the construction obligations for any common areas located within the boundary of such Manhattan West Owner's property;
2. Association Contributions: Each Manhattan West Owner will be obligated to contribute to the Manhattan West Owners Association established under the POA (the "Association") its proportionate share of the costs and expenses associated with completing the common area work for the common areas outside of the boundary of such Manhattan West Owner's property; provided that Lessee's and Ground Lessor's share shall not exceed Lessee's and Ground Lessor's Common Area Share;
3. Self-Help Rights: If any Manhattan West Owner fails to perform and complete its construction obligations with respect to the common areas located on its property, the other Manhattan West Owners shall have the right to cause the Association to exercise certain self-help remedies, including the right to enter the defaulting Manhattan West Owner's property and complete the work on behalf of such defaulting Manhattan West Owner;
4. Reciprocal Easements: The Construction Development Agreement will also set forth certain reciprocal covenants, conditions, restrictions and easements between the Manhattan West Owners to allow for, among other things, access, repair, construction and maintenance for the completion and maintenance of the common area work by the Manhattan West Owners; and
5. Notice and Cure Rights: Agency and its successors and assigns will have the right to receive copies of any notices of default served on Lessee under the Construction Development Agreement and have other commercially reasonable mortgage protection provisions reasonably acceptable to Agency.

"Common Area Share" means forty percent (40%).

"Manhattan West" shall mean the project consisting of Lots 1, 15, 50, 51, 60, 61, 8050, 8051, 8060, 8061, 9001 in Block 729, each located in Manhattan, New York.

"Manhattan West Owners" shall mean each of the owners of a parcel(s) that is part of Manhattan West, and their respective successors and assigns.