

AGENCY LEASE AGREEMENT

Dated as of February 1, 2020

by and between

NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY

and

BOP SE LLC,

a limited liability company organized and existing under the laws of the
State of Delaware, having its principal office at 250
Vesey Street, 15th Floor, New York, NY 10281, as
Lessee

2020 BOP SE LLC Project

Affecting the Land located at 375 9th Avenue,
New York, New York
Borough of Manhattan, Block 729, Lots 51 and 8051

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 February 1, 2020 (this “**Agreement**”), is by and between **NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York, having its principal office at One Liberty Plaza, New York, New York 10006, party of the first part, and BOP SE LLC, duly organized and existing under the laws of the State of Delaware, having its principal office at 250 Vesey Street, 15th Floor, New York, NY 10281 (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 1,820,000 gross square foot, 62-story, LEED certified, class-A office building on an approximately 62,000 square foot parcel of land located at 375 9th Avenue; 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 5,352 direct construction jobs and, at full occupancy, it is estimated that over

5,568 people will be employed at the Facility Realty by the office tenants thereto and in 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 \$591,893.

Agency's Reserved Rights shall mean all rights of the Agency under this Agreement including, without limitation, the right of the Agency to amend this Agreement, but excluding (a) all right, title and interest of the Agency to receive the PILOT Amounts, the PILOMRT payments and similar payments made and to be made by the Lessee under Sections 5.1 and 5.2, (b) the present and continuing right to make claim for, collect and receive the PILOT Amounts, the PILOMRT payments and similar payments made and to be made by the Lessee under Sections 5.1 and 5.2 and the right to bring actions and receive proceeds for the enforcement of such payments, and (c) the right of the Agency to amend Sections 5.1 or 5.2 in a manner that would adversely affect or diminish the PILOT Amounts, the PILOMRT payments or any other similar payments under Sections 5.1 and 5.2 or the payment or the enforcement of payment of such amounts. For the avoidance of doubt, the parties hereto intend that (i) the Agency's Reserved Rights may be enforced by the Agency and any assignee of the Agency (including, without limitation, HYIC), jointly or severally, and (i) the Agency's reservation of rights under the Assignment and the PILOT Assignment and Agreement shall not diminish or impair (A) the duties, obligations, liabilities, covenants and agreements of the Lessee hereunder that are owed to HYIC (as assignee pursuant to the Assignment) or to U.S. Bank National Association as bond trustee (as collateral assignee of HYIC pursuant to that certain Collateral Assignment, dated the Commencement Date, from HYIC to U.S. Bank National Association as bond trustee, or that

certain Subordinate Collateral Assignment, dated the Commencement Date, from HYIC to U.S. Bank National Association as bond trustee) or (B) the rights and remedies of HYIC or U.S. Bank National Association as bond trustee against Lessee under this Agreement or the Guaranty Agreement.

Agreement shall mean this 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 and commercial tenants.

Assignment shall mean the Assignment, dated on or about the Commencement Date, by and among the Agency, the City, HYIC and the Lessee.

Assignment of PILOT Mortgages shall mean, collectively, (i) the Assignment of Fee and Leasehold PILOT Mortgage No. 1, dated as of the Commencement Date, from the Agency to HYIC, (ii) the Assignment of Fee and Leasehold PILOT Mortgage No. 2, dated as of the Commencement Date, from the Agency to HYIC, and (iii) the Assignment of Fee and Leasehold PILOT Mortgage No. 3, dated as of the Commencement Date, from the 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 or General Counsel, 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 Representatives of the Lessee”, or any other officer or employee of the Lessee who is authorized to perform specific duties hereunder or under any other Project Document and of whom another Authorized Representative of the Lessee has given written notice to the Agency; 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 following the Construction Period.

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 February 7, 2020, 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 December 31, 2023.

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 November 1, 2019, prepared by the Environmental Auditor.

Environmental Auditor shall mean the Phase I Environmental Auditor.

Estimated Project Cost shall mean \$2,423,000,000.

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

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

Exempt Portion 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, 2056 (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).

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.

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 \$1,775,679.

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 June 11, 2019, 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 June 11, 2019, 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 Wells Fargo Bank, National Association, as administrative agent, and its successors and assigns, under (i) that certain Amended and Restated Senior Loan Mortgage, Assignment of Leases and Rents and Security Agreement, dated as of February 7, 2020 (the "Senior Mortgage"), made by the Lessee and the Agency to Wells Fargo Bank, National Association, as administrative agent, and the financial institutions now or hereafter signatories to the Senior Loan Agreement, dated as of February 7, 2020, and their assignees pursuant thereto, (ii) that certain Project Loan Mortgage, Assignment of Leases and Rents and Security Agreement, dated as of February 7, 2020 (the "Project Mortgage"), made by the Lessee and the Agency to Wells Fargo Bank, National Association, as administrative agent, and the financial institutions now or hereafter signatories to the Project Loan Agreement, dated as of February 7, 2020, and their assignees pursuant thereto, and (iii) that certain Building Loan Mortgage, Assignment of Leases and Rents and Security Agreement, dated as of February 7, 2020 (the "Building Mortgage"), made by the Lessee and the Agency to Wells Fargo Bank, National Association, as administrative agent, and the financial institutions now or hereafter signatories to the Building Loan Agreement, dated as of February 7, 2020, and their assignees pursuant thereto.

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 375 9th Avenue, New York, New York 10001, identified as Block 729, Lot 51 on the City's Tax Map for the Borough of Manhattan, 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 62,000 square feet.

Legal Requirements shall mean the Constitutions of the United States and the State of New York and all laws, statutes, codes, acts, ordinances, resolutions, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, certificates of occupancy, directions and requirements (including zoning, land use, planning, environmental protection, air, water and land pollution, toxic wastes, hazardous wastes, solid wastes, wetlands, health, safety, equal opportunity, minimum wage, living wage, prevailing wage, sick leave, healthcare, benefits and employment practices, including City-Assisted Construction Workforce Disclosure, NYC Administrative Code §§22-1101 through 1106) 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 SE 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)(vi).

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 the 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.

M/WBE Program shall have the meaning set forth in Section 8.26.

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-Exempt Portion shall have the meaning set forth in Section 5.1(a).

Non-Qualified USF shall mean (i) the Usable Square Footage of the Improvements that are occupied by Tenants and/or sublessees in violation of Section 8.9(f) and (ii) the Usable Square Footage of the Facility Realty that constitutes retail space in violation of Section 3.3(k).

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 10.1, 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) 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 anybody 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.

Person shall mean an individual or any Entity.

Phase I Environmental Auditor shall mean The Vertex Companies, Inc.

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 Amended and Restated PILOT Assignment and Agreement, dated as of December 1, 2006 and amended and restated as of May 1, 2017, by and among the Agency, the City and HYIC, attached hereto as Exhibit I-4, as it may be amended and supplemented in conformity therewith (it being agreed that the Agency shall provide a copy to the 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 and the Agency, as mortgagors, to the Agency and HYIC, as mortgagees, in the aggregate principal amount of \$25,000,000, Fee and Leasehold PILOT Mortgage No. 2, dated the Commencement Date, from the Lessee and the Agency, as mortgagors, to the Agency and HYIC, as mortgagees, in the aggregate principal amount of \$462,000,000, and Fee and Leasehold PILOT Mortgage No. 3, dated the Commencement Date, from the Lessee and the Agency, as mortgagors, to the Agency and HYIC, as mortgagees, in the aggregate principal amount of \$462,000,000, 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 Fifth Amended and Restated Declaration Establishing the Manhattan West Owners Association and of Covenants, Conditions, Easements and Restrictions by 450 Partners LLC, BOP NW LLC and BOP NW II LLC (as tenants in common), BOP MW Residential Market LLC, BOP NE LLC, BOP MW Retail LLC, BOP NW Loft LLC and Lessee, dated as of December 19, 2019, as the same may be amended, restated, supplemented or otherwise modified from time to time.

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)(1).

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 1,820,000 gross square foot, Class A office building excluding the Retail Improvements, provided that, until such time as the Agency Lease is amended to exclude such Retail Improvements, such improvements shall be considered to be Non-Qualified USF for purposes of the payment of PILOT pursuant to Section 5.1(g).

Project Improvements Investment shall mean the costs and expenses to be incurred by the Lessee after the Commencement Date and prior to the Completion Deadline for the construction, reconstruction, acquisition or installation of the Project Improvements in connection with the Project Work which are (a) described in the Project Cost Budget, and (b) considered hard costs of construction under normal industry standards, including, without limitation: payments to contractors, subcontractors, suppliers and materialmen for labor performed and materials supplied, except for the following work (i) excavation and foundation, (ii) demolition, (iii) structural steel and metal deck, (iv) curtail wall, (v) elevators and (vi) cogen plant and other major equipment (boilers, DX units, etc.) and (c) specifically excluding construction manager fees and costs and expenses for labor, services, facilities or equipment customarily considered as “general conditions” items, including the premium paid for payment and performance bonds and/or insurance policies that may be required in connection with the Project Work.

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”.

Retail Improvements shall mean the portion of all buildings, structures, foundations, related facilities, fixtures and other improvements comprising the construction, addition, modification, repair and renovation of the portion of an approximately 1,835,000 gross square foot, Class A office building on the Land, comprising retail space and occupying certain portions of the first and second floors of the Project Improvements.

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 the 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 the 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) and (v).

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) Recommended Method of Floor Measurement for Office Buildings (2003) for measuring Usable Area shall be used to determine Usable Square Footage.

UTEP shall mean the Uniform Tax Exemption Policy of the Agency that establishes the policies and requirements for the provision and recapture of Financial Assistance for qualifying commercial projects within the Hudson Yards UTEP Area as adopted by the Agency on August 8, 2006, and as amended and restated by the Agency on December 12, 2006, as the same were fully incorporated in the Amendment and Restatement of New York City Industrial Development Agency Uniform Tax Exemption Policy, dated June 13, 2017.

ZLDA shall mean that certain Omnibus Manhattan West Zoning Lot Development Agreement among Lessee, BOP NE LLC, BOP NW LLC, BOP NW II LLC, BOP MW Residential Market LLC and BOP NW Loft LLC, dated as of July 16, 2019, as the same may be amended, restated, supplemented or otherwise modified from time to time.

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 context 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 a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, 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 the 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 the 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 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 a 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. The 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 the Lessee hereunder, subject to diligent proceedings to cure such default and to complete the Project Work by any lender or mortgagee of the Lessee or any joint venture partner of the direct and/or indirect owners of the 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 noting the portion that constitutes retail space and if the zoning square footage of the Improvements increased, a revised architect's certification of the zoning square feet 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) Prior to the end of the Construction Period, the Lessee shall effect a severance of the Agency Lease so that the Retail Improvements shall no longer be included as a part of the Facility Realty and thereafter, 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 5,000 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 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, this Agreement, the PILOT Mortgages and the Mortgages.

(c) If at any time after the Construction Period (as defined in Section 5.2(a)), the Lessee shall make any Capital Improvements other than Capital Improvements to the interior of the Facility Realty performed by the Lessee or a Tenant, such as fit-out work, that do not (i) increase the zoning square footage of the Facility Realty or (ii) result in the New York City Department of Finance increasing the real property tax assessment of the Facility Realty through a "physical increase" (i.e., an increase to the market value of a property based on physical improvements to the building that result in an increased assessed value), then

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 Section 3.5 or 3.6, the Lessee shall deliver or cause to be delivered to the Agency any necessary documents conveying to the Agency a leasehold estate in any property installed or placed upon the Facility Realty pursuant to such Section and subjecting such Capital Improvements or substitute or replacement property to the Company Lease, this Agreement, the PILOT Mortgages and the Mortgages.

(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 Section 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(a) 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 Company Lease and this Agreement, subject only to Permitted Encumbrances, but excluding for purposes of this Section 3.8(b) the Mortgages and the other PILOT Mortgages, each of which will be shown as subordinate to the lien of the most senior PILOT Mortgage. 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 the 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 in whole or in part from Mortgage Recording Taxes to the extent permitted by applicable law by reason of the Agency being a mortgagor thereunder.

Exempt Portion shall mean that portion of the Mortgage Recording Taxes exempt from payment with respect to the recording of an Exempt Mortgage.

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.

Non-Exempt Portion shall mean that portion of the Mortgage Recording Taxes not exempt from payment with respect to the recording of an Exempt Mortgage.

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 (i) to the applicable taxing authorities, the Non-Exempt Portion of the Mortgage Recording Taxes, and (ii) to HYIC, a PILOMRT in an amount equal to the Exempt Portion of the Mortgage Recording Taxes that the Lessee is exempt from paying by reason of the Agency being a mortgagor thereunder (the “**PILOMRT Amount**”). The Lessee shall pay the Mortgage Recording Taxes for which the Lessee is not exempt so long as the Mortgage Recording Taxes and the PILOMRT Amount, collectively, do not exceed the Mortgage Recording Taxes which would have been otherwise payable by the Lessee in connection with the recording of a Mortgage against the Facility Realty had there been no exemption.

(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 the applicable Mortgage Recording Taxes on the Non-Exempt Portion of an Exempt Mortgage and a full PILOMRT on the Exempt Portion of 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 the applicable Mortgage Recording Taxes on the Non-Exempt Portion of the Original Mortgage and Mortgage Recording Taxes rather than PILOMRT on the Exempt Portion of the Original Mortgage, then the Agency will provide an exemption affidavit to exempt such Modified Mortgage to the extent permitted by applicable law, 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.

(e) At the sole cost and expense of the Lessee, the Agency shall duly execute, notarize and deliver to the Lessee any Mortgage entered into by the Lessee after the Commencement Date, promptly upon request by the Lessee, and shall also execute and deliver, to the extent permitted by applicable law, an exemption affidavit (to the extent permitted by applicable law) for each Mortgage to be recorded against the Facility Realty. In furtherance of the foregoing, the Agency shall execute such other documents as shall be necessary in connection with the recordation of a new Mortgage against the Facility Realty, to the extent permitted by applicable law, and shall otherwise cooperate with the Lessee in connection with the recording of each Mortgage against the Facility Realty, at the Lessee’s sole cost and expense.

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 after the date on which all CCP Improvements are fully assessed by the Department of Finance of the City in accordance with applicable real property tax assessment procedures or such later date as determined by the Agency in its sole discretion.

Maximum Zoning Square Footage means 1,531,467 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) less the zoning square feet of the Retail Improvements (as determined by reference to the “floor area” of the Retail 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 2021 relates to the semi-annual period commencing on July 1, 2021 and ending on December 31, 2021). 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, 2021 to December 31, 2021 is due June 22, 2021). 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, 2021.

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.

The below PILOT Calculation Table is consistent with UTEP PILOT Schedule and shall be applicable to the Facility Realty.

<u>For each City Tax Fiscal Year occurring within:</u>	<u>CCP PILOT for such City Tax Fiscal Year:</u>	<u>PILOT Amount for such City Tax Fiscal year:</u>
Construction Period	100% of CCP Taxes for such City Tax Fiscal Year	CCP PILOT for such City Tax Fiscal Year <u>plus</u> Other Improvements Taxes for such City Tax Fiscal Year

Year 1 after Construction Period	80% 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	80% 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	80% 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	80% 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) 84% 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) 88% 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) 92% 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) 96% 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

(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 2021 relates to the semi-annual period commencing on July 1, 2021 and ending on December 31, 2021), (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, 2021 to December 31, 2021 is due June 22, 2021), and (E) the Agency agrees to request appropriate officers of NYCDOF to provide the Lessee with PILOT Bills, but failure to receive a PILOT Bill shall not relieve the Lessee of its obligation, or otherwise affect the obligation of the Lessee, to pay any PILOT Amount required under this Agreement. The Lessee may send all inquiries concerning PILOT Bills to pilot1@finance.nyc.gov or: **PILOT Unit, NYC Department of Finance, 59 Maiden Lane, 22nd 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 the Lessee's favor (A) the 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 the 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 the 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 the Lessee be entitled to any refund of any such excess from the Agency or any other Person. Notwithstanding the immediately preceding sentence, if no PILOT Amount is or will subsequently become due, the Lessee shall have the option to have such overpayment credit applied toward Real Property Taxes for the Facility Realty that become due after the Expiration Date.

(f) Apportionment of Payments after Transfer.

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

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

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

(i) *Events of Default.*

(a) Upon the occurrence and continuance of an Event of Default (other than an Event of Default arising under Section 8.9(f), Section 3.3(j) or Section 3.3(k) 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) or 3.3(k) 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) or 3.3(k) 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) or 3.3(k) 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, 2021 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 the 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 the Lessee to operate the Facility Realty for its intended uses and maintain a reasonable rate of return, then the 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, this Agreement, the PILOT Mortgages and the Mortgages,

(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, the PILOT Mortgages and the Mortgages 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 the 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 the 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: 375 9th Avenue, New York, NY 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 against 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 INSURED 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; provided, however, that, for the avoidance of doubt, the Lessee shall liable for any consequential, special or punitive damages to the Agency or any other Indemnified Party for Claims brought by, or Liability to, third parties other than the Agency or any Indemnified Party.

(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 Company Lease and this Agreement, subject only to Permitted Encumbrances as defined in Section 3.8(b) 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 Property Partners, LP, so long as the Specified Conditions (as defined below) are satisfied. The Lessee may, without the consent of the Agency, (y) assign this Agreement 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 Section 8.20 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 and each other Project Document on the part of the Lessee to be kept and performed, shall be subject to service of process in the State, and, if a corporation, shall be qualified to do business in the State;

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

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

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

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

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

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

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

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

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

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

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

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

(D) have received formal written notice from a federal, state or local governmental agency or body that such Person is currently under investigation for a felony criminal offense; or

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

(b) Upon the request of the Lessee, the Agency shall execute any amendments, modifications and/or restatements of this Agreement, the Company Lease and the other Project Documents as shall be reasonably required in connection with any assignment. Any consent by the Agency to any act of assignment or sublease of all or substantially all of the Facility Realty shall be held to apply only to the specific transaction thereby authorized. Such consent shall not be construed as a waiver of the duty of the Lessee, or the successors or assigns of the Lessee, to obtain from the Agency consent to any other or subsequent assignment or sublease, or as modifying or limiting the rights of the Agency under the foregoing covenant by the Lessee.

(c) If all or substantially all of the Facility Realty is sublet or occupied by any Person other than the Lessee, the Agency, in the event of the Lessee's default in the payment of Rental Payments hereunder may, and is hereby empowered to, collect Rental Payments from such sublessee during the continuance of any such Event of Default. In case of such events, the Agency may apply the net amount received by it to the Rental Payments herein provided, and no such collection shall be deemed a waiver of the covenant herein against assignment or transfer of this Agreement, or sublease of all or substantially all of the Facility Realty or a release of the Lessee from the further performance of the covenants herein contained on the part of the Lessee.

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

(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 portions of the Facility Realty) 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 the Tenant, nor any Principals of the 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 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 Company Lease, 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 the Company Lease 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.

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) 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”.

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

Section 8.15. Requested Documents. Upon request of the Agency, the Lessee shall deliver or cause to be delivered to the Agency within fifteen (15) Business Days of the date (or such longer period if reasonably required to satisfy the request) so requested in writing:

(a) a copy of the most recent annual audited financial statements of the Lessee and of its subsidiaries, if any (including balance sheets as of the end of the Fiscal Year and the related statement of revenues, expenses and changes in fund balances and, if applicable, income, earnings, and changes in financial position) for such Fiscal Year, 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 the 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 payroll.

(c) With respect to each Tenant occupying all or part of the Facility Realty at any time during the immediately preceding calendar year, the Lessee shall file with the Agency, by the next following February 1, a certificate of an Authorized Representative of the Lessee with respect to all subtenancies in effect at the Facility Realty, in the form prescribed by the Agency.

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

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

Section 8.17. Taxes, Assessments and Charges. (a) The Lessee shall pay when the same shall become due all taxes (other than those taxes for which PILOT or PILOMRT is payable) and assessments, general and specific, if any, levied and assessed upon or against the Facility Realty, the Company Lease, this Agreement, any ownership estate or interest of the Agency or the Lessee in the Facility Realty, or the Rental Payments or other amounts payable under the Company Lease, hereunder during the term of this Agreement, and all water and sewer charges, special district charges, assessments and other governmental charges and impositions whatsoever, foreseen or unforeseen, ordinary or extraordinary, under any present or future law, and charges for public or private utilities or other charges incurred in the occupancy, use, operation, maintenance or upkeep of the Facility Realty, all of which are herein called “**Impositions**”. The Lessee may pay any Imposition in installments if so payable by law, whether or not interest accrues on the

unpaid balance. The Agency shall forward, as soon as practicable, to the Lessee any notice, bill or other statement received by the Agency concerning any Imposition.

(b) In the event the Facility Realty is exempt from Impositions (other than Real Property Taxes in respect of which PILOT or PILOMRT is payable) solely due to the Agency's leasehold estate in the Facility Realty, the Lessee shall pay all Impositions to the appropriate taxing authorities equivalent to the Impositions that would have been imposed on the Facility Realty if the Lessee were the owner of record of the Facility Realty and the Agency had no leasehold estate in the Facility Realty.

(c) The Lessee may at its sole cost and expense contest (after prior written notice to the Agency), by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Imposition (including PILOT, Real Property Taxes and PILOMRT), if (i) neither the Facility Realty nor any part thereof or interest therein would be in any danger of being sold, forfeited or lost, (ii) neither the Lessee nor the Agency would be in any danger of any civil or any criminal liability, other than normal accrual of interest, for failure to comply therewith, and (iii) the Lessee shall have furnished such security, if any, as may be required in such proceedings or as may be reasonably requested by the Agency.

Section 8.18. Compliance with Legal Requirements.

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

(b) Throughout the term of this Agreement and at its sole cost and expense, the Lessee shall promptly observe and comply with all applicable Legal Requirements (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 the 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 a Delaware limited liability company;
- (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, or under any other Project Document (unless such default is cured by the transaction),

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

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

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

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

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

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

(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 the Lessee by any lender or mortgagee of the Lessee or any joint venture partner of the direct and/or indirect owners of the 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. HireNYC Program. The Lessee shall use its good faith efforts to cause its Tenants to achieve the hiring and workforce development goals of the HireNYC Program and to cause its Tenants to perform the requirements of the HireNYC Program, all as set forth in Exhibit J. The Lessee agrees to cause its Tenants to submit the HireNYC Statement on Goals attached as Appendix A to Exhibit J that obligates the payment of any liquidated damages and other enforcement provisions set forth therein.

Section 8.24. Living Wage and Prevailing Wage.

(a) The 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. The Lessee agrees to comply with all applicable requirements of the LW Law and the Prevailing Wage Law. The Lessee acknowledges that the terms and conditions set forth in this Section 8.24 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 8.24(k)(i).

“Asserted LW Violation” has the meaning specified in Section 8.24(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 the 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) the Lessee, (b) a Site Affiliate, (c) a tenant, subtenant, leaseholder or subleaseholder of the Lessee or of an Affiliate of the 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 case 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, 2019, the “living wage rate” component of the LW shall be fifteen dollars per hour (\$15/hour) and the “health benefits supplement rate” component of the LW shall be one dollar and eighty-five cents per hour (\$1.85/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 K (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 the Lessee is no longer receiving financial assistance under this Agreement (for purposes hereof, such date is deemed to be the end of Year 19 after the Construction Period, unless this Agreement is earlier terminated) or (b) the date that is ten years after the building located at the Facility Realty commences operations.

“LW Violation Final Determination” has the meaning specified in Section 8.24(k)(i)(1), Section 8.24(k)(i)(2)(A) or Section 8.24(k)(i)(2)(B), as applicable.

“LW Violation Initial Determination” has the meaning specified in Section 8.24(k)(i)(2).

“LW Violation Notice” has the meaning specified in Section 8.24(k)(i).

“LW Violation Threshold” means \$100,000 multiplied by 1.03ⁿ, 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 the Lessee or a Site Affiliate in accordance with this Section 8.24 to the 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 the Lessee or its Site Affiliate failed to obtain a LW Agreement from a Covered Counterparty as required under Section 8.24(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 the 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, the Lessee shall pay each of its direct Site Employees no less than an LW. During the LW Term, the Lessee shall cause each of its Site Affiliates to pay their respective Site Employees no less than an LW.

(d) During the LW Term, the Lessee shall, on or prior to the day on which each direct Site Employee of the 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 8.24 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 8.24. 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 the 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 8.24.

(f) During the LW Term, the 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. The 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. The 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 the 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, the Lessee shall deliver written notice to the Agency, the DCA and the Comptroller within 30 days thereof.

(h) The 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 8.24. The 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 8.24 in accordance with paragraph (k) below. The Lessee hereby agrees that the DCA, the Comptroller and the Agency may, as their sole and exclusive remedy for any violation of the Lessee’s (or any Site Affiliate’s) obligations under this Section 8.24, 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 the Lessee (or of any Site Affiliate) under this Section 8.24. Notwithstanding anything in this Agreement to the contrary, no Event of Default under this Agreement shall occur by reason of the Lessee’s (or of any Site Affiliate’s) default under this Section 8.24. The agreements and acknowledgements of the Lessee set forth in this Section 8.24 may not be amended, modified or rescinded by the Lessee without the prior written consent of the Agency or the DCA.

(i) No later than 30 days after the Lessee’s receipt of a written request from the Agency, the DCA and/or the Comptroller, the Lessee shall provide to the Agency, the DCA and the Comptroller (i) a certification stating that all of the direct Site Employees of the Lessee and its Site Affiliates are paid no less than an LW and stating that the Lessee and its Site Affiliates are in compliance with this Section 8.24 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 the Lessee or of any Site Affiliate, and/or (iv) any other documents or information reasonably related to the determination of whether the Lessee or any Site Affiliate is in compliance with their obligations under this Section 8.24.

(j) Annually, by August 1 of each year during the LW Term, the 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 8.24 shall have been alleged by the Agency, the DCA and/or the Comptroller, then written notice will be provided to the 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 8.24(k)(ii), (iii), (iv), (v) and/or (vi (as applicable) to cure the Asserted LW Violation (the "Asserted Cure"). Upon the Lessee's receipt of the LW Violation Notice, the 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. The 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 the Lessee and deliver to the 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 the 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, the 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 the 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. The 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 the Lessee or any Site Affiliate in respect of any direct Site Employees of the Lessee or of a Site Affiliate, at the direction of the Agency or the DCA (but not both), (A) the 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 the Lessee, the 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 the Lessee or any Site Affiliate in respect of any direct Site Employees of the Lessee or of a Site Affiliate, at the direction of the Agency or the DCA (but not both), (A) the Lessee shall pay the Owed Monies and Owed Interest in respect of such direct Site Employees of the Lessee or of a Site Affiliate to such direct Site Employees, and the 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 the Lessee, the 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 the Lessee or any Site Affiliate in respect of any direct Site Employees of the 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 the 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 the 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), the 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 the 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 the 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), the 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 the Lessee.

(vi) The 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 the Lessee may be subject to for a violation of this Section 8.24 are as set forth in this paragraph (k), and (B) in no event will the Specified Contract between the 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 the Lessee or another Covered Counterparty.

(l) The terms and conditions set forth in this Section 8.24 shall survive the expiration or earlier termination of this Agreement.

Section 8.25. Labor Peace Agreement.

(a) The Lessee acknowledges and agrees that it has received “Financial Assistance” and that portions of the Facility Realty may be occupied by a “Covered Employer” as defined in Executive Order No. 19 (2016) – Labor Peace for Retail Establishments at City Development Projects (“E.O. 19”) if the Lessee fails to effectuate a Severance of the Retail Improvements prior to the end of the Construction Period. The parties agree that the provisions set forth in this Section 8.25 are meant to implement E.O. 19 with respect to the Retail Improvements solely in the event that the Lessee does not submit the Facility Realty to a condominium form of ownership and sever out the Retail Improvements prior to the end of the Construction Period.

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

“Covered Employer” means any Retail or Food Service Establishment located on the Facility Realty that (a) employs, or is anticipated to employ upon opening, 10 or more employees, and (b) occupies, or is anticipated to occupy, in excess of 15,000 gross square feet at the Facility Realty.

“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.

“Labor Organization” has the meaning set forth in the National Labor Relations Act (“NLRA”) (29 U.S.C. §152(5)).

“LPA” means an enforceable labor peace agreement that complies with the requirements of the NLRA between a Covered Employer and a Labor Organization, the terms of which, at a minimum, shall require that the Labor Organization and its members agree to refrain from picketing, work stoppages, boycotts or other economic interference and that the Covered Employer agrees to maintain a neutral posture with respect to efforts by the Labor Organization to represent Covered Employees (as defined below), and is substantially in the form of the Form of Labor Peace Agreement attached hereto as Exhibit L.

“Retail or Food Service Establishment” means any retail store selling goods or any food services or drinking establishment providing services, in each case, primarily to members of the general public.

“Term” for the purposes of this Section 8.25, shall begin at the later of (i) the Commencement Date or (ii) the Completion Deadline, and shall expire (i) 10 years thereafter, or (ii) upon the cessation of Financial Assistance (as defined in E.O. 19), whichever is later.

(c) During the Term, the Lessee shall and shall ensure that every Covered Employer, including any tenants, subtenants, licensees or occupants, has entered into an LPA with a Labor Organization representing regular full-time and regular part-time food and beverage, retail clerk, stocking and warehouse employees of Retail and Food Service Establishments at the Facility Realty, excluding supervisors, professional employees, managers and guards as defined in the NLRA (collectively, a “Covered Employee”).

(d) During the Term, the Lessee and any Covered Employer, as applicable, shall not take any adverse employment action against any employee for reporting or asserting a violation of this Section 8.25

(e) The Lessee shall cause each Covered Employer to execute an LPA on or prior to date on which such Covered Employer occupies any part of the Facility Realty, and shall deliver a copy of each LPA to the Agency and DCA.

(f) The Lessee hereby acknowledges and agrees that the City has a financial and proprietary interest in the Project, and that a labor dispute may result in interrupted services and a threat to the Project’s viability and financial health, which would adversely affect the City and the public. The City is an express third-party beneficiary of this Section 8.25 and as such the provisions of this Section 8.25 will inure to the benefit of the City and be enforceable by the City.

(g) Annually, by August 1 of each year during the Term, the Lessee shall submit to the Agency (i) a certification that all Covered Employers at the Facility Realty have entered into an LPA with a Labor Organization, and that such LPA is in full force and effect; or (ii) if any Retail or Food Service Establishment occupies a portion of the Facility Realty, and has not entered into an LPA, a certification that the establishment is exempt therefrom and stating the basis for such exemption.

(h) Violations and Remedies. Any violation of the provisions of this Section 8.25, shall be enforceable by the City, and the Lessee shall pay per diem damages to the City in the amount of \$1,000 per day for each day that it is in violation of its obligations under the provisions contained herein following written notice by the City or the Agency to the Lessee and failure to cure such violation within 30 days of the date of the notice. Such damages shall be the City’s exclusive remedy for the violation of the provisions of this Section 8.25, and the City may take any action at law or in equity in order to enforce such remedy.

(i) This Section 8.25 shall survive the Termination Date.

Section 8.26. M/WBE Program.

(a) The Lessee has submitted to the Agency an M/WBE Participation Plan which states Lessee’s proposed plans for participation by minority-owned business enterprises (“MBEs”) and women-owned business enterprises (“WBEs”, together with “MBEs” collectively referred to as “M/WBEs”) in the Project Work until the Completion Deadline, and includes the MWBE Participation Goals, defined as the target percentage of the Project Improvements Investment that will be paid to M/WBEs. The M/WBE Participation Plan is attached hereto as Exhibit M-1.

(b) The Lessee agrees that from the Commencement Date until the Completion Deadline, Lessee and its successors and assigns shall use its good faith efforts to comply with the terms and conditions and reach the goals outlined in the Lessee’s M/WBE Participation Plan and the M/WBE Program

requirements set forth in Exhibit M-2, including without limitation, the provision of all Compliance Reports (as defined therein) and the payment of any liquidated damages set forth therein.

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 the 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, 8.24, 8.25, 8.26, 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 the 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

Section 9.2. Remedies on Default. i) Whenever any Event of Default referred to in Section 9.1 shall have occurred and be continuing, the Agency may terminate this Agreement (with the effect that the term of this Agreement shall be deemed to have expired on such date of termination as if such date were the original Expiration Date of this Agreement) by delivery of written notice to the 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 shall 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.

(a) 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.

(b) No action taken pursuant to this Section 9.2 (including termination of this Agreement pursuant to this Section 9.2 or by operation of law or otherwise) shall, except as expressly provided herein, relieve the Lessee from the Lessee's obligations hereunder, including the obligations of the Lessee under Sections 5.1, 5.2, 8.2, 8.24, 8.25, 8.26, 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 the 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 (11th) Business Day following the delivery by the Agency to the Lessee of the Notification of Failure to Deliver, the Agency may charge the Lessee on a daily calendar basis the Per Diem Supplemental Late Fee in respect of each noticed failure which shall be in addition to, and be imposed concurrently with, the applicable Per Diem Late Fee.

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

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

Section 9.9. Mortgagee 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 the Lessee, a copy of each notice given by the Agency to the 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 the 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 the 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 non-Monetary Default within thirty (30) days after the expiration of the applicable period afforded to the 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 the 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 the 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 the 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 the 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 the 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 Mortgagee Protective Clauses. In addition to the other rights, notices and cure periods afforded to Mortgagees, the Agency further agrees that:

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

(b) the Agency shall consider in good faith any modification to this Agreement or the Subordination, Non-Disturbance and Attornment Agreement requested by a Mortgagee as a condition or term of granting financing to the 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 (11th) 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 the 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, 8.24, 8.25, 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 the 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; Release of Retail Improvements.

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

(b) To the extent not effectuated pursuant to paragraph (c) below, the Lessee shall subject the Facility Realty to a condominium regime and effect, with the cooperation of the Agency, a severance of the Retail Improvements from the Agency Lease prior to the end of the Construction Period (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) The Lessee hereby covenants to effectuate a Severance that includes the creation of a separate condominium unit for the Retail Improvements prior to March 31, 2021 or, in the alternative, to deliver a fully executed Tenant Lease Subordination, Non-Disturbance and Attornment Agreement with the tenant of the Retail Improvements substantially in the form attached hereto as Exhibit I-3 prior to March 31, 2021. In connection with such Severance, promptly upon the request of Lessee, the Lessee and the Agency shall amend, modify and/or restate the Project Documents so that they only encumber each Severed Portion and to release the Retail Improvements from the Project Documents (the “**Release**”). 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 in connection with the Release, including without limitation, releases, terminations and amended and restated Project Documents (collectively, the “**Release Documents**”), provided that such Release Documents, with respect solely to each Severed Portion, (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 Release and to exempt the recording of any new or restated PILOT Mortgages from Mortgage Recording Taxes to the extent permitted by law.

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
One Liberty Plaza
New York, New York 10006
Attention: General Counsel (with a copy to the
Executive Director of the Agency at the
same address)

- (2) if to the Lessee, to

BOP SE LLC
c/o Brookfield Properties
250 Vesey Street, 15th Floor
New York, New York 10281
Attention: General Counsel

with a copy to:

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

- (3) if to the Initial Mortgagee, to

Wells Fargo Bank, National Association
Commercial Real Estate – New York
500 W. 33rd Street, 61st Floor
MAC J0193-612
New York, New York 10001
Attention: Jesse Lee
Loan No. 1019333

with a copy to:

Wells Fargo Bank, National Association
Minneapolis Loan Center
600 South 4th Street, 9th Floor
Minneapolis, Minnesota 55415
Attention: Thomas Noonan
Loan No. 1019333

with a copy to:

Rierner & Braunstein LLP
7 Times Square, Suite 2506
New York, New York 10036
Attention: Jonathan Baumstark, Esq.

- (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, or any other Project Document.

Section 11.8. Severability. If any one or more of the provisions of this Agreement shall be ruled illegal or invalid by any court of competent jurisdiction, the illegality or invalidity of such provision(s) shall not affect any of the remaining provisions hereof, but this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 11.9. Effective Date; Counterparts. The date of this Agreement shall be for reference purposes only and shall not be construed to imply that this Agreement was executed on the date first above written. This Agreement was delivered on the 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 the 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 the 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, the 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 preferentem* 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, or General Counsel 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: Krishna Omolade
Title: Executive Director

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


On the 31st day of January, in the year 2020, before me, the undersigned, personally appeared Krishna Omolade, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public


Carlos A. Guerra
Notary Public, State of New York
No. 01GU6292830
Qualified in New York County
Commission Expires 11/12/2021

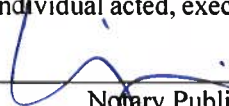
BOP SE LLC

a Delaware limited liability company

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

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

On the 27 day of January, in the year 2020, before me, the undersigned, personally appeared , 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

LOUIS GROSSI
Notary Public, State of New York
No. 01GR6353044
Qualified in New York County
Commission Expires Jan. 17, 2021

Signature Page 2 of 2
Agency Lease Agreement

APPENDICES

EXHIBIT A

DESCRIPTION OF THE LAND

Block 729 Lot 51:

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 Northerly side of W. 31st Street and the Westerly side of Ninth Avenue:

Running thence from said point of Beginning Westerly along the Northerly side of W. 31st Street a distance of 244' 9 9/16" to a point;

Thence Northerly and parallel with Ninth Avenue along a line dividing Lot 51 and Lot 50 a distance of 252' 1 1/2";

Thence Easterly and parallel with W. 31st Street along a line dividing Lot 51 and Lot 60 a distance of 244' 9 9/16" to a point on the Westerly side of Ninth Avenue;

Thence Southerly along the Westerly side of Ninth Avenue a distance of 252' 1 1/2" to the corner first mentioned and the point or place of Beginning.

EXCEPTING from the foregoing, however, the following described land:

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 Northerly side of W. 31st Street and the Westerly side of Ninth Avenue:

Running thence from said point of Beginning Westerly along the Northerly side of W. 31st Street a distance of 195' 9 9/16";

Thence Northerly and parallel with Ninth Avenue a distance of 110' 0";

Thence Westerly and parallel with W. 31st Street a distance of 49' 0";

Thence Northerly and parallel with Ninth Avenue along a line dividing Lot 8051 and Lot 8050 a distance of 142' 1 1/2";

Thence Easterly and parallel to W. 31st Street along a line dividing Lot 8051 and 8060 a distance of 244' 9 9/16" to a point on the Westerly side of Ninth Avenue;

Thence Southerly along the Westerly side of Ninth Avenue a distance of 252' 1 1/2" to the corner first mentioned and the point or place of Beginning. Said lot being limited to an Upper Limit Plane Elevation of 312.00 as defined by the Penn Tunnel Datum.

Block 729 Lot 8051:

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 Northerly side of W. 31st Street and the Westerly side of Ninth Avenue:

Running thence from said point of Beginning Westerly along the Northerly side of W. 31st Street a distance of 195' 9 9/16";

Thence Northerly and parallel with Ninth Avenue a distance of 110' 0";

Thence Westerly and parallel with W. 31st Street a distance of 49' 0";

Thence Northerly and parallel with Ninth Avenue along a line dividing Lot 8051 and Lot 8050 a distance of 142' 1 1/2";

Thence Easterly and parallel to W. 31st Street along a line dividing Lot 8051 and 8060 a distance of 244' 9 9/16" to a point on the Westerly side of Ninth Avenue;

Thence Southerly along the Westerly side of Ninth Avenue a distance of 252' 1 1/2" to the corner first mentioned and the point or place of BEGINNING.. Said lot being limited to an Upper Limit Plane Elevation of 312.00 as defined by the Penn Tunnel Datum.

Perimeter Description for Block 729 Lots 51 and 8051:

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 Northerly side of W. 31st Street and the Westerly side of Ninth Avenue:

Running thence from said point of Beginning Westerly along the Northerly side of W. 31st Street a distance of 244' 9 9/16" to a point;

Thence Northerly and parallel with Ninth Avenue along a line dividing Lot 51 and Lot 50 a distance of 252' 1 1/2";

Thence Easterly and parallel with W. 31st Street along a line dividing Lot 51 and Lot 60 a distance of 244' 9 9/16" to a point on the Westerly side of Ninth Avenue;

Thence Southerly along the Westerly side of Ninth Avenue a distance of 252' 1 1/2" to the corner first mentioned and the point or place of Beginning.

TOGETHER WITH the benefits of the easements contained in Sections 4.1, 4.3(a), 4.3(c), 4.3(d), 4.3(e), 4.3(f), 4.3(g) and 4.3(j), and Exhibit E, Items 1 and 2 of that certain Declaration Establishing the Manhattan West Owners Association and of Covenants, Conditions, Easements and Restrictions, dated as of December 18, 2014 and recorded in the New York County Office of the City Register's Office (the "City Register's Office") on January 9, 2015 as CRFN 2015000009569, as amended and restated by that certain Amended and Restated Declaration Establishing the Manhattan West Owners Association and of Covenants, Conditions, Easements and Restrictions, dated as of April 14, 2015 and recorded in the City


Register's Office on May 5, 2015 as CRFN 2015000149628, as amended and restated by that certain Second Amended and Restated Declaration Establishing the Manhattan West Owners Association and of Covenants, Conditions, Easements and Restrictions between 450 Partners LLC, a Delaware limited liability company, BOP NW LLC, a Delaware limited liability company, BOP SE LLC, a Delaware limited liability company, BOP MW Residential Market LLC, a Delaware limited liability company, BOP NE LLC and BOP MW Retail LLC, a Delaware limited liability company, dated as of October 27, 2015 and recorded in the City Register's Office on November 5, 2015 as CRFN 2015000395159, as amended and restated by that certain Third Amendment and Restated Declaration Establishing the Manhattan West Owners Association and of Covenants, Conditions, Easements and Restrictions made by 450 Partners LLC, BOP NW LLC, BOP SE LLC, BOP MW Residential Market LLC, BOP NE LLC, and BOP MW Retail LLC dated as of May 22, 2017 and recorded in the City Register's Office on June 9, 2017 as CRFN 2017000215183, and Fourth Amended and Restated Declaration Establishing The Manhattan West Owners Association and of Covenants, Conditions, Easements and Restrictions Relating to Premises Known as Manhattan West, New York, New York made among 450 Partners LLC, BOP NW LLC, BOP SE LLC, BOP MW Residential Market LLC, BOP MW Retail LLC and BOP NW Loft LLC, dated as of October 30, 2018, and recorded in the City Register's Office on November 2, 2018 as CRFN 2018000365945, and Fifth Amended and Restated Declaration Establishing The Manhattan West Owners Association and of Covenants, Conditions, Easements and Restrictions Relating to Premises Known as Manhattan West, New York, New York made among 450 Partners LLC, BOP NW LLC, BOP SE LLC, BOP MW Residential Market LLC, BOP NE LLC, BOP MW Retail LLC and BOP NW Loft LLC, dated as of December 19, 2019, and recorded December 20, 2019 as CRFN 2019000416530.

EXHIBIT B

AUTHORIZED REPRESENTATIVES OF THE LESSEE

(See attached Incumbency Certificate)

The undersigned hereby certifies that the following persons are duly elected and qualified officers of the Lessee and hold the offices set forth below and opposite their name are the genuine signatures of such officers.

<u>Name</u>	<u>Office</u>	<u>Signature Specimen</u>
Alan Chun	Senior Vice President, Development	
Jason Kirschner	Senior Vice President, Finance	_____

I have executed this certificate as of the date first written above.

Name: Noah Daniels
Title: Vice President, Counsel

The undersigned hereby certifies that the following persons are duly elected and qualified officers of the Lessee and hold the offices set forth below and opposite their name are the genuine signatures of such officers.

<u>Name</u>	<u>Office</u>	<u>Signature Specimen</u>
Alan Chun	Senior Vice President, Development	_____
Jason Kirschner	Senior Vice President, Finance	_____




I have executed this certificate as of the date first written above.

Name: Noah Daniels
Title: Vice President, Counsel

The undersigned hereby certifies that the following persons are duly elected and qualified officers of the Lessee and hold the offices set forth below and opposite their name are the genuine signatures of such officers.

<u>Name</u>	<u>Office</u>	<u>Signature Specimen</u>
Alan Chun	Senior Vice President, Development	_____
Jason Kirschner	Senior Vice President, Finance	_____

I have executed this certificate as of the date first written above.



Name: Noah Daniels
Title: Vice President, Counsel

PRINCIPALS OF THE LESSEE

Benjamin S. Brown	Managing Partner
Alan Chun	Senior Vice President, Development
Richard Clark	Chief Executive Officer
BOP SE Member LLC	100% Owner

EXHIBIT D**OWNERS OF THE LESSEE**

INDIVIDUAL OWNERS OF THE LESSEE	
Name	% Ownership or Control of the Lessee
N/A	N/A

ENTITY OWNERS OF THE LESSEE	
Name	% Ownership or Control of the Lessee
BOP SE Member LLC	100%

OWNERS of those ENTITIES that own or control more than 10% of the Lessee (“10% Entities”)		
10% ENTITY (name and actual %)	INDIVIDUAL AND ENTITY OWNERS	% Ownership or Control
BOP SE Member LLC	BOP SE Holdings LLC	100%

EXHIBIT E

PROJECT COST BUDGET¹

Uses	\$ mil	Sources	\$ mil
Land Costs	\$483,000,000	Equity	\$973,000,000
Hard Costs	\$1,187,839,021	Commercial Loan	\$1,450,000,000
Soft Costs	\$336,976,740		
Leasing Costs	\$328,000,000		
Contingencies	\$87,184,239		
Total	\$2,423,000,000	Total	\$2,423,000,000

¹ 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 February 1, 2020, between the Agency and BOP SE 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(f) OF THE LEASE AGREEMENT**

The undersigned, an Authorized Representative (as defined in the Lease Agreement referred to below) of BOP SE 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(f) of that certain Agency Lease Agreement, dated as of February 1, 2020 (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, the Lease Agreement and the PILOT Mortgages, 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 5,000 gross square feet; and

(xii) the zoning square footage of the Project Improvements equals 1,507,468 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 the Project 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 the Project 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 the Project 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 SE 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 \$2,423,000,000, will come from the following sources:

- (i) a mortgage loan in the aggregate principal amount of \$1,450,000,000 to the Lessee as evidenced by certain senior, project and building loan agreements dated on or about the date hereof entered into by the Lessee and Wells Fargo Bank, National Association; and
- (ii) equity from the Lessee or its affiliates in the amount of approximately \$973,000,000.

FORM OF SUBORDINATION NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT 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 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 One Liberty Plaza, New York, New York 10006 (the "Agency"), and **BOP SE LLC**, a limited liability company duly organized and existing under the laws of the State of Delaware, whose address for notice under this Agreement is 250 Vesey Street, 15th Floor, New York, New York 10281 (the "Company").

Introductory Provisions

A. The Company is the fee owner of all of the real property described on Exhibit A (the "Land"). Pursuant to the Agency 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 tenant under that certain Company Lease Agreement, dated as of February 1, 2020 (as the same may be amended, restated, supplemented and otherwise modified from time to time, the "Company Lease"), between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company leases the Property (the "Leased Premises") to the Agency.

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

C. The Company is the subtenant under that certain Agency Lease Agreement, dated as of February 1, 2020 (as the same may be amended, restated, supplemented and otherwise modified from time to time, the "Agency Lease"), between the Agency, as sublandlord, and the Company, as subtenant, pursuant to which the Agency subleases the Property (the "Subleased Premises") to the Company.

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

D. [_____] 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 Subleased Premises under the Agency Lease, and (2) the Agency in the Leased Premises under the Company Lease

E. The parties are now entering into this Agreement for the purpose of confirming their understandings and agreements with respect to each of the Company Lease, the Agency Lease and the Security 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 Leased 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 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 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 interest of the Company in the Property and sale of the fee interest of the Company in the Property or deed or assignment in lieu of foreclosure of the interest of the Company in the Property 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 lease between Administrative Agent or a Company Lease Assignee, as applicable, and the Agency upon all of the terms, covenants, provisions and conditions set forth in the Company Lease, and Administrative Agent or a Company Lease Assignee, as applicable, will accept the attornment of the Agency. Such attornment will be effective and self-operative without the execution of any further instrument. As used herein, "Company Lease Assignee" means any successor or assign of Administrative Agent (including, without limitation, any purchaser of the fee interest of the Company in and to the Property upon or following a foreclosure of the Security Instruments (or delivery of a deed 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 subleasehold interest of the Company in the Subleased Premises under the Agency Lease and sale of the subleasehold interest of the Company in the 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 Subleased Premises under the Agency Lease upon or following a foreclosure of the Security Instruments with respect to the subleasehold interest of the Company in and to the Subleased Premises under the Agency Lease (or delivery of an assignment of the Agency Lease in lieu of foreclosure).

Section 6. Delivery of Notices under Company Lease and Agency Lease. The Company hereby agrees to deliver to Administrative Agent a copy of any notice of default delivered by the Company to the Agency under the Company Lease or the Agency Lease. The Agency hereby agrees to deliver to 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 fee title to the Property. 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 subleasehold title to the Subleased Premises under the Agency Lease.

Section 8. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute and be construed as one and the same instrument.

Section 9. Notices. All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given if (a) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested; (b) by delivering same in person to the intended addressee; or (c) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee. Notice so mailed shall be effective upon its deposit with the United States Postal Service or any successor thereto; notice sent by a commercial delivery service shall be effective upon delivery to such commercial delivery service; notice given by personal delivery shall be effective only if and when received by the addressee; and notice given by other means shall be effective only if and when received at the office or designated address of the intended addressee. For purposes of notice, the addresses of the parties shall be 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 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 SE LLC,
a Delaware limited liability company

By: _____
Name:
Title:

EXHIBIT A

LEGAL DESCRIPTION

FORM OF SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT, dated as of _____, 2020 (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 SE 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 Company Lease Agreement, dated as of February 1, 2020 (as the same may be amended, restated, supplemented and otherwise modified from time to time, the "Company Lease"), between Obligor, as landlord, and NYCIDA, as tenant, Obligor leases the Land to NYCIDA;

WHEREAS, pursuant to that certain Agency Lease Agreement, dated as of February 1, 2020 (as the same may be amended, restated, supplemented and otherwise modified from time to time, the "Agency Lease"), between NYCIDA, as sublandlord, and Obligor, as subtenant, NYCIDA 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 and NYCIDA in favor of NYCIDA, as initial mortgagee, and HYIC, as mortgagee which PILOT Mortgages encumber, among other things, 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, [_____] and [_____] 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;

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, the interest of NYCIDA and Obligor in the Company Lease, and the interest of Obligor in the Agency Lease;

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

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

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

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

“Junior Collateral” means the right, title and interest of Obligor in the 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, Senior Creditor or Junior Creditor.

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

“PILOT Collateral” means the right, title and interest of Obligor and NYCIDA in the 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) 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.

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 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 Mortgages is hereby incorporated by reference.

3.04 Obligor, and NYCIDA agree that, upon a foreclosure of a PILOT Mortgage by Senior Creditor, Obligor 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 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 SE LLC
250 Vesey Street, 15th Floor
New York, New York 10281
Attention: General Counsel

with a copy to:

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

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

Hudson Yards Infrastructure Corporation
255 Greenwich Street, NY, NY 10007
Attention: 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
One Liberty Plaza
New York, New York 10006
Attention: General Counsel (with a copy to the Executive Director of the
Agency at the same address)
Facsimile: (212) 312-3912

(c) 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, NYCIDA, Senior Creditor and Junior Creditor with respect to the subject matter hereof and there are no promises or representations by Obligor, NYCIDA, 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 Obligor, NYCIDA, 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 SE LLC, a Delaware limited liability company

By: _____
Name:
Title:

“NYCIDA”:

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

By: _____
Name:
Title:

Exhibit A

Description of the Land

Schedule 1

PILOT MORTGAGES

Fee and Leasehold PILOT Mortgage No. 1 dated as of February 7, 2020, by and among New York City Industrial Development Agency and BOP SE LLC, as mortgagors, to New York City Industrial Development Agency and Hudson Yards Infrastructure Corporation, as mortgagees, to secure the obligation of BOP SE 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 February 7, 2020.

Fee and Leasehold PILOT Mortgage No. 2, dated as of February 7, 2020, by and among New York City Industrial Development Agency and BOP SE LLC, as mortgagors, to New York City Industrial Development Agency and Hudson Yards Infrastructure Corporation, as mortgagees, to secure the obligation of BOP SE LLC to make PILOT Payments in an amount not to exceed \$462,000,000 (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 February 7, 2020.

Fee and Leasehold PILOT Mortgage No. 3, dated as of February 7, 2020, by and among New York City Industrial Development Agency and BOP SE LLC, as mortgagors, to New York City Industrial Development Agency and Hudson Yards Infrastructure Corporation, as mortgagees, to secure the obligation of BOP SE LLC to make PILOT Payments in an amount not to exceed \$462,000,000 (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 February 7, 2020.

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

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT (this "Agreement") made as of the _____ day of _____, 20__, by and between HUDSON YARDS INFRASTRUCTURE CORPORATION, a New York local development corporation, whose address for notice under this Agreement is 255 Greenwich Street, New York, New York 10007 (the "Mortgagee"), and _____, a _____, whose address for notice under this Agreement is _____ (the "Tenant").

RECITALS:

A. BOP SE LLC, a Delaware limited liability company (the "Company"), is the fee owner of that certain real property described on Exhibit A (the "Land"). The Company will construct certain improvements located on the Land (the "Improvements" and, together with the Land, the "Property").

B. The Agency is the tenant under that certain Company Lease Agreement, dated as of February 1, 2020 (as the same may be amended, restated, supplemented and otherwise modified from time to time, the "Company Lease"), between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company leases the Property (the "Leased Premises") to the Agency. The Company holds all rights of landlord under the Company Lease.

C. The Company is the subtenant under that certain Agency Lease Agreement, dated as of February 1, 2020 (as the same may be amended, restated, supplemented and otherwise modified from time to time, the "Agency Lease"), between the Agency, as sublandlord, and the Company, as subtenant, pursuant to which the Agency subleases the Property (the "Subleased Premises") to the Company. The Agency holds all rights of sublandlord under the Agency Lease.

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

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

F. The obligation of the Company to make PILOT Payments to the Agency under the Agency Lease will be secured by, among other things, fee and leasehold PILOT mortgages (as the same may be amended, restated, supplemented and otherwise modified from time to time, the "Security Instrument") made by the Agency and the Company for the benefit of the Agency and the Mortgagee, covering the interest of (1) the Company in (x) the Property, and (y) the Subleased Premises under the Agency Lease, and (2) the Agency in the Leased Premises under the Company Lease.

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

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

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

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

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

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

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

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

4. If Mortgagee or its nominee or designee, or another purchaser of the Property (or any portion thereof that includes the Premises) upon a Foreclosure (any such person or entity, a "Successor Owner") succeeds to the interest of Landlord under the Tenant Lease, subject to Tenant's performance of its obligations under the Tenant Lease, the Tenant Lease will continue in full force and effect as a direct lease between Successor Owner and Tenant, and Successor Owner shall be subject to the provisions of the Tenant Lease with the same force and effect as if the Tenant Lease were a direct lease between Successor Owner and Tenant. Thereupon, Successor Owner shall recognize the Tenant Lease and Tenant's rights thereunder and Tenant shall make full and complete attornment to Successor Owner as substitute landlord upon the same terms, covenants and conditions as provided in the Tenant Lease, including, but not limited to, any option to purchase, right of first refusal to purchase or right of first offer to purchase the Premises as may be provided in the Tenant Lease, with the same force and effect as if Successor Owner were Landlord under the Tenant Lease, such recognition and attornment to be effective as of the time Successor Owner succeeds to the interest of Landlord under the Tenant Lease. Notwithstanding the foregoing, Tenant agrees that any such option, right of first refusal or right of first offer to purchase the Premises or any portion thereof, as may be provided in the Tenant Lease shall not apply to any Foreclosure, as defined herein, and shall not apply to any transfer of the Property (or any portion thereof that includes the Premises) by Successor Owner following such Foreclosure. In consideration of the foregoing, Mortgagee agrees that any such option, right of first refusal or right of first offer shall not be terminated by any Foreclosure or conveyance of the Property (or any portion thereof that includes the Premises) by Successor Owner following such Foreclosure; rather, any such option, right of first refusal or right of first offer shall remain as an obligation of any party acquiring the Property (or any portion thereof that includes the Premises) following the conveyance of the Property (or any portion thereof that includes the Premises) by Successor Owner following such Foreclosure. Furthermore, Tenant expressly confirms to Mortgagee that any acquisition of title to all or any portion of the Premises pursuant to Tenant's exercise of any option, right of first refusal or right of first offer contained in the Tenant Lease shall result in Tenant taking title subject to the lien of the Security Instrument. Mortgagee and Tenant agree, each at its own expense, to execute and deliver, at any time and from time to time upon request of either party, any agreement reasonably satisfactory to such party that may reasonably be necessary or appropriate to evidence such attornment and recognition provided that such agreement does not diminish or increase any of either party's obligations or adversely affect any of either party's rights.

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

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

(b) subject to any offsets or defenses which Tenant might have as to Landlord or any prior landlord 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, 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 in 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 SE LLC

By: _____
Name:
Title:

$$:SS.:$$
$$:SS.:$$

On the ____ day of _____, 2020, 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

$$:SS.:$$
$$:SS.:$$

On the ____ day of _____, 2020, 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

$$:SS.:$$
$$:SS:$$

On the ____ day of _____, 2020, 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

AMENDED AND RESTATED PILOT ASSIGNMENT AND AGREEMENT

by and among

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

and

THE CITY OF NEW YORK, as Co—assignor

and

**HUDSON YARDS INFRASTRUCTURE
CORPORATION, as Assignee**

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

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AMENDED AND RESTATED PILOT ASSIGNMENT AND AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE I

DEFINITIONS

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

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

"Agency" has the meaning given to such term in the initial paragraph of this Agreement.

"Agency's Board of Directors" means the board of directors of the Agency as constituted in accordance with Section 917 of Article 18-A of the General Municipal Law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“State” means The State of New York.

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II

ASSIGNMENT OF PILOT ASSETS

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

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

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

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

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

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

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

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

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

ARTICLE III

REPRESENTATIONS AND WARRANTIES

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

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

(a) **Power and Authority.** The Agency is a corporate governmental agency constituting a body corporate and politic and a public benefit corporation duly organized and existing under the laws of the State, and is authorized and empowered to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. By proper action of the Agency's Board of Directors the Agency has duly authorized the execution and delivery of this Agreement.

(b) **Binding Obligation.** This Agreement has been duly executed and delivered by the Agency and, assuming the due authorization, execution and delivery of this Agreement by the City and the Corporation, constitutes a legal, valid and binding obligation of the Agency enforceable in accordance with its terms.

(c) **Enforceability.** This Agreement constitutes a legal, valid and binding obligation of the Agency enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights and general principles of equity.

(d) **Bankruptcy Ineligibility.** The Agency does not qualify to be a debtor under Chapter 9 of the United States Bankruptcy Code.

(e) **No Consents.** No consent, approval, authorization, order or qualification of or with any court or governmental agency or body is required for the consummation of the transactions contemplated by this Agreement, except for those which have been obtained and are in full force and effect.

(f) **No Violation.** The execution, delivery and performance of this Agreement and each other Transaction Document to which the Agency is a party and the fulfillment of the terms hereof and thereof do not, to the Agency's knowledge, in any material way conflict with, result in any material breach by the Agency of any of the material terms and provisions of, nor constitute (with or without notice or lapse of time) a material default by the Agency under any indenture, agreement or other contract to which the Agency is a party or by which it shall be bound; nor violate any provision of law or, to the Agency's knowledge, any order, rule or regulation applicable to the Agency of any court or of any federal or state regulatory body, administrative agency or other governmental instrumentality having jurisdiction over the Agency or any of its property.

(g) **No Proceedings.** There are no material proceedings or investigations pending or, to the Agency's knowledge, threatened against the Agency, before or by any court, regulatory body, administrative agency or other governmental instrumentality having jurisdiction over the Agency: (i) asserting the invalidity of any of the Transaction Documents, (ii) seeking to prevent the issuance of the Bonds or impair in any material respect the Agency's ability to perform its obligations hereunder, or (iii) seeking any determination or ruling that would materially and adversely affect the validity or enforceability of any of the Transaction Documents, the Bonds, the Enabling Acts or this Agreement.

(h) **Title to PILOT Assets.** From and after the assignment of the PILOT Assets made hereby by the Agency and the City, the Agency will have no right, title or interest in or charge or lien on the PILOT Assets. Prior to the assignments made hereby by the Agency and the City, the Agency had, subject to the City's rights under Sections 858(15) and 874(3) of the General Municipal Law, the right, title and interest to the PILOT Assets that it purports to assign, transfer and convey pursuant to Section 2.02 hereof.

(i) **Absence of Liens.** The Agency has not sold, transferred, assigned, set over or otherwise conveyed any right, title or interest of any kind whatsoever in all or any portion of the PILOT Assets, nor has the Agency created, or to its knowledge permitted the creation or suffered the existence of, any Lien thereon.

(j) **UTEP.** The UTEP has been duly adopted by the Agency, is in full force and effect, has not been rescinded and is permitted by and consistent with the laws of the State. Except as permitted hereby, the UTEP-Hudson Yards has not been amended or modified in any respect.

SECTION 3.02. Representations of the City. The City, as Co-assignor, makes the following representations and warranties:

(a) **Power and Authority.** The City has full power and authority to execute and deliver this Agreement and to carry out its terms; the City has full power, authority and legal right to waive, surrender, agree to forgo, and to assign, transfer and convey to the Corporation its rights in and to the PILOT Assets; and the City has duly authorized such waiver, surrender, agreement to forgo and assignment, transfer and conveyance by all necessary action; and the execution, delivery and performance of this Agreement has been duly authorized by the City by all necessary action. Pursuant to the Enabling Acts and the City Charter, the Mayor of the City has full power and authority to determine the terms and conditions of this Agreement and the related documents and agreements and to execute and deliver the same.

(b) **Binding Obligation.** This Agreement has been duly executed and delivered by the Mayor [or his designee] on behalf of and in the name of the City and, assuming the due authorization, execution and delivery of this Agreement by the Agency and the Corporation, constitutes a legal, valid and binding obligation of the City enforceable in accordance with its terms.

(c) **No Consents.** No consent, approval, authorization, order or qualification of or with any court or governmental agency or body is required for the consummation of the transactions contemplated by this Agreement, except for those which have been obtained and are in full force and effect.

(d) **No Violation.** The consummation of the transactions contemplated by the Transaction Documents to which the City is a party and the fulfillment of the terms hereof and thereof do not, to the City's knowledge, in any material way conflict with, result in any material breach by the City of any of the material terms and provisions of, nor constitute (with or without notice or lapse of time) a material default by the City under any indenture, agreement or other contract to which the City is a party or by which it shall be bound; nor violate any law or, to the

City's knowledge, any order applicable to the City of any court having jurisdiction over the City or any of its property.

(e) **No Proceedings.** There are no material proceedings or investigations pending or, to the City's knowledge, threatened against the City, before or by any court, regulatory body, administrative agency or other governmental instrumentality having jurisdiction over the City: (i) asserting the invalidity of any of the Transaction Documents or the Bonds, (ii) seeking to prevent the issuance of the Bonds or to impair in any material respect the City's ability to perform its obligations hereunder, or (iii) seeking any determination or ruling that would materially and adversely affect the validity or enforceability of any of the Transaction Documents, the Bonds, the Enabling Acts or this Agreement.

(f) **Title to PILOT Assets.** From and after the assignment of the PILOT Assets made hereby by the City and the Agency, the City will have no right, title or interest in or charge or lien on the PILOT Assets, and payment of the PILOT Payments and PILOMRT Payments to the Corporation will not be subject to or dependent or conditioned on an appropriation by the City of the PILOT Payments or the PILOMRT Payments for such payment. Prior to the assignments made hereby by the City and the Agency and the City's waiver, surrender and agreement to forgo receipt of PILOT Payments and PILOMRT Payments made by the City, the City had such right, title and interest to the PILOT Payments and PILOMRT Payments as provided in Sections 858(15) and 874(3) of the Enabling Acts.

(g) **Absence of Liens.** The City has not sold, transferred, assigned, set over or otherwise conveyed any right, title or interest of any kind whatsoever in all or any portion of the PILOT Assets, nor has the City created, or to its knowledge permitted the creation or suffered the existence of, any Lien therein.

ARTICLE IV

COVENANTS OF THE AGENCY AND THE CITY

SECTION 4.01. Covenants of the Agency and City. The Agency for and on behalf of itself and the City for and on behalf of itself do hereby covenant as follows:

(a) **Protection of Title.** It shall, at the request of the Corporation and at the expense of the Corporation, take all actions as may be required by law fully to preserve, maintain, defend, protect and confirm the Agency's and the City's assignment of its interest in the PILOT Assets to the Corporation. It will not take any action that will adversely affect the validity or enforceability of the Transaction Documents, nor will it assert or claim any right, title or interest to or in the PILOT Assets that is inconsistent with the Transaction Documents.

(b) **Protection of Transaction Documents.** It will, at the request of the Corporation and at the expense of the Corporation, and subject to the City's obligation to represent the Agency pursuant to Section 5.03 of this Agreement, join in any action or proceeding at law or in equity before any court, regulatory body, administrative agency or other governmental instrumentality in which the Corporation is a party: (i) asserting the invalidity of any of the Transaction Documents to which it is a party, (ii) seeking to prevent the

consummation in accordance with its terms of any Transaction Document to which it is a party, or (iii) seeking any determination or ruling that would materially and adversely affect the validity or enforceability of any of the Transaction Documents to which it is a party.

(c) **Further Actions and Assurances.** It, at any and all times, shall at the request of the Corporation and at the expense of the Corporation, in so far as it may be authorized by law, pass, make, do, execute, acknowledge and deliver all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable for the better assuring, conveying, granting, assigning and confirming all and singular the rights and assignments hereby made or created or intended to be made or created, or which it is or may hereafter become bound to assign, or as may be reasonably necessary or proper to carry out more effectively the purposes of this Agreement.

(d) **Information Reporting.** It will provide to the Corporation at any time and from time to time such information as the Corporation may reasonably request in order to fulfill the Corporation's obligations under the First Indenture and the Second Indenture, and any obligations it may undertake in connection with the Bonds to provide information to the Rating Services, and any continuing disclosure undertaking in connection with the Bonds.

(e) **Settlement, Compromise, Etc.** It will not, without the prior written consent of the Corporation and the City, settle, stipulate or otherwise waive or compromise any right or claim or any action or proceeding to which it is a party if the same would have the effect of: (A) agreeing that the Enabling Acts, or any provision thereof material to the transactions contemplated by any of the Transaction Documents, are in conflict with or violate the constitution of the State or any provision of the statutory law of the State, (B) agreeing that any provision of a Transaction Document to which it is a party is void, voidable or unenforceable; (C) agreeing to (1) a reduction in one or more PILOT Payments or PILOMRT Payments to be made under a PILOT Agreement, (2) delay any date by which one or more PILOT Payments are required to be made under a PILOT Agreement, or (3) shorten the period over which the PILOT Payments are to be made under a PILOT Agreement; or (D) acquiescing in any of the foregoing.

SECTION 4.02. Additional Agency Covenants.

(a) **Protection of Enabling Acts.** The Agency shall cooperate and assist the City in connection with the City's performance of its obligations under Section 4.03(a) hereof.

(b) **Conformity with UTEP-Hudson Yards.** Each PILOT Agreement shall, unless the Corporation otherwise agrees in writing, conform to the UTEP-Hudson Yards and be in such form as to which the Corporation shall have given its prior written consent.

(c) **Amendment, etc. of UTEP-Hudson Yards.** The Agency shall not directly or indirectly rescind, amend, modify or deviate from the UTEP-Hudson Yards in any respect without the prior written consent of the Corporation; *provided, however*, that the Agency may, without the consent of the Corporation, amend or modify the UTEP-Hudson Yards if (i) as a result of a change in State law, the UTEP-Hudson Yards is no longer consistent therewith, (ii) such amendment or modification is required in order for the UTEP-Hudson Yards to conform to the applicable State laws, (iii) the Agency, not less than 30 days prior to it taking any action to

amend or modify the UTEP–Hudson Yards, delivered to the Corporation a copy of the proposed amendment or modification of the UTEP–Hudson Yards and (iv) the Agency certified to the Corporation, in writing, that such amendment or modification is solely required in order for the UTEP–Hudson Yards to conform to the applicable State law.

(d) **PILOT Agreements and Mortgages.** The Agency shall not provide any Financial Assistance for a qualifying commercial project within the Hudson Yards UTEP Area unless the owner of such project has executed a PILOT Agreement and a PILOT Mortgage securing its obligations to the Agency under the PILOT Agreement. The Agency shall require each owner, at such owner’s cost, to provide a mortgagee title insurance policy insuring that such PILOT Mortgage constitutes a first mortgage lien on the property described therein, subject only to such Liens as have been consented to by the Agency and the Corporation.

(e) **Extension of PILOT Agreements.** The Agency agrees that so long as any Bonds remain Outstanding it will, at the request of the Corporation, exercise any right the Agency may have under each PILOT Agreement to extend the term of such PILOT Agreement.

SECTION 4.03. Additional City Covenants.

(a) **Protection of Enabling Acts.** The City shall defend the Agency against any legal challenge arising in connection with the transactions contemplated by any of the Transaction Documents that asserts that (A) the Enabling Acts, or any provision thereof material to the transactions contemplated by any of the Transaction Documents, are in conflict with or violate the constitution of the State or any provision of the statutory law of the State, or (B) any provision of a Transaction Document to which the Agency is a party is void, voidable or unenforceable as currently in effect.

(b) **Tax Exemption.** The City shall at all times do and perform all acts and things permitted by law and necessary or desirable to assure that interest paid by the Corporation on Tax–Exempt Bonds shall be excludable from gross income for federal income tax purposes pursuant to Section 103(a) of the Code; and no funds of it shall at any time be used directly or indirectly to acquire securities, obligations or investment property the acquisition or holding of which would cause any Tax–Exempt Bond to be an arbitrage bond as defined in the Code and any applicable regulations issued thereunder and in furtherance of such covenant shall execute and comply with the tax certificate provided by Bond Counsel.

(c) **Non–Impairment.** The City shall not take any action that would limit or alter the rights vested in the Corporation under or pursuant to the Transaction Documents or in and to the PILOT Assets; nor shall the City take any action that would in any way impair the rights and remedies of the holders or the security for the Bonds.

ARTICLE V

MISCELLANEOUS

SECTION 5.01. Amendment. No agreement or other instrument purporting (i) to amend, change, modify, or terminate this Agreement or any provision hereof or (ii) to waive any provision thereof, shall have any force or effect unless approved by the Agency’s Board of

Directors, in the case of the Agency, the Mayor [or his designee], in the case of the City, and the Board of Directors of the Corporation, in the case of the Corporation, and executed and delivered by an Authorized Officer of the party against whom asserted; nor, so long as any Bonds remain outstanding, shall it have any force or effect unless made in conformity with the provisions of this Section 5.01.

SECTION 5.02. Breach of Representation or Warranty. The Agency and the City each acknowledge that the Corporation will assign to the First Indenture Trustee and/or the Second Indenture Trustee for the benefit of the Bondholders all of its rights and remedies hereunder with respect to the breach of any representations and warranties of each of them under Article III of this Agreement. Upon discovery by any party hereto of a breach of any of the foregoing representations and warranties that materially and adversely affects the value of the PILOT Assets, the party discovering such breach shall give prompt written notice to the other parties hereto.

Neither the Agency nor the City shall be liable to the First Indenture Trustee, the Second Indenture Trustee or the Bondholders for any loss, cost or expense resulting solely from the failure of the First Indenture Trustee or the Second Indenture Trustee to promptly notify the Agency or the City upon the discovery by an Authorized Officer of the First Indenture Trustee or the Second Indenture Trustee of a breach of any representation or warranty contained herein.

SECTION 5.03. Liability of Agency or City; Indemnities. The Agency and the City shall be liable in accordance herewith only to the extent of the respective obligations specifically undertaken by each of them under this Agreement. In no event, however, shall the Agency be liable for monetary damages and the Corporation and its assigns shall be limited, upon a breach by the Agency, to specific performance or other compulsory relief in the nature of mandamus, injunctive relief, and other equitable remedies as may be available. To the extent permitted by law, the City shall indemnify, defend and hold harmless the Corporation and its respective officers, directors, employees and agents from and against any and all costs, expenses, losses, claims, damages and liabilities to the extent that such cost, expense, loss, claim, damage or liability arose out of, or was imposed upon any such person through, the negligence, willful misfeasance or bad faith of the Agency or the City in the performance of their respective duties under this Agreement or by reason of reckless disregard of their respective obligations and duties under this Agreement. To the extent permitted by law, the City shall indemnify, defend and hold harmless the Agency and its respective officers, directors, employees and agents from and against any and all costs, expenses, losses, claims, damages and liabilities to the extent that such cost, expense, loss, claim, damage or liability arose out of, or was imposed upon any such person (i) in connection with the performance of such person's obligations under the Transaction Documents and not otherwise paid or reimbursed by the Corporation, (ii) in connection with or arising out of the transfer to or ownership by the Agency of fee title to any real property relating to any project that is subject to a PILOT Agreement, (iii) through, the negligence, willful misfeasance or bad faith of the City or the Corporation in the performance of their respective duties under this Agreement, by reason of reckless disregard of their respective obligations and duties under this Agreement, or (iv) arising from any representation or warranty made by the Agency, or its directors, officers, employees or agents pursuant to any Transaction Document or any certificate, notice or agreement delivered in connection herewith or therewith.

At the option of the City and absent any conflict of interest, any indemnified party shall be represented by the Corporation Counsel of the City or special counsel retained by the City with respect to any litigation brought by or against such indemnified party or its officers, directors or employees with respect to any claims, damages, judgments, liabilities or causes of action to which such persons may be subject and to which they are entitled to be indemnified hereunder. Indemnification under this Section shall survive the termination of this Agreement, the First Indenture and the Second Indenture, and shall include reasonable fees and expenses of counsel and expenses of litigation. If the City shall have made any indemnity payments pursuant to this Section and the person to or on behalf of whom such payments are made thereafter shall collect any of such amounts from others, such person shall promptly repay such amounts to the City without interest.

SECTION 5.04. Limitation on Liability. The Agency and the City and any officer or employee or agent of the Agency or the City may rely in good faith on the advice of counsel or on any document of any kind, prima facie properly executed and submitted by any person respecting any matters arising hereunder. Neither the Agency nor the City shall be under any obligation to appear in, prosecute or defend any legal action that shall not be related to its obligations under this Agreement, and that in its opinion may involve it in any expense or liability. The City shall not be required to indemnify any person for a claim settled without the prior consent of the Mayor.

Neither the Agency, the City nor any of their officers or employees or agents shall be under any liability to the Corporation, except as provided under this Agreement, for any action taken or for refraining from the taking of any action pursuant to this Agreement or for errors in judgment; but this sentence shall not protect the Agency, the City or any such person against any liability that would otherwise be imposed by reason of willful misfeasance, bad faith or negligence in the performance of duties or by reason of reckless disregard of obligations and duties under this Agreement; *provided, however*, that neither the Agency nor the officers, employees or agents of the City or the Agency, shall be liable for monetary damages and the Corporation shall be limited in its remedies against such persons to seeking specific performance, injunctive or other compulsory relief in the nature of mandamus or other equitable remedies.

Notwithstanding anything contained herein to the contrary, neither the Agency, nor its directors, officers, employees or agents shall have any liability for the representations, warranties, covenants, agreements or other obligations of the City hereunder or in any of the certificates, notices or agreements delivered pursuant hereto, or for any representation or warranty made by the Agency, or its directors, officers, employees or agents in reliance upon the Opinion pursuant to any Transaction Document or any certificate, notice or agreement delivered in connection therewith, as to all of which recourse shall be had solely to the City.

SECTION 5.05. Notices. All demands, notices and communications upon or to the Agency, the City, the Corporation, the First Indenture Trustee or the Second Indenture Trustee under this Agreement shall be in writing, personally delivered or mailed by certified mail, return receipt requested, and shall be deemed to have been duly given upon receipt: (a) in the case of the Corporation, to it to the attention of the Corporation's President with a copy to the Corporation's Secretary, at 255 Greenwich Street, New York, New York 10007; (b) in the case

of the First Indenture Trustee, addressed to it at the principal corporate trust office of the First Indenture Trustee at the address of such principal corporate trust office; (c) in the case of the Second Indenture Trustee, addressed to it at the principal corporate trust office of the Second Indenture Trustee at the address of such principal corporate trust office; (d) in the case of the City, addressed to it to the attention of the City's Director of Management and Budget, at 255 Greenwich Street, New York, New York 10007, with a copy to (i) the City's Corporation Counsel, at 100 Church Street, New York, New York 10007, and (ii) the City's Comptroller, at Municipal Building, Room 517, One Centre Street, New York, New York 10007; (e) in the case of the Agency, addressed to it to the attention of the Agency's General Counsel, with a copy to the Agency's Executive Director, at 110 William Street, New York, New York 10038; or, (f) in each case, to such other individual and at such other address as the person to be notified shall have specified by notice to the other persons.

SECTION 5.06. Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; *provided, however*, that this Agreement may not be assigned by any party hereto without the prior written consent of the other parties hereto, *except* that the Corporation may assign the Agreement to the First Indenture Trustee and/or the Second Indenture Trustee without the consent of any other party hereto.

SECTION 5.07. Limitations on Rights of Others. The provisions of this Agreement are solely for the benefit of the Agency, the City, the Corporation, the First Indenture Trustee, the Second Indenture Trustee and the Bondholders, and nothing in this Agreement, whether express or implied, shall be construed to give to any other person any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

SECTION 5.08. Separate Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

SECTION 5.09. Headings. The headings of the various Articles and Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

SECTION 5.10. Governing Law. This Agreement shall be construed in accordance with the laws of the State, without reference to its conflict of law provisions, and the obligations, rights and remedies of the parties hereunder shall be determined in accordance with such laws.

SECTION 5.11. Termination of Certain Provisions. To the extent any covenant, representation, obligation or consent requirement herein is said to be for the benefit of the Bondholders or of the First Indenture Trustee or the Second Indenture Trustee, such provision shall, with respect to such Bondholders or the First Indenture Trustee or the Second Indenture Trustee, be deemed to terminate upon the payment of all Outstanding Bonds under the First Indenture, the payment of all Outstanding Bonds under the Second Indenture and the

termination of the First Indenture and the Second Indenture; whereupon the Corporation, by appropriate instruments, shall reassign, retransfer and reconvey the respective PILOT Assets to the Agency and the City and, upon such reassignment, retransfer and reconveyance this Agreement shall terminate. Notwithstanding the foregoing, the provisions of Sections 5.03 and 5.04 shall survive the termination of this agreement.

[Remainder of page intentionally left blank; signature page follows]

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

SEAL

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**, assignor

Attest:

By: *Arthur Hansen*
Title: *Assistant Secretary*

By: 
Name: Johan Salen
Title: Executive Director

APPROVED AS TO FORM:

THE CITY OF NEW YORK, co-assignor

By: _____
Name: _____
Title: Acting Corporation Counsel

By: _____
Name: Alicia Glen
Title: Deputy Mayor for Housing and Economic
Development

SEAL

**HUDSON YARDS INFRASTRUCTURE
CORPORATION**, as assignee

Attest:

By: _____
Name: _____
Title: _____

By: _____
Name: Alan L. Anders
Title: President

(Signature Page to Amended and Restated PILOT Assignment and Agreement)

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

SEAL

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**, assignor

Attest:

By: _____
Title: _____

By: _____
Name: Johan Salen
Title: Executive Director

APPROVED AS TO FORM:

THE CITY OF NEW YORK, co-assignor

By: Albert Rodriguez
Name: Albert Rodriguez
Title: Acting Corporation Counsel

By: Alicia Glen
Name: Alicia Glen
Title: Deputy Mayor for Housing and Economic
Development

SEAL

**HUDSON YARDS INFRASTRUCTURE
CORPORATION**, as assignee

Attest:

By: Prescott Ulrey
Name: Prescott Ulrey
Title: Secretary

By: Alan L. Anders
Name: Alan L. Anders
Title: President

(Signature Page to Amended and Restated PILOT Assignment and Agreement)

PROJECT DESCRIPTION

PUBLIC AMENITIES

The Public Amenities include the construction of the first phase of a system of parks, public open spaces, and streets in the Project Area, including the first portion of a mid-block boulevard and park between Tenth and Eleventh Avenues, and between West 33rd Street and West 36th Street.

At the discretion of the Corporation, in the future the Public Amenities may also include additional portions of the mid-block boulevard and park north of West 36th Street, as well as a below-grade parking garage to be located beneath the mid-block boulevard and park between West 34th Street and West 36th Streets from Tenth to Eleventh Avenues.

SUBWAY EXTENSION

The No. 7 subway line will be extended approximately two miles from its current terminus on West 41st Street between Seventh and Eighth Avenues westward under West 41st Street to Eleventh Avenue and then southward under Eleventh Avenue. The Subway Extension includes the construction of a terminal station at West 34th Street and Eleventh Avenue and the shell of an intermediate station at Tenth Avenue and West 41st Street. The subway tracks will extend beyond the terminal station to West 25th Street and Eleventh Avenue to permit the storage of six subway trains to enhance operational reliability.

At the discretion of the Corporation, in the future the Project could include the completion of the intermediate station at Tenth Avenue and West 41st Street, including the platform, systems, entrances/exits, and finishings (tiles, lights, etc.).

PURCHASE OF TDRs

The Corporation will acquire, pursuant to the MTA Agreement, from the Triborough Bridge and Tunnel Authority, an affiliate of the MTA, certain transferable development rights appurtenant to the property within the Project Area designated as the "Eastern Rail Yards," as defined in the MTA Agreement.

EXHIBIT B

UTEP

**THIRD AMENDED AND RESTATED
UNIFORM TAX EXEMPTION POLICY
OF THE
NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY**

Approved by the Board of Directors of the New York City Industrial
Development Agency on August 3, 2010



THIRD AMENDED AND RESTATED UNIFORM TAX EXEMPTION POLICY¹

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¹ *Uniform Tax Exemption Policy*, approved December, 1994; *First Amended and Restated Uniform Tax Exemption Policy* approved March 30, 1999; amendments thereto approved August 13, 2002, November 9, 2005, August 8, 2006, and December 12, 2006; *Second Amended and Restated Uniform Tax Exemption Policy*, approved December 12, 2006; amendments thereto approved July 28, 2009.

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I. PRINCIPLES OF GENERAL APPLICATION

A. Requirements of Law; Previous Policies Superseded. Effective August 3, 2010, this Policy supersedes previous policies relating to the subject matter of this Policy.

B. Financial Assistance as Discretionary. The provision of Financial Assistance in accordance with this Policy to a Recipient for the Recipient's Project shall be a discretionary act on the part of the Board, notwithstanding the occasional use in this Policy of directive phrases such as "...the Agency shall provide..." or absolute phrases such as "...shall be exempt..."

In making the discretionary decision to provide Financial Assistance, first the Staff, and then the Board, shall consider, variously, the following:

- the extent to which a proposed Project will create or retain permanent, private-sector jobs
- whether Financial Assistance is required to induce the Project (see subdivision "C.1." below)
- the estimated value of the Financial Assistance to be provided to the Recipient
- the estimated value of any other benefits that the City may be providing
- the financial feasibility of the Project
- the environmental impact of the Project
- the amount of private-sector investment to be generated by the proposed Project
- public support for, or opposition to, the proposed Project
- the likelihood of timely accomplishment
- whether the Project involves an industry or activity which the City seeks to retain and foster
- the extent to which the proposed Project will create additional sources of revenue for the City
- whether the Project will use an apprenticeship program approved by the New York State Department of Labor

C. Conditions to receiving Financial Assistance. The following are conditions to providing Financial Assistance to any Recipient:

1. Inducement.

Unless elsewhere specified in this Policy, “inducement” by the Agency means that but for the Financial Assistance being offered by the Agency to a Recipient for the Recipient’s Project, such Project would most likely not be undertaken by the Recipient; or, if undertaken at all by such Recipient, the Project might occur at a substantially reduced level or it might occur outside of the State. The action by which a specific Project is induced is the adoption by the Board of an inducement resolution.

a. *For Industrial Projects, Commercial Growth Projects, Hudson Yards Commercial Construction Projects, Governmental Bond Projects, and Industrial Developer Projects located in a Zone.* Except as set forth in “c,” “d” and “e” below, for Industrial Projects, Commercial Growth Projects, Hudson Yards Commercial Construction Projects, Governmental Bond Projects, and Industrial Developer Projects located in a Zone, applicable “inducement” is described in the foregoing introduction to this subdivision “1.”

b. *For Civic Facility Projects.* For all Civic Facility Projects, “inducement” is the fulfillment of the *Not-for-Profit Guidelines* through operation of the Project Facility. For Civic Facility Projects that are Private Schools, “inducement” additionally includes the fulfillment of the Agency’s *Compliance Criteria for Private Schools*.

See Appendix B, annexed hereto, for Not-for-Profit Guidelines and Appendix C, annexed hereto, for Compliance Criteria for Private Schools.

c. *For Liberty Bond Projects.* For Liberty Bond Projects, “inducement” is the fulfillment of the *Selection Criteria and Requirements* of the *New York Liberty Bond Program*.

See Appendix D, annexed hereto, for Selection Criteria and Requirements of the New York Liberty Bond Program.

d. *For ARRA Bond Projects.* An ARRA Bond Project is a Project that qualifies for financing with ARRA Bonds and for which “inducement” is the following: (i) fulfillment of the *Threshold Requirements*; and (ii) fulfillment of the *Selection Criteria*; and (iii) in the case of a Project Facility to be located in the Hudson Yards UTEP Area and for which the Project as proposed will also qualify as a Hudson Yards Commercial Construction Project, the consent of the Hudson Yards Infrastructure Corporation. By way of clarification rather than limitation, for purposes of “iii” preceding, if the ARRA Bond Project in question involves Recovery Zone Facility Bonds, the requirement for consent will apply regardless of whether the Hudson Yards UTEP Area is a Recovery Zone, or lies within a Recovery Zone, or is in part a Recovery Zone.

See Appendix E, annexed hereto, for Threshold Requirements and Selection Criteria.

e. *PlaNYC Energy Program Projects.* A PlaNYC Energy Program Project consists of the acquisition, construction, equipping, furnishing and/or installation of a Peaking Unit. For a PlaNYC Energy Program Project, “inducement” consists of the following:

(i) the proposed Peaking Unit will use natural gas, or a demonstrably cleaner fuel, as its primary fuel; and (ii) the proposed Peaking Unit will have a full-load heat rate not exceeding either (aa) 7,850 btuLHV/kwh (ISO 59°, 60% RH, zero losses, sea level) as measured at generator terminals, or (bb) 8,250 btuLHV/kwh (9,150 btuHHV/kwh) as measured net of power plant parasitic loads; and (iii) nitrogen oxide (NOx) emissions from the Peaking Unit will not exceed the lesser of (aa) 25 ppm, or (bb) the then-applicable air-emissions limit as set for the City by the air-emissions permitting agency or agencies having jurisdiction; and (iv) the proposed Peaking Unit will be electrically interconnected to the City's electrical grid; and (v) the proposed Peaking Unit will satisfy either (aa) a future reliability need as identified by any one of NYISO, the transmission owner, or the City, or (bb) an environmental need identified by the City. For purposes of this Policy: "NYISO" means the New York Independent System Operator; "transmission owner" means the owner of local facilities for the transmission of electricity within the City; and "Peaking Unit" means a facility for the generation of electricity that conforms to at least one of the following: (aa) the definition applicable on the date hereof (August 3, 2010) for a "peaking unit" as provided in NYISO Services Tariff, Section 5.14.b1²; or (bb) for a period to which a particular cost-of-entry analysis (i.e., a "CONE") applies, the electricity-generating facility on which NYISO has based such CONE; or (cc) at any point in time, a facility that is generally recognized in the industry as being a "peaking unit." As defined herein, a Peaking Unit shall not include the land upon which it is situated.

f. *For Commercial Growth Projects, Hudson Yards Commercial Construction Projects, and Governmental Bond Projects.* For Commercial Growth Projects, Hudson Yards Commercial Construction Projects, and Governmental Bond Projects, the inducement criteria described in the introduction to this subdivision "1" may apply, and, in addition, "inducement" may also mean (within the discretion of the Staff and upon approval of the Board) that, but for the Financial Assistance, (i) a Recipient would either not retain and/or attract a specified number of employees or a business function or unit for a specified period of time within the City, and/or (ii) the loss of a vital service to the City might occur, and/or (iii) a vital City-supported project or initiative may be delayed or otherwise adversely affected.

2. Financial Assistance to Apply to Project Property. For the Staff and the Board to make a finding of inducement, the proposed Financial Assistance must apply to the property which is the subject of the Project. An applicant may not apply for Financial Assistance for one location when intended Project activities are to occur at another.

3. Capital Asset. The proposed Project must involve one or more of the following activities on the part of the Recipient in respect of a capital asset:

- Acquisition of title to, or equivalent ownership in, or leasehold interest in, tangible property which has a useful life of one year or more; and/or
- Renovation of Improvements; and/or
- Construction of New Improvements; and/or

² "...a peaking unit is defined as the unit with technology that results in the lowest fixed costs and highest variable costs among all other units' technology that are economically viable."

- Refunding or refinancing of conduit-issued debt originally issued for the purpose of financing any of the foregoing activities.

4. Agency Relationship to Project Property. The Agency shall have such interest in or control over a Project Facility, for such duration of time, as may be necessary under requirements of law to provide Financial Assistance; and the choice of interest in, or, in the alternative, the assertion of control over, Project property for this purpose shall be in the sole discretion of the Agency.

5. Statutory Requirements. The Agency and the Recipient shall satisfy and fulfill all requirements set forth in the Statute for providing Financial Assistance.

D. Applicability of Exemption from Taxes. The failure of this Policy (or a deviation in accordance with Article IV of this Policy) to explicitly exempt a Project Facility, or any portion thereof, or any Personal Property related thereto, or any Project activity, from a particular tax or other imposition shall be deemed to mean that such property or activity shall not be exempt and that the tax or imposition in question shall remain payable. In the absence of the circumstance described in “I” immediately below or failing satisfaction of the requirements set forth in “II” immediately below, the Agency’s mere acquisition of an interest in or control over property will not be sufficient to exempt such property or Project activities related to such property from any tax or imposition.

Exemption from a particular tax shall only occur if “I” or “II” following applies, and if “I” does apply, “II” shall not (i.e., the tax exemption in question will not be made available through the Agency or by any of its actions):

I. the property is exempt from the tax in question under law other than the Statute;

OR

II. all of the following conditions for exemption through the Agency are satisfied with respect to the tax in question:

- the Statute, or the Statute as interpreted, authorizes or otherwise permits exemption from the tax, and/or the Agency’s interest in, or control over, or involvement with, the Project property provides a sufficient basis for exemption; and
- this Policy authorizes or otherwise permits exemption from the tax; and
- the Agency has (y) delivered an instrument by which tax exemption may be effectuated, and/or (z) agreed to exempt the tax in question by agreement set forth in a Project Document; and
- in the case of real property taxes, the New York City Department of Finance has taken the ministerial action of removing the Project Facility

from the tax rolls and thereby designating such property as exempt from the City's real property taxes.

E. Governing Procedures. In all matters relating to the applicability, calculation, billing, collection and payment of PILOT, including but not limited to the determination of Assessed Valuation, the Agency may rely upon and use, or cause to be used, the methods and procedures customarily employed, and the determinations customarily made, by the New York City Department of Finance.

F. Financial Assistance in the Form of Bond Financings. This Policy authorizes the Agency to provide Financial Assistance in the form of all conduit-issued bonds and any other form of conduit-issued debt provided that (i) such obligations are authorized to be issued under law or are permitted to be issued under law, and (ii) such obligations are issued in accordance with all requirements of law, and (iii) the issuance of such obligations has been authorized by the Board in respect of a specific Project.

G. Exclusivity. A Project Facility located in the New York Liberty Zone that does not qualify as a Liberty Bond Project, may nevertheless receive Financial Assistance if it qualifies under another category of Project described in this Policy. A Project Facility located in the Hudson Yards UTEP Area that does not qualify as a Hudson Yards Commercial Construction Project may not receive Financial Assistance under another category of Project described in this Policy, provided that the foregoing shall not preclude the Agency from providing Financial Assistance limited to exemptions from City and State sales and use taxes on purchases and leases of Personal Property for tenant improvements in connection with a Commercial Growth Project that involves a Project Facility located in the Hudson Yards UTEP Area but which does not qualify as a Hudson Yards Commercial Construction Project.

H. Overlapping Project Categories. If a Project Facility falls under more than one of the Project categories described in this Policy, and should the Agency accept the applicant in connection with such Project Facility for the purpose of providing Financial Assistance to the applicant (as a Recipient) and its related Project, then, it shall be in the Agency's sole discretion as to which Project category (or Project categories) and related Financial Assistance shall apply to that Project. Notwithstanding the foregoing, where a Project Facility is located in the Hudson Yards UTEP Area, neither such Project Facility nor its related Project shall be provided with any Financial Assistance other than (i) the Financial Assistance provided for in *Appendix F*, and (ii) Financial Assistance limited to exemptions from sales and use taxes on purchases and leases of personal property for tenant-improvements in connection with Commercial Growth Projects. For purposes of this Subdivision "H," "personal property" may include building materials, fixtures, furnishings and equipment, as well as certain services that may relate to any of the foregoing, all as further provided (by the Staff in its sole discretion) in the forms of sales-tax exemption letters used by the Agency.

I. Transferability of the Project. If, after completing Project construction, reconstruction and/or renovation, a Recipient requests that its right to receive Financial Assistance continue for the balance of the applicable Financial Assistance Term notwithstanding (y) sale, lease or other disposition of the Recipient's Project Facility, and/or (z) change in the ownership of or control over the Recipient, *then*, under either (or both) of such circumstances,

the decision whether or not to consent to such request shall be made in the sole discretion of the Staff. If, before completing Project construction, reconstruction and/or renovation, a Recipient makes such request under the same circumstances, such consent may be provided only upon approval by the Board.

J. Amendment. This Policy may be further amended from time to time by action of the Board after public hearing and published notice of such hearing.

II. TAX EXEMPTION POLICIES

A. Industrial Projects.

The Agency may provide Financial Assistance to Industrial Projects in the form of the tax exemptions described in this subdivision “A.”

1. Exemption from Real Property Taxes; PILOT.

a. During the Financial Assistance Term, a Project Facility, to which an Industrial Project applies, may be exempted from Current Taxes; and a PILOT shall be payable with respect to such Project Facility once it so exempted.

b. Throughout the Financial Assistance Term, PILOT payable with respect to a Project Facility (to which an Industrial Project applies) shall consist of Land PILOT and Improvements PILOT, as described below.

(i) *Land PILOT.* With respect to Project Land, there shall be payable Land PILOT in an amount equal to Current Taxes less the sum of (aa) the Abatement Amount, and (bb) any decrease in Current Taxes arising from an applicable As-of-Right Benefit for which either Existing Improvements or Additional Improvements have qualified; *provided, however,* that Land PILOT shall be increased in years 22, 23, 24 and 25 of the Financial Assistance Term by, respectively, 20%, 40%, 60% and 80% of the difference between Current Taxes (as same may be decreased under “bb” preceding) and Land PILOT. Notwithstanding anything that may be to the contrary herein, Land PILOT shall never be less than zero.

(ii) *Improvements PILOT.* Improvements PILOT shall consist of the following:

- *Existing Improvements.* With respect to Existing Improvements there shall be payable PILOT in an amount equal to the Current Taxes attributable, at Closing, to such Existing Improvements; *provided however* that such Current-Tax amount is (aa) decreased as a result of any As-of-Right Benefit for which either Existing Improvements or Additional Improvements have qualified, and (bb) increased in years 22, 23, 24 and 25 of the Financial Assistance Term by, respectively, 20%, 40%, 60% and 80% of the difference between Current Taxes (as same may be decreased under “aa” preceding) and Existing Improvements PILOT.

- *Project Improvements PILOT.* With respect to Project Improvements, PILOT shall equal zero and such PILOT shall remain at zero notwithstanding any non-physical increase in the Assessed Valuation attributable to such Project Improvements during the Financial Assistance Term. Notwithstanding anything that may be to the contrary herein, no As-of-Right Benefit resulting from Project Improvements shall be applied to decrease Existing Improvements PILOT.
- *Additional Improvements PILOT.* With respect to Additional Improvements, there shall be payable PILOT in an amount equal to Current Taxes attributable to such Additional Improvements less any decrease arising from any applicable As-of-Right Benefit for which such Additional Improvements have qualified. Notwithstanding anything that may be to the contrary herein, no As-of-Right Benefit resulting from Project Improvements shall be applied to decrease Additional Improvements PILOT.

Notwithstanding the foregoing, Improvements PILOT shall, during the Financial Assistance Term, equal the lesser of Improvements PILOT as hereinabove described and Current Taxes as reduced by any applicable As-of-Right Benefits other than those resulting from Project Improvements.

2. Exemption from Recording Fees. Project Documents shall be exempt from recording fees.

3. Exemption from Mortgage Recording Taxes. With respect to Project Mortgages (on Project Facilities to which an Industrial Project applies), the Agency shall, subject to subdivisions “a” and “b” hereinbelow, exempt City and State mortgage recording taxes but shall do so only once and upon the following conditions: (a) aggregate Project expenditures must at a minimum equal the amount of the Project Mortgage for which exemption is being provided by the Agency; and (b) if the maturity of the indebtedness secured by a Project Mortgage extends beyond expiration or sooner termination of the Financial Assistance Term, the Recipient shall remit a PILOMRT to the Agency. In addition (and notwithstanding the foregoing), the following shall apply to the exemption of City and State mortgage recording taxes by the Agency:

a. The Agency may exempt Project Mortgages from City and State mortgage recording taxes for a second time if the first exemption is in connection with construction financing and the second exemption is in connection with permanent financing.

b. If, in connection with the refinancing of a Project Mortgage during the Financial Assistance Term, the Recipient is able, without assistance from the Agency, to continue the mortgage-recording-tax exemption (either because the same lender is refinancing or by assignment-of-mortgage from the old lender to the new lender), the Agency will not object to such assignment (and the continued exemption that it facilitates) subject to the following:

- If the indebtedness secured by the refinancing mortgage is greater than the unamortized principal of the Project Mortgage being refinanced (i.e., there is “new money”), the Recipient shall remit a PILOMRT to the Agency; and
- if the maturity of the indebtedness secured by the refinancing mortgage extends beyond the Financial Assistance Term, the Recipient shall remit a PILOMRT to the Agency.

Notwithstanding the use of the term “exemption” in this subdivision “3,” it is the general intent of this Policy (as evidenced by the aforementioned PILOMRTs) to defer mortgage recording taxes rather than to permanently exempt them. If however a Project Mortgage is fully amortized before the expiration or sooner termination of the applicable Financial Assistance Term, no PILOMRT shall be due.

4. Exemption from Sales and Use Taxes. The purchase of Personal Property, to be incorporated in or otherwise related to a Project Facility to which an Industrial Project applies, shall be exempt from City and State sales and use taxes for the period commencing with Closing and terminating on the date specified in the Project Documents for completing Project Improvements.

B. Civic Facility Projects.

The Agency may provide Financial Assistance to Civic Facility Projects in the form of the tax exemptions described in this subdivision “B.”

1. Exemption from Recording Fees. Project Documents shall be exempt from recording fees.
2. Exemption from Mortgage Recording Taxes. Project Mortgages on a Project Facility to which a Civic Facility Project applies, shall be exempt from City and State mortgage recording taxes in the same manner and to the same extent as Project Mortgages in connection with Industrial Projects; *provided, however*, that Recipients in Civic Facility Projects shall not be obligated to make PILOMRTs.

(In connection with this exemption, please see Subdivision “IV” of *Appendix C, Compliance Criteria for Private Schools*.)

C. Industrial Developer Projects Located in a Zone.

The Agency may provide Financial Assistance in the form of tax exemptions described in this subdivision “C” to Project Facilities located in a Zone to which an Industrial Developer Project applies.

1. Exemption from Recording Fees. Project Documents shall be exempt from recording fees.
2. Exemption from Mortgage Recording Taxes. Project Mortgages on a

Project Facility located in a Zone to which an Industrial Developer Project applies, shall be exempt from City and State mortgage recording taxes in the same manner and to the same extent as Project Mortgages in connection with Industrial Projects; and the obligation to pay PILOMRTs shall likewise be the same.

3. Exemption from Sales and Use Taxes. The purchase of Personal Property, to be incorporated in or otherwise related to a Project Facility located in a Zone and to which an Industrial Developer Project applies, shall be exempt from City and State sales and use taxes for the period commencing at Closing and expiring on the date provided in Project Documents for the completion of Project Improvements.

D. Commercial Growth Projects; Governmental Bond Projects; Hudson Yards Commercial Construction Projects.

The Agency may provide Financial Assistance to the below-mentioned Projects in the form the of the tax exemptions described.

1. Commercial Growth Projects and Governmental Bond Projects. Project Facilities to which Commercial Growth Projects or Governmental Bond Projects apply, shall receive such tax exemptions as the Staff determines in its sole discretion upon approval of the Board.

2. Hudson Yards Commercial Construction Projects. Project Facilities to which Hudson Yards Commercial Construction Projects apply, shall receive tax exemptions in the manner and to the extent prescribed in *Appendix F*.

E. PlaNYC Energy Program Projects.

From August 3, 2010 through December 31, 2017, the Agency may enter into Project Documents to provide Financial Assistance to PlaNYC Energy Program Projects in the form of the tax exemptions described below. Closings for PlaNYC Energy Program Projects may not occur after December 31, 2017; and the tax exemptions described below will only be available for the duration of Financial Assistance Terms which have commenced on or before December 31, 2017.

1. Exemption from Real Property Taxes; PILOT. During the Financial Assistance Term, a Peaking Unit may be exempted from Current Taxes and a PILOT shall be payable with respect to such Peaking Unit once it so exempted; and such PILOT shall equal zero and shall remain at zero notwithstanding any non-physical increase in the Assessed Valuation attributable to the Peaking Unit during the Financial Assistance Term. If the Peaking Unit may not be so exempted from Current Taxes without also exempting the land upon which it is situated, then such land shall be additionally exempted from Current Taxes and the PILOT payable with respect to it shall equal what Current Taxes would have been had such land remained on the tax rolls.

2. Exemption from Recording Taxes. Project Documents shall be exempt from recording fees.

3, Exemption from Mortgage Recording Taxes. Project Mortgages on Peaking Units shall be exempt from City and State mortgage recording taxes in the same manner and to the same extent as Project Mortgages in connection with Industrial Projects; and the obligation to pay PILOMRTs shall like-wise be the same. Notwithstanding, the following limitations shall apply:

- *Limitation as to Rate.* The amount of Financial Assistance provided hereinabove shall be limited as to tax rate to the aggregate mortgage recording tax rate in effect on August 3, 2010 – i.e., 2.8%. In the event such aggregate rate increases, Recipient shall at Closing make a PILOMRT equal to the mortgage recording tax amount resulting from the difference between the then-current aggregate rate and 2.8%.
- *Limitation as to Mortgage Amount.* The amount of Financial Assistance provided hereinabove shall be limited as to mortgage principal to an amount which shall be no greater than 50% of total Project cost. In the event mortgage principal exceeds 50% of such total Project cost, Recipient shall at Closing make a PILOMRT equal to the mortgage recording taxes applicable to such excess principal.

4. Exemption from Sales and Use Taxes. Subject to the additional limitations set forth below in this subdivision “4,” the purchase of Personal Property, to be incorporated in or otherwise related to a Peaking Unit, shall be exempt from City and State sales and use taxes for the period commencing at Closing and expiring on the date provided in the Project Documents for the completion of the Peaking Unit.

- *Limitation as to Rate.* The Financial Assistance provided hereinabove shall be limited as to tax rate to the aggregate sales-and-use tax rate in effect on August 3, 2010 – i.e., 8.875%. In the event such aggregate rate increases, Recipient shall at Closing make a payment in lieu of sales-and-use taxes in an amount equal to the sales-and-use tax amount resulting from the difference between the then-current aggregate rate and 8.875%.
- *Limitation as to Aggregate Principal.* The Financial Assistance provided hereinabove shall be limited as to aggregate expenditure-principal to an amount which shall be no greater than 50% of total estimated expenditures as estimated and represented by Recipient to the Agency at or before Closing. If and when expenditure principal exceeds 50% of such estimated amount, the exemption hereinabove provided shall no longer apply.

III. DEVIATIONS

A. Requirements for Deviation.

1. Statute. The Agency may deviate from the provisions of this Policy, provided that each such deviation (except as provided in subdivision “B.2.” below) shall be in

accordance with the requirements of this Article III and the requirements of Subdivision 874(4)(b) of the Statute.

2. Board Approval. The Staff must obtain the Board's approval for all deviations, and, in order to provide a basis for deliberating the necessity and advisability of a proposed deviation, the Staff must present to the Board, in writing, the following information and conclusions for its consideration:

- the content of the deviation,
- the reason why the deviation is needed, and
- the disadvantage to the City if the Project should not proceed.

B. Deviation from this Policy.

1. Generally. A deviation from this Policy is a substantive departure from any one or more of the following standards set forth in this Policy:

- the requirements and conditions for obtaining Financial Assistance;
- the extent to which Financial Assistance is available and its amount;
- the kinds of Projects for which Financial Assistance generally (or categories of Financial Assistance specifically) is available.

2. Deviations Not Subject to this Article III. Staff in its sole discretion may, without fulfilling the requirements of this Article III, cause the Agency to deviate from the recapture requirements of Article IV when the deviation in question is (i) necessitated by law, or (ii) minor in nature, or (iii) necessary to avoid undue hardship to the Recipient.

3. Diminished Financial Assistance Not a Deviation. Notwithstanding anything that may be to the contrary herein, offering Financial Assistance which is less than what is available under this Policy, shall not constitute a deviation from this Policy.

4. Additional Conditions Not a Deviation. Notwithstanding anything that may be to the contrary herein, imposing conditions to the receipt of Financial Assistance that are in addition to those explicitly imposed by this Policy shall not constitute a deviation from this Policy.

5. Increased Recapture Not a Deviation. Notwithstanding anything that may be to the contrary herein, none of the following shall constitute a deviation from this Policy: (x) any increase in the amount of principal of Financial Assistance to be recaptured; or (y) any increase in the amount of interest to be accrued on such principal over and above the principal and interest provided for in Article IV; or (z) any increase in the duration of the recapture period as provided for in Article IV.

IV. RECAPTURE OF FINANCIAL ASSISTANCE

A. General.

Upon the occurrence of a recapture event occurring during a recapture period, there shall occur recapture of Financial Assistance by the Agency; and, in addition, the Recipient shall pay interest with respect to the principal of such recaptured Financial Assistance.

B. Recapture Period.

1. For Commercial Growth Projects, Governmental Bond Projects, and Hudson Yards Commercial Construction Projects. For Commercial Growth Projects and Governmental Bond Projects, the recapture period shall be determined by the Staff in its sole discretion upon approval by the Board. For Hudson Yards Commercial Construction Projects, the recapture period shall be determined in accordance with *Appendix F*.

2. For Industrial Projects, Industrial Developer Projects Located in a Zone, and Civic Facility Projects. For Industrial Projects, Industrial Developer Projects located in a Zone, and Civic Facility Projects, the recapture period shall commence at Closing and shall expire on the tenth anniversary of the Operations Commencement Date.

C. Recapture Events.

1. For Industrial Projects and Civic Facility Projects. For Industrial Projects and Civic Facility Projects, the following shall constitute recapture events:

- failure to complete Project Improvements.
- subject to the bullet immediately following, liquidation of substantially all of the Recipient's operating assets at the Project Facility and/or cessation of substantially all of the Recipient's operations at the Project Facility;
- relocation of all or substantially all of Recipient's operations at the Project Facility to another site, or the sale, lease or other disposition of all or substantially all of the Project Facility; *subject, however, to the following:*
 - If the Recipient relocates its operations at the Project Facility to a site located within the City, such relocation shall not be a recapture event if (i) the Recipient maintains, for the balance remaining of the recapture period, an employment level equal to at least 90% of the number of employees employed by the Recipient before the time it relocated its operations, and (ii) the Recipient satisfies such other additional conditions as the Agency may in writing impose.

- Whether the aforementioned 90%-employment condition has been and continues to be satisfied shall be a determination made by the Agency in its sole discretion.
 - transfer of a substantial number of the Recipient's jobs from the Project Facility out of the City;
 - sublease of all or part of the Project Facility in violation of Project Documents; or
 - substantial change in the scope and nature of the Recipient's operations at the Project Facility.
2. For Commercial Growth Projects. For Commercial Growth Projects, the Staff in its sole discretion, upon approval by the Board, shall determine the nature of recapture events.
3. For Industrial Developer Projects Located in a Zone. For Industrial Developer Projects located in a Zone, failure to complete the Project Improvements by the date specified in the Project Documents (as such date may be extended by the Staff in its sole discretion) shall be a recapture event. In addition, failure during the Financial Assistance Term to maintain Industrial Tenant occupancy of at least 75% of the Project Facility's rentable square feet shall be an additional recapture event; subject, however, to reasonable allowances, as determined in the sole discretion of the Staff, for vacancies during Project construction, initial Project rent-up, casualty events, and reasonable interims between the expiration of an Industrial Tenant's lease and its replacement with another.
4. For Governmental Bond Projects. Recapture events for Governmental Bond Projects, shall be determined by the Staff in its sole discretion upon approval by the Board.
5. For Hudson Yards Commercial Construction Projects. Recapture events for Hudson Yards Commercial Construction Projects shall be those specified in *Appendix F*, and, to the extent not specified in *Appendix F*, they shall be determined by Staff in its sole discretion.

D. Financial Assistance to be Recaptured.

With respect to all Projects, the Financial Assistance to be recaptured by the Agency upon the occurrence of a recapture event during a recapture period shall be an amount equal to all or part of the difference between (i) Current Taxes (as reduced by As-of-Right Benefits arising from Existing Improvements and/or Additional Improvements that have qualified for such As-of-Right Benefits) or other taxes that the Recipient would have paid with respect to Project property had such taxes not been exempted through the Agency, and (ii) the PILOT which the Recipient in fact did pay (if any) in substitution for such Current Taxes or other taxes.

For purposes of this Policy, it is presumed that tax-exempt conduit debt financing,

while included by the Statute within the definition of Financial Assistance, does not provide a benefit that is amenable to recapture and therefore, under this Policy, the income tax revenues lost to taxing jurisdictions because of the tax-exempt status of collected interest will not be included in the Financial Assistance principal that may be recaptured.

E. Amount of Financial Assistance to be Recaptured and Interest to be Applied.

1. For Civic Facility Projects, Industrial Projects, and Industrial Developer Projects located in a Zone. Upon the occurrence of a recapture event with respect to a Civic Facility Project, an Industrial Project, or an Industrial Developer Project located in a Zone, the Agency shall cause the Recipient to pay the following amounts as recapture:

I. Financial Assistance to be recaptured by the Agency and paid by Recipient:

- For years 1 through 6 of the recapture period, the Agency shall recapture 100% of the Financial Assistance which it has provided to the Recipient;
- During year 7 of the recapture period, the Agency shall recapture Financial Assistance as reduced, cumulatively, by 1.666% each month, so that by the twelfth month of year 7, the Agency shall recapture 80% of Financial Assistance;
- During year 8 of the recapture period, the Agency shall recapture Financial Assistance as reduced, cumulatively, by 1.666% each month, so that by the twelfth month of year 8, the Agency shall recapture 60% of Financial Assistance;
- During year 9 of the recapture period, the Agency shall recapture Financial Assistance as reduced, cumulatively, by 1.666% each month, so that by the twelfth month of year 9, the Agency shall recapture 40% of Financial Assistance;
- During year 10 of the recapture period, the Agency shall recapture Financial Assistance as reduced, cumulatively, by 1.666% each month, so that by the twelfth month of year 10, the Agency shall recapture 20% of Financial Assistance;

II. Interest to be paid by the Recipient to the Agency with respect to the principal of recaptured Financial Assistance:

- From the date of receipt of Financial Assistance to the date on which recapture is due pursuant to Agency demand, interest shall accrue at the statutory judgment rate³ applicable on the date of the Agency's demand, compounded daily, but in no event shall the resulting effective rate of interest exceed the maximum interest rate permitted by law.⁴

³ 9% at the time of the approval of this Policy.

⁴ 16% at the time of the approval of this Policy.

- If Recipient fails to pay the recapture principal of Financial Assistance and the accrued interest thereon (collectively, the “aggregate amount”) on or before the date when such amounts are due, then, from such due date, interest on the aggregate amount shall accrue at a rate set by Staff in its sole discretion, but in no event shall such interest be less than the effective interest rate resulting from the statutory rate compounded daily.

2. For Commercial Growth Projects and Governmental Bond Projects. Upon the occurrence of a recapture event in respect of a Commercial Growth Project or a Governmental Bond Project, the Agency shall recapture such Financial Assistance, together with such interest, as Staff determines in its sole discretion upon approval by the Board.

3. For Hudson Yards Commercial Construction Projects. Upon the occurrence of a recapture event in respect of a Hudson Yards Commercial Construction Project, the Agency shall recapture Financial Assistance, together with interest, in the manner and to the extent set forth in *Appendix F*.

APPENDIX A

DEFINITIONS

“**Abatement Amount**” means, as applicable, the following:

I. *For all Project Facilities to which an Industrial Project applies and which are located in a Zone*, an amount equal to 100% of the Current Taxes applicable to the Project Land.

II. *For all other Project Facilities to which an Industrial Project Applies*: an amount equal to the following:

A. For Project Facilities at which all of the employees will be new hires, an amount equal to the product of \$500 and the number of employees that the Recipient reasonably intends to hire at the new Project Facility at time of Closing; provided, however, that on the July 1 following the second anniversary of commencement of operations at the new Project Facility, and for every twelve-month period thereafter during the Financial Assistance Term (including any partial twelve-month period at the end thereof), the “Abatement Amount” shall be the lesser of (aa) the original Abatement Amount, and (bb) the actual number of employees employed by the Recipient at the Project Facility on such July 1; or

B. For Project Facilities at which at least a majority of the employees to be employed by the Recipient are employees already employed by the Recipient at the time of application, an amount equal to the product of \$500 and the number of such employees at the time of its application to the Agency for Financial Assistance.

For purpose of this definition, an “employee” means one full-time employee or two part-time employees, each working 20 hours per week.

“**Additional Improvements**” means improvements that increase the Assessed Valuation of the Project Facility and for which all of the following conditions have been met: (i) such improvements were not included in the Recipient’s Project budget as presented to the Staff; and (ii) such improvements were not induced by action of the Board; and (iii) such improvements were completed after the agreed-upon completion date (as same may be extended within the sole discretion of the Staff) for the Project Improvements.

“**Agency**” means the New York City Industrial Development Agency.

“**ARRA Bonds**” means the bonds authorized to be issued by the American Recovery and Reinvestment Act of 2009 and including, but not limited to, Recovery Zone Facility Bonds.

“**ARRA Bond Project**” has the meaning provided in subdivision I.C.1.d of this Policy.

“**Assessed Valuation**” means, with respect to any fiscal year of the City, the final value ascribed to land and/or improvements or other defined real property (as the context requires) located in the City, by the New York City Department of Finance or any of its successor agencies, including, without limitation, increases arising from market re-evaluations.

“As-of-Right Benefit” means, pursuant to any non-discretionary, statutory program, the reduction of Current Taxes for qualifying improvements, including but not limited to reductions resulting from the abatement of Current Taxes and/or the exemption of Assessed Valuation from the imposition of Current Taxes.

“Board” means the Board of Directors of the Agency.

“City” means The City of New York.

“Civic Facility Project(s)” has the same meaning as the definition provided in the Statute for the term, “civic facility.”

“Closing” means the date on which the Agency and the Recipient enter into the Project Documents.

“Commercial Project(s)” means a Project where the capital asset or assets, which are the subject of the Project, are intended for commercial use as “commercial use” is determined by the Staff in its sole discretion from time to time. As defined herein, “Commercial Project” shall not include: Industrial Projects; Governmental Bond Projects; Liberty Bond Projects; Industrial Developer Projects located in a Zone; ARRA Bond Projects; Hudson Yards Commercial Construction Projects; or PlaNYC Energy Program Projects.

“Commercial Growth Project(s)” means a Commercial Project for which the availability of Financial Assistance is subject to at least one of the following conditions: (i) maintenance of a specified number of existing employees in the City; or (ii) the employment in the City of a specified number of additional employees and/or employees of a certain type; or (iii) the transfer into the City of a specified number of employees and/or employees of a certain type from employment locations outside of the State; or (iv) the maintenance of corporate headquarters in the City; or (v) the maintenance of a specified business or operating unit (other than headquarters) in the City; or (vi) such other condition relating to the Recipient’s employment and/or operations as the Board may approve from time to time.

“Construction of New Improvements” means the acquisition, construction, equipping, furnishing and/or installation of new improvements, including demolition of any existing improvements, the aggregate cost of which equals the greater of

- \$1,000,000 in 2006 dollars as inflated by the Engineering News-Record Building Cost Index or any successor index, OR
- 25% of the combined Assessed Valuation of Project Land and Existing Improvements.

Without limiting the foregoing, “Construction of New Improvements” may include the acquisition, construction, equipping, furnishing and/or installation of a Peaking Unit or the acquisition, construction, equipping, furnishing and/or installation of a dock or wharf.

Notwithstanding anything that may be to the contrary in this definition, if a Project includes demolition, the cost of such demolition may be included in the “Cost of New Improvements” (as defined herein) only to the extent that such cost, in the sole determination of the Staff, is less than substantial when compared to the aggregate cost of the Project.

“**Current Taxes**” means, at any point in time, City real property taxes equal to the product of the then-current Assessed Valuation and the applicable then-current tax rate, all as applied to (as the context requires) land, improvements, or other property defined as real property by the City’s Department of Finance. As defined and used herein, the term “Current Taxes” shall not include or give effect to As-of-Right Benefits.

“**Existing Improvements**” means improvements existing on Project Land at time of Recipient’s application, including but not limited to foundations and partial foundations. Notwithstanding the forgoing, if Recipient, as part of its Project, demolishes improvements, such demolished improvements shall not be deemed “Existing Improvements” as defined herein.

“**Financial Assistance**” has the same meaning as is provided for the term “financial assistance” in the Statute⁵.

“**Financial Assistance Term**” means, subject to earlier termination in accordance with Project Documents, the following periods of time:

- for Industrial Projects (other than Industrial Developer Projects located in a Zone), a period commencing on Closing and expiring twenty-five years after the PILOT Commencement Date;
- for all bond financings other than those financing Industrial Projects, a period commencing at Closing and expiring upon the maturity, or redemption in whole or sooner retirement of the Agency’s bond financing;
- for Commercial Growth Projects, a period determined by the Staff and approved by the Board;
- for Industrial Developer Projects located in a Zone, a period commencing on Closing and expiring ten years thereafter.
- for Hudson Yards Commercial Construction Projects, the period provided in *Appendix F*.
- for PlaNYC Energy Program Projects, a period commencing on Closing and expiring twelve years after the PILOT Commencement Date.

⁵ “Financial Assistance shall mean the proceeds of bonds issued by an agency, straight-leases, or exemptions from taxation claimed by a project occupant as a result of an agency taking title, possession or control (by lease, license or otherwise) to the property or equipment of such project occupant or of such project occupant acting as an agent of an agency.” Subdivision 854(14) of the Statute.

“Governmental Bond Project(s)” means a Project that is a governmental bond within the meaning of Subdivision 103 and 141 of the Internal Revenue Code of 1986, as amended.

“Hudson Yards Commercial Construction Project(s)” has the meaning provided in *Appendix F*.

“Industrial Developer Project” means a real estate development intended primarily for rent-up (as opposed to owner occupancy) in which Industrial Tenants rent (or will rent following completion of Project Improvements) at least 75% of the Project Facility’s rentable square feet. Liberty Bond Projects, Governmental Bond Projects and Hudson Yards Commercial Construction Projects are excluded from this definition.

“Industrial Project(s)” means a Project in which the Project Facility is intended for use by the owners or lessees of the Project Facility (and/or by affiliates of such owners or lessees) in the pursuit of one or more of the following activities: (i) manufacturing, assembling, processing, recycling, disposing, warehousing and/or distributing of tangible property, including (but not limited to) waste materials; and/or (ii) the creation of an intangible. As used herein, an “intangible” means any patent, copyright, formula, process, design, pattern, knowhow, format, or other similar item.

“Industrial Tenant” means an entity that leases a portion of a Project Facility for its own use and occupancy and for purposes that are consistent with the operation of an Industrial Project.

“Liberty Bond Project(s)” means a Project that qualifies for tax-exempt bond financing under Subdivision 1400L(d) of the Internal Revenue Code of 1986, as amended.

“Operations Commencement Date” means the date by which the Recipient has demonstrated to the satisfaction of the Staff in its sole discretion that the Recipient has (i) commenced use and occupancy of the Project Facility for the operations intended under the Project Documents, and (ii) completed the Project Improvements.

“Peaking Unit” has the meaning provided in sub-division I.C.1.e of this Policy.

“Personal Property” means materials, fixtures, furnishings, machinery and/or equipment, as well as certain services that may relate to the installation of any of the foregoing.

“PILOMRT(s)” means a payment in lieu of City and State mortgage recording taxes in connection with a Project Mortgage or the refinancing of a Project Mortgage. If a PILOMRT is applicable to a Project Mortgage, it shall be payable on the date the Project Mortgage is delivered; if applicable to a mortgage refinancing a Project Mortgage, the PILOMRT shall be payable on the date the refinancing mortgage is delivered. PILOMRTs shall equal the following (as applicable):

- *For a Project Mortgage whose term, at Closing, extends beyond the applicable Financial Assistance Term, PILOMRT shall equal the net present value of the product of (a) the unamortized principal upon expiration of the Financial*

Assistance Term, and (b) the aggregate mortgage recording tax rate in effect at Closing.

- *For a Project Mortgage whose term extends beyond the Financial Assistance Term because the Financial Assistance Term has terminated before its expiration, PILOMRT shall equal the product of (a) the unamortized principal, and (b) the aggregate mortgage recording tax rate in effect at the time of such early termination of the Financial Assistance Term.*
- *For a Project Mortgage in connection with a PlaNYC Energy Program Project, PILOMRT shall equal the amounts specified in Subdivision II.E.3 of this Policy.*
- *For a mortgage refinancing a Project Mortgage, PILOMRT shall equal the following, as applicable:*
 - the product of (a) the amount by which the principal of the refinancing mortgage exceeds the unamortized principal of the Project Mortgage - i.e., “new money,” and (b) the aggregate mortgage recording tax rate in effect at the time the refinancing mortgage is delivered; **PLUS**
 - the net present value of the product of (a) the unamortized principal of the refinancing mortgage at expiration of the Financial Assistance Term, and (b) the aggregate mortgage recording tax rate in effect at the time the refinancing mortgage is delivered; **BUT LESS**
 - any PILOMRTs previously remitted other than PILOMRTs in connection with “new money.”

For purposes of this definition, “net present value” shall be determined in accordance with such discount rate as the Staff, in its sole discretion, shall establish from time to time;

“**PILOT**” means payments-in-lieu of taxes.

“**PILOT Commencement Date**” means the date on which the Project Facility becomes exempt from Current Taxes and subject to PILOT; and such date shall never be earlier than the July 1 following the January 5 that follows the Closing.

“**PlaNYC Energy Program Project**” means a Project satisfying the requirements set forth in Subdivision I.C.1.e of this Policy.

“**Policy**” means this Uniform Tax Exemption Policy.

“**Private Schools**” means private, not-for-profit elementary and/or secondary schools providing education for any or all of grades kindergarten through 12, but not including those schools where at least 85% of tuition and/or costs are reimbursed by the New York City Department of Education and/or the New York State Education Department.

“Project(s)” means, as the context requires, one or more of the following:

- a facility described in the definition of “project” as the term “project” is defined in the Statute,

AND/OR

- one or more of the following activities, provided such activity or activities is in connection with a “project” as defined in the Statute, and further provided that the Board has adopted a resolution inducing such activity or activities:
 - ♦ the acquisition of title to, or equivalent ownership in, or leasehold interest in, a capital asset, together with activities ancillary thereto, and/or
 - ♦ the Renovation of Improvements, together with activities ancillary thereto, and/or
 - ♦ the Construction of New Improvements, together with activities ancillary thereto, and/or
 - ♦ the refunding or refinancing of conduit-issued debt originally issued for the purpose of financing any of the foregoing activities.

AND/OR

- a Project Facility.

“Project Document(s)” means the documents and instruments necessary to provide Financial Assistance to a Recipient and to satisfy all conditions and requirements of the Statute and other relevant law.

“Project Facility” means, as the context may require, any of or all of the following: (a) Project Land; and/or (b) Existing Improvements; and/or (c) Project Improvements; and/or (d) Personal Property incorporated in or otherwise related to Project Improvements; and/or (e) Additional Improvements. Without limiting the foregoing, a “Project Facility” may include a dock or wharf or a Peaking Unit.

“Project Improvements” means improvements situated on Project Land that are induced by Financial Assistance and that additionally satisfy the threshold requirements provided in “Construction of New Improvements” or “Renovation of Improvements,” as applicable.

“Project Land” means the site within the City that is the subject of the Recipient’s application to the Agency for Financial Assistance; specifically, the premises on which the Recipient’s intended Project is to occur. Without limiting the foregoing, “Project Land” may include lands under water.

“Project Mortgage” means a mortgage on a Project Facility the proceeds of which are used to finance the cost, or part of the cost, of the Project Improvements.

“Recovery Zone” means zones designated within the City in accordance with requirements of the American Recovery and Reinvestment Act of 2009 in connection with Recovery Zone Facility Bonds.

“Recipient” means a person or entity that has applied to the Agency, and has been approved by the Board, to receive Financial Assistance in connection with the Recipient's proposed Project.

“Renovation of Improvements” means the renovation, repair, reconstruction, furnishing, equipping or partial demolition of, and/or the making of an installation on or within, and/or the making of other improvements to Existing Improvements, the aggregate cost of which equals the greater of:

- \$1,000,000 in 2006 dollars as inflated by the Engineering News-Record Building Cost Index or any successor index OR
- 25% of the combined Assessed Valuation of the Project Land and Existing Improvements.

Notwithstanding anything that may be to the contrary in this definition, if a Project includes partial demolition, the cost of such partial demolition may be included in the “Renovation of Improvements” (as defined herein) only to the extent that such cost, in the sole determination of the Staff, is less than substantial when compared to the aggregate cost of the Project.

“Staff” means staff of the New York City Economic Development Corporation or of any successor thereto that has entered into an annual contract with the Agency for the purpose of providing to the Agency administrative and operating services.

“State” means the State of New York.

“Statute” means the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended, together with Subdivision 917 of the General Municipal Law, as amended.

“Zone(s)” means, as the context may require, any of or all of the following: Empowerment Zones, Recovery Zones, Industrial Business Zones, and/or any other area or areas created by or pursuant to law within the City for a specified statutory purpose. Neither the “Hudson Yards UTEP Area,” as that term is defined in *Appendix F*, nor the New York Liberty Zone, shall qualify as a “Zone” (as defined herein) except to the extent that a duly designated Zone (as defined in the previous sentence) includes all or part of the Hudson Yards UTEP Area or the New York Liberty Zone.

APPENDIX B

NOT-FOR-PROFIT GUIDELINES

The Agency will consider providing Financial Assistance to a not-for-profit applicant if the applicant's proposed Project meets all of the following criteria:

1. But for the availability of tax-exempt financing through the Agency, the Project would either not proceed as structured, or resources of the applicant otherwise available for continued or enhanced services would instead be applied to the Project.
2. The Project will either:
 - a. retain or create jobs;
 - b. continue or augment services to a needy population;
 - c. promote a purpose that would not be feasible if undertaken on a for-profit basis;
 - d. provide a service that will reduce the City's cost of providing that service, thus promoting efficiency and resulting in cost savings to the City;
 - e. continue or enhance the quality of cultural life in the City; OR
 - f. encourage substantial employment and capital investment in geographic areas in which the City seeks to promote economic development.

If the Project qualifies under Subdivisions 2 c or e above (but under no other provision of Subdivision 2), the applicant must demonstrate that it has provided or will commit to provide services, assistance and/or access to its facilities to disadvantaged City residents. Such community service must be meaningful and ongoing in the judgment of the Board and may be rendered through the applicant's principal or ancillary operations.

3. The applicant must demonstrate that it is expected to be able to service the proposed debt.
4. Except to the extent permitted by law, the applicant shall not discriminate on the basis of race, color, religion, sex, age, national or ethnic origin, or disabilities in employment matters, the providing of services, or otherwise in the administration of its programs and operations.
5. If the proposed Project is for a Private School, then, in addition to satisfying the foregoing requirements set forth in Subdivisions 1, 2, 3 and 4 above, the applicant shall additionally demonstrate that it satisfies and/or will satisfy the requirements set forth in *Appendix C, Compliance Criteria for Private Schools*.

APPENDIX C

COMPLIANCE CRITERIA FOR PRIVATE SCHOOLS

To receive Financial Assistance, a Private School must meet the following criteria:

- I. At least 20 percent of the total enrollment of the Private School must consist of New York City residents.
- II. Without in any way limiting the application and generality of Subdivision 4 of *Appendix B, Not-for-Profit Guidelines*, the Private School shall not discriminate in admissions, hiring, the granting of scholarships or loans, or the administration of educational policies generally.
- III. A Private School providing education to grades 9 through 12 must be registered with the New York State Department of Education and, in addition, if such Private School is formed under the Education Law of the State of New York, it must also be chartered by the New York Board of Regents. A Private School providing education to any of grades "K" through 8 must either be (i) registered with the New York State Department of Education, or (ii) evaluated by an independent professional (acceptable to the Staff in its sole discretion) as providing an education equivalent to that provided by public schools in the State of New York.
- IV. In those instances where a Private School (i) requests the Agency to encumber the Project premises with one or more mortgages to secure Project financing, and (ii) records such mortgage(s), and (iii) has net assets per student of more than \$20,000 (at time of application as determined by the Private School's last financial statements), then, such Private School shall pay to the Agency a fee equal to 2.55 percent of the aggregate amount of the Project Mortgage(s); provided, however, if such aggregate mortgage amount is less than \$500,000, the fee payable to the Agency shall be 2.05 percent of such aggregate mortgage amount.

Any Private School whose maximum tuition is equal to or greater than 75 percent of the Agency Average Maximum Tuition (AAMT)⁶, must satisfy the requirements described in paragraphs V, VI, VII and VIII following:

- V. A. Financial aid equal to at least 10 percent of the Private School's gross tuition revenues must be made available to and used by students who are New York City residents; and

⁶ The "AAMT" or "average annual maximum tuition" for Private Schools shall be calculated annually for each, upcoming academic year by September 1, based upon the tuitions of Private Schools for which the Agency had issued bonds through the end of the preceding fiscal year ending on June 30. For September 1, 2006 through August 31, 2007, 75% of AAMT has been calculated to be \$20,184.

- B. At least 10 percent of students who are both New York City residents and recipients of financial aid, must each receive financial aid equal to or greater than 50 percent of tuition.
- VI. The Private School must provide, prior to authorization by the Board, a written plan that demonstrates an existing or planned commitment to aid the public school system through the sharing of its facilities with public schools in the City.
- VII. A. The Private School's board of directors (or trustees) shall have adopted, or shall directed staff to develop and present for adoption, a program of community service in addition to the activities described in Subdivision VI. The program of community service shall be carried out by some combination of the Board members, administrators, faculty, parents, and students. Where, appropriate, the plan should include quantifiable objectives.

OR

- B. The Private School must have on staff a full-time paid staff member to coordinate its community service activities and the activities in Subdivision VI above. Where appropriate, quantifiable objectives should be stated for all activities.
- VIII. If the Private School is not in compliance with the requirements of Subdivision V, it must agree in writing to meet those requirements within 5 years following the first academic year in which substantial occupancy⁷ of the Project Facility is achieved.
- IX. The applicant must, in the Project Documents, agree to fulfill these Criteria throughout the Financial Assistance Term.

⁷ "Substantial occupancy" means the first academic year when the Project Facility is opened for use and made available to at least 50 percent of the student enrollment intended to occupy the Project Facility.

APPENDIX D

New York Liberty Bond Program

SELECTION REQUIREMENTS and CRITERIA

For the Selection of Projects for Liberty Bond Financing

A. *Requirements and Criteria for all Projects, whether inside or outside of the Liberty Zone.*

To be selected for Liberty Bond financing, a project must *satisfy* all of the following requirements :

- **Adherence to applicable *Program Principles*. The *Program Principles* are :**

To fulfill the vision of lower Manhattan as a 24/7, mixed-use, diversified community and support the City's broader revitalization, the Program seeks to:

- Repair and replace damaged and destroyed commercial space and improve lower quality commercial space;
- Create additional multifamily residential rental and complementary retail development in Lower Manhattan;
- Provide modern office space for displaced and decentralizing businesses in central business districts throughout the City;
- Attract new residents and employers to the City;
- Encourage environmentally responsible design and construction.

- **Submission of a complete application together with application fee**

- **Satisfaction of statutory requirements for an “eligible” facility**

- **Liberty Bond proceeds may *not* be used for costs of repair and replacement already covered by insurance proceeds, except when such insurance proceeds are applied to the satisfaction of existing mortgage indebtedness on the damaged premises, and such application does not affect the tax-exempt status of the Liberty Bonds.**

B. *Additional Requirements and Criteria for Projects located outside the Liberty Zone.*

1. In addition to fulfilling the requirements and criteria set forth in “A” above, in order to be selected for Liberty Bond financing, projects outside of the Liberty Zone *must* satisfy the following additional criterion:

- **Demonstrated contribution to the economic recovery and/or expansion of a region⁸ within the City or of the City as a whole;** *consistent with the purpose of the federal legislation that enables Liberty Bond financings, it is presumed that the development of commercial office space will be the highest priority.*
2. In addition to fulfilling the criterion immediately preceding, projects located outside the Liberty Zone are more likely to be selected if they are qualitatively distinguished.
- **Some example indicia of qualitative distinction follow:**
 - Creating or retaining a significant number of jobs;
 - Incorporating environmentally responsible design;
 - Providing public amenities;
 - Providing goods or services not generally available in the region.

<p><i>C. Special Requirements and Criteria for Industrial Projects outside of the Liberty Zone.</i></p>

Manufacturing, warehousing, distribution and other industrial facilities, tend to be capital intensive with only modest job creation potential. While for the most part the law would allow these facilities to be financed with Liberty Bonds, industrial uses tend to fall outside of the central principles for Liberty Bond financing, which are to replace lost commercial office space and lost residential and retail space. In addition, generous incentive programs are already in place to support the development of such facilities. Nevertheless, since industrial facilities are an important part of New York City's economy, the City and State will entertain applications for financing industrial projects located outside of the Liberty Zone, provided such facilities satisfy *all* of the requirements and criteria provided below (in addition to the general project requirements specified in "A" and "B" above):

- Project development cost for the facility shall equal at least \$20,000,000 dollars.
- The Project Facility will either...
 - create new jobs and retain existing jobs in the minimum aggregate amount of 200, or
 - create a minimum of 50 new jobs within twelve months of project completion.
- The operation of the Project Facility, or its particular location (in the area outside of the Liberty Zone), serves, supports or complements, in an essential way, an economic sector of the City, or attracts new economic participants to that sector.
- The Project Facility will have a significant "spin-off" or multiplier effect on the City's economy.

⁸ For purposes of this criterion, a "region" could be any of the five Boroughs, or any significant area within the City but not necessarily limited to the boundaries of a specific Borough.

The applicant for Liberty Bond financing for an industrial project may not also apply under the Industrial Incentive Program or the Small Industry Incentive Program of the New York City Industrial Development Agency.

D. *Special Requirements and Criteria for Energy Projects outside of the Liberty Zone.*

It is recognized that a reliable and competitively priced energy supply is essential to the health of the City's economy; and, in particular, to the economic recovery of lower Manhattan within the Liberty Zone. Accordingly, merchant power projects - for either generation or transmission of electricity - that are proposed to be located outside the Liberty Zone, will be considered for Liberty Bond financing, but only if the following requirements are met (in addition to the general project requirements specified in "A" and "B" above):

- The facility proposed to be constructed will not, once operational, be a public utility subject to cost-of-service regulation or be owned, in whole or in part, by a public authority; and
- The facility proposed to be constructed will have the capacity to significantly enhance the City's energy infrastructure by (i) increasing energy transmission to, or the generation of energy within, the City by a minimum of 75 megawatts ("MW")(developers submitting projects smaller than 75 MW can aggregate their projects to reach the 75 MW minimum), and (2) demonstrating that Liberty Bond financing will make the construction of the independent power or transmission project possible and/or that the project will provide discounted electricity to or funding to other initiatives designed to lower the price of electricity in, lower Manhattan; and
- The facility has progressed sufficiently in development that a bond issuance will be possible prior to the conclusion of the Liberty Bond program; e.g., developers of power plant projects subject to Article X of the Public Service Law should have submitted an application that has received a completeness determination from the New York State Siting Board; developers of power plant projects exempt from Article X should have submitted a sufficiently completed Environmental Assessment Statement such that the New York City Department of Environmental Protection is able to issue a Notice of Intent to Conduct an Environmental Review pursuant to the State Environmental Quality Review Act (SEQRA); and transmission line developers should have submitted an application pursuant to Article VII of the New York State Public Service Law that has received a completeness determination from the New York State Public Service Commission.

E. *Special Requirements and Criteria for Parking Facilities outside of the Liberty Zone.*

In addition to the general project criteria specified in "A" and "B" above, a project that is proposed to be located outside of the Liberty Zone and which consists exclusively of or contains parking facilities, must meet all four of the criteria below before it may be authorized for Liberty Bonds.

- 1) If a separate facility, the proposed parking facility should be part of an overall redevelopment/revitalization plan for the area. If part of a larger project, the parking facility must be an integral part of such project.
- 2) A study conducted independently of the Liberty Bond analysis identifies (through means acceptable to the NYCIDA or NYLDC) parking as a barrier to development/revitalization for the area where the project will be located.
- 3) The parking facility has a direct impact or direct nexus on economic development of the area.
- 4) The proposed parking facility would likely not be built without Liberty Bonds.

APPENDIX E

ARRA BONDS – THRESHOLD REQUIREMENTS AND SELECTION CRITERIA

- **Threshold Requirements:**

- Projects must be located in a Recovery Zone
- Closings must occur in a timely manner during the Authorized Period or risk forfeiture
- The underwriters or placement agent, and bond purchaser(s), must all be in place at time of submission of the “long” or final application for Program Bond financing
- All permits and approvals must be obtained
- Financing amounts must be in the \$20,000,000 to \$100,000,000 range; *notwithstanding*, projects below \$20,000,000 may in the Agency’s discretion be considered if fulfillment of Selection Criteria by the proposed project is expected to be particularly significant

- **Selection Criteria:**

- Ability to proceed with a successful financing
- Inapplicability of “as-of-right” or other discretionary programs for purposes of assisting the project
- Project’s contribution to the diversification of the City’s economy by job-type
- Diversification of the neighborhood in which the project is to be located
- On-going project employment after construction (length, quality and type)
- Construction employment (length, quality and type)
- On-going contribution to the City’s quality of life
- Economic contribution to the neighborhood in which the project is to be located
- Environmental contribution and on-going contribution to sustainable development in the City

APPENDIX F⁹

TAX EXEMPTION POLICY FOR THE HUDSON YARDS UTEP AREA

I. Certain Definitions

Capitalized Terms used and not otherwise defined herein shall have the meanings set forth in *Appendix A* to this Policy.

“CCP”, “Hudson Yards CCP” or “Hudson Yards Commercial Construction Project” means a project, including real property that is (y) located within the Hudson Yards UTEP Area, and (z) is eligible for Financial Assistance in accordance with Subdivision III of this *Appendix F*.

“CCP Improvements” means, for each Hudson Yards CCP, improvements authorized by the Agency and constructed as part of such Hudson Yards CCP.

“CCP PILOT” means, for any fiscal year, the amount of the payment in lieu of real property taxes payable as calculated in accordance with clause a) of the applicable PILOT formula for such year set forth below in the PILOT Calculation Tables in this *Appendix F*.

“CCP Taxes” means, for each Hudson Yards CCP, the real property taxes that would be payable during the applicable fiscal year, in the absence of any real property tax exemption made available by reason of the Agency’s interest, in respect of CCP Improvements and the land on which such CCP is located.

“Construction Period” means, for each Hudson Yards CCP, the period from the PILOT Commencement Date to the first June 30 after the date on which all CCP Improvements are fully assessed by the Department of Finance of the City in accordance with applicable real property tax assessment procedures or such later date as determined by the Agency in its sole discretion.

“Hudson Yards UTEP Area” means the area of Manhattan bounded by a line beginning at the intersection of Eleventh Avenue and West 30th Street, then running along West 30th Street to the intersection with Ninth Avenue, then northward to the intersection with West 31st Street, then eastward to the intersection with Seventh Avenue, then northward to the intersection with West 33rd Street, then westward to the intersection with Eighth Avenue, then northward to the intersection with West 35th Street, then westward to a point 150 feet west of the centerline of Eighth Avenue, then northward to the intersection with West 39th Street, then eastward to the intersection with Eighth Avenue, then northward to the intersection with West 40th Street, then westward to the intersection with Ninth Avenue, then northward to the intersection with West 41st Street, then eastward to a point 297 feet distant from the centerline of Ninth Avenue, then northward to the intersection with West 42nd Street, then eastward to a point 150 feet west of the centerline of Ninth Avenue, then northward 100 feet, then westward 100 feet, then southward to the intersection with West 42nd Street, then westward to the intersection with Tenth Avenue, then northward to the intersection with West 43rd Street, then westward to the intersection with Route

⁹ In the event of any conflict between the provisions of this *Appendix E* and any other provisions of this Policy, the provisions of this *Appendix E* shall govern and control.

9A, then south-westward to the intersection with West 42nd Street, then south to the intersection with West 41st Street, then eastward to the intersection with Eleventh Avenue, then southward to the intersection with West 30th Street.

“Other Improvements Taxes” means, for each Hudson Yards CCP, the real property taxes that would be payable during the applicable fiscal year, in the absence of any Financial Assistance, in respect of any assessable real property improvements that are in addition to the CCP Improvements.

“PILOT Amount” shall mean, for any fiscal year, the PILOT amount payable according to the PILOT Calculation Tables below.

“PILOT Commencement Date” means the July 1st following the January 5th which follows the closing at which the Agency enters into the documents and instruments necessary to provide Financial Assistance in connection with a Hudson Yards CCP.

“PILOT Financial Assistance Term” means, for a Hudson Yards CCP, a minimum period of 35 years and a maximum period of 99 years from the PILOT Commencement Date, as determined by the Staff and approved by the Board.

II. Financial Assistance Available

- a. Real Property Tax Exemption; Payment in Lieu of Real Property Tax ("PILOT"). From the PILOT Commencement Date to the termination of the PILOT Financial Assistance Term, the real property that comprises a Hudson Yards CCP shall be exempt from real property taxes, and the recipient of Financial Assistance shall pay a PILOT in the amount determined in accordance with the PILOT Calculation Tables set forth in this *Appendix F*.
- b. Sales Tax Exemption; Payments in Lieu of Sales Tax ("PILOST"). The sales tax exemption benefits for Hudson Yards CCPs (i) shall be for a term ending on the earlier of (x) 3 years from the commencement of construction of the CCP Improvements or (y) completion of construction of core and shell of the CCP Improvements, and (ii) shall provide savings of up to 100% of the sales and use taxes on construction materials for the CCP Improvements that would otherwise be due in the absence of exemption through the Agency, unless it is determined on a case by case basis by the Board that no exemption is appropriate. PILOST may be payable, as determined on a case by case basis by the Board, in an amount up to 100% of the sales and use taxes that would otherwise be due in the absence of Financial Assistance.
- c. Mortgage Recording Tax Exemption; Payments in Lieu of Mortgage Recording Tax ("PILOMRT"). The mortgage recording tax exemption for Hudson Yards CCPs shall be for the mortgages securing construction and permanent financing for a Hudson Yards CCP in an amount not to exceed the development costs of the

Hudson Yards CCP. However, the recipient of such Financial Assistance shall be required to make PILOMRT in an amount equal to 100% of the mortgage recording taxes that would otherwise be due. In addition, all mortgages securing the payment of PILOTs in connection with Hudson Yards CCPs shall be exempt from mortgage recording taxes and no payments in-lieu of mortgage recording taxes shall be due in respect thereto.

- d. Continuation of Benefits. In the event that a Hudson Yards CCP is transferred, sold or assigned, the Financial Assistance for such CCP shall remain in effect and be available to the transferees, buyers or assignees of the CCP (including but not limited to transferees in foreclosure), subject to their compliance with the applicable Project Documents and Agency requirements. The original project developer or principal and any transferees, buyers, or assignees of the Hudson Yards CCP shall be jointly and severally responsible for any benefits recapture obligations with respect to benefits realized in connection with the Hudson Yards CCP.
- e. Benefit Recapture and Termination of Eligibility. If a Hudson Yards CCP is not commenced or completed by the applicable dates specified in (or permitted under) the Project Documents, any sales tax exemption benefits received shall be subject to recapture and the project's status as a Hudson Yards CCP shall be subject to termination, in the Agency's discretion.

III. Eligibility for Financial Assistance

- a. In order to qualify as a Hudson Yards CCP, a project must satisfy each of the following criteria:
 - (i) Hudson Yards UTEP Area. The project must be located within the Hudson Yards UTEP Area.
 - (ii) Commercial Use. The project must consist of new construction of non-residential, commercial facilities either by a developer for leasing to commercial tenants, or by or on behalf of a principal for its own use, of which commercial tenants or such principal, as applicable, shall use and occupy not less than 75% of the usable space for the following uses:
 - 1. as Class A office space and ancillary support space, and/or
 - 2. in furtherance of "commercial purposes" as determined in the sole discretion of the Staff.
 - (iii) Size and Density. The project must satisfy size and density requirements as follows:

1. The project shall be deemed to be of sufficient size and density if the zoning square footage of the project shall equal or exceed 90% of the zoning square footage that is available for commercial use at the site of the project, according to the City's Zoning Resolution, assuming that all floor area bonuses and transfers available under the Zoning Resolution will be utilized; but in no event will any project be less than 1 million zoning square feet if it is to qualify as a CCP.
2. If the project does not satisfy the size and density standard set forth in subparagraph (iii)(1) above, it shall be in the Agency's sole discretion to determine whether the project is of sufficient size and density to qualify as a Hudson Yards CCP, except that the Agency will not consider projects of less than one million zoning square feet. The primary factor for the Agency's determination under this subparagraph shall be whether the proposed project will result in new construction that significantly furthers the objectives of the Agency to assist in the economic development of the City and spur job creation.

IV. Guidelines for PILOT Calculations for Hudson Yards Commercial Construction Projects

As provided herein, the real property that comprises a Hudson Yards Commercial Construction Project shall be exempt from real property taxes for the PILOT Financial Assistance Term and the recipient of Financial Assistance shall pay a CCP PILOT in the amount determined in accordance with the PILOT Calculation Tables provided below

For purposes of the PILOT calculations, the determination of CCP Taxes (as hereinafter defined) and Other Improvements Taxes (as hereinafter defined) in each fiscal year shall be based on actual real property taxes in such fiscal year. For all Hudson Yards Commercial Construction Projects, the CCP PILOT amount for a particular fiscal year shall never exceed CCP Taxes for such fiscal year.

PILOT CALCULATION TABLES

Zone 1 – All Hudson Yards Commercial Construction Projects within the subdivision of the Hudson Yards UTEP Area that is east of the center line of Eighth Avenue	
<u>Year of PILOT Agreement</u>	<u>PILOT Amount</u>
Each fiscal year during the Construction Period	a) CCP Taxes plus, b) Other Improvements Taxes
Years 1-4 after Construction Period	a) CCP Taxes plus, b) Other Improvements Taxes
Years 5-19 after Construction Period	a) 103% of the CCP PILOT for the previous fiscal year plus, b) Other Improvements Taxes
Each fiscal year during the remainder of PILOT Financial Assistance Term	a) CCP Taxes plus, b) Other Improvements Taxes

Zone 2 - All Hudson Yards Commercial Construction Projects within the subdivision of the Hudson Yards UTEP Area that is between the center line of Eighth Avenue and the centerline of Tenth Avenue	
<u>Year of PILOT Agreement</u>	<u>PILOT Amount</u>
Hudson Yards CCPs in Zone 2 shall be eligible to receive the Financial Assistance described below until the total square footage of Agency-authorized Hudson Yards CCPs in Zone 3 and Zone 3 Adjacent Developments equals ten million zoning square feet.	
Each fiscal year during the Construction Period	a) CCP Taxes plus, b) Other Improvements Taxes
Years 1-4 after Construction Period	a) 75% of CCP Taxes, plus b) Other Improvements Taxes
Years 5-15 after Construction Period	a) 103% of the CCP PILOT for the previous fiscal year, plus b) Other Improvements Taxes
Year 16 after Construction Period	a) Greater of 103% of CCP PILOT for the previous fiscal year and 80% of CCP Taxes, plus b) Other Improvements Taxes
Year 17 after Construction Period	a) Greater of 103% of CCP PILOT for the previous fiscal year and 85% of CCP Taxes, plus b) Other Improvements Taxes
Year 18 after Construction Period	a) Greater of 103% of CCP PILOT for the previous fiscal year and 90% of CCP Taxes plus b) Other Improvements Taxes
Year 19 after Construction Period	a) Greater of 103% of CCP PILOT for the previous fiscal year and 95% of CCP Taxes, plus b) Other Improvements Taxes
Each fiscal year during the remainder of PILOT Financial Assistance Term	a) CCP Taxes, plus b) Other Improvements Taxes
Thereafter, Hudson Yards CCPs in Zone 2 shall be eligible to receive the Financial Assistance described below until the total square footage of Agency-authorized Hudson Yards CCPs in Zone 3 and Zone 3 Adjacent Developments equals 15 million zoning square feet.	
Each fiscal year during the Construction Period	a) CCP Taxes plus, b) Other Improvements Taxes

Years 1-4 after Construction Period	a) 80% of CCP Taxes, plus b) Other Improvements Taxes
Years 5-15 after Construction Period	a) 103% of the CCP PILOT for the previous fiscal year, plus b) Other Improvements Taxes
Year 16 after Construction Period	a) Greater of 103% of CCP PILOT for the previous fiscal year and 84% of CCP Taxes, plus b) Other Improvements Taxes
Year 17 after Construction Period	a) Greater of 103% of CCP PILOT for the previous fiscal year and 88% of CCP Taxes, plus b) Other Improvements Taxes
Year 18 after Construction Period	a) Greater of 103% of CCP PILOT for the previous fiscal year and 92% of CCP Taxes, plus b) Other Improvements Taxes
Year 19 after Construction Period	a) Greater of 103% of CCP PILOT for the previous fiscal year and 96% of CCP Taxes, plus b) Other Improvements Taxes
Each fiscal year during the remainder of PILOT Financial Assistance Term	a) CCP Taxes plus, b) Other Improvements Taxes
Thereafter, Hudson Yards CCPs in Zone 2 shall be eligible to receive the financial Assistance described below until the total square footage of Agency-authorized Hudson Yards CCPs in Zone 3 and Zone 3 Adjacent Developments equals 20 million square feet.	
Each fiscal year during the Construction Period	a) CCP Taxes plus, b) Other Improvements Taxes
Years 1-4 after Construction Period	a) 85% of CCP Taxes, plus b) Other Improvements Taxes
Years 5-15 after Construction Period	a) 103% of the CCP PILOT for the previous fiscal year, plus b) Other Improvements Taxes
Year 16 after Construction Period	a) Greater of 103% of CCP PILOT for the previous fiscal year and 88% of CCP Taxes, plus b) Other Improvements Taxes
Year 17 after Construction Period	a) Greater of 103% of CCP PILOT for the previous fiscal year and 91% of CCP Taxes, plus b) Other Improvements Taxes
Year 18 after Construction Period	a) Greater of 103% of CCP PILOT for the previous fiscal year and 94% of CCP Taxes, plus b) Other Improvements Taxes
Year 19 after Construction Period	a) Greater of 103% of CCP PILOT for the previous fiscal year and 97% of CCP Taxes, plus b) Other Improvements Taxes
Each fiscal year during the remainder of PILOT Financial Assistance Term	a) CCP Taxes, plus b) Other Improvements Taxes

Zone 3 – All Hudson Yards Commercial Construction Projects within the subdivision of the Hudson Yards UTEP Area that is west of the center line of Tenth Avenue

“Zone 3 Adjacent Developments” means development(s) that have been authorized or approved by the Metropolitan Transportation Authority or any of its affiliates or the Empire State Development Corporation or any of its subsidiaries in the areas bounded by (i) West 30th and West 34th Streets and 11th and 12th Avenues, and (ii) West 30th and West 33rd Streets and 10th and 11th Avenues (collectively, “Zone 3 Adjacent Developments”)

For Zone 3, the following shall apply:

- (a) Hudson Yards CCPs in Zone 3 shall be eligible to receive the Financial Assistance described in Category A until the total square footage of Agency authorized Hudson Yards CCPs in Zone 3 and Zone 3 Adjacent Developments equals five million zoning square feet.
- (b) After eligibility for Category A has been exhausted, Hudson Yards CCPs in Zone 3 shall be eligible to receive the Financial Assistance described in Category B until the total square footage of Agency authorized Hudson Yards CCPs in Zone 3 and Zone 3 Adjacent Developments equals ten million zoning square feet.
- (c) After eligibility for Category B has been exhausted, Hudson Yards CCPs in Zone 3 shall be eligible to receive the Financial Assistance described in Category C until the total square footage of Agency authorized Hudson Yards CCPs in Zone 3 and Zone 3 Adjacent Developments equals fifteen million zoning square feet.
- (d) After eligibility for Category C has been exhausted, Hudson Yards CCPs in Zone 3 shall be eligible to receive the Financial Assistance described in Category D until the total square footage of Agency authorized Hudson Yards CCPs in Zone 3 and Zone 3 Adjacent Developments equals twenty million zoning square feet.
- (e) If at the time that a Zone 3 Hudson Yards CCP is authorized by the Agency, there is insufficient remaining eligibility in the Zone 3 Category to cover the entire zoning square footage of the CCP, then such CCP shall be treated as partially eligible for such Category and partially eligible for the next Category, and the Zone 3 PILOT for such CCP shall be the total of (X) and (Y) below:

(X) the percentage of the CCP, measured by zoning square footage, that is covered by the remaining eligibility in the Zone 3 Category, multiplied by the applicable PILOT Amount for that Category PLUS

(Y) the percentage of the CCP, measured by zoning square footage, that is not covered by the remaining eligibility in the Zone 3 Category, multiplied by the applicable PILOT Amount for the next Category

ZONE 3- CATEGORY A	
<u>Year of PILOT Agreement</u>	<u>PILOT Amount</u>
Each fiscal year during the Construction Period	a) CCP Taxes, plus b) Other Improvements Taxes
Years 1-4 after Construction Period	a) 60% of CCP Taxes, plus b) Other Improvements Taxes
Years 5-15 after Construction Period	a) 103% of the CCP PILOT for the previous fiscal year, plus b) Other Improvements Taxes
Year 16 after Construction Period	a) Greater of 103% of CCP PILOT for the previous fiscal year and 68% of CCP Taxes, plus b) Other Improvements Taxes
Year 17 after Construction Period	a) Greater of 103% of CCP PILOT for the previous fiscal year and 76% of CCP Taxes, plus b) Other Improvements Taxes
Year 18 after Construction Period	a) Greater of 103% of CCP PILOT for the previous fiscal year and 84% of CCP Taxes, plus b) Other Improvements Taxes
Year 19 after Construction Period	a) Greater of 103% of CCP PILOT for the previous fiscal year and 92% of CCP Taxes, plus b) Other Improvements Taxes
Each fiscal year during the remainder of PILOT Financial Assistance Term	a) CCP Taxes, plus b) Other Improvements Taxes

ZONE 3- CATEGORY B	
<u>Year of PILOT Agreement</u>	<u>PILOT Amount</u>
Each fiscal year during the Construction Period	a) CCP Taxes plus, b) Other Improvements Taxes
Years 1-4 after Construction Period	a) 75% of CCP Taxes, plus b) Other Improvements Taxes
Years 5-15 after Construction Period	a) 103% of the CCP PILOT for the previous fiscal year, plus b) Other Improvements Taxes
Year 16 after Construction Period	a) Greater of 103% of CCP PILOT for the previous fiscal year and 80% of CCP Taxes, plus b) Other Improvements Taxes
Year 17 after Construction Period	a) Greater of 103% of CCP PILOT for the previous fiscal year and 85% of CCP Taxes, plus b) Other Improvements Taxes
Year 18 after Construction Period	a) Greater of 103% of CCP PILOT for the previous fiscal year and 90% of CCP Taxes, plus b) Other Improvements Taxes
Year 19 after Construction Period	a) Greater of 103% of CCP PILOT for the previous fiscal year and 95% of CCP Taxes, plus b) Other Improvements Taxes
Each fiscal year during the remainder of PILOT Financial Assistance Term	a) CCP Taxes, plus b) Other Improvements Taxes

ZONE 3- CATEGORY C	
<u>Year of PILOT Agreement</u>	<u>PILOT Amount</u>
Each fiscal year during the Construction Period	a) CCP Taxes plus, b) Other Improvements Taxes
Years 1-4 after Construction Period	a) 80% of CCP Taxes, plus b) Other Improvements Taxes
Years 5-15 after Construction Period	a) 103% of the CCP PILOT for the previous fiscal year, plus b) Other Improvements Taxes
Year 16 after Construction Period	a) Greater of 103% of CCP PILOT for the previous fiscal year and 84% of CCP Taxes, plus b) Other Improvements Taxes
Year 17 after Construction Period	a) Greater of 103% of CCP PILOT for the previous fiscal year and 88% of CCP Taxes, plus b) Other Improvements Taxes
Year 18 after Construction Period	a) Greater of 103% of CCP PILOT for the previous fiscal year and 92% of CCP Taxes, plus b) Other Improvements Taxes
Year 19 after Construction Period	a) Greater of 103% of CCP PILOT for the previous fiscal year and 96% of CCP Taxes, plus b) Other Improvements Taxes
Each fiscal year during the remainder of PILOT Financial Assistance Term	a) CCP Taxes plus, b) Other Improvements Taxes

ZONE 3- CATEGORY D	
<u>Year of PILOT Agreement</u>	<u>PILOT Amount</u>
Each fiscal year during the Construction Period	a) CCP Taxes plus, b) Other Improvements Taxes
Years 1-4 after Construction Period	a) 85% of CCP Taxes, plus b) Other Improvements Taxes
Years 5-15 after Construction Period	a) 103% of the CCP PILOT for the previous fiscal year, plus b) Other Improvements Taxes
Year 16 after Construction Period	a) Greater of 103% of CCP PILOT for the previous fiscal year and 88% of CCP Taxes, plus b) Other Improvements Taxes
Year 17 after Construction Period	a) Greater of 103% of CCP PILOT for the previous fiscal year and 91% of CCP Taxes, plus b) Other Improvements Taxes
Year 18 after Construction Period	a) Greater of 103% of CCP PILOT for the previous fiscal year and 94% of CCP Taxes, plus b) Other Improvements Taxes
Year 19 after Construction Period	a) Greater of 103% of CCP PILOT for the previous fiscal year and 97% of CCP Taxes, plus b) Other Improvements Taxes
Each fiscal year during the remainder of PILOT Financial Assistance Term	a) CCP Taxes, plus b) Other Improvements Taxes

FIRST AMENDMENT

To

**Third Amended and Restated
Uniform Tax Exemption Policy of the
New York City Industrial Development Agency**
as approved on August 3, 2010 by the
Board of Directors of the
New York City Industrial Development Agency

As approved by the Board of Directors of the
New York City Industrial Development Agency
on November 9, 2010

THIRD AMENDED AND RESTATED UNIFORM TAX EXEMPTION POLICY, approved by the Board of Directors of the New York City Industrial Development Agency on August 3, 2010 ("UTEP"), IS HEREBY AMENDED by this FIRST AMENDMENT (this "Amendment") as follows:

SECTION I. DEFINITIONS AND USAGE

Terms used in this Amendment but not defined herein shall have the meanings ascribed to them in UTEP; otherwise, terms used in this Amendment will have the meanings respectively provided below in this Section I. The use in this Amendment of terms like "Project" or "Financial Assistance" shall be deemed to refer to or be in connection with "Industrial Projects." References in this Amendment to any period of years or a partial year or any date shall be deemed to refer to a period of years or a partial year or a date within a Financial Assistance Term.

Differential Product means, when the Original Product is greater than a Subsequent Product, the amount of such difference.

ELT or Equivalent Land Tax means real property taxes that would be applicable to Project Land were the Project Land not exempt.

LTA or Land Tax Abatement means the amount by which ELT is reduced to arrive at the amount of land PILOT applicable to the period of time in question.

LTA Adjustment Dates means the five-year anniversary of the PILOT Commencement Date and every five-year anniversary thereafter.

LTA Implementation Date means the January 1 following the first LTA Adjustment Date and every January 1 thereafter excepting the last one.

Original Employee Number means the following: for Industrial Projects that are on-going operations, the number of employees employed by the Recipient at time of application provided that all such employees are employed (or will be employed after transfer) at the Project Facility; and for Industrial Projects that are start-up operations, the number of employees, as projected by the Recipient at time of Closing, to be employed at the Project Facility once operations thereat have commenced.

Original Product means the product achieved by multiplying the Original Employee Number by \$500.

Subsequent Product means the product achieved by multiplying the Subsequent Employee Number by \$500.

Subsequent Employee Number means an employee-count based upon employees employed at the Project Facility over all of or part of the preceding five-year period just ended before a LTA Adjustment Date.

SECTION II. LAND PILOTS FOR INDUSTRIAL PROJECT FACILITIES NOT LOCATED IN A ZONE.

1. From the PILOT Commencement Date up to the first LTA Implementation Date.

For the five and one-half-year period commencing on the PILOT Commencement Date and ending on the December 31 preceding the first LTA Implementation Date, the LTA shall equal the Original Product and land PILOT shall equal ELT less such LTA; provided, however, that land PILOT shall never be less than zero.

2. From the first LTA Implementation Date up to the fourth LTA Implementation Date.

Following the first, second, third and fourth LTA Adjustment Dates, Subsequent Products shall be determined for the respective five-year periods commencing on the respective LTA Implementation Dates. The LTA for any five-year period commencing shall equal the Subsequent Product applicable to such five-year period and land PILOT shall equal ELT less such LTA; provided, however, that land PILOT shall never be less than zero.

Notwithstanding the foregoing, if a Subsequent Product is equal to or greater than both ELT and the Original Product, land PILOT shall equal zero for the five-year period commencing. If a Subsequent Product is equal to or greater than ELT but less than the Original Product, land PILOT shall equal the Differential Product.

3. For the last four and one-half years of the Financial Assistance Term. Land PILOT for the last four and one-half years of the Financial Assistance Term shall be the same as the land PILOT for the preceding five years subject to increases in accordance with the "burn-off" schedule prescribed in Section II.A.1.b.(i) of UTEP.

SECTION III. LAND PILOTS FOR INDUSTRIAL FACILITIES LOCATED IN A ZONE

1. From the PILOT Commencement Date up to the first LTA Implementaion Date.

For the five and one-half-year period commencing on the PILOT Commencement Date and ending on the December 31 preceding the first LTA Implementation Date, land PILOT shall equal zero.

2. From the first LTA Implementation Date up to the fourth LTA Implementation Date.

Following the first, second, third and fourth LTA Adjustment Dates, Subsequent Employee Numbers shall be determined for the respective five-year periods commencing on the respective LTA Implementation Dates. Land PILOT shall be determined for such five-year periods as follows:

- a. If the Subsequent Employee Number is equal to or greater than the Original Employee Number, land PILOT shall equal zero.
- b. If the Subsequent Employee Number is less than the Original Employee Number, land PILOT shall equal the Differential Product.

3. The last four and one-half years of the Financial Assistance Term.. Land PILOT for the last four and one-half years of the Financial Assistance Term shall be the same as the land PILOT for the preceding five years subject to increases in accordance with the "burn-off" schedule prescribed in Section II.A.1.b.(i) of UTEP.

SECTION IV. MISCELLANEOUS

Provisions in this Amendment that are conflict or that are inconsistent with provisions of UTEP are intended to replace the latter. Otherwise, UTEP remains unmodified and unamended.

**AS APPROVED BY THE BOARD OF DIRECTORS OF THE NEW YORK CITY
INDUSTRIAL DEVELOPMENT AGENCY ON NOVEMBER 9, 2010**

EXHIBIT C

FORM OF ASSIGNMENT

ASSIGNMENT

This **ASSIGNMENT** is made as of [DATE], by and among the **NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY** (the “**Agency**”), a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, **THE CITY OF NEW YORK** (the “**City**” and, collectively with the Agency, the “**Assignors**” and each, an “**Assignor**”), a municipal corporation of the State of New York, **HUDSON YARDS INFRASTRUCTURE CORPORATION** (“**Assignee**”), a local development corporation organized and existing under the Not-For-Profit Corporation Law of the State of New York, having its principal place of business at 255 Greenwich Street, New York, New York 10007, [NAME OF COMPANY] (the “**Company**”), a [type of entity] organized and existing under the laws of the State of [____], having its principal office at [_____].

SECTION 1. Definitions. Unless otherwise specified herein, capitalized terms used but not defined in this Assignment shall have the respective meanings given to those terms in the Amended and Restated PILOT Assignment and Agreement, dated as of December 1, 2006 and amended and restated as of May 1, 2017, by and among the Agency, the City and the Assignee, as amended, restated, supplemented or otherwise modified from time to time (the “**PILOT Assignment**”).

SECTION 2. Assignment. Assignors, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, do hereby absolutely and irrevocably assign, transfer, convey and deliver to Assignee, and its successors and assigns, all of their respective rights, title and interests in and to the following (collectively, the “**Assigned Assets**”): (a) those certain PILOT Assets (as defined in the PILOT Assignment), which include, without limitation, all right, title and interest of the Assignors to receive the PILOT Amounts (as defined in the Agency Lease Agreement, dated as of [DATE], by and between the Agency and the Company, as amended, restated, supplemented or otherwise modified from time to time (the “**Agency Lease Agreement**”)), the PILOMRT (as defined in the Agency Lease Agreement) payments and similar payments made and to be made by the Company under Sections 5.1 and 5.2 of the Agency Lease Agreement, (b) the Agency’s right, title and interest in the Guaranty Agreement (as defined in the Agency Lease Agreement), to the extent that the obligations guaranteed thereunder relate to the payment of the PILOT Amounts, the PILOMRT payments and similar payments made and to be made by the Company under Sections 5.1 and 5.2 of the Agency Lease Agreement, and (c) the present and continuing right to make claim for, collect and receive the PILOT Amounts, the PILOMRT payments and similar payments made and to be made by the Company under Sections 5.1 and 5.2 of the Agency Lease Agreement and the right to bring actions and receive proceeds for the enforcement of such payments.

SECTION 3. Representations and Warranties. The Agency and the City represent and warrant to the Assignee as of the date hereof as follows:

- (a) The Assigned Assets are free and clear of Liens; and

(b) The PILOT Assignment, the Agency Lease Agreement and the Guaranty Agreement remain unmodified and all provisions of the PILOT Assignment, the Agency Lease Agreement and the Guaranty Agreement are in full force and effect; and

(c) Neither the Agency nor the City has any existing defenses against the enforcement of the PILOT Assignment, the Agency Lease Agreement, the Guaranty Agreement or the other Transaction Documents.

SECTION 4. No Other Encumbrances. The Agency and the City covenant that, except as otherwise provided in the PILOT Assignment, neither will sell, convey, mortgage, encumber or otherwise dispose of any of the Assigned Assets.

SECTION 5. Further Assurances. The Agency and the City covenant that they each will execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such additional and supplemental agreements, instruments and documents, and make such further transfers as may be necessary to effectuate the assignment and transfers contemplated by the PILOT Assignment.

SECTION 6. Acknowledgement by Company. The Company acknowledges the assignment of the Assigned Assets set forth herein, and the Company agrees to make all payments of the PILOT Amounts and the PILOMRT payments to (or at the direction of) the Assignee. The Company agrees, for the benefit of the Assignee, to perform its obligations under (a) Sections 5.1 and 5.2 of the Agency Lease Agreement and (b) the Guaranty Agreement, to the extent the same relates to the payment of the PILOT Amounts, the PILOMRT payments and similar payments made and to be made under the Agency Lease Agreement.

SECTION 7. Counterparts. This Assignment may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

SECTION 8. Headings. The headings of the various Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

SECTION 9. Governing Law. This Assignment shall be construed in accordance with the laws of the State of New York, without reference to its conflict of law provisions (except Sections 5-1401 and 5-1402 of the General Obligations Law of the State of New York), and the obligations, rights and remedies of the parties hereunder shall be determined in accordance with such laws.

SECTION 10. Successors and Assigns. The provisions of this Assignment are solely for the benefit of the Agency, the City, the Assignee, U.S. Bank National Association in its capacity as First Indenture Trustee and U.S. Bank National Association in its capacity as Second Indenture Trustee; *provided, however*, that this Assignment may not be assigned by any party hereto without the prior written consent of the other parties hereto, *except* that (i) the consent of the Company shall not be required in connection with an assignment by any other party hereto and (ii) the Assignee may assign this Assignment to the First Indenture Trustee and/or the Second Indenture Trustee without the consent of any other party hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be duly executed by their respective officers as of the day and year first above written.

APPROVED AS TO FORM:

THE CITY OF NEW YORK, as Assignor

By: _____
Name: James McSpiritt
Title: Acting Corporation Counsel

By: _____
Name: Alicia Glen
Title: Deputy Mayor for Housing and Economic Development

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

By: _____
Name: Johan Salen
Title: Executive Director

**HUDSON YARDS INFRASTRUCTURE
CORPORATION**, as Assignee

By: _____
Name: Alan Anders
Title: President

(Signature Page to Assignment)

Acknowledged and agreed to with respect to Section 6 only:

[COMPANY NAME], as Company

By: _____

Name:

Title:

(Signature Page to Assignment)

Acknowledgements

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

On the ____ day of _____ in the year 20____, before me, the undersigned, personally appeared **Alicia Glen**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

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

On the ____ day of _____ in the year 20____, before me, the undersigned, personally appeared **Johan Salen**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

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

On the ____ day of _____ in the year 20____, before me, the undersigned, personally appeared **Alan Anders**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

(Notary Page to Assignment)

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

On the ____ day of _____ in the year 20____, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

(Notary Page to Assignment)

EXHIBIT D

HUDSON YARDS UTEP AREA DESCRIPTION

“Hudson Yards UTEP Area” means the area of Manhattan bounded by a line beginning at the intersection of Eleventh Avenue and West 30th Street, then running along West 30th Street to the intersection with Ninth Avenue, then northward to the intersection with West 31st Street, then eastward to the intersection with Seventh Avenue, then northward to the intersection with West 33rd Street, then westward to the intersection with Eighth Avenue, then northward to the intersection with West 35th Street, then westward to a point 150 feet west of the centerline of Eighth Avenue, then northward to the intersection with West 39th Street, then eastward to the intersection with Eighth Avenue, then northward to the intersection with West 40th Street, then westward to the intersection with Ninth Avenue, then northward to the intersection with West 41st Street, then eastward to a point 297 feet distant from the centerline of Ninth Avenue, then northward to the intersection with West 42nd Street, then eastward to a point 150 feet west of the centerline of Ninth Avenue, then northward 100 feet, then westward 100 feet, then southward to the intersection with West 42nd Street, then westward to the intersection with Tenth Avenue, then northward to the intersection with West 43rd Street, then westward to the intersection with Route 9A, then south-westward to the intersection with West 42nd Street, then south to the intersection with West 41st Street, then eastward to the intersection with Eleventh Avenue, then southward to the intersection with West 30th Street.

HireNYC

NYCEDC recognizes the importance of creating employment opportunities for low-income persons, enabling them to participate in the City's economic growth. To this end, NYCEDC has developed the HireNYC Development: Permanent Employment for all tenants and subtenants in development projects receiving NYCIDA financial assistance (each, a "Tenant") expected to produce fifteen (15) or more Eligible Jobs over the HireNYC Program Term. Participation in this program requires the successful Tenants to use good faith efforts to achieve the hiring and workforce development goals and perform the requirements of NYCEDC's HireNYC Development: Permanent Employment. The developer of projects with Tenants that are expected to produce fifteen (15) or more permanent jobs over the life of the project (the "Developer") will be required to incorporate the terms of the HireNYC Program into all Tenant leases obligating Tenants to comply with the goals and other requirements in the Tenant's HireNYC Program to the same extent as the Developer is required to comply with such goals and other requirements.

Each Tenant for projects expected to produce fifteen (15) or more permanent jobs over the life of the project must submit within its response a HireNYC Statement on Goals ("Tenant's HireNYC Program"), Appendix A, addressing the Tenant's commitment to seek to achieve the goals and other requirements set forth below and undertake other efforts to create employment opportunities for low-income persons.

Each Tenant's HireNYC Program must include all programmatic details listed below, including collaboration with a New York City agency designated by NYCEDC in a notice to the Tenant ("Designated City Agency"). The Designated City Agency will assist the Tenant in implementing their HireNYC Program including the screening of candidates from the target population ("Target Population") defined as persons who have an income that is below two hundred percent (200%) of the poverty level as determined by the New York City Center for Economic Opportunity (a description of the income level meeting this threshold for each household size is available at http://www.nyc.gov/html/ceo/downloads/pdf/ceo_poverty_measure_2005_2013.pdf). The HireNYC Program will be in effect at the Facility Realty for a period of eight (8) years from the commencement of the first business operations at the project location ("HireNYC Program Term").

Eligible Jobs shall be defined as all new and replacement entry and mid-level office and non-office FTE positions with a preference for an associate's degree or less and created in connection with the project but excluding jobs relocated from other sites. For the avoidance of doubt, contingent workers, third party contractors, and consultants are not FTE positions and therefore shall not count as Eligible Jobs.

I. Goals. Each Tenant's HireNYC Program must include, at a minimum, the following hiring and workforce development goals (collectively, the "Goals"):

Hiring Goal:	Fifty percent (50%) of all Eligible Jobs will be filled by members of the Target Population referred by the Designated City Agency for a period beginning, for each employer, at commencement of business operations and continuing through the end of the HireNYC Program Term. Notwithstanding the foregoing, the Hiring Goal shall only apply to hiring on occasions when Tenant is hiring and has posted in a day for fifteen (15) or more Eligible Jobs, where the Designated City Agency has referred at least two (2) candidates for each position, and where such candidates have passed the Tenant's standard drug test and background check.
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- Retention Goal: Forty percent (40%) of all employees whose hiring counted towards the Hiring Goal (“Referred Employees”) will be retained for at least nine (9) months from date of hire.
- Advancement Goal: Thirty percent (30%) of all Referred Employees will be promoted to a higher paid position or receive higher pay in the same position within or upon one (1) year of date of hire to the extent such advancement is consistent with the Tenant’s policies for employees in comparable positions.
- Training Goal: Cooperation with NYCEDC and the Designated City Agency to provide skills-training or higher education opportunities to members of the Target Population. Such goal may be achieved by a Tenant making available to Referred Employees the same training and educational opportunities that are otherwise available to its employees in comparable roles.

II. Program Requirements. Each Tenant’s HireNYC Program must also include all of the following requirements:

1. Designation of a workforce development liaison by the Tenant to interact with NYCEDC and the Designated City Agency during the course of Tenant’s HireNYC Program.
2. Commitment by the Tenant to do the following:
 - a. use good faith efforts to achieve the Goals;
 - b. notify NYCEDC at least six (6) weeks prior to commencing business operations;
 - c. with respect to initial hiring for any Eligible Jobs associated with the commencement of business at the project location (but only if fifteen (15) or more such Eligible Jobs are posted by any one Tenant in a day):
 - (i) provide NYCEDC and the Designated City Agency with the approximate number and type of jobs that will become available, and for each job type a description of the basic job qualifications, at least one (1) month before commencing hiring; and
 - (ii) consider only applicants referred by the Designated City Agency for the first ten (10) business days, until the Hiring Goal is achieved or until all Eligible Jobs are filled, whichever occurs first;
 - d. with respect to ongoing hiring on occasions when hiring for fifteen (15) or more Eligible Jobs posted by any one Tenant in a day:
 - (i) provide NYCEDC and the Designated City Agency with the approximate number and type of jobs that will become available, and for each job type a description of the basic job qualifications, at least one (1) month before commencing hiring or as soon as information is available, but in all cases not later than one (1) week before commencing hiring; and

- (ii) consider only applicants referred by the Designated City Agency for the first five business days, until the Hiring Goal is achieved or until all Eligible Jobs are filled, whichever occurs first;
- e. provide NYCEDC with one (1) electronic copy of the Tenant's lease (or a memorandum of lease prepared in connection with the Tenant's lease) and the HireNYC Statement on Goals executed by each tenant at the project location within fifteen (15) business days of execution of its lease;
- f. submit to NYCEDC annual HireNYC Employment Reports in the form provided by NYCEDC;
- g. cooperate with annual site visits and, if requested by NYCEDC, employee satisfaction surveys relating to employee experience with Tenant's HireNYC Program;
- h. provide information related to Tenant's HireNYC Program and the hiring process to NYCEDC upon request; and
- i. allow information collected by NYCEDC and the Designated City Agency to be included in public communications, including press releases and other media events.

III. General Requirements. The following general requirements also must be included in Tenant's HireNYC Program

1. Enforcement. In the event NYCEDC determines that the Tenant has violated any of the Tenant's HireNYC Program requirements, including, without limitation, a determination that the Tenant, has failed to use good faith efforts to fulfill the Goals, NYCEDC may assess liquidated damages set forth immediately below
2. Liquidated Damages.
 - a. If Tenant does any of the following:
 - i. fails to comply with its obligations set forth in Section II(2) clauses (a)(with respect to the Hiring Goal), (c), and/or (d), and as a result the Designated City Agency was unable to refer applicants or participate in the hiring process as required by the program; or
 - ii. fails to comply with its obligations set forth in Section II(2) clauses, (e), (f), (g), (h), and/or (i) and such failure shall continue for a period of thirty (30) days after receipt of notice from NYCEDC, then

Tenant will be liable for damages.

- b. In view of the difficulty of accurately ascertaining the loss which NYCEDC will suffer by reason of Tenant's failure to comply with program requirements, the following amounts are hereby fixed and agreed as the liquidated damages that NYCEDC will suffer by reason of such failure, and not as a penalty. In the case of clause 3.a (i), NYCEDC may assess liquidated damages for **each position** for which the Designated City Agency was unable to refer applicants or otherwise participate in hiring as required by the program in the following amounts:

- i. \$0, with respect to the first occurrence of such failure to comply;
- ii. \$500, with respect to the second occurrence of such failure to comply; and
- iii. \$1,000, with respect to each subsequent failure to comply thereafter.

In the case of clause 3.a (ii), NYCEDC may assess damages for breach of each requirement in the following amounts:

- i. \$0, with respect to the first breach;
 - ii. \$500, with respect to the second breach; and
 - iii. \$1,000, with respect to each subsequent breach thereafter.
- c. Tenant shall be liable for and shall pay to NYCEDC all damages assessed against the Tenant at the project upon receipt of demand from NYCEDC.

HireNYC Statement on Goals

Project Name: 2 Manhattan West, New York, New York

Tenant Name ("Tenant"): _____

Tenant agrees to the following:

1. Tenant will designate a workforce development liaison to interact with NYCEDC and a New York City agency designated by NYCEDC in a notice to the Tenant ("Designated City Agency") during the course of the HireNYC program.

Workforce Development

Liaison: _____

E-mail: _____

Phone: _____

2. Tenant agrees with the following HireNYC goals:

Hiring Goal: Fifty percent (50%) of all Eligible Jobs will be filled by members of the Target Population referred by the Designated City Agency for the period beginning on the Tenant's commencement of business operations at the 2 Manhattan West project location and continuing for the duration of the HireNYC Program Term (as defined in Exhibit J to the Agency Lease Agreement between the New York City Industrial Development Agency and BOP SE LLC). The Hiring Goal shall only apply to hiring on occasions when Tenant is hiring and has posted in a day for fifteen (15) or more Eligible Jobs where the Designated City Agency has referred at least two (2) candidates for each position; and where such candidates have passed the Tenant's standard drug test and background check.

Retention Goal: Forty percent (40%) of all employees whose hiring counted towards the Hiring Goal ("Referred Employees") will be retained for at least nine (9) months from date of hire.

Advancement Goal: Thirty percent (30%) of all Referred Employees will be promoted to a higher paid position or receive higher pay in the same position within or upon one (1) year of date of hire to the extent such advancement is consistent with the Tenant's policies for employees in comparable positions.

Training Goal: Cooperation with NYCEDC and the Designated City Agency to provide skills-training or higher education opportunities to members of the Target Population. Such goal may be achieved by a Tenant making available to Referred Employees the same training and educational opportunities that are otherwise available to its employees in comparable roles.

3. I will follow the program requirements:
 - a. use good faith efforts to achieve the Goals;
 - b. notify NYCEDC at least six (6) weeks prior to commencing business operations;
 - c. with respect to initial hiring for any Eligible Jobs associated with the commencement of business at the project location (but only if fifteen (15) or more such Eligible Jobs are posted by any one Tenant in a day):
 - i. provide NYCEDC and the Designated City Agency with the approximate number and type of jobs that will become available, and for each job type a description of the basic job qualifications, at least one (1) month before commencing hiring; and
 - ii. consider only applicants referred by the Designated City Agency for the first ten (10) business days, until the Hiring Goal is achieved or until all Eligible Jobs are filled, whichever occurs first;
 - d. with respect to ongoing hiring on occasions when hiring for fifteen (15) or more Eligible Jobs posted by any one Tenant in a day:
 - i. provide NYCEDC and the Designated City Agency with the approximate number and type of jobs that will become available, and for each job type a description of the basic job qualifications, at least one (1) month before commencing hiring or as soon as information is available, but in all cases not later than one (1) week before commencing hiring; and
 - ii. consider only applicants referred by the Designated City Agency for the first five business days, until the Hiring Goal is achieved or until all Eligible Jobs are filled, whichever occurs first;
 - e. provide NYCEDC with one (1) electronic copy of the Tenant's lease (or a memorandum of lease prepared in connection with the Tenant's lease) at the project location within fifteen (15) days of execution;
 - f. submit to NYCEDC annual HireNYC Employment Reports in the form provided by NYCEDC;
 - g. cooperate with annual site visits and, if requested by NYCEDC, employee satisfaction surveys relating to employee experience with Tenant's HireNYC Program; and
 - h. provide information related to Tenant's HireNYC Program and the hiring process to NYCEDC upon request.
4. Tenant agrees to the following enforcement measures:
 - a. Enforcement. In the event NYCEDC determines that the Tenant has violated any of the Tenant's HireNYC Program requirements, including, without limitation, a determination that the Tenant has failed to use good faith efforts to fulfill the Goals, NYCEDC may assess liquidated damages.

b. Liquidated Damages.

- i. In view of the difficulty of accurately ascertaining the loss which NYCEDC will suffer by reason of Tenant's failure to comply with program requirements, the following amounts are hereby fixed and agreed as the liquidated damages that NYCEDC will suffer by reason of such failure, and not as a penalty.
- ii. In the case of clause 3.a, 3.c or 3.d, NYCEDC may assess liquidated damages for **each position** for which the Designated City Agency was unable to refer applicants or otherwise participate in hiring as required by the program in the following amounts:
 1. \$0, with respect to the first occurrence of such failure to comply;
 2. \$500, with respect to the second occurrence of such failure to comply; and
 3. \$1,000, with respect to each subsequent failure to comply thereafter.
- iii. In the case of clause 3.e, 3.f, 3.g, 3.h, NYCEDC may assess damages for breach of each requirement in the following amounts:
 1. \$0, with respect to the first breach;
 2. \$500, with respect to the second breach; and
 3. \$1,000, with respect to each subsequent breach thereafter.

Tenant Name: _____

Authorized Person Signature

Date

Print Name/Title

FORM OF LW AGREEMENT**LIVING WAGE AGREEMENT**

This LIVING WAGE AGREEMENT (this “Agreement”) is made as of [____], by [____] (“Obligor”) in favor of the 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 One Liberty Plaza, New York, New York 10006.

“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 case 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 1,820,000 gross square foot, 62-story, LEED certified, class-A office building on an approximately 62,000 square foot parcel of land located at and generally known by the street address of 375 9th Avenue, New York, NY 10001.

“Lessee” means BOP SE LLC, a limited liability company organized and existing under the laws of the State of Delaware, having its principal office at 250 Vesey Street, 15th Floor, New York, New York 10281, or its permitted successors or assigns as the 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, 2019, the “living wage rate” component of the LW shall be fifteen dollars per hour (\$15/hour) and the “health benefits supplement rate” component of the LW shall be one dollar and eighty-five cents per hour (\$1.85/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 the 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 1.03ⁿ, 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 February 1, 2020, between the Agency and the Lessee (as amended, restated, supplemented or otherwise modified from time to time), pursuant to which the 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 the 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 the 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, One Liberty Plaza, New York, New York 10006, Attention: General Counsel, with a copy to New York City Industrial Development Agency, One Liberty Plaza, New York, NY, 10006, 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 the 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 One Liberty Plaza, New York, New York 10006.

“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 case 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 1,820,000 gross square foot, 62-story, LEED certified, class-A office building on an approximately 62,000 square foot parcel of land located at 375 9th Avenue, New York, New York 10001.

“Lessee” means BOP SE LLC, a limited liability company organized and existing under the laws of the State of Delaware, having its principal office at 250 Vesey Street, 15th Floor, New York, New York 10281, or its permitted successors or assigns as the 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, 2019, the “living wage rate” component of the LW shall be fifteen dollars per hour (\$15/hour) and the “health benefits supplement rate” component of the LW shall be one dollar and eighty-five cents per hour (\$1.85/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 the 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 1.03ⁿ, 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 February 1, 2020, between the Agency and the Lessee (as amended, restated, supplemented or otherwise modified from time to time), pursuant to which the 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 the 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:
- (i) If to Obligor, to [Obligor's Name], [Street Address], [City], [State], [Zip Code], Attention: [Contact Person].
 - (ii) If to the Agency, to New York City Industrial Development Agency, One Liberty Plaza, New York, New York 10006, Attention: General Counsel, with a copy to New York City Industrial Development Agency, One Liberty Plaza, New York, New York 10006, Attention: Executive Director.
 - (iii) 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.
 - (iv) 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:

EXHIBIT L

FORM OF LABOR PEACE AGREEMENT

AGREEMENT

THIS AGREEMENT made this ____ day of _____, 20__ by and between [Covered Employer] (“Employer”) at [PROJECT LOCATION] (the “Premises”), and [_____] (the “Union”).

WHEREAS, the parties wish to ensure that employees in the below described bargaining unit in the Project subject to this Agreement have the opportunity to express their desire to be represented for purposes of collective bargaining in an atmosphere free from intimidation, restraint, coercion or discrimination; and

WHEREAS, the parties wish to resolve any disputes related to any organizing drive and representational issue amicably, without resort to litigation or proceedings before the National Labor Relations Board (“NLRB”), courts or any other governmental authority having jurisdiction over such disputes; and

WHEREAS, the parties have exchanged good and valuable consideration, the receipt of which is hereby acknowledged.

NOW THEREFORE, the parties agree as follows:

1. This Agreement shall only apply to the regular full-time and regular part-time food and beverage, retail clerk, stocking and warehouse employees (“Employees”), excluding supervisors, professional employees, managers and guards as defined in the National Labor Relations Act (“NLRA”), employed by a retail or food establishment that employs or is expected to employ ten or more Employees and occupies or is expected to occupy in excess of 15,000 gross square feet on the Premises (“Retail & Food Establishments”).
2. The parties hereby establish the following procedure for the purpose of ensuring an orderly environment for the exercise by the Employees of their rights under Section 7 of the NLRA and to avoid picketing and/or other economic action directed at the Employer in the event the Union decides to conduct an organizing campaign among Employees.
3. The parties recognize that national labor law guarantees the Employees the right to form or select any labor organization to act as their exclusive representative for the purpose of collective bargaining with their employer, or to refrain from such activity.
4. The Employer will take a neutral approach to unionization of Employees. The Employer will not take any action nor make any statement that will directly or indirectly state or imply any opposition by the Employer to the selection by such Employees of a collective bargaining agent, or reference for or opposition to any particular union as a bargaining agent. This provision shall not prohibit the Employer from presenting its own package to the Employees.
5. The Union and its representatives will not coerce or threaten any Employee in an effort to obtain authorization cards.
6. The Union may engage in organizing efforts in non-work areas during Employees’ non-working times (before work or after work) and/or during such other periods as the parties may mutually agree.

7. There shall be no lock-outs of the Employees by the Employer, and the Union shall not cause any disruption of work by the Employees or of operations during organizing activity, including any picketing, strikes, slow-downs, work stoppages, sympathy strikes, sit-ins, refusal to handle merchandise or similar interference with operations. The Union further agrees that it will not, at any time, directly or indirectly, interfere with or prevent the Employer from purchasing merchandise or any services that it may require or desire from any source because of the employment by said source of non-union workers, and the Union also agrees that it will not cause any Employee to refuse to handle, sell, deliver or work on any such merchandise.

8. The Union may begin its effort to organize Employees after 10-days written notice to the Employer. Within ten days following receipt of a written notice of intent to organize Employees, the Employer will furnish the Union with a complete list of both full and part-time Employees, showing their job classifications, departments, work schedules, wage rates, benefits, and home addresses and telephone numbers. Thereafter, upon request from the Union, the Employer will promptly provide updated lists to the Union, but no more frequently than monthly, unless there is no change to the list, in which event the Employer will so advise the Union. The Union will keep the addresses and telephone numbers confidential and not use them for any purpose other than the purposes of this Agreement.

9. The arbitrator identified in Paragraph 16 ("Arbitrator"), or another person mutually agreed to by the Employer and the Union will conduct a review of Employees' authorization cards and membership information to determine whether the Union has obtained valid cards from a majority of the Employees in the bargaining unit(s) designating the Union as their representative for purposes of collective bargaining ("Cards") and to certify the results of such Card count in accordance with the procedure set forth herein.

10. At any time after the commencement date of the Union's organizing effort, the Union may request that the Arbitrator conduct a Card count. The Union shall initiate that process by advising the Employer in writing ("Notification Letter") that it represents a majority of the Employees. The date of the Notification Letter shall be the date used for purposes of determining the composition of the list of the names and the Employees to be furnished by the Employer to the Arbitrator.

11. At any time after the delivery of the Notification Letter by the Union to the Employer, the Union may notify the Arbitrator in writing that his/her services are requested for purposes of conducting a Card count. The Union shall confirm to the Employer that the Arbitrator has retained jurisdiction of the card count proceeding. As soon as practicable thereafter, but in no event later than seven (7) days after the date of the Union's written Card count request, the Union shall furnish to the Arbitrator the Cards it has obtained from the Employees, and the Employer shall furnish the Arbitrator with the list containing the names, job classifications and social security numbers of Employees employed as of the date of the Notification Letter (with a copy to the Union) together with copies of official employment documents containing the signatures of each of the Employees (e.g. Forms 1-9, Form W4 or similar documents).

12. Within ten days (unless extended by mutual consent) after receipt of the documents described above, the Arbitrator shall conduct a Card count by checking the Cards against the list of Employees and by comparing the Employees' names and signatures appearing on the Cards to the names and signatures appearing on the employment documents supplied to the Arbitrator by the Employer. At the conclusion of the Card count, the Arbitrator shall inform the parties of the results thereof, and shall certify in writing that either the Union has or has not been selected by a majority of eligible Employees as their collective bargaining representative. Both the Employer and the Union agree to abide by the Arbitrator's determinations regarding any challenges either to the validity of the Cards, the eligibility of Employees, the appropriateness of the unit and/or to the majority status of the Union. The identity of all Card- signers shall be kept confidential from the Employer.

13. If, after the Card count(s), the Union fails to be certified by the Arbitrator as the representative of the eligible Employees, this Agreement shall be deemed to continue in full force and effect, unless it is otherwise terminated in writing by mutual agreement of the parties.

14. If, after the Card count, the Arbitrator determines that a majority of such Employees has designated the Union as their exclusive collective bargaining representative or joined the Union, the Employer will recognize the Union as such representative of such Employees. The Union and the Employer will not file any charges with the NLRB in connection with any act or omission occurring within the context of this Agreement; arbitration under Paragraphs 16 and 17 shall be the parties' exclusive remedy.

15. If the Union is recognized as the exclusive collective bargaining representative, the Employer and the Union shall promptly and expeditiously commence negotiations for a collective bargaining agreement at a mutually agreeable time and place. If the parties are unable to reach a collective bargaining agreement within 90 days after certification by the Arbitrator, the parties agree that, unless the parties agree to another arbitrator, the Arbitrator may act as the arbitrator and resolve any disputes regarding the terms of the collective bargaining agreement.

16. The "Arbitrator" shall be the American Arbitration Association (the "AAA"), and all hearings conducted shall be conducted accordance to the procedures established by AAA. The Arbitrator shall have the authority to order the non-compliant party to comply with this Agreement. The parties hereto agree to comply with any order of the Arbitrator, which shall be final and binding.

17. The Arbitrator shall be guided by the following considerations: a) Employer's financial ability; b) size and type of the Employer's operations; c) cost of living as it affects the Employees; d) ability of the Employees, through the combination of wages, hours and benefits, to earn a living wage to sustain themselves and their families; and e) Employees' productivity.

18. Employer shall ensure that all subtenants, licensees and occupants sign a labor peace agreement consistent with this Agreement.

19. This Agreement, as well as any collective bargaining agreement entered into by the parties shall only apply to the Employer's operations at the Premises.

20. This Agreement shall terminate, be null and void and of no force and effect if the Project is terminated and no Financial Assistance (as defined in Executive Order No. 19 (2016) – Labor Peace for Retail Establishments at City Development Projects) has been provided. As used in this Agreement, "Project" shall mean the construction by [] of all buildings, structures, foundations, related facilities, fixtures and other improvements comprising the initial construction of an approximately [] gross square foot [] building, which will include approximately [] usable square feet of retail space, a portion of which is located on the Premises.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Agreement is executed as of the date appearing on the first page hereof.

[COVERED EMPLOYER]

By: _____
Name:
Title:

[LABOR ORGANIZATION]

By: _____
Name:
Title:

M/WBE PARTICIPATION PLAN

MWBE/DBE Participation Plan

2/7/2020

The purpose of this form is to ensure that appropriate planning and consideration go into the consultant and contractor utilization process, and to serve as documentation of your commitment to attain the level of MWBE/DBE Participation set forth in this plan. The solicitation materials indicate whether MWBE or DBE goals apply for this contract and this form should be filled out accordingly. Please complete the forms and return (1) an Excel copy of the form and (2) an executed PDF to opportunityMWDBE@nycdc.com. Any questions should also be directed to this email address.

I affirm that the following statements are true and accurate:

1. I will make and thoroughly document every good faith effort to meet the MWBE/DBE Participation Goal set forth herein.
2. This MWBE/DBE Participation Plan lists all consultants and contractors that are expected to work on this project as of the date above, whether MWBE/DBE or not.
3. I have verified that firms listed as MWBE/DBE below are certified by the appropriate entity.
4. I have included an Intent to Perform as Subcontractor Form for each firm listed below as part of this submission.

BOP SELE

Signature of Authorized Representative/Preparer

HENRY CASO S.V.P.M.W.CONST.

2.7.2020
Date

NYCEDC Approval:

Signature of NYCEDC Opportunity M/W/DBE Representative

Claudia Flores, A/P M/WBE

2.7.2020
Date

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are filled in
automatically

Project Information				Project Calculations		
Contract #	60587055/1341			Project Value/Project Award Amount	\$363,537,161.00	
Project Name	MANHATTAN WEST SOUTHEAST TOWER				\$280,881,189.91	
Business Name	AECOM TISHMAN			Total Amount to Count toward MWBE/DBE Goal	\$54,530,574.00	
Email	H.CASO@AECOM.COM					
Phone	646-442-2123			M/WBE Participation Goal	15.00%	
Contractor/Consultant Award Information						
Contractor/ Consultant	MWBE/DBE? ("Y" or "N")	Award Amount	Services to be Provided	Contracting Party <small>Please indicate the name of the party subcontracting for the services</small>	Is Contracting Party MWBE/DBE? ("Y" or "N")	Amount to Count
AECOM TISHMAN	N	\$363,537,161.00	CONSTRUCTION MANAGEMENT	N/A	N	\$0
Fred Geller Electric	N	\$64,518,601.00	Electrical #1 - Core & Shell	AECOM Tishman	N	\$0
Corporate Electric	N	\$14,190,000.00	Electrical #2 Bus Duct & Tenant Fit-Out	AECOM Tishman	N	\$0
Sirina Fire Protection	N	\$7,900,000.00	Fire Protection	AECOM Tishman	N	\$0

Contractor/ Consultant	MWBE/DBE? ("Y" or "N")	Award Amount	Services to be Provided	Contracting Party <i>Please indicate the name of the party subcontracting for the services</i>	Is Contracting Party MWBE/DBE? ("Y" or "N")	Amount to Count
JDP Mechanical	N	\$32,450,860.00	HAC #1- Core & Shell	AECOM Tishman	N	\$0
ASM Mechanical	N	\$20,000,000.00	Ventilation	AECOM Tishman	N	\$0
John Cvetta & Sons	N	\$11,000,000.00	Superstructure Concrete - Part A	AECOM Tishman	N	\$0
Roger & Sons	N	\$26,350,000.00	Superstructure Concrete - Part B	AECOM Tishman	N	\$0
Parkview Plumbing	N	\$23,900,000.00	Plumbing	AECOM Tishman	N	\$0
Platform Solutions	N	\$460,000.00	Scaffolding & Protection	AECOM Tishman	N	\$0
A. Esteban & Co.	Y	\$50,000.00	Digital Printing	AECOM Tishman	N	\$50,000.00
Cassone Leasing	Y	\$61,200.00	Office Container Rentals	AECOM Tishman	N	\$61,200.00
Orange County Ironworks	N	\$11,700,000.00	Metal Stairs & Misc. Iron	AECOM Tishman	N	\$0
Platform Solutions	N	\$4,055,000.00	Central Plaza & Sidewalk Sheds	AECOM Tishman	N	\$0
Safway Atlantic	N	\$9,550,000.00	Holst & Holst Complex	AECOM Tishman	N	\$0
Donaldson Interiors	N	\$30,500,000.00	Rough Carp., Gypsum Board & Ceilings	AECOM Tishman	N	\$0
International Asbestos Removal Inc.	Y	\$1,100,000.00	Insulation	ASM Mechanical	N	\$1,100,000.00
Harry Brainum	Y-Supplier	\$700,000.00	Metal Supplier	ASM Mechanical	N	\$420,000.00
Joa-Lyn	Y	\$1,000,000.00	Supplier (Auto Dampers and Fire Smoke Dampers)	ASM Mechanical	N	\$1,000,000.00
Turtle & Hughes	Y	\$1,609,068.94	Switchgear	Corporate Electric	N	\$1,609,068.94
Turtle & Hughes	Y	\$567,894.15	Materials	Corporate Electric	N	\$567,894.15
Henry Quentzel	Y-Supplier	\$1,500,000.00	Supply Materials	Parkview Plumbing	N	\$900,000.00

Contractor/ Consultant	MWBE/DBE? ("Y" or "N")	Award Amount	Services to be Provided	Contracting Party <i>Please indicate the name of the party subcontracting for the services</i>	Is Contracting Party MWBE/DBE? ("Y" or "N")	Amount to Count
NY Plumbing Supply	Y-Supplier	\$1,500,000.00	Supply Materials	Parkview Plumbing	N	\$900,000.00
Maravato Industries	Y-Supplier	\$100,000.00	Supply Materials	Parkview Plumbing	N	\$60,000.00
Atlantic Reinforcing	Y	\$2,366,000.00	Rebar Supply and Installation	John Cvetta & Sons	N	\$2,366,000.00
Tec- Crete	Y	\$1,275,000.00	Concrete Supplier	John Cvetta & Sons	N	\$1,275,000.00
Tec- Crete	Y	\$2,800,000.00	Concrete Supplier	Roger & Sons	N	\$2,800,000.00
Tonage, Inc.	Y	\$1,450,000.00	Reinforcing Bars and Mesh	Roger & Sons	N	\$1,450,000.00
X-Cell Insulation Corp.	Y	\$125,000.00	Fire Stopping/Insulation	Donaldson Interiors	N	\$125,000.00
City Lumber Inc.	Y-Supplier	\$1,911,864.00	Metal Studs, Insulation, Gyp, Bd & Rough Carpentry	Donaldson Interiors	N	\$1,147,118.40
Highway Safety Protection	Y-Supplier	\$57,000.00	Scissors Lifts/Man Lifts	Donaldson Interiors	N	\$34,200.00
Halley Insulation Corp.	Y	\$357,000.00	Fire Stopping/Insulation	Donaldson Interiors	N	\$357,000.00
Park Avenue Building & Roofing Supplies	Y-Supplier	\$2,142,606.00	Metal Studs, Insulation, Gyp, Bd & Rough Carpentry	Donaldson Interiors	N	\$1,785,563.60
The Steel Supply Co. Inc.	Y	\$10,000.00	Anchor Bolts	Orange County Ironworks	N	\$10,000.00
Moravato Industries	Y-Supplier	\$500,000.00	Pipe Supports, Sleeves, Supplemental Steel	JDP Mechanical	N	\$380,000.00
Asan Piping	Y-Supplier	\$2,600,000.00	Mechanical Piping Installation	JDP Mechanical	N	\$1,560,000.00
IAR Inc.	Y	\$1,300,000.00	Insulation	JDP Mechanical	N	\$1,300,000.00
Ideal Supply	Y-Supplier	\$2,000,000.00	Pipe Valves, Fittings	JDP Mechanical	N	\$1,200,000.00
Weltman Lighting	Y-Supplier	\$287,000.00	Furnishing Lighting Package	Fred Geller Electric	N	\$124,200.00
Venus Power-Com Supply LLC	Y-Supplier	\$1,300,000.00	Electrical Material for Insulation	Fred Geller Electric	N	\$780,000.00

Contractor/ Consultant	MWBE/DBE? ("Y" or "N")	Award Amount	Services to be Provided	Contracting Party <i>Please indicate the name of the party subcontracting for the services</i>	Is Contracting Party MWBE/DBE? ("Y" or "N")	Amount to Count
J.M Electrical Corp.	Y	\$4,200,000.00	Install Electrical Work for MERS, Lighting Power	Fred Geller Electric	N	\$4,200,000.00
ACT Electrical	Y-Supplier	\$1,503,000.00	Electrical Material	Fred Geller Electric	N	\$901,800.00
AGON Coordination LLC	Y	\$70,000.00	Furnish Rigger for Generator & Cogen	Fred Geller Electric	N	\$70,000.00
Turtle & Hughes	Y	\$2,490,000.00	Electrical Switchgear	Fred Geller Electric	N	\$2,490,000.00
Park Avenue Building & Roofing Supplies	Y-Supplier	\$2,000,000.00	Building Supply Materials	AECOM Tishman	N	\$1,200,000.00
IMD Building Products	Y-Supplier	\$400,000.00	Lumber /Steel Supplies	Safway Atlantic	N	\$240,000.00
NYC Supply Co.	Y-Supplier	\$50,000.00	Paint Supplies	Safway Atlantic	N	\$30,000.00
Turtle & Hughes	Y	\$30,000.00	Electrical Supplies	Safway Atlantic	N	\$30,000.00
Accu-Fire Fabrication, Inc.	Y	\$225,000.00	Furnish Sprinkler Piping	Sirina Fire Protection	N	\$225,000.00
International Asbestos Removal Inc.	Y	\$30,000.00	Insulation and Heat Tracing	Sirina Fire Protection	N	\$30,000.00
Cassone Leasing	Y	\$5,000.00	Office Container Rentals	Sirina Fire Protection	N	\$5,000.00
US Aerials & Equipment Rental	Y	\$110,000.00	Insulation and Heat Tracing	Sirina Fire Protection	N	\$110,000.00
City Lumber Inc.	Y-Supplier	\$35,000.00	Lumber /Steel Supplies	Platform Solutions	N	\$21,000.00
Garcia Marble & Tile Inc	Y	\$3,937,500.00	Furnish & Install Ceramic Tile	AECOM Tishman	N	\$3,937,500.00
M/WBE Participation	Y	\$18,258,028.91	Good faith efforts to procure	AECOM TISHMAN	N	\$18,258,028.91

Opportunity M/WBE Program

1. Background. Section 6-129 of the Administrative Code of the City of New York (hereinafter the “**Code**”) establishes a program for participation in City procurement by Minority-owned Business Enterprises (“**MBEs**”) and Women-owned Business Enterprises (“**WBEs**,” and collectively, “**M/WBEs**”), certified in accordance with Section 1304 of the City Charter by the New York City Department of Small Business Services (“**DSBS**”) or certified by New York State. NYCEDC has adopted the M/WBE Program to further participation by MBEs and WBEs in NYCEDC’s related projects, including Agency projects. Participants in the M/WBE Program shall comply with all requirements of the M/WBE Program set forth herein.

2. Minority and Women-Owned Business Enterprises. M/WBE firms must be certified by DSBS or by New York State to credit such firms’ participation toward attainment of the Participation Goal. Such certification must occur prior to the firms’ commencement of work. A list of M/WBE firms may be obtained from the DSBS website at www.nyc.gov/buycertified, by emailing DSBS at buyer@sbs.nyc.gov, by calling (212) 513-6356, or by visiting or writing DSBS at 110 William Street, New York, New York, 10038, 7th Floor. Eligible firms that have not yet been certified may contact DSBS in order to seek certification by visiting www.nyc.gov/getcertified, emailing M/WBE@sbs.nyc.gov, or calling the DSBS certification helpline at (212) 513-6311. No credit shall be given for participation by a graduate M/WBE, as defined in Section 6-129(c)(20) of the Code.

3. M/WBE Participation Goal. The Lessee has committed to an M/WBE Participation Goal of fifteen percent (15%) of the Project Improvements Investment. The Participation Goal may be calculated as follows:

(a) Contractors: The total dollar amount that Lessee has paid or is obligated to pay to contractors certified with DSBS or New York State as MBEs or WBEs for the Project Improvements Investment shall be credited toward fulfilment of the M/WBE Participation Goal, provided that the value of such a contractor’s participation shall be determined by subtracting from this total dollar amount any amounts that the contractor has paid or is obligated to pay to direct subcontractors or suppliers upon completion of such subcontractors or suppliers work or services.

(b) Direct Subcontractors: The total dollar amount that a contractor has paid or is obligated to pay to subcontractors certified with DSBS or New York State as MBEs or WBEs for the Project Improvements Investment shall be credited toward fulfilment of the M/WBE Participation Goal, provided that the value of such a direct subcontractor’s participation shall be determined by subtracting from this total dollar value any amounts that the direct subcontractor has paid or is obligated to pay to indirect subcontractors or suppliers upon completion of such indirect subcontractors or suppliers work or services, except where the indirect subcontractors or suppliers are themselves certified with DSBS or New York State as MBEs or WBEs, per Paragraph 3.(c), below.

(c) Indirect Subcontractors: The total dollar amount that a subcontractor has paid or is obligated to pay to its subcontractors certified with DSBS or New York State as MBEs or WBEs for the Project Improvements Investment shall be credited toward fulfillment of the M/WBE Participation Goal.

(d) Suppliers: 60% of the dollar amount spent on materials or supplies as a part of the Project Improvements Investment, when such materials or supplies are purchased by the Lessee, contractors or direct subcontractors from suppliers certified with DSBS or New York State as MBEs or WBEs, shall be credited toward fulfillment of the M/WBE Participation Goal.

(e) Manufacturers: 100% of the dollar amount spent on materials or supplies as a part of the Project Improvements Investment, when such materials or supplies are purchased by the Lessee, contractors or direct subcontractors from manufacturers certified with DSBS or New York State as MWBEs or WBEs, shall be credited toward fulfillment of the M/WBE Participation Goal.

(f) Brokers: In a brokerage situation, only the amount of the fee retained by the broker will be credited as attainment toward the Project MWBE Goal.

(g) Installers: 100% attainment credit for the full value of a contract awarded to a “Furnish and Install” MWBE Contractor or MWBE Subcontractor may be claimed, except that if a “Furnish and Install” MWBE Contractor or MWBE Subcontractor in turn subcontracts out a portion of its contract or subcontract to a non-MWBE Subcontractor (or sub-subcontractor), no attainment credit shall be counted toward the Project MWBE Participation Goal for that portion of the work subcontracted to the non-MWBE firm.

(h) Joint Ventures: A contractor, direct subcontractor or indirect subcontractor that is a qualified joint venture, as defined in Section 6-129(c)(24) of the Code, shall be permitted to count a percentage of its own participation toward fulfillment of the M/WBE Participation Goal. The value of such a contractor, direct subcontractor or indirect subcontractor’s participation shall be determined by subtracting from this total dollar amount any amounts that the contractor, direct subcontractor or indirect subcontractor pays to subcontractors or suppliers, and then multiplying the remainder by the percentage to be applied to total profit to determine the amount to which an M/WBE partner is entitled pursuant to the joint venture agreement. If a contractor, direct subcontractor or indirect subcontractor claims credit for participation as a qualified joint venture, then upon NYCEDC’s request, Lessee must promptly provide a copy of the joint venture agreement for review and confirmation of the M/WBE partner’s profit share as used in calculating credit toward fulfillment of the M/WBE Participation Goal.

(i) Exclusions: The following trades are excluded from the 15% MWBE Participation Goal:

- (i) Excavation/Foundation
- (ii) Structural Steel
- (iii) Elevators
- (iv) Curtain Wall
- (v) Major equipment (boilers, chillers, etc.)

(vi) Construction Manager Fees

Participation Goal Calculation Example (for illustrative purposes only):			
Project Improvements Investment:	\$100 million		
Participation Goal:	25%	Actual Participation Amount:	27.4%
Dollar Value of Participation Goal:	\$25 million	Dollar Value of Participation Amount:	\$27.4 million
Phase	Payment	Dollar Value of M/WBE Participation	Credit toward Participation Goal:
Design Phase: \$10 million is paid to an architecture firm as contractor for pre-construction work, firm is a joint venture with an M/WBE JV partner and profits are shared 50/50 pursuant to the JV Agreement	\$10 million	\$10 million (no amounts subcontracted out and no supplies needed) multiplied by the 50% JV Interest = \$5 million	5%
Construction Management/GC Level: \$90 million is paid to Contractor to serve as Construction Manager, CM is NOT an M/WBE Firm.	\$90 million	\$0	0%
Direct Subcontractor Level: CM pays \$80 million to multiple direct subcontractors. Two direct subcontractors are M/WBE firms and \$50 million of the \$80 million is paid to these two firms.	\$50 million	\$50 million minus amounts spent by these two M/WBE direct subcontractor firms on indirect subcontractors (\$30 million) and supplies (\$10 million, <i>see below</i>) = \$10 million	10%
Indirect Subcontractor Level: \$30 million is paid by Direct Subcontractors to multiple indirect subcontractors, \$10 million of the \$30 million is paid to Indirect Subcontractors that are M/WBE Firms	\$10 million	\$10 million	10%
Supplier Inclusion: \$10 million is spent by Direct Subcontractors on supplies. Of that, \$4 million is spent on supplies purchased from M/WBE suppliers.	\$4 million	60% of the \$4 million purchased from M/WBE suppliers = \$2.4 million	2.40%
		TOTAL:	27.4%

4. Modification of the Lessee's Participation Plan.

(a) The Lessee may request modification of its M/WBE Participation Plan attached as Exhibit M-1. NYCEDC may grant such request if it determines that the Lessee has established, with appropriate documentary and other evidence, that the Lessee has made good faith efforts to meet the M/WBE Participation Goal.

(b) Good faith efforts shall be documented by Lessee requesting a modification and such documentation shall be provided to NYCEDC upon NYCEDC's request. In determining whether the Lessee has made good faith efforts to meet the M/WBE Participation Goal, NYCEDC

will consider, along with any other relevant factors, evidence submitted by the Lessee showing that the Lessee or Lessee's contractors or subcontractors, as appropriate, have, without limitation, conducted the following:

i. Direct Outreach. The Lessee, or Lessee's contractors or subcontractors, as appropriate, (i) reached out to M/WBEs identified on the "Interested Subcontractor" list maintained by EDC on a website related to the Project, and provided timely notice to those identified M/WBEs and (ii) provided notice directly to M/WBEs or to business organizations made up of M/WBEs of specific opportunities to participate in the Project Work;

ii. NYCEDC Assistance. The Lessee submitted timely requests for assistance to NYCEDC's M/WBE liaison officer and provided NYCEDC with a description of how NYCEDC's recommendations were acted upon and an explanation of how action upon such recommendations did not lead to the desired level of participation of M/WBEs;

iii. Advertised Opportunities. The Lessee, or Lessee's contractors or subcontractors, as appropriate, advertised opportunities to participate in the Project Work in general circulation media, trade and professional association publications, small business media and publications of M/WBE organizations;

iv. Follow Up with M/WBEs. The Lessee, or Lessee's contractors or subcontractors, as appropriate, as appropriate, sent timely written notices to advise M/WBEs that their interest in the Project Work was solicited and to follow up after an initial solicitation to determine whether such M/WBEs were interested in Project Work;

v. Substitution of Work. The Lessee, or Lessee's contractors or subcontractors, as appropriate, made efforts to identify portions of the Project Work that could be substituted for portions originally designated for the participation by M/WBEs in the M/WBE Participation Plan and for which the Lessee claims an inability to retain M/WBEs;

vi. M/WBE Suppliers. The Lessee, or Lessee's contractors or subcontractors, as appropriate, made efforts to identify materials or supplies that could be purchased from suppliers certified with DSBS or New York State as MBEs or WBEs;

vii. Meeting with M/WBEs. The Lessee, or Lessee's contractors or subcontractors, as appropriate, held meetings with M/WBEs prior to the date their proposals were due, for the purpose of explaining in detail the scope and requirements of the work for which their proposals were solicited;

viii. Negotiated with M/WBEs. The Lessee, or Lessee's contractors or subcontractors, as appropriate, made efforts to negotiate with M/WBEs to perform specific subcontracts or act as suppliers or service providers; and

ix. Held Subcontractors Accountable. The Lessee ensured subcontractor commitment to achieving the M/WBE Participation Goal by passing goals on through relevant subcontract agreements.

(c) NYCEDC's M/WBE Director or Senior Vice President for Contracts will provide written notice to the Lessee of the determination on whether the Lessee has made all good faith efforts to meet the M/WBE Participation Goal.

5. M/WBE Compliance Reports.

The Lessee, or a designee on behalf of the Lessee, shall provide NYCEDC with written statements in the form attached hereto as Attachment 1, or such other form as shall be provided by NYCEDC ("**M/WBE Compliance Reports**"), certified under penalty of perjury, reporting the status of the Lessee's compliance with its M/WBE Participation Plan and M/WBE Participation Goal for the period covered by the report. The Lessee shall submit an M/WBE Compliance Report to NYCEDC quarterly.

In addition to the foregoing, the Lessee shall submit a final, cumulative M/WBE Compliance Report to NYCEDC within thirty (30) days of the Completion Deadline. The Lessee shall set forth in such final report the information required in prior M/WBE Compliance Reports, including information for all M/WBE contractors, subcontractors and suppliers who were paid for Project Improvement Investments.

6. Compliance Audits. The M/WBE Compliance Report may be audited by NYCEDC to determine the Lessee's compliance with the requirements of the Lessee's M/WBE Participation Proposal and M/WBE Participation Plan.

7. Enforcement. The failure of the Lessee, its contractors or subcontractors to exercise good faith efforts to comply in all material respects with the MBE/WBE Program requirements set forth herein including, without limitation, the M/WBE Participation Plan, shall constitute a breach of contract and NYCEDC may as its sole and exclusive remedy assess liquidated damages set forth in Section 8, below.

8. Liquidated Damages. If the Lessee fails to use good faith efforts to fulfill its M/WBE Participation Goal, NYCEDC may assess liquidated damages in the amount of ten percent (10%) of the difference between the dollar amount of Work required to be awarded to M/WBE contractors, subcontractors and suppliers to meet the M/WBE Participation Goal and the dollar amount the Lessee actually awarded and paid to such M/WBEs. In view of the difficulty of accurately ascertaining the loss which NYCEDC will suffer by reason of the Lessee's failure to meet the M/WBE Participation Goals, the foregoing amount is hereby fixed and agreed as the liquidated damages that NYCEDC will suffer by reason of such failure, and not as a penalty.