
AGENCY LEASE AGREEMENT

Dated as of December 1, 2015

by and between

NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY

and

GG MASTER REALTY LLC,
a limited liability company organized and existing
under the laws of the State of New York, having its
principal office in New York City at
60 20th Street, Brooklyn, New York 11232,
as Lessee

2015 Krasnyi Oktyabr, Inc. Project

Affecting the Land generally known by the street address
60 20th Street, Brooklyn, New York 11232
Borough of Kings, Block 635, Lot 10

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

Record and Return to:
Gonzalez Saggio & Harlan LLP
747 Third Avenue, Suite 1101
New York, New York 10017
Attention: Stephen Adnopo, Esq.

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- Exhibit B - Description of the Facility Personality
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- Exhibit D - Principals of Lessee and Sublessee
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AGENCY LEASE AGREEMENT

This **AGENCY LEASE AGREEMENT**, dated as of December 1, 2015 (this “Agreement”), is by and between **NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York, having its principal office at 110 William Street, New York, New York 10038, party of the first part, and 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 and the Sublessee 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, the Lessee and the Sublessee have entered into negotiations to enter into a Straight-Lease Transaction pursuant to which (i) the Lessee has leased the Facility Realty to the Agency pursuant to the Company Lease, (ii) the Agency will sublease the Facility Realty, and lease the Facility Personalty, to the Lessee pursuant to this Agreement, and (iii) the Lessee will sub-sublease the Facility Realty, and sublease the Facility Personalty, to the Sublessee pursuant to the Sublease Agreement; and

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

Lessee, and the sub-sublease of the Facility Realty and the sublease of the Facility Personalty by the Lessee to the Sublessee; and

WHEREAS, the provision by the Agency of Financial Assistance to the Lessee and the Sublessee through a Straight-Lease Transaction has been determined to be necessary to induce the Sublessee to remain and expand its operations within the City and not otherwise relocate the same outside of the City; and if the Agency does not provide such Financial Assistance, the Sublessee could not feasibly proceed with the Project; and

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

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

ARTICLE I

DEFINITIONS AND CONSTRUCTION

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

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

Additional Improvements shall mean any buildings, structures, foundations, related facilities, fixtures, and other improvements constructed, erected, placed and/or installed on, under and/or above the Land, including but not be limited to all replacements, improvements, additions, extensions and substitutions to the Existing Improvements.

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

Adjusted CRET shall have the meaning set forth in Section 5.1(a).

Adjusted ELT shall have the meaning set forth in Section 5.1(a).

Adjusted Initial CRET shall have the meaning set forth in Section 5.1(a).

Adjustment Date(s) shall have the meaning set forth in Section 5.1(a).

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.

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

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 that annual administrative fee established from time to time by the Agency's Board of Directors as generally applicable to 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).

Approved Facility shall mean the Facility as occupied, used and operated by the Sublessee 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 located at 60 20th Street, Brooklyn, New York 11232, by the Sublessee for the import and wholesale distribution of Russian and European food products.

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).

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

Authorizing Resolution shall mean the resolution of the Agency adopted on September 16, 2015 providing for Financial Assistance and authorizing the Project Documents to which the Agency is a party.

Average Equivalent Full Time Employee Number shall have the meaning set forth in Section 5.1(a).

Base Amount shall have the meaning set forth in Section 5.1(e)(iii).

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

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

Business Day shall mean any day that shall not be:

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

Business Incentive Rate shall mean the rate in connection with the Business Incentive Rate program, an energy discount program co-administered by NYCEDC and Con Edison.

Certificate shall have the meaning specified in Section 8.1(a).

Cessation Date shall have the meaning set forth in Section 5.1(a).

CGL shall have the meaning specified in Section 8.1(a).

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

City Tax Fiscal Year shall have the meaning set forth in Section 5.1(a).

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

CM shall have the meaning specified in Section 8.1(a).

Commencement Date shall mean December 10, 2015, on which date this Agreement was executed and delivered.

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

Completed Improvements Rentable Square Footage shall mean approximately 15,000 rentable square feet, the rentable square footage of the Improvements.

Comptroller has the meaning specified in Section 8.24(b).

Concessionaire has the meaning specified in Section 8.24(b).

Construction shall have the meaning specified in Section 8.1(a).

Contractor(s) shall have the meaning specified in Section 8.1(a).

Control or Controls, including the related terms “controlled by” and “under common control with”, shall mean the power to direct the management and policies of a Person (x) through the ownership, directly or indirectly, of not less than a majority of its voting

securities, (y) through the right to designate or elect not less than a majority of the members of its board of directors or trustees or other Governing Body, or (z) by contract or otherwise.

Covered Counterparty has the meaning specified in Section 8.24(b).

Covered Employer has the meaning specified in Section 8.24(b).

5.1(a). **CRET or Current Real Estate Taxes** shall have the meaning set forth in Section

DCA has the meaning specified in Section 8.24(b).

5.1(a). **DLP or Differential Land Product** shall have the meaning set forth in Section

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

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

ELT or Equivalent Land Tax shall have the meaning set forth in Section 5.1(a).

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 I of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended.

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

Environmental Audit shall mean that certain Phase I Environmental Site Assessment Report dated May 14, 2015, prepared by the Environmental Auditor.

Environmental Auditor shall mean Middleton Environmental Inc.

5.1(a). **Equivalent Full Time Employee(s)** shall have the meaning set forth in Section

Section 5.1. **Equivalent Full Time Employee Number** shall have the meaning set forth in

Estimated Project Cost shall mean \$5,075,000.

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

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

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

Existing Improvements shall mean, if any, all buildings, structures, foundations, related facilities, fixtures, and other improvements erected, placed and/or situated on, over and/or under the Land and existing on the Commencement Date.

Expiration Date shall mean June 30, 2041.

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

Facility Personalty shall mean none.

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

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 and the Sublessee 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 or the Sublessee, as applicable, 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.

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

GC shall have the meaning specified in Section 8.1(a).

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

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

Guarantors shall mean, collectively, the Lessee, the Sublessee and each other Person as shall be a Guarantor under the Guaranty Agreement, and their respective permitted estates, administrators, successors and assigns.

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

Hazardous Materials shall include any petroleum, 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.

Implementation Date(s) shall have the meaning set forth in Section 5.1(a).

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

Improvements shall mean, collectively, the Existing Improvements, if any, and any Additional Improvements. In the alternative, "Improvements" shall mean: (i) all buildings, structures, foundations, related facilities, fixtures and other improvements existing on the Commencement Date and erected or situated on the Land, if any, (ii) any other buildings, structures, foundations, fixtures and related facilities and other improvements erected or constructed on the Land throughout the Term, and (iii) all other replacements, improvements, additions, extensions, substitutions, restorations and repairs to any of the foregoing.

Indemnification Commencement Date shall mean June 9, 2015, the date on which the Agency first adopted a resolution with respect to the Project.

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

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

Inducement Resolution shall mean the resolution of the Agency adopted on June 9, 2015 inducing the Project.

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

Initial Annual Administrative Fee shall mean \$1,000.

Initial CRET shall have the meaning set forth in Section 5.1(a).

Insured(s) shall have the meaning specified in Section 8.1(a).

Insurer shall have the meaning specified in Section 8.1(a).

ISO shall have the meaning specified in Section 8.1(a).

ISO Form CG-0001 shall have the meaning specified in Section 8.1(a).

Land shall mean that certain lot, piece or parcel of land in the Borough of Kings, Block 635, Lot 10, generally known by the street address 60 20th Street, Brooklyn, New York 11232, 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 15,000 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) 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 or the Sublessee, (ii) the Facility or any part thereof, or (iii) any use or condition of the Facility or any part thereof.

Lessee shall mean GG Master Realty LLC, a limited liability company organized and existing under the laws of the State of New York, and its successors and assigns; provided, however, that nothing contained in this definition shall be deemed to limit or modify the obligations of the Lessee under Section 8.9 or 8.20.

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

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

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

Loss Event shall have the meaning specified in Section 6.1.

LW has the meaning specified in Section 8.24(b).

LW Agreement has the meaning specified in Section 8.24(b).

LW Agreement Delivery Date has the meaning specified in Section 8.24(b).

LW Event of Default has the meaning specified in Section 8.24(b).

LW Law has the meaning specified in Section 8.24(b).

LW Term has the meaning specified in Section 8.24(b).

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 has the meaning specified in Section 8.24(b).

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

Modified Exempt Mortgage shall have the meaning set forth in Section 5.3(a).

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

Mortgage Loans shall mean each Mortgage Loan, if any, referred to in the Project Finance Plan.

Mortgage Notes shall mean each mortgage note, if any, referred to in the Project Finance Plan.

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

Mortgages shall mean each mortgage, if any, referred to in the Project Finance Plan, and each other mortgage creating a lien upon the Facility Realty and to which an Authorized Representative of the Agency shall consent in writing.

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

New Money shall have the meaning specified in Section 5.3(a).

Non-Exempt Principal shall have the meaning specified in Section 5.3(a).

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

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

NPV-PILOMRT shall have the meaning specified in Section 5.3(a).

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

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

NYSDTF shall mean the New York State Department of Taxation and Finance.

OLP or **Original Land Product** shall have the meaning set forth in Section 5.1(a).

Operations Commencement Date shall have the meaning set forth in Section 5.4(a).

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

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

Original Equivalent Full Time Employee Number shall have the meaning set forth in Section 5.1.

Owed Interest has the meaning specified in Section 8.24(b).

Owed Monies has the meaning specified in Section 8.24(b).

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

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

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

under Section 8.15 within five (5) Business Days of the Agency having made the request therefor.

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

Permitted Encumbrances shall mean:

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

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

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

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

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

(vi) those exceptions to title to the Facility Realty enumerated in any title insurance policy insuring the lien of any Mortgage Loan on the Facility Realty, so long as such exceptions are reflected in the title report delivered to the Agency pursuant to Section 3.8;

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

(viii) any lien arising by reason of deposits with, or the giving of any form of security to, any governmental agency or any body created or approved by law or

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

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

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

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

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

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

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

Person shall mean an individual or any Entity.

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

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

PILOT Bill shall have the meaning set forth in Section 5.1(a).

PILOT Commencement Date shall have the meaning set forth in Section 5.1(a).

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

PILOT Payment Default shall have the meaning set forth in Section 5.1(a).

PILOT Term shall have the meaning set forth in Section 5.1(a).

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

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

Prevailing Wage Law has the meaning specified in Section 8.24(b).

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

Project shall mean the acquisition of an approximately 15,000 square foot building on an approximately 15,000 square foot parcel of land located at 60 20th Street, Brooklyn, New York 11232, being Block 635 and Lot 10, all for the use of the Sublessee in its operations as an importer and wholesale distributor of Russian and European food products, and the occupancy, use and operation, through and until the Expiration Date, of the Facility Realty as a warehousing and distribution facility for the Approved Project Operations by the Lessee and/or the Sublessee.

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

Project Completion Date shall mean the date by which all of the following conditions have been satisfied: (i) the Agency shall have received a copy of a certificate of completion issued by the New York City Department of Ports and Trade from the Lessee, (ii) there shall be no certificate, license, permit, authorization, written approval or consent or other document required to permit the occupancy, operation and use of the Facility as the Approved Facility that has not already been obtained or received, except for such certificates, licenses, permits, authorizations, written approvals and consents that will be obtained in the ordinary course of business and the issuance of which are ministerial in nature, and (iii) the Facility shall be ready for occupancy, use and operation for the Approved Project Operations in accordance with all applicable laws, regulations, ordinances and guidelines.

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 Sublease Agreement, the Guaranty Agreement, each Mortgage and each Mortgage Note.

Project Fee shall mean \$64,390, representing the \$69,390 Agency financing fee, less the application fee of \$5,000.

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

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

Qualified Workforce Program has the meaning specified in Section 8.24(b).

Real Estate Taxes shall have the meaning set forth in Section 5.1(a).

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

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

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

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

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

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

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

Sign shall have the meaning set forth in Section 8.5.

SIR shall have the meaning specified in Section 8.1(a).

Site Affiliates has the meaning specified in Section 8.24(b).

Site Employee has the meaning specified in Section 8.24(b).

SLP or Subsequent Land Product shall have the meaning set forth in Section 5.1(a).

Small Business Cap has the meaning specified in Section 8.24(b).

Special Provisions shall have the meaning set forth in Subsection 5.2(h).

Specified Contract has the meaning specified in Section 8.24(b).

State shall mean the State of New York.

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

Sublease Agreement shall mean that certain Sublease Agreement, dated as of even date herewith, between the Lessee, as sublessor, and the Sublessee, as sublessee, as the same may be amended and supplemented in accordance with its terms and as permitted by the terms thereof.

Sublessee shall mean Krasnyi Oktyabr, Inc., a corporation organized and existing under the laws of the State of New York, and its successors and assigns; provided, however, that nothing contained in this definition shall be deemed to limit or modify the obligations of the Sublessee under Section 8 of the Sublease Agreement.

Subsequent Equivalent Full Time Employee Number shall have the meaning set forth in Section 5.1(a).

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

Term shall have the meaning set forth in Section 4.2.

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).

Trust shall mean KD Family Trust, a grantor trust established under the laws of the State.

U/E shall have the meaning specified in Section 8.1(a).

Workers' Compensation shall have the meaning specified in Section 8.1(a).

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

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

(a) The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement, and the term "hereafter" shall mean after, and the term "heretofore" shall mean before, the Commencement Date.

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

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

(d) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents appended to copies hereof, shall be solely for

convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

(e) Unless the content indicates otherwise, references to designated “Exhibits”, “Appendices,” “Schedules,” “Articles”, “Sections”, “Subsections”, “clauses” and other subdivisions are to the designated Exhibits, Appendices, Schedules, Articles, Sections, Subsections, clauses and other subdivisions of or to this Agreement.

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

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

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

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

ARTICLE II

REPRESENTATIONS AND WARRANTIES

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

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

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

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

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

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

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

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

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

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

(f) The transactions contemplated by this Agreement shall not result in the removal of any facility or plant of the Lessee or of the Sublessee or any other occupant or user of the Facility 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 the Sublessee or any other occupant or user of the Facility located within the State, but outside of the City.

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

(h) 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.

(i) No funds of the Agency shall be used by the Lessee or the Sublessee 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.

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

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

(l) 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.

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

(n) The Lessee and the Sublessee are in compliance, and will continue to comply, with all applicable Legal Requirements relating to the Project and the operation of the Facility.

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

(p) The Lessee has not used Hazardous Materials on, from, or affecting the Facility in any manner that violates any applicable Legal Requirements governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and except as set forth in the Environmental Audit, to the best of the Lessee's knowledge, no prior owner or occupant of the Facility has used Hazardous Materials on, from, or affecting the Facility in any manner that violates any applicable Legal Requirements.

(q) 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 that funds or financing sufficient to complete the Project will not be obtainable.

(r) The amounts provided to the Lessee pursuant to the Mortgage Loans, together with other moneys available to the Lessee and/or the Sublessee, are sufficient to pay all costs in connection with the completion of the Project.

(s) All of the Land comprises one complete tax lot and no portion of any other tax lot.

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

(u) The Completed Improvements Rentable Square Footage and the Land Square Footage are true and correct.

(v) The Fiscal Year is true and correct.

(w) None of the Lessee, the Principals of the Lessee, or any Person that is an Affiliate of 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.

(x) 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.

(y) Information as to the Principals of the Lessee and of the Sublessee, and their respective ownership interests in the Lessee and the Sublessee, as set forth in Exhibit D, is true, correct and complete.

ARTICLE III

LEASEHOLD INTEREST CONVEYED TO THE AGENCY; THE PROJECT; MAINTENANCE; REMOVAL OF PROPERTY AND TITLE REPORT

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. [Reserved].

Section 3.3. Project Completion.

(a) The Lessee represents and warrants that Project has been completed.

(b) 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 and title to the Facility Personalty, or attributable to periods prior to such vesting, as set forth in Sections 3.1 and 3.2, and (iii) all expenses or claims incurred in connection with the Project.

Section 3.4. Maintenance.

(a) During the Term, the Lessee will:

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

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

(iii) make or cause to be made all replacements, renewals and repairs thereto (whether ordinary or extraordinary, structural or nonstructural, foreseen or

unforeseen) necessary to ensure that the operations of the Lessee and the Sublessee at the Facility shall not be materially impaired or diminished in any way.

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

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

Section 3.5. Alterations and Improvements.

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

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

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

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

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

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

(c) If at any time after the Operations Commencement Date, the Lessee shall make any Additional Improvements, the Lessee shall (i) notify an Authorized Representative of the Agency of such Additional Improvements by delivering written notice thereof within thirty (30) days after the completion of the Additional Improvements, and (ii) take the actions required by Section 5.1(f)(i)(3).

(d) In addition to the Facility Personalty, the Lessee shall have the right to install or permit to be installed at the Facility Realty, machinery, equipment and other personal property at the Lessee's own cost and expense (the "**Lessee's Property**"). Once so installed, the Lessee's Property shall not constitute Facility Personalty and shall not be subject to the Company

Lease, this Agreement or the Sublease Agreement, nor constitute part of the Facility, provided that the same is not made fixtures appurtenant to the Facility Realty. The Lessee shall have the right to create or permit to be created any mortgage, encumbrance, lien or charge on, or conditional sale or other title retention agreement with respect to, the Lessee's Property, without the consent of or notice to the Agency.

Section 3.6. Removal of Property of the Facility.

(a) The Lessee shall have the right from time to time to remove from the Facility any fixture constituting part of the Facility Realty or any machinery, equipment or other item of personal property constituting part of the Facility Personalty (in any such case, the "Existing Facility Property"), and thereby remove such Existing Facility Property from the leasehold estates of the Company Lease, this Agreement and the Sublease Agreement; provided however:

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

(ii) no such removal shall be effected if (w) such removal would change the nature of the Facility 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, (y) such removal would materially reduce the fair market value of the Facility below its value immediately before such removal, or (z) there shall exist and be continuing an Event of Default hereunder.

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

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

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

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

(b) The Lessee agrees to pay all costs and expenses (including reasonable counsel fees) incurred by the Agency in subjecting to, or releasing from, the Company Lease,

this Agreement and the Sublease Agreement any property installed or placed on, or removed from, the Facility as part of the Facility pursuant to Section 3.5 or 3.6.

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

Section 3.8. Title Report, Municipal Department Searches and Survey. On or prior to the Commencement Date, the Lessee will obtain and deliver to the Agency (x) a title report (in form and substance acceptable to the Agency) reflecting all matters of record with respect to the Land and Existing Improvements, (y) a full set of municipal department search results showing only Permitted Encumbrances, and (z) a current or updated survey of each of the Land and the Existing Improvements certified to the Agency.

ARTICLE IV

LEASE OF FACILITY AND RENTAL PROVISIONS

Section 4.1. Lease of the Facility. The Agency hereby leases the Facility Personalty and subleases the Facility Realty to the Lessee, and the Lessee hereby leases the Facility Personalty and subleases the Facility Realty from the Agency, for and during the term herein 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. Simultaneously with its execution and delivery of this Agreement, the Lessee will execute and deliver the Sublease Agreement with the Sublessee.

Section 4.2. Duration of Term. The term of this Agreement (the "Term") 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, the Lessee shall pay to the Agency (except as otherwise provided in Section 5.1) any additional amounts required to be paid by the Lessee to or for the account of the Agency hereunder, and any such additional amounts shall be paid as, and shall represent payment of, Additional Rent.

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

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

Section 4.5. Nature of Lessee's Obligation Unconditional. The Lessee's obligations under this Agreement to pay Rental Payments shall be absolute, unconditional and general obligations, irrespective of any defense or any rights of set-off, recoupment or counterclaim or deduction and without any rights of suspension, deferment, diminution or reduction it might otherwise have against the Agency or any other Person. Such obligations of the Lessee shall arise whether or not the Project has been completed as provided in this

Agreement and whether or not any Mortgagee shall be honoring its obligations under the related financing documents. The Lessee will not suspend or discontinue payment of any Rental Payment due and payable hereunder or terminate this Agreement (other than such termination as is provided for hereunder) or suspend the performance or observance of any covenant or agreement required on the part of the Lessee hereunder for any cause whatsoever, and the Lessee waives all rights now or hereafter conferred by statute or otherwise to quit, terminate, cancel or surrender this Agreement or any obligation of the Lessee under this Agreement except as provided in this Agreement or to any abatement, suspension, deferment, diminution or reduction in the Rental Payments hereunder.

Section 4.6. Assignment of Sublease Agreement.

(a) In order to secure the payment and performance of the obligations of the Lessee under this Agreement, the Lessee does hereby assign, transfer and set over to the Agency all of the Lessee's right, title and interest in and to the Sublease Agreement, including all sublease rentals, revenues and receipts therefrom (except for those rentals payable under Section 5(d) of the Sublease Agreement), and the right to enforce all of the Lessee's rights and remedies thereunder.

(b) The Lessee agrees not to terminate, modify or amend the Sublease Agreement or any of the terms thereof, or grant any concessions in connection therewith, either orally or in writing, or to accept a surrender thereof, without the prior written consent of the Agency and any attempted termination, modification or amendment of the Sublease Agreement without such written consent shall be null and void.

(c) In the exercise of the powers herein granted, no liability shall be asserted or enforced against the Agency, all such liability being hereby expressly waived and released by the Lessee. The Agency shall not be obligated to perform or discharge any obligation, duty or liability under the Sublease Agreement, or under or by reason of this assignment.

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

Section 4.8. No Warranty of Condition or Suitability. THE AGENCY HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER

EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE FACILITY, OR THE SUITABILITY OF THE FACILITY FOR THE PURPOSES OR NEEDS OF THE LESSEE OR THE SUBLESSEE OR THE EXTENT TO WHICH FUNDS AVAILABLE TO THE LESSEE WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE PROJECT. THE LESSEE ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE FACILITY PERSONALTY NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE LESSEE, ON BEHALF OF ITSELF AND THE SUBLESSEE, IS SATISFIED THAT THE FACILITY IS SUITABLE AND FIT FOR PURPOSES OF THE LESSEE AND THE SUBLESSEE. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE LESSEE OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF THE FACILITY OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

ARTICLE V

AGENCY FINANCIAL ASSISTANCE (PAYMENTS IN LIEU OF TAXES AND MORTGAGE RECORDING TAX DEFERRAL); RECAPTURE OF PUBLIC BENEFITS; NO SALES TAX EXEMPTION

Section 5.1. Payments in Lieu of Real Estate Taxes.

(a) Definitions. The following capitalized terms shall have the respective meanings specified below:

Additional Improvements shall have the meaning provided in Article I.

Adjusted CRET shall mean, with respect to any semi-annual period, CRET for such semi-annual period as reduced by any applicable as-of-right benefit for such semi-annual period (if permitted by law and as such benefit may decrease over its prescribed term), other than any as-of-right benefit whose application arises from the eligibility and acceptance of the Project Improvements under the as-of-right program in question.

Adjusted ELT shall mean, with respect to any semi-annual period, ELT for such semi-annual period as reduced by any applicable as-of-right benefit for such semi-annual period (if permitted by law and as such benefit may decrease over its prescribed term), other than any as-of-right benefit whose application arises from the eligibility and acceptance of the Project Improvements under the as-of-right program in question.

Adjusted Initial CRET shall mean Initial CRET as reduced by any applicable as-of-right benefit (if permitted by law and as such benefit may decrease over its prescribed term), other than an as-of-right benefit whose application arises from the eligibility and acceptance of the Project Improvements under the as-of-right program in question.

Adjustment Date(s) shall mean the July 1 occurring on the fifth-year anniversary of the PILOT Commencement Date, and thereafter, every fifth-year anniversary of such July 1 that occurs within the PILOT Term. For the avoidance of doubt, there are four Adjustment Dates that occur within the PILOT Term.

Average Equivalent Full Time Employee Number shall mean the average of five Equivalent Full Time Employee Numbers corresponding respectively to the five years of any five-year period ending on the June 30 prior to an Adjustment Date.

Base Amount shall have the meaning specified in Section 5.1(e)(iii).

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

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

CRET or Current Real Estate Taxes shall mean, with respect to any semi-annual period, an amount equal to Real Estate Taxes for such semi-annual period applicable to Existing Improvements, Project Improvements and/or Additional Improvements, as applicable, without reduction for any applicable as-of-right or discretionary benefit.

DLP or Differential Land Product shall mean, when the OLP is greater than the SLP, the amount of such difference.

ELT or Equivalent Land Tax shall mean, with respect to any semi-annual period, an amount equal to Real Estate Taxes for such semi-annual period applicable to the Land without reduction for any applicable as-of-right or discretionary benefit.

Equivalent Full Time Employee(s) shall mean one full-time employee working a minimum of thirty-five (35) hours per week, or two part-time employees, each working a minimum of twenty hours per week, and employed by either the Lessee or the Sublessee at the Facility Realty.

Equivalent Full Time Employee Number shall mean the number of Equivalent Full Time Employees working at the Facility Realty as such number is included in any annual report required pursuant to law.

Implementation Date(s) shall mean the January 1 following each Adjustment Date. For the avoidance of doubt, there are four Implementation Dates that occur within the PILOT Term.

Initial CRET shall mean CRET applicable to the Existing Improvements for the semi-annual period that includes the Commencement Date.

NYCDOF shall mean the New York City Department of Finance.

OLP or Original Land Product shall equal, with respect to any semi-annual period, \$4,000 (i.e., the product of \$500 times one-half (i.e., $\frac{1}{2}$) times the Original Equivalent Full Time Employee Number).

Original Equivalent Full Time Employee Number shall equal 16 Equivalent Full Time Employees – i.e., the number of Equivalent Full Time Employees employed at the Facility Realty at the time of the Lessee's (or its Affiliate's) application to the Agency for Financial Assistance.

PILOT Bill shall mean the semi-annual statement of account sent by NYCDOF for the payment of PILOT for the immediately succeeding semi-annual period in respect of the Facility Realty. For purposes of clarification, PILOT is due seven (7) Business Days prior to the commencement of the semi-annual period to which a PILOT Bill relates. 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 the amount of PILOT required under this Agreement.

PILOT Commencement Date shall mean July 1, 2016.

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

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

Project Improvements shall have the meaning provided in Article I.

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

SLP or Subsequent Land Product shall mean, with respect to any semi-annual period, the product of (a) \$500 times (b) one-half (i.e., ½) times (c) the Subsequent Equivalent Full Time Employee Number in effect for such semi-annual period (it being understood that a Subsequent Equivalent Full Time Employee Number reported on an Adjustment Date shall not be “in effect” until the Implementation Date immediately following such Adjustment Date).

Subsequent Equivalent Full Time Employee Number shall mean, with respect to any Adjustment Date, the Average Equivalent Full Time Employee Number determined as of such Adjustment Date.

Zone shall mean any area within the City which has been defined by statute, or created pursuant to statute, for economic development purposes or for community renewal and improvement or for neighborhood and landmark preservation.

(b) Description and Address of Project; Representation

The Project consists of the acquisition of an approximately 15,000 square foot building on an approximately 15,000 square foot parcel of land located at 60 20th Street, Brooklyn, New York 11232, being Block 635 and Lot 10, all for the use by the Sublessee in its operations as an importer and wholesale distributor of Russian and European food products. The Facility Realty is located in the Borough of Kings, Block 635, Lot 10, generally known by the street address 60 20th Street, Brooklyn, New York 11232. The Lessee represents that the Facility Realty is located in a Zone.

(c) Payments Prior to PILOT Commencement Date. Until the PILOT Commencement Date (or such later date as the Facility Realty is determined to be exempt from Real Estate Taxes), the Lessee shall pay to the City all Real Estate Taxes 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.

(d) PILOT Generally.

(i) It is recognized that under the provisions of the Act the Agency is required to pay no Real Estate Taxes upon any of the property acquired by it or under its jurisdiction or control or supervision or upon its activities. The Agency and the Lessee agree, however, that the Lessee shall be required to pay PILOT with respect to the Facility Realty in accordance with the provisions of this Section 5.1, as follows: (i) with respect to the Land, PILOT shall be payable in the amounts determined pursuant to Sections 5.1(e), (g), (h) and (i); and (ii) with respect to the Improvements, PILOT shall be payable in the amounts determined pursuant to Sections 5.1(f), (g), (h) and (i).

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

(iii) The Lessee acknowledges that the PILOT Commencement Date will not be deferred notwithstanding any loss of Financial Assistance contemplated hereunder in the event that the City does not recognize the Agency's exemption from Real Estate Taxes on the PILOT Commencement Date.

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

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

(e) PILOT with Respect to the Land.

During the PILOT Term, PILOT with respect to the Land shall be payable in accordance with Section 5.1(g) in the amounts described below.

(i) For each semi-annual period occurring within the period commencing on the PILOT Commencement Date and ending on the day immediately preceding the first Implementation Date, PILOT payable with respect to the Land for such semi-annual period shall be determined and payable as follows:

- (1) If the Facility Realty is located in a Zone, then PILOT payable with respect to the Land shall equal zero.
- (2) If the Facility Realty is not located in a Zone, then PILOT payable with respect to the Land shall equal (A) Adjusted ELT for such semi-annual period less (B) OLP; provided, however, that such PILOT payable with respect to the Land shall never be less than zero.

(ii) For each semi-annual period occurring within each of the five-year periods commencing on the first Implementation Date, the second Implementation Date and the third Implementation Date, PILOT payable with respect to the Land for such semi-annual period shall be determined and payable as follows:

(1) If the Facility Realty is located in a Zone:

(A) If SLP for such semi-annual period is greater than or equal to the OLP, then PILOT payable with respect to the Land shall equal zero.

(B) If the SLP for such semi-annual period is less than the OLP, then PILOT payable with respect to the Land shall equal the DLP.

(2) If the Facility Realty is not located in a Zone:

(A) If SLP for such semi-annual period is greater than or equal to Adjusted ELT for such semi-annual period, and

(I) If SLP for such semi-annual period is greater than or equal to the OLP, then PILOT payable with respect to the Land shall equal zero; or

(II) If SLP for such semi-annual period is less than the OLP, then PILOT payable with respect to the Land shall equal DLP.

(B) If SLP for such semi-annual period is less than Adjusted ELT for such semi-annual period, then PILOT payable with respect to the Land shall equal (A) Adjusted ELT for such semi-annual period less (B) SLP for such semi-annual period; provided, however, that such PILOT payable with respect to the Land shall never be less than zero.

(iii) For each semi-annual period occurring within the last four and one-half years of the PILOT Term, PILOT payable with respect to the Land for such semi-annual period shall equal the amounts provided in the table below. For purposes of the following, the “**Base Amount**” shall mean the PILOT payable with respect to the Land for the semi-annual period commencing on the fourth Implementation Date and ending on the June 30 immediately following such fourth Implementation Date, as calculated in accordance with Section 5.1(e)(ii) above (taking into account the updated SLP as of the fourth Implementation Date).

For each semi-annual period occurring within:	PILOT payable with respect to the Land for such semi-annual period:
01/01/37 - 06/30/37	[Base Amount]
07/01/37 - 06/30/38	[Base Amount] + [(Adjusted ELT for such semi-annual period – Base Amount) x (0.2)]
07/01/38 - 06/30/39	[Base Amount] + [(Adjusted ELT for such semi-annual period – Base Amount) x (0.4)]
07/01/39 - 06/30/40	[Base Amount] + [(Adjusted ELT for such semi-annual period – Base Amount) x (0.6)]
07/01/40 - 06/30/41	[Base Amount] + [(Adjusted ELT for such semi-annual period – Base Amount) x (0.8)]

(iv) The attached grid provides numerical examples to illustrate the calculation and adjustment of PILOT payable in respect of the Land: (see next page)

Assumptions for purposes of illustration:

PILOT Commencement Date is 07/01/12
 Expiration Date is 06/30/37
 Original Equivalent Full Time Employee Number equals 10
 All SLP amounts are less than the respective Adjusted ELT amounts

DATES		AVERAGE EQUIVALENT FULL TIME EMPLOYEE NUMBER	LAND PILOT for Project NOT in a Zone (for each semi-annual period)	LAND PILOT for Project IN a Zone (for each semi-annual period)
07/01/12	PILOT Commencement Date	Applicable: 10	7/01/12 through 12/31/17: Land PILOT = Adjusted ELT – OLP	7/01/12 through 12/31/17: Land PILOT = \$0
07/01/17	1 st Adjustment Date	Reported: 12	OLP = 10 x \$500 x ½ = \$2,500	
01/01/18	1 st Implementation Date	Implemented: 12	1/01/18 through 12/31/22: Land PILOT = Adjusted ELT – SLP	1/01/18 through 12/31/22: SLP (\$3,000) > OLP (\$2,500), therefore Land PILOT = \$0 ⁵
07/01/22	2 nd Adjustment Date	Reported: 8	SLP = 12 x \$500 x ½ = \$3,000 ¹	
01/01/23	2 nd Implementation Date	Implemented: 8	1/01/2023 through 12/31/27: Land PILOT = Adjusted ELT – SLP	1/01/2023 through 12/31/27: SLP (\$2,000) < OLP (\$2,500), therefore DLP = \$500, therefore Land PILOT = \$500 ⁶
07/01/27	3 rd Adjustment Date	Reported: 6	SLP = 8 x \$500 x ½ = \$2,000 ²	
01/01/28	3 rd Implementation Date	Implemented: 6	1/01/28 through 12/31/32: Land PILOT = Adjusted ELT – SLP	1/01/28 through 12/31/32: SLP (\$1,500) < OLP (\$2,500), therefore DLP = \$1,000, therefore Land PILOT = \$1,000
07/01/32	4 th Adjustment Date	Reported: 9	SLP = 6 x \$500 x ½ = \$1,500 ³	
01/01/33	4 th Implementation Date	Implemented: 9	1/01/33 through 06/30/33: Land PILOT = Adjusted ELT – SLP = Base Amount	1/01/33 through 06/30/33: SLP (\$2,250) < OLP (\$2,500), therefore DLP = \$250, therefore Land PILOT = \$250, therefore Base Amount = \$250
			SLP = 9 x \$500 x ½ = \$2,250 ⁴	
For each semi-annual period occurring within 07/01/33 through 06/30/34: Land PILOT = Base Amount + [(Adjusted ELT – Base Amount) x (0.2)]				
For each semi-annual period occurring within 07/01/34 through 06/30/35: Land PILOT = Base Amount + [(Adjusted ELT – Base Amount) x (0.4)]				
For each semi-annual period occurring within 07/01/35 through 06/30/36: Land PILOT = Base Amount + [(Adjusted ELT – Base Amount) x (0.6)]				
For each semi-annual period occurring within 07/01/36 through 06/30/37: Land PILOT = Base Amount + [(Adjusted ELT – Base Amount) x (0.8)]				

Footnotes in respect of the foregoing example (Project NOT in a Zone):

¹ On the first Adjustment Date of 7/01/17, the Average Equivalent Full Time Employee Number increased to 12 from the original number of 10. This increased employment figure is “implemented” on the corresponding first Implementation Date of 1/01/18. Since employment has increased (as compared to the original employment figures), the Land tax abatement amount (i.e., the “SLP”) has increased to \$3,000 for each semi-annual period occurring between the first Implementation Date and the second Implementation Date, and the corresponding PILOT payable with respect to the Land has decreased.

² On the second Adjustment Date of 7/01/22, the Average Equivalent Full Time Employee Number decreased to 8. This decreased employment figure is “implemented” on the corresponding second Implementation Date of 1/01/23. Since employment has decreased (as compared to the original employment figures), the Land tax abatement amount (i.e., the “SLP”) has decreased to \$2,000 for each semi-annual period occurring between the second Implementation Date and the third Implementation Date, and the corresponding PILOT payable with respect to the Land has increased.

³ On the third Adjustment Date of 7/01/27, the Average Equivalent Full Time Employee Number decreased further to 6. This decreased employment figure is “implemented” on the corresponding third Implementation Date of 1/01/28. Since employment has decreased (as compared to the original employment figures), the Land tax abatement amount (i.e., the “SLP”) has decreased to \$1,500 for each semi-annual period occurring between the third Implementation Date and the fourth Implementation Date, and the corresponding PILOT payable with respect to the Land has increased.

⁴ On the fourth Adjustment Date of 7/01/32, the Average Equivalent Full Time Employee Number increased to 9, but is still less than the original number of 10. This new number of 9 is “implemented” on the corresponding fourth Implementation Date of 1/01/33. Since employment has decreased (as compared to the original employment figures), the Land tax abatement amount (i.e., the “SLP”) has decreased to \$2,250. For the semi-annual period commencing on 1/1/33 and ending on 6/30/33, the PILOT payable with respect to the Land is equal to Adjusted ELT for such semi-annual period minus the SLP of \$2,250. This also serves as the “Base Amount” for purposes of calculating the PILOT payable with respect to the Land for the semi-annual periods occurring during years 22 through 25 (i.e., the “burn-off” periods).

Footnotes in respect of the foregoing example (Project IN a Zone):

⁵ On the first Adjustment Date of 7/01/17, the Average Equivalent Full Time Employee Number increased to 12 from the original number of 10. This increased employment figure is “implemented” on the corresponding first Implementation Date of 1/01/18. Since employment has increased or has stayed the same (as compared to the original employment figures), the PILOT payable with respect to the Land remains at zero.

⁶ On the second Adjustment Date of 7/01/22, the Average Equivalent Full Time Employee Number decreased to 8. This decreased employment figure is “implemented” on the corresponding second Implementation Date of 1/01/23. Since employment has decreased (as

compared to the original employment figures), PILOT in respect of the Land is payable in the amount of the “DLP” for each semi-annual period occurring between the second Implementation Date and the third Implementation Date (this is so even if SLP is greater than Adjusted ELT).

(f) PILOT with Respect to the Improvements.

(i) During the PILOT Term, but subject to Sections 5.1(d) and (i), PILOT with respect to the Improvements shall be payable in accordance with Section 5.1(g) in the amounts described below.

(1) Existing Improvements.

(A) For each semi-annual period occurring within the period commencing on the PILOT Commencement Date and ending on June 30, 2037, PILOT payable with respect to the Existing Improvements for such semi-annual period shall equal Adjusted Initial CRET.

(B) For each semi-annual period occurring within the period commencing on July 1, 2037 and ending on June 30, 2041, PILOT payable with respect to the Existing Improvements for such semi-annual period shall equal the amounts respectively indicated for the periods set forth below.

For each semi-annual period occurring within:	PILOT payable with respect to the Existing Improvements for such semi-annual period:
07/01/37 - 06/30/38	Adjusted Initial CRET plus the product of (x) Adjusted CRET of the Existing Improvements <u>minus</u> Adjusted Initial CRET and (y) 0.2
07/01/38 - 06/30/39	Adjusted Initial CRET plus the product of (x) Adjusted CRET of the Existing Improvements <u>minus</u> Adjusted Initial CRET and (y) 0.4
07/01/39 - 06/30/40	Adjusted Initial CRET plus the product of (x) Adjusted CRET of the Existing Improvements <u>minus</u> Adjusted Initial CRET and (y) 0.6
07/01/40 - 06/30/41	Adjusted Initial CRET plus the product of (x) Adjusted CRET of the Existing Improvements <u>minus</u> Adjusted Initial CRET and (y) 0.8

(2) Project Improvements.

(A) For each semi-annual period occurring within the period commencing on the PILOT Commencement Date and ending on June 30, 2037, PILOT payable with respect to the Project Improvements shall equal zero. Upon completion of the Project Improvements (and notwithstanding the foregoing sentence), the Lessee shall promptly request the appropriate officer of the City to reassess the Improvements.

(B) For each semi-annual period occurring within the period commencing on July 1, 2037 and ending on June 30, 2041, PILOT payable with respect to the Project Improvements for such semi-annual period shall equal the amounts respectively indicated for the periods set forth below.

For each semi-annual period occurring within:	PILOT payable with respect to the Project Improvements for such semi-annual period:
07/01/37 - 06/30/38	The product of (x) Adjusted CRET of the Project Improvements and (y) 0.2
07/01/38 - 06/30/39	The product of (x) Adjusted CRET of the Project Improvements and (y) 0.4
07/01/39 - 06/30/40	The product of (x) Adjusted CRET of the Project Improvements and (y) 0.6
07/01/40 - 06/30/41	The product of (x) Adjusted CRET of the Project Improvements and (y) 0.8

(3) Additional Improvements. For each semi-annual period occurring within the period commencing on the PILOT Commencement Date and ending on the Expiration Date, PILOT payable with respect to the Additional Improvements for such semi-annual period, if any, shall equal the Adjusted CRET applicable to such Additional Improvements for such semi-annual period. Upon completion of Additional Improvements, if any, the Lessee shall promptly comply with the requirements of Section 3.5 and request the appropriate officers of the City to reassess the Improvements.

(ii) Notwithstanding anything that may be to the contrary in this Section 5.1, PILOT with respect to the Improvements for a given semi-annual period shall never exceed Adjusted CRET for the Improvements for such semi-annual period.

(g) Payment Provisions.

(i) The Lessee agrees to pay all PILOT required to be paid under this Section 5.1 seven (7) Business Days prior to the commencement of the semi-annual period which relates to such PILOT (i.e., July 1 or January 1 (as the case may be)), in the amounts specified in PILOT Bills. The Agency agrees to request appropriate officers of NYCDOF to provide the Lessee with PILOT Bills. The Lessee understands and agrees that the failure of NYCDOF to send the Lessee a PILOT Bill shall not relieve the Lessee of its obligation hereunder to pay the amount of PILOT required in accordance with this Section 5.1. The Lessee may send all inquiries concerning PILOT Bills to

pilot1@finance.nyc.gov or: **PILOT Unit, NYC Department of Finance, 59 Maiden Lane, 22nd floor, New York, New York 10038.**

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

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

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

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

or

(2) to apply for as-of-right benefits that would reduce Real Estate Taxes with respect to the Facility Realty (as if the Facility Realty were not exempt from Real Estate Taxes); *provided, however*, that the foregoing shall not be construed to reduce PILOT payable under this Section 5.1 when the reduction arises from the eligibility and acceptance of the Project Improvements under the as-of-right program in question.

(h) Apportionment of Payments after Transfer.

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

(ii) With respect to the semi-annual period of the City Tax Fiscal Year during which the Cessation Date occurs, the Agency shall cause the appropriate officer or officers of the City to apportion that part of PILOT previously remitted for such semi-annual period (if any), which is attributable to the period commencing on the Cessation

Date and ending on the June 30 or December 31 following (as the case may be), as a credit against the Real Estate Taxes owed for such semi-annual period.

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

(i) *Sublettings.* If any portion of the Facility Realty is occupied by any Person other than the Lessee or the Sublessee (even if such Person is approved by the Agency pursuant to Section 8.9(a) hereof), for so long as such use and/or occupancy continues, Lessee shall pay or cause to be paid additional PILOT in an amount which, as prorated to such used and/or occupied space, shall equal Adjusted CRET.

(ii) *Events of Default.* Upon the occurrence of an Event of Default, including but not limited to a PILOT Payment Default, the Agency may increase PILOT (without notice other than the prior notice required for certain Events of Default) to an amount equal to Adjusted ELT as to the Land and Adjusted CRET as to the Improvements.

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

Section 5.2. No Sales Tax Exemption.

Agency's Exempt Status. The Agency constitutes a corporate governmental agency and a public benefit corporation under the laws of the State of New York, and therefore, in the exercise of its governmental functions, is exempt from the imposition of Sales and Use Taxes. Notwithstanding the foregoing, the Lessee acknowledges that the Agency is not authorizing any Sales Tax Exemption to the Lessee, the Sublessee or any other person in connection with the Project. As an exempt governmental entity, no exempt organization identification number has been issued to the Agency nor is one required. Notwithstanding the foregoing, the Agency makes no representation to the Lessee, any Agent or any third party that any Sales Tax Exemption is available under this Agreement.

Section 5.3. Mortgage Recording Tax Deferral.

(a) The following capitalized terms shall have the respective meanings specified below:

Exempt Mortgage shall mean a Mortgage the recording of which is exempt from Mortgage Recording Taxes by reason of the Agency being a mortgagor thereunder.

Gap Mortgage shall mean, upon any refinancing of the outstanding principal balance of the indebtedness secured by an existing Exempt Mortgage, the separate mortgage that will initially secure the New Money.

Modified Exempt Mortgage shall mean an Exempt Mortgage as assigned, modified, extended, consolidated and/or otherwise amended.

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.

New Money shall mean, upon any refinancing of the outstanding principal balance of the indebtedness secured by an existing Exempt Mortgage, any additional loan proceeds that may be advanced as part of such mortgage refinancing.

Non-Exempt Principal shall mean that portion of the indebtedness secured by an existing Exempt Mortgage that may be outstanding on the Expiration Date (as may be reasonably calculated by the Agency at a given point in time) or on any earlier termination of this Agreement, as the context requires.

NPV shall mean a net-present-value calculation of an amount due at a future date using such discount rate as may be required by the Agency from time to time.

NPV-PILOMRT shall mean the net-present-value calculation of a PILOMRT due at the Expiration Date using such discount rate as may be required by the Agency from time to time.

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 payment.

(b) The Lessee acknowledges that the Agency has deferred the payment of Mortgage Recording Taxes on each Exempt Mortgage for a term, such term to commence on the date of recording of such Exempt Mortgage and to end on the earliest to occur of (i) the Expiration Date, (ii) the Termination Date, (iii) the maturity or sooner termination of such Exempt Mortgage, or (iv) an Event of Default.

(c) The Lessee acknowledges and agrees that the Agency is not obligated to defer the payment of Mortgage Recording Taxes for the recording of any mortgage other than an Exempt Mortgage; nor is the Agency obligated to defer 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) The Agency agrees that if, in connection with the refinancing of an Exempt Mortgage, the Lessee (i) causes the mortgagee of the Exempt Mortgage to assign the Exempt Mortgage to a new mortgagee, and/or (ii) causes the Exempt Mortgage to be modified, extended, consolidated or otherwise amended, the Agency will not object to any resulting continuation of the deferral of the Mortgage Recording Taxes originally applicable to the Exempt Mortgage; *provided, however, that* the following conditions are satisfied: (aa) the Agency is made a party to the Modified Exempt Mortgage; and (bb) the Modified Exempt Mortgage has provisions reasonably acceptable to the Agency; and (cc) a Gap Mortgage is concurrently delivered to secure New Money, if any; and (dd) if applicable, at the time the refinancing is closed and the Modified Exempt Mortgage is executed and delivered, the Lessee shall make the following payments to NYCDOF:

(x) Mortgage Recording Taxes with respect to any Gap Mortgage; and

(y) NPV-PILOMRT with respect to any Non-Exempt Principal less the amount of any principal for which Mortgage Recording Taxes and/or PILOMRT and/or NPV-PILOMRT have already been paid or are being concurrently paid.

(e) If this Agreement terminates prior to the Expiration Date and, as a result there is Non-Exempt Principal for which Mortgage Recording Taxes, PILOMRT, NPV-PILOMRT and/or a payment under Section 5.4 has not been paid, the Lessee shall either pay PILOMRT with respect to such Non-Exempt Principal or deliver in-lieu thereof a satisfaction of the Exempt Mortgage to the Agency.

(f) The Lessee agrees that, notwithstanding delivery by the Lessee of a satisfaction of an Exempt Mortgage on the Expiration Date or on any earlier date when this Agreement may be terminated, or evidence of any reduction in the anticipated amount of Non-Exempt Principal outstanding as of the Expiration Date, the Agency shall not be obligated to refund to the Lessee any amounts of PILOMRT or NPV-PILOMRT previously paid.

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

(a) The following capitalized terms shall have the respective meanings specified below:

Benefits shall mean, collectively:

(i) all real estate tax benefits that have accrued to the benefit of the Lessee during such time as the Agency had a leasehold or controlling interest in the Facility Realty, such tax benefits to be computed by subtracting PILOT paid from those payments that the Lessee would have paid during the Term (i.e., Adjusted ELT and, as to the Improvements, Adjusted CRET) had the Agency not had a leasehold or controlling interest in the Facility Realty during such term; and

(ii) all miscellaneous benefits derived from the Agency's participation in the Straight-Lease Transaction contemplated by this Agreement, including any deferral from any applicable mortgage recording taxes and filing and recording fees.

Operations Commencement Date shall mean the date by which the Agency shall have received a signed certificate of an Authorized Representative of the Lessee certifying that the Project Completion Date has occurred and that the Facility is in fact being occupied, used and operated for the Approved Project Operations.

Recapture Event shall mean any one of the following events:

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

(ii) The Lessee or the Sublessee shall have transferred all or substantially all of its employees to a location outside of the City.

(iii) The Facility has ceased to be the Approved Facility and/or the Lessee or the Sublessee shall have substantially changed the scope and nature of their operations at the Facility Realty.

(iv) Except as permitted by written consent of the Agency pursuant to and in accordance with Section 8.20, the Lessee and/or the Sublessee shall have sold, leased or otherwise disposed of all or substantially all of the Facility Realty.

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

(vi) The Lessee or the Sublessee shall have relocated all or substantially all of its operations at the Facility Realty to another site; provided, however, and notwithstanding the foregoing, such relocation shall not be a Recapture Event if (A) the Lessee and the Sublessee have relocated their operations at the Facility Realty and at least 90% of their employees employed at the Facility Realty prior to the relocation, to another site within the City, (B) the Lessee and the Sublessee maintain, for the remaining balance of the Recapture Period, an employment level equal to at least 90% of the number of employees employed by the Lessee and the Sublessee at the Facility Realty prior to relocation, and (C) the Lessee and/or the Sublessee shall satisfy such other additional conditions as the Agency may from time to time impose provided such additional conditions are reasonable and uniformly imposed, at the time, to other similar transactions under similar circumstances. There shall arise another Recapture Event upon the failure of the Lessee and/or the Sublessee to satisfy continuously the foregoing requirements for the remaining balance of the Recapture Period. Upon the occurrence of such subsequent Recapture Event, the Agency shall have the right to demand payment of all amounts due under Section 5.4(b) or (c), and the calculation of interest pursuant to Section 5.4(c)(iii) shall assume that the subsequent Recapture Event replaces the original Recapture Event for purposes of that computation. The determination of the pre-relocation, 90%-employment level shall be done in a manner, and in respect of a date or period of time, that the Agency deems appropriate in its sole discretion. For purposes of this Section 5.4, individuals who are employed by each of the Lessee and the Sublessee shall not be counted twice.

Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event:

(A) shall have arisen as a direct, immediate result of (x) force majeure as defined in Section 11.1, (y) a taking or condemnation by governmental authority of all or substantially all of the Facility Realty, or (z) the inability at law of the Lessee to rebuild, repair, restore or replace the Facility Realty after the occurrence of a Loss Event to substantially its condition prior to such Loss Event, which inability shall have arisen in good faith through no fault on the part of the Lessee, the Sublessee, or any Affiliate, or

(B) is deemed, in the sole discretion of the Agency, to be (y) minor in nature, or (z) a cause of undue hardship to the Lessee and/or the Sublessee were the Agency to recapture any Benefits.

Recapture Period shall mean the period of time commencing on the Commencement Date, and expiring on the date which is the tenth anniversary of the Operations Commencement Date.

(b) If there shall occur a Recapture Event during the Recapture Period, but such Recapture Event is prior to the Operations Commencement Date, the Lessee shall pay to the Agency as a return of Financial Assistance conferred by the Agency, the following amounts upon demand by the Agency: (i) all Benefits; and (ii) interest described in Section 5.4(c)(iii).

(c) If there shall occur a Recapture Event during the Recapture Period, but such Recapture Event occurs on or after the Operations Commencement Date, the Lessee shall pay to the Agency as a return of Financial Assistance conferred by the Agency, the following amounts (as applicable) upon demand by the Agency:

(i) If the Recapture Event occurs within the first six (6) years after the Operations Commencement Date, one hundred percent (100%) of the Benefits.

(ii) If the Recapture Event occurs within any month during any one of the seventh, eighth, ninth or tenth years after the Operations Commencement Date, X percent of the Benefits (where "X" is a percent equal to 100% less Y, and where "Y" equals the product of 1.666% and the number of months elapsed commencing with the first month of the seventh year through and including the month in which the Recapture Event occurs).

(iii) The principal of the Benefits to be recaptured, whether pursuant to clause (i) or (ii) above, shall bear interest at a rate equal to the lesser of (x) the maximum amount of interest permitted by law, and (y) the statutory judgment rate, compounded daily, commencing from the date that any amount of Benefit principal has accrued to the Lessee, through and including the date such principal is repaid in full; such that (x) Benefit principal comprising mortgage recording taxes, or filing and recording fees, shall be deemed to have accrued to the Lessee on the Commencement Date, and (y) Benefit principal comprising real estate tax benefits shall be deemed to have accrued to the Lessee on each date upon which the Lessee shall make a payment of PILOT. The

“statutory judgment rate” shall be the statutory judgment rate in effect on the date of the Agency’s demand.

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

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

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

ARTICLE VI

DAMAGE, DESTRUCTION AND CONDEMNATION

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

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

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

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

Section 6.2. Loss Proceeds.

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

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

Section 6.3. Election to Rebuild or Terminate.

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

(i) at its own cost and expense (except to the extent paid from the Net Proceeds), within one (1) year of the Loss Event, promptly and diligently rebuild, replace, repair or restore the Facility to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, regardless of whether or not the Net Proceeds derived from the Loss Event shall be sufficient to pay the cost thereof, and the Lessee shall not by reason of payment of any such excess costs be entitled to any reimbursement from the Agency, or

(ii) exercise its option to terminate this Agreement as provided in Section 10.1;

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

(b) As soon as practicable but no later than ninety (90) days 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, a failure to advise the Agency timely being deemed an election in favor of Section 6.3(a)(ii).

Section 6.4. Effect of Election to Build.

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

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

(ii) be effected only if the Lessee shall deliver to the Agency an Opinion of Counsel acceptable to the Agency to the effect that such rebuilding, replacement, repair or restoration shall not change the nature of the Facility 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 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 and the Sublessee to use and operate the Facility 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 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 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 good and merchantable title to all Facility Personalty and a good and valid leasehold interest in all property

constituting part of the Facility Realty, and all property of the Facility is subject to the Company Lease (except in the case of the Facility Personalty), this Agreement and the Sublease Agreement, subject to Permitted Encumbrances, and (v) that the restored Facility 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 or the Sublessee 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 and obtain renewals of such temporary certificate of occupancy as needed), if required, and any and all permissions, licenses or consents required of governmental authorities for the occupancy, operation and use of the Facility for the purposes contemplated by this Agreement; (ii) a certificate of an Authorized Representative of the Lessee that all costs of rebuilding, repair, restoration and reconstruction of the Facility have been paid in full, 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 (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 any mechanic's, materialmen's or any other lien in connection with the rebuilding, replacement, repair and restoration of the Facility and that there exist no encumbrances or those encumbrances consented to by the Agency.

ARTICLE VII

COVENANT OF THE AGENCY

Section 7.1. Quiet Enjoyment. The Agency covenants and agrees that, subject to the terms and provisions of the Permitted Encumbrances (and any other impairments of title), so long as the Lessee shall pay the Rental Payments payable by it under this Agreement and shall duly observe all the covenants, stipulations and agreements herein contained obligatory upon it and an Event of Default shall not exist hereunder, the Agency shall take no action to disturb the peaceful, quiet and undisputed possession of the Facility by the Lessee under this Agreement, and the Agency (at the sole cost and expense of the Lessee) shall from time to time take all necessary action to that end.

ARTICLE VIII

COVENANTS OF THE LESSEE

Section 8.1. Insurance.

(a) Definitions. 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, including any construction, reconstruction, restoration, alteration and/or repair required under this Agreement in connection with the Facility.

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.

Insured(s) means, collectively or individually, the Lessee and the Sublessee.

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 at the Commencement Date.

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

SIR means self-insured retention.

U/E means Umbrella or Excess Liability insurance.

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

(b) Required Insurance. Throughout the Term, except during periods of Construction, each Insured shall obtain and maintain for itself as a primary insured the following insurance:

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

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

(iii) Auto liability insurance with \$1,000,000 combined single limit and \$1,000,000 for uninsured or under-insured vehicles. If neither of the Insureds owns any vehicles, each shall obtain auto liability insurance in the foregoing amounts for hired and non-owned vehicles. Notwithstanding, in the event that the Authorized Representatives for the Lessee and the Sublessee deliver certificates to the Agency certifying that neither owns, hires, rents or uses a vehicle of any sort, the Agency shall deem such certifications to satisfy the requirements of this subsection "iii."

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

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

(i) Each Insured shall obtain and maintain for itself Policies in accordance with all requirements set forth in Section 8.1(b).

(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 \$10,000,000 per project aggregate, and (y) completed operations coverage shall extend (or be extended) for an additional five (5) years after completion of the Construction (which will be deemed to be the Project Completion Date unless the Lessee shall have provided written notice and satisfactory evidence to the Agency that the Construction was completed as of a specified earlier date);

(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) Notwithstanding preceding subsections "i" and "ii", during Construction aggregate minimum coverage in the amount of \$15,000,000 (combined CGL and U/E as required by Sections 8.1(b) and 8.1(c)) may be achieved by any combination of coverage amounts among the Insureds and the GC or CM.

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

(A) CGL and U/E in accordance with the requirements in Section 8.1(b) except that, in addition, completed operations coverage shall extend (or be extended) for an additional five (5) years after completion of the Construction (which will be deemed to be the Project Completion Date unless the Lessee shall have provided written notice and satisfactory evidence to the Agency that the Construction was completed as of a specified earlier date);

(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 and auto liability insurance) to name the Agency as an additional insured on a primary and non-contributory basis as more particularly required in Section 8.1(f)(i).

(ii) No Policy shall have a deductible.

(iii) CGL shall not be subject to SIR.

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

(v) The Lessee acknowledges that the Agency is materially relying upon the content of ISO Form CG-0001 (or its equivalent if applicable) to implement the Agency's insurance requirements under this Section 8.1; accordingly, the Lessee agrees that non-standard exclusions and other modifications to ISO Form CG-0001 (or to its equivalent if applicable) are prohibited under the terms and conditions of this Section 8.1. By way of example and not limitation, no Policy delivered hereunder shall limit (whether by exception, exclusion, endorsement, script or other modification) any of the following coverage attributes:

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

(B) employer's liability coverage;

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

(D) the right of the Insureds 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 an Insured, or (y) claims against the Agency by any GC, CM, Contractor, architect or engineer or by the employees of any of the foregoing, or (z) claims against the Agency arising out of any work performed by a GC, CM, Contractor, architect or engineer.

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

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

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

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

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

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

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

(iii) Insurers must be admitted in the State; provided, however, that if an Insured requests the Agency to accept a non-admitted Insurer, and if the Agency reasonably determines that for the kind of operations performed by the Insured an admitted Insurer is commercially unavailable to issue a Policy or is non-existent, then the Agency shall provide its written consent to a non-admitted Insurer. For purposes of this paragraph, an “admitted” Insurer means that the Insurer’s rates and forms have been approved by the State 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, 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, 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: 60 20th Street, Brooklyn, New York 11232;

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

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

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

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

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

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

(g) Required Notices. (i) The Lessee shall immediately give the Agency notice of each occurrence that is reasonably probable to give rise to a claim under the insurance required to be maintained by this Section 8.1. (ii) The Lessee shall in writing immediately notify the Agency of the cancellation of any Policy. (iii) In the event that any of the Policies pertain to and cover properties (other than the Facility Realty) that are not disclosed in Subsection (h)(i) of this Section 8.1, the Lessee shall in writing notify the Agency of such additional properties.

(h) Miscellaneous.

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

(ii) In the event that any of the Policies pertain to and cover properties (other than the Facility Realty) that are not set forth in subsection "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, 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, insurance industry standards applicable to properties similar to the Facility Realty and/or operations similar to the operations of the Lessee and/or the Sublessee, 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 any Guarantor or any other party to the transactions contemplated by this Agreement, may waive particular requirements under this Section 8.1. Notwithstanding, the Lessee shall be estopped from claiming that the Agency has made any such waiver unless the Agency has executed and delivered a written instrument for the purpose of effectuating such waiver.

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

Section 8.2. Indemnity.

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) On the Commencement Date, the Lessee shall pay to the Agency the following amounts: (i) the Initial Annual Administrative Fee, and (ii) the Project Fee.

(c) 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 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. Current Facility Personalty Description. The Lessee covenants and agrees that throughout the Term, including upon the completion of the Project or of any replacement, repair, restoration or reconstruction of the Facility pursuant to Article VI, it will cause Exhibit B – “Description of the Facility Personalty”, together with the “Description of the Facility Personalty” attached as part of the exhibits to the Sublease Agreement, to be an accurate and complete description of all current items of Facility Personalty. To this end, the Lessee covenants and agrees that (y) no item of Facility Personalty shall be substituted or replaced by a new item of machinery, equipment or other tangible personal property except pursuant to Section 3.6(a) or Article VI, and (z) no item of Facility Personalty shall be delivered and installed at the Facility Realty as part of the Facility, unless in each case such item of machinery, equipment or other item of tangible personal property shall be accurately and sufficiently described in Exhibit B — “Description of the Facility Personalty”, and in the “Description of the Facility Personalty” attached as part of the exhibits to the Sublease Agreement, and the Lessee shall from time to time prepare and deliver to the Agency supplements to such Appendices in compliance with the foregoing. Such supplements shall be executed and delivered by the appropriate parties.

Section 8.5. Signage at Facility Site. Upon commencement of the Project renovations and/or construction of the Project Improvements at the Facility (including the commencement of any demolition and/or excavation), the Lessee shall erect on the Facility site, 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**”):

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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 until completion of the renovations and/or construction. The Lessee may erect other signs in addition to the Sign.

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 or any part thereof to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all applicable Legal Requirements, nor shall the Lessee cause or permit, as a result of any intentional or unintentional act or omission on the part of the Lessee or any occupant or user of the Facility, a release of Hazardous Materials onto the Facility or onto any other property.

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

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

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

Section 8.7. Employment Matters.

(a) Except as is otherwise provided by collective bargaining contracts or agreements, new employment opportunities 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 (including the Sublessee) at the Facility to consider first, persons eligible to participate in the Workforce Investment Act of 1998 (29 U.S.C. §2801) programs who shall be referred by administrative entities of service delivery areas created pursuant to such Act or by the Community Services Division of the New York State Department of Labor for such new employment opportunities.

(b) Upon the Agency's written request, the Lessee shall provide to the Agency any employment information in the possession of the Lessee or the Sublessee which is pertinent to the Lessee and the Sublessee and the employees of the Lessee and the Sublessee 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 (on behalf of itself and the Sublessee) 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 or the Sublessee and the employees of the Lessee or of the Sublessee 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 by the Sublessee, 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.

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

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

Section 8.8. Non-Discrimination.

(a) At all times during the maintenance and operation of the Facility, the Lessee shall not discriminate nor permit any of its Affiliates (including the Sublessee) to discriminate against any employee or applicant for employment because of race, color, creed, age, sex or national origin. The Lessee shall use its best efforts to ensure that employees and

applicants for employment with any subtenant of the Facility (other than the Sublessee) 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 or the Sublessee state that all qualified applicants will be considered for employment without regard to race, color, creed or national origin, age or sex.

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

Section 8.9. Assignment or Sublease.

(a) The Lessee shall not at any time (y) except as permitted by Section 8.20, assign or transfer this Agreement, or (z) sublet the whole or any part of the Facility, except to the Sublessee pursuant to the Sublease Agreement without (1) providing the Agency written notice of such intended use and/or occupancy before such use and/or occupancy actually occurs and (2) the prior written consent of the Agency (such consent to be requested by the Lessee of the Agency in the form prescribed by the Agency, and such consent of the Agency to take into consideration the Agency's policies as in effect from time to time), and provided that:

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

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

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

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

(v) with respect to any subletting in part of the Facility, no more than an aggregate of twenty percent (20%) of the Completed Improvements Rentable Square Footage shall be subleased by the Lessee or the Sublessee;

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

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

(viii) each such sublease shall contain such other provisions as the Agency may reasonably require; and

(ix) the Lessee shall furnish or cause to be furnished to the Agency a copy of any such assignment, transfer or sublease in substantially final form at least thirty (30) days prior to the date of execution thereof.

(b) Any consent by the Agency to any act of assignment, transfer or sublease 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, transfer or sublease, or as modifying or limiting the rights of the Agency under the foregoing covenant by the Lessee.

(c) If the Facility or any part thereof is sublet or occupied by any Person other than the Lessee, the Agency, in the event of the Lessee's default in the payment of Rental Payments hereunder may, and is hereby empowered to, collect Rental Payments from the Sublessee, any sublessee or any occupant during the continuance of any such 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 in whole or in part of the Facility, or constitute the acceptance of the undertenant or occupant as tenant, or a release of the Lessee from the further performance of the covenants herein contained on the part of the Lessee.

(d) The Lessee covenants and agrees that it shall not, without the prior written consent of the Agency (which consent shall not be unreasonably withheld, conditioned or delayed), amend, modify, terminate or assign, or to suffer any amendment, modification, termination or assignment of, the Sublease Agreement or any sublease entered into in accordance with this Section.

(e) The limitations in this Section 8.9 on assignment or transfer of this Agreement and subletting in whole or in part of the Facility shall have equal application to any assignment or transfer of the Sublease Agreement and sub-subletting in whole or in part of the Facility.

(f) For purposes of this Section 8.9, any license or other right of possession or occupancy granted by the Lessee or the Sublessee with respect to the Facility shall be deemed a sublease subject to the provisions of this Section 8.9.

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

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

(b) The Lessee may, upon prior written notice to the Agency, so long as there exists no Event of Default hereunder, grant such rights of way or easements over, across, 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, of this Agreement and of the Sublease Agreement as shall be necessary or convenient in the opinion of the Lessee for the operation or use of the Facility, or required by any utility company for its utility business, provided that, in each case, such rights of way, easements, permits or licenses shall not adversely affect the use or operation of the Facility 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, of this Agreement and of the Sublease Agreement.

(c) So long as there exists no Event of Default hereunder, the Lessee may from time to time request in writing to the Agency the release of and removal from the leasehold estate of the Company Lease, of this Agreement and of the Sublease Agreement of any unimproved part of the Land (on which none of the Improvements, including the buildings, structures, major appurtenances, fixtures or other property comprising the Facility Realty, is situated) provided that such release and removal will not adversely affect the use or operation of the Facility 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 from the leasehold estates of the Company Lease, of this Agreement and of the Sublease Agreement, subject to the following: (i) any liens, easements, encumbrances and reservations to which title to said property was subject on the Commencement Date, (ii) any liens, easements and encumbrances created at the request of the Lessee or the Sublessee or to the creation or suffering of which the Lessee or the Sublessee consented; (iii) any liens and encumbrances or reservations resulting from the failure of the Lessee or the Sublessee 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, of this Agreement and of the Sublease Agreement); and (v) any liens for taxes or assessments not then delinquent; provided, however, no such release shall be effected unless there shall be delivered to the Agency a certificate of an Authorized Representative of the Lessee, dated not more than sixty (60) days prior to the date of the release, stating that, in the opinion of the Person signing such certificate, the unimproved Land and the release thereof so proposed to be made is not needed for the operation of the Facility, will not adversely affect the use or operation of the Facility 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), 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 or any part thereof or the interest therein of the Agency, the Lessee or the Sublessee or against any of the Rental Payments payable under the Company Lease, under this Agreement or under the Sublease Agreement or the interest of the Agency, the Lessee or the Sublessee under the Company Lease, under this Agreement or under the Sublease Agreement, other than Liens for Impositions not yet payable, Permitted Encumbrances, or Liens being contested as permitted by Section 8.11(b), the Lessee forthwith upon receipt of notice of the filing, assertion, entry or issuance of such Lien (regardless of the source of such notice) shall give written notice thereof to the Agency and take all action (including the payment of money and/or the securing of a bond) at its own cost and expense as may be necessary or appropriate to obtain the discharge in full thereof and to remove or nullify the basis therefor. Nothing contained in this Agreement shall be construed as constituting the express or implied consent to or permission of the Agency for the performance of any labor or services or the furnishing of any materials that would give rise to any Lien against the Agency's interest in the Facility.

(b) The Lessee may at its sole cost and expense contest (after prior written notice to the Agency), by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Lien, if (i) such proceeding shall suspend the execution or enforcement of such Lien against the Facility or any part thereof or interest therein, or in the Company Lease, in this Agreement or in the Sublease Agreement, of the Agency, the Lessee or the Sublessee or against any of the Rental Payments payable under the Company Lease, under this Agreement or under the Sublease Agreement, (ii) neither the Facility nor any part thereof or interest therein would be in any danger of being sold, forfeited or lost, (iii) neither the Lessee nor the Sublessee 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 or the Sublessee 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. The Lessee shall not create, permit or suffer to exist any mortgage, encumbrance, lien, security interest, claim or charge against the Facility or any part thereof, or the interest of the Agency, the Lessee or the

Sublessee in the Facility or the Company Lease, this Agreement or the Sublease Agreement, except for Permitted Encumbrances. Notwithstanding the foregoing, in no event shall the lien of any Mortgage include the rights of the Lessee under this Agreement or the Sublease Agreement or any rentals or other amounts paid or payable hereunder or thereunder, except for rentals directly related to the payment of amounts due under any Mortgage Notes.

Section 8.14. Automatically Deliverable Documents.

(a) The Lessee shall immediately notify the Agency of the occurrence of any Event of Default, or any event that with notice and/or lapse of time would constitute an Event of Default under any Project Document. Any notice required to be given pursuant to this subsection shall be signed by an Authorized Representative of the Lessee and set forth a description of the default and the steps, if any, being taken to cure said default. If no steps have been taken, the Lessee shall state this fact on the notice.

(b) The Lessee shall promptly provide written notice to the Agency if any representation or warranty made by the Lessee pursuant to Section 2.2(w) 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 five (5) Business Days after receipt from the Agency of any subtenant survey and questionnaire pertaining to the Facility, 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 Additional Improvement(s) to the Agency.

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

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

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

(a) a copy of the most recent annual audited financial statements of the Lessee and of the Sublessee and of their subsidiaries, if any (including balance sheets as of the end of the Fiscal Year and the related statement of revenues, expenses and changes in fund balances

and, if applicable, income, earnings, and changes in financial position) for such Fiscal Year, prepared in accordance with GAAP 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 permits, authorizations and licenses from appropriate authorities relative to the occupancy, operation and use of the Facility;

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

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

(f) a certificate of an Authorized Representative of the Lessee as to whether or not, as of the close of the immediately preceding Fiscal Year, and at all times during such Fiscal Year, the Lessee 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) days nor less than fifteen (15) days prior to the date due, and (ii) the Lessee shall not have received such form from the Agency at least one (1) Business Day prior to the due date. For purposes of this Section 8.16, the Lessee shall be deemed to have "received" any such form if it shall have been directed by the Agency to a website at which such form shall be available. In the event the Agency, in its sole discretion, elects to replace one or more of the reports required by this Agreement with an electronic or digital reporting system, the Lessee shall make its reports pursuant to such system.

(b) Annually, by August 1 of each year, commencing on the August 1 immediately following the Commencement Date, until the termination of this Agreement, the Lessee and the Sublessee shall submit to the Agency the Annual Employment and Benefits Report in a form approved by the Agency 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 and the Sublessee. Upon termination of this Agreement, the Lessee and the Sublessee shall submit to the Agency the Annual Employment and Benefits Report relating to the period commencing the date of the last such Report submitted to the Agency and ending on the last payroll date of the preceding month in the form prescribed by the Agency, certified as to accuracy by the Lessee and the Sublessee. Nothing herein shall be construed as requiring the Lessee or the Sublessee to maintain a minimum number of employees on its respective payroll.

(c) [Reserved.]

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

(e) [Reserved.]

(f) If there shall have been a subtenant, other than the Lessee or the Sublessee, with respect to all or part of the Facility, at any time during the twelve-month period terminating on the immediately preceding June 30, the Lessee shall 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.

(g) If the Lessee or the Sublessee shall have had the benefit of a Business Incentive Rate at any time during the twelve-month period terminating on the immediately preceding June 30, the Lessee shall deliver to the Agency by the next following August 1, a completed report required by the Agency in connection with the Business Incentive Rate program with respect to such twelve-month period, in the form prescribed by the Agency.

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

Section 8.17. Taxes, Assessments and Charges. (a) The Lessee shall pay when the same shall become due all taxes (other than those taxes for which PILOT is payable) and assessments, general and specific, if any, levied and assessed upon or against the Facility Realty, the Company Lease, this Agreement, the Sublease Agreement, any ownership estate or interest of the Agency or the Lessee or the Sublessee in the Facility, or the Rental Payments or other amounts payable under the Company Lease, hereunder or under the Sublease Agreement during the Term, 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 estate taxes in respect of PILOT 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, if (i) such proceeding shall suspend the execution or enforcement of such Imposition against the Facility or any part thereof or interest therein, or in the Company Lease, in this Agreement or in the Sublease Agreement, of the Agency, the Lessee or the Sublessee or against any of the Rental Payments payable under the Company Lease, under this Agreement or under the Sublease Agreement, (ii) neither the Facility nor any part thereof or interest therein would be in any danger of being sold, forfeited or lost, (iii) neither the Lessee nor the Sublessee 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 or the Sublessee shall have furnished such security, if any, as may be required in such proceedings or as may be reasonably requested by the Agency.

Section 8.18. Compliance with Legal Requirements.

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

(b) Throughout the Term and at its sole cost and expense, the Lessee shall promptly observe and comply with all applicable Legal Requirements (including, without limitation, as applicable, the LW Law, the Prevailing Wage Law, and the Earned Sick Time Act, constituting Chapter 8 of Title 20 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, any occupant, user or operator of the Facility or any portion thereof, and will observe and comply with all conditions, requirements, and schedules necessary to preserve and extend all rights, licenses, permits (including zoning variances, special exception and non-conforming uses), privileges, franchises and concessions. The Lessee will not, without the prior written consent of the Agency (which consent shall not be unreasonably withheld or delayed), initiate, join in or consent to any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses that may be made of the Facility or any part thereof.

(c) The Lessee may at its sole cost and expense contest in good faith the validity, existence or applicability of any of the matters described in Section 8.18(b) if (i) such contest shall not result in the Facility or any part thereof or interest therein being in any danger of being sold, forfeited or lost, (ii) such contest shall not result in the Lessee, the Sublessee or the Agency being in any danger of any civil or any criminal liability for failure to comply therewith, and (iii) the Lessee or the Sublessee 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 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, if such failure would cause the Facility 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, but solely for the purpose of assuring that the Lessee is operating the Facility, or is causing the Facility 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) The Lessee covenants and agrees that at all times during the Term, it will

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

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

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

(iv) not, as transferor, liquidate, wind-up, dissolve, transfer or otherwise dispose of to another Entity all or substantially all of its property, business or assets (“**Transfer**”) remaining after the Commencement Date, except as provided in Section 8.20(b),

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

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

(vii) not change or permit the change of any Principal of the Lessee and/or the Sublessee, or a change in the relative ownership and/or Control of the Lessee and/or the Sublessee of any of the existing Principals, except in each case as provided in Section 8.20(d).

(b) After the Operations Commencement Date, and with 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,

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

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

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

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

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

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

(c) The Control of the Lessee and/or the Sublessee shall not change prior to the Operations Commencement Date.

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

Section 8.21. Affiliation of Sublessee. Throughout the Term the Lessee is and will continue to be an Affiliate of the Sublessee.

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

Section 8.23. Living Wage.

(a) Lessee acknowledges and agrees that it and its Site Affiliates have received “financial assistance” as defined in the LW Law. Lessee agrees to comply with all applicable requirements of the LW Law. 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.

Concessionaire means a Person that has been granted the right by Lessee, an Affiliate of Lessee or any tenant, subtenant, leaseholder or subleaseholder of Lessee or of an Affiliate of Lessee to operate at the Facility Realty for the primary purpose of selling goods or services to natural persons at the Facility Realty.

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

Covered Employer means any of the following Persons: (a) Lessee, (b) a Site Affiliate, (c) a tenant, subtenant, leaseholder or subleaseholder of Lessee or of an Affiliate of Lessee that leases any portion of the Facility Realty (or an Affiliate of any such tenant, subtenant, leaseholder or subleaseholder if such Affiliate has one or more direct Site Employees), (d) a Concessionaire that operates on any portion of the Facility Realty, and (e) a Person that contracts or subcontracts with any Covered Employer described in clauses (a), (b), (c) or (d) above to perform work for a period of more than ninety days on any portion of the Facility Realty, including temporary services or staffing agencies, food service contractors, and other on-site service contractors; provided, however, that the term “Covered Employer” shall not include (i) a Person of the type described in Section 6-134(d)(2), (3), (4) or (5) of the New York City Administrative Code, (ii) a Person that has annual consolidated gross revenues that are less than the Small Business Cap unless the revenues of the Person are included in the consolidated gross revenues of a Person having annual consolidated gross revenues that are more than the Small Business Cap, in each case calculated based on the fiscal year preceding the fiscal year in which the determination is being made, and in each calculated in accordance with generally accepted accounting principles, (iii) any otherwise covered Person operating on any portion of the Facility Realty if residential units comprise more than 75% of the total Facility

Realty area and all of the residential units are subject to rent regulation, (iv) any otherwise covered Person that the Agency has determined (in its sole and absolute discretion) in writing to be exempt on the basis that it works significantly with a Qualified Workforce Program, (v) a Person whose Site Employees all are paid wages determined pursuant to a collective bargaining or labor agreement, (vi) if Lessee is a “covered developer” under and as defined in the Prevailing Wage Law, a Person that is a “building services contractor” (as defined in the LW Law) so long as such Person is paying its “building service employees” (as defined in the Prevailing Wage Law) no less than the applicable “prevailing wage” (as defined in the Prevailing Wage Law), or (vii) a Person exempted by a Deputy Mayor of The City of New York in accordance with the Mayor’s Executive Order No. 7 dated September 30, 2014.

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

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

LW Agreement means, with respect to any Covered Counterparty, an enforceable agreement in the form attached hereto as Exhibit H (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 latest of (a) the effective date of such Covered Counterparty’s Specified Contract, (b) the date that such Covered Counterparty becomes a Covered Employer at the Facility Realty and (c) the date of this Agreement.

LW Event of Default means the satisfaction of the following two conditions: (a) two or more LW Violation Final Determinations shall have been imposed against Lessee or its Site Affiliates in respect of the direct Site Employees of Lessee or its Site Affiliates in any consecutive six year period during the LW Term and (b) the aggregate amount of Owed Monies and Owed Interest paid or payable by Lessee in respect of such LW Violation Final Determinations is in excess of the LW Violation Threshold in effect as of the date of the second LW Violation Final Determination. For the avoidance of doubt, the

Owed Monies and Owed Interest paid or payable by Lessee in respect of the Site Employees of a Covered Counterparty that is not an Affiliate of Lessee (pursuant to Section 8.24(k)(v)) shall not count for purposes of determining whether the conditions in clauses (a) and (b) of the preceding sentence have been satisfied.

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

LW Term means the period commencing on the Commencement Date and ending on the later to occur of (a) the date on which Lessee is no longer receiving financial assistance under this Agreement or (b) the date that is ten years after the Commencement Date.

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 1.03^n , where “n” is the number of full years that have elapsed since January 1, 2015.

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

Owed Monies means, as the context shall require, either (a) the total deficiency of LW required to be paid by Lessee or a Site Affiliate in accordance with this Section 8.24 to Lessee’s or its Site Affiliate’s (as applicable) direct Site Employee(s) after taking into account the wages actually paid (which shall be credited towards the “living wage rate” component of the LW), and the monetary value of health benefits actually provided (which shall be credited towards the “health benefits supplement rate” component of the LW), to such direct Site Employee(s), all as calculated on a per pay period basis; or (b) if Lessee or its Site Affiliate failed to obtain a LW Agreement from a Covered Counterparty as required under Section 8.24(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 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, if and for so long as Lessee is a Covered Employer, Lessee shall pay each of its direct Site Employees no less than an LW. During the LW Term,

Lessee shall cause each of its Site Affiliates that is a Covered Employer to pay their respective Site Employees no less than an LW.

(d) During the LW Term, if and for so long as Lessee is a Covered Employer (or if and so long as a Site Affiliate is a Covered Employer, as applicable), Lessee shall (or shall cause the applicable Site Affiliate to, as applicable), on or prior to the day on which each direct Site Employee of Lessee or of a Site Affiliate begins work at the Facility Realty, (i) post a written notice detailing the wages and benefits required to be paid to Site Employees under this Section 8.24 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, if and for so long as Lessee is a Covered Employer (or if and for so long as a Site Affiliate is a Covered Employer, as applicable), Lessee shall not (or the applicable Site Affiliate shall not, as applicable) 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, regardless of whether Lessee is a Covered Employer, Lessee shall cause each Covered Counterparty to execute an LW Agreement on or prior to the LW Agreement Delivery Date applicable to such Covered Counterparty. Lessee shall deliver a copy of each Covered Counterparty's LW Agreement to the Agency, the DCA and the Comptroller at the notice address specified in Section 12.5 and promptly upon written request. Lessee shall retain copies of each Covered Counterparty's LW Agreement until six (6) years after the expiration or earlier termination of such Covered Counterparty's Specified Contract.

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

(h) Lessee hereby acknowledges and agrees that the City, the DCA and the Comptroller are each intended to be third party beneficiaries of the terms and provisions of this Section 8.24. 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. Lessee hereby agrees that the DCA, the Comptroller and the Agency may bring an action for damages (but not in excess of the amounts set forth in paragraph (k) below), injunctive relief or specific performance or any other non-monetary action at law or in equity, in each case subject to the provisions of paragraph (k) below, as may be necessary or desirable to enforce the performance or observance of any obligations, agreements or covenants of Lessee (or of any Site Affiliate) under this Section 8.24. Notwithstanding anything herein to the contrary, no default or Event of Default under this Agreement shall occur by reason of Lessee's failure to perform or observe any obligation,

covenant or agreement contained in this Section 8.24 unless and until an LW Event of Default shall have occurred. The agreements and acknowledgements of Lessee set forth in this Section 8.24 may not be amended, modified or rescinded by Lessee without the prior written consent of the Agency or the DCA.

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

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

(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 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 Lessee's receipt of the LW Violation Notice, Lessee may either:

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

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

Asserted LW Violation and Asserted Cure (such statement, a "LW Violation Initial Determination"). Upon Lessee's receipt of the LW Violation Initial Determination, Lessee may either:

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

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

(ii) For the first LW Violation Final Determination imposed on Lessee or any Site Affiliate in respect of any direct Site Employees of Lessee or of a Site Affiliate, at the direction of the Agency or the DCA (but not both), (A) Lessee shall pay the Owed Monies and Owed Interest in respect of such direct Site Employees of Lessee or of a Site Affiliate to such direct Site Employees; and/or (B) in the case of a violation that does not result in monetary damages owed by Lessee, Lessee shall cure, or cause the cure of, such non-monetary violation.

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

(iv) For the second and any subsequent LW Violation Final Determinations imposed on Lessee or any Site Affiliate in respect of any direct Site Employees of Lessee or of a Site Affiliate, if the aggregate amount of Owed Monies and Owed Interest paid or payable by Lessee in respect of the direct Site Employees of

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

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

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

(vii) It is acknowledged and agreed that (A) other than as set forth in Section 8.2, the sole monetary damages that Lessee may be subject to for a violation of this Section 8.24 are as set forth in this paragraph (k), and (B) in no event will the Specified Contract between Lessee and a given Covered Counterparty be permitted to be terminated or rescinded by the Agency, the DCA or the Comptroller by virtue of violations by Lessee or another Covered Counterparty.

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

ARTICLE IX

REMEDIES AND EVENTS OF DEFAULT

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

(a) Failure of the Lessee to pay PILOT in accordance with Section 5.1 on or before the due date provided in a PILOT Bill and in the amount required in a PILOT Bill, or failure of the Lessee to pay all Real Estate Taxes in respect of the Facility Realty as required by, and in accordance with, Section 5.1(c);

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

(c) The occurrence of a Recapture Event;

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

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

(f) Failure of the Lessee to observe and perform any covenant, condition or agreement on its part to be performed under Sections 5.1 (except as set forth in Section 9.1(a)), 5.2, 5.3, 5.4, 8.2, 8.3, 8.8, 8.9, 8.11, 8.13, 8.17, 8.18, 8.20, 9.8, 11.2 or 11.3 or Article VI, and continuance of such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nature of such default from the Agency;

(g) Failure of the Lessee to observe and perform any covenant or agreement on its part to be performed under Section 4.7 or 9.7, and continuance of such failure for a period of fifteen (15) days after receipt by the Lessee of written notice specifying the nature of such default from the Agency;

(h) Failure of the Lessee to observe and perform any covenant, condition or agreement hereunder on its part to be performed (except as set forth in Section 9.1(a), (b), (c), (d), (e), (f) or (g)) and (i) continuance of such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nature of such failure from the Agency, or (ii) if by reason of the nature of such failure the same can be remedied, but not within the said thirty (30) days, the Lessee fails to commence and thereafter proceed with reasonable diligence after receipt of said notice to cure such failure or fails to continue with reasonable diligence its efforts to cure such failure or fails to cure such failure within sixty (60) days of receipt of said notice;

(i) The Lessee, the Sublessee or any other Guarantor shall (i) apply for or consent to the appointment of or the taking of possession by a receiver, liquidator, custodian or trustee of itself or of all or a substantial part of its property, (ii) admit in writing its inability, or

be generally unable, to pay its debts as such debts generally become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or adjustment of debts, (vi) fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against itself in an involuntary case under the Federal Bankruptcy Code, (vii) take any action for the purpose of effecting any of the foregoing, or (viii) be adjudicated a bankrupt or insolvent by any court;

(j) A proceeding or case shall be commenced, without the application or consent of the Lessee, the Sublessee or any other 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, the Sublessee or any other Guarantor or of all or any substantial part of its respective assets, or (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of ninety (90) days; or any order for relief against the Lessee, the Sublessee or any other Guarantor shall be entered in an involuntary case under the Federal Bankruptcy Code; the terms “dissolution” or “liquidation” of the Lessee, the Sublessee or any other Guarantor as used above shall not be construed to prohibit any action otherwise permitted by Section 8.20, Section 8 of the Sublease Agreement or Section 3.6 of the Guaranty Agreement;

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

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

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

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

(o) An “Event of Default” under the Sublease Agreement, the Guaranty Agreement or any other Permitted Encumbrance, including any Mortgage, shall occur and be continuing; or

(p) The occurrence of an LW Event of Default.

Section 9.2. Remedies on Default. (a) Whenever any Event of Default referred to in Section 9.1 shall have occurred and be continuing, the Agency may take any one or more of the following remedial steps:

(i) The Agency may terminate this Agreement (with the effect that the Term shall be deemed to have expired on such date of termination as if such date were the original Expiration Date of this Agreement) in which case this Agreement and all of the estate, right, title and interest herein granted or vested in the Lessee shall cease and terminate, and convey all of the Agency's right, title and interest in the Facility to the Lessee, which the Agency may accomplish by executing and recording, at the sole cost and expense of the Lessee, lease termination agreements to terminate the Company Lease and this Agreement of record as required by law and a bill of sale for the conveyance of the Facility Personalty to the Lessee (to the extent of any interest, if any, of the Agency in the Facility Personalty). The Lessee hereby waives delivery and acceptance of such termination agreements as a condition to their validity, and appoints the Agency its true and lawful agent and attorney-in-fact (which appointment shall be deemed to be an agency coupled with an interest) with full power of substitution to file on its behalf all affidavits, questionnaires and other documentation necessary to accomplish the recording of such termination agreements;

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

(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; or

(iv) The Agency may require the Lessee to pay, as if the date of demand by the Agency were the Expiration Date, any NPV-PILOMRT that may be due under and in accordance with Section 5.3(d)(y).

(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 (until such time as a Cessation Date occurs and, by reason thereof, the Lessee shall again pay Real Estate Taxes with respect to the Facility Realty), 5.2, 5.3, 5.4, 8.2, 8.24, 9.2, 9.6, 9.7, 9.8, 11.4, 11.5, 11.6, 11.11, 11.13 and 11.14, all of which shall survive any such action.

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

compliance by the Lessee with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such default by the Lessee be continued or repeated.

Section 9.4. No Additional Waiver Implied by One Waiver. In the event any covenant or agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver shall be binding unless it is in writing and signed by the party making such waiver. No course of dealing between the Agency and the Lessee or any delay or omission on the part of the Agency in exercising any rights hereunder or under any other Project Document shall operate as a waiver.

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

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

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

Section 9.8. Late Delivery Fees.

- (a) In the event the Lessee shall fail:
 - (i) to pay the Annual Administrative Fee on the date required under Section 8.3,
 - (ii) to file and/or deliver any of the documents required of the Lessee under Section 8.14 or Section 8.16 by the date therein stated (collectively, the “**Fixed Date Deliverables**”), or

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

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

(b) If the Agency shall deliver written notice (a “**Notification of Failure to Deliver**”) to the Lessee of such failure to deliver on the Due Date the Annual Administrative Fee, a Fixed Date Deliverable and/or a Requested Document Deliverable, and such payment or document shall not be delivered to the Agency within ten (10) Business Days following delivery by the Agency to the Lessee of the Notification of Failure to Deliver, then, commencing from and including the eleventh (11th) Business Day following the delivery by the Agency to the Lessee of the Notification of Failure to Deliver, the Agency may charge the Lessee on a daily calendar basis the Per Diem Supplemental Late Fee in respect of each noticed failure which shall be in addition to, and be imposed concurrently with, the applicable Per Diem Late Fee.

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

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

ARTICLE X

TERMINATION

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

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

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

(b) In the event the Lessee does not terminate the Company Lease and this Agreement (including taking all actions required to be taken by the Lessee pursuant to Section 10.3(a) within such ten (10) day period), then, commencing on the eleventh (11th) day after transmittal of the notice directing termination as provided in Section 10.2(a), the Lessee shall, in addition to all other payment obligations due to the Agency hereunder, make rental payments to the Agency in the amount of the Per Diem Holdover Rental Amount until the Lessee shall have terminated the Company Lease and this Agreement in accordance with the provisions thereof and hereof.

Section 10.3. Actions Upon Termination.

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

- (i) pay to NYCDOF any amounts due and payable pursuant to Section 5.1(i),
- (ii) pay any and all other Project Payments then due plus one dollar (\$1.00),
- (iii) perform all accrued obligations hereunder,
- (iv) deliver or cause to be delivered to the Agency (x) with respect to any Exempt Mortgage or Modified Exempt Mortgage (as the case may be), an executed satisfaction of such Mortgage in recordable form, executed by the Mortgagee, and (y)

with respect to any Mortgage on the Facility to which the Agency shall be a party and intended to continue beyond the termination of this Agreement but with respect to which Mortgage the Agency shall not have granted any deferral of Mortgage Recording Taxes, a release of the Agency from such Mortgage in recordable form executed by all other parties to such Mortgage.

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

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

(ii) a bill of sale with respect to the Facility Personalty (to the extent of any interest, if any, of the Agency in the Facility Personalty), and

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

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

Section 10.4. Survival of Lessee Obligations. Upon release of the Agency's interest in the Facility pursuant to Section 10.2 or 10.3, this Agreement and all obligations of the Lessee hereunder shall be terminated except the obligations of the Lessee under Sections 5.1 (until such time as the Agency shall cease to have a leasehold estate in the Facility and, by reason thereof, the Lessee shall again pay Real Estate Taxes with respect to the Facility Realty), 5.2, 5.3, 5.4, 8.2, 8.24, 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 5.1, 5.4, 8.1 or 8.2), so far as they are affected by such *force majeure*, shall be suspended during the continuance of the inability then claimed, which shall include a reasonable time for the removal of the effect thereof, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "*force majeure*" shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of any kind of the Government of the United States or of the State or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrest, restraining of government and people, war, terrorism, civil disturbances, explosions, partial or entire failure of utilities, shortages of labor, material, supplies or transportation, or any other act or event so long as such act or event is not reasonably foreseeable and 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 or inability to obtain financing constitute a *force majeure*. It is understood and agreed that the requirements that any *force majeure* shall be reasonably beyond the control of the party and shall be remedied with all reasonable dispatch shall be deemed to be satisfied in the event of a strike or other industrial disturbance even though existing or impending strikes or other industrial disturbances could have been settled by the party claiming a *force majeure* hereunder by acceding to the demands of the opposing person or persons.

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

Section 11.2. Priority. The Company Lease, this Agreement and the Sublease Agreement shall be subject and subordinate to any Mortgage and to the mortgage liens and security interests so created thereby; provided, however, that nothing in any Mortgage shall impair the Agency's ability to enforce its rights against the Lessee, the Sublessee or any other Guarantor.

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

Section 11.4. Service of Process. The Lessee represents that it is subject to service of process in the State and covenants that it will remain so subject until all obligations, covenants and agreements of the Lessee under this Agreement shall be satisfied and met. If for any reason the Lessee should cease to be so subject to service of process in the State, the Lessee hereby irrevocably consents to the service of all process, pleadings, notices or other papers in any judicial proceeding or action by designating and appointing the President of the Sublessee at 60 20th Street, Brooklyn, New York 11232, as its agent upon whom may be served all process, pleadings, notices or other papers which may be served upon the Lessee as a result of any of its obligations under this Agreement. If such appointed agent shall cease to act or otherwise cease to be subject to service of process in the State, the Lessee hereby irrevocably designates and appoints the Secretary of State of the State of New York as its agent upon whom may be served all process, pleadings, notices or other papers which may be served upon the Lessee as a result of any of its obligations under this Agreement; provided, however, that the service of such process, pleadings, notices or other papers shall not constitute a condition to the Lessee's obligations hereunder.

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

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

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

- (1) if to the Agency, to

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

(2) if to the Lessee, to

GG Master Realty LLC
c/o Krasnyi Oktyabr, Inc.
60 20th Street
Brooklyn, New York 11232
Attention: President

with a copy to

Lowenthal & Kofman, P.C.
2001 Flatbush Avenue
Brooklyn, New York 11234
Attention: Martin Kofman, Esq.

(3) if to the DCA, to

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

(4) if to the Comptroller, to

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

Section 11.6. Consent to Jurisdiction. The Lessee irrevocably and unconditionally (i) agrees that any suit, action or other legal proceeding arising out of this Agreement or any other Project Document, the Facility, the Project, the relationship between the

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

If the Lessee commences any action against the Agency in a court located other than the courts of record of the State in New York County or the United States District Court for the Southern District of New York, the Lessee shall, upon request from the Agency, either consent to a transfer of the action or proceeding to a court of record of the State in New York County or the United States District Court for the Southern District of New York, or, if the court where the action or proceeding is initially brought will not or cannot transfer the action, the Lessee shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of record of the State in New York County or the United States District Court for the Southern District of New York.

Section 11.7. Prior Agreements Superseded. This Agreement shall completely and fully supersede all other prior understandings or agreements, both written and oral, between the Agency and the Lessee relating to the Facility, other than the Company Lease or any other Project Document.

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

Section 11.9. Effective Date; Counterparts. The date of this Agreement shall be for reference purposes only and shall not be construed to imply that this Agreement was executed on the date first above written. This Agreement was delivered on the 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.

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

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

Section 11.14. Recourse Under This Agreement. All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency, and not of any member, director, officer, employee or agent of the Agency or any natural person executing this Agreement on behalf of the Agency in such person's individual capacity, and no recourse shall be had for any reason whatsoever hereunder against any member, director, officer, employee or agent of the Agency or any natural person executing this Agreement on behalf of the Agency. In addition, in the performance of the agreements of the Agency herein contained, any obligation the Agency may incur for the payment of money shall not subject the Agency to any pecuniary or other liability or create a debt of the State or the City, and neither the State nor the City shall be liable on any obligation so incurred and any such obligation shall be payable solely out of amounts payable to the Agency by the Lessee hereunder.

Section 11.15. Legal Counsel; Mutual Drafting. Each party acknowledges that this Agreement is a legally binding contract and that it was represented by legal counsel in connection with the drafting, negotiation and preparation of this Agreement. Each party acknowledges that it and its legal counsel has cooperated in the drafting, negotiation and preparation of this Agreement and agrees that this Agreement and any provision hereof shall be construed, interpreted and enforced without regard to any presumptions against the drafting party. Each party hereby agrees to waive any rule, doctrine or canon of law, including without limitation, the *contra preferentum* doctrine, that would require interpretation of any ambiguities in this Agreement against the party that has drafted it.

[Signature Page Follows]

IN WITNESS WHEREOF, the Agency has caused its corporate name to be subscribed unto this Agency Lease Agreement by its duly authorized Chairman, Vice Chairman, Executive Director, Deputy Executive Director 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 year and day first above written.

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**

By: 

Jeffrey Lee
Executive Director

GG MASTER REALTY LLC

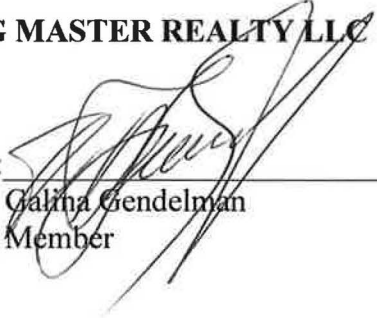
By: _____
Galina Gendelman
Member

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 year and day first above written.

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Jeffrey Lee
Executive Director

GG MASTER REALTY LLC

By:  _____
Galina Gendelman
Member

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

On the 10 day of December, in the year two thousand fifteen, before me, the undersigned, personally appeared Jeffrey Lee, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

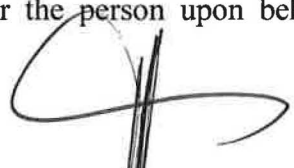
FRANCES TUFANO
Notary Public, State of New York
No. 01TU5080131
Qualified in Queens County
Commission Expires June 16, 2014



Notary Public/Commissioner of Deeds

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

On the 10 day of December, 2015, in the year two thousand fifteen, before me, the undersigned, personally appeared Galina Gendelman, 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 she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

MARTIN SILVERSTEIN
Notary
Notary Public, State of New York
Commission Expires Nov. 30, 2017
MARTIN SILVERSTEIN
Notary Public, State of New York
No. 01-SI-4696011
Qualified in Nassau County
Commission Expires Nov. 30, 2017

APPENDICES

EXHIBIT A

DESCRIPTION OF THE LAND

All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

BEGINNING at a point on the southerly side of 19th Street, 60 feet wide, distant 659 feet 6 inches westerly from the corner formed by the intersection of the southerly side of 19th Street with the westerly side of 3rd Avenue, 100 feet wide;

RUNNING THENCE southerly parallel with 3rd Avenue, and part of the distance through a party wall, 170 feet 4 inches;

THENCE westerly parallel with 19th Street, 89 feet 2 inches;

THENCE northerly parallel with 3rd Avenue, and part of the distance through a party wall, 170 feet 4 inches to the southerly side of 19th Street; and

THENCE easterly along the southerly side of 19th Street, 89 feet 2 inches to the point or place of BEGINNING.

Being the same premises as conveyed in Liber/Reel: 2870 Page: 1784

FOR INFORMATION ONLY:

Said Premises being known as 60 20th St Brooklyn NY and Section: 03 Block: 635 Lot: 10


DESCRIPTION OF THE FACILITY PERSONALTY

NONE


EXHIBIT C

AUTHORIZED REPRESENTATIVE

(i) of the Lessee:

<u>Name</u>	<u>Title</u>	<u>Signature</u>
Galina Gendelman	Member	

(ii) of the Sublessee:

<u>Name</u>	<u>Title</u>	<u>Signature</u>
KD Family Trust, Gregoriy Katsura, trustee	Sole Shareholder	

(iii) of the Trust:


<u>Name</u>	<u>Title</u>	<u>Signature</u>
Gregoriy Katsura	Trustee	

EXHIBIT D-1

Principals

Lessee:

Name

Title

Galina Gendelman
Gregoriy Katsura

Member
Member

Sublessee:

Name

Title

KD Family Trust

Sole Shareholder

EXHIBIT D-2

OWNERS OF THE LESSEE

INDIVIDUAL OWNERS	
Name	% Ownership or Control of the Lessee
Galina Gendelman	50%
Gregoriy Katsura	50%

ENTITY OWNERS	
Name	% Ownership or Control of the Lessee

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

OWNERS OF THE SUBLESSEE

INDIVIDUAL OWNERS	
Name	% Ownership or Control of the Sublessee

ENTITY OWNERS	
Name	% Ownership or Control of the Sublessee
KD Family Trust	

OWNERS of those ENTITIES that own or control more than 10% of the Sublessee ("10% Entities")		
10% ENTITY (name and actual %)	INDIVIDUAL AND ENTITY OWNERS	% Ownership or Control
	Galina Gendelman	50%
	Gregoriy Katsura	50%

EXHIBIT E

PROJECT COST BUDGET

	<u>Mortgage Loan</u>	<u>Funds of Lessee and/or Sublessee</u>	<u>Total</u>
Land and Building Acquisition	\$3,650,000	\$1,350,000	\$5,000,000
Fees/Other Soft Costs		<u>75,000</u>	<u>75,000</u>
Total	<u>\$3,650,000</u>	<u>\$1,425,000</u>	<u>\$5,075,000</u>

[FORM OF REQUIRED DISCLOSURE STATEMENT]

The undersigned, an authorized representative of _____, a _____ organized and existing under the laws of the State of _____, DOES HEREBY CERTIFY, REPRESENT AND WARRANT to the New York City Industrial Development Agency (the "Agency") pursuant to [Section 8.20] [Section 8.9] of that certain Agency Lease Agreement, dated as of _____ 1, 201_, between the Agency and _____, a _____ organized and existing under the laws of the State of _____ (the "Lease Agreement") THAT:

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

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

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

2. has been convicted of a 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 a 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.

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

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this _____ day of _____, 201_.

[NAME OF CERTIFYING ENTITY]

By: _____

Name:

Title:

PROJECT FINANCE PLAN

The plan for financing the cost of the Project, which the Lessee estimates to be \$5,075,000, from the following sources:

(i) a loan in the principal amount of \$3,650,000 to be made by Bank of America, N.A. (the "First Mortgagee") to the Lessee (the "First Mortgage Loan") on the Commencement Date, and to be evidenced by a certain mortgage note (as the same may be amended or supplemented, the "First Mortgage Note") dated the Commencement Date and in the principal amount of the First Mortgage Loan, and to be secured by a first mortgage on the Facility Realty pursuant to a certain mortgage and security agreement dated the Commencement Date (as the same may be amended or supplemented, the "First Mortgage") from the Lessee and the Agency to the First Mortgagee; and

(ii) equity from the Lessee and/or the Sublessee in the amount of \$1,425,000.

EXHIBIT H
FORM OF LW AGREEMENT

LIVING WAGE AGREEMENT

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

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

“Agency” means New York City Industrial Development Agency, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having its principal office at 110 William Street, New York, New York 10038.

“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.

“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.

“Concessionaire” means a Person that has been granted the right by Lessee, an Affiliate of Lessee or any tenant, subtenant, leaseholder or subleaseholder of Lessee or of an Affiliate of Lessee to operate at the Facility for the primary purpose of selling goods or services to natural persons at the Facility.

“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) if Lessee is a “covered developer” under and as defined in the Prevailing Wage Law, 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 the land and real property improvements located at 60 20th Street, Brooklyn, New York 11232, being Block 635 and Lot 10.

“Lessee” means GG Master Realty LLC, a limited liability company organized and existing under the laws of the State of New York, having its principal office at 60 20th Street, Brooklyn, New York 11232, or its permitted successors or assigns as Lessee under the Project Agreement.

“LW” has the same meaning as the term “living wage” as defined in Section 6-134(b)(9) of the New York City Administrative Code and shall be adjusted annually in

accordance therewith, except that as of April 1, 2015, the “living wage rate” component of the LW shall be eleven dollars and sixty-five cents per hour (\$11.65/hour) and the “health benefits supplement rate” component of the LW shall be one dollar and sixty-five cents per hour (\$1.65/hour). The annual adjustments to the “living wage rate” and “health benefits supplement rate” will be announced on or around January 1 of each year by the DCA and will go into effect on April 1 of such year.

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

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

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

“LW Term” means the period commencing on the date of this Agreement and ending on the date that is the earlier to occur of: (a) the later to occur of (i) the date on which Lessee is no longer receiving financial assistance under the Project Agreement or (ii) the date that is ten years after the Commencement Date (as defined in the Project Agreement); or (b) the end of the term of Obligor’s Specified Contract (including any renewal or option terms pursuant to any exercised options), whether by early termination or otherwise.

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

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

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

“LW Violation Threshold” means \$100,000 multiplied by 1.03^n , 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 December 1, 2015, between the Agency and the Lessee (as amended, restated, supplemented or otherwise modified from time to time), pursuant to which Lessee has or will receive financial assistance from the Agency.

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

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

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

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

2. Commencing on the Operational Date and thereafter during the remainder of the LW Term, if and for so long as Obligor is a Covered Employer, Obligor shall pay each of its direct Site Employees no less than an LW.
3. Commencing on the Operational Date and thereafter during the remainder of the LW Term, if and for so long as Obligor is a Covered Employer, Obligor shall, on or prior to the day on which each direct Site Employee of Obligor begins work at the Obligor Facility, (a) post a written notice detailing the wages and benefits required to be paid to Site Employees under this Agreement in a conspicuous place at the Obligor Facility that is readily observable by such direct Site Employee and (b) provide such direct Site Employee with a written notice detailing the wages and benefits required to be paid to Site Employees under this Agreement. Such written notice shall also provide a statement advising Site Employees that if they have been paid less than the LW they may notify the Comptroller and request an investigation. Such written notice shall be in English and Spanish.
4. Commencing on the Operational Date and thereafter during the remainder of the LW Term, if and for so long as Obligor is a Covered Employer, Obligor shall not take any adverse employment action against any Site Employee for reporting or asserting a violation of this Agreement.
5. During the LW Term, Obligor shall cause each Covered Counterparty to execute an LW Agreement on or prior to the LW Agreement Delivery Date applicable to such Covered Counterparty; provided that Obligor shall only be required to use commercially reasonable

efforts (without any obligation to commence any action or proceedings) to obtain an LW Agreement from a Covered Counterparty whose Specified Contract with Obligor was entered into prior to the date hereof (a “Pre-Existing Covered Counterparty” and a “Pre-Existing Specified Contract”). Prior to the renewal or extension of any Pre-Existing Specified Contract (or prior to entering into a new Specified Contract with a Pre-Existing Covered Counterparty), Obligor shall cause or otherwise require the Pre-Existing Covered Counterparty to execute an LW Agreement, provided that the foregoing shall not preclude Obligor from renewing or extending a Pre-Existing Specified Contract pursuant to any renewal or extension options granted to the Pre-Existing Covered Counterparty in the Pre-Existing Specified Contract as such option exists as of the date hereof. Obligor shall deliver a copy of each Covered Counterparty’s LW Agreement to the Agency, the DCA and the Comptroller at the notice address specified in paragraph 12 below and promptly upon written request. Obligor shall retain copies of each Covered Counterparty’s LW Agreement until six (6) years after the expiration or earlier termination of such Covered Counterparty’s Specified Contract.

6. Commencing on the Operational Date and thereafter during the remainder of the LW Term, in the event that an individual with managerial authority at Obligor receives a written complaint from any Site Employee (or such individual otherwise obtains actual knowledge) that any Site Employee has been paid less than an LW, Obligor shall deliver written notice to the Agency, the DCA and the Comptroller within 30 days thereof.
7. Obligor hereby acknowledges and agrees that the Agency, the City, the DCA and the Comptroller are each intended to be direct beneficiaries of the terms and provisions of this Agreement. Obligor hereby acknowledges and agrees that the DCA, the Comptroller and the Agency shall each have the authority and power to enforce any and all provisions and remedies under this Agreement in accordance with paragraph 10 below. Obligor hereby agrees that the DCA, the Comptroller and the Agency may, as their sole and exclusive remedy for any violation of Obligor’s obligations under this Agreement, bring an action for damages (but not in excess of the amounts set forth in paragraph 10 below), injunctive relief or specific performance or any other non-monetary action at law or in equity, in each case subject to the provisions of paragraph 10 below, as may be necessary or desirable to enforce the performance or observance of any obligations, agreements or covenants of Obligor under this Agreement. The agreements and acknowledgements of Obligor set forth in this Agreement may not be amended, modified or rescinded by Obligor without the prior written consent of the Agency or the DCA.
8. No later than 30 days after Obligor’s receipt of a written request from the Agency, the DCA and/or the Comptroller, Obligor shall provide to the Agency, the DCA and the Comptroller (a) a written list of all Covered Counterparties, together with the LW Agreements of such Covered Counterparties. From and after the Operational Date, no later than 30 days after Obligor’s receipt of a written request from the Agency, the DCA and/or the Comptroller, Obligor shall provide to the Agency, the DCA and the Comptroller (b) a certification stating that all of the direct Site Employees of Obligor are paid no less than an LW and stating that Obligor is in compliance with this Agreement in all material respects, (c) certified payroll records in respect of the direct Site Employees of Obligor, and/or (d) any other documents or

information reasonably related to the determination of whether Obligor is in compliance with its obligations under this Agreement.

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

10. Violations and Remedies.

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

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

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

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

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

- (b) For the first LW Violation Final Determination imposed on Obligor in respect of any direct Site Employees of Obligor, at the direction of the Agency or the DCA (but not both), (i) Obligor shall pay the Owed Monies and Owed Interest in respect of such direct Site Employees of Obligor to such direct Site Employees; and/or (ii) in the case of a violation that does not result in monetary damages owed by Obligor, Obligor shall cure, or cause the cure of, such non-monetary violation
- (c) For the second and any subsequent LW Violation Final Determinations imposed on Obligor in respect of any direct Site Employees of Obligor, at the direction of the Agency or the DCA (but not both), (i) Obligor shall pay the Owed Monies and Owed Interest in respect of such direct Site Employees of Obligor to such direct Site Employees, and Obligor shall pay fifty percent (50%) of the total amount of such Owed Monies and Owed Interest to the DCA as an administrative fee; and/or (ii) in the case of a violation that does not result in monetary damages owed by Obligor, Obligor shall cure, or cause the cure of, such non-monetary violation.
- (d) For the second and any subsequent LW Violation Final Determinations imposed on Obligor in respect of any direct Site Employees of Obligor, if the aggregate amount of Owed Monies and Owed Interest paid or payable by Obligor in respect of its direct Site Employees is in excess of the LW Violation Threshold for all past and present LW Violation Final Determinations imposed on Obligor, then in lieu of the remedies specified in subparagraph (c) above and at the direction of the Agency or the DCA (but not both), Obligor shall pay (i) two hundred percent (200%) of the Owed Monies and Owed Interest in respect of the present LW Violation Final Determination to the affected direct Site Employees of Obligor, and (ii) fifty percent (50%) of the total amount of such Owed Monies and Owed Interest to the DCA as an administrative fee.
- (e) If Obligor fails to obtain an LW Agreement from its Covered Counterparty in violation of paragraph 5 above, then at the discretion of the Agency or the DCA

(but not both), Obligor shall be responsible for payment of the Owed Monies, Owed Interest and other payments described in subparagraphs (b), (c) and (d) above (as applicable) as if the direct Site Employees of such Covered Counterparty were the direct Site Employees of Obligor.

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

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

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

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

(a) If to Obligor, to [Obligor's Name], [Street Address], [City], [State], [Zip Code], Attention: [Contact Person].

(b) If to the Agency, to New York City Industrial Development Agency, 110 William Street, New York, NY, 10038, Attention: General Counsel, with a copy to New York City Industrial Development Agency, 110 William Street, New York, NY, 10038, Attention: Executive Director.

(c) If to the DCA, to Department of Consumer Affairs of The City of New York, 42 Broadway, New York, NY, 10004, Attention: Living Wage Division.

(d) If to the Comptroller, to Office of the Comptroller of The City of New York, One Centre Street, New York, NY 10007, Attention: Chief, Bureau of Labor Law.

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

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

[_____]

By: _____

Name:

Title:

**ATTACHMENT 1 to EXHIBIT H
FORM OF LW AGREEMENT**

LIVING WAGE AGREEMENT

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

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

“Agency” means New York City Industrial Development Agency, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having its principal office at 110 William Street, New York, New York 10038.

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

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

“City” means The City of New York.

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

“Covered Employer” means Obligor; provided, however, that the term “Covered Employer” shall not include (i) a Person of the type described in Section 6-134(d)(2), (3), (4) or (5) of the New York City Administrative Code, (ii) a Person that has annual consolidated gross revenues that are less than the Small Business Cap unless the revenues of the Person are included in the consolidated gross revenues of a Person having annual consolidated gross revenues that are more than the Small Business Cap, in each case calculated based on the fiscal year preceding the fiscal year in which the determination is being made, and in each calculated in accordance with generally accepted accounting principles, (iii) any otherwise covered Person operating on any portion of the Obligor Facility if residential units comprise more than 75% of the total Facility area and all of the residential units are subject to rent regulation, (iv) any otherwise covered Person that the Agency has determined (in its sole and absolute discretion) in writing to be exempt on the basis that it works significantly with a Qualified Workforce Program, (v) a Person whose Site Employees all are paid wages determined pursuant to a collective bargaining or labor agreement, (vi) if Lessee is a “covered developer” under and as defined in the Prevailing Wage Law, 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 the land and real property improvements located at 60 20th Street, Brooklyn, New York 11232, being Block 635 and Lot 10.

“Lessee” means GG Master Realty LLC, a limited liability company organized and existing under the laws of the State of New York, having its principal office at 60 20th Street, Brooklyn, New York 11232, or its permitted successors or assigns as Lessee under the Project Agreement.

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

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

“LW Term” means the period commencing on the date of this Agreement and ending on the date that is the earlier to occur of: (a) the later to occur of (i) the date on which Lessee is no longer receiving financial assistance under the Project Agreement or (ii) the date that is ten years after the Commencement Date (as defined in the Project Agreement); or (b) the end of the term of Obligor’s Specified Contract (including any renewal or option terms pursuant to any exercised options), whether by early termination or otherwise.

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

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

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

“LW Violation Threshold” means \$100,000 multiplied by 1.03^n , 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 December 1, 2015, between the Agency and the Lessee (as amended, restated, supplemented or otherwise modified from time to time), pursuant to which Lessee has or will receive financial assistance from the Agency.

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

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

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

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

2. Commencing on the Operational Date and thereafter during the remainder of the LW Term, if and for so long as Obligor is a Covered Employer, Obligor shall pay each of its direct Site Employees no less than an LW.
3. Commencing on the Operational Date and thereafter during the remainder of the LW Term, if and for so long as Obligor is a Covered Employer, Obligor shall, on or prior to the day on which each direct Site Employee of Obligor begins work at the Obligor Facility, (a) post a written notice detailing the wages and benefits required to be paid to Site Employees under this Agreement in a conspicuous place at the Obligor Facility that is readily observable by such direct Site Employee and (b) provide such direct Site Employee with a written notice detailing the wages and benefits required to be paid to Site Employees under this Agreement. Such written notice shall also provide a statement advising Site Employees that if they have been paid less than the LW they may notify the Comptroller and request an investigation. Such written notice shall be in English and Spanish.
4. Commencing on the Operational Date and thereafter during the remainder of the LW Term, if and for so long as Obligor is a Covered Employer, Obligor shall not take any adverse employment action against any Site Employee for reporting or asserting a violation of this Agreement.
5. Commencing on the Operational Date and thereafter during the remainder of the LW Term, in the event that an individual with managerial authority at Obligor receives a written complaint from any Site Employee (or such individual otherwise obtains actual knowledge) that any Site Employee has been paid less than an LW, Obligor shall deliver written notice to the Agency, the DCA and the Comptroller within 30 days thereof.
6. Obligor hereby acknowledges and agrees that the Agency, the City, the DCA and the Comptroller are each intended to be direct beneficiaries of the terms and provisions of this Agreement. Obligor hereby acknowledges and agrees that the DCA, the Comptroller and the Agency shall each have the authority and power to enforce any and all provisions and remedies under this Agreement in accordance with paragraph 9 below. Obligor hereby agrees that the DCA, the Comptroller and the Agency may, as their sole and exclusive remedy for any violation of Obligor’s obligations under this Agreement, bring an action for damages (but not in excess of the amounts set forth in paragraph 9 below), injunctive relief or specific performance or any other non-monetary action at law or in equity, in each case subject to the provisions of paragraph 9 below, as may be necessary or desirable to enforce the performance or observance of any obligations, agreements or covenants of Obligor under this Agreement. The agreements and acknowledgements of Obligor set forth in this

Agreement may not be amended, modified or rescinded by Obligor without the prior written consent of the Agency or the DCA.

7. From and after the Operational Date, no later than 30 days after Obligor's receipt of a written request from the Agency, the DCA and/or the Comptroller, Obligor shall provide to the Agency, the DCA and the Comptroller (a) a certification stating that all of the direct Site Employees of Obligor are paid no less than an LW and stating that Obligor is in compliance with this Agreement in all material respects, (b) certified payroll records in respect of the direct Site Employees of Obligor, and/or (c) any other documents or information reasonably related to the determination of whether Obligor is in compliance with its obligations under this Agreement.
8. From and after the Operational Date, Obligor shall, annually by August 1 of each year during the LW Term, submit to its counterparty to its Specified Contract such data in respect of employment, jobs and wages at the Obligor Facility as of June 30 of such year that is needed by Lessee for it to comply with its reporting obligations under the Project Agreement.

9. Violations and Remedies.

(a) If a violation of this Agreement shall have been alleged by the Agency, the DCA and/or the Comptroller, then written notice will be provided to Obligor for such alleged violation (an "LW Violation Notice"), specifying the nature of the alleged violation in such reasonable detail as is known to the Agency, the DCA and the Comptroller (the "Asserted LW Violation") and specifying the remedy required under paragraph 9(b), (c) and/or (d) (as applicable) to cure the Asserted LW Violation (the "Asserted Cure"). Upon Obligor's receipt of the LW Violation Notice, Obligor may either:

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

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

- (1) Accept the LW Violation Initial Determination and shall perform the Asserted Cure specified in the LW Violation Initial Determination no later than 30 days after its receipt of the LW Violation Initial Determination (after such 30 day period has lapsed, but subject to clause (2) below, the LW Violation Initial Determination shall be deemed to be a "LW Violation Final Determination"), or
 - (2) Contest the LW Violation Initial Determination by filing in a court of competent jurisdiction or for an administrative hearing no later than 30 days after its receipt of the LW Violation Initial Determination, in which case, Obligor's obligation to perform the Asserted Cure shall be stayed pending resolution of the action. If no filing in a court of competent jurisdiction or for an administrative hearing is made to contest the LW Violation Initial Determination within 30 days after Obligor's receipt thereof, then the LW Violation Initial Determination shall be deemed to be a "LW Violation Final Determination". If such a filing is made, then a "LW Violation Final Determination" will be deemed to exist when the matter has been finally adjudicated. Obligor shall perform the Asserted Cure (subject to the judicial decision) no later than 30 days after the LW Violation Final Determination.
- (b) For the first LW Violation Final Determination imposed on Obligor in respect of any direct Site Employees of Obligor, at the direction of the Agency or the DCA (but not both), (i) Obligor shall pay the Owed Monies and Owed Interest in respect of such direct Site Employees of Obligor to such direct Site Employees; and/or (ii) in the case of a violation that does not result in monetary damages owed by Obligor, Obligor shall cure, or cause the cure of, such non-monetary violation.
 - (c) For the second and any subsequent LW Violation Final Determinations imposed on Obligor in respect of any direct Site Employees of Obligor, at the direction of the Agency or the DCA (but not both), (i) Obligor shall pay the Owed Monies and Owed Interest in respect of such direct Site Employees of Obligor to such direct Site Employees, and Obligor shall pay fifty percent (50%) of the total amount of such Owed Monies and Owed Interest to the DCA as an administrative fee, and/or (ii) in the case of a violation that does not result in monetary damages owed by Obligor, Obligor shall cure, or cause the cure of, such non-monetary violation.
 - (d) For the second and any subsequent LW Violation Final Determinations imposed on Obligor in respect of any direct Site Employees of Obligor, if the aggregate amount of Owed Monies and Owed Interest paid or payable by Obligor in respect of its direct Site Employees is in excess of the LW Violation Threshold for all past and present LW Violation Final Determinations imposed on Obligor, then in lieu of the remedies specified in subparagraph (c) above and at the direction of the Agency or the DCA (but not both), Obligor shall pay (i) two hundred percent (200%) of the Owed Monies and Owed Interest in respect of the present LW

Violation Final Determination to the affected direct Site Employees of Obligor, and (ii) fifty percent (50%) of the total amount of such Owed Monies and Owed Interest to the DCA as an administrative fee.

- (e) It is acknowledged and agreed that the sole monetary damages that Obligor may be subject to for a violation of this Agreement are as set forth in this paragraph 9.
10. Obligor acknowledges that the terms and conditions of this Agreement are intended to implement the Mayor's Executive Order No. 7 dated September 30, 2014.
11. All notices under this Agreement shall be in writing and shall be delivered by (a) return receipt requested or registered or certified United States mail, postage prepaid, (b) a nationally recognized overnight delivery service for overnight delivery, charges prepaid, or (c) hand delivery, addressed as follows:
- (a) If to Obligor, to [Obligor's Name], [Street Address], [City], [State], [Zip Code], Attention: [Contact Person].
 - (b) If to the Agency, to New York City Industrial Development Agency, 110 William Street, New York, NY, 10038, Attention: General Counsel, with a copy to New York City Industrial Development Agency, 110 William Street, New York, NY, 10038, Attention: Executive Director.
 - (c) If to the DCA, to Department of Consumer Affairs of The City of New York, 42 Broadway, New York, NY, 10004, Attention: Living Wage Division.
 - (d) If to the Comptroller, to Office of the Comptroller of The City of New York, One Centre Street, New York, NY 10007, Attention: Chief, Bureau of Labor Law.
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: