Execution Version

# AGREEMENT OF LEASE

**by and between**

**THE CITY OF NEW YORK,**
**as Landlord**

**and**

**ST. GEORGE OUTLET DEVELOPMENT LLC**
**as Tenant**

Premises:

Block 2, Lot 15
(formerly known as parts of Lots 1, 5, 10 and 20 on Block 2)
in the Borough of Staten Island, County of Richmond,
City and State of New York

Dated as of December 31, 2013

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## EXHIBITS AND SCHEDULES

**THIS AGREEMENT OF LEASE** (this "Lease"), is made as of December 31, 2013 (the "Effective Date"), between THE CITY OF NEW YORK, a municipal corporation of the State of New York (the "City") having an address at City Hall, New York, New York 10007 (acting by and through its DEPARTMENT OF SMALL BUSINESS SERVICES) as landlord, and ST. GEORGE OUTLET DEVELOPMENT LLC a New York limited liability company having an address at 150 Myrtle Avenue, 2nd Floor, Brooklyn, New York, as tenant ("Developer Tenant").

## RECITALS

WHEREAS, the City is the owner of good and marketable fee title in and to that certain real property (including all buildings, structures and/or improvements (including the Aqua Swirl) now or hereafter located thereat) designated as Block 2, Lot 15 (formerly designated as parts of Lots 1, 5, 10 and 20) on the Tax Map for the Borough of Staten Island, excluding the MTA Leased Area and the CSX Parcel (each as defined below), as more particularly described in Exhibit A (Legal Description of Premises) attached hereto and incorporated herein (the "Premises");

WHEREAS, the City desires to encourage the development of the Premises so as to complement and bolster economic growth in St. George, Staten Island, and the City, to connect to and complement the area's existing waterfront amenities and other assets, and to improve the environmental quality of the St. George waterfront while being sensitive to the natural environment (the "Project Mission");

WHEREAS, the City has retained New York City Economic Development Corporation, a New York not-for-profit corporation ("NYCEDC"), pursuant to that certain Amended and Restated Maritime Contract dated as of June 30, 2013 (as amended from time to time, the "NYCEDC Contract") to perform certain economic development services described therein;

WHEREAS, to facilitate the development of the Premises, and consistent with the NYCEDC Contract, NYCEDC issued a Request for Expressions of Interest released on August 11, 2011 (the "RFEI") with respect to the Premises and certain other property in St. George, Staten Island;

WHEREAS, based on the responses to the RFEI and certain supplementary information and materials submitted to NYCEDC in connection therewith, including the proposal and supplementary information and materials submitted by BFC Partners, L.P., a New York limited partnership ("BFC" or the "Developer"), the Developer has been selected to undertake the development of the Premises and the Off-Premises Improvements, each as set forth in this Lease (the "Project");

WHEREAS, NYCEDC, in selecting the Developer, and the City in authorizing this Lease, have materially relied upon the Developer's commitment to develop the Project as described in Exhibit B (Project Commitments) annexed hereto, which sets forth, among other things, (i) a detailed description of the elements of the Project to be constructed and developed and a timetable and phasing plan therefor, (ii) an operational program for the Project, and (iii) specific construction milestones for the Project which Tenant has committed to perform and

maintain during the Term of this Lease (the milestones, deadlines, commitments and site plan set forth in Exhibit B (Project Commitments) are referred to herein as, the "Project Commitments");

WHEREAS, the Developer Principals caused BFC/St. George LLC, a New York limited liability company (the "BFC Parent Entity"), to be formed on or around November 25, 2013 as an entity wholly-owned by the Developer Principals and caused Developer Tenant to be formed on or about August 10, 2012 as an entity now wholly owned by the BFC Parent Entity and by Empire Outlets Investor LLC ("EOI"), a Delaware limited liability company and Affiliate of Goldman Sachs Bank USA, as a Retail Partner;

WHEREAS, in furtherance of the Project, the Developer Principals and Developer Tenant, as tenant, each desire for the Developer Tenant to lease the Premises from the City, and the City, as landlord, desires to lease the Premises to Developer Tenant, and consistent with the NYCEDC Contract, NYCEDC is appointed by the City to administer this Lease and act for and on behalf of the City with respect to the City's proprietary interest in the Premises and the City's rights, and to discharge and perform certain of the City's obligations as landlord as further provided hereunder (or cause one or more of NYCEDC's contractors to perform any such work or obligations);

WHEREAS, as of August 20, 2012, NYCEDC and Developer Tenant entered into a pre-development agreement (the "Pre-Development Agreement") a copy of which is attached hereto at Exhibit C (Pre-Development Agreement), pursuant to which, among other provisions, NYCEDC and Developer Tenant have undertaken various obligations including, subject to the satisfaction of certain conditions set forth in the Pre-Development Agreement, the obligation to enter into this Lease;

WHEREAS, the City's Planning Commission on September 11, 2013 (Calendar No. 30) and the New York City Council on October 30, 2013 approved the disposition and rezoning of the Premises and the development of the Premises as contemplated in the Approved ULURP Application, pursuant to the City's Uniform Land Use Review Procedure as codified under Sections 197-c and 197-d of the Charter ("ULURP") and such approval has been filed on October 30, 2013 with the Department of City Planning;

WHEREAS, Tenant anticipates seeking an exemption or deferral from mortgage recording taxes from the NYCIDA and in connection with any such exemption or deferral Tenant would enter into a sublease of the Premises to the NYCIDA pursuant to a Company Lease Agreement (the "NYCIDA Sublease") and the NYCIDA would enter into a sub-Sublease of the Premises to Tenant pursuant to an Agency Lease Agreement (the "NYCIDA Sub-Sublease"); and

WHEREAS, the conditions precedent to the execution of this Lease as set forth in the Pre-Development Agreement have been satisfied or waived in accordance therewith.

NOW THEREFORE, it is hereby mutually covenanted and agreed by and between the parties hereto that this Lease is made upon the terms, covenants, and conditions hereinafter set forth.

## ARTICLE 1
## DEFINITIONS AND INTERPRETATION

Section 1.1 Definitions. For all purposes of this Lease and, unless otherwise indicated therein, all agreements supplemental hereto the terms defined in this Article 1 shall have the following meanings:

"AAA Rules" has the meaning provided in Section 42.1(a) hereof.

"Abatement Base" has the meaning provided in Section 3.8(g) hereof.

"Acceptable Guarantor" means, (a) with respect to the initial guaranty issued or to be issued to Landlord in accordance with Section 13.4(g), each of the Developer Principals together with BFC, and (b) following execution and delivery to Landlord of such guaranty, if any Developer Principal (i) is unable or unwilling to provide the Standby Completion Guaranty or any other guaranty contemplated hereunder due to (i) a failure to meet the Guarantor Net Worth Test, or (ii) a Permitted Removal of any or all of the Developer Principals, then another domestic Person or Persons reasonably acceptable to the City and Lease Administrator.

"Accounting Principles" means the then current 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 their respective successor organizations) or through other appropriate boards or committees thereof, and that are consistently applied for all periods after the Effective Date.

"Actual Incremental Remediation Costs" means the reasonable, documented out-of-pocket incremental costs and expenses incurred by Tenant to undertake or cause the undertaking of all Remediation Work at the Premises to remediate any Hazardous Substance Conditions in accordance with the Remediation Work Plan, this Lease and applicable Requirements, as such costs and expenses are reported in the Credit Claim in accordance with Section 21.3; provided, that such incremental costs and expenses shall be those costs and expenses which exceed the customary costs of removing normal urban fill (i.e. without any Hazardous Substances or underground storage tanks) common to the City and County of Richmond, as such customary costs shall have been provided to Developer by NYCEDC upon request.

"Additional Rent" means any and all sums and payments, other than Base Rent, the Percentage Rent, and the Hotel Percentage Rent that this Lease requires Tenant to pay to Landlord or any third party, whether or not expressly designated as Additional Rent, including the Esplanade Maintenance Contribution and the Additional Rent Charge.

"Additional Rent Charge No. 1" has the meaning provided in Section 3.7(c) hereof.

"Additional Rent Charge No. 2" has the meaning provided in Section 3.7(d) hereof.

"Additional Security Deposit" has the meaning provided in Section 33.1(b).

"Adjacent Property Owners" means any Person who owns real estate which is located adjacent to the Premises, leases or licenses real estate from the City which is located adjacent to the Premises, or manages or operates property which is located adjacent to the Premises.

"Adjusted for Inflation" means, with respect to any sum, that there shall be added to such sum (as the same may have been previously adjusted), beginning on the Effective Date unless otherwise specified, on an annual or such other basis as may be specified in this Lease (such annual or other period, the "Specified Interval"), an amount equal to the product of (A) such sum (as the same may have been previously adjusted) and (B) a fraction (1) the numerator of which is the difference between (a) the Consumer Price Index for the calendar month that is three (3) months immediately preceding the calendar month in which the Specified Interval for which such calculation is being made ended and (b) the Consumer Price Index for the calendar month that is three (3) months immediately preceding the calendar month in which the immediately preceding Specified Interval ended (or, if such date would be prior to the Effective Date, the calendar month in which the Effective Date occurs) (the "Measuring Month"), and (2) the denominator of which is the Consumer Price Index for the Measuring Month; provided, however, (i) if for any Specified Interval the difference between the index numbers in clauses (a) and (b) above is less than zero (0), such numerator shall be deemed to be zero (0) for purposes of calculating the applicable adjustment, and (ii) the applicable adjustment for the Specified Interval immediately following a Specified Interval in which the preceding clause (i) shall have been applicable shall be determined by replacing clause (b) above in its entirety with the following: "(b) the Consumer Price Index for the calendar month that is three (3) months immediately preceding the calendar month in which the Last Positive Specified Interval (as hereinafter defined) ended". The "Last Positive Specified Interval" means the last Specified Interval prior to the date of the applicable determination hereunder for which the numerator was greater than zero (0)."

"Adjustment Amount 1" means an amount in dollars to be applied against either (a) each PILOT payment as provided in Section 3.8(c)(i) for each applicable Tax Year, or (b) each payment of Base Rent as provided in Section 3.2(b)(i), in either case as such amount is calculated by Lease Administrator in accordance with Section 3.9 of this Lease and any other applicable Project Agreement.

"Adjustment Amount 2" means an amount in dollars to be applied against either (a) each PILOT payment as provided in Section 3.8(c)(ii) for each applicable Tax Year, or (b) each payment of Base Rent as provided in Section 3.2(b)(ii), in either case as such amount is calculated by Lease Administrator in accordance with Section 3.9 of this Lease and any other applicable Project Agreement.

"Adjustment Amount 3" means an amount in dollars to be applied against each PILOT payment as provided in Section 3.8(c)(iii) for each applicable Tax Year, as such amount is calculated by Lease Administrator in accordance with Section 3.9 of this Lease and any other applicable Project Agreement.

"Affiliate" means, with respect to any Person, another Person (other than an individual) that Controls, is Controlled by, or is under common Control with, such Person.

"AIDC" means Apple Industrial Development Corp., a not-for-profit corporation with which NYCEDC contracts to perform certain lease administration services.

"Annual Gross Revenue Report" has the meaning provided in Section 36.4(b).

"Approved Plans and Specifications" has the meaning provided in Section 13.1(b)(i) hereof.

"Approved Remediation Costs" means an amount equal to Four Hundred Ninety-Two Thousand, Five Hundred and Twenty Five Dollars $492,525.

"Approved ULURP Application" means the ULURP application and all other land use approvals required in connection with the Project prepared and submitted by Developer in accordance with ULURP and other Requirements, as such application and approvals were approved by all necessary Governmental Authorities and filed on the date specified above in the Recitals with the Department of City Planning.

"Aqua Swirl" means the "Aqua Swirl" drainage system constructed prior to the date hereof on the Premises by DOT pursuant to a Federal grant from the Federal Transit Administration, or another replacement system acceptable to DOT and the Federal Transit Administration.

"Architect" means a registered architect or architectural firm selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed.

"Assignee" has the meaning provided in Section 10.1(d)(ii) hereof.

"Assignee Reasonably Satisfactory to Landlord" has the meaning provided in Section 41.17(c) hereof.

"Assignment" has the meaning provided in Section 10.1(d)(i) hereof.

"Assignment of Construction Agreement" has the meaning provided in Section 13.4(e) hereof.

"Ballpark-Controlled Parking" has the meaning provided in Section 23.3(c) hereof.

"Ballpark Easement" means that certain Easement dated as of December 7, 2000 and recorded December 21, 2000 in the Richmond County Clerk's Office in Reel 10786, Page 081.

"Ballpark Event" has the meaning provided in the Ballpark Lease for the term "Tenant Event".

"Ballpark Lease" means that certain Stadium Lease dated as of December 7, 2000, as amended by the First Amendment of Lease dated on or around May 21, 2004, the Second Amendment of Lease dated as of January 4, 2007, the Third Amendment of Lease dated as of September 28, 2011, and the Ballpark Lease 4th Amendment (upon the occurrence of the

Ballpark Lease 4th Amendment Effective Date), and as may be further amended from time to time, between the City of New York and NYCEDC, as assigned by NYCEDC to Staten Island Minor League Holdings, LLC and as further assigned to Nostalgic Partners LLC, and as may be further assigned from time to time.

"Ballpark Lease 4th Amendment" means the Fourth Amendment Lease dated as of September 27, 2012 between the City of New York and Nostalgic Partners LLC.

"Ballpark Lease 4th Amendment Effective Date" means the date on which the Ballpark Lease 4th Amendment becomes effective in accordance with Paragraph 9 thereof.

"Ballpark Lease Amendment Documents" means the Ballpark Lease 4th Amendment, which as of the Ballpark Lease 4th Amendment Effective Date will amend the Ballpark Lease and the other agreements or instruments (if any) executed pursuant to the Pre-Development Agreement, copies of which are attached hereto at Exhibit D (Ballpark Lease Amendment Documents).

"Ballpark Lease Parking Contribution" means an amount equal to one hundred percent (100%) of the portion of Tenant's Net Parking Area Income (as defined in Part A of Exhibit O (Parking Management Services; Form of Parking Rent Statement) that is derived from Qualifying Vehicles (as defined in the Ballpark Lease).

"Ballpark Tenant" means the tenant under the Ballpark Lease.

"Banquet Facility" means a space of approximately 12,000 square feet to be used as a banquet or catering facility (or for other uses acceptable to Landlord) adjacent to the Hotel which is operated and managed by a Qualified Banquet Facility Operator or another Person reasonably acceptable to Landlord, to be constructed on the Premises as described in the Project Commitments and the Approved ULURP Application and as more specifically shown on the Approved Plans and Specifications.

"Banquet Facility Portion" means the portion of the Premises to be used primarily for constructing, operating and maintaining the Banquet Facility, as described in the Project Commitments and the Approved ULURP Application and as more specifically shown on the Approved Plans and Specifications.

"Base Rent" means the amounts specified for and applicable to each Lease Year as provided in Section 3.2(a) hereof.

"BFC Exit Date" means the effective date of (a) any Permitted Removal, or (b) any Transfer, Sublease or Assignment undertaken in accordance with this Lease following which none of the Developer Principals have day-to-day operational and managerial control over Tenant and the Project and the Developer Principals no longer have Developer Principal Control over the Transferee, Subtenant or Assignee.

"Building Permit Date" has the meaning provided in Section 3.8(g) hereof.

"Buildings" means, individually and collectively, any occupancy structure or other building now situated on, or in the future constructed on, the Land (including footings and foundations), together with the Equipment, other improvements and appurtenances of every kind and description hereafter erected, constructed, or placed upon or within such occupancy structure or building, including Capital Improvements (as hereinafter defined), and any and all alterations and replacements thereof, additions thereto and substitutions therefor, but excluding any personal property, trade fixtures or equipment owned by any Subtenant or contractor.

"Buildings Department" means the New York City Department of Buildings.

"Business Day" means any day other than a Saturday, Sunday, legal holiday, a day on which the City is closed for business, or a day on which banking institutions in the City are authorized by law or executive order to close.

"Capital Improvement" has the meaning provided in Section 15.1(c) hereof.

"Casualty Restoration" has the meaning provided in Section 8.2(a) hereof.

"Charter" means the New York City Charter.

"City" has the meaning provided in the caption of this Lease.

"Closing Date Guaranty" has the meaning given in the Pre-Development Agreement.

"Commence the Initial Construction Work" or "Commencement of the Construction Renovation Work" means that (i) the Permits for the Initial Construction Work in question have been issued, (ii) Tenant shall have commenced on-site work at the Premises on such Initial Construction Work, and (iii) a Completion Guaranty and the Standby Completion Guaranty for such Initial Construction Work shall have been delivered in accordance with Section 13.4(g) hereof, or the Closing Date Guaranty shall have been delivered in accordance with the Pre-Development Agreement.

"Comparable Outlet Mall" means any of (i) Woodbury Common Premium Outlets, located in the town of Central Valley, New York, (ii) Jersey Shore Premium Outlets, located in Tinton Falls, New Jersey, (iii) The Mall at Short Hills, located in Short Hills, New Jersey, (iv) Westfield Garden State Plaza Shopping Center, located in Paramus, New Jersey, (v) the Westfarms Mall, located in Farmington, Connecticut, (vi) Clinton Crossing Premium Outlets, located in Clinton, Connecticut, (vii) Stamford Town Center, located in Stamford, Connecticut, and (viii) Tanger Outlet of Riverhead NY, located in Riverhead, New York, or such additional outlet or retail malls as Landlord and Tenant may agree to in writing from time to time.

"Completion Guaranty" means a guaranty of lien-free completion of the Initial Construction Work (or other applicable Construction Work) issued to the Recognized Mortgagees by a Guarantor as a condition to providing construction financing for the Project or any portion thereof.

"Comptroller" means the Comptroller of the City.

"Condemnation Restoration" has the meaning provided in Section 9.2(b) hereof.

"Construction Agreement" has the meaning provided in Section 13.4(d) hereof.

"Construction Commencement Date" has the meaning provided in Section 13.1(b)(ii) hereof.

"Construction Work" means any construction or renovation work performed by or on behalf of Tenant under this Lease including in connection with any Phase, the Initial Construction Work, the Off-Premises Improvements, a repair, a Restoration, a Capital Improvement or any other construction work performed in connection with the use, maintenance or operation of the Premises, including all connections to public or private utilities and any excavation or pile driving, but not including test borings, test-pilings, surveys and similar pre-construction activities.

"Contractor" has the meaning provided in Section 13.4(d) hereof.

"Control" means, with respect to any Person, either (a) the direct or indirect ownership of, or beneficial interest in, not less than fifty one percent (51%) of the ownership interests in such Person or (b) the power directly or indirectly to direct the management and affairs of such Person, whether through the ability to exercise voting power, by contract or otherwise, including the right to make (or consent to) all capital and other major decisions to be made by such Person.

"Conviction" has the meaning provided in Section 41.17(c)(ii) hereof.

"Credit Claim" means a written request submitted to Landlord and Lease Administrator by Tenant in accordance with this Lease in which Tenant (a) certifies to Landlord and Lease Administrator (i) that all Remediation Work has been completed at the Premises as part of the Initial Construction Work of the Phase 1 Development in accordance with this Lease, (ii) as to the amount of the Actual Incremental Remediation Costs incurred and paid by Tenant in performing such Remediation Work, (iii) the amount of the Credit Claim Amount, and (iv) that attached to such certification are copies of all receipts, invoices, bills, proofs of payment and other documentation necessary to substantiate or evidence the amounts constituting the Actual Incremental Remediation Costs for which the Credit Claim Amount is claimed, and (b) attaches all receipts, invoices, bills, proofs of payment and other documents necessary to substantiate or evidence the Actual Incremental Remediation Costs, including the Credit Claim Amount.

"Credit Claim Amount" means the amount set forth in the Credit Claim which Tenant, in good faith, has determined to be eligible for credit against Base Rent in accordance with this Lease.

"CSX" means the CSX Corporation or an Affiliate thereof, including the Staten Island Railroad Corporation (f/k/a the "Staten Island Rapid Transit Railway Company").

"CSX Parcel" means the property rights above a plane over land shown or identified in Part A of Exhibit V (CSX Parcel), attached hereto located at St. George, in the Borough of Staten Island and County of Richmond, City and State of New York, above a plane twenty-three (23) feet above the top of the highest rail situated over and above that certain parcel of land, with an

aggregate area of 97,011 square feet (2.227 acres, more or less), as more particularly described by metes and bounds description provided at Part A of Exhibit V attached hereto.

"CSX Parcel PSA" has the meaning provided in Section 30.4.

"CSX-Tenant Agreement" means that certain Agreement of Purchase and Sale to be entered into after the Effective Date between Tenant and CSX pursuant to which Tenant will purchase the CSX Parcel.

"Cure Date" has the meaning provided in Section 24.1(k) hereof.

"Cure Period" has the meaning provided in Section 24.3(b) hereof.

"Date of Taking" has the meaning provided in Section 9.1(c)(i) hereof.

"Default" means any specified condition or event, or failure of any specified condition or event to occur, which constitutes or would constitute, after notice and lapse of cure period (if any is required) an Event of Default.

"Default Notice" has the meaning provided in Section 24.3(a) hereof.

"Depositary" means an Institutional Lender selected by Tenant and, to the extent required pursuant to the terms of the definition of Institutional Lender, approved by Landlord (which approval shall not be unreasonably withheld, delayed or conditioned), except that any Recognized Mortgagee which is an Institutional Lender shall be deemed approved by Landlord.

"Determination Date" shall mean, as the case may be, (a) the date as of which the value of the Premises is determined by the Fair Market Value Appraisal, (b) the date as of which a calculation of the Prepayment Amount is determined in accordance with Section 3.3(d), or (c) the date as of which an Adjustment Amount is calculated by Lease Administrator pursuant to Section 3.8(c) .

"Developer" has the meaning provided in the Recitals of this Lease.

"Developer Principal(s)" means Donald Capoccia, Joseph Ferrara and Brandon Baron.

"Developer Principal Control" has the meaning provided in Section 10.1(d).

"Developer Tenant" has the meaning provided in the Preamble of this Lease.

"DOF" means the City's Department of Finance.

"DOT" means the City's Department of Transportation.

"DOT Off-Premises Area" means that certain area owned by the City adjacent to the Premises and administered by DOT which excludes the Non-DOT Off-Premises Area, and which is to be the subject of part of the Off-Premises Improvements, as such area is generally depicted in orange colored cross-hatching on the drawing attached hereto at Part 1 of Exhibit U (Off-Premises Areas and Off-Premises Improvements) and is identified in such exhibit with the caption "DOT Off-Premises Area".

"DOT Off-Premises Improvements" the portion of the Off-Premises Improvements located in the DOT Off-Premises Area.

"EB-5 Lender" has the meaning set forth in clause (G) of the definition of Institutional Lender.

"Effective Date" has the meaning provided in the caption of this Lease.

"Employment Report" has the meaning provided in Section 39.9(a) hereof.

"Environmental Laws" means any and all federal, state or local environmental, health and/or safety-related laws, regulations, standards, environmental impact filings and disclosure requirements, decisions of the courts, permits or permit conditions, relating to the protection of the environment, including those regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Substances, currently existing or as amended or adapted in the future which are or become applicable to Tenant or the Premises.

"EOI" has the meaning set forth in the recitals.

"EOI Exit Date" means the effective date of any Transfer, Sublease or Assignment undertaken in accordance with this Lease, pursuant to which EOI ceases or will cease to have a legal and beneficial ownership interest in Tenant.

"Equipment" means all fixtures and personal property incorporated in, or attached to, and used or usable in the operation of the Premises and shall include, but shall not be limited to, all such fixtures and personal property reimbursed out of or otherwise paid for in whole or in part with City funds pursuant to any Funding Agreement between Lease Administrator and Tenant (or any Affiliate of Tenant), machinery, apparatus, devices, motors, engines, dynamos, compressors, pumps, boilers and burners, heating, lighting, plumbing, ventilating, air cooling and air conditioning equipment; chutes, ducts, pipes, tanks, fittings, conduits and wiring; incinerating equipment; elevators, escalators and hoists; partitions, doors, cabinets, hardware; books and stacks and shelving therefor; floor, wall and ceiling coverings; wash room, toilet and lavatory equipment; lobby decorations; windows, window washing hoists and equipment; communication equipment; and all additions or replacements thereof; excluding, however, Tenant's Equipment.

"Equity Interest" has the meaning provided in Section 10.1(d)(iv) hereof.

"Esplanade" means that certain area directly adjacent to the waterfront of the north shore of Staten Island, stretching from Jersey Street to the Ferry terminal, a portion of which is located in front of the Premises, including the esplanade and paved pathway thereon, that roadway commonly known as "Bank Street" and the esplanade adjacent thereto (if any) and certain

portions of the Off-Premises Areas, and excluding the Plaza, as such area is generally shown on the drawing attached hereto at Part 1 of Exhibit E (Esplanade Drawing; Esplanade Maintenance Standards) in blue cross-hatching.

"Esplanade Maintenance Contribution" has the meaning provided in Section 3.7(b) hereof.

"Esplanade Maintenance Standards" means the standards for maintenance of the Esplanade as set forth in Part 2 of Exhibit E (Esplanade Drawing; Esplanade Maintenance Standards).

"Event of Default" has the meaning provided in Section 24.1 hereof.

"Exercise Notice" has the meaning provided in Section 10.7(b) hereof.

"Exercise Notice Date" has the meaning provided in Section 10.7(b) hereof.

"Expiration Date" means the Initial Expiration Date, as the same may be duly extended in accordance with Section 2.2(b) hereof, or such earlier date upon which this Lease shall be terminated in accordance with the terms herein.

"Expiration of the Term" means the expiration of the Term upon the Expiration Date.

"Extension Term(s)" has the meaning provided in Section 2.2(b) hereof.

"Fair Market Rent" means the amount equal to an annual rate of six percent (6%) of the Fair Market Value Appraisal of the Premises.

"Fair Market Value Appraisal" shall have the meaning provided in Section 35.1(b) hereof.

"Federal Courts" has the meaning provided in Section 41.18 hereof.

"FEIS" means the Final Environmental Impact Statement for the Project, as more fully described in the Notice of Completion for the Final Environmental Impact Statement for the St. George Waterfront Redevelopment issued by the City's Department of Small Business Services on August 29, 2013 (CEQR Number 13SBS001R).

"Ferry Operations" means the presence, from time to time, of operational sounds, vibrations, smells, emissions, and security and traffic conditions arising from the normal day-to-day operations and maintenance of the Ferry Terminal.

"Ferry Terminal" means the St. George Ferry Terminal located immediately adjacent to the Premises.

"Fifth Exercise Period" has the meaning provided in Section 3.3(b) hereof.

"Fifth Extension Term" has the meaning provided in Section 2.2(b) hereof.

"First Credit Amount" has the meaning provided in Section 21.3(c) hereof.

"First Exercise Period" has the meaning provided in Section 3.3(b) hereof.

"First Extension Term" has the meaning provided in Section 2.2(b) hereof.

"First Percentage Trigger" means, that portion of Gross Revenues and/or Hotel Gross Revenue as reported in the Gross Revenue Report for a given Fiscal Year, where (a) such Gross Revenues (excluding Hotel Gross Revenue), if any, are equal to or greater than Twenty Million Dollars ($20,000,000) and less than or equal to Twenty Five Million Dollars ($25,000,000), and (b) with respect to such Hotel Gross Revenues, where such Hotel Gross Revenues are equal to or greater than Ten Million Dollars ($10,000,000) and less than Fifteen Million Dollars ($15,000,000).

"First Threshold Amount" has the meaning provided in Section 21.3(c).

"Fiscal Year" has the meaning provided in Section 39.9(a) hereof.

"Fourth Exercise Period" has the meaning provided in Section 3.3(b) hereof.

"Fourth Extension Term" has the meaning provided in Section 2.2(b) hereof.

"Full Build" means the completion of construction of the entire Project, including all Phases, as set forth in the Project Commitments and in a manner consistent with the Approved ULURP Application.

"Full Build Scheduled Completion Date" means, subject to Unavoidable Delay, the date that is no later than the second (2nd) anniversary of the Construction Commencement Date for the Phase 3 Development.

"Funding Agreement Failure" has the meaning provided in Section 3.8(g).

"Funding Failure Default" means any Defaults occurring under Sections 24.1(b), (c) or (h) directly caused by the failure of the Recognized Mortgagees to disburse construction funds to Tenant in accordance with the loan or credit agreements duly executed and delivered between Recognized Mortgagees and Tenant immediately following the satisfaction or waiver of the conditions precedent to such disbursement as set forth in such loan or credit agreements, and where such failure is a breach of such Recognized Mortgagees' obligations under such loan or credit agreements or a Recognized Mortgage.

"Good Faith Deposits" has the meaning given in the Pre-Development Agreement, a copy of which is attached hereto at Exhibit C (Pre-Development Agreement).

"Governmental Authority or Authorities" means the United States of America, the State of New York, the City, and any agency, department, legislative body, commission, board, bureau, instrumentality or political subdivision of any of the foregoing, now existing or hereafter created, having or claiming jurisdiction over the Premises, any Building, any portion thereof or any street, road, avenue or sidewalk constituting a part of, or in front of, the Premises, or any

vault in or under the Premises; provided, that the term Governmental Authority shall not include NYCEDC or Landlord to the extent Landlord is acting solely in its proprietary capacity hereunder (and not in its official governmental capacity).

"Greater NYC Area" means New York City, and Nassau County, Suffolk County, and Westchester County in the State of New York, and Hudson County and Bergen County in the State of New Jersey.

"Gross Revenue" means, without duplication and as determined in accordance with the Accounting Principles, all revenue, income and cash receipts received by or on behalf of Tenant or any Affiliate of Tenant derived from Tenant's leasehold interest in or operation or development of the Premises during a given Quarterly Period or Fiscal Year (as the case may be), including (i) rental and all other payments, other than security deposits, received under any Subleases or any Permitted Space Leases of any portion of the Premises, (ii) revenues derived from the aggregate gross sales from any business conducted by Tenant in or upon any portion of the Premises (all such sales made and orders received in or at the Premises shall be deemed as made and completed therein whether or not delivery or performance thereof is made at or from the Premises), (iii) proceeds of any business interruption insurance obtained by Tenant pursuant to this Lease, and (iv) revenue generated by parking at the Parking Garage, food and beverage sales, and licensing and concession fees, and (v) revenues from advertising or promotional services, *but* excluding (a) any return or refund of the Security Deposit in accordance with Section 33, (b) amounts equal to the Base Rent and the PILOT paid by Tenant under this Lease during the applicable Quarterly Period or Lease Year (as the case may be), (c) repairs of and transfers of merchandise of Subtenants for the convenience of their customers or refunds and returns of merchandise sold from the stores of Subtenants, and (d) Hotel Gross Revenues. Revenues included as part of Gross Revenue shall exclude sales taxes and credit card fees or charges.

"Gross Revenue Report" means all or any of the Quarterly Gross Revenue Reports and/or the Annual Gross Revenue Reports.

"Guarantor" means (a) if the Recognized Mortgagees have required that the Completion Guaranty be issued, the Person or Persons who issued such Completion Guaranty, and (b) if the Completion Guaranty has not been or will not be issued to the Recognized Mortgagees, an Acceptable Guarantor.

"Guarantor Net Worth Test" means that the Guarantors under each guaranty provided in connection with this Lease have an aggregate net worth of at least (i) Forty Million dollars ($40,000,000) (Adjusted for Inflation) including aggregate Liquid Assets of at least Six Million dollars ($6,000,000 )(Adjusted for Inflation), in the case of the Developer Principals, and (ii) an amount reasonably acceptable to the City and the Lease Administrator, in the case of any other guarantor.

"Hazardous Substances" means any (i) "hazardous substance" as defined under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq., or (ii) "hazardous waste" as defined under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., or (iii) "hazardous materials" as defined under the

Hazardous Substances Transportation Authorization Act, 49 U.S.C. Section 5101 et seq., or (iv) "hazardous waste" as defined under New York Environmental Conservation Law, Section 27-0901 et seq., or (v) "hazardous substance" as defined under the Clean Water Act, 33 U.S.C. Section 1321 et seq., and the regulations adopted and publications promulgated pursuant to the above, and (vi) any other chemical, substance or material which is now or becomes in the future listed, defined or regulated in any manner by any Environmental Law based upon, directly or indirectly, its properties or effects.

"Hazardous Substance Condition" means the presence at, on, beneath, or within any portion of the Premises of any Hazardous Substance and/or any underground or subsurface storage tanks or other similar storage vessel, or any Hazardous Substance and/or underground or subsurface storage tanks or other similar storage vessel affecting any part of the Premises.

"Hearing" has the meaning provided in Section 41.17(a) hereof.

"Hearing Officers" has the meaning provided in Section 41.17(a) hereof.

"Hotel" means an upscale, full service hotel, which is substantially similar in quality and reputation to those Persons doing business as Crown Plaza Hotels & Resorts, Courtyard Marriott and Hilton Garden Inn Hotels (as the quality and reputation of such Persons existed on the Effective Date), and which is operated and managed by a Qualified Hotel Operator, and which is to be constructed on the Hotel Portion as described in the Project Commitments and the Approved ULURP Application and as more specifically shown on the Approved Plans and Specifications.

"Hotel Gross Revenues" means the sum of (a) all revenues, receipts and income of whatever kind or nature received by or on behalf of Tenant, Hotel Tenant or any Affiliate thereof that, in the applicable Quarterly Period or Fiscal Year, is generated from, or derived by, the operation, leasing, use or occupancy of any portion of the Hotel or Banquet Facility, including (i) all Hotel room fees, in-room food and beverage sales, whether the same is consumed on or off the Premises; (ii) amounts received in connection with in-room movie rentals and telecommunications services; (iii) catering, banquet, bar, restaurant or spa services to the extent operated by Tenant, Hotel Tenant or their Affiliates (without duplication); (iv) fees and rents received in connection with a rental of, concession or license to use or any grant of permission to occupy, manage or operate any portion of the Hotel or Banquet Facility, or catering, banquet, bar, restaurant or spa services, parking (but not the gross receipts of any such lessees, concessionaires or licensees); (v) revenues from signage and advertisement; and (vi) amounts received in connection with vending and coin operated machines and telecommunications devices such as automatic teller machines, public pay telephones and internet access terminals; *plus* (b) notwithstanding any contrary provision of the Uniform System, all revenue generated from fees or other amounts received in connection with the provision of a service in respect of the Hotel or Banquet Facility or any portion thereof (such as gym or spa services); *plus* (c) proceeds from business interruption insurance received by or to the account or benefit of Tenant, Tenant or any of their Affiliates (without duplication) in respect of the Hotel, Banquet Facility, catering and/or spa facilities, proceeds from rent interruption insurance received by Tenant or Hotel Tenant in respect of damage to the banquet, catering and/or spa facilities, as applicable, if not operated by Tenant; provided, that to the extent that Tenant or Hotel Tenant shall, by

sublease, franchise, concession or other arrangements, without the prior approval of Landlord, transfer revenues that would otherwise be included in Hotel Gross Revenues to any Person to any material extent, then the amount of revenues (without duplication) so transferred shall be included in Hotel Gross Revenues.

"Hotel Percentage Rent" means any and all amounts payable by Tenant pursuant to Section 3.5 hereof.

"Hotel Portion" means the portion of the Premises to be used primarily for constructing, operating and maintaining the Hotel, as described in the Project Commitments and the Approved ULURP Application and as more specifically shown on the Approved Plans and Specifications.

"Hotel Tenant" means the Person proposed by Tenant in the Severance Lease Notice to serve as the tenant under the Severance Lease for the Hotel Portion and the Banquet Facility Portion, where (a) prior to the BFC Exit Date, the Developer Principals shall have Developer Principal Control over such proposed Person, and (b) after the BFC Exit Date, such proposed Person is a Qualified Hotel Operator and demonstrates to Landlord, in Landlord's reasonable determination, that such Person has sufficient assets for the acquisition of Tenant's interest under this Lease, the management of the Premises and the ability to perform or cause the performance of Tenant's obligations under this Lease.

"Imposition(s)" has the meaning provided in Section 4.1(b) hereof.

"Improvement Award" has the meaning provided in Section 9.1(b) hereof.

"Increased Prepayment Amount" has the meaning provided in Section 3.3(e) hereof.

"Indemnitees" has the meaning provided in Section 20.1 hereof.

"Indicted Party" has the meaning provided in Section 41.17(a) hereof.

"Initial Construction Work" means (i) the Construction Work undertaken in connection with the Buildings, including the Buildings constituting the Phase 1 Development, the Phase 2 Development, and the Phase 3 Development; (ii) other improvements to be made by Tenant in accordance with the Project Commitments and the Approved ULURP Application; and (iii) the Construction Work undertaken in connection with the Off-Premises Improvements.

"Initial Expiration Date" has the meaning provided in Section 2.2(a) hereof.

"Initial Tax" has the meaning provided in Section 3.8(g) hereof.

"Initial Tax Rate" has the meaning provided in Section 3.8(g) hereof.

"Initial Term" has the meaning provided in Section 2.2(a) hereof.

"Institutional Investor" shall mean EOI and any other Person that, at the time of the initial determination of its status as an Institutional Investor, (a) is not an Unqualified Person and (b) is one of the following (i) a U.S. or foreign bank or insurance company possessing (x) a net worth

of no less than $500,000,000, and (y) having a debt, credit or claims paying rating of BAA1 or better from S&P or BBB+ or better from Moody's or an equivalent rating from another nationally recognized credit rating agency, (ii) a private corporate or public pension or profit sharing plan (or similar plan) or an endowment fund for colleges, universities or private charitable foundations, in each case either directly or indirectly through one or more wholly owned subsidiaries or affiliates have legal title to real estate assets and/or commercial mortgages having a net value of not less than $500,000,000; (iii) a publicly-traded real estate investment trust or real estate company having either (x) a net worth no less than $250,000,000 or (y) aggregate total assets of no less than $600,000,000; or (iv) any other entity which is regularly engaged in the business of or organized for the purpose of acquiring ownership and other interest in real estate (including direct and beneficial ownership interests and mortgage loans or interests in mortgage loans) including a so-called "opportunity fund", "hedge fund", or other similar investment fund, and, in any case, having either (x) a net worth (inclusive of unfunded capital commitments from members or partners) of no less than $250,000,000 or (y) aggregate total assets of no less than $600,000,000 (inclusive of unfunded capital commitments from members or partners), provided that any such entity is not an individual. In addition, any other Person or Persons, all of the direct equity owners of which are Institutional Investors under the preceding provisions of this definition, shall also be deemed to constitute Institutional Investors.

"Institutional Lender" means (A) any savings bank, a savings and loan association, a commercial bank or trust company (whether acting individually or in a fiduciary capacity) or an Affiliate of any of the foregoing, (B) an insurance company organized and existing under the laws of the United States or any state thereof (C) a real estate investment trust, a trustee or issuer of collateralized mortgage obligations, a loan conduit or other similar investment entity which (i) is regularly engaged in the business of providing debt financing and (ii) acts through an institutional trustee, (D) a religious, educational or eleemosynary institution, a federal, state, or municipal employee's welfare, benefit, pension or retirement fund, a union pension or other retirement or investment fund, any governmental agency or entity insured by a governmental agency, a credit union, trust or endowment fund, (E) any brokerage or investment banking organization regularly engaged in the business of providing debt financing, (F) any institutional trustee, servicer or fiduciary for the holders of bonds, notes, commercial paper or other evidence of indebtedness as part of a securitization of rated single or multi-class securities secured by, or evidencing ownership interests in, such debtor, (G) subject to the requirements of this Lease with respect to EB-5 Lenders, an EB-5 regional center designated by the United States Customs and Immigration Service ("EB-5 Lender"), or (H) any combination of the foregoing entities and any other Person approved by Landlord, such approval not to be unreasonably withheld, delayed or conditioned; provided that, each of the above entities (other than a governmental agency, entity insured by a governmental agency, public benefit corporation or a pass-through conduit for securities issued by a governmental or quasi-governmental agency or public benefit corporation, an EB-5 Lender, or any subsidiary of the foregoing) shall qualify as an Institutional Lender only if it shall satisfy the Eligibility Requirements. For the purpose of this definition, the "Eligibility Requirements" means, with respect to any Person, that such Person (i) is subject to the jurisdiction of the courts of the State of New York and (ii) has assets of not less than the Required Threshold, as Adjusted for Inflation.

"Investigations" means any invasive or intrusive physical or environmental due diligence undertaken by or on behalf of BFC or Tenant on or at the Premises in connection with the

Project, including environmental testing, measuring, investigating, digging of test pits, taking soil borings, undertaking soil or other analysis, and the removal and repair of asphalt, concrete or any fixtures as necessary to undertake the foregoing.

"ISO" has the meaning provided in Section 7.3(a) hereof.

"Land" means the land portions of the Premises.

"Landlord" means the City, provided, however, that if the City or any successor to the City's interest hereunder transfers or assigns its interest in the Premises or its interest under this Lease, then, from and after the date of such assignment or transfer, the term Landlord means the assignee or transferee and the assignor or transferor shall be, and hereby is, entirely freed and relieved of all agreements, covenants and obligations of Landlord hereunder to be performed on or after the date of such transfer or assignment, provided that the transferee or assignee under such transfer or assignment has assumed, in a written instrument (a copy of which shall be provided to Tenant), and agreed to carry out, any and all agreements, covenants and obligations of Landlord hereunder occurring from and after the date of such assignment or transfer.

"Landlord's Appraisal" has the meaning provided in Section 35.1(a) hereof.

"Last Positive Specified Interval" has the meaning provided in the definition of "Adjusted for Inflation" of this Lease.

"Late Charge Rate" means (i) in the case of Tenant's failure to pay PILOT, the rate of interest charged from time to time by the City for delinquent Taxes, and (ii) in all other cases, the Prime Rate plus one percent (1%) per annum, except where the sum on which the Late Charge Rate is being imposed is ten percent (10%) or more of the amount of the payment which should have been made or where Landlord has incurred costs in curing a Default of Tenant, in which case the Late Charge Rate shall mean the Prime Rate plus three percent (3%) per annum; provided, however, that the Late Charge Rate shall not exceed the maximum annual rate of interest which then lawfully may be charged to Tenant or by Landlord, as the case may be.

"Lease" means this Agreement of Lease, all exhibits hereto and all amendments, modifications and supplements thereof.

"Lease Administrator" means NYCEDC or such other entity designated by Landlord pursuant to Section 41.21.

"Lease Year" means the twelve (12) month period beginning on the Effective Date and each succeeding twelve (12) month period during the Term, provided, however, that if the Effective Date occurs on a date which is other than the first day of a calendar month, the first Lease Year shall begin on the Effective Date and continue for the remainder of the first (partial) calendar month and the succeeding eleven (11) full calendar months, and thereafter each Lease Year shall be each succeeding twelve (12) full calendar months.

"License" has the meaning provided in Section 39.8(a) hereof.

"Liquid Assets" means, as of the date of determination, all cash, cash equivalents or other assets convertible into cash or cash equivalents upon not more than five (5) days' notice, in each case not subject to any lien, pledge, security interest or other encumbrance.

"Liquidated Damages" has the meaning provided in Section 13.14 hereof.

"Manager" means an operator or manager of the Project, as selected from time to time in accordance with this Lease.

"Measuring Month" has the meaning provided in the definition of "Adjusted for Inflation" of this Lease.

"Member" has the meaning provided in Section 39.8(c) hereof.

"Memorandum of Lease" means the memorandum of lease to be recorded by Tenant promptly after the Effective Date in accordance with Section 37.1 hereof and in the form attached hereto at Exhibit R (Form of Memorandum of Lease).

"Mortgage" has the meaning provided in Section 11.1(b) hereof.

"Mortgagee" means the holder of a Mortgage.

"MTA" means the Staten Island Rapid Transit Operating Authority, a subsidiary of the Metropolitan Transportation Authority.

"MTA Leased Area" means that certain parcel of land area identified in the second (2nd) proviso of Exhibit A (Legal Description of Premises) attached hereto, located at St. George, in the Borough of Staten Island and County of Richmond, City and State of New York, together with that certain volume of air space over such parcel that is below the plane that is either (i) twenty-two (22) feet over the top of rail, or (ii) if the New York State Department of Transportation issues a waiver of the overhead clearance requirements set forth in Railroad Law Section 51-a, seventeen (17) feet, six (6) inches over the top of rail (in either case as such air space and such parcel are depicted in the metes and bounds description and the schematics included with such proviso).

"Net Worth" means, with respect to any Person as of any date, (i) the aggregate amount of all assets of such Person which would be reflected on a balance sheet or personal financial statements (but excluding therefrom (A) capitalized interest, debt discount and expense, goodwill, patents, trademarks, service marks, tradenames, copyrights, franchises, licenses, amounts due from Affiliates and any other items which would be treated as intangibles under Accounting Principles, (B) assets owned jointly with another Person (including a spouse), (C) assets owned by a trust with respect to which such Person is not the sole, one hundred percent (100%) beneficiary, or with respect to which such Person is not the sole, one hundred percent (100%) controlling party and (D) residences owned by such Person), less (ii) the aggregate amount of all liabilities of such Person, including contingent liabilities, which would be reflected on a balance sheet, in each case prepared in accordance with Accounting Principles.

"New York State Courts" has the meaning provided in Section 41.18 hereof.

"Non-Compliance Notice" has the meaning provided in Section 23.2 hereof.

"Non-DOT Off-Premises Area" means that certain area owned by the City adjacent to the Premises administered by one or more City agencies other than DOT which excludes the DOT Off-Premises Area, and which is to be the subject of the Off-Premises Improvements, as such area is generally depicted in yellow colored cross-hatching on the drawing attached hereto at Part 1 of Exhibit U (Off-Premises Areas and Off-Premises Improvements) and is identified in such exhibit with the caption "Non-DOT Off-Premises Area".

"Non-Prevailing Party" has the meaning provided in Section 42.1(b) hereof.

"NYCEDC" has the meaning provided in the Recitals of this Lease.

"NYCEDC Contract" has the meaning provided in the Recitals of this Lease.

"NYCIDA" means the New York City Industrial Development Agency.

"NYCIDA Sublease" has the meaning provided in the Recitals of this Lease.

"NYCIDA Sub-Sublease" has the meaning provided in the Recitals of this Lease.

"Off-Premises Area" means the DOT Off-Premises Area and the Non-DOT Off Premises Area, as generally depicted in Part 1 of Exhibit U (Off-Premises Areas and Off-Premises Improvements) attached hereto.

"Off-Premises Improvements" means, in a manner consistent with the Approved ULURP Application and the Approved Plans and Specifications the relocation of Bank Street, construction of the Plaza, reconstruction of the staircase and landings to the Ferry Terminal (with snow melt capabilities in such staircase and landings), installation of elevator(s) on the Premises serving that staircase and certain improvements to the "Wall Street Ramp" as more fully described in the Project Commitments.

"Offer" has the meaning provided in Section 10.7(b) hereof.

"Offer Notice" has the meaning provided in Section 10.7(b) hereof.

"Offer Period" has the meaning provided in Section 10.7(b) hereof.

"Offer Terms" has the meaning provided in Section 10.7(b) hereof.

"Operating Commitments" means Developer Tenant's commitments timely to perform and maintain specified operating milestones, if any, as set forth in the Project Commitments and the Approved ULURP Application, which commitments are the obligation of Tenant under this Lease.

"Option Exercise Period" has the meaning provided in Section 3.3(b) hereof.

"Parking Areas" means the parking areas made available by Tenant to provide the Required Parking and all parking areas within the Parking Garage.

"Parking Garage" means the Buildings and any other area of the Premises to be used for the provision of the Required Parking, in accordance with Section 23.1(a) and Section 23.3, as contemplated in the Project Commitments and the Approved ULURP Application and as further detailed in the Approved Plans and Specifications.

"Parking Management Agreement" means the agreement to be entered into between Tenant and the Parking Operator, pursuant to which the Parking Operator shall perform the Parking Management Services.

"Parking Management Services" has the meaning provided in Section 23.3 hereof.

"Parking Operator" means a Qualified Parking Operator reasonably acceptable to Landlord and retained by Tenant pursuant to the Parking Management Agreement to perform the Parking Management Services.

"Parking Rent Statement" has the meaning provided in Section 36.1(b) hereof.

"Participation Holdback Amount" means, in respect of a given Fiscal Year, an amount equal to the aggregate of all Taxes due and payable by Tenant to DOF or its successor in respect of such Fiscal Year in accordance with Section 3.8 with respect to the Phase 2 Development, *minus* the aggregate of all Taxes that would have been payable by Tenant to DOF or its successor in respect of such Fiscal Year with respect to the Phase 2 Development in accordance with applicable Requirements, if a twenty-five (25) year tax abatement schedule as set forth in Exhibit T (Participation Holdback Schedule and Holdback Examples) applied to the Abatement Base for the Phase 2 Development for such Fiscal Year, based on DOF's annual assessment of the property.

"Percentage Rent" means any and all amounts payable by Tenant pursuant to Section 3.4 hereof.

"Permit" has the meaning provided in Section 39.8(a) hereof.

"Permitted Ancillary Uses" has the meaning provided in Section 23.1(b) hereof.

"Permitted Person" means any Person that (A) is not in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the City or NYCEDC, unless such default or breach has been waived in writing by the City or NYCEDC, as the case may be; (B) has not been convicted of a felony and/or any crime involving moral turpitude in the preceding ten (10) years; (C) has not received written notice of default in the payment to the City of any Taxes or Impositions, individually or collectively in excess of Five Thousand Dollars ($5,000.00) that have not been cured or satisfied, unless such default is then being contested with due diligence in proceedings in a court or other appropriate forum; and (D) has not, at any time in the three (3) preceding years, owned any property which, while in the ownership of such Person, was acquired by the City by in rem tax foreclosure, other than a property in which the City has released or is in the process of releasing its interest to such Person pursuant to the Administrative Code of the City.

"Permitted Removal" means the removal of BFC (on an involuntary basis on the part of BFC) from acting as the managing member of Tenant or the removal of Donald Capoccia (or another Developer Principal reasonably acceptable to Landlord (on an involuntary basis on the part of Mr. Capoccia or such other Developer Principal, as the case may be) from having day-to-day operational and managerial control over Tenant and the Project, in either case by one or more Institutional Investors following a Removal Event such that BFC is no longer the managing member of Tenant and/or Donald Capoccia (or another Developer Principal reasonably acceptable to Landlord) no longer has day-to-day operational and managerial control over Tenant and the Project; provided, that (a) immediately following such action, (i) the Premises are managed by a manager or a Principal of the Institutional Investor that, in each case, possesses a level of experience and management skill that is commercially reasonable with regard to retail and hotel developments in New York City similar to the Project, and (ii) unless Landlord otherwise consents, Tenant shall have retained a Qualified Developer described in clause (c) of the definition of Qualified Developer to complete the Initial Construction Work, and (b) a Guarantor has provided to Landlord a replacement guaranty for each guaranty contemplated by this Lease that is then outstanding covering all of the obligations under each existing guaranty (and Tenant shall have delivered to Landlord fully executed original counterpart(s) of the same).

"Permitted Space Lease" means a Sublease of a portion of the Premises to a Permitted Space Tenant for a Permitted Ancillary Use; provided that a Sublease that constitutes an "Assignment" as provided in Section 10.1(d) hereof shall not qualify as a Permitted Space Lease.

"Permitted Space Tenant" means a Subtenant under a Permitted Space Lease, who is a Permitted Person.

"Person" means an individual, corporation, partnership, limited liability company, joint venture, estate, trust, unincorporated association; any federal, state, county or municipal government or any bureau, department or agency thereof; and any fiduciary acting in such capacity on behalf of any of the foregoing.

"Phase" means any of the phases of performance, by Tenant, of the Project Commitments, including the undertaking and performance of the Phase 1 Development, the Phase 2 Development or the Phase 3 Development.

"Phase 1 Development" means the Construction Work of Buildings to be performed and completed by Tenant as the first Phase of the Project, including the construction and Substantial Completion of the Parking Garage, as set forth in the Project Commitments and the Approved ULURP Application.

"Phase 2 Development" means the Construction Work of Buildings to be performed and completed by Tenant as the second Phase of the Project, including the construction and Substantial Completion of the Retail Portion and the Off-Premises Improvements, as set forth in the Project Commitments and the Approved ULURP Application.

"Phase 3 Development" means the Construction Work of Buildings to be performed and completed by Tenant as the third Phase of the Project, including the construction and Substantial

Completion of the Hotel Portion and the Banquet Facility Portion, as set forth in the Project Commitments and the Approved ULURP Application.

"Phase II ESA Report" means that certain Phase II Environmental Site Assessment, dated October 2012, prepared for BFC Partners by URS Corporation-New York (Project No.: 1114018).

"PILOT" has the meaning provided in Section 3.8(a) hereof.

"PLA" means a project labor agreement between Tenant (or an Affiliate of Tenant) and one or more labor unions related to the Phase 1 Development and Phase 2 Development or related to the Phase 3 Development that has been duly executed, delivered and is legally binding on the parties thereto and is effective .

"PLA Documents" means all of the following:

(i) a true, complete and correct copy of the PLA for Construction Work of the Phase 1 Development and the Phase 2 Development or the PLA for Construction Work of the Phase 3 Development (as the case may be);

(ii) a true, complete and correct copy of the then most recent budget, pro-forma or financial model for the Phase 1 Development and Phase 2 Development, or for the Phase 3 Development (as the case may be), and a certificate signed by a Developer Principal certifying to Landlord and Lease Administrator that attached to such certificate is Tenant's then most recent budget, pro-forma or financial model for the Phase 1 Development and Phase 2 Development or the Phase 3 Development (as the case may be), that such budget, pro-forma or financial model has been calculated using the best judgment of the Developer Principals based on all available Project information known to them or to Tenant and was prepared using prudent and commercially reasonable assumptions and methods;

(iii) evidence satisfactory to Lease Administrator documenting the final terms and conditions of the additional debt financing obtained by Tenant to finance any additional hard costs set forth in such budget, pro-forma or financial model;

(iv) a copy of a revised and updated Schedule 2 for Landlord's and Lease Administrators' review, reflecting the reductions to PILOT payments reflected in such Schedule that Tenant proposes are necessary and appropriate in order to reduce such Schedule in accordance with Section 3.8(c)(i), or Section 3.8(c)(ii) (as the case may be); and

(v) a written description of the means and methods by which Tenant calculated the reductions reflected in such Schedule.

"Plans and Specifications" has the meaning provided in Section 13.1(b)(iii) hereof.

"Plaza" means the plaza immediately adjacent to the Premises located between the Premises and the waterfront of the north shore of Staten Island, as such plaza is generally shown in green cross-hatching on the drawing attached hereto at Part 1 of Exhibit E (Esplanade Drawing; Esplanade Maintenance Standards).

"Post-Completion Tax" has the meaning provided in Section 3.8(g) hereof.

"Pre-Development Agreement" has the meaning provided in the Recitals of this Lease.

"Premises" has the meaning provided in the Recitals of this Lease.

"Prepayment Amount" has the meaning provided in Section 3.3(d) hereof.

"Prepayment Option" has the meaning provided in Section 3.3(a) hereof.

"Prepayment Option Election Notice" has the meaning provided in Section 3.3(c) hereof.

"Prevailing Party" has the meaning provided in Section 42.1(b) hereof.

"Prime Rate" means the rate announced as such from time to time by JP Morgan Chase Bank, or its successors (or if JP Morgan Chase Bank or its successors shall cease to exist, another Institutional Lender selected by Landlord), at its principal office. Any interest payable under this Lease with reference to the Prime Rate shall be adjusted on a daily basis, based upon the Prime Rate in effect at the time in question, and shall be calculated on the basis of a 365-day year.

"Principal(s) of Tenant" shall mean, EOI and the Developer Principals

"Principal" means, with respect to any Person that is an entity, the chief executive officer, the chief financial officer and the chief operating officer of such Person, any individual holding equivalent positions, shareholders, members or other equity owners, or any other Person possessing, directly or indirectly, the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities, partnership interests, membership interests or by contract or otherwise.

"Prohibited Distinctions" has the meaning provided in Section 39.10(a) hereof.

"Prohibited Use" means the uses specified in Exhibit S (Prohibited Uses) attached hereto.

"Project" has the meaning provided in the Recitals of this Lease.

"Project Agreements" means this Lease, the Pre-Development Agreement, each PLA, the Survey License and the Licenses (each as defined in the Pre-Development Agreement), the Closing Date Guaranty, Completion Guaranty and Standby Completion Guaranty, the Tenant Operating Agreement, the Ballpark Lease Amendment Documents, and any other contract, agreement, side letter agreement, loan or credit agreement, funding agreement, promissory note, or other instrument concerning the Project to which any of Tenant, Developer (or any Affiliate thereof), the Landlord and/or the Lease Administrator is a party.

"Project Commitments" has the meaning provided in the Recitals of this Lease.

"Project Mission" has the meaning provided in the Recitals of this Lease.

"Project Report" has the meaning provided in Section 23.2 hereof.

"Purchase Agreement" has the meaning provided in Section 10.7(c) hereof.

"Purchase Option" has the meaning provided in Section 10.7(b) hereof.

"Qualified Developer" means, as of a given date, Developer Tenant or any other Person (a) having the demonstrated resources and capabilities to manage and operate assets in the Greater NYC Area comparable to the Retail Portion, the Hotel Portion, and the Banquet Facility Portion, and (b) (i) with respect to the Retail Portion, which is a Qualified Retail Operator or has retained a Qualified Retail Operator (where such Person which has retained a Qualified Retail Operator has a Net Worth at least equal to the amounts required in the proviso of the definition of Qualified Retail Operator), (ii) with respect to the Hotel Portion, which is a Qualified Hotel Operator, and (iii) with respect to the Banquet Facility Portion, which is a Qualified Banquet Facility Operator.

"Qualified Banquet Facility Operator" means as of a given date, a Person that is acceptable to Landlord (acting reasonably), and which has the demonstrated resources, capabilities and experience, immediately prior to such given date of not less than five (5) years, with managing and operating banquet facilities located in the Greater NYC Area which are substantially similar to the Banquet Facility Portion.

"Qualified Hotel Operator" means, as of a given date, a Person that is acceptable to Landlord (acting reasonably), that is creditworthy and which has the demonstrated resources, capabilities and experience, immediately prior to such given date of not less than five (5) years, with managing and operating hotels located in the Greater NYC Area which are substantially similar to the Hotel and which are, as of the Effective Date, substantially similar in quality and reputation those Persons doing business as Crown Plaza Hotels & Resorts, Courtyard Marriott and Hilton Garden Inn Hotels (as the quality and reputation of such Persons existed on the Effective Date).

"Qualified Parking Operator" means a Person acceptable to Landlord (acting reasonably) which has demonstrated resources, capabilities and experience managing and operating at least five (5) parking lots located in New York City which are substantially similar to the Parking Garage.

"Qualified Retail Operator" means, as of the BFC Exit Date, a Person acceptable to Landlord (acting reasonably) which, for a continuous period of not less than ten (10) years immediately prior to such date, has been actively engaged in the business of managing and operating (y) at least one (1) of the Comparable Outlet Malls, or (z) other retail assets in the Greater NYC Area which contain at least fifty (50) stores or that comprise at least three-hundred thousand (300,000) gross square feet; provided, that if: (A) the Buildings constituting the Retail Portion have achieved Substantial Completion as of such given date, and (B) at least Eighty Percent (80%) but less than or equal to Ninety Percent (90%) of the gross leasable area of such Buildings to be leased to Subtenants, as contemplated in the Approved Plans and Specifications, has been leased and occupied by Subtenants, such Person shall also have a Net Worth of not less than Twenty Million Dollars ($20,000,000) in order to qualify as a "Qualified Developer"; provided further, that if over Ninety Percent (90%) of the gross leaseable area of such Buildings

to be leased to Subtenants have been so leased and occupied, then no such Net Worth requirement shall apply to such Person.

"Quarterly Gross Revenue Report" has the meaning provided in Section 36.4(a).

"Quarterly Period" means, (a) with respect to the first quarterly period in a given Fiscal Year, the three (3) month period beginning on the first day of the Fiscal Year; provided, that if the first day of such Fiscal Year occurs on a date which is other than the first day of a calendar month, the first quarterly period in such Fiscal Year shall be the remainder of the first (partial) month and the succeeding two (2) full calendar months, and thereafter (b) with respect to each subsequent quarterly period following such first quarterly period, each three (3) month period which begins on the day after the last day of the immediately preceding quarterly period.

"Recognized Mortgage" has the meaning provided in Section 11.2(b) hereof.

"Recognized Mortgagee" means the holder of a Recognized Mortgage.

"Recognized Sublease" means a Sublease of part of the Retail Portion or the entirety of the Banquet Facility Portion (if Tenant has not exercised its Severance Lease option in accordance with Article 12), the Parking Garage to a Recognized Subtenant, which Sublease (a) is arms'-length and (as set forth in a certificate from a reputable national brokerage company) is on market terms taking into account all relevant factors (including as to the rent payable thereunder) as of the date made, and (b) demises no less than three thousand (3,000) square feet of floor area of the Premises (or where such floor area is not so demised, such Sublease is reasonably acceptable to Landlord); provided that a Sublease that is considered an "Assignment" as expressly set forth in Section 10.1(d)(i) hereof shall not qualify as a Recognized Sublease.

"Recognized Subtenant" means a Person that is the Subtenant under a Recognized Sublease, which Subtenant (i) is a Permitted Person, (ii) with respect to a Sublease of part of the Retail Portion, is owned by or directly affiliated with a retail brand or other company that has an international, national or regional reputation or is otherwise nationally or regionally recognized (or where such Person is not so owned or affiliated, then such Person is reasonably acceptable to Landlord), (iii) with respect to a Sublease of part of the Retail Portion, owns or operates a retail store in at least one of the Comparable Outlet Malls (or where such Person does not own or operate such a retail store, such Person is reasonably acceptable to Landlord), (iv) with respect to a Sublease of the Banquet Facility Portion, is a Qualified Banquet Facility Operator, (iv) with respect to a Sublease of the Parking Garage, is or retains a Parking Operator, and (vi) has delivered any documents required for a Recognized Subtenant under this Lease, including, without limitation, the Required Disclosure Statements.

"Remediation Action and Cost Report" has the meaning provided in the Pre-Development Agreement.

"Remediation Credit Approval" means an approval of the Approved Credit Amount (as defined in the Pre-Development Agreement) by Lease Administrator in accordance with Section 5.1(d)(iv) of the Pre-Development Agreement.

"Remediation Work" means the removal, and disposal of all Hazardous Substance Conditions at the Premises and any other actions necessary to otherwise remediate the Premises as required by all Legal Requirements and Environmental Laws, including excavating, testing, onsite management, temporary storage, transportation, offsite disposal and any other related actions as may be required by Legal Requirements and Environmental Laws.

"Remediation Work Plan" has the meaning provided in the Pre-Development Agreement.

"Removal Event" means: (a) the occurrence of a felony, fraud, misappropriation of funds or wilful misconduct; (b) a breach of the transfer provisions in the Tenant Operating Agreement or any other constituent documents of Tenant or a parent entity thereof; (c) cessation of involvement in the day-to-day management and operation of the Premises; (d) bankruptcy and insolvency related events; (e) the death, legal incapacitation or retirement of a Developer Principal in connection with which notice and certifications are not given in accordance with Section 10.1(j); or (f) the occurrence of a material default or material misrepresentation under the Tenant Operating Agreement or other constituent document of Tenant or any agreement relating to the Premises, in each case subject to the expiration of any notice and cure periods in the Tenant Operating Agreement or such other constituent documents.

"Rental" means all of the amounts payable by Tenant pursuant to this Lease, including Base Rent, Percentage Rent, Hotel Percentage Rent, Additional Rent, PILOT, Impositions, the amounts payable pursuant to Article 20 hereof and any other sums, costs, expenses or deposits which Tenant is obligated, pursuant to any of the provisions of this Lease, to pay and/or deposit.

"Replacement Value" means the actual cost to repair, rebuild or replace an item or structure damaged or destroyed by casualty or condemnation with an item or structure of comparable size, material and quality and used for comparable purposes and in the same location as the item or structure being repaired, rebuilt or replaced.

"Reporting Period" has the meaning provided in Section 39.9(a) hereof.

"Requested Information" has the meaning provided in Section 3.8(g).

"Required Disclosure Statement" has the meaning provided in Section 10.1(e) hereof.

"Required Hours" has the meaning provided in Section 23.1(c) hereof.

"Required Parking" means the Ballpark-Controlled Parking, and (a) during the period between the Effective Date and the Substantial Completion Date of the Phase 2 Development, no less than Seven Hundred Eighty-Six (786) parking spaces located on or off the Premises, and (b) during the period after such Substantial Completion Date, One Thousand, Two Hundred and Fifty (1,250) parking spaces located on the Premises.

"Required Threshold" means an Institutional Lender having net assets of no less than Five Hundred Million Dollars ($500,000,000.00) as of the Effective Date, provided that if an Institutional Lender comprises more than one Person (whether as Affiliated real estate investment trusts, Affiliated funds or otherwise), the Required Threshold shall be the combined assets of all such Affiliated Persons as of the Effective Date.

"Required Uses" has the meaning provided in Section 23.1(a) hereof.

"Requirements" has the meaning provided in Section 16.1(b) hereof.

"Restoration" means either a Casualty Restoration or a Condemnation Restoration, or both.

"Restoration Funds" means (a) any moneys that may be received by Depositary pursuant to the provisions of Section 8.3 or Section 9.2(c) hereof, together with the interest, if any, earned thereon, and (b) the proceeds of any security deposited with Depositary pursuant to Section 34.2(b) hereof, together with the interest, if any, earned thereon.

"Retail Partner" means EOI, which Person is deemed to be a Qualified Developer.

"Retail Portion" means the portion of the Premises to be used primarily for retail and related food services purposes as described in the Project Commitments, the Approved ULURP Application and as more specifically shown on the Approved Plans and Specifications.

"RFEI" has the meaning provided in the Recitals of this Lease.

"RNDA" has the meaning provided in Section 10.6(b) hereof.

"ROFO Period" has the meaning provided in Section 10.7(a) hereof.

"Sales Taxes" has the meaning provided in Section 4.6 hereof.

"Sales Tax Exemption Letter" means a letter from the City of New York to Tenant pursuant to which Tenant is exempted from the imposition of certain sales and use taxes, as more fully set forth in such letter.

"Scheduled Commencement Date" has the meaning provided in Section 13.1(b)(iv) hereof.

"Scheduled Completion Date" has the meaning provided in Section 13.1(b)(v) hereof.

"Schematics" has the meaning provided in Section 13.1(b)(vi) hereof.

"Second Credit Amount" has the meaning provided in Section 21.3(c) hereof.

"Second Exercise Period" has the meaning provided in Section 3.3(b) hereof.

"Second Extension Term" has the meaning provided in Section 2.2(b) hereof.

"Second Percentage Trigger" means, that portion of Gross Revenues and/or Hotel Gross Revenues as reported in the Gross Revenue Report for a given Fiscal Year, where (a) such Gross Revenues (excluding Hotel Gross Revenues), if any, are greater than Twenty Five Million Dollars ($25,000,000) and less than or equal to Forty Million Dollars ($40,000,000), and (b) with respect to such Hotel Gross Revenues, where such Hotel Gross Revenues, if any, are equal to or greater than Fifteen Million Dollars ($15,000,000).

"Second Request" has the meaning provided in Section 13.1(i) hereof.

"Second Threshold Amount" has the meaning provided in Section 21.3(c) hereof.

"Security Deposit" has the meaning provided in Section 33.1 hereof.

"Severance Lease" means a severance lease agreement in respect of the Hotel Portion and the Banquet Facility Portion between Landlord and the Hotel Tenant on substantially the same terms and in substantially the same form as this Lease except (a) to the extent such terms are otherwise agreed by Landlord and the Hotel Tenant and (b) such severance lease agreement shall not provide that a Default or Event of Default hereunder constitutes a default or event of default under such severance lease agreement.

"Severance Lease Notice" has the meaning provided in Section 12.1(b) hereof.

"Severance Lease Notice Period" has the meaning provided in Section 12.1(b) hereof.

"Site Easements" means easement agreements, licenses, rights of way, or other instruments to be entered into, from time to time, between Tenant, and Adjacent Property Owners or other Persons (excluding any Title Matters) pursuant to which such Adjacent Property Owners or other Persons grant Tenant access necessary or prudent for the interconnection of the Retail Portion to any utilities or for the provision of pedestrian and/or vehicular access rights and rights of ingress and egress to and from the Project.

"Site Environmental Conditions" has the meaning provided in Section 21.2 hereof.

"Soft Costs" has the meaning provided in Section 8.3(b)(ii) hereof.

"Stabilization Date" means the date on which Landlord receives written notice from Tenant certifying that (a) the Buildings constituting the Full Build have achieved Substantial Completion, and (b) at least Eighty Percent (80%) of the gross leasable area of the Buildings in the Retail Portion to be leased to Subtenants as contemplated in the Approved Plans and Specifications has been leased and occupied by Subtenants, as such date shall have been confirmed in writing by Landlord or Lease Administrator.

"Standby Completion Guaranty" means a guaranty of lien-free completion of the Initial Construction Work (or other applicable Construction Work) issued to the Landlord as the beneficiary by a Guarantor, in a form acceptable to Landlord, pursuant to which Landlord may exercise the right to cause the timely completion of the Initial Construction Work as provided in Section 13.4(g)(ii).

"Sublease(s)" has the meaning provided in Section 10.1(d)(v) hereof.

"Substantial Completion" or "Substantially Complete(d)" has the meaning provided in Section 13.1(b)(vii) hereof.

"Substantial Completion Date" means, with respect to any Phase, the date on which such Phase shall have been Substantially Completed.

"Substantially All of the Premises" has the meaning provided in Section 9.1(c)(ii) hereof.

"Subtenant(s)" has the meaning provided in Section 10.1(d)(vi) hereof.

"Tax Year" means each tax fiscal year of the City.

"Taxes" means the real property taxes assessed and levied against the Premises or any part thereof (or, if the Premises or any part thereof or the owner or occupant thereof is exempt from such real property taxes then the real property taxes which would be so assessed and levied if not for such exemption, taking into account any as-of-right abatements or credits, and any exemption, discretionary abatements or credits that are actually granted, in connection with the Premises or any owner or occupant thereof) pursuant to the provisions of Chapter 58 of the Charter and Title 11, Chapter 7 of the New York City Administrative Code and Chapter 50-a of the Consolidated Laws of the State of New York, each as the same may now or hereafter be amended, or any statute or ordinance in lieu thereof in whole or in part or in addition thereto to the extent the charges imposed thereby are of a type customarily considered as real property taxes.

"Taxing Authorities" has the meaning provided in Section 4.6 hereof.

"Tenant" means the Developer Tenant and its permitted successors and assigns.

"Tenant's Appraisal" has the meaning provided in Section 35.1(b) hereof.

"Tenant Liabilities" has the meaning provided in Section 20.1 hereof.

"Tenant's Equipment" means all of Tenant's (or a Subtenant's) personal property and trade fixtures removable without damage to the Premises, including all communications equipment (including all such equipment installed on the rooftop of any Building or elsewhere on the Premises), computer equipment, supplemental mechanical systems, lobby decorations, artwork, and movable furniture of Tenant (or a Subtenant) installed or placed by Tenant (or a Subtenant) on, in or around the Premises and removable without damage to the Premises; provided, that in no event shall any such personal property or trade fixtures reimbursed out of or otherwise paid for in whole or in part with City funds pursuant to any Funding Agreement between Lease Administrator and Tenant (or any Affiliate of Tenant) constitute Tenant's Equipment.

"Tenant Operating Agreement" means the agreement among each Developer Principal and EOI, dated November 27, 2013 pursuant to which such parties' respective rights and obligations as equity owners in Tenant are set forth.

"Term" means the period commencing on the Effective Date and ending on the Expiration Date.

"Termination Notice" has the meaning provided in Section 24.3(c) hereof.

"Third Appraiser" has the meaning provided in Section 35.1(c) hereof.

"Third Exercise Period" has the meaning provided in Section 3.3(b) hereof.

"Third Extension Term" has the meaning provided in Section 2.2(b) hereof.

"Third Percentage Trigger" means, that portion of Gross Revenues as reported in the Gross Revenue Report for a given Fiscal Year, where such Gross Revenues (excluding Hotel Gross Revenues), if any, are greater than Forty Million Dollars ($40,000,000).

"Third Threshold Amount" has the meaning provided in Section 21.3(c) hereof.

"Threshold Amount" means (i) prior to Substantial Completion, an amount equal to Five Million Dollars ($5,000,000), and (ii) subsequent to Substantial Completion, an amount equal to five percent (5%) of the Replacement Value of the Buildings.

"Title Matters" has the meaning provided in Section 2.1 hereof.

"Transfer" has the meaning provided in Section 10.1(d)(vii) hereof.

"Transferee" has the meaning provided in Section 10.1(d)(viii) hereof.

"ULURP" has the meaning provided in the Recitals of this Lease.

"Unavoidable Delays" means delays resulting from causes beyond Tenant's reasonable control including: (i) actions of or failures to act by Landlord (in its proprietary capacity under this Lease) or by Lease Administrator which are in violation of this Lease, or a termination of the License (as defined in Part 2 of Exhibit U (Off-Premises Areas and Off-Premises Improvements)) without cause by DOT with respect to the DOT Off-Premises Area, (ii) orders of any court of competent jurisdiction (including any litigation which results in an injunction or a restraining order prohibiting or otherwise delaying the Initial Construction Work or any other Construction Work, as the case may be), (iii) labor disputes (including strikes, lockouts not caused by Tenant, slowdowns and similar labor problems), (iv) shortages or inability to obtain labor, fuel, steam, water, electricity, equipment, supplies, or materials (for which no substitute is readily available), (v) acts of God (including earthquakes, floods and inordinately severe weather conditions), (vi) enemy action (including a terrorist act or acts), civil disturbance or commotion, (vii) inability to obtain labor, materials or permits due to unscheduled extraordinary governmental restrictions, (viii) fire, or other casualty of which Tenant has given Landlord notice within ten (10) days after Tenant has actual knowledge of the same, (ix) unlawful interference of or by an adjoining property owner or operator with Tenant's construction obligations under this Lease (to the extent Tenant is diligently pursuing its rights and remedies under law and equity to promptly remove such interference), (x) the inability of Tenant to obtain a necessary Permit from the Buildings Department or other agency having jurisdiction thereover, relating to either a portion of the Initial Construction Work or the Off-Premises Improvements as a result of a general failure or moratorium on the issuance of new Permits required for the Initial Construction Work or a portion thereof, or (xi) a failure by Lease Administrator to disburse funds to Tenant in accordance with Lease Administrator's obligations as set forth in a Project Agreement between Lease Administrator and Tenant, where all conditions set forth such Project Agreement to the disbursement of such funds have been duly satisfied or waived; but in all cases only (A) to the extent (if any) such delay cannot be offset or eliminated by the exercise of

reasonable, good-faith curative efforts on the part of Tenant, and without giving duplicative effect to concurrent delays, and (B) provided that Tenant (x) notifies Lease Administrator in writing of the occurrence of any event constituting an Unavoidable Delay condition promptly after Tenant has actual knowledge thereof, and (y) throughout the pendency of such Unavoidable Delay condition, utilizes good-faith efforts to minimize the impact and delays caused by such Unavoidable Delay condition. The period of delay caused by any occurrence of an event of Unavoidable Delay shall not be deemed to commence any earlier than ten (10) Business Days before the date Tenant gives notification to Landlord of such occurrence. Upon cessation of the event of Unavoidable Delay causing such delay, Tenant shall recommence the performance of the obligation affected by such event of Unavoidable Delay. Under no circumstances shall (a) the non-payment of money or a failure attributable to a lack of funds or a delay due to Tenant's financial condition or inability to obtain financing, be deemed to be (or to have caused) an event of Unavoidable Delay except as set forth in (xi) above, and (b) a termination of the License specified in (i) above without cause by DOT with respect to the DOT Off-Premises Area excuse the performance of any other obligations hereunder except for Tenant's obligation to undertake the DOT Off-Premises Improvements in accordance with this Lease. If and to the extent that an Unavoidable Delay continues as a result of a delay within the reasonable control of Tenant, then such Unavoidable Delay shall not be deemed an Unavoidable Delay for the period of such Tenant delay.

"Uniform System" means the Uniform System of Accounts for the Lodging Industry (Tenth Revised Edition 2006) published by the American Hotel & Lodging Association, including any subsequent revisions thereto.

"Unqualified Person" means any Person that is not a Permitted Person and is not Controlled by a Person that is not a Permitted Person.

"Withholding Period" has the meaning provided in Section 3.11(a) hereof.

Section 1.2 Interpretation. Except as otherwise expressly provided herein, the following rules of interpretation shall apply to this Lease:

(a) The singular includes the plural and the plural includes the singular.

(b) "or" is not exclusive.

(c) A reference to any law, ordinance, regulation, statute, order, or code includes any amendment or modification to such law, ordinance, regulation, statute, order or code.

(d) A reference to a Person includes its permitted successors, permitted replacements and permitted assigns.

(e) The words "include", "includes" and "including" are not limiting.

(f) In the event of any conflict between the provisions of this Lease (exclusive of the Exhibits thereto) and any Exhibit thereto, the provisions of this Lease shall control.

(g) Unless otherwise expressly provided, references to any document, instrument or agreement (i) shall include all exhibits, schedules and other attachments thereto, (ii) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (iii) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, amended and restated, modified and supplemented from time to time and in effect at any given time.

(h) The words "hereof", "herein" and "hereunder" and words of similar import when used in any document shall refer to such document as a whole and not to any particular provision of such document.

(i) References to "days" shall mean calendar days, unless the term "Business Day" shall be used.

(j) References to a time of day shall mean such time in New York, New York, unless otherwise specified.

(k) If, at any time after the Effective Date, A.M. Best Company, Inc. or Standard and Poor's Ratings Group, Inc. changes their respective system of classifications, then any such "rating" referred to herein shall be considered to be at or above a specified level if it is at or above the new rating which most closely corresponds to the specified level under the old rating system.

## ARTICLE 2
## DEMISE OF PREMISES AND TERM OF LEASE

Section 2.1 Demise of Premises.

(a) Subject to Section 2.1(b), Landlord does hereby demise and lease to Tenant, and Tenant, having conducted its own independent title search with respect to the Premises and not relying on any statements or representations of any kind of Landlord, does hereby hire and take from Landlord the Premises, together with all easements, appurtenances and other rights and privileges now or hereafter belonging or appertaining to the Premises, subject only to those matters affecting title set forth in Exhibit G (Title Matters) hereto (the "Title Matters").

(b) Upon satisfaction of the applicable requirements set forth in Sections 12.1 and 12.2, Landlord shall enter into the Severance Lease with the Hotel Tenant as provided in Article 12. On the effective date of such Severance Lease, this Lease shall automatically be superseded by such Severance Lease with respect to the Hotel Portion.

Section 2.2 Term.

(a) Initial Term. The initial term of this Lease (the "Initial Term") shall commence on the Effective Date and shall expire at 11:59 p.m. of the last day of the forty-ninth (49th) Lease Year or such earlier date upon which this Lease shall be terminated in accordance with the terms herein (the "Initial Expiration Date").

(b) Extension Term Option.

(i) Grant of Option. Provided that this Lease shall then be in full force and effect in accordance with its terms and there shall not then exist any Event of Default or material Default hereunder, Tenant shall have five (5) consecutive options to extend the then Term for the following periods (each an "Extension Term" and collectively the "Extension Terms"), each of which options shall be exercised in the manner set forth in Section 2.2(b)(ii) below (all Lease Years stated below are inclusive):

| | |
|---|---|
| "First Extension Term" | Lease Years 50 to 59 |
| "Second Extension Term" | Lease Years 60 to 69 |
| "Third Extension Term" | Lease Years 70 to 79 |
| "Fourth Extension Term" | Lease Years 80 to 89 |
| "Fifth Extension Term" | Lease Years 90 to 99 |

(ii) Exercise of Option. Tenant shall exercise its option to extend the then Term for any Extension Term by giving written notice to Lease Administrator of its election not fewer than eighteen (18) months prior to the last day of the then-Term, TIME BEING OF THE ESSENCE. If, after the date when such notice is given but prior to the start of the applicable Extension Term, Landlord and Tenant become aware of facts or circumstances which constitute an Event of Default, then Tenant shall be permitted a reasonable period of time prior to the start of such Extension Term in which to cure the Event of Default.

(iii) Terms Governing Extension Term(s). If the Term has been extended for an Extension Term, the Term shall automatically be extended for the applicable Extension Term without the necessity for execution of an extension or renewal lease. The Term, as extended for such Extension Term, shall be upon all of the same terms, covenants and conditions as shall be in effect hereunder, except that (y) Base Rent shall be determined in accordance with the provisions of Section 3.2 hereof; and (z) Tenant shall have no further right to extend or renew the Term other than as provided herein.

Section 2.3 Premises "AS IS". Tenant (a) has examined the physical condition of the Premises prior to the execution and delivery of this Lease and agrees to accept the Premises in their "AS IS, WHERE IS" condition (including as to the presence of any and all Hazardous Substances and the Ferry Operations), and without any representations or warranties of any kind or nature by Landlord, except as otherwise expressly provided herein, (b) will not make any claim that the Premises is not suitable for the uses set forth in this Lease, and (c) except to the extent of any express obligations of Landlord under this Lease, will not at any time make any claim regarding the condition of the Premises or due to the Ferry Operations.

## ARTICLE 3
## RENT

Section 3.1 Time and Place of Payment. Except as otherwise specifically provided herein, all Rental shall be paid to Landlord (except for such items included in Rental that are to be paid to third parties directly, as expressly set forth in this Lease), without notice or demand, by, at the election of Tenant, (i) good checks drawn on an account at a bank that is a member of the New York Clearing House Association (or any successor body of similar function) or in currency that at the time of payment is legal tender for public and private debts in the United States of America, at the office of Landlord set forth above or at such other place as Landlord shall direct by notice to Tenant (with a copy concurrently sent to any Recognized Mortgagee), or (ii) by wire transfer(s) of immediately available funds to account(s) at a bank(s) that is a member of the New York Clearing House Association (or any successor body of similar function) designated by Landlord in writing. The foregoing requirement to pay Rental without notice or demand shall not limit Tenant's rights to cure a failure to pay Rental as provided in Section 24.1(a) hereof.

Section 3.2 Base Rent.

(a) Amount of Base Rent. Tenant shall pay Landlord (a) on the Effective Date an amount equal to the sum of One Million, Two Hundred and Fifty Thousand Dollars ($1,250,000) (in respect of Base Rent for the Parking Garage and Retail Portion), *plus* Two Hundred and Fifty Thousand Dollars ($250,000) (in respect of Base Rent for the Hotel Portion and Banquet Facility), and (b) thereafter, commencing on the first day of the second ($2^{nd}$) Lease Year and continuing on the first day of each Lease Year thereafter during the Term, an annual rent as follows:

(i) for the second ($2^{nd}$) Lease Year through and including the fifth ($5^{th}$) Lease Year, an amount per annum equal to the Base Rent set forth in Section 3.2(a);

(ii) for the sixth ($6^{th}$) Lease Year through and including the tenth ($10^{th}$) Lease Year, an amount per annum equal to the product of (y) the annual Base Rent payable for the fifth ($5^{th}$) Lease Year, *multiplied by* (z) 110%;

(iii) for the eleventh ($11^{th}$) Lease Year through and including the fifteenth ($15^{th}$) Lease Year, an amount per annum equal to the product of (y)

the annual Base Rent payable for the tenth (10th) Lease Year, *multiplied by* (z) 110%;

(iv) for the sixteenth (16th) Lease Year through and including the twentieth (20th) Lease Year, an amount per annum equal to the product of (y) the annual Base Rent payable for the fifteenth (15th) Lease Year, *multiplied by* (z) 110%;

(v) for the twenty-first (21st) Lease Year through and including the twenty-fifth (25th) Lease Year, an amount per annum equal to the product of (y) the annual Base Rent payable for the twentieth (20th) Lease Year, *multiplied by* (z) 110%;

(vi) for the twenty-sixth (26th) Lease Year through and including the thirtieth (30th) Lease Year, an amount per annum equal to the greater of (y) the product of (A) the annual Base Rent payable for the twenty-fifth (25th) Lease Year, *multiplied by* (B) 112%, and (z) the Fair Market Rent as of a Determination Date not earlier than one hundred eighty (180) days prior to the last day of the twenty-fifth (25th) Lease Year; provided, that if Fair Market Rent has not yet been determined in accordance with Section 35.1 hereof as of the first day of the twenty-sixth (26th) Lease Year, Tenant shall pay Base Rent in accordance with clause (y) of this Section 3.2(a)(vi) until such determination has been made, and when such determination has been made, an appropriate retroactive adjustment shall be made for any underpayment;

(vii) for the thirty-first (31st) Lease Year through and including the thirty-fifth (35th) Lease Year, an amount per annum equal to the product of (y) the annual Base Rent payable for the thirtieth (30th) Lease Year, *multiplied by* (z) 110%;

(viii) for the thirty-sixth (36th) Lease Year through and including the fortieth (40th) Lease Year, an amount per annum equal to the product of (y) the annual Base Rent payable for the thirty-fifth (35th) Lease Year, *multiplied by* (z) 110%;

(ix) for the forty-first (41st) Lease Year through and including the forty-fifth (45th) Lease Year, an amount per annum equal to the product of (y) the annual Base Rent payable for the fortieth (40th) Lease Year, *multiplied by* (z) 110%;

(x) for the forty-sixth (46th) Lease Year through and including the forty-ninth (49th) Lease Year, an amount per annum equal to the product of (y) the annual Base Rent payable for the forty-fifth (45th) Lease Year, multiplied by (z) 110%;

(xi) for the fiftieth (50th) Lease Year through and including the fifty-fourth (54th) Lease Year; an amount per annum equal to the greater of (y) the product of (A) the annual Base Rent payable for the forty-ninth (49th) Lease Year,

*multiplied by* (B) 112%, and (z) the Fair Market Rent as of a Determination Date not earlier than one hundred eighty (180) days prior to the last day of the forty-ninth (49th) Lease Year; provided, that if Fair Market Rent has not yet been determined in accordance with Section 35.1 hereof as of the first day of the fiftieth (50th) Lease Year, Tenant shall pay Base Rent in accordance with clause (y) of this Section 3.2(a)(xi) until such determination has been made, and when such determination has been made, an appropriate retroactive adjustment shall be made for any underpayment;

(xii) for the fifty-fifth (55th) Lease Year through and including the fifty-ninth (59th) Lease Year, an amount per annum equal to the product of (y) the annual Base Rent payable for the fifty-fourth (54th) Lease Year, *multiplied by* (z) 110%;

(xiii) for the sixtieth (60th) Lease Year through and including the sixty-fourth (64th) Lease Year, an amount per annum equal to the product of (y) the annual Base Rent payable for the fifty-ninth (59th) Lease Year, *multiplied by* (z) 110%;

(xiv) for the sixty-fifth (65th) Lease Year through and including the sixty-ninth (69th) Lease Year, an amount per annum equal to the product of (y) the annual Base Rent payable for the sixty-fourth (64th) Lease Year, *multiplied by* (z) 110%;

(xv) for the seventieth (70th) Lease Year through and including the seventy-fourth (74th) Lease Year, an amount per annum equal to the product of (y) the annual Base Rent payable for the sixty-ninth (69th) Lease Year, *multiplied by* (z) 110%;

(xvi) for the seventy-fifth (75th) Lease Year through and including the seventy-ninth (79th) Lease Year an amount per annum equal to the greater of (y) the product of (A) the annual Base Rent payable for the seventy-fourth (74th) Lease Year, *multiplied by* (B) 112%, and (z) the Fair Market Rent as of a Determination Date not earlier than one hundred eighty (180) days prior to the last day of the seventy-fourth (74th) Lease Year; provided, that if Fair Market Rent has not yet been determined in accordance with Section 35.1 hereof as of the first day of the fiftieth (50th) Lease Year, Tenant shall pay Base Rent in accordance with clause (y) of this Section 3.2(a)(xvi) until such determination has been made, and when such determination has been made, an appropriate retroactive adjustment shall be made for any underpayment;

(xvii) for the eightieth (80th) Lease Year through and including the eighty-fourth (84th) Lease Year, an amount per annum equal to the product of (y) the annual Base Rent payable for the seventy-ninth (79th) Lease Year, *multiplied by* (z) 110%;

(xviii) for the eighty-fifth (85th) Lease Year through and including the eighty-ninth (89th) Lease Year, an amount per annum equal to the product of (y) the annual Base Rent payable for the eighty-fourth (84th) Lease Year, *multiplied by* (z) 110%;

(xix) for the ninetieth (90th) Lease Year through and including the ninety-fourth (94th) Lease Year, an amount per annum equal to the product of (y) the annual Base Rent payable for the eighty-ninth (89th) Lease Year, *multiplied by* (z) 110%; and

(xx) for the remainder of the Term, an amount per annum equal to the product of (y) the annual Base Rent payable for the ninety-fourth (94th) Lease Year, *multiplied by* (z) 110%.

(b) Adjustments to Base Rent. Following the Effective Date, subject to any applicable provisions set forth elsewhere in this Lease or any other Project Agreement, upon delivery to Lease Administrator of the documents provided for in Section 3.8(d), Base Rent shall be reduced in accordance with the following:

(i) As of a given Determination Date, *if* Lease Administrator receives the applicable PLA Documents and determines that Tenant is eligible for the reduction contemplated in Section 3.8(c)(i) in light of the hard costs set forth in the then most recent budget, pro-forma or financial model provided by Tenant for the Phase 1 Development and Phase 2 Development as part of the PLA Documents, and in connection therewith either Lease Administrator or Landlord elects not to make an adjustment to PILOT pursuant to Section 3.8(c)(i), *then* Base Rent shall be reduced such that each payment thereof for the applicable number of Lease Years (as determined by Lease Administrator) after such Determination Date shall be reduced by an amount equal to Adjustment Amount 1.

(ii) As of a given Determination Date, *if* Lease Administrator receives the applicable PLA Documents and determines that Tenant is eligible for the reduction contemplated in Section 3.8(c)(ii) in light of the hard costs set forth in the then most recent budget, pro-forma or financial model provided by Tenant for the Phase 3 Development as part of the PLA Documents, and in connection therewith either Lease Administrator or Landlord elects not to make an adjustment to PILOT pursuant to Section 3.8(c)(ii), *then* Base Rent shall be reduced such that each payment thereof for the applicable number of Lease Years (as determined by Lease Administrator) after such Determination Date shall be reduced by an amount equal to Adjustment Amount 2.

Section 3.3 Prepayment Option.

(a) Option to Prepay Base Rent. Subject to the terms and conditions of this Lease, during the Option Exercise Periods Tenant has the right to give irrevocable notice of election to prepay in advance (and in the manner provided in this Section 3.3) the entire Base

Rent for the next upcoming Extension Term which immediately follows the applicable Option Exercise Period, in any case for an amount equal to the Prepayment Amount (each such option, a "Prepayment Option").

(b) Exercise Periods. Provided that this Lease shall then be in full force and effect in accordance with its terms and there shall not then exist any Default or Event of Default hereunder which would not be cured by the payment of Base Rent prior to the start of the next upcoming Extension Term, in addition to the Initial Exercise Option (as defined and set forth in the Pre-Development Agreement), Tenant shall have five (5) options to exercise its Prepayment Option each of which shall be exercised by giving notice within the exercise periods set forth in the table below (together with the Initial Exercise Period (as defined in the Pre-Development Agreement) collectively, the "Option Exercise Periods" and each individually, an "Option Exercise Period"):

| | |
|---|---|
| "First Exercise Period" | In respect of a prepayment for the First Extension Term, the period of time that is no greater than 60 days before the first day of the First Extension Term and no less than 30 days before the first day of the First Extension Term. |
| "Second Exercise Period" | In respect of a prepayment for the Second Extension Term, the period of time that is no greater than 60 days before the first day of the Second Extension Term and no less than 30 days before the first day of the Second Extension Term. |
| "Third Exercise Period" | In respect of a prepayment for the Third Extension Term, the period of time that is no greater than 60 days before the first day of the Third Extension Term and no less than 30 days before the first day of the Third Extension Term. |
| "Fourth Exercise Period" | In respect of a prepayment for the Fourth Extension Term, the period of time that is no greater than 60 days before the first day of the Fourth Extension Term and no less than 30 days before the first day of the Fourth Extension Term. |
| "Fifth Exercise Period" | In respect of a prepayment for the Fifth Extension Term, the period of time that is no greater than 60 days before the first day of the Fifth Extension Term and no less than 30 days before the first day of the Fifth Extension Term. |

(c) Election Notice. In the event Tenant elects to exercise a Prepayment Option, Tenant shall deliver to Landlord during the applicable Exercise Period irrevocable written notice of such election (the "Prepayment Option Election Notice") in

substantially the applicable form attached to this Lease at Part 1 of Exhibit H (Forms of Election Notices).

(d) Prepayment Amount and Date of Payment. Subject to Section 3.3(e), the payment to be made by Tenant in connection with its exercise of a given Prepayment Option shall be equal to the amount (the "Prepayment Amount") determined in accordance with Exhibit I (Prepayment Amount Calculation Methodology). Following delivery of a Prepayment Option Election Notice, in accordance with Section 3.1 Tenant shall pay the applicable Prepayment Amount to Landlord on the first day of the first Lease Year of the Extension Term to be prepaid.

(e) Effect of Subsequent Appraisals. If, in respect of the Initial Term or any given Extension Term, (i) Tenant has elected to prepay the Base Rent for the Initial Term or such Extension Term and has paid to Landlord the applicable Prepayment Amount, and (ii) at any time, from time to time, during the Initial Term or such Extension Term a determination of the Fair Market Rent for the Premises is made as provided in Section 3.2 and such Fair Market Rent is determined to be an amount greater than the Base Rent used as the basis for calculating the applicable Prepayment Amount, then the Prepayment Amount for the remainder of the Initial Term or such Extension Term shall be recalculated using the amount of such Fair Market Rent in lieu of the Base Rent amount. Tenant shall be responsible for paying Landlord the difference (if any) between the Prepayment Amount initially paid in respect of the Initial Term or such Extension Term, and the newly calculated Prepayment Amount determined pursuant to the previous sentence (the "Increased Prepayment Amount"). Tenant shall have the option of paying the Increased Prepayment Amount for the Initial Term or such Extension Term either (x) in a single payment no later than twenty (20) Business Days following the date on which the Increased Prepayment Amount is determined, or (y) shall have the right pay the Increased Prepayment Amount in equal annual installments over the remainder of the Initial Term or the relevant Extension Term (as the case may be) on the same dates as the Base Rent would have been paid during the Initial Term or the relevant Extension Term had the relevant Prepayment Option had not been exercised.

Section 3.4 Percentage Rent for Parking Garage and Retail Portion.

(a) Obligation to Pay Percentage Rent. Subject to Section 3.11, starting with respect to the first (1st) Fiscal Year after the Substantial Completion Date for the Phase 2 Development and continuing for each subsequent Fiscal Year thereafter until the Expiration Date, Tenant shall pay Percentage Rent in respect of the Parking Garage and Retail Portion to Landlord in accordance with this Section 3.4.

(b) First Percentage Trigger. In the event that the First Percentage Trigger shall have occurred with respect to a given Fiscal Year, Tenant shall pay Landlord, no later than ten (10) Business Days after the last day of the applicable Fiscal Year, an amount equal to the product of (i) that portion of the Gross Revenue (excluding Hotel Gross Revenue) for the applicable Fiscal Year for which such payment is due that is equal to or greater than Twenty Million Dollars ($20,000,000) and less than or equal to Twenty Five Million Dollars ($25,000,000), *multiplied by* (ii) three percent (3%).

(c) Second Percentage Trigger. In addition to the amounts payable by Tenant to Landlord pursuant to Section 3.4(b) above (and not in substitution or replacement thereof), in the event that the Second Percentage Trigger shall have occurred with respect to a given Fiscal Year, Tenant shall pay Landlord, no later than ten (10) Business Days after the last day of the applicable Fiscal Year, an amount equal to the product of (i) that portion of the Gross Revenue for the applicable Fiscal Year for which such payment is due that is greater than Twenty Five Million Dollars ($25,000,000) and less than or equal to Forty Million Dollars ($40,000,000), *multiplied by* (ii) five percent (5%).

(d) Third Percentage Trigger. In addition to the amounts payable by Tenant to Landlord pursuant to Sections 3.4(b) and 3.4(c) above (and not in substitution or replacement thereof), in the event that the Third Percentage Trigger shall have occurred with respect to a given Fiscal Year, Tenant shall pay Landlord, no later than ten (10) Business Days after the last day of the applicable Fiscal Year, an amount equal to the product of (i) that portion of the Gross Revenue for the applicable Fiscal Year for which such payment is due that is greater than Forty Million Dollars ($40,000,000), *multiplied by* (ii) seven percent (7%).

Section 3.5 Percentage Rent for Hotel Portion.

(a) Obligation to Pay Hotel Percentage Rent. Subject to Section 3.11, starting with respect to the first Fiscal Year after the Substantial Completion of the Phase 3 Development and continuing for each subsequent Fiscal Year thereafter until the Expiration Date, Tenant shall pay Hotel Percentage Rent to Landlord in respect of the Hotel Portion in accordance with this Section 3.5.

(b) First Percentage Trigger. In the event that the First Percentage Trigger shall have occurred with respect to a given Fiscal Year, Tenant shall pay Landlord, no later than ten (10) Business Days after the last day of the applicable Fiscal Year, an amount equal to the product of (i) that portion of the Hotel Gross Revenue for the applicable Fiscal Year for which such payment is due that is equal to or greater than Ten Million Dollars ($10,000,000) and less than Fifteen Million Dollars ($15,000,000), *multiplied by* (ii) five percent (5%).

(c) Second Percentage Trigger. In addition to the amounts payable by Tenant to Landlord pursuant to Section 3.5(b) above (and not in substitution or replacement thereof), in the event that the Second Percentage Trigger shall have occurred with respect to a given Fiscal Year, Tenant shall pay Landlord, no later than ten (10) Business Days after the last day of the applicable Fiscal Year, an amount equal to the product of (i) that portion of the Hotel Gross Revenue for the applicable Fiscal Year for which such payment is due that is equal to or greater than Fifteen Million Dollars ($15,000,000), *multiplied by* (ii) six percent (6%).

Section 3.6 Ballpark Lease Parking Contribution. On the fifteenth (15th) day of each month, Tenant shall (i) pay over to Landlord (or, at the direction of Landlord, directly to the tenant under the Ballpark Lease), an amount equal to the Ballpark Lease Parking Contribution and (ii) deliver to Landlord a Parking Rent Statement in accordance with Section 36.1(b). Landlord and Tenant shall cooperate with each other in any efforts to delineate whether vehicles entering Ballpark-Controlled Parking are attributable to a Ballpark Event or a purpose other than a Ballpark Event, so that the amounts payable by Landlord to the tenant under the

Ballpark Lease and correspondingly the amounts payable by Tenant to Landlord hereunder may be reduced in accordance with the Ballpark Lease.

Section 3.7 Additional Rent.

(a) In addition to the Base Rent payable hereunder, Tenant shall pay to Landlord (or the appropriate third party, as applicable) as additional rent under this Lease, all Additional Rent. Except where this Lease provides otherwise, Tenant shall pay all Additional Rent within fifteen (15) days after receipt of an invoice and reasonable backup documentation.

(b) Tenant shall pay to Landlord an annual contribution (the "Esplanade Maintenance Contribution") in advance on the first day of each Lease Year toward the costs of maintaining the Esplanade for the next upcoming Lease Year, as provided in Section 14.6, in an amount equal to: (a) Fifty-Five Thousand Dollars ($55,000), in respect of the first of such payments, and thereafter (b) an amount equal to the product of (X) the Esplanade Maintenance Contribution payable during the immediately preceding Lease Year, *multiplied* by (Y) 102.5% for the first Fifteen (15) Lease Years, and thereafter as Adjusted for Inflation from the prior Lease Year. The first Esplanade Maintenance Contribution shall be paid by Tenant to Landlord on the Effective Date and each payment of the Esplanade Maintenance Contribution thereafter shall be paid by Tenant to Landlord on the first day of each Lease Year thereafter during the Term. In the event Tenant exercises its right to undertake or cause to be undertaken Esplanade maintenance work in accordance with Section 14.6, then the next following Base Rent payment payable by Tenant hereunder shall be reduced in accordance with Section 14.6.

(c) Tenant shall pay an added Rental charge (the "Additional Rent Charge No. 1") to Landlord (a) on the date that is thirty (30) days after funds are disbursed to Tenant as a loan pursuant to any Project Agreement between Lease Administrator and Tenant relating to construction costs for the Phase 1 Development and/or the Phase 2 Development in an amount equal to the initial payment of principal and interest to be made by Tenant under such Project Agreement, and (b) thereafter, commencing on the first (1st) anniversary of such date and continuing on each subsequent anniversary of such date until and including the thirtieth ($30^{th}$) anniversary of such date, the applicable Rental charge for Additional Rent Charge No. 1 specified in Schedule 1 attached hereto; provided, that if at the time any payment of Additional Rent Charge No. 1 is due and payable hereunder Tenant has made full and timely payment of all amounts then due and payable under such Project Agreement, then a credit in an amount equal to such Additional Rent Charge No. 1 shall automatically be applied with respect to such Additional Rent Charge No. 1.

(d) Tenant shall pay an added Rental charge (the "Additional Rent Charge No. 2") to Landlord (a) on the date that is thirty (30) days after funds are disbursed to Tenant as a loan pursuant to any Project Agreement between Lease Administrator and Tenant relating to construction costs for the Phase 3 Development in an amount equal to the initial payment of principal and interest to be made by Tenant under such Project Agreement, and (b) thereafter, commencing on the first (1st) anniversary of such date and continuing on each subsequent anniversary of such date until and including the thirtieth ($30^{th}$) anniversary of such date, the applicable Rental charge for Additional Rent Charge No. 2 specified in Schedule 1 attached hereto; provided, that if at the time any payment of Additional Rent Charge No. 2 is due

and payable hereunder Tenant has made full and timely payment of all amounts then due and payable under such Project Agreement, then a credit in an amount equal to such Additional Rent Charge No. 2 shall automatically be applied with respect to such Additional Rent Charge No. 2.

Section 3.8 Payments in Lieu of Taxes.

(a) Tenant's Obligation to Pay PILOT. Except as otherwise set forth in Section 3.8(f), for so long as Landlord is the City, for each Tax Year or portion thereof within the Term, Tenant shall pay to DOF or its successor in function, upon notice to Tenant of the amount due, an annual sum (each such sum being hereinafter referred to as "PILOT") on the dates and in the amounts set forth in Section 3.8(b). PILOT due for any period of less than six months shall be appropriately apportioned.

(b) Amount of PILOT. If a PLA covering Construction Work for the Phase 1 Development and the Phase 2 Development is delivered to Landlord and Lease Administrator by December 31, 2014, then PILOT shall be in the amounts and on the dates specified in Schedule 2 attached hereto. If such PLA is not delivered to Landlord and Lease Administrator by such date, then PILOT shall be paid in equal semiannual installments during each Tax Year or portion thereof within the Term in advance on the first day of each January and July (or in such other manner as the City then may generally require for the payment of Taxes without interest or penalty) in the following amounts:

(i) For the period beginning on the Effective Date through the last day of the Tax Year in which the applicable Building Permit Date occurs, PILOT in an amount equal to Taxes attributable to the Land shall be payable under this Lease.

(ii) With respect to the Phase 1 Development and the Phase 3 Development, for the period beginning on the day next succeeding the expiration of the period referred to in Section 3.8(b)(i) hereof and ending on the last day of the twenty-fifth (25th) full Tax Year to commence thereafter, PILOT attributable to such Phases shall be in an amount equal to Taxes, less Taxes on the following amounts:

(A) for the sixteen (16) Tax Years beginning with the first full Tax Year to commence following the end of the Tax Year in which an increase in the assessment of the Improvements resulting from a physical increase occurs, an amount equal to one hundred percent (100%) of the Abatement Base for the Tax Year in question; (B) for the next succeeding Tax Year, an amount equal to ninety percent (90%) of the Abatement Base for such Tax Year; (C) for the next succeeding Tax Year, an amount equal to eighty percent (80%) of the Abatement Base for such Tax Year; (D) for the next succeeding Tax Year, an amount equal to seventy percent (70%) of the Abatement Base for such Tax Year; (E) for the next succeeding Tax Year, an amount equal to sixty percent (60%) of the Abatement Base for such Tax Year; (F) for the next succeeding Tax Year, an amount equal to fifty percent (50%) of the Abatement Base for such Tax Year;

(G) for the next succeeding Tax Year, an amount equal to forty percent (40%) of the Abatement Base for such Tax Year; (H) for the next succeeding Tax Year, an amount equal to thirty percent (30%) of the Abatement Base for such Tax Year; (I) for the next succeeding Tax Year, an amount equal to twenty percent (20%) of the Abatement Base for such Tax Year, and (J) for the next succeeding Tax Year, an amount equal to ten percent (10%) of the Abatement Base for such Tax Year.

(iii) With respect to the Phase 2 Development, for the period beginning on the day next succeeding the expiration of the period referred to in Section 3.8(b)(i) hereof and ending on the last day of the fifteenth (15th) full Tax Year to commence thereafter, PILOT attributable to such Phase shall be in an amount equal to Taxes, less Taxes on the following amounts:

(y) ninety percent (90%) of the Phase 2 Development will be determined as follows: (A) for the eleven (11) Tax Years beginning with the first full Tax Year to commence following the end of the Tax Year in which an increase in the assessment of the Improvements resulting from a physical increase occurs, an amount equal to one hundred percent (100%) of the Abatement Base for the Tax Year in question; (B) for the next succeeding Tax Year, an amount equal to eighty percent (80%) of the Abatement Base for such Tax Year; (C) for the next succeeding Tax Year, an amount equal to sixty percent (60%) of the Abatement Base for such Tax Year; (D) for the next succeeding Tax Year, an amount equal to forty percent (40%) of the Abatement Base for such Tax Year; and (E) for the next succeeding Tax Year, an amount equal to twenty percent (20%) of the Abatement Base for such Tax Year; and

(z) ten percent (10%) of the Phase 2 Development shall be determined in accordance with Section 3.8(b)(iii)(A) above.

(iv) With respect to all Phases, there shall be no increases in the Abatement Base of more than five percent (5%) over the previous years' assessment as a result of an equalization increase in the assessment of the land leased under this Lease or the Improvements constituting any Phase for the thirteen (13) Tax Years beginning with the first (1st) full Tax Year to commence after an increase in the assessment of the Improvements resulting from a physical increase occurs.

(v) For each Tax Year commencing on the day next succeeding the expiration of the periods referred to in Sections 3.8(b)(ii) and (iii) hereof and continuing for the remainder of the Term, PILOT shall be in an amount equal to Taxes on the Premises, prorated for any period in which the remaining Term includes only a partial Tax Year (such proration being on a per diem basis, using the actual number of days); provided, that if and to the extent that all or any portion of the Premises would have qualified for an as-of-right exemption, abatement, credit or other reduction from Taxes under then-applicable laws, regulations, policies and/or programs, if Tenant were the fee owner of the Premises (such as, by way of examples only, pursuant to the ICAP program or

based on Tenant's tax-exempt status and use of the Premises (if then applicable)), then the PILOT due hereunder shall be adjusted to reflect the amount of such as-of-right exemption, abatement, credit or other reduction for which the Premises would have qualified. Landlord and Tenant acknowledge that, in the absence of Tenant's fee ownership of the Premises, determinations as to whether Tenant would have qualified for as-of-right exemptions, abatements, credits or reductions may be hypothetical, and the parties shall act reasonably and in good faith in making such determinations for purposes of this Section 3.8(b)(v). To the extent that actual applications to DOF for as-of-right exemptions, abatements, credits or reductions may be relevant to making such determinations, Landlord shall cooperate with Tenant (at no cost or expense to Landlord), as reasonably requested from time to time by Tenant, in connection with such applications (such cooperation to include an amendment to this Section 3.8(b)(v) (in a form mutually acceptable to Landlord and Tenant) for the sole purpose of setting forth any as-of-right exemption, abatement, credit or other reduction for which the Premises would have qualified if Tenant were the fee owner of the Premises).

(c) Adjustments to PILOT. Following the Effective Date, subject to any applicable provisions set forth elsewhere in this Lease or any other Project Agreement, upon delivery to Lease Administrator of the documents provided for in Section 3.8(d), PILOT shall be reduced in accordance with the following:

(i) As of a given Determination Date, *if* Lease Administrator determines that Tenant is eligible for the reduction contemplated in this Section 3.8(c)(i) in light of the hard costs set forth in the then most recent budget, pro-forma or financial model provided by Tenant for the Phase 1 Development and Phase 2 Development as part of the PLA Documents, and in connection therewith either Lease Administrator or Landlord elects not to make an adjustment to Base Rent pursuant to Section 3.2, *then* Schedule 2 shall be reduced such that each PILOT payment hereunder for the applicable number of Tax Years (as determined by Lease Administrator) after such Determination Date shall be reduced by an amount equal to Adjustment Amount 1.

(ii) As of a given Determination Date, *if* Lease Administrator determines that Tenant is eligible for the reduction contemplated in this Section 3.8(c)(ii) in light of the hard costs set forth in the then most recent budget, pro-forma or financial model provided by Tenant for the Phase 3 Development as part of the PLA Documents and in connection therewith either Lease Administrator or Landlord elects not to make an adjustment to Base Rent pursuant to Section 3.2, *then* Schedule 2 shall be reduced such that each PILOT payment hereunder for the applicable number of Tax Years (as determined by Lease Administrator) after such Determination Date shall be reduced by an amount equal to Adjustment Amount 2.

(iii) *If* a Funding Agreement Failure has occurred *then* Schedule 2 shall be reduced such that each PILOT payment hereunder for the applicable

number of Tax Years (as determined by Lease Administrator) shall be reduced by an amount equal to Adjustment Amount 3.

(d) Calculation of Adjustment Amounts.

(i) Subject to any applicable terms set forth elsewhere in this Lease or any other applicable Project Agreement, *if*, by December 31, 2014 Tenant delivers the PLA Documents for the Phase 1 Development and the Phase 2 Development to Lease Administrator, *then*, Lease Administrator shall respond in writing to Tenant within ten (10) Business Days of receipt of the last of such PLA Documents delivered pursuant to this Section 3.8(d)(i). In such response Lease Administrator shall indicate whether Lease Administrator approves of the calculation and the proposed amounts of the reduced PILOT payments or whether Lease Administrator, in good faith, requires additional information or documents from Tenant in order to make such determination. Upon Lease Administrator's approval of such calculation and such proposed amounts, then Schedule 2 shall be adjusted as set forth in Section 3.8(c)(i).

(ii) Subject to any applicable terms set forth elsewhere in this Lease or any other applicable Project Agreement, *if*, by December 31, 2015 Tenant delivers the PLA Documents for the Phase 3 Development to Lease Administrator, *then*, Lease Administrator shall respond in writing to Tenant within ten (10) Business Days of receipt of the last of such PLA Documents delivered pursuant to this Section 3.8(d)(ii). In such response Lease Administrator shall indicate whether Lease Administrator approves of the calculation and the proposed amounts of the reduced PILOT payments or whether Lease Administrator, in good faith, requires additional information or documents from Tenant in order to make such determination. Upon Lease Administrator's approval of such calculation and such proposed amounts, then Schedule 2 shall be adjusted as set forth in Section 3.8(c)(ii).

(iii) Subject to any applicable terms set forth elsewhere in this Lease or any other applicable Project Agreement, *if* a Funding Agreement Failure occurs and Tenant delivers to Lease Administrator: (A) evidence satisfactory to Lease Administrator documenting the final terms and conditions of the additional debt financing obtained by Tenant to compensate for the failure of City funds under a funding agreement to become available; (B) a copy of a revised and updated Schedule 2 for Landlord's and Lease Administrators' review, reflecting the reductions to PILOT payments reflected in such Schedule that Tenant proposes are necessary and appropriate in order to reduce such Schedule in accordance with Section 3.8(c)(iii); and (C) a written description of the means and methods by which Tenant calculated the reductions reflected in such Schedule, *then*, Lease Administrator shall respond in writing to Tenant within ten (10) Business Days of receipt of the last of the documents delivered under this Section 3.8(d)(iii). In such response Lease Administrator shall indicate whether Lease Administrator approves of the calculation and the proposed amounts of the

reduced PILOT payments or whether Lease Administrator, in good faith, requires additional information or documents from Tenant in order to make such determination. Upon Lease Administrator's approval of such calculation and such proposed amounts, then Schedule 2 shall be adjusted as set forth in Section 3.8(c)(iii).

(iv) In the event either Party disputes any matter relating to this Section 3.8(d), the Parties shall use their good faith efforts to resolve the dispute.

(e) Tax Contest. Tenant shall continue to pay the full amount of PILOT required under this Section 3.8, notwithstanding that Tenant may have instituted tax assessment reduction or other actions or proceedings pursuant to Section 34.1 hereof to reduce the assessed valuation of the Premises or any portion thereof. If any such tax reduction or other action or proceeding shall result in a final determination in Tenant's favor, (i) Tenant shall be entitled to a credit against future PILOT and/or any other Rental to the extent, if any, that the PILOT previously paid for any Tax Year for which such final determination was made exceeds the PILOT as so determined, and (ii) if such final determination is made for the then current Tax Year, future payments of PILOT for such Tax Year shall be based on the PILOT as so determined. If at the time Tenant is entitled to receive such a credit the City is paying interest on refunds of Taxes, Tenant's credit shall include interest at the rate then being paid by the City. In no event, however, shall Tenant be entitled to any cash refund of any such excess from Landlord.

(f) Privatization of Landlord's Interest in Premises. *If* (i) the City ceases to be Landlord, (ii) Tenant has not purchased the Premises pursuant to Section 10.7, and (iii) in accordance with Section 3.8(b) PILOT payments are to be made in the amounts set forth in Schedule 2 attached hereto or in accordance with any of Section 3.8(b)(i) - (iv), *then* commencing as of the effective date on which the City ceases to be Landlord, Tenant have no obligation to remit or otherwise pay to the new Landlord any payments for Taxes billed to the new Landlord; provided, that until the end of the period in which all PILOT payments would have otherwise been required under Schedule 2, or Section 3.8(b)(i) - (iv) (as the case may be) had the City continued to be Landlord, Tenant shall continue to make payments to Landlord in amounts equal to such PILOT payments that would otherwise have been required in accordance with this Lease if the City were still Landlord. After such final payment is made in accordance with this Lease, Tenant shall remit to the Landlord the full amount of Taxes billed to the Landlord, subject to Tenant's right to seek reductions in the assessed value of the Premises pursuant to Section 34.1 and Tenant's rights pursuant to Section 3.8(e).

(g) Definitions.

(i) "Abatement Base" shall be the amount by which the Post-Completion Tax on a Building exceeds one hundred fifteen percent (115%) of the Initial Tax levied on such Building. The Abatement Base shall not be applicable in any year of the benefit period to the Initial Tax or to Taxes on the portion of the assessment attributable to the Land.

(ii) "Building Permit Date" means the date on which the first building permit for the Commencement of the Initial Construction Work for the Buildings comprising the Phase 1 Development and the Phase 2 Development, or the Phase 3 Development (as the case may be) is issued by the Department of Buildings, the Department of Small Business Services or such other Governmental Authority as may be applicable, such permit being that which first would allow any portion of the Initial Construction Work for such Phase (not including demolition or excavation without construction of foundations or installation of permanent improvements) to proceed with respect to the Buildings to be constructed in such Phase.

(iii) "Funding Agreement Failure" means if (A) Tenant has diligently, continuously and in good faith undertaken its obligations in this Lease and any other Project Agreement between Lease Administrator and Tenant concerning the use of City capital funds for the Project and (B) by the later of (i) One Hundred and Twenty days (120) following Tenant's submission to Lease Administrator of (y) an executed PLA related to the construction of the Phase 1 Development and Phase 2 Development as required hereunder, and (z) all Requested Information, and (ii) July 31, 2014, either: (a) a funding agreement has not been fully executed and Lease Administrator has determined in good faith that the City's office of management and budget is not reasonably likely to issue to NYCEDC a "certificate to proceed" or to otherwise authorize the use of City capital funds for the Project; or (b) the funding agreement has been fully executed and delivered and NYCEDC has made a good faith determination that the Comptroller is not reasonably likely to register such agreement.

(iv) "Initial Tax" shall be determined by multiplying the final taxable assessed value, without regard to any exemptions, shown on the assessment roll with a taxable status date immediately preceding the Building Permit Date, by the Initial Tax Rate.

(v) "Initial Tax Rate" shall be the final tax rate applicable to the assessment roll with a taxable status date immediately preceding the Building Permit Date.

(vi) "Post-Completion Tax" shall be determined by multiplying the Initial Tax Rate by the final taxable assessed value, without regard to any exemptions, that would be shown on the assessment roll but for the abatement, with a taxable status date immediately following the first anniversary of the Building Permit Date.

(vii) "Requested Information" means all budget and other documentation and information requested from Tenant by NYCEDC from time to time in connection with the pursuit of the approval by the City's office of management and budget of the use of City capital funds for the Project and/or the registration by the Comptroller of the funding agreement referred to in this Section 3.8.

Section 3.9 Abatement, Deduction, Counterclaim and Offsets. It is the intention of Landlord and Tenant that, except as otherwise specifically provided in this Lease, (a) Rental shall be absolutely net to Landlord without any abatement, diminution, reduction, deduction, counterclaim, setoff or offset whatsoever, so that each Lease Year of the Term shall yield, net to Landlord, all Rental, and (b) Tenant shall pay all costs, expenses and charges of every kind relating to the Premises (except Taxes other than pursuant to Section 3.8(f) hereof) that may arise or become due or payable during or after (but attributable to a period falling within) the Term, except, however, that Tenant shall not be responsible for payment of (x) Taxes or (y) any costs, expenses and charges of any kind relating to the Premises, in either case, to the extent attributable to any period prior to the Effective Date.

Section 3.10 Acceptance of Partial Payments; No Waiver. The acceptance by Landlord or its agent or any other Person entitled thereto of any partial payment of Base Rent or Rental or any other amount payable by Tenant hereunder, or the failure by Landlord or its agent to enforce any provision of this Lease, shall not be considered a waiver of any of Landlord's rights either under this Lease, at law or in equity.

Section 3.11 Percentage Rent Holdback.

(a) Notwithstanding the provisions of Sections 3.4 and 3.5, beginning with and including the twelfth (12th) Fiscal Year and continuing through and including the twenty-fifth (25th) Fiscal Year (the "Withholding Period"), as further provided in this Section 3.11 Tenant shall have the right to withhold and retain from Percentage Rent and Hotel Percentage Rent an amount equal to the Participation Holdback Amount approved by Landlord that would, absent this Section 3.11, have otherwise been payable to Landlord in accordance with Sections 3.4 and 3.5.

(b) Any Percentage Rent in a given Fiscal Year during the Withholding Period that is greater than the Participation Holdback Amount approved by Lease Administrator in accordance with this Section 3.11, shall continue to be payable in accordance with Sections 3.4 and 3.5.

(c) Tenant shall deliver to Lease Administrator no less than Forty Five (45) days prior to the end of each Fiscal Year of the Withholding Period, a certified statement in the form attached hereto at Exhibit F (Form of Withholding Certificate) attaching DOF's annual assessment of the property for such Fiscal Year and Tenant's calculation of the Participation Holdback Amount in respect of such Fiscal Year. Lease Administrator shall respond in writing to Tenant within ten (10) Business Days of receipt of such statement and indicate in such response whether Lease Administrator approves of such calculation and the amount of the approved Participation Holdback Amount. In the event either Party disputes any matter relating to this Section 3.11, the Parties shall use their good faith efforts to resolve the dispute.

(d) During the Withholding Period, within ten (10) days of the end of each Fiscal Year, if Tenant is permitted to withhold and retain amounts from such Percentage Rent pursuant to this Section 3.11, then at the time of each payment of Percentage Rent in accordance with Sections 3.4 and 3.5, Tenant shall deliver to Lease Administrator a certified statement, dated as of the date of each such payment, certifying the amount of the total

Percentage Rent that would have been paid as of such date without taking into account any Participation Holdback Amount, and any and all amounts withheld or retained from the Percentage Rent payment for the applicable Fiscal Year on account of the Participation Holdback Amount approved by Lease Administrator.

(e) The calculation and approval of each Participation Holdback Amount shall occur on an annual basis in respect of each Fiscal Year during the Withholding Period and the accrual of credit or carryover of Participation Holdback Amounts from one Fiscal Year to the next (and the application of the same against Participation Rent as provided in this Section 3.11) shall be permitted up to but no later than with respect to the last Fiscal Year of the Withholding Period.

(f) By way of example only, set forth in Exhibit T (Participation Holdback Schedule and Holdback Examples) are hypothetical scenarios demonstrating how the provisions of this Section 3.11, would be applied in such hypothetical scenarios.

(g) To the extent any provision of this Section 3.11 conflicts with or is otherwise inconsistent with any other provision of this Lease, such other provision shall prevail.

## ARTICLE 4
## IMPOSITIONS

Section 4.1 Payment of Impositions.

(a) Obligation to Pay Impositions. Tenant shall pay, in the manner provided in Section 4.1(c) hereof, all Impositions that at any time thereafter during the Term are, or, if the Premises or any part thereof were not owned by the City, would be assessed, levied, confirmed, imposed upon, or would grow out of, become due and payable out of, or with respect to, or would be charged with respect to the ownership, leasing, operation, use, occupancy and possession of (i) the Premises or any part thereof, or (ii) the sidewalks or streets in front of or adjoining the Premises or any part thereof, or (iii) any vault, passageway or space in, over or under such sidewalk or street, or (iv) any other appurtenances of the Premises or any part thereof, or (v) any personal property or other facility used in the operation of the Premises, or (vi) the Rental (or any portion thereof) of any other amount payable by Tenant hereunder, or (vii) any documents to which Tenant is a party creating or transferring an interest or estate in the Premises or any portion thereof. Landlord, in its proprietary capacity and not in its governmental capacity, shall cooperate with Tenant in the preparation and submission, by Tenant, of such applications or filings as may be necessary to obtain exemptions or abatements from any Impositions that would be available to an owner of the Premises if the City were not the Landlord, including the "Industrial and Commercial Abatement Program". Tenant shall reimburse Landlord within ten (10) Business Days after Landlord's demand for any reasonable cost or expense incurred by Landlord in providing such assistance.

(b) "Imposition(s)" means:

(i) real property general and special assessments (including any special assessments for or imposed by any business improvement district or by any special assessment district) other than Taxes;

(ii) personal property taxes;

(iii) occupancy and rent taxes assessed against Tenant;

(iv) water, water meter and sewer rents, rates and charges;

(v) license and permit fees;

(vi) service charges with respect to police protection, fire protection, street and highway construction, maintenance and lighting, sanitation and water supply which affect the Premises;

(vii) except for Taxes, any other governmental levies, fees, rents, assessments or taxes and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind whatsoever;

(viii) any municipal, state or federal inheritance, estate, succession, transfer or gift taxes of Tenant but only to the extent that such taxes become or would become, by reason of the nonpayment thereof, an encumbrance or lien upon the Premises or any portion thereof, the sidewalks or streets in front of or adjoining the Premises or any portion thereof, any vault, passageway or space in, over or under such sidewalks or streets, or any other appurtenances of the Premises or any portion thereof, or any personal property, equipment or other facility used in the operation thereof, or the Rental (or any portion thereof) payable by Tenant hereunder; and

(ix) any fines, penalties and other similar governmental charges applicable to the foregoing, together with any interest or costs with respect to the foregoing, incurred by reason of Tenant's failure to make any payments as herein provided.

(c) Payments of Impositions. Subject to the provisions of Section 34.2 hereof, during the Term, Tenant shall pay, or cause to be paid, each Imposition or installment thereof not later than the due date thereof (taking into account any option to pay such Imposition in installments). However, if by law, at the payer's option, any Imposition may be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the Imposition in such installments and shall be responsible for the payment of such installments with interest, if any, imposed thereon. If Tenant fails twice to make any payment of an Imposition (or installment thereof) on or before the due date thereof, Tenant shall, at Landlord's request, be required for a period of two (2) years following the second such failure to pay all Impositions or installments thereof thereafter payable by Tenant not later than ten (10) days before the due date thereof.

(d) Income or Franchise Tax of Landlord. Tenant shall not be required to pay any municipal, state or federal corporate income or franchise tax imposed upon Landlord, whether based upon the income or capital of Landlord; nor shall Tenant be required to pay any municipal, state or federal inheritance, estate, succession, transfer or gift taxes of Landlord.

Section 4.2 Evidence of Payment. Tenant shall furnish to Landlord, within ten (10) Business Days of the date such Imposition is first due and payable, official receipts of the appropriate taxing authority or other proof reasonably satisfactory to Landlord, evidencing the payment of any Impositions.

Section 4.3 Evidence of Nonpayment. Any certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition asserting nonpayment of such Imposition shall be prima facie evidence that such imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill, at the time or date stated herein. Notices given by Landlord under this Lease shall not be deemed to be such certificate, advice or bill.

Section 4.4 Apportionment of Imposition. Any Imposition relating to a fiscal period of the taxing authority, a part of which is included within the Term and a part of which is included in a period of time before the Effective Date or after the Expiration Date, shall be apportioned between Landlord and Tenant as of the Effective Date or the Expiration Date (unless the Expiration Date has occurred as a result of an Event of Default, in which case Tenant shall not be entitled to an apportionment) so that Tenant shall pay that portion of such Imposition which that part of such fiscal period included in the Term bears to the fiscal period of the taxing authority.

Section 4.5 Taxes. Provided the City shall be Landlord, Landlord shall pay or, on or before the due date thereof (which may be by bookkeeping entry, interdepartmental direction or other manner or procedure selected by Landlord), cancel or otherwise satisfy and discharge of record any and all Taxes. If the City shall cease to be Landlord, Landlord shall pay the Taxes on or before the due date thereof. If Landlord shall have failed to pay the Taxes as required hereunder, and if after thirty (30) days written notice to Landlord to pay the Taxes such Taxes are not paid, then Tenant may, but shall not be obliged to, pay such unpaid Taxes together with any interest or penalties thereon and credit such payment against the next installment(s) of PILOT and Rental together with interest thereon at the Prime Rate. Landlord, from time to time, upon request of Tenant, shall furnish to Tenant and any Recognized Mortgagee designated in writing by Tenant, within forty-five (45) days of such request, official receipts of the appropriate taxing authority or other proof, reasonably satisfactory to Tenant, evidencing the cancellation, satisfaction or discharge of record of the Taxes in lieu of which the PILOT payments are being made.

Section 4.6 Sales Tax. Tenant acknowledges that Tenant may incur New York City and New York State sales and/or compensating use taxes imposed pursuant to Sections 1105, 1107, 1109 and 1110 of the New York State Tax Law, as each of the same may be amended from time to time (including any successor provisions to such statutory sections) (collectively, "Sales Taxes") on tangible personal property incorporated into or otherwise in connection with the Construction Work. Except as set forth in any Sales Tax Exemption Letter

that has been issued and is effective, Tenant shall pay all Sales Taxes as may be imposed by the New York State Department of Taxation and Finance or DOF (collectively, together with any successor(s) in function, the "Taxing Authorities"), as if Tenant were the fee owner of the Premises, and without regard to any exemption that may arise or be available solely on account of Landlord's ownership of the Premises. Tenant acknowledges that except as set forth in any Sales Tax Exemption Letter (i) Landlord shall have no liability to Tenant therefor, nor be required to provide any exemption (including the delivery of any other sales tax exemption letter), and (ii) Tenant shall pay all such amounts as and when due together with any interest or penalty charges imposed thereon by the Taxing Authorities. This Section 4.6 shall not be construed to prevent Tenant or a Recognized Subtenant from claiming any exemption from Sales Taxes to which Tenant or such Recognized Subtenant may be entitled by law based on Tenant's exempt status (without regard to any exemption that may arise or be available solely on account of Landlord's ownership of the Premises); provided, however that Landlord makes no representation with respect to the ability of Tenant or any Recognized Subtenant to acquire any exemption from Sales Taxes.

## ARTICLE 5
## DEPOSITS FOR IMPOSITIONS AND INSURANCE PREMIUMS

Section 5.1 Deposits.

(a) Tenant's Obligations to Make Deposits. Unless Tenant is already making such deposits with a Depositary in conformance with the requirements of a Recognized Mortgage upon Landlord's demand made at any time after the occurrence of two (2) separate Defaults by Tenant of which Landlord has given notice with respect to a monetary obligation under this Lease within a twelve (12) month period, Tenant shall deposit with Depositary on the first day of each month during the remainder of the Term an amount equal to (i) in the case of Impositions, one-twelfth (1/12) of the amount of the annual Impositions as reasonably estimated by Landlord and (ii) in the case of insurance premiums, one-twelfth (1/12) of the annual premiums for the insurance coverage required to be carried or caused to be carried by Tenant pursuant to the provisions of Article 7. If, at any time, the moneys so deposited by Tenant shall be insufficient to pay in full the next installment of Impositions, Tenant shall, not later than the date which is ten (10) days prior to the due date of the Imposition deposit the amount of the insufficiency with Depositary.

(b) Depositary's Obligations. Depositary shall place all moneys deposited pursuant to the provisions of this Section 5.1 in a special interest-bearing account in the name of Landlord in a savings or commercial bank or in city, state or federal government obligations to be used by Depositary to pay the Impositions and insurance premiums for which such amounts were deposited. Depositary shall apply the amounts deposited and the interest earned thereon to any (i) such Impositions not later than the last day on which any such Imposition may be paid without penalty or interest and (ii) such premiums not later than the last day on which such premiums may be paid without penalty, interest or cancellation of the subject policies. Upon the occurrence of an Event of Default, Depositary shall apply such deposits to the payment of the Impositions or premiums next due, unless this Lease has been terminated and a

new lease has not been entered into, or this Lease has not been continued, with a Recognized Mortgagee, in which event Depositary shall apply such deposits at the direction of Landlord to any of Tenant's obligations under this Lease. Interest earned on such deposits shall be applied to the next required deposit.

(c) Increase of Deposits. If the amount of any Imposition or insurance premium is increased, Tenant shall, within ten (10) days of receipt of notice of such increase, increase the amount of such monthly deposits so that sufficient moneys for the payment of such Imposition or insurance premium shall always be available to pay such Imposition or insurance premium at least ten (10) days before the Imposition becomes due and payable and at least thirty (30) days before the insurance premium becomes due and payable, as the case may be.

(d) Determination of Sufficiency of Deposits. For the purpose of determining whether Depositary has on hand sufficient moneys to pay an Imposition or insurance premium, deposits for each category of Imposition or insurance premium shall be treated separately. Depositary shall not be obligated to use moneys deposited for the payment of an Imposition or an insurance premium not yet due and payable for the payment of an Imposition or insurance premium that is due and payable.

(e) Return of Deposits. If the Default that gave rise to Landlord's demand for Tenant to make deposits for Impositions or insurance premiums under the provisions of Section 5.1(a) hereof has been cured by Tenant and, for a period of twelve (12) consecutive months following such cure, no Default with respect to any monetary obligation of Tenant under this Lease has occurred that has not been cured within the applicable grace period, then, at any time after the expiration of such twelve (12) month period, upon demand by Tenant and provided no Default with respect to any monetary obligation of Tenant under this Lease then exists, Landlord shall reasonably cooperate with Tenant in Tenant's efforts to cause Depositary to return to Tenant all unexpended moneys then held by Depositary pursuant to the provisions of Sections 5.1(a) and (c) hereof, with accrued interest thereon which shall not have been applied by Depositary pursuant to the provisions of this Article 5. Thereafter, Tenant shall not be required to make any deposits required by this Article 5 unless and until there shall occur within a twelve (12) month period two (2) subsequent Defaults with respect to any monetary obligation of Tenant under this Lease and Landlord has demanded of Tenant to make such deposits.

(f) Deposits with Recognized Mortgagee. In the event that a Recognized Mortgagee shall require Tenant to deposit funds to insure payment of Impositions or insurance premiums, the same shall be credited against any amounts required to be deposited under this Article 5 for so long as such funds are used solely to pay Impositions or insurance premiums. The disposition of such amounts shall be governed by the Recognized Mortgage pursuant to which the same are deposited with such Recognized Mortgagee, provided that Tenant shall notify Landlord, or cause the Recognized Mortgagee to immediately notify Landlord, of any disbursement of deposited funds, and, to the extent such funds are applied by the Recognized Mortgagee to payments other than Impositions or insurance premiums, within five (5) Business Days after demand by Landlord, Tenant shall restore sufficient funds to the account to satisfy the requirements of Sections 5.1(a) and (c) hereof.

Section 5.2 Effect of Sale or Transfer of Premises By Landlord. In the event of Landlord's sale or transfer of the Premises, as provided in Section 10.7, to a Person other than Tenant, Depositary shall continue to hold any moneys deposited with it pursuant to the provisions of Sections 5.1(a) and (c) hereof and shall transfer such deposits to a special account with such Depositary established in the name of the Person who acquires the Premises and becomes Landlord for the purposes provided in the applicable provisions of this Lease. Upon such sale or transfer, the transfer of such deposits and notice thereof to Tenant, Landlord shall be deemed to be released to the extent of the deposits so transferred from all liability with respect thereto and Tenant shall look solely to the Depositary and the new Landlord with respect thereto. Landlord shall promptly deliver to Tenant a copy of the instrument of transfer to the new Landlord. The provisions of this Section 5.2 shall apply to each successive transfer of such deposits.

Section 5.3 Effect of Termination. Upon the Expiration of the Term, if this Lease shall terminate and a new lease shall not be entered into, or this Lease shall not be continued, with a Recognized Mortgagee, all deposits then held by Depositary, together with the interest, if any, earned thereon shall be applied by Landlord on account of any and all sums due under this Lease and the balance, if any, remaining thereafter with the interest, if any, earned thereon and remaining after application by Landlord as aforesaid, shall be returned to Tenant or, if there shall be a deficiency, Tenant shall pay such deficiency to Landlord on demand.

## ARTICLE 6
## LATE CHARGES

Section 6.1 Late Charges. If any payment of Rental is not paid within five (5) Business Days after the day on which it first becomes due, a late charge on the sum so overdue, calculated at the Late Charge Rate from the date such Rental first becomes due to the date on which actual payment of the sum is received by Landlord, shall become due and payable to Landlord as liquidated damages, and not as a penalty, for the administrative costs and expenses incurred by Landlord by reason of Tenant's failure to make such payment promptly. Tenant shall pay Landlord, within ten (10) days after demand, which may be made from time to time, all late charges. No failure by Landlord to insist upon the strict performance by Tenant of its obligations to pay late charges shall constitute a waiver by Landlord of its right to enforce the provisions of this Article 6 in any instance thereafter occurring. The provisions of this Article 6 shall not be construed in any way to extend the grace periods or notice periods provided for in Article 24 hereof.

## ARTICLE 7
## INSURANCE

Section 7.1 Tenant's Obligation to Insure.

(a) From the Effective Date through the Expiration Date, Tenant shall obtain and keep in full force and effect insurance of the types, and in at least the coverage amounts, required by this Article 7, and ensure that such insurance adheres to all requirements herein.

(b) Tenant is authorized to undertake or maintain operations under this Lease only during the effective period of all required coverages.

Section 7.2 Commercial General Liability Insurance Prior to Construction Commencement.

(a) Tenant shall maintain Commercial General Liability insurance in the amount of at least One Million Dollars ($1,000,000) per occurrence. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Premises and/or the Off-Premises Area and such per-location aggregate shall be at least Two Million Dollars ($2,000,000). Tenant shall maintain excess liability coverage of at least Five Million Dollars ($5,000,000) in excess of the primary Commercial General Liability insurance. All such insurance shall protect the insureds from claims for property damage and/or bodily injury, including death, that may arise from any of the operations under this Lease. Coverage shall be at least as broad as that provided by the edition of Insurance Services Office ("ISO") Form CG 0001 in effect as of date hereof, shall contain no exclusions other than as required by law or as approved by Landlord, and shall be "occurrence" based rather than "claims-made." Policies providing such insurance may not include any endorsements excluding coverage relating to employer's liability or New York Labor Law claims.

(b) Such Commercial General Liability insurance shall name each of Landlord, Lease Administrator and AIDC, together with their respective officials and employees, as Additional Insureds with coverage at least as broad as the most recent edition of ISO Form CG 20 26 in effect as of the date hereof.

Section 7.3 Commercial General Liability Insurance.

(a) Beginning on and including the Construction Commencement Date for the Phase 1 Development (and in any case, at all times while Construction Work is being undertaken by Tenant pursuant to this Lease), Tenant shall maintain Commercial General Liability insurance, written on ISO Form CG 00 01 or its equivalent with no modification to the contractual liability provisions contained therein, in the amount of at least One Million Dollars ($1,000,000) per occurrence / Two Million Dollars ($2,000,000) aggregate. The aggregate shall apply on a per project basis . Tenant shall also maintain excess/umbrella liability coverage of at least Fifty Million Dollars ($50,000,000) in excess of the primary Commercial General Liability insurance. All such insurance shall protect the insureds from claims for property damage and/or bodily injury, including death, that may arise from any of the operations under this Lease. Coverage shall be "occurrence" based rather than "claims-made." Policies providing such insurance may not include any endorsements excluding coverage relating to employer's liability or New York Labor Law claims. Following completion of the Initial Construction Work, upon written request of Tenant (and subject to Landlord's reasonable approval), Tenant may maintain excess/umbrella liability coverage in an amount less than $50,000,000 in excess of the primary Commercial General Liability insurance, provided that in no event shall Tenant maintain excess/umbrella liability coverage of less than Twenty-Five Million Dollars ($25,000,000) in excess of the primary Commercial General Liability insurance.

(b) Such Commercial General Liability insurance shall name each of Landlord, Lease Administrator and AIDC, together with their respective officials and employees, as Additional Insureds with coverage at least as broad as the most recent edition of ISO Forms CG 20 26 and CG 20 37 in effect as of the date hereof.

Section 7.4 Workers' Compensation, Employers Liability, and Disability Benefits Insurance. Tenant shall maintain Workers' Compensation insurance, Employers Liability insurance, and Disability Benefits insurance on behalf of, or with regard to, all employees involved in Tenant's operations under this Lease, and such insurance shall comply with the laws of the State of New York.

Section 7.5 Business Automobile Liability Insurance.

(a) With regard to all operations under this Lease, Tenant shall maintain or cause to be maintained Business Automobile Liability insurance in the amount of at least Five Million Dollars ($5,000,000.00) each accident combined single limit for liability arising out of ownership, maintenance or use of any owned, non-owned or hired vehicles. Coverage shall be at least as broad as the most recent edition of ISO Form CA 00 01 in effect as of the date hereof.

(b) If vehicles are used for transporting any Hazardous Substances, such Business Automobile Liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (ISO Form endorsement CA 99 48 or its reasonable equivalent) as well as proof of an MCS-90 endorsement.

Section 7.6 Property Insurance.

(a) Tenant shall maintain comprehensive "All Risk" or "Special Perils" form property insurance covering all buildings, structures, equipment and fixtures that are located on the Premises or used in connection with operations under this Lease (collectively, the "Insured Improvements"). Such insurance shall provide full Replacement Value coverage for the Insured Improvements (without depreciation or obsolescence clause) and include, without limitation, coverage for loss or damage by acts of terrorism, water, flood, subsidence and earthquake. Such insurance shall be "occurrence" (rather than "claims-made") based and shall designate Tenant as Named Insured and Landlord, Lease Administrator and AIDC as Loss Payee as their interests may appear.

(b) The limit of such property insurance shall be no less than the full costs of replacing the Insured Improvements including the costs of post-casualty debris removal and Soft Costs, to the extent that such costs can be covered by an "All risk" or "Special Perils" form insurance policy. Notwithstanding the foregoing, flood coverage may carry a sublimit of not less than Ten Million Dollars ($10,000,000).

(c) Business Interruption Insurance. Either as part of the above referenced property insurance or as a separate property insurance policy, Tenant shall include and maintain or procure and maintain (or cause to be procured and maintained) business interruption insurance coverage on an "All Risk" basis in an amount, and with limits, reasonably determined by Tenant and its property insurance carrier, but in no event less than an amount

correlated to the "restoration period" as that term is understood and used in the insurance industry. The insurance required in this subsection shall designate Tenant as Named Insured and shall be in the broadest form available covering loss of income. Tenant acknowledges that, subject to the provisions of Section 8.6 of this Lease, Tenant shall remain responsible for the payment of Rental during the period of any Casualty Restoration required of Tenant under this Lease notwithstanding that the limits of Tenant's business interruption insurance may be exhausted prior to the completion of such Casualty Restoration.

(d) All such policies of insurance shall name Landlord, Lease Administrator and AIDC as Loss Payees as their interests may appear, and specify that in the event a loss occurs at an occupied facility, occupancy shall be permitted without the consent of the insurance company.

(e) In the event of any loss to the Insured Improvements, Tenant shall provide the insurance company that issued such property insurance with prompt, complete and timely notice, and simultaneously provide Landlord, Lease Administrator and AIDC with a copy of such notice. Tenant shall thereafter take all appropriate actions in a timely manner to adjust such claim on terms that provide Landlord with the maximum possible payment for the loss. Tenant shall provide Landlord, Lease Administrator and AIDC with the opportunity to participate in any negotiations with the insurer regarding adjustments for claims.

Section 7.7 Builder's Risk Insurance.

(a) With regard to any Construction Work affecting any Building and any Construction Work of or affecting the Off-Premises Improvements, Tenant shall maintain or cause to be maintained Builder's Risk insurance covering such Buildings and the Off-Premises Improvements and while in the course of such Construction Work and include property of every kind and description intended to become a permanent part of the Building and the Off-Premises Improvements or other structure, including temporary structures built or assembled on the Premises or the Off-Premises Area.

(b) Such insurance shall be written on an "All Risk" form and provide coverage for direct physical loss and damage, including flood and earthquake, off-site storage, transit, Soft Costs, delay in completion (including delayed start-up and extra expense), testing, machinery breakdown, equipment and indoor/outdoor installed fixtures and structures, materials and supplies. Such insurance shall cover the total value of such renovation or construction, as well as the value of any equipment, supplies and/or material for such operations that may be in storage (on or off site) or in transit. Such insurance shall also cover the cost of removing debris, including demolition as may be legally necessary by operation of any law, ordinance or regulation, and for loss or damage to any owned, borrowed, leased or rented capital equipment, tools, including tools of Tenant's agents and employees, staging towers and forms, and property of the City held in their care, custody and/or control. Notwithstanding the foregoing, flood coverage may carry a sublimit of not less than Ten Million Dollars ($10,000,000).

(c) All such policies of insurance shall name Landlord, Lease Administrator and AIDC as Loss Payees as their interests may appear, and specify that in the

event a loss occurs at an occupied facility, occupancy shall be permitted without the consent of the insurance company.

(d) In the event of any loss to any such Construction Work, Tenant shall provide the insurance company that issued such Builder's Risk insurance with prompt, complete and timely notice, and simultaneously provide Landlord with a copy of such notice. Tenant shall provide Landlord, Lease Administrator and AIDC with the opportunity to participate in any negotiations with the insurer regarding adjustments for claims.

Section 7.8 Pollution/Environmental Liability Insurance. Beginning on and including the Construction Commencement Date for the Phase 1 Development (and in any case, at all times while Construction Work is being undertaken by Tenant pursuant to this Lease), Tenant shall maintain Pollution Environmental Liability Insurance covering the following two distinct and separate risks and coverages; provided, that such coverage is available at a commercially reasonable cost:

(i) The risk associated with any loss, cost, claims, causes of action, damages and remediation obligations imposed by any Governmental Authority which may arise as a result of the environmental condition of the property on the Effective Date. Coverage shall be procured by Tenant effective as of the Effective Date, with a policy limit of Five Million ($5,000,000) Dollars, which policy shall provide coverage to the maximum extent readily available for a continuous coverage period of ten (10) years or such lesser period; provided that the policy has an extended coverage period so that the total coverage period aggregates ten (10) years; provided further, that in no event shall such policy limit be less than Two Million Dollars ($2,000,000) which is the minimum amount of coverage if the Investigations undertaken pursuant to the Pre-Development Agreement disclose no Hazardous Substances. The City, Landlord, AIDC and any other Lease Administrator shall be additional insureds. The coverage shall include coverage for any environmental remediation program required by a Governmental Authority as well as any third-party claims for bodily or personal injury or death and property damage.

(ii) The risk associated with any actual, alleged, or threatened emission, discharge, dispersal, seepage, release or escape of pollutants (including any Hazardous Substances in violation of applicable Environmental Laws) or in the investigation, settlement or defense of any claim, suit or proceeding against any of the Additional Insureds arising out of or in connection with Tenant's use or occupancy of the Premises and the Off-Premises Area as referred to in this clause (iii) and transport to and from the Premises and the Off-Premises Area. Such coverage shall be procured by Tenant with a policy limit of Five Million ($5,000,000) Dollars; provided, that in no event shall such policy limit be less than Two Million Dollars ($2,000,000) which is the minimum amount of coverage if the Investigations undertaken pursuant to the Pre-Development Agreement disclose no Hazardous Substances.

The policy for the two coverages prescribed above shall name the Lease Administrator, Landlord and AIDC as additional insureds, and both of said coverages shall be on a primary and non-contributory basis. The insurance coverage required in this Section 7.8 is not intended to be duplicative of that required of consultants, contractors and subcontractors in Section 7.9 below. Both coverages (i) and (ii) of this Section 7.8, in so far as they relate to bodily injury and property damage and clean up shall apply to both on and off the Premises and shall include, without limitation, coverage for improper or inadequate: (i) environmental management practices by or on behalf of Tenant, its Representatives or Subtenants in violation of applicable law; (ii) storage of chemicals and Hazardous Substances; and (iii) loading, unloading, transportation, and/or off-site disposal of Hazardous Substances. Coverage must not exclude transportation (owned and non-owned vehicles) of the Hazardous Materials to and from the Premises and the Off-Premises Area and all related events which may occur in the Premises or the Off-Premises Area.

Section 7.9 Contractors Pollution Liability Insurance. In the event Tenant enters into a contract with another party that involves any Remediation Work or any other abatement, removal, repair, replacement, enclosure, encapsulation and/or delivery, receipt, or disposal of any petroleum products, asbestos, lead, PCBs or any other Hazardous Substances, Tenant shall maintain, or cause the contractor to maintain, Contractors Pollution Liability Insurance covering bodily injury, property damage, clean-up costs/remediation expenses and legal defense costs. Such insurance shall provide coverage for sudden and non-sudden pollution conditions arising out of the contractor's operations at the Premises or the Off-Premises Area.

(b) If required, the Contractors Pollution Liability Insurance shall have a limit of at least Three Million Dollars ($3,000,000.00) and provide coverage for Tenant as named insured, or additional insured, as applicable, and each of Lease Administrator and Landlord and AIDC, and their respective officials and employees, as additional insured. Coverage for Landlord, Lease Administrator and AIDC shall be at least as broad as Tenant's; provided, that in no event shall such policy limit be less than Two Million Dollars ($2,000,000) which is the minimum amount of coverage if the Investigations undertaken pursuant to the Pre-Development Agreement disclose no Hazardous Substances. If this insurance is issued on a claims-made basis, such policy or policies shall have a retroactive date on or before the beginning of the contractor's work, and continuous coverage shall be maintained, or an extended discovery period exercised, for a period of not less than three years after the termination or completion of such work; provided, that such policy or policies are available at a commercially reasonable cost.

Section 7.10 Additional Coverages. Lease Administrator shall have the right, at any time and from time to time to modify, increase or supplement the insurance coverages, limits, sublimits, minimums and standards required by this Article 7 to conform such requirements to the insurance coverages, limits, sublimits, minimums and standards that at the time are commonly carried by owners of premises comparable to the Premises, or are commonly carried by businesses of the size and nature of the business conducted at the Premises, subject to Section 7.13(e).

Section 7.11 General Requirements for Insurance Coverage and Policies.

(a) Policies of insurance required under this Article 7 shall be provided by companies that may lawfully issue such policy and have an A.M. Best Company, Inc. rating of at least A- / "VII" or a Standard and Poor's Ratings Group, Inc. rating of at least A, unless prior written approval is obtained from Lease Administrator.

(b) Policies of insurance required under this Article 7 shall be primary and non-contributing to any insurance maintained by Landlord of any other insurance maintained by Tenant.

(c) The limits of coverage for all types of insurance required under this Article 7 shall be the greater of (i) the minimum limits set forth in this Article 7 or (ii) the limits provided to Tenant under all primary, excess/umbrella, and blanket policies covering operations under this Lease.

(d) All required policies, except for Workers' Compensation insurance, Employers Liability insurance, and Disability Benefits insurance, shall contain an endorsement requiring that the issuing insurance company provide Landlord with advance written notice in the event such policy is to expire or be cancelled or terminated for any reason, and to mail such notice to both Landlord, at the address for notices to Landlord herein, and the Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007. Such notice is to be sent at least ten (10) days before the expiration, cancellation or termination date, except in cases of non-payment, where at least ten (10) days written notice would be provided.

(e) All required policies, except Workers' Compensation, Employers Liability, and Disability Benefits, shall include a waiver of the right of subrogation with respect to all insureds and loss payees named therein.

Section 7.12 Proof of Insurance.

(a) Certificates of insurance, acceptable to Landlord demonstrating unequivocally that the coverage required under this Article 7 is in full force and effect or certified copies of policies for all insurance required in this Article 7 must be submitted to and accepted by Lease Administrator prior to or upon execution of this Lease.

(b) For Workers' Compensation, Employers Liability Insurance, and Disability Benefits insurance policies, Tenant shall submit one of the following:

(i) C-105.2 Certificate of Worker's Compensation Insurance;

(ii) U-26.3 State Insurance Fund Certificate of Workers' Compensation Insurance;

(iii) Request for WC/DB Exemption (Form CE-200);

(iv) Equivalent or successor forms used by the New York State Workers' Compensation Board; or

(v) Other proof of insurance in a form reasonably acceptable to Landlord. ACORD forms are not acceptable proof of workers' compensation coverage.

(c) For all insurance required under this Article 7 other than for Workers Compensation, Employers Liability, and Disability Benefits, Tenant shall submit one or more Certificates of Insurance in a form acceptable to Lease Administrator. All such Certificates of Insurance shall (a) certify the issuance and effectiveness of all such policies of insurance, each with the specified minimum limits; and (b) be accompanied by the provision(s) or endorsement(s) in Tenant's policy/ies (including its general liability policy) by which each of Lease Administrator, Landlord and AIDC has been made an additional insured or loss payee, as required herein. All such Certificates of Insurance shall be accompanied by either a duly executed "Certification by Broker" in the form required by Lease Administrator or certified copies of all policies referenced in such Certificate of Insurance. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted. ACORD forms 24 and 25 are not acceptable proof of coverage for any required commercial general liability or "All Risk" or "Special Perils" property coverage.

(d) Certificates of Insurance confirming renewals of insurance shall be submitted to Lease Administrator prior to the expiration date of coverage of all policies required under this Lease. Such Certificates of Insurance shall comply with subsections (b) and (c) directly above.

(e) Acceptance or approval by Lease Administrator of a Certificate of Insurance, policy, or any other matter does not waive Tenant's obligation to ensure that insurance fully consistent with the requirements of this Article 7 is secured and maintained, nor does it waive Tenant's liability for its failure to do so.

(f) Tenant shall be obligated to provide Landlord with a copy of any policy of insurance required under this Article 7 upon request by Lease Administrator or the New York City Law Department.

Section 7.13 Miscellaneous.

(a) In the event that Tenant requires any subtenant or other entity, by contract or otherwise, to procure insurance with regard to any operations under this Lease, the Tenant shall ensure that such entity also names Landlord, Lease Administrator and AIDC, including their officials and employees, as additional insureds under such policies with coverage at least as broad as the most recent edition of ISO forms CG 20 26 and CG 20 37.

(b) Tenant and each Subtenant (if any) may satisfy their respective insurance obligations under this Article 7 through primary policies or a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required herein.

(c) Tenant shall be solely responsible for the payment of all premiums for all policies and all deductibles or self-insured retentions to which they are subject, whether or not Landlord is an insured under the policy.

(d) Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Article 7, Tenant shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this Lease (including notice to Commercial General Liability insurance carriers for events relating to Tenant's own employees) no later than 20 days after such event. For any policy where Lease Administrator and/or Landlord is an additional insured, such notice shall expressly specify that "this notice is being given on behalf of [New York City Economic Development Corporation][1] and the City of New York as Insured as well as the Named Insured." Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. Tenant shall simultaneously send a copy of such notice to Landlord at the notice address provided herein and to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

(e) Tenant's failure to secure and maintain insurance in complete conformity with this Article 7, or to give the insurance carrier timely notice on behalf of Landlord, or to do anything else required by this Article 7 shall constitute a material breach of this Lease. Such breach shall not be waived or otherwise excused by any action or inaction by Lease Administrator or by Landlord at any time. Notwithstanding the foregoing, if any of the insurance required to be carried under Sections 7.7, 7.8 or 7.9 of this Lease shall not, after diligent and commercially reasonable efforts by Tenant, and through no act or omission on the part of Tenant, be obtainable at a commercially reasonable cost from domestic carriers licensed to do business in New York and customarily insuring large-scale urban developments and business operations of a size, nature and character similar to the size, nature and character of the business operations being conducted by Tenant at the Premises, then Tenant shall promptly notify Landlord of Tenant's inability to obtain such insurance at a commercially reasonable cost and Tenant shall promptly obtain the maximum insurance obtainable at a commercially reasonable cost, and in such case, the failure of Tenant to carry the insurance which is unobtainable at a commercially reasonable cost shall not be a Default for as long as such insurance shall remain unobtainable at a commercially reasonable cost. For purposes of this Section 7.13(e), types and amounts of insurance shall be deemed unobtainable at a commercially reasonable cost only if such types or amounts of insurance are (i) (A) actually unobtainable, (B) practically unobtainable as a result of commercially unreasonable premiums, or (C) not generally made available to owners or operators of facilities such as are being conducted by Tenant on the Premises, and (ii) not required by statute or other applicable Requirements. Any dispute with regard to whether any insurance is unobtainable at a commercially reasonable cost or rate shall be resolved by arbitration pursuant to Article 42 hereof.

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[1] Replace with full name of the then Lease Administrator as applicable.

(f) Insurance coverage in the minimum amounts provided for in this Article 7 shall not relieve Tenant or any Subtenant of any liability under this Lease, nor shall it preclude Landlord from exercising any rights or taking such other actions as are available to it under any other provisions of this Lease or the law.

(g) In the event of any loss, accident, claim, action, or other event that does or can give rise to a claim under any insurance policy required under this Article 7, Tenant shall at all times fully cooperate with Landlord with regard to such potential or actual claim.

(h) Tenant waives all rights against Lease Administrator and Landlord, and their respective officials and employees, for any damages or losses that are covered under any insurance required under this Article 7 (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of Tenant and/or its employees, agents, or servants of its contractors or subcontractors.

(i) In the event Tenant receives notice, from an insurance company or other person, that any insurance policy required under this Article 7 shall expire or be cancelled or terminated (or has expired or been cancelled or terminated) for any reason, Tenant shall immediately forward a copy of such notice to both Landlord, at the address for notices to Landlord herein, and the Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007. Notwithstanding the foregoing, Tenant shall ensure that there is no interruption in any of the insurance coverage required under this Article 7.

(j) There shall be no self-insurance program with regard to any insurance required under this Article unless approved in writing by the Lease Administrator. Tenant shall ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance under this Article, including, but not limited to, the defense and indemnification obligations that insurers are required to undertake in liability policies.

Section 7.14 Responsibility for Safety, Injuries or Damage; Indemnification.

(a) Without limiting in any way any other provisions of this Lease, including Article 20 (but also without imposing any obligation on Tenant to the extent resulting from the gross negligence or willful misconduct of Landlord or Lease Administrator, or any of its employees, agents, contractors and subcontractors), as and between Landlord and Tenant only (and without limiting in any way any claim that Tenant may have against any Person other than Landlord, Lease Administrator, or any of their respective employees or agents):

(i) Tenant shall be solely responsible for the safety and protection of its employees, agents, servants, contractors, and subcontractors, and for the safety and protection of the employees, agents, or servants of its contractors, subcontractors, and Subtenants; provided that nothing in this Section 7.14(a)(i) shall limit the responsibility of Landlord in its official governmental capacity to provide all applicable safety, fire and other services (if any) available to property owners;

(ii) Tenant shall be solely responsible for taking all reasonable precautions to protect the persons and property of Landlord or others from damage, loss or injury resulting from any and all operations under this Lease.

(iii) Tenant shall be solely responsible for injuries to any and all persons, including death, and damage to any and all property arising out of or related to the operations under this Lease, whether or not due to the negligence of Tenant, including injuries or damages resulting from the acts or omissions of any of its employees, agents, servants, contractors, subcontractors, Subtenants or any other person; and

(iv) Tenant shall use the Premises and the Off-Premises Area in compliance with, and shall not cause or permit the Premises (and shall not cause or to the extent within Tenant's control, permit the Off-Premises Area) to be used in violation of any Environmental Laws. Except as may be agreed by Landlord as part of this Lease, Tenant shall not cause or permit, or allow any of Tenant's personnel to cause or permit any Hazardous Substances to be brought upon, store, used generated, treated or disposed of on the Premises or the Off-Premises Area (other than Hazardous Substances typically used in the operation of facilities similar to the Premises in New York City and/or in such reasonable quantities as the Requirements allow).

Section 7.15 Application of Insurance Proceeds. For the avoidance of doubt, from the Effective Date through the Expiration Date any and all proceeds received by Tenant from insurance carried pursuant to this Article 7 with respect to any casualty, loss or damage to the Buildings or otherwise shall be applied toward the repair, reconstruction or replacement of such Buildings or other portion of the Project as a Casualty Restoration in accordance with Section 8.3.

## ARTICLE 8
## DAMAGE, DESTRUCTION AND RESTORATION

Section 8.1 Notice to Landlord. Tenant shall notify Landlord immediately if any Building is damaged or destroyed in whole or in part by fire or other casualty if the reasonably estimated cost of repairing or restoring such damage or destruction is in excess of the Threshold Amount.

Section 8.2 Casualty Restoration.

(a) Obligation to Restore. If all or any portion of any Building is damaged or destroyed by fire or other casualty, ordinary or extraordinary, foreseen or unforeseen, Tenant shall, in accordance with the provisions of this Article 8 and Article 13 hereof (as if such restoration were the Initial Construction Work), restore such Building to the extent of the value and as nearly as possible to the character of such Building as it existed immediately before such casualty and otherwise in substantial conformity with the Plans and Specifications (a "Casualty Restoration"). Tenant shall so restore the Premises whether or not (i) such damage or destruction was insured or was insurable, (ii) Tenant is entitled to receive any

insurance proceeds, or (iii) the insurance proceeds are sufficient to pay in full any cost of the Construction Work required in connection with the Casualty Restoration.

(b) Estimate of Construction Work Cost. Before commencing any Construction Work in connection with a Casualty Restoration, and as soon as reasonably practicable (and in any event, within ninety (90) days after the damage or destruction) Tenant shall furnish Landlord with an estimate, prepared by the Architect (after consultation by the Architect with Landlord, to the extent practicable), of the cost of such Construction Work. Such estimate shall include, without limitation, Architect's and engineer's fees (and other construction-related Soft Costs), construction labor costs and the cost of materials, fixtures and equipment, and the schedule for incurring these costs. Landlord, at its election and at Landlord's sole cost, may engage a licensed professional engineer or registered architect to prepare its own estimate of the cost of such Construction Work. If Landlord shall fail to disapprove Tenant's estimate of such cost within thirty (30) days of receipt of such estimate, Tenant's estimate shall be deemed approved. If Landlord shall dispute the estimated cost of such Construction Work, the dispute shall be resolved by a licensed professional structural engineer or licensed professional contractor, chosen by agreement of Landlord and Tenant, which structural engineer or contractor shall resolve the dispute by choosing either Landlord's or Tenant's estimate, which choice shall be binding on the parties. During the course of any Casualty Restoration, Tenant shall provide monthly summaries to Landlord of the progress of the Construction Work. Such summary shall include a breakdown of the applicable costs spent for the Construction Work for such month. Tenant further agrees that Landlord shall have the right, at all reasonable times, to inspect the Premises and the progress of the Construction Work. Tenant agrees that if it fails to properly and fully complete such Construction Work, then after notice and an opportunity to cure as set forth herein, Landlord shall have the right to complete such Construction Work at the cost and expense of Tenant, to terminate this Lease or to avail itself of any other remedy available under law.

(c) Commencement of Construction Work. Subject to Unavoidable Delays relating to the Construction Work in connection with a Casualty Restoration, Tenant shall commence the Construction Work in connection with a Casualty Restoration promptly after settlement of the insurance claim, if any, relating to the damages or destruction (which settlement will be diligently prosecuted), but in any event within twelve (12) months after the damage or destruction. Prior to commencing the Construction Work in connection with a Casualty Restoration, Tenant will proceed diligently and in good faith to take all actions required to be taken prior to the commencement of the Construction Work, including the preparation of any necessary plans and specifications and the obtaining of any necessary permits and approvals.

Section 8.3 Restoration Funds. All insurance proceeds received by or payable to Tenant with respect to any casualty or otherwise (excluding insurance proceeds from "contents" insurance policies carried by Tenant for personal property separate and apart from the policies required under this Lease), together with any interest earned on such insurance proceeds from time to time, shall be applied toward the cost of the Casualty Restoration, and any such funds remaining after the completion of a Casualty Restoration in accordance with the terms of this Lease shall be distributed as provided in Section 8.3(c) below. If the cost of the Casualty Restoration is (A) in excess of the Threshold Amount, then such funds shall be deposited with Depositary for disbursement as provided in this Article 8 and shall be deemed "Restoration

Funds"; and (B) less than or equal to Threshold Amount, then such funds shall be paid to Tenant in trust for application as provided in this Article 8.

(a) Reimbursement of Depositary's and Landlord's Expenses. Before paying the Restoration Funds to Tenant, Depositary shall reimburse itself, Landlord and Tenant therefrom to the extent of the necessary and proper expenses (including reasonable attorneys' fees and disbursements) paid or incurred by Depositary, Landlord or Tenant in the collection of such Restoration Funds.

(b) Disbursement of Restoration Funds.

(i) Application for Disbursement. In connection with any Construction Work in connection with a Casualty Restoration costing in excess of the Threshold Amount, the Depositary shall pay to Tenant the Restoration Funds from time to time in installments as the Casualty Restoration progresses, in the manner and at the times as required by the Recognized Mortgagee most senior in lien. If there is no Recognized Mortgagee or the Recognized Mortgage has no provision relating to the disbursement of the Restoration Funds, then, subject to the provisions of Sections 8.2(a), 8.3(a), 8.3(b)(ii), 8.4 and 8.5 hereof, the Restoration Funds shall be paid to Tenant in installments as the Casualty Restoration progresses, upon application to be submitted by Tenant to Depositary and Landlord showing the cost of labor and the cost of materials, fixtures and equipment that either have (A) been incorporated in the Buildings since the last previous application and either have been paid for by Tenant or are then due and owing by Tenant, or (B) not been incorporated in the Buildings but have been purchased since the last previous application and either have been paid for by Tenant, or payment for same is then due and owing by Tenant and such material, fixtures and equipment are insured by Tenant for one hundred percent (100%) of the cost thereof and stored at a secure and safe location either on, or outside of, the Premises. Depositary shall not make any installment payment to Tenant for materials, fixtures and equipment, purchased but not yet incorporated in the Buildings, until Tenant shall have delivered to Landlord certificates of insurance evidencing that such materials, fixtures and equipment are insured for one hundred percent (100%) of the cost thereof.

(ii) Holdback of Restoration Funds. The amount of any installment of the Restoration Funds to be paid to Tenant for labor, the cost of materials, fixtures and equipment (but exclusive of architects' fees, insurance and other professional fees and "soft" construction costs, called herein "Soft Costs") shall be equal to ninety-five percent (95%) of the amount by which (A) the product derived by multiplying the Restoration Funds by a fraction, the numerator of which shall be the total cost (including any amounts that may have been retained by Tenant from any contractors) of all labor, and the cost of materials, fixtures and equipment incorporated in the Buildings or purchased, insured and stored as provided in Section 8.3(b)(i) hereof, excluding Soft Costs, and the denominator of which shall be the total estimated cost of the Construction Work in connection with such Casualty Restoration, exceeds (B) all prior installments of

Restoration Funds paid to Tenant excluding Soft Costs. Upon Substantial Completion of the Casualty Restoration, and upon application for final payment submitted by Tenant to Depositary and Landlord and compliance with the conditions set forth in Section 8.4 hereof, the remaining portions of the Restoration Funds shall be first paid to each of Tenant's contractors in payment of the amounts due and remaining unpaid on account of work performed in connection with the Restoration and not disputed by Tenant, and any amounts retained under such contracts, and the balance of the Restoration Funds shall be paid in accordance with Section 8.3(c).

(c) Disbursement of Remaining Restoration Funds. Any Restoration Funds remaining after the completion of a Casualty Restoration in accordance with the provisions of Sections 13.2 and 13.5 hereof shall be paid to Tenant (or first to the Recognized Mortgage in the amount required by the Recognized Mortgagee (if any)).

Section 8.4 Conditions Precedent to Disbursement of Restoration Funds. The following are conditions precedent to each payment of Restoration Funds to be made to Tenant pursuant to Section 8.3(b) hereof:

(b) Certificate of Architect. A certificate of the Architect or the inspecting licensed, professional engineer selected by Tenant and approved by Landlord, such approval not to be unreasonably withheld, delayed or conditioned, for such Construction Work shall be submitted to Depositary and Landlord stating that:

(i) The sum then requested to be withdrawn either has been paid by Tenant or is justly due to contractors, subcontractors, materialmen, engineers, architects or other Persons (whose names and addresses shall be stated), who have rendered or furnished services or materials for the work and, giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of such Persons with respect thereto, and stating, in reasonable detail, the progress of the Construction Work in connection with the Restoration up to the date of the certificate;

(ii) No part of such expenditures has been or is being made the basis, in any previous or then pending request, for the withdrawal of Restoration Funds or has been paid out of any of the Restoration Funds received by Tenant;

(iii) The sum then requested does not exceed the cost of the services and materials described in the certificate;

(iv) The materials, fixtures and equipment, for which payment is being requested pursuant to clause (B) of Section 8.3(b)(i) hereof, to the extent applicable, are in substantial accordance with the Plans and Specifications (or such other plans and specifications approved by Landlord for purposes of the Casualty Restoration);

(v) Except in the case of the final request for payment by Tenant, the balance of the Restoration Funds held by Depositary (including any bond, cash or other security provided by Tenant in accordance with Section 8.5 hereof) shall be sufficient, upon Substantial Completion of the Construction Work in connection with the Restoration, to pay for the Construction Work in full, and estimating, in reasonable detail, the total and remaining costs to complete such Construction Work, and

(vi) In the case of the final request for payment by Tenant, the Construction Work in connection with a Restoration shall have been completed, except for punch list items, in accordance with the provisions of Sections 13.2 and 13.5 hereof.

(c) Certificate of Title Insurance. There shall be furnished to Landlord a report or a certificate of a title insurance company reasonably satisfactory to Landlord, or other evidence reasonably satisfactory to Landlord, showing that there are no (i) vendor's, mechanic's, laborer's or materialman's statutory or other similar liens filed against the Premises or any part thereof (except liens as to which Tenant shall have complied with the applicable provisions of this Lease, including Section 17.2), or (ii) public improvement liens created or caused to be created by Tenant affecting Landlord or the assets of, or any funds appropriated to Landlord, except in the case of either clause (i) or (ii), for (A) liens which will be discharged upon payment of the amount then requested to be withdrawn, (B) liens or encumbrances which the Restoration is intended to remove or (C) other liens expressly permitted pursuant to the terms of this Lease.

(d) Defaults. No Event of Default shall exist.

Section 8.5 Restoration Fund Deficiency. If the estimated cost (determined as provided in Section 8.2(b) hereof) of any Construction Work in connection with any Restoration (a) exceeds the Threshold Amount, and (b) exceeds the net Restoration Funds received by Depositary pursuant to Section 8.3 hereof, then, before the commencement of such Construction Work, or, at any time after commencement of such Construction Work if it is reasonably determined by Landlord that the cost to complete such Construction Work exceeds the unapplied portion of the Restoration Funds and as a condition to the disbursement of further Restoration Funds, Tenant shall, within ten (10) days of Landlord's request, furnish to Landlord evidence reasonably satisfactory to Landlord of the financial ability of Tenant to pay the amount of such excess, which evidence may, at Tenant's election, consist of a letter of credit, loan commitment, surety bond, completion guaranty (from a credit-worthy entity acceptable to Landlord) or any combination of the foregoing or such other security as may be reasonably satisfactory to Landlord, in the amount of such excess.

Section 8.6 Effect of Casualty on This Lease. Except as provided herein, this Lease shall neither terminate, be forfeited nor be affected in any manner, nor shall there be a reduction or abatement of Rental by reason of damage to, or total, substantial or partial destruction of, the Buildings, or by reason of the untenantability of any part thereof, nor for any reason or cause whatsoever. Tenant's obligations hereunder, including the payment of Rental, shall continue as though the Buildings had not been damaged or destroyed and shall continue without abatement, suspension, diminution or reduction whatsoever.

Section 8.7 Waiver of Rights under Statute. The existence of any present or future law or statute notwithstanding, Tenant waives all rights to quit or surrender the Premises or any part thereof by reason of any casualty to the Buildings. It is the intention of Landlord and Tenant that the foregoing is an "express agreement to the contrary" as provided in Section 227 of the Real Property Law of the State of New York.

## ARTICLE 9
## CONDEMNATION

Section 9.1 Substantial Taking.

(a) Termination of Lease for Substantial Taking. If during the term of this Lease, all or Substantially All of the Premises is taken (excluding a taking of the fee interest in the Land if, after such taking, Tenant's rights under this Lease and the leasehold interest created thereby are not materially affected) for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement among Landlord, Tenant and those authorized to exercise such right, this Lease shall terminate on the day immediately prior to the Date of Taking and the Rental payable by Tenant hereunder shall be apportioned and paid to that termination date.

(b) Disbursement of Award. If all or Substantially All of the Premises is taken or condemned as provided in Section 9.1(a) hereof, the entire award paid in connection with such taking or condemnation (net of reimbursement to Depositary, Landlord and Tenant of any reasonable costs of collection) shall be apportioned in the following order of priority:

(i) there shall first be paid to Landlord so much of such award which is for or attributable to the value of the Land (but not including the Initial Construction Work or other Buildings, appurtenant structures or improvements constructed or being constructed thereon by Tenant), considered as encumbered by this Lease;

(ii) there shall next be paid to Tenant (or, as directed by Tenant, to any Recognized Mortgagees in the order of the priority of their liens) so much of such award as is attributable to the value of the Initial Construction Work which has achieved Substantial Completion and any other Construction Work which may be undertaken from time to time in accordance with this Lease (the "Improvement Award"); and

(iii) there shall next be paid to Landlord the remaining balance of such award remaining for the value attributable to such Initial Construction Work or such other Construction Work. Tenant shall have the right to claim separately Tenant's Equipment, and moving and reasonable relocation costs for itself and any Subtenants, and Subtenants shall have the right to claim for their respective Tenant's Equipment.

(c) Definitions.

(i) "Date of Taking" means the earlier of (A) the date on which actual possession of all or Substantially All of the Premises, or any part thereof, as the case may be, is acquired by any lawful power or authority pursuant to the provisions of applicable federal or New York State law or (B) the date on which title to all or Substantially All of the Premises, or any part thereof, as the case may be, has vested in any lawful power or authority pursuant to the provisions of applicable federal or New York State law.

(ii) "Substantially All of the Premises" means such portion of the Premises as, when so taken, would leave a balance of the Premises that, due either to the area so taken or the location of the part so taken in relation to the part not so taken, would not, under economic conditions, applicable zoning laws and building regulations then existing, and after performance by Tenant of all covenants, agreements, terms and provisions contained herein or by Requirements required to be observed by Tenant, readily accommodate new or reconstructed buildings of type and size generally similar to the Buildings as existing at the Date of Taking and capable of supporting substantially similar activities as the Premises in the condition thereof immediately prior to the Date of Taking.

Section 9.2 Less Than A Substantial Taking.

(a) Taking of Less Than Substantially All of the Premises. If less than Substantially All of the Premises is taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement among Landlord, Tenant and those authorized to exercise such right, this Lease shall continue for the remainder of the Term without diminution of any of Tenant's obligations hereunder, except that Base Rent shall be reduced in proportion to the percentage of the Premises which is so taken and PILOT shall be reduced in proportion to the extent that Taxes would otherwise be reduced by reason of such taking.

(b) Obligation to Restore the Premises. If less than Substantially All of the Premises is taken as provided in Section 9.2(a) hereof, Tenant shall, as required by Section 9.2(d) hereof, after settlement of the award, restore the remaining portion of the Building not so taken so that the Building shall be a complete structure, in good condition and repair and (to the extent applicable) consisting of self-contained architectural units, and to the extent practicable, of a size and condition substantially similar to the size and condition of, and of character similar to the character of, the Building as it existed immediately before such taking (a "Condemnation Restoration") whether or not the award or awards received by Tenant for such taking are sufficient to pay in full the Construction Work in connection with such Condemnation Restoration, and Landlord, in no event, shall be obligated to restore any remaining portion of the Premises not so taken or to pay any costs or expenses thereof. No holder of any Mortgage shall have the right to apply the proceeds of any award paid in connection with any taking toward payment of the sum secured by its Mortgage if and to the extent that this Lease requires that Tenant restore the portion of the Premises remaining after such taking.

(c) Payment of Award. In the event of any taking described in Section 9.2(a), the entire award, excluding any separate award for or attributable to the Land, shall be paid to the Depositary and applied first to Condemnation Restoration and thereafter as provided in Section 9.2(d).

(d) Performance of Condemnation Restoration. The Construction Work in connection with a Condemnation Restoration, submission of the estimated cost thereof by Tenant and approval thereof by Landlord, Tenant's obligation to provide additional security, and disbursement of the condemnation award by Depositary shall be done, determined, made and governed in accordance with the provisions of Article 13 (as if such Construction Work were Initial Construction Work) and Sections 8.2(b), 8.3 (except Section 8.3(c) hereof), 8.4 and 8.5 hereof, as if such Condemnation Restoration were a Casualty Restoration. If the portion of the award made available by Depositary is insufficient for the purpose of paying for the cost of the Construction Work in connection with the Condemnation Restoration, Tenant shall nevertheless be required to perform such Construction Work as required hereby and pay any additional sums required for such Construction Work. Any balance of the award held by Depositary and any cash and the proceeds of any security deposited with Depositary pursuant to Section 8.5 remaining after completion of such Construction Work shall be paid to Tenant, subject to the rights of Recognized Mortgagees, if any.

Section 9.3 Temporary Taking.

(a) Notice of Temporary Taking. If the temporary use of the whole or any portion of the Premises is taken for a public or quasi-public purpose by a lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement between Tenant and those authorized to exercise such right, Tenant shall give Landlord prompt notice thereof. The Term shall not be reduced or affected in any way by reason of such temporary taking and Tenant shall continue to pay Rental to Landlord with a reduction in proportion to the percentage of the Premises which is so taken and the duration of such taking; and PILOT (if any) shall be reduced on a proportionate basis on account of such temporary taking; provided, that such reduction in Rental payments shall only be to the extent that rent is not paid to Tenant by Subtenants in connection with such temporary taking.

(b) Obligation to Restore for Temporary Taking Not Extending Beyond the Term. If the temporary taking is for a period not extending beyond the Term, and (i) if the award by reason of the temporary taking is paid less frequently than in monthly installments, such award shall be paid to, and held by, Depositary as a fund that Depositary shall apply from time to time, first to the payment of the Rental payable by Tenant hereunder for the period in question and any remaining balance to be paid to Tenant, or (ii) if such award is paid in monthly installments, such award shall be paid to Tenant. Notwithstanding the foregoing, if the taking results in changes or alterations in any Building that would necessitate an expenditure to restore such Building to its former condition then Tenant shall restore such Building in the same manner, and subject to the same terms and conditions, as if such restoration were a Condemnation Restoration. If the cost of such restoration is in excess of Threshold Amount, a portion of such award equal to the estimated cost of Restoration shall be paid to and held by Depositary and applied to the Restoration of the Building as provided in Section 9.2 hereof.

(c) Temporary Taking Extended Beyond the Expiration of the Term. If the temporary taking for a period extending beyond the Expiration of the Term, such award or payment shall be apportioned between Landlord and Tenant as of the Expiration of the Term, and the portion allocable to the period during the Term shall be paid and applied in accordance with the provisions of Section 9.3(b) hereof. If this Lease shall terminate for any reason before Substantial Completion of the Construction Work related to such taking, Depositary shall pay Landlord the remaining Restoration Funds retained by Depositary for that purpose.

Section 9.4 Governmental Action Not Resulting in a Taking. In case of any governmental action not resulting in the taking or condemnation of any portion of the Premises, such as the changing of the grade of any street upon which the Premises abut, then this Lease shall continue in full force and effect without reduction or abatement of Rental. Any award payable in connection with such governmental action, shall be applied first to reimburse Tenant for any Construction Work performed by Tenant resulting from such governmental action and any balance shall be paid to Landlord. Landlord (in its capacity as landlord under this Lease and not as a "taker") shall have no obligation to perform or bear any cost incurred for Construction Work required as a result of any such Governmental Action.

Section 9.5 Collection of Awards. Each of the parties shall execute documents that are reasonably required to facilitate collection of any awards made in connection with any condemnation proceeding referred to in this Article 9.

Section 9.6 Tenant's Approval of Settlements. Landlord shall not settle or compromise any taking or other governmental action creating a right to compensation in Tenant as provided in this Article 9 or enter into a sale of all or a portion of the Premises in lieu of condemnation without the consent of Tenant, which consent shall not be unreasonably withheld, if the settlement, compromise or sale may adversely affect or prejudice Tenant's right to compensation for the taking or the amount of such compensation or Tenant's rights under this Lease (including Tenant's right to operate the Project, other than the Off-Premises Improvements).

Section 9.7 Negotiated Sale. In the event of a negotiated sale of all or a portion of the Premises in lieu of condemnation, the proceeds shall be distributed as provided in cases of condemnation.

Section 9.8 Intention of Parties. It is the intention of Landlord and Tenant that the provisions of this Article 9 shall constitute an "express agreement to the contrary" as provided in Section 227 of the Real Property Law of the State of New York and shall govern and control in lieu thereof.

## ARTICLE 10
## ASSIGNMENT, TRANSFER AND SUBLETTING

Section 10.1 Tenant's Right to Assign, Transfer or Enter into a Sublease.

(a) Except as permitted by the further provisions of this Article 10, Tenant shall not, without the prior consent of Landlord, which consent may be withheld in Landlord's sole discretion, enter into (i) an Assignment, (ii) a Transfer, or (iii) a Sublease.

(b) Notwithstanding Section 10.1(a) hereof, prior to the Stabilization Date, the following transactions may occur without a requirement to obtain Landlord's consent but subject to the other provisions of this Article 10 (including, without limitation, Sections 10.1(e) and (f) below):

(i) an Assignment, Transfer or Sublease to any Person in which the Developer Principals have Developer Principal Control;

(ii) one or more Transfers by or within an Institutional Investor;

(iii) a Transfer of all or any portion of the Equity Interests in Tenant to one or more members of the family (as defined in Section 267(c)(4) of the Internal Revenue Code) of any Developer Principal or a trust in which all of the beneficial interests are held by one or more members of the family (as defined in Section 267(c)(4) of the Internal Revenue Code) of any Developer Principal;

(iv) one or more Permitted Space Leases or one or more Recognized Subleases; and

(v) the granting of Recognized Mortgages (subject to the provisions of Article 11);

provided, that in all of the foregoing cases: (x) Tenant shall provide Landlord with thirty (30) days' prior notice of any such Assignment, Transfer or Sublease, together with evidence demonstrating that Landlord's consent is not required pursuant to this Section 10.1(b); (y) following any such Assignment, Transfer or Sublease, except in the case of a Permitted Removal, Donald Capoccia (or another Developer Principal reasonably acceptable to Landlord) shall continue to maintain day-to-day operational and management control of the Project and the Developer Principals shall continue to have legal and beneficial interests in Tenant; and (z) with respect to any such Transfer by or within an Institutional Investor, the Transferee shall be an Institutional Investor and no Unqualified Person shall own any direct or indirect Equity Interest in Tenant (other than with respect to any corporation which is listed on any national or regional stock exchange or which is listed in the NASDAQ system, minority shareholders of such corporation).

(c) Notwithstanding Section 10.1(a) hereof, following the Stabilization Date, Tenant may, with Landlord's consent, which consent shall not be unreasonably withheld, but subject to the other provisions of this Article 10 (including, without limitation, Sections 10.1(e) and (f) below), enter into an Assignment, Transfer or Sublease; provided, that a Qualified Developer maintains day-to-day operational and managerial control over Tenant. Notwithstanding Sections 10.1(a) and (b) hereof, following the Stabilization Date, the following transactions may occur without a requirement to obtain Landlord's consent but subject to the other provisions of this Article 10 (including, without limitation, Sections 10.1(e), (f) and (g) below):

(i) direct or indirect Equity Interests in Tenant held by an Institutional Investor may be Transferred to any Person who is an Institutional Investor; provided, that after each such Transfer (A) a Qualified Developer maintains day-to-day operational and managerial control over Tenant, and (B) no Unqualified Person shall own any direct or indirect Equity Interest in Tenant (other than with respect to any corporation which is listed on any national or regional stock exchange or which is listed in the NASDAQ system, minority shareholders of such corporation); provided further, that (with respect to Transfers of direct Equity Interests in Tenant), Landlord shall receive from Tenant not less than ten (10) days' prior notice of any such Transfer, together with evidence demonstrating that Landlord's consent is not required pursuant to this Article 10, which notice shall be treated confidentially by Landlord and Lease Administrator and shall not be disclosed to any Person other than officers, employees, agents and designees of Landlord and/or Lease Administrator (except to the extent any such disclosure is required by applicable Requirements);

(ii) new members may be admitted as direct members of Tenant; provided, that after each such admission (A) a Qualified Developer maintains day-to-day operational and managerial control over Tenant, and (B) no Unqualified Person shall own any direct or indirect Equity Interest in Tenant (other than with respect to any corporation which is listed on any national or regional stock exchange or which is listed in the NASDAQ system, minority shareholders of such corporation); provided further, that (with respect to Transfers of direct Equity Interests in Tenant), Landlord shall receive from Tenant not less than ten (10) days' prior notice of any such Transfer, together with evidence demonstrating that Landlord's consent is not required pursuant to this Article 10, which notice shall be treated confidentially by Landlord and Lease Administrator and shall not be disclosed to any Person other than officers, employees, agents and designees of Landlord and/or Lease Administrator (except to the extent any such disclosure is required by applicable Requirements);

(d) Definitions.

(i) "Assignment" means the sale, exchange, assignment or other disposition of all or any portion of Tenant's interest in this Lease or the leasehold estate created hereby whether by operation of law or otherwise (but not including a Sublease or the Severance Lease), including a foreclosure sale or an assignment in lieu of foreclosure; provided, that a Sublease for all or substantially all of the Premises for all or substantially all of the remainder of the then-Term shall be considered an Assignment.

(ii) "Assignee" means an assignee under an Assignment.

(iii) "Developer Principal Control" means any Person in which the Developer Principals have (A) in the aggregate, direct or indirect ownership of, or beneficial interest in, not less than twenty-five percent (25%) of the ownership interests in such Person, and (B) the power directly or indirectly to

direct the management and affairs of such Person, whether through the ability to exercise voting power, by contract or otherwise, including the right to make (or consent to) all capital and other major decisions to be made by such Person;

(iv) "Equity Interest" means, with respect to any entity, (A) the ownership of (i) outstanding stock of such entity if such entity is a corporation, a real estate investment trust or a similar entity, (ii) a capital, profits, membership, or partnership interest in such entity if such entity is a limited liability company, partnership or joint venture, (iii) interest in a trust if such entity is a trust, (B) any right of a lender in connection with the Project to participate in cash flow, gross or net profits, gain or appreciation, or (C) any other interest that is the functional equivalent of any of the foregoing.

(v) "Sublease" means a sublease (including a sub-sublease and any further level of subletting and not including the NYCIDA Sublease and the NYCIDA Sub-Sublease), occupancy, license or concession agreement.

(vi) "Subtenant" means a tenant, operator, licensee, franchisee or concessionaire pursuant to a Sublease.

(vii) "Transfer" means (A) the sale, assignment or transfer of any Equity Interests in Tenant or any Equity Interests in a general partner or managing member of Tenant; or (B) the issuance of additional Equity Interests in Tenant or of additional Equity Interests in a general partner or managing member of Tenant; or (C) the sale, assignment, redemption or transfer of any general partner's or managing member's Equity Interests in Tenant or the sale, assignment, redemption or transfer of Equity Interests in a partnership or limited liability company that is a general partner or managing member of Tenant; or (D) a change in the capacity to direct the business policies or day-to-day management of Tenant or of the entity that is the general partner or managing member of Tenant; provided, that the term "Transfer" shall not include the sale or exchange of shares in a company whose shares are publicly traded on a national or regional stock exchange.

(viii) "Transferee" means a Person to which a Transfer is made.

(e) Required Disclosure Statements. Any proposed Assignee, Subtenant or Transferee shall deliver to Lease Administrator the Required Disclosure Statement, in the form attached as Exhibit J (Required Disclosure Statement) hereto (as such form may be updated from time to time, the "Required Disclosure Statement"), and otherwise in a form reasonably satisfactory to Lease Administrator; provided, that if the information set forth in the Required Disclosure Statement reveals that a proposed Assignee, Subtenant or Transferee is a Person with whom the City and/or NYCEDC will generally not do business or if such information is otherwise not acceptable to the Lease Administrator, acting in its sole but reasonable discretion, then the Assignment, Sublease or Transfer shall not be permitted;

(f) Limitations on Right to Assign, Transfer or Enter into a Sublease. Notwithstanding anything set forth in this Article 10 to the contrary, Tenant shall have no right to enter into an Assignment, Transfer or a Sublease:

(i) If on the effective date of such Assignment, Transfer or Sublease, or on the BFC Exit Date or the EOI Exit Date, an Event of Default has occurred and is continuing.

(ii) If the proposed Assignee, Transferee or Subtenant fails to deliver a satisfactory Required Disclosure Statement as provided in Section 10.1(e) hereof.

(iii) If the proposed Assignment, Transfer or Sublease would be reasonably likely to cause the Project Commitments to be breached in any material respect.

(iv) If the proposed Assignment or Transfer is with respect to less than all of the Premises, or if following the BFC Exit Date, the Developers retain any Equity Interest or other direct or indirect leasehold or other interest in the Premises.

(g) Assignment, Transfer or Sublease Instruments. Tenant (or Subtenant, as applicable) shall deliver to Landlord, or shall cause to be delivered to Landlord, within thirty (30) days after the execution thereof, but in any case no later than by the BFC Exit Date or the EOI Exit Date (as applicable), (i) in the case of an Assignment, an executed counterpart of the instrument of assignment and an executed counterpart of the instrument of assumption by the Assignee of Tenant's obligations under this Lease (or of Subtenant's under a Sublease), to be in form and substance reasonably satisfactory to Landlord; provided that in the case of an Assignment pursuant to a bona fide foreclosure proceeding, or a bona fide assignment in lieu of foreclosure, the Assignee's obligations shall be limited to payment of Rental and the satisfaction of the other obligations of Tenant, whether accruing prior to, on, or after the effective date of such Assignment, (ii) in the case of a Transfer, an executed counterpart of the instrument of Transfer, and if the Transfer is effected through admission of a new or substitute partner of Tenant all relevant amendments to the partnership or related agreement and, if applicable, the certificate of limited partnership or other related certificate, and (iii) in the case of a Sublease, an executed counterpart of the Sublease.

(h) Condominium Conversion. Tenant shall not, without the prior consent of Landlord (and in Landlord's sole and absolute discretion), submit Tenant's leasehold estate in the Premises, or any part thereof, to the provisions of Article 9-B of the Real Property Law of the State of New York, as it may be amended.

(i) Release of Assignor. If, as and when Tenant consummates an Assignment permitted in accordance with this Article 10 and the Assignee assumes Tenant's obligations under this Lease, then from and after the date of such Assignment, the Tenant which so Assigned this Lease shall have no further obligations or liability hereunder, other than any obligations that arose before the effective date of such Assignment (unless such obligations are

expressly assumed by the Assignee); provided, that nothing in this Section 10.1(i) shall affect any then-effective Closing Date Guaranty, Completion Guaranty or Standby Completion Guaranty.

(j) Death, Incapacitation or Retirement of Developer Principals. In the event that any Developer Principal dies, becomes legally incapacitated, or retires prior to a Transfer (made in accordance with this Article 10) of all the Developer Principals' rights and interests in Tenant, then Tenant shall, within ten (10) Business Days of such death, incapacitation or retirement, notify Landlord of such death, incapacitation or retirement and shall cause the remaining Developer Principals to certify to Landlord, in writing, that such remaining Developer Principals intend to fully observe and perform the terms, obligations and covenants specified herein which relate to the Developer Principals.

Section 10.2 Subtenant Violation. A violation or breach of any of the terms, provisions or conditions of this Lease that results from, or is caused by, an act or omission by a Subtenant shall not relieve Tenant of Tenant's obligation to cure such violation or breach, subject to any notice and cure period to which Tenant is entitled in accordance with the express terms of this Lease.

Section 10.3 Collection of Subrent by Landlord. After an Event of Default, Landlord may, subject to the rights of any Recognized Mortgagee (unless a Funding Failure Default has occurred), collect rent and all other sums due under any Subleases and apply the net amount collected to the Rental payable by Tenant hereunder. No such collection shall be, or shall be deemed to be, a waiver of any agreement, term, covenant or condition of this Lease nor the recognition by Landlord of any Subtenant as a direct tenant of Landlord nor a release of Tenant from performance by Tenant of its obligations under this Lease. Following the cure of any such Event of Default, such right of collection shall terminate and Landlord shall not again exercise such right unless and until the occurrence of a subsequent Event of Default.

Section 10.4 Sublease Assignment.

(a) Assignment of Subleases to Landlord. As security for Tenant's obligations hereunder, Tenant hereby assigns, transfers and sets over unto Landlord, subject to any assignment of Subleases and/or rents made in connection with any Recognized Mortgage, all of Tenant's right, title and interest in and to all Subleases and hereby confers upon Landlord, its agents and representatives, a right of entry in, and sufficient possession of, the Premises to permit and ensure the collection by Landlord of all sums payable under the Subleases. The exercise of such right of entry and qualified possession by Landlord shall not constitute an eviction of Tenant from the Premises or any portion thereof. If such right of entry and possession is denied to Landlord, its agents or representatives, Landlord, in the exercise of this right, may use all legal means to recover possession of the Premises. This assignment, although presently effective, shall be operative only upon the occurrence and during the continuance of an Event of Default and not before.

(b) Schedule of Subleases. At any time upon Landlord's demand, Tenant shall deliver to Landlord, within fifteen (15) days of such demand, (i) a schedule of all Subleases, giving the names of all Subtenants, a description of the space that has been sublet,

expiration dates, rentals and such other information as Landlord reasonably may request, and (ii) an electronic (in ".PDF" format) or photostatic copy of each of the Subleases to the extent not previously delivered. Upon reasonable request of Landlord, Tenant shall permit Landlord and its agents and representatives to inspect original counterparts of all Subleases.

Section 10.5 Required Sublease Clauses.

(a) Each Sublease shall:

(i) Provide that it is subordinate and subject to this Lease.

(ii) Provide that, except for security deposits and any other amounts deposited with Tenant or with any Recognized Mortgagee in connection with the payment of insurance premiums, real property taxes and assessments and other similar charges or expenses, no Subtenant shall pay rent or other sums payable under any Sublease to Tenant for more than one (1) month in advance without, in each case, the prior written consent of Landlord or Lease Administrator, which consent shall not be unreasonably conditioned, withheld or delayed.

(iii) Provide that, at Landlord's option, on the termination of this Lease pursuant to Article 24 hereof, the Subtenant shall attorn to, or shall enter into a direct lease on terms identical to its Sublease with, Landlord for the balance of the unexpired term of the Sublease.

(iv) Include provisions in accordance with Section 39.9(c), (d) and (e) hereof.

(v) To the extent such Sublease is for retail space within the Retail Portion of the Premises or the provision of space within the Premises for retail food services (including restaurants or cafes), include provisions requiring the Subtenant to keep its respective retail or food services establishment open for business during the Required Hours.

(b) Tenant shall use its best efforts to require that each Sublease provide that:

(i) any loading and unloading by the Subtenant (and any of the officers, employees, contractors, agents or representatives of Subtenant) for the Subtenant's business purposes shall only occur during "off hours" that are not between 7:00 a.m. and 10:00 a.m. during weekday mornings and not between 4:00 p.m. and 7:00 p.m. on weekday afternoons/evenings;

(ii) the Subtenant has inspected the Premises and the Project and acknowledges that the same are proximate to the Ferry Terminal and other security and other operations ancillary thereto and Subtenant is fully aware of the Ferry Operations, and that the Subtenant shall not object to the Ferry Operations nor make a claim or seek injunctive relief against Landlord or Tenant based on (y)

a breach of the covenant of quiet enjoyment, or interference with the Subtenant's use or operations of the areas of the Project covered under the Sublease, or (z) any other defaults of Landlord under this Lease in connection with or arising from the Ferry Operations.

Section 10.6 Recognized Subtenant Non-Disturbance.

(a) Upon the termination of this Lease for any reason (other than the then-scheduled expiration of this Lease), Landlord shall recognize any Recognized Subtenant as the direct tenant of Landlord (under the then-executory terms of the applicable Recognized Sublease); provided, that at the time of such termination of this Lease, (x) no default exists under such Recognized Sublease beyond the expiration of any applicable cure period, which at such time would permit the (sub)landlord thereunder to terminate the Recognized Sublease or to exercise any remedy for dispossession provided for therein, (y) a Person meeting the requirements in clauses (a) and (b)(i) of the definition of "Qualified Developer" is the duly appointed operator of the Project, and (z) such Recognized Subtenant delivers to Landlord an instrument confirming the agreement of the Recognized Subtenant to attorn to Landlord and to recognize Landlord as the Recognized Subtenant's (sub)landlord under its Recognized Sublease, which instrument shall provide that neither Landlord, nor anyone claiming by, through or under Landlord, shall be:

(i) liable for any act or omission of any prior (sub)landlord (including, without limitation, the then defaulting (sub)landlord) other than those of a continuing or on-going nature;

(ii) subject to any counterclaims, offsets or defenses that such Recognized Subtenant may have against any prior (sub)landlord (including, without limitation, the then defaulting (sub)landlord) other than those of a continuing or on-going nature;

(iii) bound by any payment of rent that such Recognized Subtenant might have paid for more than the current month to any prior (sub)landlord (including, without limitation, the then defaulting (sub)landlord), except for security deposits and any other amounts deposited with any prior (sub)landlord (including, without limitation, the then defaulting (sub)landlord) in connection with the payment of insurance premiums, real property taxes and assessments or other similar charges or expenses, to the extent such deposits have been received by Landlord;

(iv) bound by any covenant to undertake or complete any construction, alteration or renovation work with respect to the Premises or any portion thereof demised by the Recognized Sublease (other than (A) normal maintenance and repair or (B) in connection with a casualty or condemnation except as provided in clauses (ix) or (x) below);

(v) bound by any obligation to make any payment to the Recognized Subtenant except with respect to (i) any amount payable from a fund, reserve, deposit, credit, receipt or other amount if actually held or received by Landlord for such purpose, or (ii) any obligation which arises after attornment;

(vi) bound by any amendment thereto or modification thereof made following the occurrence of an Event of Default;

(vii) liable for any asbestos or other Hazardous Material present either at the Premises or at any other structure constructed by or on behalf of any prior (sub)landlord;

(viii) if Landlord is the City, obligated to procure any insurance covering any risk for which the City generally self-insures;

(ix) in the event of a casualty, obligated to repair or restore the Premises or any portion thereof beyond such repair or restoration as may be reasonably accomplished from the net insurance proceeds actually made available to Landlord (or, in the case of self-insurance by Landlord, in excess of the amount of casualty insurance required to be carried by (sub)landlord under the Recognized Sublease);

(x) in the event of a partial condemnation, obligated to repair or restore the Premises or any part thereof beyond such repair or restoration as may be reasonably accomplished from the net proceeds of any award actually made available to Landlord;

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

(xii) be obligated to give Recognized Subtenant all or any portion of any insurance proceeds or condemnation awards payable to Landlord as a result of a casualty or condemnation other than for trade fixtures and personalty (such as inventory) of Recognized Subtenant or capital improvements constructed by or on behalf of Recognized Subtenant.

(b) The foregoing provisions of Section 10.6(a) are deemed self-executing and incorporated within any Recognized Sublease, but either Landlord or the applicable Recognized Subtenant shall execute an instrument confirming the same upon request therefor in the form attached to this Lease as Exhibit K (Form of RNDA) (each an "RNDA") . Such RNDA may also contain such additional provisions as Landlord and a Recognized Subtenant may request of the other and as the other may agree to which does not contradict the foregoing, each acting in their reasonable discretion.

Section 10.7 Tenant's Right of First Offer.

(a) Prior to the Expiration Date or earlier termination of this Lease in accordance with its terms, Landlord shall not offer to sell, accept any offer to purchase any interest in the Premises, or otherwise sell, transfer or convey any interest in the Premises (the "ROFO Period") except as set forth in this Section 10.7.

(b) If (i) Landlord desires to sell any interest in the Premises at any time during the ROFO Period or (ii) Landlord receives an offer from any Person to buy or sell to any Person any interest in the Premises (an "Offer") which Landlord desires to accept, then Landlord shall give written notice (the "Offer Notice") offering to sell the Premises to Tenant, which Offer Notice shall set forth the purchase price and the other terms and conditions upon which Landlord might be willing to sell the Premises to Tenant, and in the case of an Offer, the Offer Notice shall also contain the purchase price and the other material terms and conditions set forth in the Offer. During the twenty (20) day period (the "Offer Period") commencing on the date of the Offer Notice, Tenant shall have the option (the "Purchase Option") to purchase the Premises from Landlord at the purchase price and upon the other terms and conditions set forth in the Offer Notice (said purchase price and such other terms and conditions being herein referred to as the "Offer Terms"). To exercise the Purchase Option, Tenant must give to Landlord notice thereof (the "Exercise Notice") agreeing to the proposed price and other terms and conditions set forth in the Offer Notice on or before the last day of Offer Period (which last day is hereinafter referred to as the "Exercise Notice Date"). If Landlord does not receive the Exercise Notice from Tenant by the Exercise Notice Date, Tenant shall be deemed to have rejected and waived the Purchase Option.

(c) If Tenant gives the Exercise Notice to Landlord by the Exercise Notice Date, then Landlord (or Landlord's counsel) shall, no later than thirty (30) days after Exercise Notice Date, provide Tenant with a proposed purchase and sale agreement (the "Purchase Agreement") which incorporates:

(i) all of the Offer Terms;

(ii) the proposed closing date, which (unless otherwise required by any Requirements) shall be no later than ninety (90) days after the date that Landlord executes and delivers the Purchase Agreement to Tenant (notwithstanding anything to the contrary contained in any Offer);

(iii) the purchase price for the Premises, which shall be payable solely in lawful money of the United States;

(iv) whether seller or buyer is to be obligated to pay any New York State and/or New York City transfer and deed taxes or gains taxes, or any other taxes applicable to such sale;

(v) any fees or expenses payable by buyer (other than customary adjustments);

(vi) any facts which would make the representations and warranties set forth therein untrue in any material respect;

(vii) the schedules and exhibits to the Purchase Agreement shall be completed; and

(viii) as conditions to the closing, that all applicable City approvals and other Requirements shall have been duly obtained or satisfied.

(d) Landlord and Tenant shall, in good faith, negotiate the terms of the Purchase Agreement other than the Offer Terms, it being agreed that Tenant (or any permitted transferee of Tenant) shall, as a condition to closing under the Purchase Agreement, deliver to Lease Administrator the Required Disclosure Statement in advance of the date of such closing; provided, that if the information set forth in the Required Disclosure Statement reveals that Tenant or the proposed purchaser of the Premises is a Person with whom the City and/or the Lease Administrator will generally not do business or if such information is otherwise not acceptable to Lease Administrator, acting in its sole but reasonable discretion, then the sale of the Premises shall not be permitted. Tenant shall execute and deliver to Landlord four (4) original executed counterparts of the Purchase Agreement within five (5) Business Days after the date on which Landlord and Tenant have agreed to the terms of the Purchase Agreement. If (i) within thirty (30) days after Landlord delivers its initial draft of the Purchase Agreement, Landlord and Tenant have not agreed upon the terms of the Purchase Agreement, or (ii) Tenant has not delivered four (4) original executed counterparts of the Purchase Agreement to Landlord within five (5) Business Days after the date on which Landlord and Tenant have agreed to the terms of the Purchase Agreement, Tenant shall be deemed to have rejected and waived the Purchase Option with respect to the Premises identified in the Offer Notice, the Purchase Option and Tenant's exercise thereof shall be deemed null and void and of no further force or effect; provided, that if, during the thirty (30) day period specified in clause (i) of this sentence, Tenant has diligently and in good faith continued to negotiate the terms of such Purchase Agreement with Landlord, then Tenant shall not be deemed to have rejected or waived such Purchase Option and Landlord and Tenant shall continue in good faith to negotiate the terms of such Purchase Agreement for an additional period of no greater than thirty (30) days beyond the last day of the initial thirty (30) day period specified in clause (i) of this sentence.

(e) If Tenant shall, or shall be deemed to, have rejected and waived the Purchase Option, Landlord may (but shall not be obligated to) enter into a contract to sell the Premises to any Person, free of any rights of Tenant, at a purchase price not less than ninety-five percent (95%) of the purchase price quoted in the Offer Terms and upon other terms and conditions not materially inconsistent with the other Offer Terms, within eighteen (18) months following Tenant's rejection and waiver or deemed rejection and waiver of the Purchase Option.

(f) If Landlord gives to Tenant the Offer Notice and if Tenant fails to give the Exercise Notice to Landlord on or before the Exercise Notice Date, and thereafter Landlord contemplates selling its interest in the Premises at a purchase price that is less than ninety-five percent (95%) of the purchase price quoted in the Offer Terms or at least eighteen (18) months has lapsed since Tenant's rejection and waiver, or deemed rejection and waiver of the Purchase Option and Landlord has not entered into a contract of sale for the Premises

(excluding any contract of sale that may have been terminated), then, subject to and in accordance with the provisions of this Section 10.7, prior to offering any portion of the Premises for sale or accepting an Offer therefor, Landlord shall give to Tenant a new Offer Notice, and Tenant shall have the Purchase Option with respect to such new Offer Notice, as set forth above, except that the new Offer Notice shall set forth such new terms and conditions.

(g) The provisions of this Section 10.7 shall not apply to the following:

(i) any sale, transfer or conveyance of any interest in the Premises to any Person that is an agency of the City or other municipal, state or federal governmental entity; provided, that such buyer or transferee agrees to be bound by this Lease;

(ii) any sale, transfer or conveyance of any interest in the Premises to a not-for-profit entity for "Community Facility Use", as such term is defined in the City's Zoning Resolution; or

(iii) the granting of rights of way, licenses or easements, including for public or private utilities which do not materially interfere with the Project.

Section 10.8 Unqualified Persons.

(a) Transfers to Unqualified Persons. Except as otherwise expressly provided herein, in no event shall Tenant be permitted to make a Transfer, Assignment or Sublease to an Unqualified Person, nor shall any Subtenant be permitted to assign its Sublease or sublet or otherwise grant occupancy rights with respect to the space demised to it or any portion thereof to an Unqualified Person.

(b) Procedure for Determining Unqualified Person Status. If Tenant seeks to determine whether any Person subject to the restrictions in this Lease regarding Unqualified Persons is an Unqualified Person, Tenant may submit to Landlord the name of such Person and, except with respect to any Person that is publicly held, the name of each Person having Control in such Person, together with such completed questionnaire(s) or form(s) as are used by the City of New York for a comparable transaction unless Landlord has furnished Tenant with different questionnaire(s) or form(s) for such purpose, in which case Tenant shall complete the questionnaire(s) or form(s) furnished by Landlord. Notwithstanding anything to the contrary contained in this Lease, any provision in this Lease referring to an Unqualified Person shall also apply to the Principals of such Person unless such Person is a publicly traded entity. Within twenty (20) Business Days after receipt of all such names and fully-completed questionnaires or forms, as applicable, Landlord shall endeavor to notify Tenant of Landlord's determination, which determination shall be limited to whether such Person (and any Controlling Principals thereof) is an Unqualified Person; provided, that Landlord will endeavor to confirm whether any Person is a Unqualified Person promptly after receiving all of the information described herein. If Landlord fails to so notify Tenant within such period, then Tenant shall give

Landlord a reminder notice, which reminder notice shall contain the following caption in bold and capitalized type:

> YOU ARE REQUIRED TO DETERMINE THAT _____ IS NOT AN UNQUALIFIED PERSON WITHIN TWENTY (20) BUSINESS DAYS FROM THE DATE OF YOUR RECEIPT OF THIS NOTICE.

If such Person is not an Institutional Investor and Landlord fails to notify Tenant of whether such Person is an Unqualified Person within twenty (20) Business Days after its receipt of such reminder notice, then Landlord and Tenant shall work together continuously and diligently and in good faith to determine as soon as practicable whether such Person is an Unqualified Person. If such Person is an Institutional Investor and Landlord fails to notify Tenant of whether such Person is an Unqualified Person within twenty (20) Business Days after its receipt of such reminder notice, then such Person shall be deemed to be a Permitted Person.

Section 10.9 Transferee Identity

. Upon request by Landlord in connection with any required consent to a Transfer, Tenant shall deliver to Landlord information regarding the identity and composition of the proposed Transferee, including, if such Transferee is not a public company, the names and addresses of each Principal of the transferee, together with such other information and evidence as shall be reasonably necessary and reasonably satisfactory to Landlord to confirm the composition and identity of the proposed Transferee and compliance with the requirements of this Article 10. Tenant shall also deliver to Landlord a certification signed by an officer of the Transferee or by a Developer Principal of Tenant stating that, to the knowledge of the person signing such certification, the information so delivered is accurate and does not fail to disclose any information which would make the information delivered to Landlord inaccurate or misleading in any material respect.

## ARTICLE 11
## MORTGAGES

Section 11.1 Effect of Mortgages.

(a) No Effect on Landlord's Interest in Premises. No Mortgage shall extend to, affect or be a lien or encumbrance upon, the estate and interest of Landlord in the Premises or any part thereof.

(b) "Mortgage" means any mortgage or deed of trust that constitutes a lien on all or any portion of Tenant's interest in the Lease and the leasehold estate created hereby. Notwithstanding anything in this Lease to the contrary, a Mortgage shall only be permitted to the extent of Tenant's rights and interests in the Premises as demised under this Lease, and may be subject to release or amendment at such time as this Lease may be severed in accordance with Section 12.2.

Section 11.2 Mortgagee's Rights.

(a) Mortgagee's Rights Not Greater than Tenant's. With the exception of the rights granted to Recognized Mortgagees pursuant to the provisions of Sections 11.3, 11.4, 11.6 and 11.8 hereof, the execution and delivery of a Mortgage or a Recognized Mortgage shall not give nor shall be deemed to give a Mortgagee or a Recognized Mortgagee any greater rights against Landlord than those granted to Tenant hereunder.

(b) "Recognized Mortgage" means a Mortgage (i) that is held by an Institutional Lender (or a corporation or other entity wholly owned by an Institutional Lender) that is a Permitted Person; (ii) which shall comply with the provisions of this Article 11; (iii) an electronic (in ".PDF" format) or photostatic copy of which has been delivered to Landlord, together with a certification by Tenant and the Mortgagee confirming that such electronic or photostatic copy is a true and accurate copy of the Mortgage and giving the name and post office address of the holder thereof; and (iv) which is recorded in the Office of the City Register, Richmond County, City of New York.

(c) Notwithstanding the foregoing in sub-Section (b), for the purposes hereof, in the event the holder of a Mortgage is an EB-5 Lender, then:

(i) at the time of the origination of such Mortgage,

(A) in respect of financing for the Phase 1 Development and the Phase 2 Development: (1) (a) such Mortgage must be subordinate to another Mortgage or Mortgages held by a Recognized Mortgagee that is not an EB-5 Lender; provided, that such senior Mortgage or Mortgages secure loans in an aggregate maximum original principal amount (whether or not then drawn) of not less than Twenty Five Million Dollars ($25,000,000) at any time prior to the Substantial Completion Date of the Phase 2 Development (it being understood that the EB-5 Lender shall continue to be a Recognized Mortgagee after Mortgages senior to its Mortgage have been satisfied), and (b) such Mortgage shall not secure a loan in excess of One Hundred Seventy Five Million Dollars ($175,000,000), unless in each case Landlord has provided prior written consent otherwise in its sole discretion; or (2) an Institutional Investor must hold Equity Interests in Tenant; and

(B) in respect of financing for the Phase 3 Development: (1) (a) such Mortgage must be subordinate to another Mortgage or Mortgages held by a Recognized Mortgagee that is not an EB-5 Lender; provided, that such senior Mortgage or Mortgages secure loans in an aggregate maximum original principal amount (whether or not then drawn) of not less than Twenty Five Million Dollars ($25,000,000) at any time prior to the Substantial Completion Date of the Phase 3 Development (it being understood that the EB-5 Lender shall continue to be a Recognized

Mortgagee after Mortgages senior to its Mortgage have been satisfied) and (b) such Mortgage shall not secure a loan in excess of Fifty Million Dollars ($50,000,000), unless in each case Landlord has provided prior written consent otherwise in its sole discretion; or (2) an Institutional Investor must hold Equity Interests in Tenant; and

(ii) if such Mortgage is refinanced, then the Person providing such refinancing shall be an Institutional Lender that is not an EB-5 Lender.

(d) A prospective Recognized Mortgagee shall be permitted to submit documentation and request a determination by Lease Administrator of its status as a Permitted Person prior to its making the loan to be secured by a Recognized Mortgage, which determination shall be valid so long as such Recognized Mortgage is executed within sixty (60) days following such determination; provided, that no material adverse change to such prospective Recognized Mortgagee has occurred prior to the expiration of such 60 day period. A Recognized Mortgagee shall not cease to be a Recognized Mortgagee because the Recognized Mortgagee ceases to meet the Required Thresholds of an Institutional Lender or ceases to be a Permitted Person following the date of the making of the Recognized Mortgage, subject to the further provisions of this Article 11.

Section 11.3 Notice and Right to Cure Tenant's Defaults.

(a) Notice to Recognized Mortgagee. Landlord shall give to Recognized Mortgagee and each Institutional Investor who is not also a Recognized Mortgagee, at the address of the Recognized Mortgagee stated in a notice given by the Recognized Mortgagee to Landlord and at the address of each such Institutional Investor stated in a notice given by each such Institutional Investor to Landlord, and otherwise in the manner pursuant to the provisions of Article 25 hereof, a copy of each notice of Default at the same time as it gives notice of Default to Tenant.

(b) Right and Time to Cure. Subject to the provisions of Section 11.5 hereof (a) a Recognized Mortgagee shall, in the case of any default hereunder (other than a Funding Failure Default), and (b) an Institutional Investor shall, in the case of both a default hereunder (other than a Funding Failure Default) and a default under the Tenant Operating Agreement which results in a Permitted Removal, each have a period of thirty (30) days more than is given Tenant, under the provisions of this Lease, to remedy such default or cause it to be remedied or, with respect solely to the Recognized Mortgagee, to proceed under Section 11.3(d)(ii). At any time after commencing to proceed in the manner described in Section 11.3(d)(ii), the holder of such Recognized Mortgage may notify Landlord, in writing, that it has relinquished possession of the Premises demised hereunder or that it will not institute foreclosure proceedings or, if such proceedings shall have been commenced, that it has discontinued such proceedings, and, in either event the Recognized Mortgagee shall have no further liability in connection therewith from and after the date on which it delivers notice to Landlord. Thereupon, Landlord shall have the unrestricted right to terminate this Lease and to take any other action it deems appropriate by reason of any default or "event of default"

hereunder which occurred prior to Landlord's delivery of notice of the termination of this Lease, and, upon any such termination, the provisions of Section 11.4 hereof shall apply.

(c) Acceptance of Recognized Mortgagee's Performance. Subject to the provisions of Section 11.5 hereof, Landlord shall accept performance by the Recognized Mortgagee or an Institutional Investor of any covenant, condition or agreement on Tenant's part to be performed hereunder, except for the obligations of Tenant which are not susceptible of being performed by a Recognized Mortgagee or an Institutional Investor, with the same force and effect as though performed by Tenant. In the event of a Default under Article 24 (other than a Funding Failure Default), a Recognized Mortgagee may exercise its rights under Section 11.4 hereof.

(d) Commencement of Performance by Recognized Mortgagee for Non-Rental Defaults. No Event of Default (other than an Event of Default arising from the nonpayment of Rental or a Funding Failure Default) shall be deemed to have occurred if, within the period set forth in Section 11.3(b) hereof, a Recognized Mortgagee has:

(i) In the case of a default that is curable without possession of the Premises, if Recognized Mortgagee or an Institutional Investor cured such default within the periods provided in Section 11.3(b); or

(ii) In the case of a default where possession of the Premises is required in order to cure such default, or is a default that is otherwise not susceptible of being cured by a Recognized Mortgagee (including a default occurring on any portion of the Premises), if a Recognized Mortgagee proceeds promptly to institute foreclosure proceedings, and prosecutes the foreclosure proceedings in good faith and with reasonable diligence to obtain possession of the Premises and, upon obtaining possession of the Premises, promptly commences to cure the default (other than a default which is not susceptible of being cured by a Recognized Mortgagee) and prosecutes such cure to completion with reasonable diligence.

(e) No Merger. So long as any Recognized Mortgage is in existence, unless all holders of such Recognized Mortgages shall otherwise express their consent in writing, the fee title to the Premises and the leasehold estate of Tenant created by this Lease shall not merge, but shall remain separate and distinct, notwithstanding the acquisition of both fee title to the Premises and any portion of the leasehold estate by Landlord, or by Tenant, or by any Recognized Mortgagee or by any other party.

(f) Foreclosure by EB-5 Lender. In the event the Recognized Mortgagee instituting foreclosure proceedings and obtaining possession of the Premises in accordance with clause (ii) of Section 11.3(d) is an EB-5 Lender, then (x) if such proceedings and possession occurs prior to Substantial Completion of the Full Build, such EB-5 Lender shall, prior to or simultaneously with such possession, retain a Qualified Developer that is or is advised by a Qualified Parking Operator, a Qualified Retail Operator, a Qualified Hotel Operator and/or a Qualified Banquet Facility Operator as necessary and appropriate given the Phase of construction of the Project, to complete the Project, or (y) if such acquisition occurs after

Substantial Completion of the Full Build, such EB-5 Lender shall, prior to such possession, either (A) hire a Person which possess a level of experience and management skill that is commercially reasonable with regard to developments in New York City of a type similar to the Project (unless senior officers or managers of the EB-5 Lender possess such level of experience and management skill) and cause such Person to maintain such position until at least such time as the senior officers or manager of the EB-5 Lender have such level of experience and management skill; or (B) continue to employ as of the effective date of the possession the primary project manager employed at the Premises (if any) immediately prior to the possession or such other personnel in such capacities as are reasonably acceptable to Landlord and NYCEDC.

Section 11.4 Execution of New Lease.

(a) Notice of Termination. If this Lease is terminated by reason of an Event of Default or otherwise, Landlord shall give prompt notice thereof to each applicable Recognized Mortgagee and each Institutional Investor who is not also a Recognized Mortgagee. Such notice shall set forth in reasonable detail a description of all defaults, to the actual knowledge of Landlord, in existence at the time the Lease was terminated by Landlord.

(b) Request for and Execution of New Lease. If, within thirty (30) days of the receipt (as shown on proof of service or return receipt) of the notice referred to in Section 11.4(a) hereof, a Recognized Mortgagee shall request a new Lease (which shall take the form of a direct lease between Landlord and a Recognized Mortgagee's designee as set forth herein), then subject to the provisions of Sections 11.4(c) and 11.5 hereof, within thirty (30) days after Landlord shall have received such request, Landlord shall execute and deliver a new Lease for the Premises for the remainder of the term to such Recognized Mortgagee's designee if and only if (i) such Recognized Mortgagee delivers to Lease Administrator a Required Disclosure Statement for itself and such nominee, and such Required Disclosure Statements shall contain no information that is unacceptable to Lease Administrator acting in its sole discretion, and (ii) the proposed designee is otherwise acceptable to Lease Administrator in Lease Administrator's reasonable discretion. If Landlord is not then allowed to enter into such new Lease by order of a court of competent jurisdiction, the Recognized Mortgagee shall be deemed to have properly requested a new Lease pursuant to this Section 11.4(b) and Landlord, subject to the provisions of Section 11.4(c), shall deliver such new Lease promptly after the restriction on such new Lease by order of a court of competent jurisdiction is lifted. The new Lease shall contain all of the covenants, conditions, limitations and agreements contained in the Lease; provided, however, that Landlord shall not be deemed to have represented or covenanted that such new Lease shall be superior to claims of Tenant, its other creditors or a judicially appointed receiver or trustee for Tenant. Notwithstanding the foregoing, if the Recognized Mortgagee shall request a new Lease pursuant to this Section 11.4(b), Landlord shall not voluntarily encumber, or consent to the encumbrance of the Premises demised by the Lease during the period following termination of the Lease and delivery of a new Lease pursuant to this Section 11.4(b).

(c) Conditions Precedent to Landlord's Execution of New Lease. The provisions of Section 11.4(b) hereof notwithstanding, Landlord shall not be obligated to enter into a new Lease with a Recognized Mortgagee unless the Recognized Mortgagee (i) shall pay to Landlord, concurrently with the execution and delivery of the new Lease, all Rental due under

the Lease up to and including the date of the commencement of the term of the new Lease (excluding penalties and interest thereon) and all expenses, including reasonable attorneys' fees and disbursements and court costs, incurred in connection with the default or event of default, the termination of the Lease and the preparation of such new Lease, if and to the extent such expenses would be collectible under the Lease from Tenant, (ii) except in the case of an event of default or defaults not susceptible to cure by the Recognized Mortgagee, shall promptly after receipt from Landlord of a statement of the default required to be cured, cure all defaults then existing under the Lease (as though the term had not been terminated), and (iii) shall deliver to Landlord a statement, in writing, acknowledging that Landlord, by entering into such new Tenant with such designee of such Recognized Mortgagee, shall not have or be deemed to have waived any defaults or events of default then existing under the Lease notwithstanding that any such defaults or event of default existed prior to the execution of such new Lease and that the breached obligations which gave rise to the defaults or event of default are also obligations under such new Lease.

(d) No Waiver of Default. The execution of a new Lease shall not constitute a waiver of any default existing immediately before termination of the Lease and, except for a default which is not susceptible of being cured by the Recognized Mortgagee, the Tenant under the new Lease shall cure, within the applicable periods set forth in the Lease as extended by Section 11.3(b) hereof, all defaults specified in Landlord's statement of defaults referred to in Section 11.4(c) hereof existing under the Lease immediately before its termination.

(e) Assignment of Depositary Proceeds. Concurrently with the execution and delivery of a new Lease pursuant to the provisions of Section 11.4(b) hereof, Landlord shall assign to the new Tenant named therein all of its right, title in and interest to moneys (including insurance proceeds and condemnation awards), if any, then held by, or payable to, Landlord or a depositary that Tenant would have been entitled to receive but for the termination of the Lease. Any sums then held by, or payable to, a depositary, shall be deemed to be held by, or payable to, a depositary under the new Lease.

(f) Assignment of Subleases. Upon the execution and delivery of a new Lease pursuant to the provisions of Section 11.4(b) hereof, all Subleases that have been assigned to Landlord shall be assigned and transferred, together with any security or other deposits received by Landlord and not applied under such Subleases (if any), without recourse, by Landlord to the Tenant named in the new Lease. Between the date of termination of the Lease and the date of the execution and delivery of the new Lease, if a Recognized Mortgagee or has requested a new Lease as provided in Section 11.4(b) hereof, Landlord shall not, except as may be commercially reasonable in the ordinary course of business, materially modify or amend, or cancel any Sublease or accept any cancellation, termination or surrender thereof (unless such termination is effected as a matter of law upon the termination of the Lease or terminated by the terms of the Sublease) or enter into any new Sublease without the consent of the Recognized Mortgagee's designee.

Section 11.5 Recognition by Landlord of Recognized Mortgagee Most Senior in Lien. If more than one Recognized Mortgagee has exercised any of the rights afforded by Sections 11.3 or 11.4 hereof, only that Recognized Mortgagee to the exclusion of all other Recognized Mortgagees whose Recognized Mortgage is most senior in lien shall be recognized

by Landlord as having exercised such right, for so long as such Recognized Mortgagee shall be diligently exercising its rights hereunder with respect thereto, and thereafter only the Recognized Mortgagee whose Recognized Mortgage is next most senior in lien shall be recognized by Landlord, unless such Recognized Mortgagee has designated a Recognized Mortgagee whose Mortgage is junior in lien to exercise such right. If the parties shall not agree on which Recognized Mortgage is prior in lien, such dispute shall be determined by a title insurance company chosen by Landlord, and such determination shall bind the parties.

Section 11.6 Application of Proceeds from Insurance or Condemnation Awards. No Mortgage shall contain any provisions with respect to the application of (a) insurance proceeds payable in connection with any damage or destruction to the Buildings or (b) the proceeds of any award payable in connection with a taking referred to in Article 9 hereof which are inconsistent with the requirements of this Lease.

Section 11.7 Appearance at Condemnation Proceedings. A Recognized Mortgagee shall have the right to appear in any condemnation proceedings and to participate in any and all hearings, trials and appeals in connection therewith.

Section 11.8 Rights of Recognized Mortgagees. The rights granted to a Recognized Mortgagee under the provisions of Sections 11.3, 11.4 and 11.7 hereof shall not apply in the case of any Mortgagee that is not a Recognized Mortgagee.

Section 11.9 Landlord's Right to Mortgage its Interest. Landlord shall have the right to mortgage its interest in the Premises, as long as such mortgage is subject to this Lease, and any new Lease executed pursuant to the provisions of Section 11.4 hereof. Anything in this Lease to the contrary notwithstanding, Landlord covenants and agrees that neither Tenant's interest in this Lease, nor any Mortgagee's interest in a Recognized Sublease or a new Sublease obtained pursuant to Section 11.4 hereof, shall be subordinate to any mortgage on Landlord's interest in the Premises. Landlord agrees to include in such mortgage a subordination clause reasonably satisfactory to Tenant and to the Recognized Mortgagee most senior in lien in order to accomplish such subordination. Such mortgage shall also include a waiver and release by the mortgagee of any claims to any insurance proceeds or condemnation awards properly applicable to a Condemnation Restoration or a Casualty Restoration. If the mortgagee refuses to include such provisions, Landlord shall not enter into the mortgage, and to do so shall constitute a material default by Landlord under the terms of this Lease. For the purposes of this provision, it is understood and agreed that the lien of any such mortgage shall be subordinate to this Lease, and to Tenant's interest in this Lease and Tenant's leasehold estate or any new lease granted pursuant to Section 11.4, notwithstanding that as a technical legal matter the leasehold estate created pursuant to this Lease may have terminated prior to the execution, delivery and recordation of a memorandum of such new Lease. Any such mortgagee shall, upon foreclosure under such mortgage, be entitled to succeed only to the interest of Landlord.

Section 11.10 Confirmation. The provisions of this Article 11 are deemed self-executing, but either Landlord, Tenant and/or a Recognized Mortgagee shall execute an instrument confirming the same in recordable form upon request therefor. Such instrument may also contain such substitutions for and modifications of the foregoing and such additional

provisions as Landlord, Tenant and/or a Recognized Mortgagee may request of the other and as the other may agree to, each acting in their reasonable discretion.

## ARTICLE 12
## SEVERANCE LEASE

Section 12.1 Severance Lease Notice.

(a) Provided that: (i) at least fifty percent (50%) of the gross leasable area of the Retail Portion to be leased to Subtenants, as contemplated in the Approved Plans and Specifications, has been leased by Subtenants who are not Affiliates of Tenant or Developer and a copy of each such Sublease has been delivered in accordance with Section 10.1(g); (ii) the Substantial Completion Date for the Phase 1 Development shall have occurred; (iii) Developer Tenant or a Person meeting the requirements in clauses (a) and (b)(i) of the definition of "Qualified Developer" is the duly appointed operator of the Project; (iv) this Lease shall then be in full force and effect in accordance with its terms; and (v) there shall not then exist any Event of Default or material Default hereunder, then Landlord and Tenant shall enter into a Severance Lease as provided in this Article 12.

(b) Within One Hundred and Fifty (150) days of the date on which each of the conditions listed in Section 12.1(a) have been satisfied (such period, the "Severance Lease Notice Period"), Tenant may deliver to Landlord and Lease Administrator, during such Severance Lease Notice Period, written notice of Tenant's desire to enter into a Severance Lease for the Hotel Portion and the Banquet Facility Portion. Such notice (the "Severance Lease Notice") shall be in substantially the form attached to this Lease at Part 2 of Exhibit H (Forms of Election Notices).

Section 12.2 Severance Leases.

(a) If Tenant gives the Severance Lease Notice to Landlord and Lease Administrator within the Severance Lease Notice Period, then Landlord shall, no later than thirty (30) days after the end of the Severance Lease Notice Period, provide the Hotel Tenant with a proposed draft of the Severance Lease for the Hotel Portion. For the avoidance of doubt, such Severance Lease shall not include provisions pursuant to which a Default or Event of Default hereunder will constitute a default or event of default under such Severance Lease and a default or event of default under such Severance Lease will not constitute a Default or Event of Default hereunder.

Section 12.3 Administrative Fees. Tenant shall pay or cause to be paid to Lease Administrator on the date of the Severance Lease Notice an administrative fee in the amount of twenty-five thousand dollars ($25,000) in respect of the Severance Lease. Each such amount shall be paid to Lease Administrator by wire transfer of immediately available funds in accordance with wire instructions to be provided by Lease Administrator.

Section 12.4 Conditions to Execution of Severance Leases. The execution and delivery of the Severance Lease by Landlord, and the effectiveness thereof, shall be conditioned on the satisfaction or waiver of each of the following:

(a) Landlord and the Hotel Tenant shall have agreed to the final form of the Severance Lease;

(b) Landlord and Tenant shall have agreed to the final form of an amendment agreement, pursuant to which any conforming amendments which Landlord considers necessary or prudent to this Lease or the memorandum of this Lease are memorialized;

(c) to the extent the Hotel Tenant is not a Qualified Hotel Operator, the Hotel Tenant shall have delivered to Landlord a copy of an operation and management agreement reasonably acceptable to Landlord between the Hotel Tenant and a Qualified Hotel Operator pursuant to which such Qualified Hotel Operator shall be the operator and manager of the Hotel during the term of the Severance Lease;

(d) to the extent any corporate or other approvals or authorizations are necessary under any Requirements (including any required City procurement processes) prior to the execution and delivery of the Severance Lease, all such approvals or authorizations shall have been duly obtained or given;

(e) there shall not exist any Event of Default or material Default hereunder as of the effective date of the Severance Lease;

(f) all necessary Site Easements shall have been executed, delivered and where appropriate recorded in accordance with this Lease, including as provided in Section 13.16.

## ARTICLE 13
## INITIAL CONSTRUCTION WORK

Section 13.1 Initial Construction Work.

(a) Commencement and Completion. Tenant shall perform (or cause to be performed) the Initial Construction Work in compliance with the Project Commitments and in a manner consistent with the Approved ULURP Application, as more particularly set forth in Exhibit B (Project Commitments) and the Approved Plans and Specifications. With respect to each Phase, Tenant shall (i) commence the Initial Construction Work included in such Phase not later than the Scheduled Commencement Date for such Phase (subject to Unavoidable Delays), (ii) thereafter continue to prosecute the Initial Construction Work for each Building included in such Phase with diligence and continuity (subject to Unavoidable Delays) in accordance with a development and construction schedule approved by Landlord and Tenant, (iii) Substantially Complete the Buildings included in such Phase or before the Scheduled Completion Date for such Phase (subject to Unavoidable Delays), and (iv) diligently pursue a permanent certificate of occupancy or certificate of completion or other licenses or permits required for lawful occupancy and use and operation, as applicable, for all Buildings included in such Phase and shall promptly furnish Landlord with such permanent certificate of occupancy or certificate of completion or

licenses or permits after the same shall have been duly issued by the Buildings Department or other applicable Governmental Authority. Certain key dates with respect to the development and construction schedule approved by Landlord and Tenant for the Phases of the Initial Construction Work are set forth in the Project Commitments.

(b) Definitions.

(i) "Approved Plans and Specifications" means the Plans and Specifications for each Phase of the Initial Construction Work, in each case as approved by Lease Administrator and/or DOT (as applicable) pursuant to Section 13.1(d) or (e) hereof.

(ii) "Construction Commencement Date" means, with respect to each Phase, the date specified in a notice given by Tenant to Landlord and Lease Administrator in which notice Tenant advises Landlord and Lease Administrator that the Initial Construction Work for such Phase has commenced; provided, that in any case, such notice shall have been delivered no later than by the date when any Construction Work occurs in respect of such Phase and Landlord shall have confirmed such date in writing (or shall be deemed to have confirmed such date if such confirmation is not delivered within ten (10) Business Days).

(iii) "Plans and Specifications" means the completed final drawings, plans and specifications for all Phases of the Initial Construction Work, as applicable prepared by the Architect for submission to the Department of Buildings and for advertisements for bid to contractors or construction managers that shall, subject to the provisions of subparagraph (d) below, conform to the Schematics, as the same may be modified from time to time, in accordance with the provisions of this Article 13.

(iv) "Scheduled Commencement Date" means, with respect to the Phase 1 Development, the date that is no later than the first anniversary of the Effective Date, and for each subsequent Phase, the respective dates upon which Tenant shall commence the Initial Construction Work for such Phase, subject to Unavoidable Delay, as more particularly set forth in the Project Commitments.

(v) "Scheduled Completion Date" means, with respect to the Phase 1 Development, the date that is no later than the second (2nd) anniversary of the Construction Commencement Date for such Phase, and for each subsequent Phase and the Full Build, the respective dates upon which the Initial Construction Work for such Phase and the Full Build shall be Substantially Completed, subject to Unavoidable Delay, as more particularly set forth in the Project Commitments; provided, that in any case the Full Build shall be Substantially Completed by the Full Build Scheduled Completion Date.

(vi) "Schematics" means schematic drawings for each Building and the Off-Premises Improvements, including the DOT Off-Premises

Improvements, constituting the Project and each Phase of the Project approved by Lease Administrator and, as applicable, by DOT, and showing all Site Easements approved by Landlord.

(vii) "Substantial Completion" or "Substantially Complete(d)" means that with respect to any Phase or any other Construction Work which may be undertaken from time to time in accordance with this Lease (A) the Buildings to be constructed in such Phase or as part of such other Construction Work, as the case may be, shall have been substantially completed in accordance with the Approved Plans and Specifications (excluding work for Subtenants), (B) the Buildings Department, or other appropriate Governmental Authority, shall have issued, pursuant to Section 645 of the Charter or another applicable Requirement, or any successor statute of similar import, either temporary or permanent certificates of occupancy or certificates of completion or other licenses or permits required for lawful occupancy and use and operation, as applicable, for all Buildings, (C) Lease Administrator (and with respect to the DOT Off-Premises Improvements, DOT) shall have each received written notice from Tenant certifying that the Construction Work for all such Buildings in such Phase or as part of such other Construction Work, as the case may be, has been substantially completed, together with the certificates, as-built plans, survey and other documents required to be delivered pursuant to Section 13.5 hereof, and (D) the Site Easements for such Phase or such other Construction Work, as the case may be, shall have been executed, delivered and where appropriate recorded.

(c) Submission and Review of Schematics. By the applicable dates set forth in the Project Commitments, Tenant shall submit proposed Schematics for Construction Work of the Phase 1 Development, Phase 2 Development and Phase 3 Development, as the case may be (including all applicable Site Easements for such Phase) to Lease Administrator (and to DOT with respect to the DOT Off-Premises Improvements), for Lease Administrator's and, if applicable, DOT's review and approval prior to its submission of such Schematics to any other Governmental Authority. Submission of such Schematics shall be made in such format, including electronic format, as shall be reasonably approved by Lease Administrator and, if applicable, by DOT. Lease Administrator and DOT shall review such Schematics solely for the purpose of determining whether the same comply with the Project Commitments and the Approved ULURP Application, and shall not unreasonably withhold, condition or delay its approval thereof. A preliminary site plan of the Project is attached for informational purposes only to this Lease at Exhibit B-2. Each review by Lease Administrator and DOT of such Schematics shall be carried out within twenty (20) Business Days after the date of Tenant's delivery to Lease Administrator and DOT of such Schematics or revisions thereof (as contemplated below), whichever is applicable. If Lease Administrator or DOT reasonably determines that such Schematics comply in all material respects with the Project Commitments, Lease Administrator or DOT shall so notify Tenant in writing. If Lease Administrator or DOT reasonably determines that such Schematics do not conform in any material respect with the Project Commitments or the Approved ULURP Application, Lease Administrator or DOT shall so notify Tenant, specifying in reasonable detail in what respects the Schematics do not so conform, and Tenant shall revise them to so conform and shall resubmit the Schematics to Lease Administrator or DOT for review. If Lease Administrator or DOT has not notified Tenant of its

determination within ten (10) Business Days after Lease Administrator or DOT, as the case may be, received a Second Request with respect thereto, Lease Administrator or DOT, as applicable, shall be deemed to have approved the submission. Each resubmission by Tenant shall be made within twenty (20) days of the date of Lease Administrator's or DOT's notice to Tenant disapproving any portion of the submission.

(d) Submission and Review of Plans and Specifications. As soon as practicable, but not fewer than ninety (90) days prior to the date Tenant plans to commence Construction of a given Phase, Tenant shall submit final Plans and Specifications for such Phase to Lease Administrator (and to DOT, with respect to the DOT Off-Premises Improvements), for their review and approval prior to its submission of such final Plans and Specifications to any other Governmental Authority. Submission shall be made in such format, including electronic format, as shall be reasonably approved by Lease Administrator and DOT, as the case may be. If Lease Administrator and, if applicable, DOT reasonably determine that the applicable Plans and Specifications comply in all material respect with the Project Commitments and the Approved ULURP Application, Lease Administrator and DOT shall so notify Tenant in writing. If Lease Administrator (or DOT, with respect to the DOT Off-Premises Improvements) reasonably determines that such Plans and Specifications do not comply in all material respects with the Project Commitments or the Approved ULURP Application, Lease Administrator (or DOT, with respect to the DOT Off-Premises Improvements), shall so notify Tenant, specifying in reasonable detail in what respect the Plans and Specifications do not so conform, and Tenant shall revise them to so conform and shall resubmit the Plans and Specifications to Lease Administrator or DOT for review. Tenant shall submit to Lease Administrator (and DOT, with respect to the DOT Off-Premises Improvements) together with the applicable Plans and Specifications, a construction schedule for such Phase for Lease Administrator's and DOT's review based on compliance with the Project Commitments; provided, however, that Tenant shall deliver the construction schedule not less than thirty (30) days prior to the date Tenant plans to commence Construction of such Phase. Each review of Plans and Specifications by Lease Administrator and DOT shall be carried out within twenty (20) days of the date of submission to Lease Administrator and DOT by Tenant of the Plans and Specifications (and construction schedule) or any revisions thereof. Each resubmission by Tenant shall be made within twenty (20) days of the date of Lease Administrator's or DOT's notice to Tenant disapproving any portion of the submission, as the case may be. If Lease Administrator or DOT has not notified Tenant of its determination within ten (10) Business Days after Lease Administrator or DOT, as the case may be, received a Second Request with respect thereto, Lease Administrator or DOT, as applicable, shall be deemed to have approved the submission. Each resubmission by Tenant shall be made within twenty (20) days of the date of Lease Administrator's or DOT's notice to Tenant disapproving any portion of the submission.

(e) Modification of Approved Plans and Specifications. If Tenant desires to modify the Plans and Specifications in any material respect after they have been approved (or have been deemed approved) by Lease Administrator or DOT, Tenant shall submit such proposed modifications to Lease Administrator and/or DOT, as applicable. Lease Administrator and/or DOT, as applicable shall review the proposed changes to determine whether they comply in all material respects with the Project Commitments and the Approved ULURP Application. The review process, and the timetables therefor, shall be the same as the review process for Plans and Specifications set forth in Section 13.1(d); provided, that Lease

Administrator and DOT shall review any revisions within ten (10) Business Days of receipt thereof.

(f) Compliance with Requirements, Etc. The Plans and Specifications shall comply with all Requirements and shall be consistent with the Approved ULURP Application. It is Tenant's responsibility to assure such compliance. Lease Administrator's and DOT's approval of the Plans and Specifications shall not be, nor shall be construed as being, or relied upon as, a determination that the Plans and Specifications comply with the Requirements or the Approved ULURP Application.

(g) Landlord's Right to Use Field Personnel. Landlord and Lease Administrator reserve the right to maintain field personnel at the Premises to observe Tenant's construction methods and techniques for compliance with the Requirements and safety practices, and Landlord and Lease Administrator shall be entitled to have their field personnel or other designees attend Tenant's job and/or safety meetings. Tenant shall notify Landlord and Lease Administrator of each job meeting in connection with the Initial Construction Work (such notification may be by telephone call to persons designated for such purpose by Landlord and Lease Administrator). No such observation or attendance by Landlord's or Lease Administrator's personnel or designees shall impose upon Landlord or Lease Administrator responsibility for any failure by Tenant to observe any Requirements or safety practices in connection with such construction, or constitute an acceptance of any work which does not comply in all respects with the provisions of this Lease.

(h) M/WBE Practices and Program. Tenant shall (A) comply with the M/WBE Practices annexed as Exhibit L (M/WBE Practices and Program) to this Lease and (B) use commercially reasonable efforts to comply with the M/WBE Program annexed as Exhibit L (M/WBE Practices and Program) to this Lease.

(i) Lease Administrator and DOT Review; Second Requests. Except as otherwise set forth herein, Lease Administrator and DOT each agree to respond to any written request for approval under this Section 13.1 within thirty (30) days after Tenant's request, provided Tenant's submissions comply in all material respects with the requirements above. In addition, following any disapproval by Lease Administrator or DOT, as the case may be, of any Schematics or Plans and Specifications, Lease Administrator and DOT agree to respond to any revised submission of such plans and specifications within ten (10) Business Days after such submission. If Lease Administrator and/or DOT has not notified Tenant of its determination on or before the end of the applicable review period set forth herein, Tenant shall have the right to provide Lease Administrator and DOT with a second written request for approval (a "Second Request"), which shall specifically identify Tenant's request for approval and to what such request relates, and set forth in bold capital letters the following statement: "IF [NYCEDC][DOT] FAILS TO RESPOND WITHIN TEN (10) BUSINESS DAYS AFTER RECEIPT OF THIS NOTICE, THEN [NYCEDC'S][DOT'S] CONSENT TO THE SUBMISSION SHALL BE DEEMED GRANTED." In the event that Lease Administrator or DOT fails to respond to a Second Request within ten (10) Business Days after receipt by Lease Administrator or DOT, then the approval request for which the Second Request is submitted shall be deemed to be approved by Lease Administrator and/or DOT, as the case may be. Any dates or timeframes for Lease Administrator's or DOT's approvals set forth in this Section

13.1(i) are not intended to, and shall not, increase Lease Administrator's nor DOT's obligations or modify any timeframes set forth in this Section 13.1 or elsewhere in this Lease.

(j) No Representations or Warranties. Tenant understands and agrees that neither Landlord nor Lease Administrator shall incur any liability to any Person for any act or omission in connection with their respective reviews and approvals of the Approved Plans and Specifications or any other document, or failure to review or approve the foregoing in accordance with the provisions of this Lease, and neither Landlord's nor Lease Administrator's approval of the Approved Plans and Specifications or any other document shall be, or shall be construed or interpreted, or otherwise relied upon, by any Person as: (1) a representation, warranty or determination by either Landlord or Lease Administrator that the Approved Plans and Specifications comply with applicable Requirements, or are structurally or architecturally sound or safe, or technically correct, (2) an opinion by either Landlord or Lease Administrator that the improvements constructed pursuant to the Approved Plans and Specifications are adequate or sufficient for any purpose or use, (3) a waiver of any of Landlord's or Lease Administrator's rights or (4) a release of Tenant from any of its obligations under this Lease.

(k) LEED. Tenant shall apply for and make good faith efforts to achieve a LEED (Leadership in Energy and Environmental Design) Certified rating of at least Silver under version 2.2 for the core and shell of all Buildings at the Premises from the United States Green Building Council.

Section 13.2 Commencement and Completion of All Initial Construction Work. All Initial Construction Work, once commenced, shall be prosecuted diligently and continuously (subject to Unavoidable Delay), in a good and workmanlike manner and, if applicable, in accordance with the approved Plans and Specifications therefor, the terms and provisions of this Lease and all applicable Requirements.

Section 13.3 Supervision of Architect and General Contractor. All Initial Construction Work shall be carried out under the supervision of the Architect and BFC (as general contractor).

Section 13.4 Conditions Precedent to Tenant's Commencement of Initial Construction Work.

(a) Permits, Insurance and Necessary Site Easements. Tenant shall not commence any Phase of the Initial Construction Work unless and until (i) Tenant shall have obtained and delivered to Landlord and Lease Administrator copies of all necessary permits, consents, certificates and approvals of all Governmental Authorities with regard to the particular work to be performed during such Phase, certified by Tenant or Tenant's Architect, (ii) Tenant shall have delivered to Landlord and Lease Administrator certified copies, certificates or memoranda of the policies of insurance required to be carried pursuant to the provisions of Article 7 hereof, and (iii) Tenant shall have delivered to Landlord and Lease Administrator copies of all Site Easements necessary for the commencement of such Phase, which have been executed and delivered by the parties thereto and which, as necessary, have been recorded, in each case as necessary or prudent in order to commence the Initial Construction Work.

(b) Cooperation of Landlord in Obtaining Permits. Landlord, in its proprietary capacity and not in its governmental capacity, shall cooperate with Tenant and undertaken reasonable efforts to cause Adjacent Property Owners to also cooperate with Tenant in obtaining the permits, consents, certificates and approvals required by Section 13.4(a) hereof, and Landlord shall sign any reasonable application made by Tenant required to obtain such permits, consents, certificates and approvals. Tenant shall reimburse Landlord within ten (10) Business Days after Landlord's demand for any reasonable cost or expense incurred by Landlord in obtaining the permits, consents, certificates and approvals required by Section 13.4(a) hereof.

(c) Approval of Plans and Specifications. Tenant shall not (i) commence any Phase of the Initial Construction Work (other than portions of the Initial Construction Work constituting the DOT Off-Premises Improvements) unless and until Landlord and Lease Administrator shall have approved the Plans and Specifications for such Phase, or (ii) if applicable to such Initial Construction Work being performed, commence any other Initial Construction Work unless and until Landlord and Lease Administrator shall, if required hereunder, have approved or deemed to have approved the proposed plans and specifications in the manner provided herein. Tenant shall not commence any Construction Work of the DOT Off-Premises Improvements unless and until DOT has approved (or has been deemed to have approved) the Plans and Specifications for the DOT Off-Premises Improvements.

(d) Construction Agreement. Tenant shall deliver to Landlord a true, correct and complete copy of a stipulated sum or cost-plus contract, a guaranteed maximum price contract, or construction management contract for all Phases of the Initial Construction Work, or other form of contract that satisfies the requirements of Section 13.10 hereof (each a "Construction Agreements"), in forms assignable to Landlord, each made with a reputable and responsible contractor or construction manager who is a Permitted Person (such Person, a "Contractor"), each such contract shall provide for the completion of the applicable Phase or Phases of the Initial Construction Work in accordance with the Approved Plans and Specifications therefor, applicable Requirements and this Lease.

(e) Assignment of Construction Agreement. Tenant shall deliver to Landlord a collateral assignment of the Construction Agreement ("Assignment of Construction Agreement") duly executed and acknowledged by Tenant (and consented to by the Contractor) effective by its terms upon any termination of this Lease, or upon Landlord's re-entry upon the Premises following an Event of Default before the complete performance of the Construction Agreement. Any such assignment shall be subject to the rights of any Recognized Mortgagee therein. The Assignment of Construction Agreement shall also include, subject to the rights of any Recognized Mortgagee, the benefit of all payments made on account of the Construction Agreement, including payments made before the effective date of any assignment of such Construction Agreement. The Assignment of Construction Agreement may include a provision that in order for it to become effective the assignee must assume Tenant's remaining obligations under the assigned Construction Agreement.

(f) Sufficient Funds. Prior to commencement of each Phases of the Initial Construction Work, Tenant shall deliver to Landlord evidence that Tenant has sufficient funds (or binding commitments therefor) available to it to complete such Initial Construction Work so commenced in accordance with the Approved Plans and Specifications for such Phase,

applicable Requirements and this Lease. Within five (5) Business Days of their execution, Tenant shall deliver to Landlord and the Lease Administrator true and complete copies of (i) all Mortgages and all loan or credit agreements as executed and delivered between Recognized Mortgagees and Tenant pursuant to which the Recognized Mortgagees will provide such funds, or (ii) where such Initial Construction Work will not be financed with Mortgages, loan or credit agreements or any other form of debt financing, all equity contribution, funding or other agreements between Tenant and the Person or Persons providing equity or other non-debt financing for such Initial Construction Work, as such equity contribution, funding or other agreements are executed and delivered between Tenant and such Person or Persons.

(g) Completion Guaranty and Standby Completion Guaranty. If the Closing Date Guaranty was not delivered on or prior to the Effective Date in accordance with the Pre-Development Agreement, then prior to commencement of the Initial Construction Work of the Phase 1 Development, Tenant shall deliver, or cause to be delivered, to Landlord:

(i) a copy of the Completion Guaranty from a Guarantor issued to the Recognized Mortgagees guaranteeing Substantial Completion of all Initial Construction Work by the Full Build Scheduled Completion Date; provided, that if the Recognized Mortgagees have not required any such Completion Guaranty, then Tenant shall cause a completion guaranty acceptable to Landlord to be issued to Landlord from a Guarantor, guaranteeing lien-free completion of all Initial Construction Work; and

(ii) a Standby Completion Guaranty from a Guarantor issued to Landlord guaranteeing Substantial Completion of all Initial Construction Work by the Full Build Scheduled Completion Date. Such Standby Completion Guaranty shall contemplate that if (A) an Event of Default occurs pursuant to Sections 24.1(b), (c) or (h) (other than where such Event of Default arises in connection with a Funding Failure Default), (B) a Default Notice has been issued by Landlord in connection therewith, and (C) the Recognized Mortgagees have not exercised all of their rights under the Completion Guaranty to remedy such Event of Default within thirty (30) days from date of such Default Notice, have not been continuously and diligently pursuing the remedy of such Event of Default, and have not otherwise caused the Initial Construction Work to be undertaken in a timely manner consistent with this Lease, then Landlord shall have the right to exercise its rights under the Standby Completion Guaranty to remedy such Event of Default or otherwise secure the faithful performance and timely completion of such Initial Construction Work; provided, that Landlord shall have no such right under the Standby Completion Guaranty if the Event of Default which occurred pursuant to 24.1(b), (c) or (h) was due to a Funding Failure Default.

Section 13.5 Completion of Initial Construction Work; Certificates. Upon Substantial Completion of each Phase of the Initial Construction Work, Tenant shall furnish Landlord with (a) a certification of the Architect or, if in connection with a Casualty Restoration, such inspecting engineer (certified to Landlord) that, in its professional judgment and in accordance with the applicable standard of care, after diligent inquiry, to the best of its knowledge, on the basis of its observations, the applicable Phase of Initial Construction Work

has been Substantially Completed in accordance with the Approved Plans and Specifications therefor and, as constructed, such Phase of the Initial Construction Work complies with the New York City Building Code and all other applicable Requirements, (b) a copy or copies of the temporary or permanent certificate(s) of occupancy or certificate(s) of completion or other licenses or permits required for lawful occupancy and use and operation, as applicable, for all Buildings issued by the Buildings Department or other appropriate Governmental Authority, and (c) a complete set of "as built" plans and a survey showing the Buildings completed in such Phase. Landlord shall have an unrestricted non-exclusive license to use such "as built" plans and survey in conjunction with the development of the Premises or otherwise without paying any additional cost or compensation therefor; provided that such license shall be subject to the rights of the parties preparing such plans and survey under copyright and other applicable laws.

Section 13.6 Title to the Buildings and Materials. Materials to be incorporated in the Buildings shall, effective upon their purchase and all times thereafter but, in all events, subject to this Lease, constitute the property of Landlord, and upon the incorporation of such materials therein, title thereto shall vest in Landlord. However, (a) Landlord shall not be liable in any manner for payment or for damage or risk of loss or otherwise to any contractor, subcontractor, laborer or supplier of materials in connection with the purchase or installation of any such materials and (b) Landlord shall have no obligation to pay any compensation to Tenant by reason of its acquisition of title to the materials. Title to the Buildings shall at all times remain vested in Landlord.

Section 13.7 Risks of Loss. Tenant hereby assumes all risks of demolition, removal, renovation and restoration of the Buildings.

Section 13.8 Costs and Expenses.

(a) Tenant understands and agrees that the Buildings will be constructed, maintained, restored, secured and insured entirely at Tenant's sole cost and expense without reimbursement or contribution by Landlord, or any credit or offset of any kind for any costs or expenses incurred by Tenant (except as otherwise expressly provided in this Lease).

(b) Tenant shall reimburse Lease Administrator and Landlord for any reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Lease Administrator and Landlord in connection with Lease Administrator's review and/or approval of Tenant's Plans and Specifications, Schematics, Standby Completion Guaranty, and Construction Agreement security and any other documents requiring Landlord's or Lease Administrator's review and/or approval in connection with the Initial Construction Work.

Section 13.9 Names of Contractors, Materialmen, Etc. Tenant shall furnish Landlord, within thirty (30) days of Landlord's demand, with a list of all Persons performing any labor, or supplying any materials, in connection with each Phase of the Initial Construction Work costing in excess of ten percent (10%) of the Replacement Value. The list shall state the name and address of each Person and in what capacity each Person is performing work at the Premises. All persons employed by Tenant with respect to all Phases of the Initial Construction Work shall

be paid, without subsequent deduction or rebate unless expressly authorized by law, not less than the minimum hourly rate required by law.

Section 13.10 Construction Agreement.

(a) Required Clauses. All Construction Agreements shall include the following provisions:

(i) "[Contractor]/[Subcontractor]/[Materialman] hereby agrees that immediately upon the purchase by [contractor]/[subcontractor]/[materialman] of any building materials to be incorporated in the Building (as defined in the lease pursuant to which the owner acquired a leasehold interest in the property (the 'Lease')), such materials shall become the sole property of Landlord (as defined in the Lease), notwithstanding that such materials have not been incorporated in, or made a part of, the Building at the time of such purchase; provided, however, that Landlord shall not be liable in any manner for payment or otherwise to [contractor]/[subcontractor]/[materialman] in connection with the purchase of any such materials and Landlord shall have no obligation to pay any compensation to [contractor]/[subcontractor]/[materialman] [by reason of such materials becoming the sole property of Landlord]."

(ii) "[Contractor]/[Subcontractor]/[Materialman] hereby agrees that notwithstanding that [contractor]/[subcontractor]/[materialman] performed work at the Premises (as such term is defined in the Lease) or any part thereof, Landlord shall not be liable in any manner for payment or otherwise to [contractor]/[subcontractor]/[materialman] in connection with the work performed at the Premises."

(iii) "[Contractor]/[Subcontractor]/[Materialman] hereby agrees to make available for inspection by Landlord, during reasonable business hours, [contractor's]/[subcontractor's]/[materialman's] books and records relating to Initial Construction Work (as defined in the Lease) being performed or the acquisition of any material or Equipment (as such term is defined in the Lease) to be incorporated into the Building."

(iv) "All covenants, representations, guarantees and warranties of [contractor]/[subcontractor]/[materialman] hereunder shall be deemed to be made for the benefit of Landlord under the Lease and Recognized Mortgagee and shall be enforceable against [contractor]/[subcontractor]/[materialman] by said Landlord.

(v) "Landlord is not a party to this [agreement]/[contract] nor will Landlord in any way be responsible to any party for any and or all claims of any nature whatsoever arising or which may arise from such [agreement]/[contract]."

Section 13.11 Demolition of the Buildings. Except to the extent permitted by the immediately following sentence, Tenant shall not demolish the Buildings during the Term,

without in each case the advance written consent of Landlord, which consent shall be at Landlord's sole discretion. If the Buildings are substantially destroyed as a result of a fire or other casualty and it is necessary in connection with a Casualty Restoration to demolish the remainder of the Buildings, Tenant shall have the right, subject to compliance with the terms of Articles 8 and 13, to demolish the remainder of the Buildings. Nothing herein shall restrict the right of Tenant to perform any Capital Improvements that have been approved by Landlord in accordance with Article 15 hereof.

Section 13.12 Development Sign. Within thirty (30) days after request of Landlord, Tenant shall furnish and install a project sign during the Initial Construction Work, the design and location of which shall be reasonably satisfactory to each of Landlord and Tenant. Tenant shall extend to Landlord, and any of its designee(s), the privilege of being featured participants in any opening ceremonies to be held at such time and in such manner as Tenant, in its reasonable discretion, shall determine. Tenant shall provide to Landlord reasonable prior notice of any such ceremonies.

Section 13.13 Compliance with Requirements. Tenant assumes sole responsibility for compliance with all applicable Requirements in the performance of Initial Construction Work. Accordingly, Tenant shall ensure that the Plans and Specifications and any Initial Construction Work undertaken at the Premises during the Term complies with all applicable Requirements.

Section 13.14 Construction Milestones. If Tenant fails to (a) Commence any Phase of the Initial Construction Work by the Scheduled Commencement Date, or (b) Substantially Complete any Phase of the Initial Construction Work by the Scheduled Completion Date (subject to Unavoidable Delays), regardless of whether Landlord is entitled to Liquidated Damages as a result of Tenant's failure to Commence such Initial Construction Work by the Scheduled Commencement Date, then there shall accrue to Landlord liquidated damages for the period of such delay as follows (the "Liquidated Damages"): Tenant shall, immediately upon request by Landlord, pay Landlord One Hundred, Twenty-Five Thousand Dollars ($125,000) for each calendar month of delay; provided, that for any period of delay that is less than a full calendar month, the amount of Liquidated Damages due shall be apportioned on the basis of the number of calendar days in such calendar month. Any Liquidated Damages payable shall constitute Rental hereunder. For the avoidance of doubt, nothing in this Section 13.14 shall preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease.

Section 13.15 Construction Staging. Tenant acknowledges that it is aware that construction activities of third parties and of Landlord (including any agencies thereof) are in progress or contemplated within the area surrounding the Premises. Landlord and Tenant shall coordinate construction activities at the Premises with other construction activities taking place in the area surrounding the Premises in accordance with good construction practice. Tenant also acknowledges that as of the Effective Date the Premises includes Seven Hundred Eighty Six (786) parking spaces and Tenant shall comply with the parking requirements set forth in the Project Commitments and as specified in the Approved ULURP Application during the performance of the Initial Construction Work and otherwise as provided in this Lease, including Section 23.3.

Section 13.16 Site Easements. Within thirty (30) days following the Effective Date, Tenant shall submit a list of proposed Site Easements to Landlord and Lease Administrator for review and approval, along with a description in reasonable detail of such Site Easements and a map or schematic showing in detail the location of each proposed Site Easement relative to the proposed Schematics for the Initial Construction Work as submitted pursuant to Section 13.1(c). Tenant shall cause each Site Easement to provide that upon the earlier of (a) the Expiration of the Term, and (b) a termination of this Lease and re-entry by Landlord upon the Premises (or a portion thereof) in accordance with this Lease, including Article 24, subject to rights held by the Recognized Mortgagees, the Landlord (and any Person designated by Landlord) shall have the same rights and privileges as held by Tenant under such Site Easement. Landlord shall cooperate and shall make reasonable efforts to assist Tenant in obtaining from Adjacent Property Owners or other Persons such Site Easements, access rights or other easements for the benefit of the Project. To the extent any Site Easements are recorded, Tenant shall be solely responsible for the cost and expense of recording such Site Easements.

## ARTICLE 14
## REPAIRS, SIDEWALKS, UTILITIES AND WINDOW CLEANING

Section 14.1 Maintenance of the Premises, Etc. Tenant shall take good care of the Premises, the Plaza, alleys, curbs, sidewalks (including the portion of the Richmond Terrace sidewalk adjacent to the Premises), expansion joints, and gutters (if any) in front of or adjacent to the Premises (excluding the Esplanade), vaults, water, sewer and gas connections, pipes and mains adjacent to and servicing the Premises, and shall keep and maintain the Premises (including the foregoing) in good and safe order and condition, and shall make all repairs therein and thereon, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, necessary to keep the Premises in good and safe order and condition, however the necessity or desirability therefor may occur; provided, that Tenant shall have no obligation to repair or replace any portion of the Esplanade or any portion of the Off-Premises Areas beyond undertaking the Off-Premises Improvements in accordance with Section 15.2), except as set forth above or to the extent such repairs or replacements are necessary due to causes attributable to Tenant. Tenant shall neither commit nor suffer, and shall use all reasonable precaution to prevent, waste, damage or injury to the Premises. All repairs made by Tenant shall be equal in quality and class to the original work and shall be made in compliance with the Requirements. As used in this Section 14.1, the term "repairs" shall include all necessary (a) replacements, (b) removals, (c) alterations, and (d) additions.

Section 14.2 Removal of Equipment.

(a) Tenant shall not, without the prior consent of Landlord (except where Landlord has already consented to the same in connection with a Casualty Restoration, Condemnation Restoration or approved demolition), which consent shall not be unreasonably withheld, remove or dispose of any Equipment unless such Equipment (a) is promptly replaced by Equipment of at least equal utility and quality, or (b) is removed for repairs, cleaning or other servicing; provided, that Tenant reinstalls such Equipment on the Premises with reasonable diligence; provided further, that Tenant shall not be required to replace any Equipment that has become obsolete or that performed a function that has become obsolete, unnecessary (including

by reason of the changed requirements of Subtenants) or undesirable in connection with the operation of the Premises. To the extent the removal of any trade fixtures and Equipment causes damage to any Building, Tenant shall promptly repair such damage.

(b) Notwithstanding anything to the contrary in Section 14.2(a), all of Tenant's Equipment shall, at all times, remain Tenant's property. Tenant may remove and replace any of Tenant's Equipment at any time during the Term in accordance with the terms of this Lease; provided, however, that with respect to trade fixtures, the removal thereof will not cause structural damage to the Buildings unless promptly repaired by Tenant.

Section 14.3 Free of Dirt, Snow, Etc. Tenant shall keep clean and free from dirt, snow, ice, rubbish, obstructions and encumbrances the sidewalks (including the portion of the Richmond Terrace sidewalk adjacent to the Premises), grounds, parking facilities, the Plaza and other plazas, common areas, vaults, chutes, sidewalk hoists, railings, gutters, alleys, curbs or any other space within the Premises. Nothing herein shall limit the responsibility of Landlord (if any) acting in its official governmental capacity.

Section 14.4 No Obligation to Supply Utilities. Landlord shall not be required to supply any facilities, services or utilities whatsoever to the Premises and shall not have any duty or obligation to make any alteration, change, improvement, replacement, Restoration or repair to any Building, and Tenant assumes the full and sole responsibility for the condition, operation, alteration, change, improvement, replacement, Restoration, repair, maintenance and management of the Premises, including but not limited to the construction of any on-site and off-site infrastructure improvements for utility service. Nothing herein shall limit the responsibility of Landlord (if any) acting in its official governmental capacity.

Section 14.5 Window Cleaning. Tenant shall not clean nor require, permit, suffer nor allow any window in the Buildings to be cleaned from the outside in violation of Section 202 of the Labor Law or of the rules of any Governmental Authority.

Section 14.6 Maintenance of the Esplanade.

(a) Landlord shall maintain (or cause to be maintained) the Esplanade in a manner consistent with the Esplanade Maintenance Standards.

(b) In the event, from time to time, Landlord does not perform (or cause to be performed) such maintenance obligations in a manner materially consistent with the Esplanade Maintenance Standards, then:

(i) with respect to non-emergency maintenance, upon giving notice to Landlord and the Lease Administrator, and Landlord's failure to perform or cause to be performed such maintenance within thirty (30) days of the date of such notice, Tenant shall have the right (A) to undertake or cause to be undertaken such maintenance work in a manner consistent with the Esplanade Maintenance Standards as is reasonably necessary to remedy or cure the maintenance work to have been performed by or on behalf of Landlord, and (B) to be compensated for the reasonable documented out-of-pocket costs and expenses

incurred by Tenant in connection with performing or causing the performance of such work; and

(ii) with respect to emergency maintenance work, including snow and ice removal, upon giving notice to Landlord and the Lease Administrator (which notice need not be in writing), Tenant shall have the immediate right (A) to undertake or cause to be undertaken such emergency maintenance work in a manner consistent with the Esplanade Maintenance Standards as is reasonably necessary to remedy or cure the emergency maintenance work to have been performed by or on behalf of Landlord, and (B) to be compensated for the reasonable documented out-of-pocket costs and expenses incurred by Tenant in connection with performing or causing the performance of such emergency work.

(c) Tenant's compensation for such work shall be in the form of a reduction, from the next following Base Rent payment payable by Tenant in accordance with Section 3.2(a), of an amount equal to such compensation as agreed to by Landlord and the Lease Administrator, acting reasonably, based on a review of such documented out-of-pocket costs and expenses (which documentation shall include invoices and other supporting documentation), and the work undertaken by or on behalf of Tenant in accordance with this Section 14.6.

(d) It is understood that prior to DOT issuing to Tenant an offsite access agreement, DOT and Tenant shall have agreed to a security plan in a form substantially similar to what was circulated by Tenant (or its officers, employees or represenatatives) on December 13, 2013 and commented on by DOT (or its employees or representatives) on December 17, 2013. Furthermore DOT and Tenant shall continue to work together in good faith to coordinate and cooperate with one another in order to ensure that a security plan is agreed to as soon as possible after the Effective Date of this Lease.

## ARTICLE 15
## CAPITAL IMPROVEMENTS

Section 15.1 Capital Improvements; Tenant's Right to Make Capital Improvements.

(a) Tenant shall have the right to make Capital Improvements after Substantial Completion of the Initial Construction Work as long as Tenant shall comply with all provisions of Article 13 hereof (as if such Capital Improvement were the Construction Work), but excluding clauses (i), (iii) and (iv) of Section 13.1(a), and as long as Tenant shall comply with the requirements of this Article 15. Tenant shall obtain the consent of Landlord for any Capital Improvement, which consent shall not be unreasonably withheld, delayed or conditioned. At least thirty (30) days before Tenant's commencement of any such Capital Improvement, Tenant shall provide Landlord with:

(i) complete plans and specifications for the proposed Capital Improvement prepared by the Architect. All plans and specifications submitted

pursuant to this Section 15.1(a)(i) shall be reviewed by Landlord in accordance with the provisions of Section 13.1(e) hereof as if such plans and specifications were a modification of the Approved Plans and Specifications (and, for purposes of Article 13, any such plans and specifications shall constitute "Plans and Specifications");

(ii) a copy of a contract made with a reputable and responsible contractor, providing for the completion of the Capital Improvement in accordance with the Approved Plans and Specifications therefor; and

(iii) funds sufficient to reimburse Landlord for the reasonable fees and expenses of any registered architect or licensed professional engineer selected by Landlord to review the plans and specifications therefor and to inspect the Capital Improvement on behalf of Landlord; provided, that if such review is also required by a Recognized Mortgagee, Landlord shall rely on the architect or engineer selected by the Recognized Mortgagee.

(b) Completed Capital Improvements Shall Not Reduce Value of Premises. All Capital Improvements, when completed, shall be of a character that will not (i) materially reduce the value of the Premises below its value immediately before commencement of such Capital Improvement, (ii) diminish the Required Use of the Project or, (iii) cause the Required Hours to be diminished, or (iv) cause any deviation from the Project Commitments and the Project as described in the Approved ULURP Application.

(c) "Capital Improvement" means (i) a material change, alteration, demolition, construction, reconstruction or addition to the Premises having a cost in excess of Five Million Dollars ($5,000,000), or (ii) work that would change, in any material respect, any plazas, open space or the exterior of any Building, or would change, in any material respect, the height, bulk or setback of any Building from the height, bulk or setback of such Building existing immediately before the commencement of the Capital Improvement. Capital Improvements shall not include the Initial Construction Work, any Casualty Restoration or Condemnation Restoration, any interior alteration made in connection with the initial occupancy under a Sublease, or any Tenant or Subtenant fit-out work.

Section 15.2 Off-Premises Improvements.

(a) To the extent Tenant has the right to access and enter upon the Off-Premises Areas pursuant to Section 15.2(b), and to the extent any Off-Premises Improvements can be undertaken without such right of access and entry, Tenant shall undertake the Off-Premises Improvements as part of the Initial Construction Work at Tenant's own cost and expense and shall comply with all provisions of Article 13 hereof (as if such Off-Premises Improvement were Construction Work). Tenant shall obtain the consent of Landlord for all Off-Premises Improvements that are not part of the DOT Off-Premises Improvements, and the consent of DOT for all DOT Off-Premises Improvements, which consent shall not be unreasonably withheld, delayed or conditioned. At least thirty (30) days before Tenant's commencement of any portion of the Off-Premises Improvements, Tenant shall provide the following to Landlord (or to DOT, with respect to the DOT Off-Premises Improvements):

(i) complete plans and specifications for the proposed Off-Premises Improvements prepared by the Architect. All plans and specifications submitted pursuant to this Section 15.2(a)(i) shall be reviewed by Landlord (and with respect to plans and specification for Off-Premises Improvements to be undertaken on property administered by DOT, by the DOT Representatives) in accordance with the provisions of Section 13.1(e) hereof as if such plans and specifications were a modification of the Approved Plans and Specifications (and, for purposes of Article 13, any such plans and specifications shall constitute "Plans and Specifications");

(ii) a copy of a contract made with a reputable and responsible contractor, providing for the completion of the Off-Premises Improvements in accordance with the Approved Plans and Specifications therefor;

(iii) evidence of Tenant's ability to pay for such Capital Improvement; and

(iv) funds sufficient to reimburse Landlord for the reasonable documented out-of-pocket fees and expenses of any registered architect or licensed professional engineer selected by Landlord to review the plans and specifications therefor and to inspect the Off-Premises Improvements on behalf of Landlord; provided, that if such review is also required by a Recognized Mortgagee, Landlord shall rely on the architect or engineer selected by the Recognized Mortgagee.

(b) Subject to the additional terms set forth in Part 2 of Exhibit U (Off-Premises Areas and Off-Premises Improvements), Tenant is hereby granted the right to access and enter upon the Off-Premises Areas for the sole purposes of undertaking the Off-Premises Improvements in accordance with this Lease. If any time after the Off-Premises Improvements are completed in accordance with this Lease Tenant requires the right of access to or across any portion of the Off-Premises Areas it shall seek prior permission from the jurisdictional agency to obtain such right, approval of which shall not be unreasonably withheld by such agency.

## ARTICLE 16
## REQUIREMENTS OF GOVERNMENTAL AUTHORITIES

Section 16.1 Requirements.

(a) Obligation to Comply. Subject to the provisions of Article 34 hereof, in connection with any Construction Work, maintenance, management, use and operation of the Premises and Tenant's performance of its obligations hereunder, Tenant shall comply promptly with all Requirements, without regard to the nature of the work required to be done, whether extraordinary or ordinary, and whether requiring the removal of any encroachment, or affecting the maintenance, use or occupancy of the Premises, or involving or requiring any structural changes or additions in or to the Premises, and regardless of whether such changes or

additions are required by reason of any particular use to which the Premises, or any part thereof, may be put.

(b) "Requirements" means:

(i) any and all laws, rules, regulations, orders, ordinances, statutes, codes, executive orders and requirements of all Governmental Authorities applicable to the Premises or any street, road, avenue or sidewalk comprising a part of, or immediately adjacent to, the Premises or any vault in, or under the Premises (including the Building Code of the City and the laws, rules, regulations, orders, ordinances, statutes, codes and requirements of any applicable Fire Rating Bureau or other body exercising similar functions);

(ii) the certificate(s) of occupancy or certificate(s) of completion or other licenses or permits required for lawful occupancy and use and operation, as applicable, issued for any Building, as then in force;

(iii) the provisions of applicable resolutions and/or special permits of the City Planning Commission; and

(iv) all Environmental Laws.

## ARTICLE 17
## DISCHARGE OF LIENS; BONDS

Section 17.1 Creation of Liens. Tenant shall neither create nor cause to be created (a) any lien, encumbrance or charge upon this Lease, the leasehold estate created hereby, the income therefrom or the Premises or any part thereof, (b) any lien, encumbrance or charge upon any assets of, or funds appropriated to, Landlord, or (c) any other matter or thing whereby the estate, rights or interest of Landlord in and to the Premises or any part thereof might be impaired. Notwithstanding the above, (a) Tenant shall have the right to execute Recognized Mortgages and related security documents and Subleases as provided by, and in accordance with, the provisions of this Lease, and (b) Landlord shall subject its fee interest to easement agreements and similar encumbrances that are, in Landlord's reasonable discretion, necessary or desirable for the construction and operation of the Project, and any Site Easements.

Section 17.2 Discharge of Liens. If any mechanic's, laborer's, vendor's, materialman's or similar statutory lien is filed against the Premises or any part thereof, or if any public improvement lien created, or caused or suffered to be created by Tenant shall be filed against any assets of, or funds appropriated to, Landlord, Tenant shall, within thirty (30) days after Tenant receives notice of the filing of such mechanic's, laborer's, vendor's, materialman's or similar statutory lien or public improvement lien, cause such lien to be discharged of record, by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. However, Tenant shall not be required to discharge any such lien if Tenant shall have (a) furnished Landlord or the applicable court with a letter of credit, cash deposit, bond or other security reasonably satisfactory to Landlord, in an amount sufficient to pay the lien with interest and

penalties, if any, and (b) brought an appropriate proceeding to discharge such lien and is prosecuting such proceeding.

Section 17.3 No Authority to Contract in Name of Landlord. Nothing contained in this Lease shall be deemed or construed to constitute the consent or request of Landlord, express or implied, by implication or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement of, alteration to, or repair of, the Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for, or permit the rendering of, any services or the furnishing of materials that would give rise to the filing of any lien, mortgage or other encumbrance against the Premises or any part thereof or against any assets of, or funds appropriated to, Landlord. Notice is hereby given, and Tenant shall cause all agreements entered into by Tenant to provide, that to the extent enforceable under New York law, Landlord shall not be liable for any such work performed or to be performed at the Premises or any part thereof for Tenant or any Subtenant or for any materials furnished or to be furnished to the Premises or any part thereof for any of the foregoing, and no mechanic's, laborer's, vendor's, materialman's or other similar statutory lien for such work or materials shall attach to or affect the Premises or any part thereof or any assets of, or funds appropriated to, Landlord.

## ARTICLE 18
## REPRESENTATIONS; POSSESSION

Section 18.1 Representations of Landlord. Landlord represents, warrants and covenants that (a) it has not dealt with any broker, finder or like entity in connection with this Lease or the transactions contemplated hereby; (b) Landlord has all requisite power and authority to execute, deliver and perform this Lease; and (c) the terms, provisions, covenants and obligations of Landlord as set forth in this Lease are legally binding on and enforceable against Landlord, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency and other similar Requirements affecting creditors' rights generally and to general principles of equity.

Section 18.2 Tenant's Acknowledgment of No Other Representations. Tenant confirms that, except for the representations contained in Section 18.1 hereof, (a) no representations, statements, or warranties, express or implied, have been made by, or on behalf of, Landlord, NYCEDC or AIDC with respect to the Premises or the transaction contemplated by this Lease, the status of title thereto, the physical condition thereof, the zoning or other laws, regulations, rules and orders applicable thereto of the use that may be made of the Premises, (b) Tenant has relied on no such representations, statements or warranties, and (c) Landlord shall not be liable in any event whatsoever for any latent or patent defects in the Premises.

Section 18.3 Tenant's Representations, Warranties and Covenants. Tenant represents, warrants and covenants that:

(a) Prior Conduct. None of Tenant, the Principals of Tenant, or any Person that directly or indirectly Controls, is Controlled by, or is under common Control with Tenant:

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

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

(iii) has received written notice of default in the payment to the City of any Taxes or Impositions, individually or collectively in excess of Five Thousand Dollars ($5,000.00) that has not been cured or satisfied, unless such default is then being contested with due diligence in proceedings in a court or other appropriate forum; or

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

(b) Disclosure. As of the Effective Date, (i) the Developer Principals are the sole members of the BFC Parent Entity and the BFC Parent Entity along with the Retail Partner are the sole members of Tenant, and no other Person directly or indirectly has an ownership interest in Tenant, and (ii) the Developer Principals have Developer Principal Control in Tenant. All Persons, in respect of Tenant, for which disclosure has been required are listed on Exhibit J (Required Disclosure Statement), and all information provided in the Required Disclosure Statement submitted prior to execution of this Lease is true and correct.

(c) No Broker. It has not dealt with any broker, finder or like entity in connection with this Lease or the transactions contemplated hereby.

(d) No City Interest. No officer, agent, employee or representative of the City or NYCEDC has received or will receive any payment or other consideration for the making of this Lease and no officer, agent, employee or representative of the City or NYCEDC has any interest or will have any direct interest in this Lease or any proceeds thereof.

(e) Good Standing. Tenant is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, having the power and authority to own its assets and to transact the business in which it is now engaged or proposed to be engaged, and is duly qualified and in good standing under the laws of each other jurisdiction in which such qualification is required.

(f) Due Execution and Delivery. The execution and delivery of this Lease by Tenant has been duly authorized by all required company action and creates legally binding and enforceable obligations on Tenant's part to be performed, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency and other similar Requirements affecting creditors' rights generally and to general principles of equity.

(g) Other Agreements and Restrictions. The execution and delivery of this Lease by Tenant will not (i) violate any provision of, or require any filing, registration, consent or approval under, any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Tenant, (ii) result in a breach of, or constitute a default or require any consent under any indenture or loan or credit agreement or any other agreement, lease or instrument to which Tenant is a party or by which it or its properties may be bound or affected; (iii) result in, or require, the creation or imposition of any lien, upon or with respect to any of the properties now owned or hereafter acquired by Tenant; or (iv) cause Tenant to be in default under any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award or any indenture, agreement, lease or instrument to which Tenant is a party or by which it or its properties may be bound or affected.

(h) Legal Actions. There are no actions, suits or proceedings pending or, to the knowledge of Tenant, threatened against, or affecting Tenant, any Affiliate of Tenant or any Person who is, or who is a member of the immediate family (whether by birth or marriage) of, a member, partner, director or officer of Tenant before any court, Governmental Authority or arbitrator, which may, in any one case or in the aggregate, materially adversely affect the financial condition, operations, properties or business of Tenant, or the ability of Tenant to perform its obligations under this Lease.

(i) Tax Returns. Tenant has filed all tax (federal, state and local) returns, if any, required to be filed and has paid all taxes, assessments and governmental charges and levies thereon due thereon, including interest and penalties. Tenant has no knowledge of any claims for taxes due and unpaid which might become a lien upon any of its assets.

(j) Development Security. The Development Security (as defined in the Pre-Development Agreement) has not been cancelled or revoked and remains in full force and effect in accordance with the Pre-Development Agreement.

Section 18.4 Possession. Landlord shall deliver possession of the Premises to Tenant in accordance with the provisions of the Lease, subject to Title Matters and the Ferry Operations, and Tenant shall accept possession of the Premises "as-is."

## ARTICLE 19
## LANDLORD NOT LIABLE FOR INJURY OR DAMAGE, ETC.

Section 19.1 Landlord Not Liable. Landlord shall not be liable for any injury or damage to Tenant or to any Person happening on, in or about the Premises or its appurtenances, nor for any injury or damage to the Premises or to any property belonging to Tenant or to any other Person that may be caused by fire, by breakage, or by the use, misuse or abuse of any portion of the Premises (including any hatches, openings, installations, stairways or hallways or other facilities, and the streets or sidewalk areas within the Premises) or that may arise from any other cause whatsoever, unless caused by the gross negligence, willful misconduct or intentionally tortious acts of Landlord, Lease Administrator, or any of their respective agents, contractors or employees. In addition, Landlord shall not be liable to Tenant or to any Person for

any failure of water supply, gas or electric current, nor for any injury or damage to any property of Tenant or of any Person or to the Premises caused by or resulting from gasoline, oil, steam, gas, electricity or hurricane, tornado, flood, wind or similar storm or disturbance or by or from water, rain or snow which may leak or flow from the street, sewer, gas mains or subsurface area or from any part of the Premises or by or from leakage of gasoline or oil from pipes, appliances, sewer or plumbing works therein or from any other place, nor for interference with light or other incorporeal hereditaments by any Person, or caused by any public or quasi-public work or the Ferry Operations, unless caused by Landlord's or Lease Administrator's or any of their respective agents', contractors' or employees', respective negligence or intentionally tortious acts. Nothing herein shall limit the rights, obligations or authority of Landlord acting in its governmental capacity.

## ARTICLE 20
## INDEMNIFICATION OF LANDLORD AND OTHERS

Section 20.1 Obligation to Indemnify. Tenant shall not do or permit any act or thing to be done upon the Premises, or any portion thereof (or on any off-Premises parking lots utilized by Tenant or its contractors or any vehicle providing transportation to or from such lots, in either case pursuant to this Lease) which subjects Landlord to any liability or responsibility for injury, damage to Persons or property or to any liability by reason of any violation of law or of any Requirement but shall exercise such control over the Premises and such parking lots and vehicles so as to fully protect Landlord against any such liability. The foregoing provisions of this Section 20.1 shall not modify Tenant's right to contest the validity of any Requirements in accordance with the provisions of Section 34.3 hereof. To the fullest extent permitted by law, Tenant shall indemnify and save Landlord, Lease Administrator and AIDC and their respective officials, officers, directors, employees, agents and servants (collectively, the "Indemnitees") harmless from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses (collectively, the "Tenant Liabilities"), including architects' and attorneys' fees and disbursements, that may be imposed upon or incurred by or asserted against any of the Indemnitees by reason of any of the following occurring during the Term, unless caused by the gross negligence, willful misconduct or intentionally tortious acts of any of the Indemnitees:

(a) Construction Work. Construction Work and/or any other work or act done in, on or about the Premises or any part thereof;

(b) Use and Possession. The use, non-use, possession, occupation, alteration, condition, operation, maintenance or management of the Premises or any part thereof or of any street, sidewalk, curb, vault, passageway or space comprising a part thereof or adjacent thereto (with respect to such adjacent areas for which Tenant is responsible for the maintenance and/or operations) or of any off-Premises parking lots utilized by Tenant or its contractors pursuant to this Lease or any vehicle providing transportation to or from such lots pursuant to this Lease;

(c) Acts or Failure to Act of Tenant/Subtenant. Any act or failure to act on the part of Tenant or any Subtenant or any of its or their respective officers, shareholders,

directors, agents, contractors, servants, employees, licensees or invitees when such action is otherwise required;

(d) Accidents, Injury to Person or Property. Any accident, injury (including death at any time resulting therefrom) or damage to any Person or property occurring in, on, or about the Premises or any part thereof; in, on or about any street, sidewalk, curb, vault, passageway or space comprising a part thereof or adjacent thereto (with respect to such adjacent areas for which Tenant is responsible for the maintenance and/or operations); or in, on, or about any off-Premises parking lots utilized by Tenant or its contractors pursuant to this Lease or any vehicle providing transportation to or from such lots pursuant to this Lease;

(e) Lease Obligations. Tenant's failure to pay Rental or to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on Tenant's part to be kept, observed, performed or complied with and the proper exercise by Landlord of any remedy provided in this Lease with respect thereto;

(f) Liens, Encumbrance or Claim Against Premises. Any lien or claim that is alleged to have arisen against or on the Premises, or any lien or claim created or permitted to be created by Tenant or any Subtenant or any of its or their officers, agents, contractors, servants, employees, licensees or invitees against any assets of, or funds appropriated to, Landlord or any liability asserted against Landlord with respect thereto;

(g) Default of Tenant. Any failure on the part of Tenant to keep, observe and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in the Construction Agreements, the Subleases or other contracts and agreements affecting the Premises, on Tenant's part to be kept, observed or performed;

(h) Recording Fees. Any recording or transfer tax attributable to and required to be paid by Landlord with respect to the execution, delivery or recording of this Lease, a memorandum thereof or any Site Easements;

(i) Contest and Proceedings. Any contest or proceeding brought or permitted to be brought pursuant to the provisions of Article 34 hereof;

(j) Brokerage. Any claim for brokerage commissions, fees or other compensation by any Person who alleges to have acted or dealt with Tenant in connection with this Lease or the transactions contemplated by this Lease unless such person was a broker, finder or the like who alleges to have been retained by or to have acted for Landlord; or

(k) Claims by Subtenants. Any liabilities related to claims for damages or efforts to obtain injunctive relief by any Subtenants where such claims or efforts arise from or in connection with the Ferry Operations.

Section 20.2 Contractual Liability. The obligations of Tenant under this Article 20 shall not be affected in any way by the absence of insurance coverage, or by the failure or refusal of any insurance carrier to perform an obligation on its part under insurance policies affecting the Premises or any off-Premises parking lots utilized by Tenant or its contractors

pursuant to this Lease or any vehicle providing transportation to or from such lots pursuant to this Lease.

Section 20.3 Defense of Claim, Etc. If any claim, action or proceeding is made or brought against any of the Indemnitees by reason of any event to which reference is made in Section 20.1 hereof, then upon demand by Landlord, Tenant shall either resist, defend or satisfy such claim, action or proceeding in such Indemnitee's name, by the attorneys for, or approved by, Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance) or by such other attorneys as Landlord shall approve, such approval not to be unreasonably withheld. The foregoing notwithstanding, such Indemnitee may engage its own attorneys to defend such Indemnitee, or to assist such Indemnitee in such Indemnitee's defense of such claim, action or proceeding, as the case may be, the costs and expenses of which shall be paid by such Indemnitee except that Tenant shall pay the reasonable fees and disbursements of such attorneys of such Indemnitee if either (i) the claim, action or proceeding is based solely on the negligence or intentionally tortious acts of Tenant, (ii) the Indemnitee reasonably determines that Tenant is not diligently and competently resisting or defending the claim, action or proceeding, or (iii) there exists a conflict of interest that could impair the defense afforded to Indemnitee hereunder.

Section 20.4 Survival Clause. The provisions of this Article 20 shall survive the Expiration of the Term.

## ARTICLE 21
## HAZARDOUS MATERIALS

Section 21.1 Covenant.

(a) Tenant covenants that the Premises shall be kept free of Hazardous Substances, and neither Tenant nor any occupant of the Premises shall use, transport, store, dispose of or in any manner deal with Hazardous Substances at the Premises; provided that Tenant may utilize Hazardous Substances on the Premises in the amounts and in a manner that is commercially reasonable and customary for the uses to be conducted on the Premises (and that is in accordance with all Requirements).

(b) Tenant shall comply with, and ensure compliance by all occupants of the Premises, at all times during the Term, with all applicable Environmental Laws. Tenant shall keep the Premises free and clear of any liens imposed pursuant to such laws. In the event that Tenant receives any notice or advice from any Governmental Authority or any source whatsoever with respect to Hazardous Substances, at, under, on, from, adjacent to or affecting the Premises, Tenant shall immediately notify Landlord.

Section 21.2 Pre-Closing Investigations. Tenant, prior to the Effective Date, has conducted Investigations of the Premises as provided in the Pre-Development Agreement and the environmental conditions of the Premises, as described in the Phase II ESA Report prepared based on such Investigations, a portion of which is attached hereto at Exhibit M (Environmental Conditions) ("Site Environmental Conditions"), show the results of such Investigations.

Section 21.3 Remediation Work and Incremental Remediation Costs.

(a) Tenant shall perform such Remediation Work which the Site Environmental Conditions and the Phase II ESA Report indicate must be undertaken and as otherwise required by any Requirements, and if a Remediation Action and Cost Report was prepared and accepted in accordance with the Pre-Development Agreement, Tenant shall cause the Remediation Work Plan be undertaken in accordance with such Remediation Work Plan, this Lease and all applicable Requirements. Except as otherwise provided in this Section 21, all Remediation Work and any other environmental remediation work undertaken by Tenant or in connection with this Project shall be undertaken at Tenant's sole cost and expense and Tenant shall arrange for any necessary certificates of compliance from applicable Governmental Authorities. On the basis of the Site Environmental Conditions and the Phase II ESA Report, Tenant shall have purchased the Pollution Legal Liability coverage required by Section 7.8. Except as otherwise provided in this Article 21, in addition to any Investigations undertaken prior to the Effective Date in accordance with the Pre-Development Agreement, Tenant shall conduct and complete, at its sole cost and expense, all further Investigations, and take all remedial actions required by applicable Requirements necessary to clean up and remove all Hazardous Substances from the Premises. Except as expressly set forth in this Section 21.3, nothing in this Lease shall give rise to any obligation on the part of Landlord, Lease Administrator or any other Person (other than Tenant) to pay, credit or reimburse any amounts in connection with any Remediation Work or other environmental mitigation or remediation actions that may be undertaken on the Premises in connection with the Project.

(b) In performing or causing the performance of any Remediation Work at the Premises, Tenant shall record such information and retain such documents as necessary to properly substantiate the Actual Incremental Remediation Costs and the Credit Claim Amount and shall obtain or cause to be obtained all insurance required under this Lease, including Sections 7.8 and 7.9.

(c) Following completion of all Remediation Work at the Premises as part of the Initial Construction Work for the Phase 1 Development in accordance with the Remediation Work Plan and payment of all costs incurred as a result of such Remediation Work, this Lease and applicable Requirements, Developer shall have the right to send to Landlord and Lease Administrator the Credit Claim for their review and approval, acting reasonably. Following Landlord's and Lease Administrator's review and approval of the Credit Claim and the Credit Claim Amount, Tenant shall be eligible for credit against Base Rent as follows:

(i) if the Credit Claim Amount is equal to or greater than One Million Five Hundred Thousand Dollars ($1,500,000 ("First Threshold Amount"), but less than Two Million Dollars ($2,000,000) ("Second Threshold Amount"), then following the submission of an acceptable Credit Claim, an amount equal to the Credit Claim Amount, *minus* the First Threshold Amount (the "First Credit Amount") shall, in accordance with Section 21.3(d), be credited against Base Rent payable by Tenant;

(ii) if the Credit Claim Amount is equal to or greater than the Second Threshold Amount, but less than or equal to Three Million Dollars

($3,000,000) ("Third Threshold Amount"), then following the submission of an acceptable Credit Claim, an amount equal to the result of (A) such Credit Claim Amount, *minus* the Second Threshold Amount, *divided* by (B) Two (2) (the "Second Credit Amount") shall, in accordance with Section 21.3(d) (and in addition to the First Credit Amount), be credited against Base Rent payable by Tenant;

(iii) if the Credit Claim Amount is equal to or greater than the Third Threshold Amount and Lease Administrator has given the Remediation Credit Approval, then an amount equal to the Credit Claim Amount, *minus* the Third Threshold Amount shall, in accordance with Section 21.3(d) (and in addition to the First Credit Amount and the Second Credit Amount) be credited against Base Rent payable by Tenant;

(d) Where any amount is to be credited against Base Rent in accordance with Section 21.3(c), such amount shall be credited against the Base Rent payable by Tenant for the next following Lease Year and each subsequent Lease Year thereafter until the balance of such credit amount is zero (0), and the corresponding amount of such Base Rent payments shall be reduced by an amount equal to such credit amount or the remaining balance thereof.

(e) For the avoidance of doubt, notwithstanding any other provision in this Article 21, in no event shall the Credit Claim Amount or any other amount to be credited against Base Rent under this Article 21 be greater than the Approved Remediation Costs.

Section 21.4 Indemnification.

(a) Tenant shall defend, indemnify and save the Indemnitees harmless from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including court costs and reasonable attorneys' fees and disbursements, that may be imposed upon, or incurred by, or asserted against, any of the Indemnitees (i) arising out of, or in any way related to the presence, storage, transportation, disposal, release or threatened release of any Hazardous Substances over, under, in, on, from or affecting the Premises, and any persons, real property, personal property, or natural substances thereon or affected thereby during the Term of this Lease, including any such liability, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses imposed upon, incurred by or asserted against Landlord or Lease Administrator under the Comprehensive Environmental Response, Compensation, and Liability Act (subject to Section 21.3(c) hereof), (ii) arising out of any action taken by Tenant or any of its contractors, employees, agents or subcontractors relating to Hazardous Substances, and (iii) any violations of any Environmental Laws. The indemnity provisions set forth in Article 20 shall also apply to the indemnity obligations of Tenant set forth in this Section 21.4(a).

(b) Notwithstanding the foregoing, Tenant shall not be required to indemnify, defend or save harmless the Indemnitees from any liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including court costs and reasonable attorneys' fees and disbursements, that may be imposed upon, or incurred by, or asserted against

any of the Indemnitees arising out of any claim by any Person alleging bodily injury as a result of exposure to any Hazardous Substances occurring on the Premises prior to the Effective Date (except to the extent, if any, the same was caused by the act, omission or negligence of any party claiming by, through or under Tenant at any time including during Tenant's due diligence activities).

## ARTICLE 22
## LANDLORD'S RIGHT TO DISCHARGE LIENS

Section 22.1 Discharge of Liens. If Tenant shall fail to cause any mechanic's, laborer's, vendor's, materialman's or similar statutory lien or any public improvement lien to be discharged in accordance with the provisions of Article 17 hereof, and if such lien shall continue for an additional twenty (20) days after the applicable cure period provided for in Article 17, then, subject to any rights granted to a Recognized Mortgagee under this Lease, Landlord may, but shall not be obligated to, discharge such lien of record by procuring the discharge of such lien by deposit or by bonding proceedings. Landlord may also compel the prosecution of an action for the foreclosure of such lien by the lien or and to pay the amount of the judgment in favor of the lien or with interest, costs and allowances.

Section 22.2 Reimbursement for Amounts Paid by Landlord Pursuant to this Article. Any amounts paid by Landlord pursuant to Section 22.1 hereof, including all costs and expenses incurred by Landlord in connection therewith, shall be reimbursed by Tenant within fifteen (15) days of Landlord's demand therefor, together with a late charge on the amounts so paid by Landlord, calculated at the Late Charge Rate from the date of any such payment by Landlord to the date on which payment of such amounts is received by Landlord.

Section 22.3 Waiver, Release and Assumption of Obligations. Landlord's payment or performance pursuant to the provisions of this Article 22 shall not be, nor be deemed to be (a) a waiver or release of the Default or Event of Default with respect thereto (or any past or future Default or Event of Default) or of Landlord's right to take such action as may be permissible hereunder, or (b) Landlord's assumption of Tenant's obligations to pay or perform any of Tenant's past, present or future obligations hereunder.

Section 22.4 Proof of Damages. Landlord shall not be limited in the proof of any damages that it may claim against Tenant arising out of, or by reason of, Tenant's failure to provide and keep insurance in force in accordance with the provisions of this Lease to the amount of the insurance premium or premiums not paid. However, Landlord shall be entitled to seek, and if successful, to recover, as damages for such Default or Event of Default, the uninsured amount of any loss and damage sustained or incurred by it and the costs and expenses of any suit in connection therewith, including reasonable attorneys' fees and disbursements.

## ARTICLE 23
## PERFORMANCE AND COMMITMENTS

Section 23.1 Use and Operating Requirements. Tenant acknowledges and agrees that its ongoing commitment to use and operate the Project in accordance with the Project Commitments, and otherwise in accordance with this Section 23.1, and for no other use or

purpose, is of paramount importance to Landlord, and a material inducement to Landlord in agreeing to enter into this Lease, and that Tenant's failure to do so in accordance with the provisions set forth in this Article 23 shall constitute a material breach under the terms of this Lease. Accordingly, at all times during the Term, Tenant shall comply with the use and operating requirements for the Project, including as follows:

(a) Tenant shall (i) continuously, on a daily basis throughout the Term, use the Premises (and cause the Premises to be used) primarily for the conduct of retail business within the Retail Portion of the Project, the operation of the Hotel within the Hotel Portion of the Project, and the provision of banquet or catering services within the Banquet Facility Portion, each as more fully described in the Project Commitments, (ii) provide and operate, or cause to be operated, the Required Parking in accordance with Section 23.3 (the uses under this clause (a) above, collectively, the "Required Uses").

(b) So long as the provisions of Section 23.1(a) above are complied with, the balance of the Retail Portion of the Premises not used for the conduct of retail business may be used for retail food services purposes (including restaurants and cafes) complementary to the Required Uses so long as the same is in compliance with Requirements and this Lease (the uses under this clause (b), collectively, the "Permitted Ancillary Uses").

(c) Tenant shall, and shall cause, the Retail Portion of the Premises (including all portions of the Premises covered by a Sublease), to be operated and open for business every day of each Lease Year during the Term, starting at no later than ten (10) a.m. and continuing until at least nine (9) p.m. during each such day (the "Required Hours").

(d) Tenant shall comply with the HireNYC Program annexed as Exhibit N (HireNYC Program) to this Lease.

(e) Tenant shall not use or occupy the Premises, and shall not permit the Premises or any part thereof to be used or occupied for any purpose other than Required Uses and Permitted Ancillary Uses, without (in any such instance) the prior written consent of Landlord in its sole discretion. Without limiting the generality of the preceding sentence, Tenant shall not use or permit any portion of the Premises to be used (i) for any unlawful or illegal business, use or purpose, (ii) for any purpose, or in any way in violation of the provisions of this Section 23.1 or Article 16 hereof or the certificate(s) of occupancy for the Premises, (iii) in such manner as may make void or voidable any insurance then in force with respect to the Premises, (iv) for any residential use, or (v) for any of the Prohibited Uses, and Tenant shall make good faith efforts to refrain from engaging in any unethical or disreputable method of business operation and shall make good faith efforts to cause other Persons on the Premises (including Subtenants) to refrain from using such methods of business operation. Tenant shall, promptly upon Tenant's knowledge of any business, use, purpose, or occupation of the Premises in violation of this Section 23.1, take all necessary steps, legal and equitable, to compel the discontinuance of such business, use or purpose, including, if necessary, the removal from the Premises of any Subtenants using a portion of the Premises for an unlawful or illegal business, use or purpose or in violation of this Section 23.1 or Article 16 hereof. The provisions of this Section 23.1 shall not restrict Tenant's rights under Article 34 hereof to contest any Requirements.

(f) Tenant shall cooperate with the City in connection with the Project and with the public facilities and uses surrounding the Premises (including, without limitation, the Ferry Terminal, the ballpark and the railroad right-of-way adjacent to the Premises), by among other things (i) cooperating with, and avoiding interference with, the nearby operations of DOT, (ii) complying with the New York City Police Department's counterterrorism policies, (iii) allowing for the use, from time to time, of the railroad right-of-way adjacent to the Premises and cooperating with the Metropolitan Transportation Authority or any other relevant agency in connection therewith, (iv) avoid attaching any structures to the Ferry Terminal or its vehicle ramps except as provided in the Approved Plans and Specifications and as required (in the sole determination of the Lease Administrator and DOT should any connections be desired to be made to DOT owned structures or facilities) to fulfill the "Development Goals" (as set forth in the RFEI), (v) ensuring free and unfettered access through the Premises to the nearby DOT facilities, including as provided in applicable Site Easements, (vi) anticipating, in the development of the Plans and Specifications and other planning related to the Project, that DOT conducts ongoing operations, including ferry operations and construction work at the current nearby vehicle ramp and other future intermittent construction work and that such ferry operations and construction work will produce noise, (vii) complying with the Ballpark Easement by, among other things, permitting pedestrian and vehicular ingress and egress in the easement area; (viii) diligently, continuously and in good faith cooperating with Landlord, Lease Administrator and the Ballpark Tenant to finalize an amendment to the Ballpark Easement promptly following the Effective Date pursuant to Paragraph 3(c) of the Ballpark Lease 4th Amendment. With respect to items (i), (iii), (v) and (vi) above, Landlord shall make reasonable efforts to cause Adjacent Property Owners to also cooperate with Tenant in connection with Tenant's performance of such obligations.

Section 23.2 Project Report; Aqua Swirl Reporting.

(a) Within sixty (60) days following the end of each calendar year during the Term, or at such other time as Lease Administrator may reasonably request from time to time (but not more than twice during any twelve month period) upon not less than sixty (60) days prior written notice, Tenant shall deliver a written report to Lease Administrator (the "Project Report") setting forth in narrative form a status report on the Project, and the manner in which Tenant is complying with the Project Commitments and the Approved ULURP Application, which written report shall be in a form and contain such information as shall be reasonably satisfactory to Landlord. The Project Report shall, among other things, contain Tenant's certification that (i) the Premises and that all applicable Phases of the development of the Project are in compliance with the Project Commitments and the Approved ULURP Application, (ii) the Premises are in compliance with the Operating Commitments, (iii) in its reasonable and good faith judgment, Tenant anticipates that it will be able to comply timely with any Project Commitments and/or Operating Commitments to be performed in the upcoming Lease Year as set forth in the Project Commitments, including the commencement or completion of any Phase of development scheduled to be commenced or completed in such upcoming Lease Year. In the event that Tenant shall be unable to provide the required certification, the Project Report shall identify any areas of non-compliance with specificity, and explain the reasons for such non-compliance (a "Non-Compliance Notice"). Landlord shall endeavor to review each Project Report and submit any questions thereto or request any additional or supporting

information that it requires within thirty (30) days following Landlord's receipt of such Project Report.

(b) With respect to the Aqua Swirl, Tenant shall make available to DOT all reports and other information required under applicable Requirements and as required in accordance with the terms of the FTA grant to DOT pursuant to which Federal funds were made available to finance the original Aqua Swirl.

Section 23.3 Parking.

(a) Tenant acknowledges that prior to the Effective Date Tenant has received a true and complete copy of the Ballpark Lease and has fully reviewed the provisions in the Ballpark Lease that are relevant to the Parking Garage to be built as part of the Project.

(b) During the Term, Tenant shall cause the Required Parking to be open to the general public twenty-four (24) hours per day for each day during the Term, shall ensure that an adequate number of parking attendants employed by the Parking Operator are present to operate the Required Parking, and that there is appropriate lighting and security in and around the Required Parking.

(c) After the Substantial Completion Date of the Phase 2 Development Tenant shall make available, on the days of each Ballpark Event, for use by attendees at such Ballpark Event, no less than Three- Hundred Eighty (380) parking spaces on the Premises, for a time period commencing two (2) hours before and ending one (1) hour after such Ballpark Event, at parking rates established from time to time by the tenant under the Ballpark Lease (including the right to cause Tenant to issue free parking passes during such periods) ("Ballpark-Controlled Parking").

(d) No later than sixty (60) days prior to the Substantial Completion Date of the Phase 1 Development, Tenant shall enter into the Parking Management Agreement with the Parking Operator (whether or not a Recognized Sublease of the Parking Garage has been entered into) and shall provide a copy of such fully executed Parking Management Agreement to Landlord.

(e) Except as otherwise provided in this Lease, in connection with the operation and management of the Parking Areas, following the Effective Date Tenant shall perform or cause the Parking Operator to perform the services and undertake the obligations (the "Parking Management Services") as set forth in Part A of Exhibit O (Parking Management Services; Form of Parking Rent Statement).

Section 23.4 Other Commitments

(a) Commuter Parking: Tenant will operate (or cause the Parking Operator to operate) (i) four (4) temporary off-Premises parking lots with an aggregate total of at least Seven Hundred Eighty-Six (786) parking spaces during the construction of the Phase 1 Development and the Phase 2 Development until such time as temporary replacement parking

spaces are available on the North Site Redevelopment (as defined in the Ballpark Lease 4th Amendment attached hereto as part of the Ballpark Lease Amendment Documents) or parking spaces on the Premises may lawfully be made available to the public, and (ii) upon completion of construction of such North Site Redevelopment and confirmation of such completion by the City, pursuant to Section 11.01(d) of the Ballpark Lease, to the extent the use of any parking lots located on the Premises as of the Effective Date has been or continues to be suspended or discontinued, Tenant will operate (or cause the Parking Operator to operate) replacement parking spaces which are within reasonable walking distance of the stadium immediately adjacent to the Premises unless otherwise agreed in writing by Landlord and the Ballpark Tenant. With respect to such off-Premises parking lots, Tenant shall operate free ADA-accessible shuttle bus service, which will run on a continuous loop during peak commuter hours between such temporary off-Premises parking lots and the Ferry Terminal during the duration of such construction or until such replacement parking spaces within a reasonable walking distance of the stadium immediately adjacent to the Premises are made available. Tenant will to hire a unionized contractor to operate such shuttle bus services. Tenant shall cause the timing of such shuttle bus service to be coordinated with Ferry boat arrivals and departures from the Ferry Terminal.

Tenant shall provide fair parking rates for commuters using Parking Garage or any portion of the Required Parking. Tenant will cap commuter parking rates for no less than Seven Hundred, Eighty-Six (786) parking spaces at Eight dollars ($8) per day until the earlier to occur of (1) the Substantial Completion of the Phase 1 Development and the Phase 2 Development or the third (3rd) anniversary of the Effective Date. After such period, Tenant shall (i) cap such commuter parking rates at no more than Nine dollars and fifty cents ($9.50) per day for the next five (5) years with limited annual increases at no more than fifty cents ($0.50) in any one year and (ii) thereafter Tenant will provide written notification to the local councilmember, Community Board 1, and the Deputy Mayor for Economic Development no less than Forty-Five (45) days before any change to the commuter parking rate, with a final approval by the Deputy Mayor for Economic Development for any increases.

(b) Community Association Advisory Board: Tenant will work with a Community Association Advisory Board. Board meetings would commence within the first three months of the start of project construction and continue for the duration of construction and one year after operation commences. The Board will be comprised of representatives from the Councilmember, Borough President, Community Board 1, and other community organizations, as determined by the Councilmember. Tenant will designate, from its general contractor/construction manager, an individual to act as a liaison to the Board ("Construction Liaisons"). This designation shall occur no later than 30 days prior to the commencement of any construction on the Premises. Upon request of the Board, the Construction Liaisons shall address, on a regular basis, the questions and concerns of the Board about construction related issues. The Construction Liaisons and the Tenant shall, promptly and in good faith, work with the Board and others, if necessary, to address such questions and concerns, as appropriate.

(c) Traffic Mitigation: Tenant shall undertake at its expense the actions set forth in the Project Commitments identified therein under the heading “Traffic Mitigation”

(d) HireNYC Program: The Tenant commits to adhere to the goals set forth herein pertaining to the HireNYC Program set forth in Exhibit N (HireNYC Program) to this Lease (which shall mean to include any replacement program of similar character and with similar goals) to make good faith efforts to create meaningful opportunities for low- income persons in addition to potential for later advancement. The Tenant will provide progress reports on the HireNYC Program upon the local Councilmember's request. The hiring and workforce development goals include the goals identified in Exhibit N or, at the Tenant's discretion, higher goals (collectively, the "Goals"); provided, that in no event shall the Tenant or any of their tenants be subject to any liability, loss, claim, damage or expense for failure to achieve the Goals.

Tenant commits to working with the West Brighton Community Local Development Corporation as a community-based organization to help implement the Goals. NYCEDC will provide technical assistance including NYCEDC staff resources to West Brighton Community Local Development Corporation in their support of the HireNYC Program.

(e) M/WBE Contractors/Subcontractors: Tenant will strive to hire no less than 25% Minority, Women and Local Business participation by contractors and subcontractors. Towards this end, Tenant will consider, in choosing a general contractor or construction manager ("GC/CM") for the Project, the GC/CM's prior qualifications and experience in working with M/WBE firms. All M/WBE requirements will be monitored by the City.

(f) Wages: Tenant agrees that in constructing the Project it shall use Building and Construction Trades Council of Greater New York union labor pursuant to a PLA for the construction of the Phase 1 Development and Phase 2 Development. Tenant has entered into an agreement with the New York Hotel & Motel Trades Council, AFL-CIO as well as with 32BJ/SEIU. Tenant shall hire a unionized contractor for shuttle bus services.

## ARTICLE 24
## EVENTS OF DEFAULT, REMEDIES, ETC.

Section 24.1 Definition. Each of the following events shall be an "Event of Default" hereunder:

(a) if Tenant fails to make any payment (or any part thereof) of Rental required to be paid by Tenant hereunder and such failure shall continue for a period of ten (10) days after notice thereof from Landlord to Tenant;

(b) if (i) Tenant fails to Commence any Phase of the Initial Construction Work on or before the applicable Scheduled Commencement Date for such Phase (subject to Unavoidable Delays); and (ii) in connection with all such failures, including failures to Commence other Phases of the Initial Construction Work on or before the Scheduled Commencement Date applicable to such other Phase, together with failures (if any) described in

Section 24.1(c), Liquidated Damages have accrued for an aggregate period equal to six (6) months or more and are payable in accordance with Section 13.14;[2]

(c) if (i) Tenant fails to Substantially Complete any Phase of the Initial Construction Work on or before the Scheduled Completion Date for such Phase (subject to Unavoidable Delays); and (ii) in connection with all such failures, including failures to Substantially Complete any other Phase of the Initial Construction Work on or before the Scheduled Completion Date for such other Phase, together with failures (if any) described in Section 24.1(b), Liquidated Damages have accrued for an aggregate period of at least six (6) months and are payable in accordance with Section 13.14;

(d) Intentionally omitted;

(e) Intentionally omitted;

(f) if Tenant enters into an Assignment, Transfer or Sublease in violation of the provisions of this Lease, and such Assignment, Transfer or Sublease is not voided or made to comply with the provisions of this Lease within twenty (20) days after Landlord's notice thereof to Tenant;

(g) if Tenant fails to maintain the insurance required to be maintained by Tenant pursuant to Article 7, and such failure continues for a period of ten (10) days after notice thereof from Landlord to Tenant;

(h) if Tenant fails to comply in any material respect with the Project Commitments, and such failure continues for a period of thirty (30) days after notice thereof from Landlord or the Lease Administrator to Tenant;

(i) if the Premises is not used and operated for the Required Use and such non-compliance continues for a period of thirty (30) days after notice thereof from Landlord to Tenant;

(j) subject to Unavoidable Delays, if the Premises is not open for business during the Required Hours on any given date and following such date, such non-compliance occurs thirty (30) or more additional times within a period of forty-five (45) days after notice thereof from Landlord to Tenant;

(k) if Tenant fails to observe or perform (subject to Unavoidable Delays) one or more of the terms, conditions, covenants or agreements of this Lease not otherwise expressly provided for in this Section 24.1, and such failure continues for a period of

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[2] For purposes of example only: If: (a) the Initial Construction Work for the Phase 1 Development Commences 2 months after the Scheduled Commencement Date for such Phase and 2 months' worth of Liquidated Damages accrue due to such failure; (b) the Phase 1 Development is Substantially Completed 1 month after the Scheduled Completion Date for such Phase and an additional 1 months' worth of Liquidated Damages accrue due to such failure; and (c) Initial Construction Work for the Phase 2 Development Commences 3 months after the Scheduled Commencement Date for such Phase and an additional 3 months' worth of Liquidated Damages accrue due to such failure, then an aggregate total period of six months' worth of Liquidated Damages would have accrued.

thirty (30) days after Landlord's notice thereof to Tenant specifying such failure (unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed within such thirty (30) day period, in which case no Event of Default shall be deemed to exist as long as Tenant has commenced curing the same within the thirty (30) day period and diligently and continuously prosecuted the same to completion); provided, however, if following the expiration of such thirty (30) day period as the same may be extended in accordance with the provisions of this clause (k) (the "Cure Date"), Tenant has failed to cure the same, then, following the Cure Date (the "Default Payment Trigger"), Tenant shall pay to Landlord (x) for each day Tenant fails to cure from and after the Default Payment Trigger and until the thirtieth (30th) day thereafter (the "Second Default Payment Trigger"), $1,000 per day, (y) for each day Tenant fails to cure from and after the Second Default Payment Trigger and until the thirtieth (30th) day thereafter (the "Third Default Payment Trigger") $1,500 per day and (z) for each day Tenant fails to cure from and after the Third Default Payment Trigger and thereafter, $2,000 per day;

(l) to the extent permitted by law, if Tenant admits, in writing, that it is unable to pay its debts as such become due;

(m) to the extent permitted by law, if Tenant makes a general assignment for the benefit of creditors;

(n) to the extent permitted by law, if Tenant files a voluntary petition under Title 11 of the United States Code or if such petition is filed against Tenant and an order for relief is entered, or if Tenant files a petition or an answer seeking, consenting to, or acquiescing in, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, State or other bankruptcy or insolvency statute or law, or seeks, or consents to, or acquiesces in, or suffers the appointment of, any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant, or of all or any substantial part of its properties, or of the Premises or any interest of Tenant therein, or if Tenant takes any partnership or corporate action in furtherance of any action described in Sections 24.1(l), 24.1(m) or 24.1(n) hereof;

(o) to the extent permitted by law, if within sixty (60) days after the commencement of a proceeding against Tenant seeking any reorganization, arrangement, composition readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, State or other bankruptcy or insolvency statute or law, such proceeding is not dismissed, or if, within one hundred twenty (120) days after the appointment, without the consent or acquiescence of Tenant, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official, or of all or any substantial part of its properties, or of the Premises or any interest of Tenant therein, such appointment is not vacated or stayed on appeal or otherwise, or if, within one hundred twenty (120) days after the expiration of any such stay, such appointment is not vacated;

(p) if any of the representations made by Tenant in Article 18 hereof prove to be or have been false or misleading in any material respect as of the date made and are not cured within twenty (20) days after delivery of notice thereof from Landlord; or

(q) (i) if a levy under execution or attachment is made against the Premises or any part thereof, the income therefrom, this Lease or the leasehold estate created hereby and such execution or attachment causes this Lease or the leasehold estate to be in imminent danger of being forfeited or sold in discharge of such levy, or (ii) if a levy under execution or attachment in an amount equal to or greater than Two Hundred Fifty Thousand Dollars ($250,000.00) is made against Tenant or any of its properties other than the Premises or any part thereof, the income therefrom or the leasehold estate created hereby and such execution or attachment has not been vacated or removed by court order, bonding or otherwise within a period of one hundred twenty (120) days.

(r) Subject to Tenant's rights of contest pursuant to Section 34.3 hereof, if Tenant violates any of the Requirements as required under Section 16.1 hereof, and such violation continues for thirty (30) days following notice thereof from Landlord specifying such violation. Notwithstanding the foregoing, if compliance with the Requirements requires work to be performed, acts to be done, or conditions to be removed which cannot, by their nature, reasonably be performed, done, or removed within such thirty (30) day period, no Event of Default shall be deemed to exist as long as Tenant has commenced curing the same within the thirty (30) day period and diligently and continuously prosecuted the same to completion. In no case, however, shall notice be required and an extension of any cure period be permitted to Tenant where a violation threatens imminent harm to persons or property.

(s) If Tenant fails to comply with Section 21.1 hereof and such failure continues for a period of thirty (30) days after Landlord's notice thereof to Tenant specifying such failure, unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot, by their nature, reasonably be performed, done, or removed within such thirty (30) day period, in which case no Event of Default shall be deemed to exist as long as Tenant has (i) commenced curing the same within the thirty (30) day period and diligently and continuously prosecuted the same to completion and (ii) remedied any condition which would pose an imminent and material risk or hazard to persons or property. In no event shall the period of any such extension exceed one hundred (180) days.

Section 24.2 Enforcement of Performance. If an Event of Default occurs, Landlord may elect to proceed by appropriate judicial proceedings, either at law or in equity, to enforce performance or observance by Tenant of the applicable provisions of this Lease and/or to recover damages for breach thereof at 11:59 p.m. on the date specified in the applicable Termination Notice.

Section 24.3 Expiration and Termination of Lease.

(a) Default Notice. If an Event of Default occurs, Landlord shall have the right (but not the obligation), at any time thereafter, to deliver a written notice (a "Default Notice") to Tenant specifying the Event of Default in reasonable detail.

(b) Cure Period. Upon receipt of a Default Notice, Tenant shall immediately, diligently and continuously pursue remediation of the Default which is the basis of the Event of Default, and shall otherwise cause such Default to be remediated or cured within ten (10) days of the date of the Default Notice (the "Cure Period").

(c) Termination Notice. If an Event of Default is not remediated or cured within the applicable Cure Period, then Landlord shall have the right (but not the obligation) to terminate this Lease by delivery of a written notice (a "Termination Notice") to Developer. If delivered, such Termination Notice shall state that this Lease and the Term shall expire and terminate on a date specified therein, which date shall not be less than ten (10) days after the giving of such Termination Notice, and in such event this Lease and the Term shall terminate on the date specified in such Termination Notice in accordance with Section 24.3(e). If such termination is stayed by order of any court having jurisdiction over any case described in Section 24.1(l), (m), (n) or (o) hereof or by federal or state statute then following the expiration of any such stay, or if the trustee appointed in any such case, Tenant or Tenant as debtor-in-possession fails to assume Tenant's obligations under this Lease within the period prescribed therefor by law or within one hundred twenty (120) days after entry of the order for relief or as may be allowed by the court, or if the trustee, Tenant or Tenant as debtor-in-possession fails to provide adequate protection of Landlord's right, title and interest in and to the Premises and adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease as provided in Section 24.10 hereof, Landlord, to the extent permitted by law, or by leave of the court having jurisdiction over such case, shall have the right, at its election, to terminate this Lease on five (5) days' notice to Tenant, Tenant as debtor-in-possession or the trustee. Upon the expiration of any five (5) day period described in this Section 24.3(c), this Lease shall cease and terminate (subject to the applicable provisions of Section 24.3(e)) and Tenant, Tenant as debtor-in-possession and/or the trustee immediately shall quit and surrender the Premises.

(d) Re-Entry. If this Lease (or the applicable portion thereof, subject to Section 24.3(c)) is terminated as provided in Section 24.3(c) hereof, Landlord may, without notice, re-enter and repossess the Premises and may dispossess Tenant by summary proceedings or otherwise.

(e) Termination. Notwithstanding any other provisions of this Lease (except Article 11), if Landlord shall terminate this Lease pursuant to Section 24.3(c), then (x) this Lease shall be terminated as to the entire Premises and this Lease and the Term and all rights of Tenant under this Lease shall expire and terminate as if the date specified in the notice were the Expiration Date, and Tenant shall immediately quit and surrender the Premises, (y) Landlord shall retain the remaining portion of the Security Deposit, the Additional Security Deposit and the Good Faith Deposits, and (z) thereafter neither party shall have any rights against or liabilities to the other by reason of this Lease, except under those provisions that expressly survive the termination of this Lease; provided, however, Tenant shall pay to Landlord all Rental payable under this Lease to the date on which the Lease was terminated and shall remain liable for and shall pay to Landlord all items of Base Rent failing due thereafter on the respective dates when such items of Base Rent would have been payable but for the termination of this Lease (which such obligations of Tenant shall survive the termination of this Lease; provided, that Tenant's obligation to continue paying Base Rent after the termination of this Lease shall expire upon any reletting of the Premises).

(f) Completion of Construction Work. In the event of any termination pursuant to Section 24.3(c), with respect to any portions of the Premises on which Construction Work has commenced, Landlord may (i) complete all such uncompleted Construction Work, (ii)

repair and alter any such portion(s) of the Premises in such manner as Landlord may deem necessary or advisable without affecting any liability of Tenant, and (iii) draw on the Security Deposit, any Additional Security Deposit held by Landlord and the Standby Completion Guaranty or the Closing Date Guaranty (as the case may be) therefor for the whole or any part of the remainder of the Term or for a longer period, in Landlord's name or as agent of Tenant; provided, that Landlord's right to draw on or exercise rights under the Standby Completion Guaranty shall be subject to Section 13.4(g)(ii). Notwithstanding the foregoing, Tenant shall remain liable to pay for the cost and expense of completing any Construction Work underway at the time of such termination related to general site improvements and shall be responsible for site cleanup and backfilling as necessary for any other Construction Work underway at the time of such termination.

(g) Reletting. Landlord in no way shall be responsible or liable for any reletting or failure to relet any portion(s) of the Premises or for any failure to collect any rent due on any reletting, and no such reletting and collection of rent or failure to relet or to collect rent shall operate to give Tenant any rights with respect to the Premises or the rentals from reletting or relieve Tenant of any liability under this Lease or to otherwise affect any such liability. Landlord shall pay and dispose of any rent and other sums collected or received as a result of such reletting as follows:

(i) First, Landlord shall pay to itself the cost and expense of terminating what would otherwise have constituted the unexpired portion of the Term, re-entering, retaking, repossessing, repairing, altering and/or completing construction of any portion(s) of the Premises and the cost and expense of removing all persons and property therefrom, including in such costs brokerage commissions, legal expenses and court costs and reasonable attorneys' fees and disbursements;

(ii) Second, Landlord shall pay to itself the cost and expense sustained in securing any new tenants and other occupants, including in such costs, brokerage commissions, legal expenses and reasonable attorneys' fees and disbursements and other expenses of preparing any portion(s) of the Premises, and to the extent that Landlord shall maintain and operate any portion(s) of the Premises, the cost and expense of operating and maintaining same;

(iii) Third, Landlord shall pay to itself any balance remaining on account of the liability of Tenant to Landlord under this Lease; and

(iv) Fourth, Tenant shall retain any balance.

Section 24.4 Waiver of Rights of Tenant. To the extent not prohibited by law, Tenant hereby waives and releases all rights now or hereafter conferred by statute to redemption, re-entry, repossession or restoration if Tenant is dispossessed by a judgment or order of any court or judge. Tenant shall execute, acknowledge and deliver within ten (10) days after request by Landlord any instrument that Landlord may request, evidencing such waiver or release.

Section 24.5 Receipt of Moneys After Notice or Termination. No receipt of moneys by Landlord from Tenant after the termination of this Lease, or after the giving of any notice of the termination of this Lease, shall reinstate, continue or extend the Term or affect any notice theretofore given to Tenant, or operate as a waiver of the right of Landlord to enforce the payment of Rental payable by Tenant hereunder or thereafter falling due, or operate as a waiver of the right of Landlord to recover possession of the Premises by proper remedy. After delivery of Termination Notice, and the consequent termination of this Lease pursuant to Section 24.3(e), or after the commencement of any suit or summary proceedings or after a final order or judgment for the possession of the Premises, all Rent thereafter falling due under this Lease shall be accelerated and shall be due and payable to Landlord upon Landlord's demand therefor, and Landlord furthermore may demand, receive and collect any moneys otherwise due or thereafter falling due under this Lease, notwithstanding the termination thereof, without in any manner affecting the notice, proceeding, order, suit or judgment.

Section 24.6 Waiver of Service. Tenant hereby expressly waives the service of any notice of intention to re-enter provided for in any statute, or of the institution of legal proceedings in connection therewith and Tenant, for and on behalf of itself and all Persons claiming through or under Tenant, also waives any and all rights (a) of redemption provided by any law or statute now in force or hereafter enacted or otherwise, or (b) of re-entry, or (c) of repossession or (d) to restore the operation of this Lease, if Tenant is dispossessed by a final, non-appealable judgment or by warrant of a court or judge or in case of re-entry or repossession by Landlord or in case of any expiration or termination of this Lease. The terms "enter", "re-enter", "entry" or "re-entry", as used in this Lease, are not restricted to their technical legal meanings.

Section 24.7 Strict Performance. No failure by Landlord to insist upon Tenant's strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy available to Landlord by reason of a Default or Event of Default, and no payment or acceptance of full or partial Rental during the continuance of any Default or Event of Default, shall constitute a waiver of any such Default or Event of Default or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with by either party, and no Default by Tenant, shall be waived, altered or modified except, in either case, by a written instrument executed by the other party. No waiver of any Default shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent Default. No failure or delay by Tenant to insist upon Landlord's performance of any material covenant, agreement, term or condition of this Lease that is applicable to Landlord shall be deemed a waiver thereof by Tenant.

Section 24.8 Landlord's Right to Enjoin Defaults or Threatened Defaults and Compel Specific Performances. In the event of Tenant's Default or threatened Default, Landlord shall be entitled to enjoin the Default or threatened Default and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise, and Landlord shall have the right to compel specific performance as may be available in a court of equity notwithstanding any other remedies that may be available to Landlord.

Section 24.9 Tenant's Payment of All Costs and Expenses. Tenant shall pay Landlord all costs and expenses, including reasonable attorneys' fees and disbursements, incurred by Landlord in any action or proceeding to which Landlord may be made a party by reason of any act or omission of Tenant. Tenant shall also pay Landlord all costs and expenses, including reasonable attorneys' fees and disbursements incurred by Landlord in enforcing any of the covenants and provisions of this Lease, unless Tenant is the prevailing party in any action or proceeding commenced to enforce any of the covenants or provisions of this Lease. All of the sums paid or obligations incurred by Landlord, with interest and costs, shall be paid by Tenant to Landlord within ten (10) days after demand.

Section 24.10 Remedies Under Bankruptcy and Insolvency Codes. If an order for relief is entered or if any proceeding or other act becomes effective against Tenant or Tenant's interest in this Lease in any proceeding which is commenced by or against Tenant under the present or any future Federal Bankruptcy Code or in a proceeding which is commenced by or against Tenant seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any other present or future applicable federal, state or other bankruptcy or insolvency statute or law, Landlord shall be entitled to invoke any and all rights and remedies available to it under such bankruptcy or insolvency code, statute or law or this Lease, including such rights and remedies as may be necessary to adequately protect Landlord's right, title and interest in and to the Premises or any part thereof and adequately assure the complete and continuous future performance of Tenant's obligations under this Lease. Adequate protection of Landlord's right, title and interest in and to the Premises, and adequate assurance of the complete and continuous future performance of Tenant's obligations under the Lease, shall include, without limitation, all of the following requirements:

(a) that Tenant shall comply with all of its obligations under this Lease;

(b) that Tenant shall pay Landlord, on the first day of each month occurring after the entry of such order, or on the effective date of such stay, a sum equal to the amount by which the Premises diminished in value during the immediately preceding monthly period, but, in no event an amount which is less than the aggregate Rental payable for such monthly period;

(c) that Tenant shall continue to use the Premises in the manner required by this Lease;

(d) that Landlord shall be permitted to supervise the performance of Tenant's obligations under this Lease;

(e) that Tenant shall hire such security personnel as may be necessary to insure the adequate protection and security of the Premises;

(f) that Tenant shall pay Landlord, within thirty (30) days after entry of such order or the effective date of such stay, as partial adequate protection against future diminution in value of the Premises and adequate assurance of the complete and continuous

performance of Tenant's obligations under this Lease, a security deposit in an amount acceptable to Landlord, but in no event less than the Base Rent payable hereunder, for the then current Lease Year;

(g) that Tenant shall have and will continue to have unencumbered assets after the payment of all secured obligations and administrative expenses to assure Landlord that sufficient funds will be available to fulfill the obligations of Tenant under this Lease;

(h) that Landlord shall be granted a security interest acceptable to it in property of Tenant to secure the performance of Tenant's obligations under this Lease; and

(i) that if Tenant's trustee, Tenant or Tenant as debtor-in-possession shall assume this Lease and propose to assign it (pursuant to Title 11 U.S.C. § 365, as it may be amended) to any Person who shall have made a bona fide offer therefor, the notice of such proposed assignment, giving (i) the name and address of such Person, (ii) all of the terms and conditions of such offer, and (iii) the adequate assurance to be provided Landlord to assure such Person's future performance under the Lease, including the assurances referred to in Title 11 U.S.C. § 365(b), as it may be amended, shall be given to Landlord by the trustee, Tenant or Tenant as debtor-in-possession no later than twenty (20) days after receipt by the trustee, Tenant or Tenant as debtor-in-possession of such offer, but in any event no later than ten (10) days before the date that the trustee, Tenant or Tenant as debtor-in-possession shall make application to a court of competent jurisdiction for authority and approval to enter into such assignment, and Landlord shall thereupon have the prior right and option, to be exercised by notice to the trustee, Tenant or Tenant as debtor-in-possession, given at any time before the effective date of such proposed assignment, to accept an assignment of this Lease upon the same terms and conditions and for the same consideration, if any, as the bona fide offer made by such Person, less any brokerage commissions which may be payable by Tenant out of the consideration to be paid by such Person for the assignment of this Lease.

Section 24.11 Funds Held by Depositary. If this Lease shall terminate as a result of an Event of Default, any funds held by Depositary shall be paid to Tenant, or any Person claiming through Tenant, unless a Recognized Mortgagee has entered into a new lease pursuant to Sections 11.4 hereof, in which case such funds shall continue to be held by Depositary pursuant to the terms of such new lease. Notwithstanding the foregoing, any insurance proceeds or condemnation award then made available shall be retained by the Depositary and disbursed directly to Landlord for any Construction Work or other work to be performed by Landlord pursuant to Section 24.3(c) hereof.

Section 24.12 Funds Held by Tenant. From and after the date, if any, on which Tenant receives notice from Landlord that an Event of Default shall has occurred hereunder and so long as such Event of Default is continuing, Tenant shall not pay, disburse or distribute any rents, issues or profits of the Premises, or portion thereof, the proceeds of any insurance policies covering or relating to the Premises or any portion thereof or any awards payable in connection with the condemnation of the Premises or any portion thereof theretofore paid to Tenant (except to the extent that such insurance proceeds or condemnation awards are required in connection with any Restoration to be performed pursuant to Article 8 or Article 9), except to (i) a creditor

that is not an Affiliate of Tenant or a Person who is, or who is a member of the immediate family (whether by birth or marriage) of, a member, partner, director or officer of Tenant, in payment of amounts then due and owing by Tenant to such creditors, (ii) an Affiliate of Tenant or a Person who is, or who is a member of the immediate family (whether by birth or marriage) of, a member, partner, director or officer of Tenant, in payment of amounts then due and owing by Tenant to such Affiliate or such other Person for items and services provided to Tenant in connection with its operations conducted at the Premises or any portion thereof to the extent such amounts do not exceed those that are customarily and reasonably paid in arm's length transactions to Persons who are not Affiliates or such members, partners, directors, officers or family members for comparable items and services, (iii) the holders of Recognized Mortgages, in payment of the principal amount, all unpaid and accrued interest and other sums then outstanding under such Recognized Mortgages and any other amounts payable pursuant to such Recognized Mortgages, (iv) in the case of insurance proceeds or condemnation awards, to the parties performing any Restoration, and (v) to satisfy Requirements; provided however, that the foregoing provisions of this Section 24.12 shall not prohibit Tenant from making distributions to such directors, officers or shareholders of Tenant or to such partners or tenants-in-common comprising Tenant, if, after making any such distributions to such directors, officers or shareholders of Tenant or to such partner or tenants-in-common comprising Tenant, Tenant shall have retained an amount which is not less than the amount which Landlord reasonably claims is due and owing in connection with such Event of Default or reasonably claims will be adequate to cure such Event of Default. The foregoing shall be subject to the rights of Landlord upon termination of this Lease pursuant to Section 24.3 and the last sentence of Section 24.11.

Section 24.13 Rights Cumulative. Each right and remedy of Landlord provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

Section 24.14 Survival. The rights and remedies of Landlord and the other provisions of this Article 24 shall survive the expiration or earlier termination of this Lease.

## ARTICLE 25
## NOTICES

Section 25.1 Notices. All notices, demands, requests, consents, approvals and other communications hereunder shall be in writing and shall be deemed to have been duly given if (i) personally delivered with proof of delivery thereof, (ii) sent by United States certified mail, return receipt requested, postage prepaid, (iii) sent by reputable overnight courier service or (iv) transmitted by electronic transmission (with written confirmation of receipt); provided, that copy is also sent promptly by mail or in a manner as otherwise herein provided, in each case addressed to the respective parties as follows:

If to Landlord:

New York City Economic Development Corporation
110 William Street
New York, New York 10038
Attn: Executive Vice President, Real Estate Transaction Services

with a copy to:

New York City Economic Development Corporation
110 William Street
New York, New York 10038
Attn: General Counsel

and to:

New York City Law Department
100 Church Street
New York, New York 10007
Attention: Chief, Economic Development Division

If to Tenant:

St. George Outlet Development LLC
150 Myrtle Avenue
2nd Floor
Brooklyn, New York, 11201
Attn: Mr. Donald Capoccia

with copies to:

Akerman LLP
666 5th Ave., 20th Floor
New York, New York 10103
Attn: Steven Polivy, Esq.

If to an Institutional Investor:

Empire Outlets Investor LLC
c/o Goldman Sachs Bank USA
200 West Street
New York, New York 10001
Attn: Margaret Anadu and Andrea Gift

with copies to:

Jones Day
222 East 41st St.
New York, New York 10017
Attn: Steven C. Koppel Esq.

or to such other address or party as either party may have furnished to the other in writing in accordance herewith, except that notices of change of address or addresses shall only be effective upon receipt. Notices shall be deemed given when received if delivered personally or by overnight courier or by facsimile (provided receipt of such facsimile is confirmed prior to 5:00 p.m. on a Business Day, otherwise delivery shall be deemed given on the following Business Day), or if mailed then two (2) Business Days after such mailing in the United States, with failure to accept delivery to constitute delivery for purposes hereof.

## ARTICLE 26
## STREET WIDENING

Section 26.1 Proceedings for Widening Street. If any proceedings are instituted or orders made for the widening or other enlargement of any street contiguous to the Premises requiring any changes or alteration upon the Premises, or in the sidewalks, grounds, parking facilities, plazas, areas, vaults, gutters, alleys, curbs or appurtenances therein, Tenant shall comply promptly with such requirements, at its sole cost and expense, and if Tenant shall fail to comply with such requirements within thirty (30) days after notice thereof by Landlord to Tenant specifying such failure (or if compliance with such requirements requires work to be performed, acts to be done or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed, as the case may be, within such thirty (30) day period, if, within such thirty (30) day period, Tenant shall fail to commence to remedy such failure or shall fail to diligently and continuously, subject to Unavoidable Delays, prosecute the same to completion), then, Landlord, upon notice to Tenant may comply with the same, and the amount expended therefor, together with any interest, fines, penalties, reasonable architects' and attorneys' fees and disbursements or other costs and expenses incurred by Landlord in effecting such compliance or as a result of Tenant's failure to so comply, shall constitute Rental hereunder and shall be payable by Tenant to Landlord on demand.

Section 26.2 Contest of Proceedings. Tenant shall be permitted to contest in good faith any proceedings or orders for street widening or any changes or alterations resulting therefrom or necessitated thereby; provided, that such contest shall be brought in accordance with the provisions of Section 34.3 hereof as though Tenant were contesting a Requirement thereunder.

Section 26.3 Distribution of Award. Any award made in connection with such proceedings shall be deemed to be an award made in connection with a taking of less than all or Substantially All of the Premises and shall be paid, distributed and applied in accordance with the provisions of Section 9.2 hereof.

## ARTICLE 27
## EXCAVATIONS AND SHORING

Section 27.1 Excavations on Adjacent Property. If any excavation is contemplated for construction or other purposes upon property adjacent to the Premises, then Tenant, at its option, shall either:

(a) afford to Landlord or, at Landlord's option, to the Person or Persons causing or authorized to cause such excavation the right to enter upon the Premises in a reasonable manner for the purpose of doing such work as may be necessary to preserve any of the walls of the Buildings or other structures on the Premises from injury or damage and to support them by proper foundations. If so requested by Tenant, such entry and work shall be done in the presence of a representative of Tenant; provided, that such representative is available when the entry and work are scheduled to be done, and in all events such work shall be performed with reasonable diligence (subject to Unavoidable Delays) in accordance with, and subject to, any applicable Requirements, or

(b) perform or cause to be performed, at Landlord's or such other Person's expense, all such work as may be necessary to preserve any of the walls of the Buildings from injury or damage and to support them by proper foundations.

Section 27.2 No Claim Against Landlord. Tenant shall not, by reason of any such excavation or work, have any claim against Landlord for damages or for indemnity or for suspension, diminution, abatement or reduction of the Rental payable by Tenant hereunder except to the extent, if any, that such excavation or work is undertaken by the City in its official governmental capacity (and not in any propriety capacity as Landlord of the Premises) and in a manner that is grossly negligent and in violation of any Requirements.

## ARTICLE 28
## CERTIFICATES BY LANDLORD AND TENANT

Section 28.1 Certificate of Tenant. Tenant shall, within fifteen (15) days after notice by Landlord, execute, acknowledge and deliver to Landlord or any other Person specified by Landlord, a statement (which may be relied upon by such Person) (a) certifying: (i) that this Lease is unmodified and in full force and effect (or if there are modifications, that this Lease, as modified, is in full force and effect and stating such modifications); (ii) the date to which each item of Rental payable by Tenant hereunder has been paid; and (iii) as to the identity of all Persons who are members of Tenant and that no Person has any Equity Interest in Tenant other than such Persons; (b) stating (i) whether Tenant has given Landlord notice of any event that, with the giving of notice or the passage of time, or both, would constitute a default by Landlord in the performance of any covenant, agreement, obligation or condition contained in this Lease, and (ii) whether, to the best knowledge of Tenant, Landlord is in default in performance of any covenant, agreement, obligation or condition contained in this Lease, and, if so, specifying in detail each such default; (c) stating such other information as Landlord may reasonably request; and (d) if requested by Landlord or Lease Administrator, such statement shall attach a structure chart showing the capital/ownership structure of Tenant and all Persons who hold Equity Interests in Tenant.

Section 28.2 Certificate of Landlord. Landlord shall, within fifteen (15) days after notice by Tenant, execute, acknowledge and deliver to Tenant, or such other Person specified by Tenant, a statement (which may be relied upon by such Person) (a) certifying (i) that this Lease is unmodified and in full force and effect (or if there are modifications, that this Lease, as modified, is in full force and effect and stating such modifications), and (ii) the date to which each item of Rental payable by Tenant hereunder has been paid, (b) stating (i) whether an Event of Default has occurred or whether Landlord has given Tenant notice of any event that, with the giving of notice or the passage of time, or both, would constitute an Event of Default, and (ii) whether, to the best knowledge of Landlord, Tenant is in Default in the performance of any covenant, agreement, obligation or condition contained in this Lease, and, if so, specifying, in detail, each such Default or Event of Default and (c) stating such other information as Tenant may reasonably request.

Section 28.3 Substantial Completion Certificate. Upon Tenant's satisfaction of the conditions required with respect to Substantial Completion of the Construction Work, Landlord, upon request of Tenant, shall deliver a certificate in recordable form confirming same and setting forth the date on which the Construction Work has been Substantially Completed.

Section 28.4 Authority of Party Executing Certificate. If the party delivering a certificate described in this Article 28 shall be other than an individual, the instrument shall be signed by a person authorized to execute on behalf of said party and the delivery of such instrument shall be a representation to such effect. Any such certificate may be relied upon by any prospective transferee of the interest of Landlord or Tenant hereunder or by any prospective Mortgagee or Recognized Mortgagee.

## ARTICLE 29
## CONSENTS AND APPROVALS

Section 29.1 Effect of Granting or Failure to Grant Approvals or Consents. All consents and approvals which may be given under this Lease shall, as a condition of their effectiveness, be in writing. The granting of any consent or approval by a party to perform any act requiring consent or approval under the terms of this Lease, or the failure on the part of a party to object to any such action taken without the required consent or approval, shall not be deemed a waiver by the party whose consent was required of its right to require such consent or approval for any further similar act.

Section 29.2 Remedy for Refusal to Grant Consent or Approval. If, pursuant to the terms of this Lease, any consent or approval by Landlord or Tenant is not to be unreasonably withheld or is subject to a specified standard, then in the event of a final determination that the consent or approval was unreasonably withheld or that such specified standard has been met (such that the consent or approval should have been granted), the consent or approval shall be deemed granted but the granting of the consent or approval shall be the only remedy to the party requesting or requiring the consent or approval.

Section 29.3 No Unreasonable Delay; Reasonable Satisfaction. If it is provided that a particular consent or approval by Landlord or Tenant is not to be unreasonably withheld, such consent or approval also shall not be unreasonably delayed and any matter required to be

done satisfactorily or to the satisfaction of a party need only be done reasonably satisfactorily or to the reasonable satisfaction of that party.

Section 29.4 No Fees, Etc. Except as specifically provided herein, no fees or charges of any kind or amount shall be required by either party hereto as a condition of the grant of any consent or approval which may be required under this Lease.

## ARTICLE 30
## SURRENDER AT END OF TERM

Section 30.1 Surrender of Premises. Upon the Expiration of the Term (or upon a termination of this Lease and re-entry by Landlord upon the Premises (or a portion thereof) pursuant to Article 24 hereof), Tenant, without any payment or allowance whatsoever by Landlord, shall surrender the Premises (or applicable portion thereof) to Landlord, in good order, condition and repair, reasonable wear and tear excepted, free and clear of all Subleases, liens and encumbrances other than (a) those liens and encumbrances which Landlord shall have consented and agreed to in writing and (b) the Title Matters. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Premises on the Expiration of the Term.

Section 30.2 Delivery of Subleases, Etc. Upon the Expiration of the Term (or upon a termination of this Lease and re-entry by Landlord upon the Premises (or a portion thereof) pursuant to Article 24 hereof), Tenant shall deliver to Landlord, Tenant's executed counterparts of all Subleases and any service and maintenance contracts then affecting the Premises, true and complete maintenance records for the Premises, all original (or, if unavailable, true copies of) licenses and permits then pertaining to the Premises, permanent or temporary certificates of occupancy then in effect for the Building, and all warranties and guarantees then in effect which Tenant has received in connection with any work or services performed or Equipment installed in the Building, together with a duly executed assignment thereof to Landlord, and all financial reports, books and records required by Article 36 hereof, and any and all other documents of every kind and nature whatsoever in Tenant's possession relating to the operation of the Premises, all to the extent necessary for the continued operation or maintenance of the Premises.

Section 30.3 Personal Property. Any personal property of Tenant or of any Subtenant which shall remain on the Premises for ten (10) days after the termination of this Lease and after the removal of Tenant or such Subtenant from the Premises, may, at the option of Landlord, be deemed to have been abandoned by Tenant or such Subtenant, and either may be retained by Landlord as its property or be disposed of, without accountability in such manner as Landlord may see fit, subject to the rights of any Recognized Mortgagee if a new lease has not been entered into pursuant to Section 11.4 hereof. Landlord shall not be responsible for any loss or damage occurring to any such property owned by Tenant or any Subtenant after the expiration of such ten (10) day period.

Section 30.4 Option to Purchase CSX Parcel. Subject to the additional terms of this Section 30.4, upon the Expiration of the Term (or upon a termination of this Lease and re-entry by Landlord upon the Premises (or a portion thereof) pursuant to Article 24 hereof), Landlord (or another Person designated by Landlord) shall have the right, but not the obligation,

to purchase the CSX Parcel or a portion thereof from Tenant for an amount equal to Nine Hundred Thirty-Six Thousand dollars ($936,000).

(a) If Landlord (or its designee) elects to purchase the CSX Parcel or a portion thereof, then Landlord (or its designee) shall give written notice to Tenant of such election (which notice may be given prior to the Expiration Date) and within sixty (60) days of the date of receipt of such notice, Landlord (or its designee) shall provide Tenant with a proposed draft of purchase and sale agreement (the "CSX Parcel PSA") containing terms substantially consistent with the terms attached hereto at Part B of Exhibit V (CSX Parcel), and which sets forth the following:

(i) the proposed closing date, which (unless otherwise required by any Requirements) shall be no later than ninety (90) days after the later of the date that Landlord (or its designee) executes and delivers the CSX Parcel Purchase Agreement to Tenant and the date upon which all City approvals have been obtained in accordance with applicable Requirements;

(ii) as conditions to the closing, that all applicable City approvals and other Requirements shall have been duly obtained or satisfied; and

(iii) to the extent not set forth in the terms attached hereto at Part B of Exhibit V (CSX Parcel), such additional terms as Landlord (or its designee) and Tenant may agree; provided, that in no event shall the failure of Landlord (or its designee) and Tenant to agree to any such additional term excuse Tenant's obligation to sell the CSX Parcel Purchase Agreement to Landlord (or its designee) in accordance with this Section 30.4.

(b) During the period starting on the Effective Date and continuing for ninety (90) days after the Effective Date, Landlord (or its designee) and Tenant shall diligently, continuously and in good faith cooperate with one another to finalize the terms to be attached hereto at Part B of Exhibit V (CSX Parcel). Upon finalizing such terms Lease Administrator shall promptly attach such terms to this Lease and deliver to Landlord and Tenant an updated copy of the Lease including such finalized terms. If Landlord (or its designee) and Tenant are unable or unwilling to finalize such terms for any reason within such 90-day period, the terms of the CSX Parcel PSA shall be materially consistent with a form of purchase and sale agreement selected by Lease Administrator acting reasonably.

(c) Landlord (or its designee) and Tenant shall diligently, continuously and in good faith cooperate with one another to promptly finalize the form of CSX Parcel PSA following its delivery to Tenant pursuant to Section 30.4(a). Tenant shall execute and deliver to Landlord (or its designee) four (4) original executed counterparts of the CSX Parcel PSA within five (5) Business Days after the date on which such form is finalized.

(d) Notwithstanding anything to the contrary set forth in this Section 30.04, upon (i) the conditions for Landlord's (or its designee's) purchase of the Property as set forth in this Section 30.04 being satisfied, and (ii) Landlord (or its designee) tendering to Tenant the amount set forth in the first paragraph above in this Section 30.04, title to the CSX Parcel

shall be deemed to have been conveyed to Landlord, or its designee, as Landlord shall determine in written notice to Tenant. Tenant covenants that upon the satisfaction of the conditions referred to or set forth in clauses (i) and (ii) of this paragraph 30.04(d), Tenant shall deliver to Landlord (or its designee) a bargain and sale deed (containing the standard New York Lien Law Section 13 covenant) for the CSX Parcel, and such tax returns, affidavits and other documents necessary to record such deed; provided, that upon the satisfaction of such conditions as are referred to or set forth above in this paragraph 30.04(d), title to the CSX Parcel shall be deemed to have passed to Landlord or its designee regardless of whether such deed is executed and delivered to Landlord or its designee.

(e) Within five (5) Business Days of the date it is executed and delivered by Tenant, Tenant shall deliver to Lease Administrator a true, complete and correct copy of the CSX-Tenant Agreement.

Section 30.5 Survival Clause. The provisions of this Article 30 shall survive the Expiration of the Term.

## ARTICLE 31
## ENTIRE AGREEMENT

Section 31.1 Entire Agreement. This Lease, together with the Exhibits hereto, contain all of the promises, agreements, conditions, inducements and understandings between Landlord and Tenant concerning the Premises and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, expressed or implied, between them other than as expressly set forth herein and therein.

## ARTICLE 32
## QUIET ENJOYMENT

Section 32.1 Quiet Enjoyment. Landlord covenants that, as long as no Event of Default has occurred and has not been remedied, Tenant shall and may (subject to the terms and conditions of this Lease) peaceably and quietly have, hold and enjoy the Premises for the Term without molestation or disturbance by or from Landlord or any Person claiming through Landlord and free of any encumbrances except for Title Matters and those encumbrances created or suffered by Tenant.

Section 32.2 Access and Inspection. Notwithstanding anything to the contrary in this Lease, (i) Landlord and its agents, representatives, and designees shall have the right to enter the Premises upon reasonable notice to Tenant during regular business hours, and in accordance with Tenant's reasonable instructions, solely to: (a) ascertain whether Tenant is complying with this Lease; (b) inspect the Premises and any Initial Construction Work or other Construction Work; or (c) show the Premises to prospective purchasers, transferees, or mortgagee of any of Landlord's interest in the Premises, and (ii) DOT and its agents, representatives and designees shall have the right to enter the Premises upon reasonable notice to Tenant during regular business hours (or without notice in case of emergency) for the purpose of inspecting, maintaining and making repairs to the Ferry Terminal and the DOT Off-Premises Improvements. In entering the Premises, Landlord and its designees shall not unreasonably

interfere with operations on the Premises and shall comply with Tenant's (or any Subtenant's) reasonable instructions.

## ARTICLE 33
## SECURITY DEPOSIT; ADDITIONAL SECURITY DEPOSIT AND GOOD FAITH DEPOSITS

Section 33.1 Security Deposit and Additional Security Deposit.

(a) As collateral security for Tenant's obligation to perform the Initial Construction Work, pay Rental and any other amounts payable by Tenant under this Lease, as and when payment of such Rental or other amounts becomes due and payable, and for the faithful performance of all other terms, covenants and conditions of this Lease (including terms and covenants that survive the expiration or earlier termination of this Lease, or Tenant vacating the Premises), and for any liability that Tenant may incur to Landlord in connection with this Lease, Tenant shall:

(i) on or before the Effective Date, deposit with Lease Administrator an amount equal to One Million, Two Hundred and Fifty Thousand Dollars ($1,250,000.00) (as such deposit may be adjusted under this Article 33, together with any interest that may accrue thereon, the "Security Deposit") by check drawn against an account maintained with a bank that is a member of the New York Clearinghouse, or by letter of credit in form and substance satisfactory to Landlord; and

(ii) if all guaranties (including the Completion Guaranty and the Standby Completion Guaranty) required to be delivered hereunder by Tenant to Landlord as conditions to the commencement of the Initial Construction Work have not been delivered in accordance with this Agreement on or before the Scheduled Commencement Date for the Phase 1 Development, deposit with Lease Administrator within five (5) Business Days after such Scheduled Commencement Date an amount equal to One Million Dollars ($1,000,000.00) (such amount, together with any interest that may accrue thereon, the "Additional Security Deposit") by check drawn against an account maintained with a bank that is a member of the New York Clearinghouse, or by letter of credit in form and substance satisfactory to Landlord.

Section 33.2 Disposition of Security Deposit.

(a) The Security Deposit (and if the Additional Security Deposit has been delivered pursuant to Section 33.1(a)(ii), the Additional Security Deposit) shall each be deposited, if made by check, by Lease Administrator in an interest bearing account. Interest that may accrue thereon shall belong to the party entitled to retain the Security Deposit and/or the Additional Security Deposit in accordance with this Lease; provided, that Lease Administrator or Landlord may retain for itself such portion of the Security Deposit (and if the Additional Security Deposit has been delivered pursuant to Section 33.1(a)(ii), of the Additional Security Deposit) as shall be equal to one percent (1%) per annum (or such higher percentage as Lease

Administrator or Landlord may from time to time be lawfully entitled to retain), which percentage shall be paid to Lease Administrator or Landlord as an administrative fee and which Lease Administrator or Landlord may withdraw from time to time and retain. The obligation to pay any taxes related to or affecting any interest earned on such Security Deposit (and if the Additional Security Deposit has been delivered pursuant to Section 33.1(a)(ii), on such Additional Security Deposit) (except as to that portion of the Security Deposit or the Additional Security Deposit, as the case may be, which belongs to Lease Administrator or Landlord) shall be the sole responsibility of Tenant and Tenant hereby agrees to pay same and to forever indemnify and save harmless Landlord in respect thereof. Tenant shall, within fifteen (15) days after demand, furnish Landlord and Lease Administrator with a tax identification number for use in respect of such deposit.

(b) Supplementing Section 33.1, Tenant may deliver as the Security Deposit (and if the Additional Security Deposit is to be delivered pursuant to Section 33.1(a)(ii), as the Additional Security Deposit) a clean, unconditional and irrevocable letter of credit, in the amount required to be deposited under Section 33.1 (the "Letter of Credit"), issued by J.P. Morgan Chase & Co. or another commercial bank or banks reasonably acceptable to Landlord (each of which bank shall have its letter of credit office in New York City or allow for presentation via express mail or courier), and in form and substance satisfactory to Landlord, to be held by Landlord as a security deposit hereunder. Each Letter of Credit delivered hereunder shall (i) initially expire not less than one (1) year from the date of issue thereof, (ii) provide for automatic renewals for periods of not less than one (1) year unless notice of non-renewal is given to Landlord at least thirty (30) days prior to the expiration date thereof, and (iii) have a final expiration date not less than four (4) months after the Expiration Date. Tenant shall pay to Landlord, on demand, as additional rent hereunder, all fees and charges paid by Landlord to the bank(s) issuing each Letter of Credit delivered hereunder in connection with the transfer of the same to any future owner of the Premises. If an Event of Default occurs Landlord shall be permitted to draw down any portion or the entire amount of each Letter of Credit delivered hereunder and apply the proceeds or any part thereof in accordance with this Article 33 and retain the balance for the Security Deposit (and if the Additional Security Deposit has been delivered pursuant to Section 33.1(a)(ii), for the Additional Security Deposit). Landlord shall also have the right to draw down any portion or the entire amount of each Letter of Credit delivered hereunder if Landlord receives notice that the date of expiry of the applicable Letter of Credit will not be extended by the issuing bank and if a replacement Letter of Credit meeting the requirements of this Article 33 (or a cash Security Deposit) in the amount then required hereunder is not delivered by Tenant to Landlord within five (5) Business Days thereafter, and may retain the proceeds for the Security Deposit (and if the Additional Security Deposit has been delivered pursuant to Section 33.1(a)(ii), the Additional Security Deposit). In addition, following the Expiration Date and during the four (4) month period in which each Letter of Credit delivered hereunder is still in effect, Landlord may draw upon each such Letter of Credit to the extent necessary to cover any outstanding obligations of Tenant under this Lease and hold such amounts as Landlord reasonably estimates are required to cover such obligations.

(c) If Landlord shall have drawn against a Letter of Credit delivered hereunder or cash that is part of the Security Deposit (or if the Additional Security Deposit has been delivered pursuant to Section 33.1(a)(ii), that is part of the Additional Security Deposit) and applied all or any portion thereof to sums due to Landlord following the occurrence of an Event

of Default hereunder, then Tenant shall deposit with Landlord, within fifteen (15) days of demand therefor, a new Letter of Credit meeting the requirements of this Article 33 or sufficient amount of cash to bring the balance of the cash or Letter of Credit then held by Landlord to the amount of the Security Deposit (and if the Additional Security Deposit has been delivered pursuant to Section 33.1(a)(ii), the Additional Security Deposit) then required hereunder.

Section 33.3 Application of Security Deposit. Without limiting its rights and remedies hereunder, at law or in equity, Landlord and/or Lease Administrator may use, retain or apply all or any portion of the Security Deposit (and if the Additional Security Deposit has been delivered pursuant to Section 33.1(a)(ii), of the Additional Security Deposit) to satisfy (i) any cost or expense arising from the occurrence of an Event of Default hereunder, (ii) any other cost or expense incurred by Landlord or Lease Administrator in connection with the failure of Tenant (beyond any applicable cure period) to pay Rental or any other amount payable by Tenant hereunder, when such Rental or other amount becomes due and payable, (iii) the failure of Tenant to perform when due (beyond any applicable cure period) any other term, covenant or condition of this Lease, or (iv) any other liability incurred by Tenant to Landlord and/or Lease Administrator under this Lease as and when due (beyond any applicable cure period), in each case provided, that the application of any portion of the Security Deposit (and if the Additional Security Deposit has been delivered pursuant to Section 33.1(a)(ii), of the Additional Security Deposit) to the cure of any such Event of Default shall not be deemed to have cured such Event of Default unless the entire outstanding amount due or damages suffered by Landlord and/or Lease Administrator, as the case may be, shall have been paid in full and the Security Deposit (and if the Additional Security Deposit has been delivered pursuant to Section 33.1(a)(ii), the Additional Security Deposit) shall each have been replenished by Tenant so that the balances thereof is or are (as the case may be) equal to the amount immediately prior to such application.

Section 33.4 Adjustment of Security Deposit. On any date that the amount of the Security Deposit held by Lease Administrator is less than the annual Base Rent rate then in effect, Tenant shall deposit an amount equal to the excess of such annual Base Rent rate over the then amount of the Security Deposit with Lease Administrator as an adjustment to the Security Deposit, so that at all times during the Term the Security Deposit on deposit with Lease Administrator shall be no less than the annual Base Rent rate then in effect; provided, that until the Construction Commencement Date occurs for the Phase 3 Development, if the amount of the Security Deposit held by Lease Administrator is less than the annual Base Rent rate then in effect, Tenant shall deposit an amount equal to the excess of such annual Base Rent (*minus* any Base Rent payable for the Hotel Portion and the Banquet Facility) over the then required amount of the Security Deposit with Lease Administrator as an adjustment to the Security Deposit.

Section 33.5 Return of Security Deposit. If Tenant shall not then be in default of any of the terms, covenants and provisions of this Lease:

(a) any remaining portion of the Security Deposit shall be returned to Tenant within ninety (90) days after the Expiration of the Term, or earlier as provided in Section 33.4 (or the guaranty shall be deemed terminated and returned to Tenant); and

(b) if the Additional Security Deposit has been delivered pursuant to Section 33.1(a)(ii), any remaining portion of the Additional Security Deposit shall be returned to

Tenant within twenty (20) Business Days of the date on which the last of the guaranties (including the Completion Guaranty and the Standby Completion Guaranty) required to be delivered hereunder by Tenant to Landlord as conditions to the commencement of the Initial Construction Work have been delivered in accordance with this Agreement.

Section 33.6 Good Faith Deposits. As further provided in the Pre-Development Agreement, as of the Effective Date the Parties acknowledge that Developer has paid the Good Faith Deposits as security for Tenant's timely implementation and development of the Project. Following the delivery of the Completion Guaranty and the Standby Completion Guaranty in accordance with this Lease, the Good Faith Deposits (including all interest earned thereon) shall be paid to Tenant; provided that there does not exist any Default or Event of Default with respect to any monetary obligation of Tenant under this Lease.

## ARTICLE 34
## ADMINISTRATIVE AND JUDICIAL PROCEEDINGS, CONTESTS, ETC.

Section 34.1 Tax Contest Proceedings. Tenant shall have the exclusive right to seek reductions in the valuation of the Premises assessed for real property tax purposes and to prosecute any action or proceeding in connection therewith by appropriate proceedings diligently conducted in good faith, in accordance with the Charter and the New York City Administrative Code. If the attribution by DOF provided for in Section 3.8 hereof is not contestable by the standard legal procedures for contesting or seeking reductions in assessment valuation, Tenant shall have the right to contest or dispute with Landlord whether, for the purpose of determining the PILOT due under this Lease, said attribution by DOF is correct and reasonable in the context of normal assessment practice in the City, said contest to be resolved by an appropriate court. Tenant shall, during the pendency of such proceeding, comply with the provisions of Section 34.2(b) below.

Section 34.2 Imposition Contest Proceedings. Tenant shall have the right to contest, at its own cost and expense, the amount or validity, in whole or in part, of any Imposition by appropriate proceedings diligently conducted in good faith, in which event, notwithstanding the provisions of Section 4.1 hereof, payment of such Imposition may be postponed if, and only as long as:

(a) neither the Premises nor any part thereof, is, by reason of such postponement or deferment, in danger of being forfeited and if Landlord is not in danger of being subjected to criminal liability or penalty or civil liability or penalty in excess of the amount for which Tenant has furnished security as provided in Section 34.2(b) hereof by reason of nonpayment thereof, and

(b) Tenant has deposited with Depositary cash, bond or other security (which may include, without limitation and at Tenant's election, a guaranty from a creditworthy entity) in the amount so contested and unpaid, together with all interest and penalties in connection therewith and all charges relating to such contested Imposition that are reasonably expected to be assessed against, or become a charge on the Premises or any part thereof in or during the pendency of such proceedings. Such deposit shall be held in an interest-bearing

account or in city, state or federal government obligations. The provisions of this subsection (b) shall be deemed waived if a deposit or other security is maintained for the same purpose with a Recognized Mortgagee. Upon the termination of such proceedings, Tenant shall pay the amount of such Imposition or part thereof as finally determined in such proceedings, the payment of which was deferred during the prosecution of such proceedings, together with any costs, fees (including reasonable attorneys' fees and disbursements), interest, penalties or other liabilities in connection therewith, and upon such payment, Depositary shall return to Tenant any amount or other security deposited with it with respect to such imposition, together with the interest, if any, earned thereon. However, if Depositary is so requested by Tenant, Depositary shall disburse said moneys on deposit with it directly to the Person to whom or to which such Imposition is payable and, except as otherwise specifically provided herein, return any balance to Tenant. Except as provided above, if, at any time during the continuance of such proceedings, Landlord, in its reasonable judgment, shall deem insufficient the amount or nature of the security deposited, Tenant, within ten (10) days after Landlord's demand, shall make an additional deposit of such additional sums or other acceptable security as Landlord reasonably may request, and upon failure of Tenant to so do, the amount theretofore deposited, together with the interest, if any, earned thereon, may, after not less than three (3) Business Days, notice to Tenant, be applied by Landlord to the payment, removal and discharge of such Imposition and the interest and penalties in connection therewith and any costs, fees (including reasonable attorneys' fees and disbursements) or other liability accruing in any such proceedings and the balance, if any, remaining thereafter, together with the interest, if any, earned thereon and remaining after application by Landlord as aforesaid, shall be returned to Tenant or to the Person entitled to receive it. If there is a deficiency, Tenant shall pay the deficiency to Landlord or the Person entitled to receive it, within ten (10) days after Landlord's demand. Nothing contained in this subsection shall be deemed to limit Tenant's obligation to make deposits provided for in Article 5 hereof.

Section 34.3 Requirement Contest. Tenant shall have the right to contest the validity of any Requirement or the application thereof. During such contest, compliance with any such contested Requirement may be deferred by Tenant on the condition that, before instituting any such proceeding, Tenant shall furnish Depositary with a surety company bond, cash deposit, letter of credit, guaranty or other security in form and amount satisfactory to Landlord, securing compliance with the contested Requirement and payment of all interest, penalties, fines, civil liabilities, fees and expenses in connection therewith. Any such proceeding instituted by Tenant shall be commenced promptly after Tenant makes its election to contest such Requirement and shall be prosecuted with diligence to final adjudication, settlement, compliance or other mutually acceptable disposition of the Requirement so contested. The furnishing of any bond, deposit, guaranty or other security notwithstanding, Tenant shall comply with any such Requirement in accordance with the provisions of Section 16.1(a) hereof if the Premises, or any part thereof, are in danger of being forfeited or if Landlord is in danger of being subjected to criminal liability or penalty, or civil liability in excess of the amount for which Tenant shall have furnished security as hereinabove provided by reason of noncompliance therewith.

## ARTICLE 35
## APPRAISALS

Section 35.1 Procedure for Appraisals. In each instance where this Lease calls for an appraisal, such appraisal shall be conducted as follows:

(a) Landlord shall select an appraiser no more than six (6) months and no less than three (3) months before the date when an appraisal must be completed under this Lease unless the parties agree otherwise in any instance where an appraisal is needed under this Lease. The appraiser so selected shall prepare an appraisal report and value estimate (the value estimate so set forth in the appraisal report shall be the "Landlord's Appraisal"). For purposes of any appraisal conducted for purposes of calculating Fair Market Rent, such appraisal shall reflect the use of the Land without value given or attributed by the appraiser to the improvements and the Buildings constructed on the Premises by Tenant. Landlord shall deliver a copy of Landlord's Appraisal and the associated appraisal report to Tenant.

(b) With respect to any Landlord's Appraisal conducted for purposes of determining Fair Market Rent, Tenant shall, within fifteen (15) days of receipt of Landlord's Appraisal, provide notice to Landlord that Tenant either accepts or rejects the results of the appraisal. If Tenant accepts Landlord's Appraisal, or if Tenant fails to respond within the timeframe contemplated in the previous sentence, such appraisal shall then become the approved appraisal for the Premises (the "Fair Market Value Appraisal"). If Tenant rejects Landlord's Appraisal, Tenant's notice shall also contain an explanation of Tenant's objections to the appraisal and the basis for those objections. Landlord shall have the option, within fifteen (15) days of receipt of Tenant's comments, either to reject Tenant's comments by notice to Tenant of such rejection or to accept Tenant's comments to Landlord's Appraisal and agree to corresponding adjustments to the appraised value of the Premises. If Landlord accepts Tenant's comments, then Landlord's Appraisal, as adjusted, shall then become the Fair Market Value Appraisal. If Landlord rejects Tenant's comments, then Tenant shall have the right, by notice to Landlord given within ten (10) days after Landlord's notice of rejection ("Tenant Appraisal Notice"), to commission its own appraisal at its own expense. The appraiser so selected by Tenant shall prepare an appraisal report and value estimate (the value estimate so set forth in the appraisal report shall be the "Tenant's Appraisal"). Tenant's Appraisal and the associated appraisal report must be submitted to Landlord within thirty (30) days following the giving of Tenant's Appraisal Notice. If Tenant fails to deliver Tenant's Appraisal Notice or Tenant's Appraisal timely, then Landlord's Appraisal shall be deemed the Fair Market Value Appraisal.

(c) If the value of the Premises reflected in Tenant's Appraisal is within ten percent (10%) of the value of the Premises reflected in Landlord's Appraisal, the average of Tenant's Appraisal and Landlord's Appraisal shall become the Fair Market Value Appraisal. If the value of the Premises reflected in Tenant's Appraisal differs by more than ten percent (10%) from the value of the Premises reflected in Landlord's Appraisal, then Landlord shall, within fifteen (15) days following delivery of Tenant's Appraisal, provide notice to Tenant that Landlord either accepts or rejects the results of Tenant's Appraisal. If Landlord accepts Tenant's Appraisal, such appraisal shall then become the Fair Market Value Appraisal. If Landlord rejects Tenant's Appraisal, Landlord's notice shall also contain an explanation of Landlord's objections to the appraisal and the basis for those objections. Tenant shall have the

option, by notice given to Landlord within fifteen (15) days following Landlord's notice, either to reject Landlord's comments or to accept Landlord's comments to the appraisal and agree to corresponding adjustments to the appraised value of the Premises. If Tenant accepts Landlord's comments, then Tenant's Appraisal, as adjusted, shall then become the Fair Market Value Appraisal. If Tenant rejects Landlord's comments, then a third appraisal of the Premises shall be commissioned by Landlord, which third appraiser ("Third Appraiser") shall be appointed within ten (10) days by the mutual agreement of Landlord's appraiser and Tenant's appraiser, or, in the absence of agreement, by the process prescribed by the American Arbitration Association or other recognized mediation or arbitration service provider selected by Landlord. The Third Appraiser shall be given a copy of Landlord's Appraisal and Tenant's Appraisal, and shall select as the fair market value of the Premises the value set forth in either Landlord's Appraisal or Tenant's Appraisal, and the value so selected by the Third Appraiser shall be the Fair Market Value Appraisal.

(d) Any appraiser selected or appointed pursuant to this Article 35 shall be a member of the American Institute of Real Estate Appraisers or MAI (or a successor organization), shall be an appraiser acceptable to Lease Administrator, and shall have at least fifteen (15) years of experience appraising commercial properties in the City. All appraisers chosen or appointed pursuant to this Article 35 shall be sworn fairly and impartially to perform their duties as such appraiser.

(e) Tenant shall pay the costs of all appraisals conducted pursuant to this Lease, including appraisals commissioned by Landlord or Lease Administrator, and shall deliver payment to Landlord or Lease Administrator (as the case may be) within thirty (30) days of demand for such payment.

## ARTICLE 36
## FINANCIAL REPORTS

Section 36.1 Statement.

(a) Effective upon the Substantial Completion Date, Tenant shall furnish to Landlord, for as long as the City is the owner of the Premises and to the extent that the Administrative Code of the City Section 11-208.1 (or successor thereto) is then in force and effect, income and expense statements of the type required by such code section (or successor thereto) as if Tenant were the "owner" of the Premises as such term is used in said Section 11-208.1, such statements to be submitted within the time periods and to the address provided for in said Section 11-208.1 and shall be submitted notwithstanding that the City holds fee title to the Premises, that the Premises may therefore not be "income-producing property" as that concept is used in Section 11-208.1, or that PILOT rather than real estate taxes are being paid with respect to the Premises.

(b) Together with each payment by Tenant to Landlord pursuant to Section 3.6, Tenant shall deliver to Landlord a Parking Rent Statement in the form attached hereto at Part B of Exhibit O (Parking Management Services; Form of Parking Rent Statement)

(the "Parking Rent Statement") together with such other information as Landlord may reasonably require in order for Landlord to comply with its obligations under the Ballpark Lease.

Section 36.2 Maintenance of Books and Records. Tenant shall keep and maintain, at an office in the City, complete and accurate books and records of accounts of the operations of the Premises from which Landlord may determine for each Lease Year the items to be shown or set forth on the statements and/or reports to be delivered to Landlord pursuant to Sections 36.1 and 36.4 hereof and shall preserve, for a period of at least six (6) years after the end of each applicable period of time, the records of its operations of the Premises. However, if, at the expiration of such six (6) year period, Landlord is seeking to contest or is contesting any matter relating to such records or any matter to which such records may be relevant, Tenant shall preserve such records until one (1) year after the final adjudication, settlement or other disposition of any such contest. Tenant shall also promptly furnish to Landlord copies of all of Tenant's operating statements and financial reports from time to time furnished to each Recognized Mortgagee.

Section 36.3 Books and Records. Inspection and Audits of Books and Records. Landlord, the Comptroller and/or Landlord's agents or representatives shall have the right from time to time during regular business hours, upon five (5) Business Days' notice, to inspect, audit and, at its option, duplicate all of Tenant's books and records and all other papers and files of Tenant relating to the operation of the Premises or to this Lease for the period for which Tenant is required to maintain its records as provided in Section 36.2. Landlord shall be responsible for the cost and expense of such inspection, audit, and duplication; provided, that if such inspection or audit reveals that Tenant has understated any figures or data provided to Landlord pursuant to Section 36.4, then Tenant shall promptly reimburse Landlord for such out-of-pocket costs and expenses. If the Comptroller establishes a policy allowing the City to provide in future leases similar to this Lease for a right to audit that extends less than the six (6) year period provided in Section 36.2 hereof, then such shorter period shall be applicable hereunder, but in no event shall such period be less than one (1) year. Tenant shall produce such books, records, papers and files from time to time upon the request of Landlord, the Comptroller and/or Landlord's agents or representatives. Subject to applicable law, Landlord and the Comptroller shall hold in confidence, and shall cause Landlord's agents an representatives to hold in confidence, all information obtained from Tenant's books, records, papers and files, except as may be necessary for the enforcement of Landlord's rights under this Lease.

Section 36.4 Gross Revenue Reports.

Starting with respect to the sixth (6th) Lease Year and continuing for each subsequent Lease Year until the Expiration Date, Tenant shall deliver or cause to be delivered to Landlord, Lease Administrator and any other Person specified by Landlord or Lease Administrator the Gross Revenue Reports as follows:

(a) Quarterly Reports. As soon as available and in any event within thirty (30) days after the last day of each Quarterly Period in a given Fiscal Year (a) a report in form and substance acceptable to Landlord and Lease Administrator (the "Quarterly Gross Revenue Report"), stating the Gross Revenue for the immediately preceding Quarterly Period, and summarizing all relevant underlying data and figures used in calculating such Gross

Revenue, and (b) a statement in form and substance acceptable to Landlord and Lease Administrator (i) certifying as of the date of the Quarterly Gross Revenue Report that the matters covered in such Quarterly Gross Revenue Report are true and complete in all respects, contain no material omissions or misstatements of fact and that such Quarterly Gross Revenue Report fairly presents the Gross Revenues of Tenant for the Quarterly Period covered by such report, and (ii) stating such other information as Landlord or Lease Administrator may reasonably request.

(b) Annual Reports. As soon as available and in any event within thirty (30) days after the last day of each Fiscal Year (a) a report in form and substance acceptable to Landlord and Lease Administrator (the "Annual Gross Revenue Report"), stating the Gross Revenue for the immediately preceding Fiscal Year, and summarizing all relevant underlying data and figures used in calculating such Gross Revenue, and (b) a statement in form and substance acceptable to Landlord and Lease Administrator (i) certifying as of the date of the Annual Gross Revenue Report that the matters covered in such Annual Gross Revenue Report are true and complete in all respects, contain no material omissions or misstatements of fact and that such Annual Gross Revenue Report fairly presents the Gross Revenues of Tenant for the Fiscal Year covered by such report, and (ii) stating such other information as Landlord or Lease Administrator may reasonably request.

Section 36.5 Survival Clause. The obligations of Tenant under this Article 36 shall survive the Expiration of the Term.

## ARTICLE 37
## RECORDING OF LEASE

Section 37.1 Tenant to Record. Landlord and Tenant shall promptly execute the Memorandum of Lease and of any amendments hereto, including such amendments as are necessary to be made in the event the Severance Lease is entered into (in form reasonably acceptable to Landlord and Tenant) and Tenant shall cause the Memorandum of Lease or amendments to be recorded in the office of the Register of the City of New York (Richmond County) promptly after the execution and delivery of this Lease or any such amendments and shall pay and discharge all costs, fees and taxes in connection therewith. Neither Tenant nor Landlord shall record this Lease or the Severance Lease under any circumstances unless expressly required by all Recognized Mortgagees.

## ARTICLE 38
## SUBORDINATION

Section 38.1 No Subordination. Except as otherwise specifically provided herein, Landlord's interest in the Premises and in this Lease, as the same may be modified, amended or supplemented, shall not be subject or subordinate to (a) any Mortgage now or hereafter existing, (b) any other liens or encumbrances hereafter affecting Tenant's interest in this Lease and the leasehold estate created hereby or (c) any Sublease or any mortgages, liens or encumbrances now or hereafter placed on any Subtenant's interest in the Premises. This Lease and the leasehold estate of Tenant created thereby and all rights of Tenant hereunder are and shall be subject to the Title Matters.

## ARTICLE 39
## NONDISCRIMINATION AND AFFIRMATIVE ACTION; INVESTIGATIONS

Section 39.1 Nondiscrimination and Affirmative Action.

(a) Obligations. So long as the City is the owner of the Premises, Tenant shall be bound by the following requirements:

(i) Tenant will not engage in any unlawful discrimination against any employee or job applicant because of race, creed, color, national origin, sex, age, disability, marital status or sexual orientation with respect to all employment decisions including recruitment, hiring, compensation, fringe benefits, leaves, promotion, upgrading, demotion, downgrading, transfer, training and apprenticeship, lay-off and termination and all other terms and conditions of employment;

(ii) Tenant will not engage in any unlawful discrimination in the selection of contractors on the basis of the owner's, partner's or shareholder's race, creed, color, national origin, sex, age, disability, marital status or sexual orientation;

(iii) Tenant will state in all solicitations or advertisements for employees placed by or on behalf of Tenant (A) that all qualified job applicants will receive consideration for employment without unlawful discrimination based on race, creed, color, national origin, sex, age, disability, marital status or sexual orientation, or (B) that Tenant is an equal opportunity employer;

(iv) Tenant will inform its employees in writing that it "treats all employees and job applicants without unlawful discrimination as to race, creed, color, national origin, sex, age, disability, marital status or sexual orientation in all employment decisions, including hiring, compensation, training and apprenticeship, transfer, lay-off and termination and all other terms and conditions of employment," and that "[i]f you feel that you have been unlawfully discriminated against, you may call or write the Division of Labor Services of the Department of Small Business Services, General Counsel's Office, 110 William Street, New York, New York 10038 (212-513-6300)"; and

(v) Tenant, as "Owner" (as such term is used in AIA Form 201), will include, or cause to be included, the following provisions in every construction contract of One Million Dollars ($1,000,000.00) or more or subcontract of Seven Hundred Fifty Thousand Dollars ($750,000.00) or more in such a manner that the provision will be binding upon all contractors and subcontractors, and will cause each contractor or subcontractor engaged in Initial Construction Work or any Capital Improvement to comply with the following provisions:

"By signing this contract, contractor agrees that it:

(1) will not engage in any unlawful discrimination against any employee or job applicant because of race, creed, color, national origin, sex, age, disability, marital status or sexual orientation with respect to all employment decisions including recruitment, hiring, compensation, fringe benefits, leaves, promotion, upgrading, demotion, downgrading, transfer, training and apprentice-ship, layoff and termination and all other terms and conditions of employment;

(2) will not engage in any unlawful discrimination in the selection of contractors on the basis of the owner's, partner's or shareholder's race, creed, color, national origin, sex, age, disability, marital status or sexual orientation;

(3) will state in all solicitations or advertisements for employees placed by or on behalf of contractor (A) that all qualified job applicants will receive consideration for employment without unlawful discrimination based on race, creed, color, national origin, sex, age, disability, marital status or sexual orientation, or (B) that contractor is an equal opportunity employer; and

(4) will inform its employees in writing that it "treats all employees and job applicants without unlawful discrimination as to race, creed, color, national origin, sex, age, disability, marital status or sexual orientation in all employment decisions, including hiring, compensation, training and apprenticeship, transfer, lay-off and termination and all other terms and conditions of employment," and that "[i]f you feel that you have been unlawfully discriminated against, you may call or write Division of Labor Services of the Department of Small Business Services, General Counsel's Office, 110 William Street, New York, New York 10038 (212-513-6300)".

Promptly upon Landlord's request therefor, Tenant shall provide evidence to Landlord that any such contract or subcontract (or proposed contract or subcontract) contains the required language.

Section 39.2 Generally. Nothing in this Article 39 shall be construed as an acknowledgement that the Initial Construction Work or any Construction Work is a "public work" as such term is used in Section 220 of the New York State Labor Law or a "construction project" under Executive Order No. 50, and Tenant's, employment and other obligations under Section 39.1 above are not "public work" or "construction project", nor shall Tenant's, employment and other obligations herein specifically agreed to by Tenant be construed as an

acknowledgement of the application of other requirements that may apply, either now or in the future, to "public work" by operation of law, judicial decision, legislation, rules and regulations or otherwise.

Section 39.3 Cooperation by Tenant. Tenant shall cooperate fully and faithfully with any investigation, audit or inquiry conducted by any Governmental Authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a Governmental Authority that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry. If:

(a) any Person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other Governmental Authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, the State of New York or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation, or any public benefit corporation organized under the laws of the State of New York; or

(b) any Person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a Governmental Authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of a Governmental Authority that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State of New York, or any political subdivision thereof, or any local development corporation within New York City, then the commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) days written notice to the parties involved, to determine if any penalties should attach for the failure of a person to testify.

Section 39.4 Adjournments of Hearing, Etc. If Tenant or any agent, employee or associate of Tenant requests an adjournment in any proceeding investigating the events surrounding the negotiation and consummation of this Lease of up to thirty (30) days, such adjournment shall be granted. If a further adjournment is sought it must be done by a written request to the agency head or commissioner who convened the hearing, at least three (3) Business Days prior to the scheduled hearing date, setting forth the reasons for the request. If the commissioner or agency head denies the request for an additional adjournment, then Tenant, its agent, employee or associate must appear at the scheduled hearing or commence an action to obtain a court order, pursuant to Article 78 of the Civil Practice Laws and Rules, substantiating a claim that the denial of the adjournment was capricious or arbitrary. If Tenant, its agent, employee or associate fails to appear at the rescheduled hearing or to diligently pursue such judicial relief, as the case may be, then, if in the sole judgment of the commissioner or agency head the failure to appear would have a material adverse effect on the investigation, the commissioner or agency head who convened the hearing may suspend this Lease pending the

final determination pursuant to Section 39.6 below without the City incurring any penalty or damages for delay or otherwise; provided, that the right to suspend this Lease shall not be invoked if Tenant shall have discharged or disassociated itself from such agent, employee or associate and said agent, employee or associate is not reemployed either directly or indirectly or otherwise compensated by Tenant.

Section 39.5 Penalties. The penalties which may attach after a final determination by the commissioner or agency head may include but shall not exceed:

(a) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any Person, or any entity of which such Person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

(b) The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Lease, nor the proceeds of which pledged, to an unaffiliated and unrelated Recognized Mortgagee for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination. Monies due for goods delivered, work done, rentals or fees accrued prior to the cancellation or termination shall be paid by the City.

Section 39.6 Criteria for Determination. The commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in subsections (a) and (b) below, and may also consider, if relevant and appropriate, the criteria established in subsections (c) and (d) below in addition to any other information which may be relevant and appropriate:

(a) the entity's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including the discipline, discharge or disassociation of any Person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought;

(b) the relationship of the Person who refused to testify to any entity that is a party to the hearing, including whether the Person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the Person has within the entity;

(c) the nexus of the testimony sought to the subject entity and its contract, leases, permits or license with the City; and

(d) the effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Section 39.5 above; provided, that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in Section 39.3 above gives notice and proves that such interest was previously acquired. Under either circumstance the

party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

Section 39.7 Solicitation. In addition to, and notwithstanding any other provision of this Lease, the commissioner or other agency head whose agency is a party in interest to this Lease may declare a Default under this Lease in the event Tenant fails to promptly report in writing to the Commissioner of Investigation of the City, any solicitation from Tenant or Principals of Tenant of money, goods, requests or future employment or other benefit or thing of value, which request is made by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Lease by Tenant or affecting the performances of Tenant's obligations under this Lease. Tenant may cure such Default by removing such Principal of Tenant and causing him to divest himself from any interest in this Lease or the Premises.

Section 39.8 Definitions. As used in this Article 39:

(a) The term "License" or "Permit" means a license, permit, franchise or concession not granted as matter of right.

(b) The term "entity" means any firm, partnership, corporation, association or Person that receives moneys, benefits, licenses, leases or permits from or through New York City or otherwise transacts business with New York City.

(c) The term "Member" means any Person associated with another Person or entity as a partner, director, officer, principal or employee.

Section 39.9 Employment Reporting and Requirements. Tenant shall comply with the follow employment reporting and related requirements.

(a) With regard to each period from July 1 through June 30 (a "Fiscal Year") any part of which falls within the seven (7) year period following the Effective Date (such seven (7) year period, the "Reporting Period"), Tenant shall submit to Landlord, for each Fiscal Year, by August 1 following the end of such Fiscal Year, an employment and benefits report (the "Employment Report") in the form annexed hereto as Exhibit P (Form of Employment Report) (with the dates therein updated to reflect the applicable Fiscal Year). Tenant shall include in such Employment Report information collected by Tenant from Subtenants.

(b) During the Reporting Period, Tenant shall, in good faith, consider such proposals as the City and/or any City-related entities may make with regard to jobs Tenant may seek to fill in relation to its activities on or concerning the Premises and shall provide the City and such entities with the opportunity to (i) refer candidates who are City residents having the requisite education and experience for the positions in question, and/or (ii) create a program to train City residents for those jobs (it being understood that Tenant shall not be required to hire any candidate which Tenant, in good faith, considers unqualified for the applicable position).

(c) Each Sublease entered into by Tenant prior to the end of the Reporting Period shall include provisions requiring the Subtenant:

(i) with regard to each Fiscal Year during the Reporting Period, to complete with regard to itself and its sub-subtenants items 1-5, 15 and 16 of the Employment Report (with the dates therein updated to reflect the applicable Fiscal Year), to sign such report and to submit it to Tenant before August 1 immediately following such Fiscal Year; and

(ii) in good faith, to consider such proposals as the City and/or City-related entities may make with regard to any jobs such Subtenant may seek to fill in relation to its activities on or concerning the Premises, and to provide the City and such entities with the opportunity to (A) refer candidates who are City residents having the requisite experience for the positions in question, and/or (B) create a program to train City residents for those jobs, and to report to Landlord, upon Landlord's request, regarding the status of its consideration of such proposals (it being understood that Tenant shall not be required to hire any candidate which Tenant, in good faith, considers unqualified for the applicable position).

(d) Each Sublease shall provide that both Tenant and Landlord and their respective designees shall be beneficiaries of each such agreement by the Subtenant. Tenant shall reserve the right, on behalf of itself and Landlord, and their respective designees, as such third party beneficiaries, to seek specific performance by such Subtenant, at the expense of such Subtenant, of the obligations set forth in this Section 39.9.

(e) Tenant shall retain for six (6) years all forms completed by Tenant and any Subtenants and, at Landlord's request, shall permit Landlord upon reasonable notice, to inspect such forms and provide Landlord copies thereof.

Section 39.10 Tenant Covenants. Tenant covenants and agrees to be bound by the following covenants, which shall be binding for the benefit of Landlord and enforceable by Landlord against Tenant to the fullest extent permitted by law and equity:

(a) Tenant (and any lessees of the Premises or any part thereof) shall comply with all applicable federal, state, and local laws in effect from time to time prohibiting discrimination or segregation by reason of age, race, creed, religion, sex, color, national origin, ancestry, sexual orientation or affectional preference, disability, or marital status (collectively, "Prohibited Distinctions") in the sale, lease, or occupancy of the Premises.

(b) Tenant shall not effect or execute any agreement, lease, conveyance, or other instrument whereby the sale, lease or occupancy of the Premises, or any part thereof, is restricted upon the basis of any Prohibited Distinction.

(c) Tenant (and any lessees of the Premises or any part thereof) shall include the covenants of (a) and (b) in any agreement, lease, conveyance, or other instrument with respect to the sale, lease or occupancy of the Premises entered into after the date hereof.

(d) Tenant shall comply with the provisions of Executive Order No. 50, as amended, and shall incorporate the language required thereby in any construction contract related to Construction Work.

## ARTICLE 40
## ADVERTISING AND SIGNAGE

Section 40.1 Advertising and Signage. No advertisement, notice or sign shall be placed or affixed to the outside of any Building or on any other part of the Premises other than signs, notices, advertisements, and the like for the Subtenants (i.e. retail stores and food services establishments), parking facilities, and such signage as is customarily used in hotels similar to the Hotel, and as required by the Requirements.

## ARTICLE 41
## MISCELLANEOUS

Section 41.1 Captions. The captions of this Lease are for the purpose of convenience of reference only, and in no way define, limit or describe the scope or intent of this Lease or in any way affect this Lease.

Section 41.2 Table of Contents. The Table of Contents is for the purpose of convenience of reference only, and is not to be deemed or construed in any way as part of this Lease.

Section 41.3 Reference to Landlord and Tenant. The use herein of the neuter pronoun in any reference to Landlord or Tenant shall be deemed to include any individual Landlord or Tenant, and the use herein of the words "successors and assigns" or "successors or assigns" of Landlord or Tenant shall be deemed to include the heirs, legal representatives and assigns of any individual Landlord or Tenant.

Section 41.4 Relationship of Landlord and Tenant. This Lease is not to be construed to create a partnership or joint venture between the parties, it being the intention of the parties hereto only to create a landlord and tenant relationship.

Section 41.5 Person Acting on Behalf of a Party Hereunder. If more than one Person is named as or becomes a party hereunder, the other party may require the signatures of all such Persons in connection with any notice to be given or action to be taken hereunder by the party acting through such Persons. Each Person acting through or named as a party shall be fully liable for all of such party's obligations hereunder, subject to Sections 41.6 hereof. Any notice by a party to any named as the other party shall be sufficient and shall have the same force and effect as though given to all Persons acting through or named as such other party.

Section 41.6 Landlord's Liability. The liability of Landlord hereunder for damages or otherwise shall be limited to Landlord's interest in the Premises, the proceeds of any insurance policies relating to the Premises, any awards payable in connection with any condemnation of the Premises or any part thereof. Neither Landlord nor any of the directors, officers, employees, shareholders, agents or servants of Landlord shall have any liability (personal or otherwise) hereunder beyond Landlord's interest in the Premises and this Lease. No other property or assets of Landlord or any property of the directors, officers, employees, shareholders, agents or servants of Landlord shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies hereunder. Notwithstanding anything herein contained to the contrary, Landlord's interest in the Premises and this Lease

shall not be deemed to include (i) any rights, claims or interests of the City that may exist at any time pursuant to any loan document or any note or mortgage to which the City is a party or given to the City in connection with the Premises, (ii) any rights, claims or interests of the City that may arise at any time from, or be a result of, its acting in its governmental capacity, or (iii) any rents, issues or proceeds from, or in connection with, the Premises which have been distributed by the City. The provisions of this Section 41.6 shall survive the Expiration of the Term.

Section 41.7 Remedies Cumulative. Each right and remedy of any party provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease, or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by any party of any one or more of the rights or remedies provided for in this Lease, or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by any party of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

Section 41.8 Intentionally Omitted.

Section 41.9 Merger. There shall be no merger of this Lease or the leasehold estate created hereby with the fee estate in the Premises or any part thereof by reason of the same Person acquiring or holding, directly or indirectly, this Lease and the leasehold estate created hereby or any interest in this Lease or in such leasehold estate as well as the fee estate in the Premises.

Section 41.10 Performance at Tenant's Sole Cost and Expense. Except as otherwise specifically provided herein, when Tenant exercises any of the rights, or renders or performs any of its obligations hereunder, Tenant hereby acknowledges that it shall so do at Tenant's sole cost and expense.

Section 41.11 Waiver, Modification, Etc. No covenant, agreement, term or condition of this Lease to be performed or complied with by either party, and no Default thereof by Tenant or Landlord's failure to perform them shall be changed, modified, altered, waived or terminated except by a written instrument of change, modification, alteration, waiver or termination executed by the other party. No waiver of any Default shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent Default thereof.

Section 41.12 Depositary Charges and Fees. Tenant shall pay any and all fees, charges and expenses owing to Depositary in connection with any services rendered by Depositary pursuant to the provisions of this Lease.

Section 41.13 Ownership of Deposited Funds. Subject to application in accordance with the terms of this Lease, all funds held by Depositary pursuant to this Lease, while held by Depositary, shall be and shall be deemed to be the property of Tenant, subject to a perfected security interest therein in favor of any Recognized Mortgagee or Landlord.

Section 41.14 Governing Law. This Lease shall be governed by, and be construed in accordance with, the laws of the State of New York.

Section 41.15 Successors and Assigns. The agreements, terms, covenants and conditions herein shall be binding upon, and inure to the benefit of, Landlord and Tenant and, except as otherwise provided herein, their respective successors and assigns.

Section 41.16 Change in Policy. If at any time subsequent to the Effective Date, Landlord shall cease to require provisions similar to the provisions of Sections 39.1, 39.9 or 41.17 hereof in its ground leases with developers, or if such provisions in such other ground leases with Tenant or an Affiliate of Tenant are less restrictive than the provisions of Section 39.1, 39.9 or 41.17 hereof, then the provisions of such Section shall be deemed modified to conform to such less restrictive provisions, or if such other ground leases with Tenant or an Affiliate of Tenant omit provisions dealing with the subject matter described in such Section altogether, then such Section shall be deemed terminated and of no further force or effect. Landlord shall promptly notify Tenant of any such deemed modification or termination.

Section 41.17 Indictment.

(a) If any grand jury impaneled by any federal or state court files an indictment with such court charging Tenant or any Principal of Tenant (such indicted Person, the "Indicted Party") with having committed an intentional felony in connection with the Project or any other matter, then Landlord shall convene a hearing (the "Hearing") before a panel of three persons consisting of (i) the City's Deputy Mayor for Finance and Economic Development, (ii) the President of NYCEDC and (iii) the Corporation Counsel of the City, or a duly authorized designee of any of them, or such substitute persons as the City's Mayor may designate (the "Hearing Officers"). Such hearing shall be held upon not less than forty-five (45) days written notice to the Indicted Party and Tenant for the purpose of determining whether it is in the best interest of the City to require the Indicted Party to assign its interest in this Lease or in Tenant, as the case may be. At the Hearing, Tenant and the Indicted Party shall have the opportunity to be represented by counsel and to make a presentation to the Hearing Officers orally and in writing. The Hearing Officers shall consider and address in reaching their determination (x) the nexus of the conduct charged in the indictment to this Lease, (y) the deleterious effect which an Assignment of the Indicted Party's interest in this Lease or in Tenant, as the case may be, would have on the economic development interests of the City which this Lease is intended to promote, and (z) any other relevant matters. The Hearing Officers shall render a decision in writing within twenty (20) days of the last day of the Hearing. If the Hearing Officers decide by a majority vote that it is in the best interest of the City to require an Assignment by the Indicted Party, then Landlord shall notify the Indicted Party and Tenant of the Hearing Officers' decision within five (5) days of the date thereof. The Indicted Party shall assign its interest in this Lease or in Tenant, as the case may be, within six (6) months of the date of the notice of such decision by the Hearing officers to an Assignee Reasonably Satisfactory to Landlord. The Indicted Party may receive the consideration for such Assignment in installment payments; provided that such consideration shall be for a sum certain (if paid in money) and that following such Assignment the Indicted Party shall have no further interest in the Project or in any profits therefrom.

(b) Any failure of (i) the Indicted Party to assign its interest in this Lease or in Tenant, as the case may be, or (ii) an Assignee Reasonably Satisfactory to Landlord, acting as a trustee (as contemplated below), to assign the Indicted Party's interest in this Lease or in Tenant, as the case may be, following a Conviction within the time and in the manner

provided hereunder, shall be deemed to be a Default by Tenant hereunder. Upon the occurrence of such Default, Landlord and the Recognized Mortgagee shall have all of the rights and remedies provided hereunder in the case of a Default by Tenant.

(c) "Assignee Reasonably Satisfactory to Landlord" means any Person who is (x) a Recognized Mortgagee or an Institutional Investor or (y) that delivers to Landlord a Required Disclosure Statement without any modifications thereto that are not acceptable to Landlord acting in its sole discretion and is not an Affiliate of the Indicted Party and who is either (A) a Person who is satisfactory to the Recognized Mortgagee and who is financially capable of performing the Indicted Party's obligations as set forth hereunder or (B) a Person (other than a Person who is, or who is a member of the immediate family (whether by birth or marriage) of, a member, partner, director or officer of the Indicted Party) who is acting in a fiduciary capacity as an independent trustee for the benefit of the Indicted Party for the purpose of actively managing this Lease or the Indicted Party's Interest in Tenant, as the case may be. The trust agreement between the Indicted Party and the trustee shall be reasonably satisfactory to Landlord and the Recognized Mortgagee. The trust agreement shall provide in substance, inter alia, as follows:

(i) If (x) the Indicted Party is found not guilty of the felony for which it is indicted by a court of competent jurisdiction or (y) the felony charges against such Indicted Party are dismissed, then the trustee shall reassign the Indicted Party's interest in Tenant or in this Lease, as the case may be, to the Indicted Party.

(ii) If (x) the Indicted Party is found guilty of the felony for which it is indicted by a court of competent jurisdiction and such verdict is affirmed by the court having ultimate jurisdiction to hear an appeal of such conviction or the period of appeal expires or the Indicted Party waives any right to appeal such determination or (y) the Indicted Party pleads guilty to the felony for which it is indicted (either (x) or (y) above, a "Conviction"), then the trustee shall assign this Lease or the indicted Party's interest in Tenant, as the case may be, within six months Of the date of the Conviction to an Assignee Reasonably Satisfactory to Landlord pursuant to subsection (a) above.

(iii) During the pendency of any such trust, the Indicted Party shall exercise no control over the Project, but may make contributions to the Project and receive distributions therefrom.

(d) This Section 41.17 shall apply only for so long as the City or an agency or instrumentality thereof shall be the owner of the Premises.

Section 41.18 Claims. Any and all claims asserted by or against Landlord arising under this Lease or related hereto shall be heard and determined either in the courts of the United States ("Federal Courts") located in New York City or in the courts of the State of New York ("New York State Courts") located in New York City. To effect this agreement and intent, Landlord and Tenant agree as follows:

(a) If Landlord initiates any action against Tenant in Federal Court or in New York State Court, service of process may be made on Tenant either in person, wherever Tenant may be found, or by registered mail (return receipt requested) addressed to Tenant at its address as set forth in this Lease, or to such other address as Tenant may provide to Landlord in writing.

(b) With respect to any action between Landlord and Tenant in New York State Court, Tenant hereby expressly waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of forum non conveniens, (ii) to remove to Federal Court outside New York City, and (iii) to move for a change of venue to New York State Court outside New York City.

(c) With respect to any action between Landlord and Tenant in Federal court located in the City, Tenant expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a Federal court outside the City.

(d) If Tenant commences any action against Landlord in a court located other than in the City and State of New York, then, upon request of Landlord, Tenant shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, then Tenant shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

Section 41.19 FIRPTA Provisions. During the Term, Landlord shall furnish Tenant with certifications substantially in the form of Exhibit Q (FIRPTA Form) annexed hereto at such time(s) as (a) there is any transfer in interest in Landlord or (b) Landlord transfers by whatsoever means or by operation of law all or any portion of its interest in the Premises. In the event Tenant is at any time (and from time to time) required to pay any withholding or similar tax (regardless of how the same may be characterized) attributable to Landlord's status as a non-resident alien, foreign corporation or other foreign person under applicable laws and regulations, Tenant, notwithstanding anything in this Lease to the contrary, shall be permitted to offset the amount so withheld against payments of Rental payable hereunder.

Section 41.20 Invalidity of Certain Provisions. If any term or provision of this Lease or the application thereof to any Person or circumstances shall, to any extent, be invalid and unenforceable, the remainder of this Lease, and the application of such term or provision to Persons or circumstances other than those as to which it is held invalid and unenforceable, shall not be affected thereby and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law; provided that such invalidity or unenforceability shall not materially affect the transactions contemplated in this Lease.

Section 41.21 Lease Administrator. Tenant understands, acknowledges and agrees that, until Tenant is notified to the contrary by Landlord, Lease Administrator will administer this Lease on behalf of Landlord, and unless and until such notice is received, Tenant agrees to accept from Lease Administrator any notices of default, notices of termination, bills,

invoices and any other notices and demands executed and/or delivered by Lease Administrator (or any entity designated by Lease Administrator to act on its behalf) as having been fully authorized by Landlord and having the same force, effect and validity as if executed and/or delivered by Landlord. Tenant shall have the right to rely on any consent, approval or waiver given in writing by Lease Administrator as if the same were given by Landlord, without any obligation to question or further confirm the same. Tenant further understands, acknowledges and agrees that AIDC performs certain property management services for NYCEDC under contract, and that AIDC may perform lease administration functions on behalf of NYCEDC with respect to this Lease for such time as NYCEDC may serve as Lease Administrator hereunder. Notwithstanding anything in the foregoing to the contrary, it is understood that Lease Administrator has no authority to bind the Landlord to any amendments to this Lease.

Section 41.22 Right to Use Renderings and Photographs. Notwithstanding any other provisions of this Lease, Lease Administrator shall have the right to use photographs and artist's renderings of the Project in its marketing and promotional materials, subject to the copyright and other intellectual property rights of such photographer, architect or artist.

Section 41.23 Counterparts. This Lease may be executed simultaneously in two or more counterparts, each of which will be deemed an original and all of which taken together shall constitute but one and the same agreement, and it shall not be necessary in making proof of this Lease to produce or account for more than one such counterpart.

## ARTICLE 42
## ARBITRATION

Section 42.1 Arbitration.

(a) Whenever this Lease expressly provides that a matter shall be determined by arbitration, such dispute under this Lease shall be submitted to arbitration under the then-prevailing rules of the American Arbitration Association before a single arbitrator under the Expedited Procedures provisions of the Commercial Arbitration Rules of the AAA (the "AAA Rules").

(b) The arbitrator conducting any such arbitration shall be bound by the provisions of this Lease and shall not have the power to add to, subtract from, or otherwise modify such provisions. Landlord and Tenant shall sign all documents, and do all other things, reasonably necessary to submit any such matter to arbitration and waive any and all rights they or either of them may at any time have to revoke their agreement hereunder to submit to arbitration and to abide by the decision rendered thereunder, which shall be binding and conclusive on the parties and shall constitute an "award" by the arbitrator within the meaning of the AAA Rules and applicable law. Judgment may be had on the decision and award of the arbitrators so rendered in any court of competent jurisdiction. The arbitrator shall be a qualified, disinterested and impartial person who shall have had at least ten (10) years' experience in New York City in an occupation directly related to the matter of the dispute. Landlord and Tenant may each appear and be represented by counsel before such arbitrator and submit such data and memoranda in support of their respective positions in the matter in dispute as may be reasonably necessary or appropriate under the circumstances. Each party hereunder shall pay its own costs,

fees and expenses (including counsel, experts and presentation of proof) in connection with any arbitration or other action or proceeding brought under this Article 42 hereof, and the expenses and fees of the arbitrator selected shall be shared equally by Landlord and Tenant. Notwithstanding any contrary provisions hereof, the arbitrator may award damages, costs, reasonable attorneys' fees and interest. If (i) the arbitrator shall award judgment solely to either party (the "Prevailing Party"), and (ii) the other party (the "Non-Prevailing Party") shall not comply with the terms of such judgment, and (iii) the Prevailing Party shall commence an action to enforce the judgment, and (iv) the Prevailing Party is successful in such action, then the Non-Prevailing Party shall pay the Prevailing Party's out-of-pocket expenses and reasonable attorneys' fees in connection with the enforcement of the arbitrator's judgment.

*[SIGNATURE PAGES FOLLOW]*

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the date first written above.

**LANDLORD**

THE CITY OF NEW YORK

By: _____

Name: Andrew Schwartz

Title: First Deputy Commissioner

Department of Small Business Services

Approved as to Form:

By: _____

Acting Corporation Counsel

**TENANT**

ST. GEORGE OUTLET DEVELOPMENT LLC

By: BFC/St. George LLC, Managing Member

By: _____

Name:

Title:

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the date first written above.

**LANDLORD**

THE CITY OF NEW YORK

By: _____

Name:

Title:

Department of Small Business Services

Approved as to Form:

By: _____

Acting Corporation Counsel

**TENANT**

ST. GEORGE OUTLET DEVELOPMENT LLC

By: BFC/St. George LLC, Managing Member

By: _____

Name:

Title:

STATE OF NEW YORK )

) SS:

COUNTY OF New York )

On December 20, 2013, before me, the undersigned, personally appeared Andrew Schwartz personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Arthur Hauser

Notary Public

Arthur Hauser
Notary Public, State of New York
NO. 01HA6276327
Qualified in Kings County
Certificate Filed in New York County
Commission Expires 2/11/2017

STATE OF NEW YORK )

) SS:

COUNTY OF _____ )

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

_____

Notary Public

STATE OF NEW YORK )

) SS:

COUNTY OF _____ )

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

_____

Notary Public

STATE OF NEW YORK )

) SS:

COUNTY OF Kings )

On December 30, 2013, before me, the undersigned, personally appeared Donald Capocci personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

A Noriega

Notary Public

ALMA NORIEGA
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01NO6109895
Qualified in Queens County
Commission Expires May 24, 2016

# EXHIBIT A

## Legal Description of Premises

Subject to the provisos set forth below in this Exhibit A, **ALL THAT CERTAIN** plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Staten Island, County of Richmond, City and State of New York, bounded and described as follows:

BEGINNING at a point being distant along the northeasterly line of Richmond Terrace (variable width) on a course of South 30 degrees - 08 minutes - 23 seconds East, a distance of 68.53 feet from a point of commencement on the northeasterly line of Richmond Terrace which is 32.43 feet northwesterly and 100 feet northeasterly from the intersection of the southwesterly line of Richmond Terrace with the southeasterly line of Wall Street, said point of commencement being further described as having the coordinate value of South 4888.423, West 9425.204 in the system established by the United States Coast and geodetic survey for the Borough of Richmond, from said point of beginning running thence the following (2) two courses along the dividing line of Lot 15 and Lot 20, Block 2:

1. Along a curve to the right having a radius of 38.28 feet, an arc length of 51.41 feet, having a central angle of 76 degrees - 56 minutes - 11 seconds, bearing a chord of North 15 degrees - 02 minutes - 12 seconds East, a distance of 47.63 feet to a point, thence;

2. North 59 degrees - 51 minutes - 37 seconds East, a distance of 475.54 feet to a point, thence;

3. Continuing along said dividing line and along the dividing line of Lot 15 with Lots 5 and 1, Block 2, South 59 degrees - 29 minutes - 32 seconds East, a distance of 309.11 feet to a point, running thence, along the dividing line of Lot 15 and Lot 1, Block 2 for the following (9) nine courses:

4. North 40 degrees - 29 minutes - 12 seconds East, a distance of 35.39 feet to a point, thence;

5. Along a curve to the right having a radius of 962.68 feet, an arc length of 51.07 feet, having a central angle of 03 degrees - 02 minutes - 22 seconds, bearing a chord of South 71 degrees - 16 minutes - 36 seconds East, a chord distance of 51.06 feet to a point, thence;

6. South 33 degrees - 37 minutes - 53 seconds East, a distance of 9.36 feet to a point, thence;

7. South 36 degrees - 29 minutes - 12 seconds West, a distance of 231.41 feet to a point, thence;

8. South 53 degrees - 06 minutes - 07 seconds East, a distance of 119.79 feet to a point, thence;

9. South 27 degrees - 03 minutes - 46 seconds West, a distance of 8.65 feet to a point, thence;

10. South 55 degrees - 54 minutes - 44 seconds East, a distance of 26.81 feet to a point, thence;

11. South 36 degrees - 00 minutes - 00 seconds West, a distance of 165.94 feet to a point, thence;

12. North 54 degrees - 00 minutes - 00 seconds West, a distance of 73.14 feet to a point, thence;

13. Along the dividing line of Lot 15 with Lots 1 and 10, Block 2, South 36 degrees - 23 minutes - 58 seconds West, a distance of 349.41 feet to a point, running thence, along the dividing line of Lot 15 and Lot 45, Block 2 for the following (2) two courses:

14. North 30 degrees - 08 minutes - 23 seconds West, a distance of 0.17 feet to a point, thence;

15. Along a curve to the right having a radius of 46.66 feet, an arc length of 92.39 feet, having a central angle of 113 degrees - 27 minutes - 20 seconds, bearing a chord of North 86 degrees - 52 minutes - 03 seconds West, a chord distance of 78.02 feet to a point, thence;

16. Along the aforementioned, northeasterly line of Richmond Terrace, North 30 degrees - 08 minutes - 23 seconds West, a distance of 599.23 feet to the point and place of BEGINNING.

Containing 353,627 square feet or 8.118 acres

PROVIDED, that the Premises as set forth above in this Exhibit A does not include the property rights above a plane over the land described below in this proviso located at St. George, in the Borough of Staten Island and County of Richmond, City and State of New York, above a plane twenty-three (23) feet above the top of the highest rail situated over and above that certain parcel of land, with an aggregate area of 97,011 square feet (2.227 acres, more or less), as more particularly described as follows:

BEGINNING AT POINT BEING DISTANT ALONG THE NORTHEASTERLY LINE OF RICHMOND TERRACE (VARIABLE WIDTH) ON A COURSE OF SOUTH 30 DEGREES - 08 MINUTES - 23 SECONDS EAST, A DISTANCE OF 68.53 FEET FROM A POINT OF COMMENCEMENT ON THE NORTHEASTERLY LINE OF RICHMOND TERRACE WHICH IS 32.43 FEET NORTHWESTERLY AND 100 FEET

NORTHEASTERLY FROM THE INTERSECTION OF THE SOUTHWESTERLY LINE OF RICHMOND TERRACE WITH THE SOUTHEASTERLY LINE OF WALL STREET, SAID POINT OF COMMENCEMENT BEING FURTHER DESCRIBED AS HAVING THE COORDINATE VALUE OF SOUTH 4888.423, WEST 9425.204 IN THE SYSTEM ESTABLISHED BY THE UNITED STATES COAST AND GEODETIC SURVEY FOR THE BOROUGH OF RICHMOND, FROM SAID POINT OF BEGINNING RUNNING THENCE

1. ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 38.28 FEET, AN ARC LENGTH OF 51.40 FEET, A CENTRAL ANGLE OF 76 DEGREES - 56 MINUTES - 11 SECONDS, BEARING A CHORD NORTH 15 DEGREES - 02 MINUTES - 12 SECONDS EAST, A CHORD DISTANCE OF 47.63 FEET TO A POINT, THENCE;

2. NORTH 59 DEGREES - 51 MINUTES - 37 SECONDS EAST, A DISTANCE OF 10.01 FEET TO A POINT, THENCE;

3. SOUTH 81 DEGREES - 27 MINUTES - 38 SECONDS EAST, A DISTANCE OF 164.23 FEET TO A POINT, THENCE;

4. SOUTH 36 DEGREES - 28 MINUTES - 58 SECONDS EAST, A DISTANCE OF 74.62 FEET TO A POINT, THENCE;

5. SOUTH 59 DEGREES - 51 MINUTES - 36 SECONDS WEST, A DISTANCE OF 113.81 FEET TO A POINT, THENCE;

6. SOUTH 30 DEGREES - 08 MINUTES - 23 SECONDS EAST, A DISTANCE OF 24.33 FEET TO THE BEGINNING OF A CURVE,

7. ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 583.42 FEET, AN ARC LENGTH OF 67.77 FEET, HAVING A CENTRAL ANGLE OF 06 DEGREES - 39 MINUTES - 20 SECONDS, BEARING A CHORD SOUTH 33 DEGREES - 28 MINUTES - 03 SECONDS EAST, A CHORD DISTANCE OF 67.73 FEET TO A POINT OF COMPOUND CURVATURE, THENCE;

8. ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 318.68 FEET, AN ARC LENGTH OF 433.72 FEET, HAVING A CENTRAL ANGLE OF 77 DEGREES - 58 MINUTES - 42 SECONDS, BEARING A CHORD SOUTH 75 DEGREES - 47 MINUTES - 04 SECONDS EAST, A CHORD DISTANCE OF 401.01 FEET TO A POINT, THENCE.

9. SOUTH 36 DEGREES - 23 MINUTES - 58 SECONDS WEST, A DISTANCE OF 318.17 FEET TO A POINT, THENCE;

10. NORTH 30 DEGREES - 08 MINUTES - 23 SECONDS WEST, A DISTANCE OF 0.17 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, THENCE;

11. ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 46.66 FEET, AN ARC LENGTH OF 92.39 FEET, HAVING A CENTRAL ANGLE OF 113 DEGREES - 27 MINUTES - 20 SECONDS, BEARING A CHORD NORTH 86 DEGREES - 52

MINUTES - 03 SECONDS WEST, A CHORD DISTANCE OF 78.02 FEET TO A POINT OF TANGENCY, THENCE;

12. THENCE NORTH 30 DEGREES - 08 MINUTES - 23 SECONDS WEST, A DISTANCE OF 599.23 FEET TO THE POINT AND PLACE OF BEGINNING.

CONTAINING 97,011 SQUARE FEET 2.227 ACRES

PROVIDED, FURTHER that the Premises includes that certain volume of air space over the premises described below that is above the plane that is either (i) twenty-two (22) feet over the top of rail, or (ii) if the New York State Department of Transportation issues a waiver of the overhead clearance requirements set forth in Railroad Law Section 51-a, seventeen (17) feet, six (6) inches above the top of rail (in either case as such premises and such air space are depicted in the metes and bounds description and the schematics that follow):

BEGINNING AT POINT ON THE NORTHEASTERLY LINE OF RICHMOND TERRACE, SAID POINT BEING DISTANT ALONG THE NORTHEASTERLY LINE OF RICHMOND TERRACE (VARIABLE WIDTH) ON A COURSE OF SOUTH 30 DEGREES - 08 MINUTES - 23 SECONDS EAST, A DISTANCE OF 86.13 FEET FROM A POINT FORMED BY THE INTERSECTION OF THE NORTHEASTERLY LINE OF RICHMOND TERRACE WITH THE EXTENSION OF THE NORTHWESTERLY LINE OF WALL STREET (50 FEET WIDE) AND FROM SAID POINT AND PLACE OF BEGINNING OF LEASE AREA A RUNNING THENCE ALONG THE DIVIDING LINE OF LOT 15 AND LOT 20, BLOCK 2 FOR THE FOLLOWING (2) TWO COURSES:

1. ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 38.28 FEET, AN ARC LENGTH OF 51.40 FEET, HAVING A CENTRAL ANGLE OF 76 DEGREES - 56 MINUTES - 11 SECONDS, BEARING A CHORD OF NORTH 15 DEGREES - 02 MINUTES - 12 SECONDS EAST, A DISTANCE OF 47.63 FEET TO A POINT, THENCE;

2. NORTH 59 DEGREES - 51 MINUTES - 37 SECONDS EAST, A DISTANCE OF 16.34 FEET TO A POINT, RUNNING THENCE, THROUGH THE INTERIOR OF LOT 15, BLOCK 2 FOR THE FOLLOWING (4) FOUR COURSES:

3. SOUTH 30 DEGREES - 08 MINUTES - 23 SECONDS EAST, A DISTANCE OF 10.00 FEET TO A POINT, THENCE;

4. NORTH 59 DEGREES - 51 MINUTES - 37 SECONDS EAST, A DISTANCE OF 16.31 FEET TO A POINT, THENCE;

5. SOUTH 30 DEGREES - 08 MINUTES - 23 SECONDS EAST, A DISTANCE OF 70.00 FEET TO A POINT, THENCE

6. SOUTH 59 DEGREES - 51 MINUTES - 37 SECONDS WEST, A DISTANCE OF 66.44 FEET TO A POINT, THENCE;

7. ALONG THE NORTHEASTERLY LINE OF RICHMOND TERRACE, NORTH 30 DEGREES - 08 MINUTES - 23 SECONDS WEST, A DISTANCE OF 46.42 FEET TO THE POINT AND PLACE OF BEGINNING OF LEASE AREA A.

CONTAINING 4,855 SQUARE FEET OR 0.111 ACRES

VERTICAL LIMITS OF THE LEASE AREA EXTEND FROM AN ELEVATION OF 3.93 FEET TO AN ELEVATION OF 27.21 FEET IN RICHMOND COUNTY HIGHWAY DATUM REPUTED TO BE 3.192 FEET ABOVE SEA LEVEL AT SANDY HOOK, WHICH IS A MINIMUM CLEARANCE OF 17'-6" FROM TOP OF RAIL AND 18'-0" FROM BOTTOM OF RAIL.

AND

BEGINNING AT POINT ON THE DIVIDING LINE OF LOT 15 AND LOT 20, BLOCK 2, SAID POINT BEING DISTANT THE FOLLOWING (3) THREE COURSES FROM A POINT FORMED BY THE INTERSECTION OF THE NORTHEASTERLY LINE OF RICHMOND TERRACE (VARIABLE WIDTH) WITH THE EXTENSION OF THE NORTHWESTERLY LINE OF WALL STREET (50 FEET WIDE):

A. ALONG SAID NORTHEASTERLY LINE SOUTH 30 DEGREES - 08 MINUTES - 23 SECONDS EAST, A DISTANCE OF 86.13 FEET TO THE POINT AND PLACE OF BEGINNING OF LOT 15, BLOCK 2, RUNNING THENCE THE FOLLOWING (2) TWO COURSES ALONG DIVIDING LINE OF LOT 15 AND LOT 20, BLOCK 2:

B. ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 38.28 FEET, AN ARC LENGTH OF 51.40 FEET, HAVING A CENTRAL ANGLE OF 76 DEGREES - 56 MINUTES - 11 SECONDS, BEARING A CHORD OF NORTH 15 DEGREES - 02 MINUTES - 12 SECONDS EAST, A DISTANCE OF 47.63 FEET TO A POINT, THENCE;

C. NORTH 59 DEGREES – 51 MINUTES – 37 SECONDS EAST, A DISTANCE OF 16.34 FEET TO THE POINT AND PLACE OF BEGINNING OF LEASE AREA A-1, RUNNING THENCE;

1. CONTINUING ALONG SAID DIVIDING LINE NORTH 59 DEGREES - 51 MINUTES - 37 SECONDS EAST, A DISTANCE OF 16.31 FEET TO A POINT, RUNNING THENCE, THROUGH THE INTERIOR OF LOT 15, BLOCK 2 FOR THE FOLLOWING (3) THREE COURSES:

2. SOUTH 30 DEGREES - 08 MINUTES - 23 SECONDS EAST, A DISTANCE OF 10.00 FEET TO A POINT, THENCE;

3. SOUTH 59 DEGREES - 51 MINUTES - 37 SECONDS WEST, A DISTANCE OF 16.31 FEET TO A POINT, THENCE;

4. NORTH 30 DEGREES - 08 MINUTES - 23 SECONDS WEST, A DISTANCE OF 10.00 FEET TO THE POINT AND PLACE OF BEGINNING OF LEASE AREA A-1.

CONTAINING 163 SQUARE FEET OR 0.004 ACRES

VERTICAL LIMITS OF THE LEASE AREA EXTEND FROM AN ELEVATION OF 3.93 FEET TO AN ELEVATION OF 25.83 FEET IN RICHMOND COUNTY HIGHWAY DATUM REPUTED TO BE 3.192 FEET ABOVE SEA LEVEL AT SANDY HOOK.

AND

BEGINNING AT POINT ON THE NORTHEASTERLY LINE OF RICHMOND TERRACE (VARIABLE WIDTH) SAID POINT BEING DISTANT ALONG SAID NORTHEASTERLY LINE THE FOLLOWING (2) TWO COURSES FROM A POINT FORMED BY THE INTERSECTION OF THE NORTHEASTERLY LINE OF RICHMOND TERRACE WITH THE EXTENSION OF THE NORTHWESTERLY LINE OF WALL STREET (50 FEET WIDE)

A. SOUTH 30 DEGREES - 08 MINUTES - 23 SECONDS EAST, A DISTANCE OF 86.13 FEET TO THE POINT AND PLACE OF BEGINNING OF LOT 15, BLOCK 2, RUNNING THENCE;

B. SOUTH 30 DEGREES – 08 MINUTES – 23 SECONDS EAST, A DISTANCE OF 46.42 FEET TO THE POINT AND PLACE OF BEGINNING OF LEASE AREA B, FROM SAID POINT OF BEGINNING RUNNING THENCE THROUGH THE INTERIOR OF LOT 15, BLOCK 2 FOR FOLLOWING (4) FOUR COURSES:

1. NORTH 59 DEGREES - 51 MINUTES - 37 SECONDS EAST, A DISTANCE OF 66.44 FEET TO A POINT, THENCE;

2. SOUTH 30 DEGREES - 08 MINUTES - 23 SECONDS EAST, A DISTANCE OF 123.66 FEET TO A POINT, THENCE;

3. ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 530.46 FEET, AN ARC LENGTH OF 15.78 FEET, HAVING A CENTRAL ANGLE OF 01 DEGREE - 42 MINUTES – 14 SECONDS, BEARING A CHORD SOUTH 31 DEGREES – 03 MINUTES – 09 SECONDS EAST, A CHORD DISTANCE OF 15.77 FEET TO A POINT, THENCE;

4. SOUTH 59 DEGREES - 51 MINUTES - 37 SECONDS WEST, A DISTANCE OF 66.69 FEET TO A POINT, THENCE;

5. ALONG THE NORTHEASTERLY LINE OF RICHMOND TERRACE, NORTH 30 DEGREES - 08 MINUTES - 23 SECONDS WEST, A DISTANCE OF 139.43 FEET TO THE POINT AND PLACE OF BEGINNING OF LEASE AREA B.

CONTAINING 9,264 SQUARE FEET OR 0.213 ACRES

VERTICAL LIMITS OF THE LEASE AREA EXTEND FROM AN ELEVATION OF 3.93 FEET TO AN ELEVATION OF 27.70 FEET IN RICHMOND COUNTY HIGHWAY DATUM REPUTED TO BE 3.192 FEET ABOVE SEA LEVEL AT SANDY HOOK, WHICH IS A MINIMUM CLEARANCE OF 17'-6" FROM TOP OF RAIL AND 18'-0" FROM BOTTOM OF RAIL.

AND

BEGINNING AT POINT ON THE NORTHEASTERLY LINE OF RICHMOND TERRACE (VARIABLE WIDTH) SAID POINT BEING DISTANT ALONG SAID NORTHEASTERLY LINE THE FOLLOWING (2) TWO COURSES FROM A POINT FORMED BY THE INTERSECTION OF THE NORTHEASTERLY LINE OF RICHMOND TERRACE WITH THE EXTENSION OF THE NORTHWESTERLY LINE OF WALL STREET (50 FEET WIDE)

A. SOUTH 30 DEGREES - 08 MINUTES - 23 SECONDS EAST, A DISTANCE OF 86.13 FEET TO THE POINT AND PLACE OF BEGINNING OF LOT 15, BLOCK 2, RUNNING THENCE;

B. SOUTH 30 DEGREES – 08 MINUTES – 23 SECONDS EAST, A DISTANCE OF 185.85 FEET TO THE POINT AND PLACE OF BEGINNING OF LEASE AREA C, FROM SAID POINT OF BEGINNING RUNNING THENCE THROUGH THE INTERIOR OF LOT 15, BLOCK 2 FOR FOLLOWING (4) FOUR COURSES:

1. NORTH 59 DEGREES - 51 MINUTES - 37 SECONDS EAST, A DISTANCE OF 66.69 FEET TO A POINT, THENCE;

2. ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 530.46 FEET, AN ARC LENGTH OF 68.56 FEET, HAVING A CENTRAL ANGLE OF 07 DEGREES - 24 MINUTES – 19 SECONDS, BEARING A CHORD SOUTH 35 DEGREES – 36 MINUTES – 26 SECONDS EAST, A CHORD DISTANCE OF 68.51 FEET TO A POINT, THENCE;

3. ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 318.77 FEET, AN ARC LENGTH OF 16.14 FEET, HAVING A CENTRAL ANGLE OF 02 DEGREES - 54 MINUTES – 03 SECONDS, BEARING A CHORD SOUTH 41 DEGREES – 43 MINUTES – 00 SECONDS EAST, A CHORD DISTANCE OF 16.14 FEET TO A POINT, THENCE;

4. SOUTH 51 DEGREES - 28 MINUTES - 52 SECONDS WEST, A DISTANCE OF 77.28 FEET TO A POINT, THENCE;

5. ALONG THE NORTHEASTERLY LINE OF RICHMOND TERRACE, NORTH 30 DEGREES - 08 MINUTES - 23 SECONDS WEST, A DISTANCE OF 95.27 FEET TO THE POINT AND PLACE OF BEGINNING OF LEASE AREA C.

CONTAINING 6,332 SQUARE FEET OR 0.145 ACRES

VERTICAL LIMITS OF LEASE AREA EXTEND FROM AN ELEVATION OF 3.93 FEET TO AN ELEVATION OF 28.06 FEET IN RICHMOND COUNTY HIGHWAY DATUM REPUTED TO BE 3.192 FEET ABOVE SEA LEVEL AT SANDY HOOK, WHICH IS A MINIMUM CLEARANCE OF 17'-6" FROM TOP OF RAIL AND 18'-0" FROM BOTTOM OF RAIL.

AND

BEGINNING AT POINT ON THE NORTHEASTERLY LINE OF RICHMOND TERRACE (VARIABLE WIDTH) SAID POINT BEING DISTANT ALONG SAID NORTHEASTERLY LINE THE FOLLOWING (2) TWO COURSES FROM A POINT FORMED BY THE INTERSECTION OF THE NORTHEASTERLY LINE OF RICHMOND TERRACE WITH THE EXTENSION OF THE NORTHWESTERLY LINE OF WALL STREET (50 FEET WIDE)

A. SOUTH 30 DEGREES - 08 MINUTES - 23 SECONDS EAST, A DISTANCE OF 86.13 FEET TO THE POINT AND PLACE OF BEGINNING OF LOT 15, BLOCK 2, RUNNING THENCE;

B. SOUTH 30 DEGREES – 08 MINUTES – 23 SECONDS EAST, A DISTANCE OF 281.12 FEET TO THE POINT AND PLACE OF BEGINNING OF LEASE AREA D, FROM SAID POINT OF BEGINNING RUNNING THENCE THROUGH THE INTERIOR OF LOT 15, BLOCK 2 FOR FOLLOWING (5) FIVE COURSES:

1. NORTH 51 DEGREES - 28 MINUTES - 52 SECONDS EAST, A DISTANCE OF 77.28 FEET TO A POINT, THENCE;

2. ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 318.77 FEET, AN ARC LENGTH OF 223.90 FEET, HAVING A CENTRAL ANGLE OF 40 DEGREES - 14 MINUTES – 38 SECONDS, BEARING A CHORD SOUTH 63 DEGREES – 17 MINUTES – 21 SECONDS EAST, A CHORD DISTANCE OF 219.33 FEET TO A POINT, THENCE;

3. SOUTH 16 DEGREES – 58 MINUTES – 16 SECONDS WEST, A DISTANCE OF 41.65 FEET TO A POINT, THENCE;

4. ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 297.34 FEET, AN ARC LENGTH OF 88.71 FEET, HAVING A CENTRAL ANGLE OF 17 DEGREES - 05 MINUTES – 41 SECONDS, BEARING A CHORD SOUTH 84 DEGREES – 49 MINUTES – 14 SECONDS EAST, A CHORD DISTANCE OF 88.39 FEET TO A POINT, THENCE;

5. ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 252.36 FEET, AN ARC LENGTH OF 44.94 FEET, HAVING A CENTRAL ANGLE OF 10 DEGREES - 12 MINUTES – 09 SECONDS, BEARING A CHORD NORTH 80 DEGREES – 52 MINUTES – 44 SECONDS EAST, A CHORD DISTANCE OF 44.88 FEET TO A POINT, THENCE;

6. ALONG THE DIVIDING LINE OF LOT 15 AND LOT 10, BLOCK 2, SOUTH 36 DEGREES - 23 MINUTES - 58 SECONDS WEST, A DISTANCE OF 234.00 FEET TO A POINT, RUNNING THENCE, ALONG THE DIVIDING LINE OF LOT 15 AND LOT 45, BLOCK 2 FOR THE FOLLOWING (2) TWO COURSES:

7. NORTH 30 DEGREES – 08 MINUTES – 23 SECONDS WEST, A DISTANCE OF 0.17 FEET, TO A POINT, THENCE;

8. ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 46.66 FEET, AN ARC LENGTH OF 92.39 FEET, HAVING A CENTRAL ANGLE OF 113 DEGREES - 27 MINUTES – 20 SECONDS, BEARING A CHORD NORTH 86 DEGREES – 52 MINUTES – 03 SECONDS WEST, A CHORD DISTANCE OF 78.02 FEET TO A POINT, THENCE;

9. ALONG THE NORTHEASTERLY LINE OF RICHMOND TERRACE, NORTH 30 DEGREES - 08 MINUTES - 23 SECONDS WEST, A DISTANCE OF 318.11 FEET TO THE POINT AND PLACE OF BEGINNING OF LEASE AREA D.

CONTAINING 56,978 SQUARE FEET OR 1.308 ACRES

VERTICAL LIMITS OF THE LEASE AREA EXTEND FROM AN ELEVATION OF 3.93 FEET TO AN ELEVATION OF 28.36 FEET IN RICHMOND COUNTY HIGHWAY DATUM REPUTED TO BE 3.192 FEET ABOVE SEA LEVEL AT SANDY HOOK, WHICH IS A MINIMUM CLEARANCE OF 17’-6” FROM TOP OF RAIL AND 18’-0” FROM BOTTOM OF RAIL.

EXCEPTED FROM THE ABOVE DESCRIBED VERTICAL LIMITS ARE THE FOLLOWING 2 PARCELS.

BEGINNING AT POINT ALONG THE NORTHEASTERLY LINE OF RICHMOND TERRACE SAID POINT BEING DISTANT SOUTH 30 DEGREES - 08 MINUTES - 23 SECONDS EAST, A DISTANCE OF 192.94 FEET FROM SAID POINT AND PLACE OF BEGINNING FOR S.I.R.T.O.A. LEASE AREA D RUNNING THENCE FROM SAID POINT AND PLACE OF BEGINNING OF EXCLUSION AREA 1 THROUGH THE INTERIOR OF S.I.R.T.O.A. LEASE AREA D FOR THE FOLLOWING (2) TWO COURSES:

1. NORTH 40 DEGREES - 29 MINUTES - 12 SECONDS EAST, A DISTANCE OF 89.04 FEET TO A POINT, THENCE;

2. SOUTH 30 DEGREES - 08 MINUTES - 23 SECONDS EAST, A DISTANCE OF 189.52 FEET TO A POINT, THENCE;

3. ALONG THE DIVIDING LINE OF LOT 15 AND LOT 10, BLOCK 2, SOUTH 36 DEGREES - 23 MINUTES - 58 SECONDS WEST, A DISTANCE OF 20.36 FEET TO A POINT, RUNNING THENCE, ALONG THE DIVIDING LINE OF LOT 15 AND LOT 45, BLOCK 2 FOR THE FOLLOWING (2) TWO COURSES:

4. NORTH 30 DEGREES - 08 MINUTES - 23 SECONDS WEST, A DISTANCE OF 0.17 FEET TO A POINT, THENCE;

5. ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 46.66 FEET, AN ARC LENGTH OF 92.39 FEET, HAVING A CENTRAL ANGLE OF 113 DEGREES - 27 MINUTES - 20 SECONDS, BEARING A CHORD NORTH 86 DEGREES - 52 MINUTES - 03 SECONDS WEST, A CHORD DISTANCE OF 78.02 FEET TO A POINT, THENCE;

6. ALONG SAID NORTHEASTERLY LINE OF RICHMOND TERRACE NORTH 30 DEGREES - 08 MINUTES - 23 SECONDS WEST, A DISTANCE OF 125.21 FEET TO THE POINT AND PLACE OF BEGINNING OF EXCLUSION AREA 1.

CONTAINING 15,043 SQUARE FEET OR 0.345 ACRES

AND

BEGINNING AT POINT ON THE NORTHERLY LINE OF THE S.I.R.T.O.A. LEASE PARCEL D SAID PIOINT BEING THE FOLLOWING TWO COURSES FROM SAID POINT AND PLACE OF BEGINNING FOR S.I.R.T.O.A. LEASE AREA D;

A. NORTH 51 DEGREES - 28 MINUTES - 52 SECONDS EAST, A DISTANCE OF 77.28 FEET TO A POINT, THENCE;

B. ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 318.77 FEET, AN ARC LENGTH OF 43.82 FEET, TO THE POINT AND PLACE OF BEGINNING OF EXCLUSION AREA 2, THENCE;

1. ALONG SAID NORTHERLY LINE OF LEASE AREA D ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 318.77 FEET, AN ARC LENGTH OF 20.13 FEET, HAVING A CENTRAL ANGLE OF 03 DEGREES - 37 MINUTES – 06 SECONDS, BEARING A CHORD SOUTH 52 DEGREES – 51 MINUTES – 08 SECONDS EAST, A CHORD DISTANCE OF 20.13 FEET TO A POINT, THENCE THE FOLLOWING (3) THREE COURSES THROUGH THE INTERIOR OF S.I.R.T.O.A. LEASE AREA D:

2. SOUTH 43 DEGREES – 36 MINUTES – 14 SECONDS WEST, A DISTANCE OF 63.45 FEET TO A POINT, THENCE;

3. NORTH 46 DEGREES – 23 MINUTES – 46 SECONDS WEST, A DISTANCE OF 20.00 FEET TO A POINT, THENCE;

4. NORTH 43 DEGREES – 36 MINUTES – 14 SECONDS EAST, A DISTANCE OF 61.18 FEET TO THE POINT AND PLACE OF BEGINNING OF EXCLUSION AREA 2.

CONTAINING 1,244 SQUARE FEET OR 0.029 ACRES

For Information Only: Said premises described in this Exhibit A are known as 1 Richmond Terrace and Borough Place, Staten Island, NY and designated as Block 2, Lot 15, as shown on the Tax Map of the City of New York, County of Richmond.

*(Schematics referred to above in this Exhibit A attached hereto)*

# EXHIBIT B

## PROJECT COMMITMENTS

## Exhibit B-1

| PROJECT COMMITMENTS | |
|---|---|
| **Project Overview** | |
| **Parking Garage** | A parking garage of approximately 540,000 square feet, containing at least 1,250 parking spaces to replace the 786 parking spaces on the Premises as of the Effective Date, and to add additional parking spaces as required by the approvals/zoning for the new uses of the Project. The parking garage is shown in the conceptual designs attached to this exhibit. |
| **Retail Portion** | A designer outlet retail center with a minimum of 289,000 square feet of leasable retail space. The outlet retail center is shown in the conceptual designs attached to this exhibit. |
| **Hotel and Hotel Portion** | A 200-key/room hotel with banquet facility of at least 102,000 square feet total (where such banquet facility is at least 12,000 square feet. The hotel is shown in the conceptual designs attached to this exhibit. |
| **Banquet Facility and Banquet Facility Portion** | A banquet facility of at least 12,000 square feet (which may be used for other purposes if agreed to in writing by Landlord and Lease Administrator). The banquet facility is shown in the conceptual designs attached to this exhibit. |
| **Full Build** | The full Project will be approximately 972,000 square feet and is shown in the conceptual designs attached to this exhibit. |
| **Off-Premises Improvements** | Relocation of Bank Street, construction of a waterfront plaza, reconstruction of the stair case to the Ferry Terminal and installation of elevator(s) on the Premises serving that staircase. |
| **Description of Phases of Development** | |
| **Phase 1 Development** | A parking garage containing at least 1,250 parking spaces to replace the 786 parking on the Premises as of the Effective Date, and to add additional parking spaces as required by the approvals/zoning for the new uses of the Project. |

| PROJECT COMMITMENTS | | | | |
|---|---|---|---|---|
| **Phase 2 Development** | A designer outlet retail center with a minimum of 289,000 square feet of leasable retail space] and the Off-Premises Improvements. | | | |
| **Phase 3 Development** | A 200-key/room hotel and banquet facility of at least 102,000 square feet total (where such banquet facility is at least 12,000 square feet) | | | |
| **Development Commitments** | | | | |
| | **Phase 1 Development** | **Phase 2 Development** | **Phase 3 Development** | **Full Build** |
| Construction Commencement Date | By December 31, 2014 | By December 31, 2014 | By the date that is the second (2nd) anniversary of the Substantial Completion Date of the Phase 2 Development. | --- |
| Scheduled Completion Date | By the date that is the second (2nd) anniversary of the Construction Commencement Date for the Phase 1 Development. | By December 31, 2018 | By the Full Build Scheduled Completion Date. | By the Full Build Scheduled Completion Date. |
| Total square feet of Building space (minimum) | 540,000 | 289,000 | Hotel and Banquet Facility combined: 102,000<br>Banquet Facility: 12,000 | 972,000 |
| *Total square feet available for retail use (minimum)* | --- | 289,000 | 12,000 (if Banquet Facility is used for retail purposes) | 301,000 |
| Total number of Hotel rooms | --- | --- | 200 keys | 200 keys |
| Submission of proposed Schematics | By January 30, 2014 | By the date that is no less than 120 days before starting any Construction Work for the Phase 2 Development | By the date that is no less than 120 days before starting any Construction Work for the Phase 3 Development | --- |
| Total number of parking spaces (minimum) made available on or off the Premises | Prior to completion of the Phase 2 Development, no less than 786. | Prior to completion of the Phase 2 Development, no less than 786.<br>After completion of the Phase | No less than 1,250 on the Premises. | No less than 1,250 on the Premises. |

| PROJECT COMMITMENTS | | | | |
|---|---|---|---|---|
| | | 2 Development, no less than 1,250 on the Premises. | | |
| | | | | |
| | | | | |
| Sustainability Plan | Strive to incorporate energy conservation and Project design characteristics, equipment and materials capable of maximizing LEED points and Project energy efficiency where feasible. | | | |
| ULURP | The Project shall be built in a manner consistent with the Approved ULURP Application. | | | |
| **Operating Commitments** | | | | |
| Opening Day | Phase 1 Development: Opened to the public during the hours set forth in Section 23.3(b) of this Lease within thirty (30) days of the Substantial Completion Date for the Phase 1 Development.<br><br>Phase 2 Development: Opened to the public during the Required Hours within ninety (90) days of the Substantial Completion Date of the Phase 2 Development.<br><br>Phase 3 Development: Opened to the public during hours customary to hotels similar to the Hotel within ninety (90) days of the Substantial Completion Date of the Phase 3 Development. | | | |
| **Traffic Mitigation** | | | | |
| Traffic Operations | As more fully set forth in the FEIS, it is anticipated that the Project would result in significant adverse traffic impacts at 16 of the 28 intersections analyzed in the FEIS (see below).<br>• Richmond Terrace and Staten Island Ferry Viaduct (cars)<br>• Richmond Terrace and Staten Island Ferry Viaduct (buses)<br>• Richmond Terrace and Wall Street<br>• Richmond Terrace and Hamilton Avenue<br>• Richmond Terrace and Jersey Street<br>• Bay Street and Victory Boulevard<br>• Bay Street and Vanderbilt Avenue<br>• Bay Street and Hylan Boulevard<br>• Bay Street and School Road<br>• Victory Boulevard and Jersey Street<br>• Victory Boulevard and Clove Road.<br>• Victory Boulevard and Slosson Avenue<br>• SIE/I-278 EB Exit Ramp and Lortel Avenue and Slosson Avenue<br>• Willow Road East and Forest Avenue<br>• Forest Avenue and Jewett Avenue | | | |

- Richmond Terrace and Schuyler Street.

The Developer and New York Wheel, LLC, as co-applicants (together, the "Applicants") shall work with DOT to implement the following mitigation measures, as more fully detailed in the FEIS, to fully mitigate the impacts at the intersections listed above, with the exception of the Richmond Terrace and Staten Island Ferry Viaduct (cars) and Richmond Terrace and Staten Island Ferry Viaduct (buses) intersections, which would remain partially mitigated and unmitigated respectively. Such mitigation measures shall consist of:

- standard traffic capacity improvement measures, such as lane restriping, prohibiting turning movements, revised signal timing, and modified traffic signals;
- modifying and restriping the Wall Street Ramp;
- installation of a new traffic signal at Richmond Terrace and Schuyler Street;
- reversing the street direction of Wall Street and Schuyler Street between Richmond Terrace and Stuyvesant Place contingent upon NYCEDC obtaining final approval from NYPD and FDNY; and
- Traffic Enforcement Agent ("TEA") for a defined period of time prior to Staten Island Yankee Saturday evening home games at Richmond Terrace and Hamilton Avenue.

Conceptual plans for the proposed project improvements and proposed mitigation measures have been reviewed by DOT and agreed to in concept; however, further DOT design review is required. In accordance with this Lease, Applicants will address DOT's issues and submit detailed design/construction drawings including the Wall Street Ramp and adjacent structure for DOT review and approval. DOT will participate in the review process relating to proposed geometric reconfiguration, reconstruction, signal design/installation and construction drawings. The developers/EDC/lead agency should submit all of the required drawings/design as per AASHTO and DOT specifications for DOT review and approval. The Applicants/NYCEDC/lead agency will be responsible for all costs associated with the design and construction of the project improvement and mitigation measures. The Applicants/NYCEDC/lead agency should inform NYCDOT six months prior to the completion and occupancy of each development site.

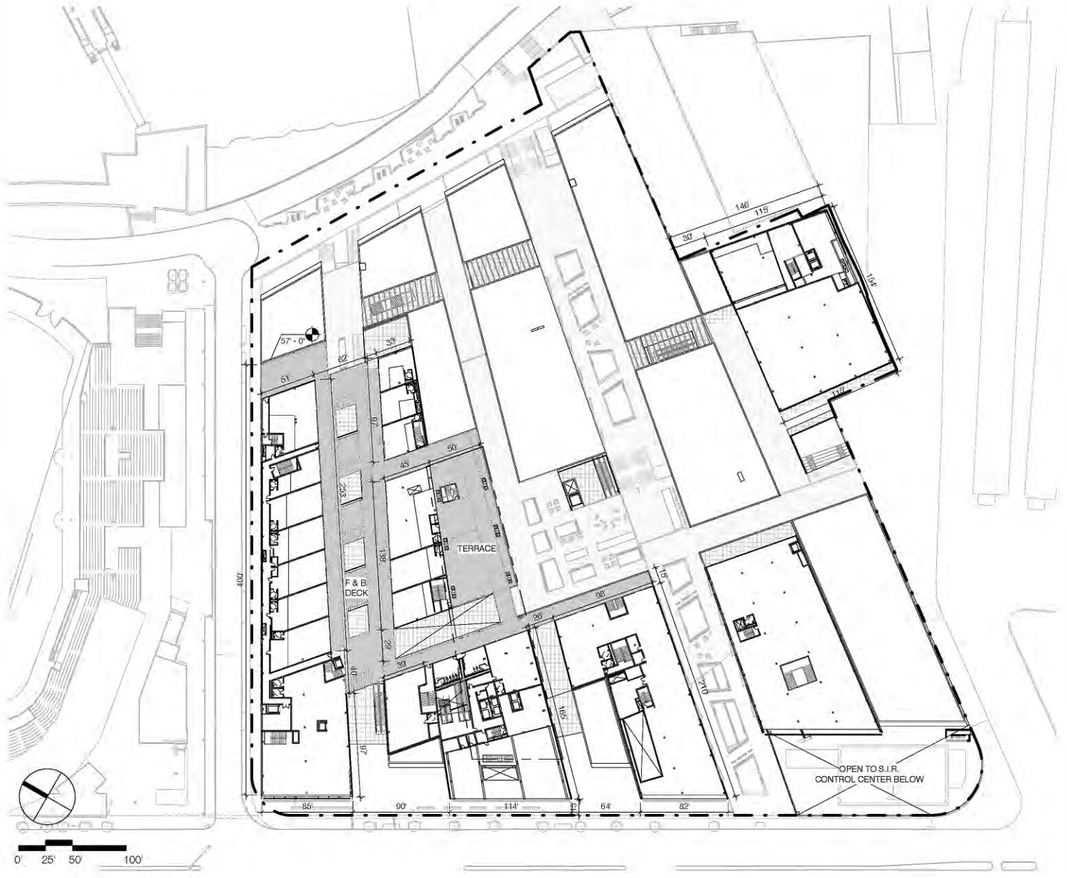
In addition to the mitigation measures set forth above, the Developer shall conduct a post opening survey and the Applicants shall conduct a monitoring plan after the Project is fully built and occupied at their expense. Before commencing such post opening survey and monitoring plan the Applicants shall submit a detailed scope of work for DOT review and approval.

The Applicants will be responsible for costs associated with the design and implementation of recommended improvements identified by the monitoring plan and approved by DOT in consultation with the Applicants and NYCEDC. Improvements, if

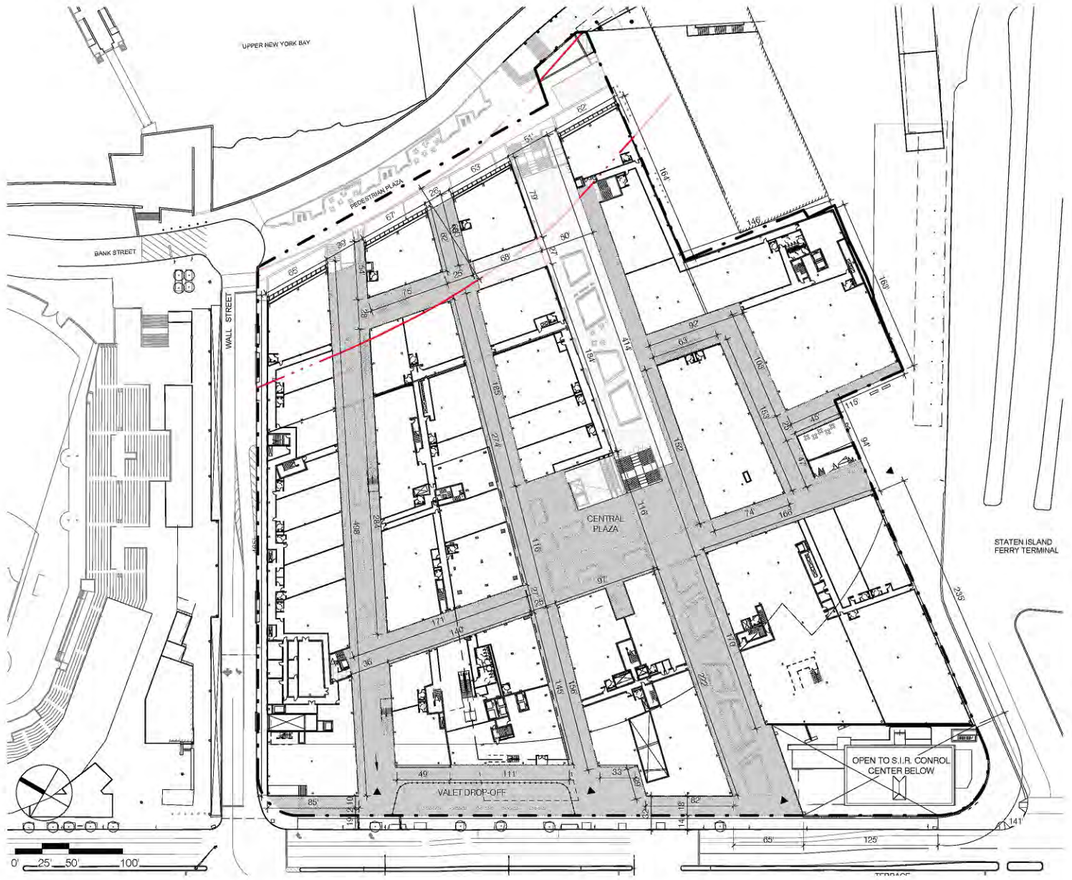
| PROJECT COMMITMENTS | |
|---|---|
| | warranted, will be limited to signal timing and/or signal head modifications to accommodate phasing changes, restriping, new or modified signage and parking regulation changes. NYCEDC will be responsible for other costs associated with the design and/or implementation of recommended improvements identified by the monitoring plan and approved by DOT in consultation with the Applicants and NYCEDC. These improvements, if warranted, will be limited to one traffic signal in addition to the signal already committed to as part of the proposed mitigation, and if warranted, up to 3 TEAs on weekday evenings and weekends during peak tourist/shopping periods of the year. |
| Construction | As detailed in the FEIS, after the second quarter of 2015, a significant adverse traffic impact would occur at the Richmond Terrace and Jersey Street intersection during the Weekday PM peak hour of the peak construction period condition, when access to the Premises (and the site on which the New York Wheel will be undertaken) would be open on Richmond Terrace and Jersey Street, Nicholas Street, and Wall Street. This impact could be mitigated by advancing the proposed traffic mitigation at this location, which would consist of the northbound/southbound left-turn westbound right-turn overlap phase being eliminated and the reallocation of signal timing for each of the four peak hours analyzed.<br><br>To ensure that the construction of the Project would result in the lowest practicable diesel particulate matter ("DPM") emissions, the Project will implement an emissions reduction program for all construction activities, including: diesel equipment reduction; clean fuel; best available tailpipe reduction technologies; utilization of newer equipment; source location; dust control; and idle restriction. |
| Noise | The west facing facades of the Project (including the Hotel) will be designed to provide a composite Outdoor Indoor Transmission Class ("OITC") rating greater than or equal to the attenuation requirements listed which will provide sufficient attenuation to achieve the CEQR interior noise level requirements. |

**Exhibit B-2 - Preliminary Site Plan**

*(attached hereto)*




LEVEL 4 - ILLUSTRATIVE PLAN | 1/64" = 1'-0" | 4 | Z-112




LEVEL 3 - ILLUSTRATIVE PLAN | 1/64" = 1'-0" | 3 | Z-112

NOTES:

1. Building Materials are for illustrative purposes only and are subject to change;

2. Stairs, and stair detailing may change based upon coordination with DOB/FDNY for egress but will not decrease in width;

3. kiOSKs are permitted in all private open spaces;

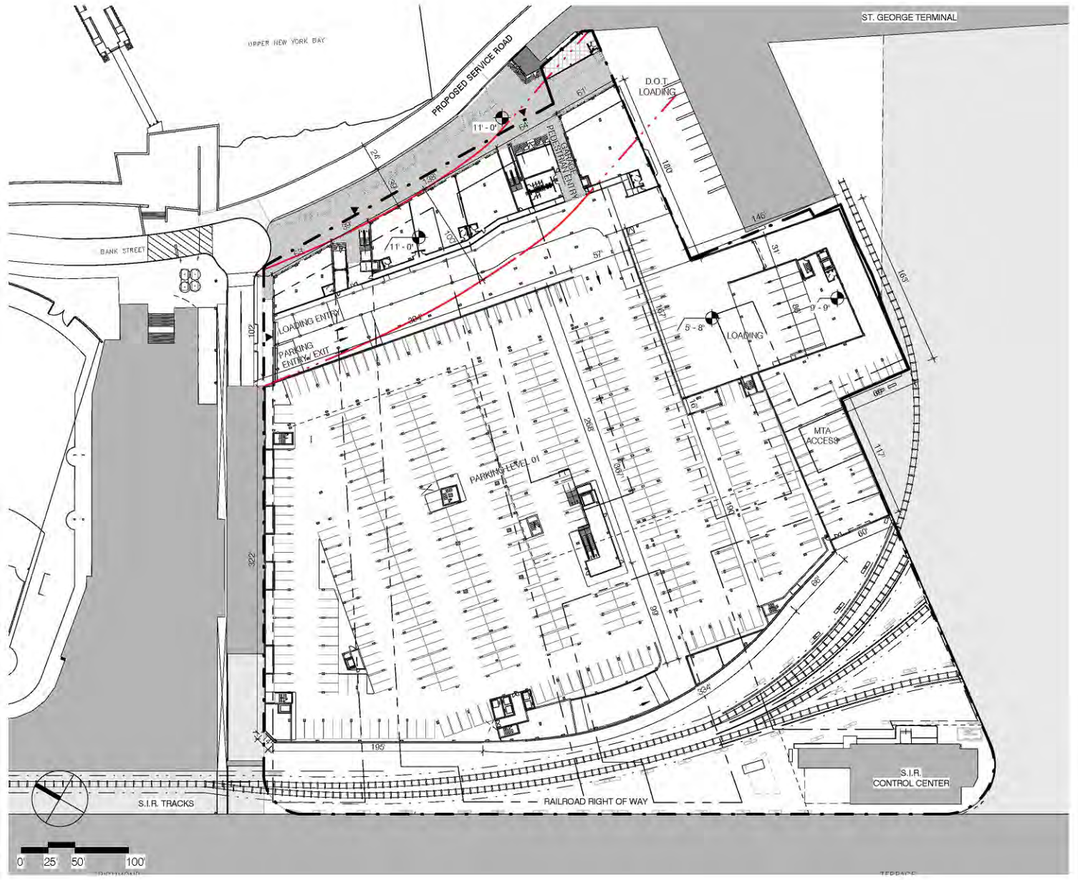
4. The bulk envelopes of the retail buildings may be reduced in depth and or width up to 5 feet. The height of the building may be between up to 5ft above the max elevation as shown on the plans and the minimum height as shown on the plans. Mechanical and elevator bulkheads may protrude 20 feet above rooftop elevations indicated on drawings;

5. The location of escalators and elevators located directly adjacent to Publicly Accessible Open Spaces indicated on Drawing Z-135 may change in location by up to 100 feet;

6. All elevations shown are in relation to the Staten Island Highway Datum (SIHD);

7. Locations of Doors, windows and façade detailing are for illustrative purposes only.


LEVEL 2 ILLUSTRATIVE PLAN | 1/64" = 1'-0" | 2 | Z-112




LEVEL 1 - P1 ILLUSTRATIVE PLAN | 1/64" = 1'-0" | 1 | Z-112

**LEGEND**

- EXTERIOR SPACE
- REFERENCE PLANE BOUNDARY
- PROJECT ENTRY POINT


ROOF LEVEL - PLAN | 1/64" = 1'-0" | 3 | Z-113

NOTES:

1. Building Materials are for illustrative purposes only and are subject to change;

2. Stairs, and stair detailing may change based upon coordination with DOB/FDNY for egress but will not decrease in width;

3. kiOSKs are permitted in all private open spaces;

4. The bulk envelopes of the retail buildings may be reduced in depth and or width up to 5 feet. The height of the building may be between up to 5ft above the max elevation as shown on the plans and the minimum height as shown on the plans. Mechanical and elevator bulkheads may protrude 20 feet above rooftop elevations indicated on drawings;

5. The location of escalators and elevators located directly adjacent to Publicly Accessible Open Spaces indicated on Drawing Z-135 may change in location by up to 100 feet;

6. All elevations shown are in relation to the Staten Island Highway Datum (SIHD);

7. Locations of Doors, windows and façade detailing are for illustrative purposes only;

8. The developer shall have the ability to build the hotel as a second phase of the project. The developer shall build no less than 90,000 sq. ft. and no more than 130,000 sq. ft. of hotel floor area. Such hotel space shall be located as shown on drawing 2 of Z-113, but the width and or depth of the envelope may be reduced or increased by 5 feet. The height of the building may be between up to 5ft above the max elevation as shown on the plans and the minimum height as shown on the plans.


LEVEL 6 - PLAN | 1/64" = 1'-0" | 2 | Z-113


LEVEL 5 - PLAN | 1/64" = 1'-0" | 1 | Z-113

LEGEND

- EXTERIOR SPACE
- REFERENCE PLANE BOUNDARY
- PROJECT ENTRY POINT

# EXHIBIT C

## PRE-DEVELOPMENT AGREEMENT

**Pre-Development Agreement**

*(attached hereto)*

**Execution Copy**

# PRE-DEVELOPMENT AGREEMENT

**between**

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION**

**and**

**ST. GEORGE OUTLET DEVELOPMENT LLC**

Premises:

Parts of Lots 1, 5 and 20 at Block 2
in the Borough of Staten Island, County of Richmond,
City and State of New York

Dated as of August 20, 2012

LDCMT-22-407
St. George – South Site

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# PRE-DEVELOPMENT AGREEMENT

This PRE-DEVELOPMENT AGREEMENT (this "Agreement"), dated as of this 20th day of August, 2012 (the "Commencement Date"), is made by and between NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION, a local development corporation organized pursuant to Section 1411 of the New York State Not-for-Profit Corporation Law ("NYCEDC"), and ST. GEORGE OUTLET DEVELOPMENT LLC a New York limited liability company ("Developer"; and together with NYCEDC, the "Parties").

## RECITALS

WHEREAS, the City of New York ("City") is the owner of good and marketable fee title in and to that certain real property (including all buildings, structures and/or improvements now or hereafter located thereat) designated, as of the Commencement Date, as Parts of Lots 1, 5 and 20 at Block 2 on the Tax Map for the Borough of Staten Island, as more particularly described in Exhibit A (Premises) attached hereto and incorporated herein (the "Premises");

WHEREAS, the City desires to encourage the simultaneous redevelopment of both the Premises and certain portions of real property owned by the City to the north of the Premises, (the "North Site"), each as more particularly described in Exhibit B (St. George Project Locations) attached hereto, in each case so as to complement and bolster economic growth in St. George, Staten Island, and the City, to connect to and complement the area's existing waterfront amenities and other assets, and to improve the environmental quality of the St. George waterfront while being sensitive to the natural environment;

WHEREAS, the City has retained NYCEDC pursuant to that certain Amended and Restated Maritime Contract dated as of June 30, 2011 (the "NYCEDC Contract") to perform certain economic development services described therein;

WHEREAS, to facilitate the development of the Premises, and consistent with the NYCEDC Contract, NYCEDC issued a Request for Expressions of Interest released on August 11, 2011 (the "RFEI") with respect to the Premises and certain other property in St. George, Staten Island;

WHEREAS, based on the responses to the RFEI and certain supplementary information and materials submitted to NYCEDC in connection therewith, including the proposal and supplementary information and materials submitted by BFC Partners, L.P., a New York limited partnership ("BFC"), NYCEDC desires to select Developer to undertake the development of the Premises, which development shall include a minimum of 300,000 square feet of retail (including food service), as well as parking facilities, and such other commercial uses as approved in ULURP (the "Project"), effective upon the Commencement Date and subject to the terms and conditions set forth herein;

WHEREAS, the principals of BFC, Donald Capoccia, Joseph Ferrara and Brandon Baron (together, the "Developer Principals") caused Developer to be formed on or about August 10, 2012, as an entity wholly-owned by the Developer Principals;

WHEREAS, in furtherance of the Project, the Parties anticipate that Developer will lease the Premises from the City pursuant to an Agreement of Lease (the "Lease") in substantially the form attached hereto as Exhibit C (Form of Lease) and that NYCEDC will administer the Lease and act for and on behalf of the City with respect to the City's proprietary interest in the Premises;

WHEREAS, the Lease, subject to required approval by the City and Developer, will be executed and delivered substantially in the form attached hereto at the Closing in accordance with this Agreement;

WHEREAS, each of the Parties desires to enter into this Agreement to set forth the conditions for the execution and delivery of the Lease and all other actions and transactions necessary or appropriate to consummate the Closing; and

WHEREAS, Developer has paid or caused to be paid to NYCEDC all amounts required to be paid as of the Commencement Date in accordance with this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the covenants of the Parties set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

## ARTICLE 1.
## DEFINITIONS AND INTERPRETATION

Section 1.1 Definitions. As used in this Agreement and except as otherwise provided, capitalized terms shall have the meanings set forth in this Section 1.1. Capitalized terms not otherwise defined below shall have the respective meanings assigned thereto in the Lease.

"Administrative Fee" has the meaning provided in Section 3.1 hereof.

"Agreement" has the meaning provided in the Preamble of this Agreement.

"Appraisal" has the meaning provided in Section 5.15 hereof.

"Approved Credit Amount" has the meaning provided in Section 5.1(d)(iv) hereof.

"Approved Estimated Costs" has the meaning provided in Section 5.1(d) hereof.

"Automatic Credit Amount" has the meaning provided in Section 5.1(d)(ii) hereof.

"Background Questionnaire Forms" has the meaning provided in Section 5.6 hereof.

"Ballpark Lease" " means that certain Stadium Lease dated as of December 7, 2000, as amended and as may be amended from time to time, between the City and NYCEDC, as assigned by NYCEDC to Staten Island Minor League Holdings, LLC and as further assigned to Nostalgic Partners, LLC, and as may be further assigned from time to time.

"Ballpark Lease Amendment Documents" means an amendment to the Ballpark Lease as necessary to accurately reflect, in such Ballpark Lease, the Project and the transactions contemplated in the Transaction Agreements, and such other agreements or instruments among

or between NYCEDC, the City, Developer, the North Site Developer and/or the tenant under the Ballpark Lease, as NYCEDC or the City considers necessary or prudent to resolve any issues concerning the provision, operation and management of parking on or related to the Premises and/or the North Site, in any case as such agreements shall be consistent with the Ballpark Lease and Legal Requirements, and shall not impose any additional material obligations on the Project or the Premises that are greater than those set forth in the Ballpark Lease as of the Commencement Date.

"BFC" has the meaning provided in the Recitals of this Agreement.

"Business Day" shall mean a day that is not either Saturday or Sunday and is not a holiday observed by the City.

"CEQR" has the meaning provided in Section 3.3(b) hereof.

"City" has the meaning provided in the Recitals of this Agreement.

"Closing" has the meaning provided in Section 8.1 hereof.

"Closing Conditions" shall mean, collectively, the Developer Closing Obligations and the Other Closing Obligations.

"Closing Date" has the meaning provided in Section 8.1 hereof.

"Closing Date Guaranty" has the meaning provided in Section 7.8 hereof.

"Commencement Date" has the meaning provided in the Preamble of this Agreement.

"Credit Claims" has the meaning provided in the Lease.

"DCP" has the meaning provided in Section 5.3 hereof.

"Default" means any specified condition or event, or failure of any specified condition or event which would constitute, after notice and lapse of cure period (if any is required) any Developer Default.

"DEIS" has the meaning provided in Section 5.10(c) hereof.

"Developer" has the meaning provided in the Preamble of this Agreement.

"Developer Closing Obligations" has the meaning provided in Section 9.1 hereof.

"Developer Default" has the meaning provided in Section 17.1 hereof.

"Developer Principals" has the meaning provided in the Recitals of this Agreement.

"Development Security" means (A) as of the Commencement Date, the irrevocable standby letter of credit, issued August 17, 2012 by Wells Fargo Bank, National Association, a copy of which is attached hereto at Exhibit D (Copy of Development Security), and (B) as of the date following the expiration or termination of such irrevocable standby letter of credit, (i) a performance or completion bond, (ii) a letter of credit or letter of guaranty from a bank or financial institution, (iii) a payment guaranty, or (iv) any other alternative form of security, subject to NYCEDC's reasonable determination that such security provides NYCEDC and the City with sufficient protection and guarantees of the development of the Project and Developer's timely performance of its obligations under the Transaction Agreements; provided, that in any case such bond, letter, guaranty or other form of security shall (A) name NYCEDC as the obligee, sole payee or beneficiary thereunder or shall otherwise identify NYCEDC as the

Person for whose benefit such bond, letter, guaranty or other form of security has been issued, (B) obligate the issuer thereof to pay NYCEDC a sum of no less than One Million Dollars ($1,000,000) on demand in immediately available funds in accordance with the terms therein, (C) be issued by a creditworthy Person acceptable to NYCEDC, and (D) otherwise be acceptable to NYCEDC in its sole discretion and consistent with the provisions of this Agreement, including Section 7.2.

"Documents" means any documents, studies, reports, data, drawings, schematics, plans, specifications, analyses, evaluations or other written information or materials in hard copy or electronic forms.

"DOT" means the City's Department of Transportation.

"Draft EAS Submission Outside Date" has the meaning provided in Section 5.10(b) hereof.

"Election Notice" has the meaning provided in Section 5.1(d)(iv) hereof.

"EAS" has the meaning provided in Section 5.10(b).

"Environmental Consultant" means AKRF, Inc., a New York corporation, or such other reputable environmental consultant or engineer approved in advance by NYCEDC.

"Environmental Laws" means any and all federal, state or local environmental, health and/or safety-related laws, regulations, standards, decisions of the courts, permits or permit conditions, relating to the protection of the environment, including those regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Substances, currently existing or as amended or adapted in the future which are or become applicable to Developer or the Premises.

"Expiration Date" shall mean the Initial Expiration Date, or such later date to which the date of the Closing has been extended pursuant to an express provision of this Agreement; provided, however, notwithstanding anything herein to the contrary, in no event shall Developer have the right to extend the Expiration Date beyond the Outside Date.

"Estimated Remediation Costs" means the estimated costs and expenses of undertaking all Remediation Work at the Premises, to the extent such estimated costs and expenses exceed the customary costs of removing normal urban fill (i.e. without any Hazardous Substances or underground storage tanks) common to the City and County of Richmond (as such customary costs shall have been provided to Developer by NYCEDC upon request), as such estimated costs and expenses are set forth in the Remediation Budget delivered to NYCEDC in accordance with Section 5.1(c).

"Extended Closing Date" has the meaning provided in Section 8.2(a) hereof.

"Extension" has the meaning provided in Section 8.2(a) hereof.

"Extension Fee" has the meaning provided in Section 8.2(a) hereof.

"FEIS" has the meaning provided in Section 5.10(c) hereof.

"Final Closing Date" means a Closing Date which has been adjourned or extended in accordance with Section 8.2.

"First Credit Amount" has the meaning provided in Section 5.1(d)(iii) hereof.

"First Good Faith Deposit" has the meaning provided in Section 7.1(a)(i) hereof.

"First Threshold Amount" has the meaning provided in Section 5.1(d)(i).

"Good Faith Deposits" means the First Good Faith Deposit and the Second Good Faith Deposit.

"Governmental Authorities" shall mean the United States of America, the State of New York, the City, and any agency, department, legislative body, commission, board, bureau, instrumentality or political subdivision of any of the foregoing, now existing or hereafter created, having or claiming jurisdiction over the Premises or any portion thereof or any street, road, avenue or sidewalk constituting a part of, or in front of, the Premises, or any vault in or under the Premises; provided, that the term Governmental Authority shall not include NYCEDC or the City to the extent the City is acting solely in its proprietary capacity under the Lease (and not in its official governmental capacity).

"Hazardous Substances" shall mean any (i) "hazardous substance" as defined under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq., or (ii) "hazardous waste" as defined under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., or (iii) "hazardous materials" as defined under the Hazardous Substances Transportation Authorization Act, 49 U.S.C. Section 5101 et seq., or (iv) "hazardous waste" as defined under New York Environmental Conservation Law, Section 27-0901 et seq., or (v) "hazardous substance" as defined under the Clean Water Act, 33 U.S.C. Section 1321 et seq., and the regulations adopted and publications promulgated pursuant to the above, or (vi) other chemical, substance or material which is now or becomes in the future listed, defined or regulated in any manner by any Environmental Law based upon, directly or indirectly, its properties or effects.

"Hazardous Substance Condition" means the presence at, on, beneath, or within any portion of the Premises of any Hazardous Substance and/or any underground or subsurface storage tanks or other similar storage vessel, or any Hazardous Substance and/or underground or subsurface storage tanks or other similar storage vessel affecting any part of the Premises.

"Initial Exercise Period" has the meaning provided in Section 6.1 hereof.

"Initial Exercise Option" has the meaning provided in Section 6.1 hereof.

"Initial Expiration Date" shall mean December 31, 2013; provided, that the same shall be subject to extension for Unreasonable Delay (pursuant to Section 7.5), North Site Delay (pursuant to Section 5.18) or a Paid Extension (pursuant to Section 8.2(a)).

"Initial Indication Notice" has the meaning provided in Section 5.1(c) hereof.

"Invasive Testing Due Diligence Period" has the meaning provided in Section 5.1 hereof.

"Investigations" means any invasive or intrusive physical or environmental due diligence undertaken by or on behalf of BFC or Developer on or at the Premises in connection with the Project in accordance with this Agreement and the Licenses, including environmental testing, conducting of the "Phase II" study, measuring, investigating, digging of test pits, taking soil borings, undertaking soil or other analysis, and the removal and repair of asphalt, concrete or any fixtures as necessary to undertake the foregoing.

"Lease" has the meaning provided in the Recitals of this Agreement.

"Lead Agency" means the City's Department of Small Business Services.

"Legal Requirements" means any and all applicable present and future statutes, laws, ordinances, codes, rules, regulations, orders or the like made by any Governmental Authority, now existing or hereafter created, which are applicable to Developer, the Project or the Premises.

"Licenses" means (i) the revocable license agreement to be entered into between the City and BFC, and (ii) the license or other instrument to be entered into between DOT and BFC, as each of such revocable license and such license or other instrument are concurrently entered into after the Commencement Date and collectively authorize BFC and its designees to enter onto the Premises to perform certain Investigations, as more particularly described therein.

"Memorandum of Lease" means the memorandum of the Lease in the form attached to the Lease.

"Milestone" has the meaning provided in Section 7.3(a) hereof.

"Milestone Schedule" means the schedule of Milestones set forth in Section 7.3(a).

"New Lot" has the meaning provided in Section 5.9 hereof.

"North Site" has the meaning provided in the Recitals of this Agreement.

"North Site Delay" has the meaning provided in Section 5.18(b) hereof.

"North Site Developer" means New York Wheel, LLC in its capacity as the developer of the North Site project or any successors or assigns thereof.

"NYCEDC" has the meaning provided in the Preamble of this Agreement.

"NYCEDC Contract" has the meaning provided in the Recitals of this Agreement.

"NYCEDC Title Notice" has the meaning provided in Section 14.1(a).

"Other Closing Obligations" has the meaning provided in Section 9.2 hereof.

"Outside Date" shall mean April 1, 2014.

"Paid Extension" has the meaning provided in Section 8.2(a) hereof.

"Paid Extension Notice" has the meaning provided in Section 8.2(a) hereof.

"Paid Outside Date" means September 1, 2014.

"Parties" has the meaning provided in the Preamble of this Agreement.

"Person" means an individual, corporation, partnership, limited liability company, joint venture, estate, trust, unincorporated association; any Governmental Authority; and any fiduciary acting in such capacity on behalf of any of the foregoing.

"PDC" has the meaning provided in Section 5.12 hereof.

"Permitted Exceptions" has the meaning provided in Section 14.1(a) hereof.

"Preliminary Design Approval" has the meaning provided in Section 5.12 hereof.

"Premises" has the meaning provided in the Recitals of this Agreement.

"Prepayment Amount" has the meaning provided in Section 6.3.

"Prepayment Option Election Notice" has the meaning provided in Section 6.2 hereof.

"Principal" has the meaning provided in Section 5.6 hereof.

"Prior Lot" has the meaning provided in Section 5.9 hereof.

"Project" has the meaning provided in the Recitals of this Agreement.

"Project Approval Failure" means a failure of the Closing to occur by the Final Closing Date, where such failure was solely caused by (i) the City Planning Commission's express disapproval or rejection of the ULURP Application for the Project, (ii) the City Council's express disapproval or rejection of the ULURP Application for the Project, or (iii) the Project's inability to otherwise continue to be developed in accordance with Legal Requirements due to a final, non-appealable order or decision of a court of law.

"Project Schematics" has the meaning provided in Section 5.14 hereof.

"Remediation Work" means the removal, and disposal of all Hazardous Substance Conditions at the Premises and any other actions necessary to otherwise remediate the Premises as required by all Legal Requirements and Environmental Laws, including excavating, testing, onsite management, temporary storage, transportation, offsite disposal and any other related actions as may be required by Legal Requirements and Environmental Laws.

"Remediation Work and Cost Report" has the meaning provided in Section 5.1(c) hereof.

"Remediation Budget" has the meaning provided in Section 5.1(c)(ii) hereof.

"Remediation Work Plan" has the meaning provided in Section 5.1(c)(i) hereof.

"RFEI" has the meaning provided in the Recitals of this Agreement.

"Scheduled Closing Date" has the meaning provided in Section 8.1 hereof.

"Second Credit Amount" has the meaning provided in Section 5.1(d)(iii) hereof.

"Second Good Faith Deposit" has the meaning provided in Section 7.1(a)(ii) hereof.

"Second Good Faith Deposit Payment Date" means the ULURP Application Certification Date.

"Second Threshold Amount" has the meaning provided in Section 5.1(d)(ii) hereof.

"Security Deposit" has the meaning provided in the Lease.

"Survey" means a survey of the Premises undertaken in accordance with the Survey License.

"Survey License" means the revocable license agreement between the City and BFC, a copy of which is attached hereto at Exhibit E (Survey License).

"Term" has the meaning provided in Section 4.1 hereof.

"Third Threshold Amount" has the meaning provided in Section 5.1(d)(iii) hereof.

"Title Company" means the Royal Abstract Corporation (or an affiliate thereof), or such other a reputable national title insurance company, acceptable to NYCEDC, that is licensed to do business in the State of New York.

"Title Defect(s)" has the meaning provided in Section 14.2 hereof.

"Title Defect Adjournment" has the meaning provided in Section 14.4 hereof.

"Title Objections" has the meaning provided in Section 14.1(a).

"Title Objection Notice" has the meaning provided in Section 14.1(a).

"Title Report" has the meaning provided in Section 5.8 hereof.

"Transaction Agreements" means the Survey License, the Licenses, this Agreement, the Lease, that certain schedule agreed to between Developer and the North Site Developer, a copy of which is attached hereto at Exhibit G (Copy of Common Schedule), the Development Security, and any other contract or agreement relating to the Premises or the Project entered into between or among the City and/or NYCEDC and the Developer and/or any affiliate of or other Person controlled by or under common control with Developer.

"ULURP" has the meaning provided in Section 5.3 hereof.

"ULURP Application" has the meaning provided in Section 5.3 hereof.

"ULURP Application Approval Date" has the meaning provided in Section 5.3 hereof.

"ULURP Application Certification Date" has the meaning provided in Section 5.3 hereof.

"ULURP Submission" has the meaning provided in Section 5.11 hereof.

"Unreasonable Delays" means delays resulting from specific causes beyond Developers' reasonable control including (and limited to): (i) a failure to receive comments from a City agency within twenty (20) Business Days of Developer's complete submission or complete resubmission to such agency of a DEIS chapter or the ULURP Application, or (ii) a failure to receive comments from NYCEDC within five (5) Business Days after delivering to NYCEDC of a complete submission or complete resubmission of a DEIS chapter or the ULURP Application (unless the review of such submission or resubmission by NYCEDC, or the provision of comments to such submission or resubmission by NYCEDC, in either case reasonably requires NYCEDC to coordinate with the Lead Agency or its counsel, in which case NYCEDC shall have ten (10) Business Days to provide comments to Developer); provided, in either case that Developer (A) notifies NYCEDC of the occurrence of any event constituting an Unreasonable Delay condition within two (2) Business Days thereof, (B) throughout the pendency of such Unreasonable Delay condition, utilizes good-faith efforts to minimize the impact and delays caused by such Unreasonable Delay condition on the relevant approval process, (C) keeps NYCEDC informed on a regular basis as to the status of such Unreasonable Delay condition, and (D) any resubmission to a City agency or to NYCEDC shall reasonably respond to and address such City agency's or NYCEDC's prior comments.

"Voluntary Title Defects" has the meaning provided in Section 14.3 hereof.

Section 1.2 Interpretation. Except as otherwise expressly provided herein, the following rules of interpretation shall apply to this Agreement:

(a) The singular includes the plural and the plural includes the singular.

(b) The word "or" is not exclusive.

(c) A reference to any law, ordinance, regulation, statute, order, code or other Legal Requirements includes any amendment or modification to such law, ordinance, regulation, statute, order, code or other Legal Requirements.

(d) A reference to a Person includes its permitted successors, permitted replacements and permitted assigns.

(e) The words "include", "includes" and "including" are not limiting.

(f) In the event of any conflict between the provisions of this Agreement (exclusive of the Exhibits hereto) and any Exhibit hereto, the provisions of this Agreement shall control.

(g) Unless otherwise expressly provided, references to any document, instrument or agreement (i) shall include all exhibits, schedules and other attachments thereto, (ii) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (iii) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, amended and restated, modified and supplemented from time to time and in effect at any given time.

(h) The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(i) References to "days" shall mean calendar days, unless the term "Business Day" shall be used.

(j) References to a time of day shall mean such time in New York, New York, unless otherwise specified.

## ARTICLE 2.
## CERTAIN TRANSACTION AGREEMENTS

Section 2.1 Lease Delivered at Closing. At the Closing, subject to the terms and conditions of this Agreement, including the satisfaction of the Closing Conditions, Developer and the City will each execute and deliver the Lease. The Parties acknowledge and agree that the Lease is in substantially final form as of the date of this Agreement and will be in final form upon the satisfaction of the following:

(a) the amount to be inserted in the definition of "Base Rent" in the Lease which amount shall be determined in accordance with Section 5.15 hereof;

(b) if applicable, Developer shall have provided NYCEDC with information as necessary to complete the definition of "Retail Partner" in the Lease; provided that such Person obtained a membership, ownership, equity or other interest in Developer in accordance with Section 18.2 hereof;

(c) to the extent any Ballpark Lease Amendment Documents have been executed, the terms and conditions of such documents shall be reflected in the Lease; and

(d) Exhibit B (Project Commitments) of the Lease shall be updated as necessary to take into account any changes resulting from the approvals and design submissions contemplated in Article 5 hereof.

Section 2.2 Modifications to Form of Lease. Except as provided in Section 2.1 and as expressly provided in the form of the Lease attached hereto, the Lease shall not be substantively modified by or at the request, directly or indirectly, of either Party, except in accordance with this Agreement, as required by the City approvals, or as the Parties and the City may mutually agree in writing. Any Party's consent to the modification of any portion of the Lease shall not be deemed to be a consent to the modification of any other portion of any of the Lease or any subsequent modification of the same portion of the Lease.

## ARTICLE 3.
## PAYMENTS

Section 3.1 Administrative Fee. Developer shall pay or have paid to NYCEDC on or before the Commencement Date an administrative fee in the amount of ONE HUNDRED THOUSAND AND 00/100 DOLLARS ($100,000.00) (the "Administrative Fee") to be paid to NYCEDC by wire transfer of immediately available funds in accordance with wire instructions to be provided by NYCEDC.

Section 3.2 Deposits.

(a) Good Faith Deposits. Developer shall deliver or cause to be delivered the First Good Faith Deposit and the Second Good Faith Deposit to NYCEDC in accordance with Section 7.1 hereof.

(b) Security Deposit. Developer shall deliver or cause to be delivered the Security Deposit to NYCEDC on or prior to the Closing Date as provided in the Lease.

Section 3.3 Payments During the Term. During the Term Developer shall pay the following amounts to NYCEDC as and when such amounts would have otherwise been payable to the applicable Governmental Authority in connection with the applicable submission:

(a) ULURP Fee. A ULURP filing fee in an amount equal to the amount that would have been charged according to the applicable rules, regulations or policies of DCP had such filing been made with DCP; and

(b) CEQR Fee. A City of New York Environmental Quality Review ("CEQR") filing fee in an amount equal to the amount that would have been charged by the applicable rules, regulations or policies of the Lead Agency for the CEQR review had such filing been made with such Lead Agency.

If an exemption from any of the fees set forth in Section 3.3(a) or (b) is available by reason of the City's involvement in the applicable transaction, then Developer shall make payments to NYCEDC in-lieu of such fees in an amount equal to the fees that would have been charged had such exemption not existed.

Section 3.4 Requirements. All payments required under this Article 3 and payments of any Extension Fees shall be non-refundable, except as otherwise expressly set forth herein, and may not be used as a credit against any other amounts due and payable under any of the Transaction Agreements, except as expressly provided in Section 7.1(c).

## ARTICLE 4.
## TERM

Section 4.1 Term; Expiration Date. This Agreement (except for the provisions herein which survive the Expiration Date or earlier termination of this Agreement as set forth in Section 19.8,) shall be for a term (the "Term") commencing on the Commencement Date and expiring on the earlier of (a) the Closing Date, and (b) the Expiration Date.

## ARTICLE 5.
## DEVELOPER AND NYCEDC COVENANTS

Section 5.1 Due Diligence Period

(a) Within thirty (30) days following the date both Licenses are effective (such period, as the same may be extended by NYCEDC pursuant to this Section 5.1, the "Invasive Testing Due Diligence Period") or as otherwise provided in the Licenses, Developer shall complete any on-site Investigations, in accordance with the Licenses and this Agreement. Developer shall continue to have access to the Premises pursuant to the Licenses throughout the Term to complete any non-invasive on-site physical and environmental due diligence investigations in accordance with the Licenses. Developer, and not the City, NYCEDC or any third party, shall be responsible for the payment of all costs and expenses incurred by or on behalf of Developer in the course of all Investigations and all other due diligence activities. Such expenditures will not entitle Developer to any credit against any amounts due and payable under any of the Transaction Agreements.

(b) The Invasive Testing Due Diligence Period may be extended by NYCEDC to such later date as determined by NYCEDC in its sole discretion; provided, however, that (i) to the extent (if any) that any additional Investigations after the expiration of the Invasive Testing Due Diligence Period are required (A) due to delays as expressly contemplated in the Licenses, or (B) under applicable Legal Requirements (including CEQR), and (ii) in either case Developer provides notice thereof to NYCEDC (which notice shall include reasonable specificity regarding such required additional invasive due diligence activities and a description of the applicable delay or such Legal Requirements, as the case may be), then NYCEDC shall extend the Invasive Testing Due Diligence Period for the purpose of permitting Developer to conduct such required additional Investigations in accordance with the terms and conditions of the Licenses.

(c) In the course of undertaking any Investigations, if Developer or the Environmental Consultant discovers any Hazardous Substance Condition, then Developer shall (and shall cause the Environmental Consultant to) prepare and deliver a report, certified by the Environmental Consultant and in form and substance reasonably acceptable to NYCEDC and the City and otherwise in a manner consistent with Legal Requirements (the "Remediation Work and Cost Report") to NYCEDC and the City within ten (10) days of the completion of applicable soil or other environmental testing, but in no event later than thirty (30) days after the date both Licenses are effective; provided, that if the Remediation Work and Cost Report is not delivered to NYCEDC and the City within such 30-day period, and after delivery of a notice to Developer by NYCEDC Developer fails to respond to such notice within (3) days by delivering the Remediation Work and Cost Report, then Developer shall be responsible for performing all Remediation Work after Closing in accordance with the Lease at its sole cost and expense without any credit toward Base Rent as provided below in this Section 5.1. Such Remedial Action and Cost Report shall include the following:

(i) a work plan ("Remediation Work Plan"), describing in reasonable detail all Remediation Work Developer anticipates will be necessary to remediate the Hazardous Substance Conditions at the Premises in accordance with all Legal Requirements and Environmental Laws;

(ii) a budget setting forth the total Estimated Remediation Costs ("Remediation Budget") determined using a conservative methodology acceptable to NYCEDC and setting forth, in reasonable detail, the individual elements constituting the Estimated Remediation Costs expected to be incurred by Developer in causing the Remediation Work Plan to be undertaken and to otherwise comply with all Legal Requirements, as such Remediation Budget shall have been developed by Developer and its Environmental Consultant in their best professional judgment;

(iii) copies of all results of all Hazardous Substances testing undertaken in connection with the Investigations, or to develop the Remediation Work Plan and/or the Remediation Budget; and

(iv) such additional information as Developer may wish to include or as the City or NYCEDC may reasonably request.

(d) Following delivery and acceptance by NYCEDC of the Remediation Work and Cost Report, including the Estimated Remediation Costs set forth therein (as such Estimated Remediation Costs are accepted and approved by NYCEDC, the "Approved Estimated Costs"):

(i) If the Approved Estimated Costs are less than One Million Five Hundred Thousand Dollars ($1,500,000) ("First Threshold Amount"), then Developer shall cause the Remediation Work Plan and all other Remediation Work to be undertaken at its sole cost and expense after Closing in accordance with the Lease, and to otherwise perform the Developer Closing Obligations to achieve the Closing as provided in this Agreement;

(ii) If the Approved Estimated Costs are equal to or greater than the First Threshold Amount, but less than Two Million Dollars ($2,000,000) ("Second Threshold Amount"), then Developer shall cause the Remediation Work Plan and all other Remediation Work to be undertaken at its sole initial cost and expense after Closing in accordance with the Lease, and to otherwise perform the Developer Closing Obligations to achieve the Closing as provided in this Agreement; provided, that following the performance of such Remediation Work after Closing in accordance with the Lease, an amount equal to such Approved Estimated Costs, *minus* the First Threshold Amount (the "First Credit Amount") shall, in accordance with Article 21 of the Lease, be credited against Base Rent payable by Tenant based on Credit Claims received in accordance with the Lease;

(iii) If the Approved Estimated Costs are equal to or greater than the Second Threshold Amount, but less than or equal to Three Million Dollars ($3,000,000) ("Third Threshold Amount"), then Developer shall cause the Remediation Work Plan and all other Remediation Work to be undertaken at its sole initial cost and expense after Closing in accordance with the Lease, and to otherwise perform the Developer Closing Obligations to achieve the Closing as provided in this Agreement; provided, that following the performance of such Remediation Work after Closing in accordance with the Lease, an amount equal to the result of (A) such Approved Estimated Costs, *minus* the Second Threshold Amount, *divided* by (B) Two (2) (the "Second Credit Amount") shall, in accordance with Article 21 of the Lease (and in addition to the First Credit Amount), be credited against Base Rent payable by Tenant based on Credit Claims received in accordance with the Lease; and

(iv) If the Approved Estimated Costs are equal to or greater than the Third Threshold Amount, then NYCEDC shall, in its sole discretion and in consultation with the City and such other Persons as NYCEDC may wish to consult, either (A) approve an amount equal to such Approved Estimated Costs, *minus* the Third Threshold Amount (the "Approved Credit Amount") to be credited against Base Rent payable by Tenant in accordance with Article 21 of the Lease in addition to the First Credit Amount and the Second Credit Amount, or (B) elect not to approve any such amount or any such credit. NYCEDC shall give notice to Developer of NYCEDC's election (the "Election Notice") not later than twenty (20) Business Days after the date on which the Estimated Remediation Costs set forth in the Remediation Work and Cost Report were accepted and approved by NYCEDC; provided, that if NYCEDC does not deliver the Election Notice within such 20-Business Day period, then NYCEDC shall be deemed to have elected not to give such approval as of the last day of such 20-Business Day period.

(e) Following delivery of the Election Notice, if NYCEDC has elected not to give the approval specified in Section 5.1(d)(iv)(B), then (i) Developer shall have the right to terminate this Agreement by giving notice to NYCEDC not later than ten (10) days after the date of the Election Notice (or the date on which NYCEDC is deemed to have elected not to give such approval); provided, that if Developer has not delivered such notice within such 10-day period, the Developer shall be deemed to have waived such termination right, or (ii) where Developer does not elect to terminate this Agreement under sub-clause (i) above, subject to credits, if any, of the First Credit Amount and the Second Credit Amount in accordance with

Article 21 of the Lease, Developer shall undertake the Remediation Work at its sole cost and expense after Closing in accordance with the Lease. Effective upon such termination, Developer shall be entitled, upon written request, to the return of all Good Faith Deposits and the Development Security hereunder, and neither Party shall have any further rights or obligations hereunder (other than those which expressly survive the termination of this Agreement as provided in Section 19.8), at law or in equity, for damages or otherwise.

(f) During the performance of any Investigations, NYCEDC and the City shall have the right to have their employees, representatives, contractors or agents present at the Premises during such Investigations.

(g) In the event NYCEDC disputes any matter set forth in the Remediation Work and Cost Report or the amount or method used to calculate the Estimated Remediation Costs and the Parties are unable to directly and promptly resolve such matter, then the Parties shall follow the procedures set forth in Exhibit F-1 (Environmental Remediation Cost Dispute Procedure).

(h) After the Commencement Date, the Parties shall undertake in good faith to determine the appropriate amounts of Pollution Environmental Liability Insurance and Contractors Pollution Liability Insurance to be inserted in Section 7.8 and Section 7.9 of the Lease, respectively within ten (10) Business Days following delivery of the final version of the "Phase II" study undertaken as part of the Investigations.

Section 5.2 Approvals in General. During the Term, Developer, at its sole cost and expense, shall diligently perform and undertake all actions which are prudent and/or necessary to be performed and undertaken by Developer to obtain the discretionary public approvals and determinations required to proceed with the Project, as more fully described below.

Section 5.3 ULURP. Developer shall be responsible for the preparation and submission of the documentation required to obtain the necessary approvals for the disposition of the Premises pursuant to the City's Uniform Land Use Review Procedure under Section 197-c or 197-d of the New York City Charter ("ULURP"), as well as all other land use approvals required in connection with the Project (the "ULURP Application"). The date on which the ULURP Application shall be certified by the City's Department of City Planning ("DCP") is referred to herein as the "ULURP Application Certification Date". The date on which the ULURP Application shall be approved by all necessary bodies (or deemed approved pursuant to applicable Legal Requirements in the absence of action by a necessary body) is referred to herein as the "ULURP Application Approval Date".

Section 5.4 Intentionally Omitted.

Section 5.5 Documents and Work Product. Developer shall promptly submit copies to NYCEDC of all Documents and other work product produced by third parties from time to time in connection with Developer's due diligence, environmental review, Investigations, and pursuit of public approvals with respect to the Premises, but excluding any non-final draft versions of Documents (except as otherwise provided herein) and Documents subject to the attorney-client privilege; provided, that if this Agreement is terminated, then copies of all Documents, including

such non-final draft versions, shall promptly be so submitted. All such Documents and other work product shall become the property of NYCEDC, subject to Developer's right to use the same in connection with the Project, and NYCEDC shall have the right to use the same in connection with the Premises; provided, however, that with respect to architectural plans and all materials related solely to design where the copyright thereto is owned by the architect or another third party, Developer shall obtain and provide to NYCEDC a non-exclusive, non-transferable license to use such architectural plans and materials in connection with the Project.

Section 5.6 Background Investigation Questionnaire. On or before the Commencement Date, Developer shall complete and submit to NYCEDC and shall cause its Principals to complete and submit to NYCEDC the qualification and background investigation forms required and provided to Developer by NYCEDC in connection with the leasing of real property by the City and NYCEDC ("Background Questionnaire Forms") and thereafter, until the Closing, promptly provide an update to such Background Questionnaire Forms if and when any information contained therein shall change. If any additional Person becomes a Principal at any time prior to the Closing in accordance with Section 18.2 or otherwise, Developer shall, no less than ten (10) Business Days prior to the date such Person becomes a Principal, cause such Principal to complete and submit a Background Questionnaire Form. A "Principal" is defined in the Background Questionnaire Forms.

Section 5.7 Good Faith and Cooperation. Developer shall promptly and in good faith take all steps necessary to fulfill the Developer Closing Obligations. NYCEDC shall use good faith efforts to (a) cause the Other Closing Obligations to be fulfilled, (b) deliver or cause the delivery of the Licenses, and (c) locate and deliver copies of the survey prepared in connection with the lease of the premises under the Ballpark Lease. Where the satisfaction of a Developer Closing Obligation requires cooperation by NYCEDC, or the satisfaction of an Other Closing Obligation requires cooperation or performance by Developer, the Parties shall cooperate in good faith to assist each other therewith in order to achieve such satisfaction in as timely a manner as reasonably practicable. Developer shall cooperate and coordinate in good faith with the North Site Developer from time to time to the extent such cooperation and coordination is necessary or prudent in order to satisfy or perform any Developer Closing Obligation.

Section 5.8 Title and Survey. Not later than forty-five (45) days from the Commencement Date, Developer (at its sole cost and expense) shall furnish to NYCEDC two (2) copies of a title report with respect to the Premises (the "Title Report") issued by the Title Company in form and substance reasonably acceptable to NYCEDC, together with the Survey. The Survey shall indicate the Tax Block and Lot of the Premises as they exist as of the date of the Survey. The Title Report shall include a copy of (i) the current City Tax Map that includes the Premises and (ii) if available to the Title Company, the historical City Tax Map (as of the date of the City's acquisition of the Premises) that includes the Premises. The Title Report shall include a metes and bounds description of the Premises based upon the Survey. Developer shall have the Survey and the metes and bounds description thereof certified to NYCEDC and the City. Unless NYCEDC shall object to such description or shall find such certification insufficient, such description shall be used as the description in the tax lot subdivision application materials to be submitted by Developer for the New Lot, and as the basis for the legal description of the Premises in the Lease.

Section 5.9 Tax Lot Subdivision. Developer shall apply for and diligently seek to obtain a permanent tax lot number that encompasses the entire Premises and no other real property (in either case, "New Lot"). Not later than thirty (30) days after the date on which the certified Survey and certified metes and bounds description are delivered to NYCEDC in accordance with Section 5.8 and are accepted by NYCEDC, Developer shall submit the tax lot subdivision application materials and thereafter diligently take all additional actions necessary to cause the City Tax Map to be amended by subdividing the entire existing tax lot ("Prior Lot") encompassing the New Lot, and cause a permanent tax lot number to be issued for each of the New Lot and every other portion of the Prior Lot. NYCEDC shall assist and cooperate with such application.

Section 5.10 Environmental Review.

(a) Developer shall be responsible for the preparation of the materials required for the completion of and approval of any and all required environmental reviews, assessments and impact statements in connection with the Project. The Parties acknowledge and agree that to complete such reviews, assessments and impact statements, and the work necessary in connection therewith, Developer has retained the Environmental Consultant at its sole cost and expense.

(b) Without limiting the generality of the foregoing, Developer shall, by August 15, 2012 (the "Draft EAS Submission Outside Date"), diligently complete and submit to NYCEDC for its initial review, (i) a draft of an Environmental Assessment Statement ("EAS") to be reviewed by the Lead Agency in connection with the ULURP Application, together with the appropriate attachments (including draft scoping documents) required for submission of the draft EAS, and (ii) a draft scope of work for the preparation of the DEIS.

(c) If it is determined by the Lead Agency that an additional environmental review under CEQR procedures is needed in connection with any aspect of the Project, then Developer, at its sole cost and expense, shall prepare and perform, or cause to be prepared and performed, in a timely manner, all environmental reviews, studies and applications, including the preparation of a Draft Environmental Impact Statement ("DEIS"), which may be required in order to obtain the certification of the City Planning Commission to proceed with, and obtain all further approvals of the appropriate Governmental Authority for, the ULURP Application and any other legally required approvals related to the Project. Developer shall deliver each DEIS chapter to NYCEDC and the Lead Agency for distribution on a "rolling basis" as each such DEIS chapter is completed; provided, that no later than ninety (90) days after the applicable public scoping meeting (including the end of the applicable public comment period), all DEIS chapters required for the Project shall be delivered to NYCEDC and the Lead Agency. Developer shall respond to comments delivered by NYCEDC or the Lead Agency to such DEIS chapters (i) within ten (10) days after the first round of such comments are so delivered in respect of a given DEIS chapter, and (ii) within five (5) days after any subsequent rounds of comments are so delivered in respect of a given DEIS chapter, unless Developer and NYCEDC determine that additional time is necessary in order for Developer to adequately respond to such comments. Developer will diligently pursue completion of the CEQR process through final completion of the Final Environmental Impact Statement ("FEIS") (including using diligent efforts to respond to questions from the applicable agencies as quickly as possible).

(d) To the extent not already paid by Developer in accordance with Article 3, Developer shall pay all fees charged by the Lead Agency under CEQR and by any other Governmental Authorities, for the review, filing and/or processing of the EAS, the DEIS/FEIS, and any and all other applications, studies and determinations as may be required to obtain the certification of the City Planning Commission to proceed with, and obtain all further approvals of the appropriate Governmental Authorities for, the Project, whether pursuant to ULURP or any other legally required approval. In the event that any such fees are not paid by the time of the Closing, or if the Closing does not occur prior to the Expiration Date, Developer shall remain obligated to pay the CEQR fees if and when due.

Section 5.11 ULURP Certification.

(a) Developer shall promptly submit to NYCEDC all materials required to be submitted in connection with the ULURP Application (the "ULURP Submission") and such other materials as DCP shall require following the Commencement Date, and thereafter shall promptly provide such further information as may be requested by DCP and/or other applicable agencies in connection with the ULURP certification process.

(b) Developer shall use all diligent efforts to cause the ULURP Application Certification Date to occur on or before April 1, 2013.

Section 5.12 Public Design Commission. Not later than thirty (30) days after the ULURP Application Certification Date, Developer shall (i) submit all materials (other than confirmation of community board review, which shall be delivered to the City's Public Design Commission ("PDC") following the community board review during the ULURP Application review process) necessary for preliminary review of the Project by PDC ("Preliminary Design Approval"), all of which materials shall be subject to advance review and approval by NYCEDC prior to the presentation of such materials to PDC and (ii) perform all other related tasks necessary or appropriate in connection with such preliminary review. After the initial presentation, Developer shall pursue Preliminary Design Approval from PDC with diligence.

Section 5.13 LEED Silver Certification. Developer shall make good faith efforts to cause all Buildings included in the Project to achieve at least LEED Silver certification (for New Construction and Major Renovation) from the United States Green Building Council. Not later than ninety (90) days after the ULURP Application Certification Date, Developer shall submit to NYCEDC a proposal for achieving such certification, which proposal shall be subject to NYCEDC's review and approval.

Section 5.14 Schematic Design. Within ten (10) Business Days after Preliminary Design Approval from PDC, Developer shall deliver to NYCEDC (a) updated Project schematics for the Phase 1 Development, Phase 2 Development and Phase 3 Development, including site plans, elevations, sections, massing diagrams, floor plans, circulation plans and major systems plans, reflecting all changes from the environmental review, ULURP and PDC review processes as of such date, and a schematic cost estimate for the Phase 1 Development, Phase 2 Development and Phase 3 Development, in form and substance acceptable to NYCEDC, for NYCEDC's review (collectively, the "Project Schematics").

Section 5.15 Appraisal. No earlier than the ULURP Application Certification Date, and no later than one hundred and twenty (120) days following the ULURP Application Certification Date, NYCEDC shall obtain an independent appraisal to determine the fair market rent for the Premises (the "Appraisal") which Appraisal shall reflect the use of the Premises without value given or attributed by the appraiser to the improvements and Buildings to be constructed on the Premises in connection with the Project. The Appraisal shall be procured by NYCEDC and paid for by Developer (which amount shall be payable by Developer in advance, and not on a reimbursement basis, within ten (10) days after written demand from NYCEDC therefor). NYCEDC shall provide Developer a copy of the Appraisal promptly after it is completed and in final form. If the Appraisal indicates that the fair market rent for the Premises is greater than $1,250,000 per annum, then Developer may reject such Appraisal in writing within fifteen (15) days of receipt of such Appraisal and the Parties shall then resolve such matter in accordance with the Appraisal dispute procedures set forth in Exhibit F-2 (Appraisal Dispute Procedures) attached hereto; provided, that if such rejection is not received within fifteen (15) days, then the Developer shall be deemed to have accepted such Appraisal. If the Closing Date does not occur within one (1) year after the date of the Appraisal, then NYCEDC, in its sole and absolute discretion, may notify Developer that an update of the Appraisal is required. Any updates of the Appraisal shall be conducted by appraisers selected and retained directly by NYCEDC and paid for by Developer (in advance, and not on a reimbursement basis, within ten (10) days after written demand from NYCEDC therefor). Notwithstanding the foregoing, the Base Rent for the Premises for the first Lease Year shall be the higher of the fair market rent for the Premises as determined by the Appraisal, and $1,250,000 per annum.

Section 5.16 Financing. Not fewer than one hundred twenty (120) days prior to the Scheduled Closing Date, Developer shall furnish to NYCEDC the sources and uses for developing the Project and evidence of financing and equity with respect to the Project, in the form of executed financial commitments and statements of the availability of dedicated funds. Such evidence of financing and equity shall be certified by the appropriate officer of Developer. Such financing and equity shall be in an aggregate amount which is, to NYCEDC's reasonable satisfaction, sufficient to perform and complete the Project in accordance with the Lease; provided, that if NYCEDC has not advised Developer whether or not such financing and equity is satisfactory within twenty (20) Business Days of receipt of such certified evidence, then such financing and equity shall be deemed to be satisfactory ten (10) Business Days after notice thereof from Developer. The provisions of this Section 5.16 are included herein for the benefit of NYCEDC only and may be waived only by NYCEDC in its sole discretion.

Section 5.17 Employment Report. On or before the Closing Date, Developer shall complete and return to NYCEDC the initial employment report in the format customarily required by NYCEDC at such time.

Section 5.18 Delays Related to North Site.

(a) NYCEDC and Developer acknowledge that, (i) while the Premises and the North Site will be the subject of separate ULURP Applications, it is anticipated that (because of their proximity, timing of disposition and development and other factors) the performance of the DEIS and FEIS for the Project will be linked to the performance of certain studies and analysis that must be performed with respect to the proposed project on the North Site, and (ii) in

connection therewith, Developer and the North Site Developer have agreed on a schedule of deliverables for each of the Developer and the North Site Developer to enable the timely performance of the DEIS and FEIS for the Project, of copy of which schedule is attached hereto at Exhibit G (Copy of Common Schedule).

(b) Notwithstanding any provision of this Article 5 or Section 7.3, if (i) North Site Developer shall fail to deliver any required deliverable on the respective date set forth on such schedule but Developer shall have delivered its reciprocal required deliverable on the required date, and (ii) such failure by North Site Developer results in Developer failing to meet one or more of the Milestones set forth in lines (i), and (ii), of the Milestone Schedule, then Developer shall be entitled to receive additional time to satisfy such Milestone (without payment by Developer of the liquidated damages set forth in Section 7.3(a)) equal, on a day-for-day basis, to the period of such delay caused by North Site Developer ("North Site Delay"); provided, that (x) Developer notifies NYCEDC of the occurrence of any event constituting a North Site Delay condition within two (2) Business Days thereof, (y) NYCEDC shall not have received any notice from North Site Developer contradictory to such notice from Developer, and (z) Developer keeps NYCEDC informed on a regular basis as to the status of such North Site Delay condition, including when such delay has ended. In the event that there is a dispute between Developer and North Site Developer as to the existence of a North Site Delay, NYCEDC shall determine, in its sole and absolute discretion, whether such North Site Delay exists based upon its review of any evidence thereof received from Developer and North Site Developer. Notwithstanding anything herein to the contrary, if NYCEDC notifies Developer that the North Site Developer will no longer be pursuing the North Site project, then from and after the date of such notification, (i) Developer shall no longer be entitled to any further extensions for North Site Delay, and (ii) this Section 5.18 and all other references in this Agreement to North Site Delay shall be of no further force and effect other than with respect to North Site Delays, if any, which occurred prior to the date of such notification.

(c) If the occurrence of the ULURP Application Certification Date was delayed due to a North Site Delay, the Initial Expiration Date shall be extended without charge to Developer to the extent of such North Site Delay; provided, that in no event shall the Initial Expiration Date be extended beyond the Outside Date as a result of a North Site Delay.

Section 5.19 Parking and Ballpark Lease. With respect to parking to be provided on the Premises or otherwise after the Closing Date, Developer shall (and shall cause BFC to) cooperate with NYCEDC in good faith to cause the Ballpark Lease Amendment Documents to be negotiated, executed and delivered in a timely manner. With respect to Developer's obligation to provide replacement parking during construction of the Project, NYCEDC shall cooperate in good faith with Developer in identifying potential locations for such parking.

## ARTICLE 6.
## RENT PREPAYMENT OPTION

Section 6.1 Option to Prepay Base Rent. Subject to the terms and conditions of this Agreement, if (a) this Agreement is in full force and effect in accordance with its terms, and (b) there shall not then exist any Developer Default hereunder or any Default, then during the period

of time that is no greater than sixty (60) days before the Closing Date and no less than thirty (30) days before the Closing Date (the "Initial Exercise Period"), Developer shall have the right to give irrevocable notice of its election to prepay in advance (and in the manner provided in this Article 6) the entire Base Rent for the Initial Term for an amount equal to the Prepayment Amount (the "Initial Exercise Option").

Section 6.2 Election Notice. In the event Developer elects to exercise the Initial Exercise Option, Developer shall deliver to NYCEDC and the City, during the Initial Exercise Period, notice of such election (the "Prepayment Option Election Notice") in substantially the form attached to this Agreement at Exhibit H (Form of Prepayment Option Election Notice).

Section 6.3 Prepayment Amount and Date of Payment. Subject to Section 3.3 of the Lease, the payment to be made by Developer in connection with its exercise of the Initial Exercise Option shall be equal to the amount (the "Prepayment Amount") determined in accordance with Exhibit I (Prepayment Amount Calculation Methodology). Following delivery of the Prepayment Option Election Notice for the Initial Exercise Option, Developer shall pay the Prepayment Amount to the City on the Closing Date by wire transfer of immediately available funds to an account or accounts designated by the City.

## ARTICLE 7.
## GOOD FAITH DEPOSITS; DEVELOPMENT SECURITY; AND DEVELOPER PERFORMANCE MILESTONES

Section 7.1 Good Faith Deposits.

(a) In accordance with wire instructions to be provided by NYCEDC, Developer shall deposit with NYCEDC (i) on or before the Commencement Date an amount equal to Five Hundred Thousand Dollars ($500,000) (the "First Good Faith Deposit"), and (ii) on or before the Second Good Faith Deposit Payment Date, an additional amount equal to Five Hundred Thousand Dollars ($500,000) (the "Second Good Faith Deposit"), in either case as either such Good Faith Deposit may be replenished from time to time in accordance with Section 7.4(d).

(b) NYCEDC shall deposit the Good Faith Deposits into an interest bearing account, and all interest earned therein shall be added to the Good Faith Deposits.

(c) If this Agreement is terminated by reason of a Developer Default or the failure to obtain the approval of all necessary bodies of the ULURP Application by the Expiration Date (other than due to a Project Approval Failure), then NYCEDC shall retain the Good Faith Deposits, together with such other amounts deposited with NYCEDC as may be retained by NYCEDC in accordance with the terms of this Agreement (including liquidated damages for failure to meet the Milestones as provided in Sections 7.3 and 7.4), as liquidated damages for NYCEDC's losses sustained by reason of Developer Default, and not as a penalty. Subject to the provisions of Section 7.4 below, at Closing, any remaining amounts of the Good Faith Deposits shall be retained in the relevant interest bearing account and shall continue to serve as performance security until the Standby Guaranty is delivered in accordance with the

Lease, following which such amounts may be applied toward Base Rent payable by Tenant pursuant to the Lease.

Section 7.2 Development Security.

(a) Developer shall deliver (or cause to be delivered) to NYCEDC the Development Security on or before the Commencement Date.

(b) Developer shall cause the Development Security to remain valid and in full force and effect during the period which starts on the date on which the Development Security is issued and ends on the earlier of (i) the date on which the City notifies Developer that the City has received the Standby Completion Guaranty (and the Completion Guaranty, or a copy thereof, as provided in the Lease) in accordance with the Lease, and (ii) the Closing Date; provided, that (A) as per the information provided to NYCEDC in accordance with Section 5.16, (including the sources and uses for developing the Project and the evidence of financing and equity with respect to the Project), the Project will be equity-financed and constructed without debt financing from any Institutional Lenders or any Recognized Mortgagees (as each such term is defined in the Lease); and (B) no later than by the Closing Date, Developer shall have delivered the Closing Date Guaranty to the City in accordance with Section 7.8.

(c) NYCEDC shall have the right to demand and receive immediate payment under the Development Security if:

(i) this Agreement is terminated due to a Developer Default in accordance with Section 17.2; or

(ii) the Closing has not occurred by the Final Closing Date (except due to a Project Approval Failure); or

(iii) after the Closing, the Lease is terminated in accordance with Section 24.3 of the Lease;

(iv) the Initial Construction Work for the Phase 1 Development (as each term is defined in the Lease) has not commenced by the Scheduled Commencement Date; or

(v) at any time prior to the stated expiration date thereof, NYCEDC receives notice from the issuer of such Development Security that, prior to end of the period stated above in Section 7.2(b), such Development Security will expire, terminate or otherwise cease to be valid and in full force and effect, or by its own terms such Development Security is due to expire prior to the end of such period, and in either case Developer does not deliver to NYCEDC at least five (5) Business Days prior to the date of such expiration or termination replacement Development Security in accordance with this Section 7.2.

(d) In the event NYCEDC draws upon the Development Security pursuant to Section 7.2(c)(v), such amounts as drawn shall be held by NYCEDC in escrow and shall be returned to Developer promptly if replacement Development Security is delivered to NYCEDC in accordance with this Agreement.

Section 7.3 Developer Performance Milestones.

(a) Notwithstanding anything to the contrary contained herein or in the Transaction Agreements, Developer acknowledges and agrees that its timely performance of its obligations under Article 5 of this Agreement is of the essence hereunder. To further secure NYCEDC of Developer's timely performance of its obligations, Developer hereby agrees that if any of the following events (each, a "Milestone") shall fail to occur, then (subject to Unreasonable Delays) NYCEDC shall be entitled to deduct and retain funds from the Good Faith Deposits (as liquidated damages for NYCEDC's losses sustained by reason of the occurrence of such event and not as a penalty) as provided in the Milestone Schedule and Section 7.4:

| **Milestone** | **Liquidated Damages** |
|---|---|
| (i) Developer shall timely submit the draft EAS and attachments and the DEIS scoping documents on or before the Draft EAS Submission Outside Date (as required under Section 5.10(b)). | As more fully provided in Section 7.4:<br>(a) $0/day for the first 10 days<br>(b) $1,000/day for the next 30 days<br>(c) $2,000/day for the next 60 days<br>(d) $3,000/day for all the following days |
| (ii) Developer shall timely submit all of the draft DEIS chapters on a rolling basis, but in no event later than ninety (90) days after the applicable public scoping (as required under Section 5.10(c)). | As more fully provided in Section 7.4:<br>(a) $0/day for the first 10 days<br>(b) $3,000/day for all the following days |
| (iii) The ULURP Application Certification Date shall have occurred no later than twenty (20) days after the date on which notice is issued by the applicable Governmental Authority that the DEIS is complete. | As more fully provided in Section 7.4:<br>(a) $0/day for the first 10 days<br>(b) $1,000/day for the next 30 days<br>(c) $2,000/day for the next 60 days<br>(d) $3,000/day for all the following days |
| (iv) Developer shall timely submit all materials necessary for preliminary review of the Project by PDC as and when required under Section 5.12. | As more fully provided in Section 7.4:<br>(a) $0/day for the first 10 days<br>(b) $1,000/day for the next 30 days<br>(c) $2,000/day for the next 60 days<br>(d) $3,000/day for all the following days |
| (v) Developer shall have timely delivered to NYCEDC all of the materials described in Section 5.14 as and when required thereunder. | As more fully provided in Section 7.4:<br>(a) $1,000/day for first 30 days<br>(b) $2,000/day for the next 60 days<br>(c) $3,000/day for all the following days |

TIME SHALL BE OF THE ESSENCE as against Developer with respect to the provisions of this Section 7.3(a), subject to Unreasonable Delays and to North Site Delay. Except to the extent of Unreasonable Delays, Developer expressly acknowledges that it shall not be excused from timely performance of the Milestones by reason of any alleged failure of NYCEDC to cooperate with Developer. Nothing in this Section shall be deemed to imply NYCEDC consent to any extension of the Closing Date, which shall be governed by Article 8.

(b) NYCEDC's retention of the amounts set forth in Section 7.3(a) hereof from the Good Faith Deposits shall not be deemed a waiver by NYCEDC of any Developer Default that may exist by reason of Developer's failure to meet the Milestones, and such right shall be in addition to all other rights and remedies which NYCEDC may have under this Agreement in the event of a Developer Default. Neither the exercise of any provision hereof nor any delay in asserting any right granted to NYCEDC hereunder shall be construed as a waiver by NYCEDC of its rights under this Section 7.3.

(c) Notwithstanding anything in this Section 7.3 to the contrary, in the event that, on or prior to the Initial Expiration Date, either (y) the Closing has occurred, or (z) all of the Closing Conditions for which the performance by the Developer of its obligations under this Agreement is a prerequisite shall have been satisfied and Developer is ready, willing and able to execute the Lease and close the transactions hereunder and the failure of the Other Closing Obligations to be timely satisfied was not due to Developer's failure to timely perform any of its obligations under this Agreement which are necessary for the satisfaction of such Other Closing Obligations, then NYCEDC shall credit back against the Good Faith Deposits any funds theretofore deducted pursuant to Section 7.3(a) and Section 7.4.

Section 7.4 Payment of Liquidated Damages.

(a) Developer acknowledges that NYCEDC and the City will suffer actual damages if Developer is delayed in achieving any Milestone on or before the corresponding date set forth in the Milestone Schedule. In the event of such a delay, Developer shall be liable for liquidated damages as provided below in this Section 7.4 (and NYCEDC shall have the right to deduct and retain funds from the Good Faith Deposits as payment thereof) for each day of delay from the scheduled completion date set forth in the Milestone Schedule until the date on which the corresponding Milestone is satisfied:

(b) If Developer fails to achieve the Milestones set forth in lines (i) (iii), or (iv) of the Milestone Schedule by the corresponding date set forth therein, Developer shall be obligated to pay liquidated damages (and NYCEDC shall have the right to deduct and retain funds from the Good Faith Deposits as payment thereof) as follows:

(i) at the rate of One Thousand Dollars ($1,000) per day for each day of delay from the tenth (10th) day after the scheduled completion date set forth in the Milestone Schedule until the earlier of (y) the date on which the corresponding Milestone is satisfied, and (z) forty (40) days after the scheduled completion date set forth in the Milestone Schedule;

(ii) if such Milestone has not been achieved within the time period described in the previous sub-paragraph (i), then at the rate of Two Thousand Dollars ($2,000) per day for each day of delay from the fortieth (40th) day after the scheduled completion date set forth in the Milestone Schedule until the earlier of (y) the date on which the corresponding Milestone is satisfied, and (z) one hundred (100) days after the scheduled completion date set forth in the Milestone Schedule; and

(iii) if such Milestone has not been achieved within the time period described in the previous sub-paragraph (ii), then at the rate of Three Thousand Dollars ($3,000) per day for each day of delay from the one hundredth (100th) day after the scheduled completion date set forth in the Milestone Schedule until the earlier of (y) the date on which the corresponding Milestone is satisfied, and (z) such other date, consistent with this Agreement, as the Parties may mutually agree to in writing.

provided, that in the case of this Section 7.4(b), if Developer has failed to achieve the Milestone set forth in line (iii) of the Milestone Schedule by the corresponding date set forth therein due to an Unreasonable Delay, then Developer shall not be obligated to pay liquidated damages in connection with such delay.

(c) If Developer fails to achieve the Milestone set forth in line (ii) of the Milestone Schedule by the corresponding date set forth therein, Developer shall be obligated to pay liquidated damages (and NYCEDC shall have the right to deduct and retain funds from the Good Faith Deposits as payment thereof) at the rate of Three Thousand Dollars ($3,000) per day for each day of delay from the scheduled completion date set forth in the Milestone Schedule until the date on which the corresponding Milestone is satisfied.

(d) In the event NYCEDC deducts and retains any amounts as provided above, Developer shall, within five (5) Business Days following each and any such deduction, deposit with NYCEDC such amount as shall replenish the Good Faith Deposits to an amount equal to (i) Five Hundred Thousand Dollars ($500,000), for any applicable deduction and retention by NYCEDC occurring before the Second Good Faith Deposit Payment Date, and (ii) One Million Dollars ($1,000,000), for any applicable deduction and retention by NYCEDC occurring on or after the Second Good Faith Deposit Payment Date.

(e) For the avoidance of doubt, nothing in this Section 7.4 shall modify or limit the other rights or remedies available to NYCEDC as set forth in this Agreement or any Transaction Agreement.

Section 7.5 Unreasonable Delay.

(a) If any Unreasonable Delay should occur from time to time during the Term, then each Milestone date in Section 7.3(a) shall be extended on a day-for-day basis to the extent delay of such Milestone is caused by such Unreasonable Delay. If the date on which the ULURP Application Certification Date occurs was delayed due to Unreasonable Delay, the Initial Expiration Date shall be extended without charge to Developer to the extent of such Unreasonable Delay; provided, that in no event shall the Initial Expiration Date be extended beyond the Outside Date as a result of an Unreasonable Delay. For the avoidance of doubt, no event of Unreasonable Delay shall be "double counted" or otherwise result in anything more than one (1) day of tolling for each day of Unreasonable Delay notwithstanding the possibility that more than one event constituting an Unreasonable Delay may exist on a given day.

(b) During the period of a given Unreasonable Delay, Developer shall continue to diligently pursue the ULURP Certification to the extent not prevented by the event of Unreasonable Delay. Upon cessation of the event of Unreasonable Delay causing such delay,

Developer shall recommence the performance of the obligation affected by such event of Unreasonable Delay.

(c) If and to the extent that an Unreasonable Delay continues as a result of a delay within the reasonable control of Developer, then such Unreasonable Delay shall not be deemed an Unreasonable Delay for the period of such Developer delay.

Section 7.6 Termination for ULURP Application Certification Delay.

(a) In the event the ULURP Application Certification Date has not occurred by October 1, 2013, then either Party shall have the right to terminate this Agreement upon giving notice to the other Party, such termination to be effective as of the date which is thirty (30) days after the date of such notice; provided, that if Developer desires to terminate this Agreement pursuant to this Section 7.6, (a) there shall not, as of the date of Developer's notice given in accordance with this Section 7.6, exist any Developer Default hereunder or any Default, and (b) prior to giving such notice, Developer shall have been diligently and in good faith working to achieve the ULURP Application Certification Date by the date set forth above.

(b) Upon a termination of this Agreement pursuant to this Section 7.6: (i) Developer shall be entitled to the return of all Good Faith Deposits and the Development Security paid hereunder, and (ii) neither Party shall have any further rights or obligations hereunder (other than those which expressly survive the termination of this Agreement as provided in Section 19.8), at law or in equity, for damages or otherwise.

Section 7.7 Termination for Project Approval Failure.

(a) Notwithstanding any other provision of this Agreement, if a Project Approval Failure occurs at any time, then this Agreement shall automatically terminate on the effective date of a notice given by NYCEDC to Developer.

(b) Upon such termination (i) neither Party shall have any further rights or obligations hereunder (other than those which expressly survive the termination of this Agreement as provided in Section 19.8), at law or in equity, for damages or otherwise, and (ii) Developer shall be entitled, upon written request, to remaining amounts of the Good Faith Deposits (less any amounts retained or retainable from the Good Faith Deposits in accordance with this Agreement in connection with events which occurred prior to the effective date of the termination notice given in sub-clause (a) above), and the return of the Development Security; provided, with respect to this sub-clause (ii), that as of the effective date of such termination notice, there shall exist no Event of Default other than an event or circumstance which gives rise to any of the following:

(A) any Event of Default arising from or related to Developer's failure to perform the obligations by the times specified in Sections 5.1, 5,12, or 5.14; or

(B) any Event of Default arising from or related to Developer's failure to perform its obligations specified in Sections 5.6, 5.9, 5.13, 5.15, 5.16, 5.17, 7.4, or 14.1.

and in the case of (A) or (B) above, none of such events or circumstances and no other Event of Default shall have contributed to the Project Approval Failure giving rise to the termination of this Agreement under this Section 7.7,

Section 7.8 Closing Date Guaranty.

(a) Following the Commencement Date, in accordance with sub-clause (b) below, the Parties shall diligently and in good faith negotiate the form of a completion guaranty (the "Closing Date Guaranty") to be issued by a Guarantor (as defined in the Lease) in the form to be attached hereto at Exhibit J (Form of Closing Date Guaranty), which, if issued, shall guaranty lien-free completion of all Initial Construction Work (as defined in the Lease).

(b) The Parties shall negotiate such form of Closing Date Guaranty so that it shall be in final form within ten (10) Business Days from the Commencement Date and once final, shall be attached hereto at Exhibit J (Form of Closing Date Guaranty), and thereafter shall not be modified or amended by Developer or NYCEDC, except in accordance with this Agreement. The Parties acknowledge and agree that their failure to agree on a final form of a Closing Date Guaranty within such ten (10) Business Day period shall not entitle Developer to terminate this Agreement.

(c) From the Closing Date (or such earlier date on which the Closing Date Guaranty may be issued) until the date specified in the Closing Date Guaranty on which the Closing Date Guaranty is to no longer be effective, Developer shall cause the Closing Date Guaranty to remain in full force and effect in accordance with the terms set forth therein, the Lease, and this Agreement.

## ARTICLE 8.
## CLOSING; EXTENSIONS

Section 8.1 Timing. The execution and delivery of the Lease and the performance of such other obligations as may be necessary in connection therewith and/or otherwise in connection with the Project (the "Closing"), shall be held at the offices of NYCEDC (or at such other place within the City as NYCEDC may designate by notice to Developer), at 1:00 p.m. on the Initial Expiration Date, such earlier date upon which the Parties may mutually agree or such later date to which the Closing may be extended or adjourned pursuant to this Agreement. The scheduled date for Closing, as the same may be extended pursuant to this Agreement, is the "Scheduled Closing Date". The actual date on which the Closing shall occur is the "Closing Date".

Section 8.2 Extensions for Failure to Satisfy Developer Closing Obligations.

(a) If as of the Initial Expiration Date (as may be extended for Unreasonable Delay and/or North Site Delay): (i) the Other Closing Obligations have been satisfied (other than any Other Closing Obligation which could not be satisfied because of Developer's failure to perform, in a timely manner, any of its obligations under this Agreement which are necessary for the satisfaction of such Other Closing Obligation), and (ii) all Developer Closing Obligations have not been satisfied, then:

(A) Developer shall have the right to extend the Expiration Date (and the Scheduled Closing Date) for one (1) or more extension periods (each a "Paid Extension") not to exceed five (5) months in the aggregate and in no case beyond the Paid Outside Date (each further adjourned Closing Date pursuant to this Section 8.2(a)(A), an "Extended Closing Date") by (y) delivering notice to NYCEDC no less than ten (10) Business Days prior to the then Scheduled Closing Date (a "Paid Extension Notice"), and (z) making payment to NYCEDC of an amount equal to One Hundred Twenty-Five Thousand Dollars ($125,000) for each Paid Extension (each an "Extension Fee") in accordance with Section 8.2(c); provided, that in no event shall Developer be entitled to an Extended Closing Date beyond the Paid Outside Date; and provided, further that Developer shall not have such extension rights if, as of the date of the Paid Extension Notice, there exists any Developer Default or any Default; or

(B) where Developer has not exercised its right to extend the Expiration Date (and the Scheduled Closing Date) as provided in sub-clause (B) above, NYCEDC shall not otherwise be obligated to proceed with the Closing on such date and shall have the right to terminate this Agreement by reason of a Developer Default as provided in Section 17.2; provided, that NYCEDC shall have the right, from time to time in NYCEDC's sole discretion, to extend the Initial Expiration Date (and the Scheduled Closing Date) for one or more extension periods (each an "Extension") not to exceed eighteen (18) months in the aggregate.

Notwithstanding any other provision of this Section 8.2, in no event shall the Expiration Date (and the Scheduled Closing Date) be extended beyond the Paid Outside Date in connection with any Paid Extensions.

(b) If the Closing has not occurred and either (i) the Developer Closing Obligations have not been satisfied by the Final Closing Date, or (ii) the Developer Closing Obligations have not been satisfied by the last Extended Closing Date, then in either case, notwithstanding the notice provisions of Section 17.2, this Agreement shall automatically terminate by reason of a Developer Default on the effective date of a notice given by NYCEDC to Developer, and NYCEDC shall have the right to retain the Good Faith Deposits as liquidated damages for loss of a bargain and not as a penalty and shall have all other rights and remedies provided for herein or available at law or equity; provided, that if the Closing has not occurred by the Final Closing Date or the last Extended Closing Date due to a Project Approval Failure, then the provisions of Section 7.7 shall apply. TIME SHALL BE OF THE ESSENCE as against Developer with respect to the Scheduled Closing Date, each Extension, each Paid Extension, each Extended Closing Date, and the Final Closing Date.

(c) Each payment of an Extension Fee shall be made on the date on which the Paid Extension Notice is delivered in accordance with Section 8.2(a), and shall be made by wire transfer of immediately available funds in accordance with wire instructions to be provided by NYCEDC. In the event the Closing occurs prior to the last day of a given Paid Extension, the pro-rata portion (if any) of the applicable Extension Fee equal to the remaining days in such Paid Extension after such Closing shall be applied toward the Base Rent payable by Tenant pursuant to the Lease.

Section 8.3 Extensions for Failure to Satisfy Other Closing Obligations.

(a) If as of the then-applicable Expiration Date, (i) the Developer Closing Obligations have been satisfied, and (ii) the Other Closing Obligations have not been satisfied (other than any Other Closing Obligation which could not be satisfied because of Developer's failure to perform, in a timely manner, any of its obligations under this Agreement which are necessary for the satisfaction of such Other Closing Obligation), then neither Party shall be obligated to proceed with the Closing at such time, but NYCEDC shall be entitled, by notice to Developer (and at no charge to NYCEDC or Developer), to extend such Expiration Date (and the Scheduled Closing Date) for one or more periods, not to exceed twelve (12) months in the aggregate, to enable the Other Closing Obligations to be satisfied.

(b) If (i) the Other Closing Obligations have not been satisfied by the Expiration Date as extended in accordance with Section 8.3(a) (other than any Other Closing Obligation which could not be satisfied because of Developer's failure to perform, in a timely manner, any of its obligations under this Agreement which are necessary for the satisfaction of such Other Closing Obligation), and (ii) the Closing has not occurred, then either Party may notify the other of such Party's election to terminate this Agreement and the effective date of such termination. Upon such termination, NYCEDC shall, as Developer's sole right and remedy against NYCEDC under and by reason of this Agreement, return to Developer the Development Security and any remaining amounts of the Good Faith Deposits which have not been forfeited in accordance with Article 7 hereof, and thereafter neither Party shall have any rights against or liabilities to the other by reason of this Agreement, other than any obligations which are expressly stated to survive the termination of this Agreement as provided in Section 19.8.

## ARTICLE 9.
## DEVELOPER AND OTHER CLOSING OBLIGATIONS

Section 9.1 Developer Closing Obligations. The following are the "Developer Closing Obligations":

(a) Developer shall have performed all of its obligations under Article 5, including that Developer shall have completed and submitted to NYCEDC the Background Questionnaire Forms and NYCEDC's review of such forms shall have revealed no information which, under the City's or NYCEDC's policies, would preclude the leasing of the Premises to Developer pursuant to the Lease; provided, that if any such information is revealed, Developer shall have five (5) days from receipt of notice thereof from NYCEDC to remedy (to NYCEDC's satisfaction) the facts or circumstances giving rise to such preclusion;

(b) Developer shall have provided NYCEDC with proof reasonably satisfactory to NYCEDC that the insurance requirements set forth in the Transaction Agreements are satisfied;

(c) Developer shall have performed all of the obligations and complied with all of the requirements to be performed or complied with by Developer under this Agreement which are necessary for the Other Closing Obligations to be satisfied;

(d) Developer shall have performed all of the obligations and complied with all of the requirements to be performed or complied with by Developer as of the commencement date or effective date of each of the Transaction Agreements, as may be more particularly set forth therein;

(e) Developer shall have provided NYCEDC with (i) updated proof reasonably satisfactory to NYCEDC as to the due organization of Developer and the authority of Developer to enter into each of the Transaction Agreements to which it is a party, (ii) copies of Developer's organizational documents if any changes have been made since the prior submission of same to NYCEDC and (iii) proof reasonably satisfactory to NYCEDC as to the identity of the beneficial owners of Developer and that such beneficial owners of Developer as of the Closing Date are the same as disclosed previously to NYCEDC in accordance with this Agreement; and

(f) Developer shall have delivered the Closing Date Guaranty as provided in Section 7.8, or shall have delivered replacement Development Security in accordance with Section 7.2, to the extent the Development Security issued prior to the Closing Date is expiring or terminating prior to the end of the period specified in Section 7.2(b).

Section 9.2 Other Closing Obligations. The following are the "Other Closing Obligations":

(a) if required in connection with the execution and delivery of the Lease, the City shall have authorized the disposition of the Premises pursuant to the Lease, following a public hearing conducted in accordance with Section 1301(2)(g) of the New York City Charter after the publication of notice in the City Record at least thirty (30) days in advance of such hearing; and

(b) the ULURP Application Approval Date shall have occurred.

## ARTICLE 10.
## NYCEDC CLOSING DELIVERABLES

Section 10.1 NYCEDC Deliverables. At the Closing, NYCEDC will deliver the following to Developer:

(a) the Lease pursuant to Article 2 hereof;

(b) evidence of authorization by the City and/or any other City entity executing and delivering the Lease of its authority to do so;

(c) all necessary transfer tax forms in connection the Lease, duly executed and acknowledged where appropriate, by NYCEDC;

(d) all Documents and other deliverables required (pursuant to the terms of the Transaction Agreements) to be executed and delivered by the City and/or NYCEDC on or before the delivery of the Lease (including the Memorandum of Lease pursuant to Section 12 hereof); and

(e) such other Documents and affidavits, executed on behalf of the City and/or NYCEDC, as are customary and are reasonably required by the Title Company to issue to Developer a leasehold policy of title insurance with respect to the property leased under the Lease.

## ARTICLE 11.
## DEVELOPER CLOSING DELIVERABLES

Section 11.1 Developer Deliverables. At the Closing, Developer will deliver the following to NYCEDC:

(a) the Lease to which Developer is a party pursuant to Article 2 hereof;

(b) insurance certificates evidencing satisfaction of the insurance requirements set forth in the Transaction Agreements;

(c) all Documents and other deliverables required to be executed and delivered by Developer on or before the Closing Date under Article 5 (if not previously submitted to NYCEDC);

(d) certified copies of the organizational documents of Developer, together with a certificate of subsistence and certified copies of all consents and resolutions authorizing the execution and delivery of the Transaction Agreements;

(e) a duly executed, and where appropriate, acknowledged, counterpart of all necessary transfer tax forms;

(f) payment, in accordance with the Transaction Agreements, of all amounts then due and payable under the Transaction Agreements (including the Security Deposit); and

(g) all other Documents payments and other deliverables required to be executed and delivered by Developer on or before the delivery of the Lease, as set forth herein or therein, including the Closing Date Guaranty in accordance with Section 7.2(b).

## ARTICLE 12.
## TRANSFER TAXES; RECORDING

Section 12.1 Payment of Transfer Taxes. Developer shall pay, and at the Closing shall deliver to the Title Company, Developer's checks or other payment for, any real property transfer tax imposed by the City and any real estate transfer tax imposed by the State of New York, with respect to the Transaction Agreements. At the Closing, each of the Parties, as applicable, or their respective attorneys, shall execute and acknowledge all applicable transfer tax returns.

Section 12.2 Recorded Documents. Promptly after the Closing and at Developer's sole cost and expense, Developer shall cause each of the Memorandum of Lease, and all of the other

Transaction Agreements that are contemplated to be recorded, if any, to be submitted for recording to the Office of the City Register of the City of New York, in the County of Richmond, and, in connection therewith, shall deliver an executed counterpart of the necessary transfer tax returns and shall deliver to NYCEDC evidence acceptable to NYCEDC that such documents have been duly recorded and that such transfer taxes have been paid.

## ARTICLE 13.
## REPRESENTATIONS AND WARRANTIES OF DEVELOPER; OTHER MATTERS

Section 13.1 Developer Representations and Warranties. Developer hereby represents and warrants, as of the Commencement Date and the Closing Date (unless otherwise specified below), that:

(a) Good Standing. Developer is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of New York, is authorized to do business in the State of New York and has all requisite power and authority to execute, deliver and perform this Agreement.

(b) Due Execution and Delivery. The execution and delivery of this Agreement has been duly authorized by all required company action and upon such execution and delivery this Agreement shall constitute a legal, valid, binding and enforceable obligation of Developer, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency and other similar laws affecting creditors' rights generally and by general principles of equity.

(c) Ownership of Developer. As of the Commencement Date, in the aggregate the Developer Principals directly own one hundred percent (100%) of the membership interests in Developer and no other Person directly or indirectly holds any membership, ownership, equity or other interest in Developer, nor does any other Person have the power, directly or indirectly, to direct the management and affairs of Developer, whether through the ability to exercise voting power, by contract or otherwise, including the right to make (or consent to) all capital and other major decisions to be made by Developer.

(d) Other Agreements and Restrictions. The execution and delivery of this Agreement by Developer will not (i) violate any provision of, or require any filing, registration, consent or approval under Legal Requirements having applicability to Developer, (ii) result in a breach of, or constitute a default or require any consent under any indenture or loan or credit agreement or any other agreement, lease or instrument to which Developer is a party or by which it or its properties may be bound or affected; (iii) result in, or require, the creation or imposition of any lien, upon or with respect to any of the properties now owned or hereafter acquired by Developer; or (iv) cause Developer to be in default under or violation of any Legal Requirements or other order, writ, judgment, injunction, decree, determination or award or any indenture, agreement, lease or instrument to which Developer is a party or by which it or its properties may be bound or affected.

Section 13.2 Common Schedule. The copy of the schedule provided by Developer and attached hereto at Exhibit G (Copy of Common Schedule) is a true, correct and complete copy of such schedule as agreed to between Developer and North Site Developer.

Section 13.3 Condition of Property; "As Is" Condition.

(a) Developer will complete or has completed to its satisfaction within the Term of this Agreement, its due diligence review and examination and inspection of the Premises.

(b) Developer is a sophisticated real estate developer and possesses, or has engaged other parties that possess, specific expertise in the development of real property in the City, is reasonably familiar with the location, physical condition and state of repair of the Premises and agrees to accept the Premises "as is", "where is" and "with all faults", in whatever condition and state of repair it may be on the Closing Date, without any abatement or reduction in, or credit or allowance against the Good Faith Deposits, the Development Security, the Security Deposit or any other amounts due under the Transaction Agreements by reason of any current condition of the Premises or any loss, damage, destruction or deterioration thereto or thereof subsequent to the Commencement Date except in connection with Remediation Work that may be undertaken by or on behalf of Developer in accordance with this Agreement and the Lease.

(c) Developer has not been induced by, and has not relied to any extent upon any information or materials provided to it or obtained by it by, the City, NYCEDC or any other Person owned, controlled by or affiliated with the City or any representations, warranties or statements, whether oral or written, express or implied, made by the City, NYCEDC or any other Person owned, controlled by or affiliated with the City, or any agent, employee or other representative thereof or by any broker or any other Person representing or purporting to represent any of such parties, which information, materials, representations, warranties or statements are not expressly set forth in this Agreement concerning the Premises, its state of title, condition or state of repair, tenancies or occupancies, the absence or presence of hazardous waste and materials and/or Hazardous Substances upon or under the Premises, or any other matter affecting or relating to the Premises or this transaction.

Section 13.4 No Representations. Without limiting the foregoing, NYCEDC makes no representation or warranty concerning any of the following matters:

(a) the Premises' compliance or non-compliance with any Legal Requirements,

(b) the environmental condition of the Premises, or the Premises' compliance or non-compliance with any Environmental Laws,

(c) the actual or permitted current or future use of the Premises pursuant to applicable Legal Requirements,

(d) the current or future real estate tax liability, assessment or valuation of the Premises,

(e) the availability or non-availability of any benefits conferred by Legal Requirements, whether for subsidies, special real estate tax treatment or other benefits of any kind,

(f) the availability or unavailability from any Governmental Authority of any licenses, permits, approvals or certificates which may be required in connection with the development or operation of the Premises,

(g) the compliance or non-compliance of the Premises, in their respective current or future states, with applicable zoning ordinances, or

(h) the inability to obtain an exemption from or a change in the zoning or a variance with respect to the Premises' non-compliance, if any, with any provision of the Zoning Resolution.

Section 13.5 Limitations. NYCEDC shall not be liable or bound in any manner by any verbal or written statements, representations, real estate brokers' "set-ups", offering memorandum or information pertaining to the Premises furnished by any real estate broker, advisor, consultant, agent, employee, representative of NYCEDC, or by any other Person, including by NYCEDC in connection with the RFEI.

Section 13.6 Waiver. Developer hereby waives, to the extent permitted by law, any and all implied warranties that may be applicable with respect to the Premises or the Project.

## ARTICLE 14.
## TITLE DEFECTS

Section 14.1 Permitted Exceptions.

(a) By no later than August 17, 2012, Developer shall deliver to NYCEDC a written statement (a "Title Objection Notice") setting forth, in reasonable detail, any specific items appearing in the Title Report and/or the Survey that Developer has reasonably determined would materially adversely affect Developer's ability to finance, construct, and/or operate the Project (collectively, "Title Objections"). NYCEDC shall notify Developer (the "NYCEDC Title Notice") within fifteen (15) Business Days of the delivery of the Title Objection Notice whether NYCEDC intends to undertake to eliminate the Title Objections. All Title Objections which NYCEDC undertakes to eliminate shall be treated in the same manner as Voluntary Title Defects for all purposes of this Article 14. In the event that NYCEDC notifies Developer that NYCEDC is unable to undertake to eliminate any of the Title Objections, then Developer may elect, as its sole remedy, within five (5) Business Days after the delivery of the NYCEDC Title Notice (TIME BEING OF THE ESSENCE WITH RESPECT THERETO), either (i) to accept the Property subject to such Title Objections which NYCEDC will not undertake to eliminate; or (ii) to terminate this Agreement by notice given to NYCEDC, in which event Developer shall, as its sole and complete remedy, be entitled to a return of the Development Security and Good Faith Deposits and any Liquidated Damages theretofore paid. Upon such return of the Development Security and Good Faith Deposits and any Liquidated Damages theretofore paid, this Agreement shall terminate and neither Party hereto shall have any further obligations hereunder other than

those expressly provided in Section 19.8. Upon the Closing, pursuant to the Lease, Developer shall accept leasehold title to the Premises, which title shall be subject only to the following (collectively, "Permitted Exceptions"):

(b) all matters of record, other than (i) Title Objections (excluding Title Objections accepted by Developer pursuant to Section 14.1(a)), and (ii) Voluntary Title Defects;

(c) all exceptions, including printed exceptions, set forth in the Title Report, other than (i) Title Objections (excluding Title Objections accepted by Developer pursuant to Section 14.1(a)), (ii) Voluntary Title Defects; and (iii) any judgment liens, mortgages and rights of tenants in possession, whether or not such matters appear in the Title Report;

(d) any and all matters created by or on behalf of, or with the consent of, Developer, including all matters created pursuant to and in accordance with the Transaction Agreements;

(e) any and all liens and other matters arising from Developer's entry onto the Premises (1) pursuant to the temporary construction permits or any construction agreement, (2) for the performance of any site preparation work, or (3) for any other reason, other than as a result of acts or omissions of the NYCEDC or the City which do not comply with the Transaction Agreements or materially impair the use of the Premises or development of the Project;

(f) all matters shown on the Survey (other than (i) Title Objections (excluding Title Objections accepted by Developer pursuant to Section 14.1(a)), and (ii) Voluntary Title Defects), and any further matters that an accurate survey or physical inspection of the Premises as of the date hereof would reveal, and such additional matters created after the date hereof that an accurate survey or physical inspection of the Premises as of the Closing Date would reveal; provided, that such additional matters do not render title to the Premises uninsurable or materially impair the use of the Premises or development of the Project;

(g) all present and future zoning, building, fire, health and similar laws, codes, regulations and ordinances and other Legal Requirements;

(h) any easement or right of use created in favor of any public utility company for electricity, steam, gas, telephone, water, television, cable or other service and the right to install, use, maintain, repair and replace wires, cables, terminal boxes, lines, services, connections, poles, mains, facilities and the like, upon, under and across the Premises that (i) is reflected on the Survey, (ii) is recorded as of the date hereof (other than Title Objections accepted by Developer pursuant to Section 14.1(a)), or (iii) do not materially adversely affect Developer's ability to construct the Project;

(i) all violations of laws, codes, rules, regulations, statutes, ordinances, orders or requirements, now issued or noted or hereafter issued or noted by any Governmental Authority having jurisdiction against or affecting the Premises relating to conditions existing on, prior to, or subsequent to the date hereof (but excluding any fines, penalties or fees resulting from such violations, if any);

(j) real estate taxes, tax liens, water and sewer charges, assessments and vault charges, and any liens with respect to any of the foregoing, to the extent due and payable after Closing (but not including any such taxes, charges or assessments arising prior to Closing);

(k) rights of the tenant under the Ballpark Lease related to parking on or off the Premises or as provided in the Ballpark Lease Amendment Documents, if any; and

(l) such other tenancies, occupancies and other title matters as shall hereafter be agreed to between Developer and NYCEDC.

Section 14.2 Rights in Respect of Inability to Convey. In the event that at the Scheduled Closing Date, (a) title to the Premises is subject to liens, encumbrances or other matters not constituting Permitted Exceptions (each of such matters, individually, a "Title Defect" and, collectively, "Title Defects"), and (b) Developer has not, on or prior to the earlier of (i) fifteen (15) days following the date on which Developer first has actual knowledge of the Title Defect and (ii) the Scheduled Closing Date, given notice to NYCEDC that Developer is willing to waive objection to each Title Defect and proceed to Closing hereunder, then NYCEDC shall have the right, subject to the rights of Developer with respect to Voluntary Title Defects as set forth in Section 14.3, to take such action as NYCEDC shall deem advisable to discharge each such Title Defect.

Section 14.3 Voluntary Title Defects. On or prior to the Closing, (a) any Title Defect created or permitted to be created by NYCEDC or the City (in its proprietary capacity) or anyone claiming by, through or under such parties) after the Commencement Date but prior to the Closing Date, and (b) any Title Defect which constitutes a sum of money payable to the City, including any fines, penalties, liens or judgments payable to the City (the title defects under clauses (a) and (b), collectively, "Voluntary Title Defects") shall be discharged or paid by on or before the Closing Date. Developer shall promptly notify NYCEDC of any and all Voluntary Title Defects of which Developer may become aware, which notices shall describe in reasonable detail the Voluntary Title Defect that is being objected to by Developer. Except as set forth in this Section 14.3 with respect to Voluntary Title Defects, nothing contained in this Agreement shall be deemed to require NYCEDC to bring any action or proceeding or take any other steps to remove any Title Defect or to expend any moneys therefor, nor shall Developer have any right of action against NYCEDC or the City, at law or in equity, for NYCEDC's or the City's inability to convey title in accordance with the terms of this Agreement.

Section 14.4 Adjournment. In the event that NYCEDC or the City shall elect to take action to discharge any Title Defects, NYCEDC shall be entitled to one or more adjournments of the Scheduled Closing Date for a period not to exceed ninety (90) days in the aggregate (such adjournments, collectively, the "Title Defect Adjournment"), and the Closing shall be adjourned to a date specified by NYCEDC not beyond such ninety (90) day period. No action taken by NYCEDC to discharge, or attempt to discharge, any purported Title Defect shall be an admission that any such purported Title Defect is not a Permitted Exception. If, for any reason whatsoever, each such Title Defect shall not have been paid or discharged (other than Voluntary Title Defects which must be discharged) at the expiration of such adjournment(s), NYCEDC, by giving notice to Developer, may terminate this Agreement, effective as of the date which is ten (10) Business

Days after the date of such notice, subject to Developer's right to elect to accept such Title Defects and proceed to Closing in accordance with the provisions of Section 14.6 hereof.

Section 14.5 Termination. Upon any termination of this Agreement pursuant to this Article 14, then (a) Developer shall be entitled to the return of the Good Faith Deposits (with any interest earned thereon) and the Development Security, and (b) neither party shall have any further rights or obligations hereunder (other than as expressly provided in Section 19.8), at law or in equity, for damages or otherwise.

Section 14.6 Developer's Right to Accept Title. Notwithstanding the foregoing provisions of this Article 14, Developer may, by notice given to NYCEDC at any time prior to the Scheduled Closing Date, or the effective date of an election by NYCEDC to terminate this Agreement pursuant to this Article 14, elect to waive objection to any Title Defect and accept such title as the City and/or NYCEDC can convey, notwithstanding the existence of any Title Defects. In such event, this Agreement shall remain in effect and the Parties shall proceed to Closing; provided, that Developer shall not be entitled to any rebate of or credit against the Good Faith Deposits, or any abatement, credit or allowance of any kind or any claim or right of action against NYCEDC or the City for damages or otherwise by reason of the existence of any Title Defects.

Section 14.7 Title Company Endorsement. If at the Closing, the Premises shall be subject to any Title Defect, such matter shall not be deemed grounds for termination of this Agreement or any other remedy if the Title Company will, without material cost to Developer, either omit the same as an exception to Developer's leasehold title policy for the Premises or affirmatively insure against enforcement of such matter against the Premises by endorsement reasonably satisfactory to Developer, or if another reputable national title insurer would, without cost to Developer, reasonably omit the same from such leasehold policy or issue affirmative insurance over the same. Nothing in this Section 14.7 shall be deemed to create any obligation on the part of NYCEDC to cause the Title Company to omit or issue affirmative insurance over any such Title Defects, or to otherwise satisfy such Title Defect.

## ARTICLE 15.
## NOTICE

Section 15.5 Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if (i) personally delivered with proof of delivery thereof, (ii) sent by United States certified mail, return receipt requested, postage prepaid or (iii) sent by reputable overnight courier service, in each case addressed to the respective Parties as follows:

**If to NYCEDC:**

New York City Economic Development Corporation
110 William Street
New York, New York 10038
Attn: Executive Vice President, Real Estate Transaction Services

**With copies to:**

New York City Economic Development Corporation
110 William Street
New York, New York 10038
Attn: General Counsel

and

New York City Law Department
100 Church Street
New York, New York 10007
Attn: Chief, Economic Development Division

**If to Developer:**

St. George Outlet Development LLC
150 Myrtle Avenue
2nd Floor
Brooklyn, New York 11201
Attn: Mr. Donald Capoccia

**With copies to:**

Akerman Senterfitt LLP

Prior to February 1, 2013, at: 335 Madison Ave., 26th Floor
New York, New York 10017
Attn: Steven Polivy, Esq.

After February 1, 2013, at: 666 5th Ave., 20th Floor
New York, New York 10103
Attn: Steven Polivy, Esq.

or to such other address or party as either party may have furnished to the other in writing in accordance herewith, except that notices of change of address or addresses shall only be effective upon receipt. Notices shall be deemed given when delivered personally or by overnight courier, or if mailed, two (2) Business Days after mailing in the United States, with failure to accept delivery to constitute delivery for purposes hereof.

## ARTICLE 16.
## BROKER

Section 16.1 No Brokers.

(a) Each Party represents to the other that it has not dealt with any broker in connection with the Project or this Agreement.

(b) Developer shall forever defend, indemnify and hold harmless NYCEDC and its officials, officers, directors, members, principals, agents, representatives and employees, from and against any and all liabilities, claims, demands, penalties, fines, settlements, damages, costs, expenses and judgments arising from any claims for a commission or other similar compensation brought by any broker or brokerage firm or other firm or individual relating to this Agreement, arising in whole or in part from the actions or omissions of Developer or of any Person that is an affiliate of Developer or of the employees, officers, owners, directors, members, principals, representatives or agents of Developer or any Person that is an affiliate of Developer.

## ARTICLE 17.
## DEFAULTS

Section 17.1 Developer Default. Each of the following shall constitute a default by Developer under this Agreement (each, a "Developer Default"):

(a) if on the Expiration Date, any Developer Closing Obligations remain unsatisfied;

(b) if on the Expiration Date, all of the Other Closing Obligations have been satisfied (other than any Other Closing Obligation which could not be satisfied because of Developer's failure to perform, in a timely manner, any of its obligations under this Agreement which are necessary for the satisfaction of such Other Closing Obligation), and Developer refuses or willfully fails to close on such date;

(c) any default by Developer under any Transaction Agreement that is not cured within thirty (30) days after delivery to Developer of notice thereof; provided, that if (i) the event or circumstance giving rise to such default cannot reasonably be cured within such thirty (30) day period, (ii) such event or circumstance is susceptible of remedy or cure, (iii) Developer has during such thirty (30) day period been proceeding continuously, with diligence and in good faith to remedy or cure such event or circumstance, (iv) such event or circumstance does not arise from and is not related to a failure to pay any amounts due under any Transaction Agreement, and (v) at least five (5) days prior the expiration of such 30-day period Developer delivers to NYCEDC, in writing, a description of a course of action for curing such default and a proposed additional period of time Developer in good faith believes is needed to effect such cure, and such description (including the course of action and period of time proposed therein) is acceptable to NYCEDC in its reasonable discretion, then the time within which such default may be remediated or cured shall be extended to such date agreed to in writing by NYCEDC and Developer, so long as (x) Developer continues during such agreed period to continuously, diligently and in good faith pursue such cure or remedy within such agreed period, (y) such

agreed period ends no later than thirty (30) days following the end of the 30-day period specified in sub-clause (iii) above, and (z) if the additional time proposed by Developer in accordance with sub-clause (v) above is for more than an additional thirty (30) days beyond the 30-day period specified in sub-clause (iii) above, then any additional time granted by NYCEDC under this Section 17.1(c) shall be at NYCEDC's sole discretion;

(d) any assignment or transfer by Developer or of any interest in Developer in contravention of Article 18 of this Agreement which has not been remedied within thirty (30) days after notice from NYCEDC;

(e) a breach of any of the covenants, agreements or obligations to be performed by Developer under this Agreement on or before the Closing Date, including any failure by Developer to perform its obligations as and when required to be performed under Article 5, and/or any failure by Developer timely to submit to NYCEDC documents required to be delivered hereunder in a complete and reviewable form reasonably satisfactory to NYCEDC, which failure continues for a period of thirty (30) days after notice from NYCEDC;

(f) a false or misleading representation by Developer in this Agreement that is not cured within thirty (30) days after delivery to Developer of notice thereof;

(g) any admission in writing by Developer that Developer is unable to pay its debts as such become due; any general assignment by Developer for the benefit of its creditors; any filing by Developer of a voluntary petition under the United States Bankruptcy Code or a filing of such a petition against Developer which remains undismissed for a period of sixty (60) days, or the entering of any order for relief against Developer in any such action; any filing by Developer of a petition or an answer seeking, consenting to, or acquiescing in, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, State or other bankruptcy or insolvency statute or law, or if Developer shall seek, or consent to, or acquiesce in, or suffer the appointment of, any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Developer, or of all or any substantial part of its properties, or of its rights under this Agreement; or if Developer shall take any action in furtherance of any action described herein; and

(h) any failure to pay any amount due under this Agreement to NYCEDC as and when due that is not cured within ten (10) days after delivery to Developer of notice thereof.

Section 17.2 Termination for Developer Default. If any Developer Default occurs, NYCEDC shall have the right to terminate this Agreement immediately by notice to Developer and retain the Good Faith Deposits as liquidated damages for loss of a bargain and not as a penalty, and shall have all other rights and remedies available under this Agreement, at law or equity.

## ARTICLE 18.
## NO ASSIGNMENTS; NO CHANGE OF CONTROL

Section 18.1 No Assignments. Developer's interest under this Agreement shall not be assigned (including affiliate transfers), nor shall Developer divest itself of any interest herein, without the prior written consent of NYCEDC, which consent shall be at NYCEDC's sole and absolute discretion. Any attempted assignment in contravention of this Section 18.1 shall be null and void.

Section 18.2 No Change of Control.

(a) Except as provided in Section 18.2(b), no membership, ownership, equity or other interest in Developer shall be sold, assigned or otherwise transferred by any Developer Principle, nor shall any such interest in Developer be issued, between the Commencement Date and the Closing Date without the prior written consent of NYCEDC, which consent shall be at the sole and absolute discretion of NYCEDC. If any such equity interest is sold, assigned, transferred or issued without the permission of NYCEDC or in accordance with Section 18.2(b), Developer shall be in default under this Agreement and NYCEDC shall have the rights set forth in Section 17.2.

(b) Between the Commencement Date and the Closing Date, membership, ownership, equity or other interests in Developer may be sold, assigned or otherwise transferred by the Developer Principals to another Person; provided, that (i) such Person is a Qualified Developer (as defined in the Lease), (ii) following such sale, assignment or other transfer the Developer Principals continue to have Developer Principal Control (as defined in the Lease) over Developer and Mr. Donald Capoccia shall continue to maintain day-to-day operational and management control of the Project, (iii), such Person has completed and submitted all Background Questionnaire Forms to NYCEDC in the manner provided in Section 5.6, and (iv) Developer shall have provided NYCEDC with thirty (30) days' advance notice of such sale, assignment or other transfer and such Person is otherwise reasonably acceptable to NYCEDC.

(c) In the event that any Developer Principal dies or becomes legally incapacitated prior to the Closing Date, then Developer shall, within ten (10) Business Days after such death or incapacitation, notify NYCEDC of such death or incapacitation and shall cause the remaining Developer Principals to certify to NYCEDC, in writing, that such remaining Developer Principals intend to fully observe and perform the terms, obligations and covenants specified herein which relate to the Developer Principals and to cause Developer to perform its obligations in this Agreement in a timely manner as provided herein.

## ARTICLE 19.
## MISCELLANEOUS

Section 19.1 Entire Agreement. This Agreement and the other Transaction Agreements constitute the full agreement among the Parties with respect to the transaction contemplated herein, and all prior understandings and agreements are merged into this Agreement and the Transaction Agreements.

Section 19.2 Amendments. No provision of this Agreement may be amended, supplemented, modified or waived, except by written instrument signed by the Parties.

Section 19.3 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York (without giving effect to principles of conflicts of laws).

Section 19.4 Captions. The captions and other headings in this Agreement are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof.

Section 19.5 Successors and Assigns. Subject to Section 18.1, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

Section 19.6 Further Assurances. Developer shall ensure that all Documents furnished to NYCEDC do not and will not contain any untrue statement of a material fact and do not and will not omit to state any material fact or any fact necessary to make the statements contained therein not misleading in light of the circumstances in which made, and will promptly disclose to NYCEDC and correct any defect or error that may be discovered therein or in any of the Transaction Agreements or in the execution, acknowledgement or recordation thereof.

Section 19.7 Invalidity. If any term or provision of this Agreement or the application thereof to any Person or circumstances shall, to any extent, be invalid and unenforceable, the remainder of this Agreement, and the application of such term or provision to Persons or circumstances other than those as to which it is held invalid and unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 19.8 Survival. The provisions set forth in Sections 5.1(d), 5.10(d), 7.1, 7.2, 7.8, 8.2, 12.2, 14.5, and in Articles 1, 13, 16 and 19 hereof shall survive the Expiration Date or earlier termination of this Agreement.

Section 19.9 Execution. This Agreement shall not be, be deemed to be, or become binding upon NYCEDC or any other party hereto to any extent or for any purpose unless and until it is executed by each of such Parties and fully executed counterparts are delivered to all Parties.

Section 19.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement. Each of the signatories below represents that it has authority to sign on behalf of the Party for which it signed and has the power to bind such Party.

Section 19.11 Payments or Deliveries on Non-Business Days. Except as may otherwise be provided herein, whenever any payment or deliverable to be paid or delivered hereunder would otherwise fall on a day which is not a Business Day, the due date for such payment or deliverable shall be the immediately following Business Day.

*[Remainder of Page Intentionally Left Blank; Signature Pages Follow]*

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION**

By: _____
Patrick O'Sullivan
Executive Vice President

**ST. GEORGE OUTLET DEVELOPMENT LLC**

By: _____
Donald A. Capoccia
Member

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION**

By: _____
Patrick O'Sullivan
Executive Vice President

**ST. GEORGE OUTLET DEVELOPMENT LLC**

By: _____
Donald A. Capoccia
Member

ALMA NORIEGA
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01NO6109895
Qualified in Queens County
Commission Expires May 24, 2016

# EXHIBIT A

## THE PREMISES

**EXHIBIT B**

**ST. GEORGE PROJECT LOCATIONS**

# EXHIBIT C

## FORM OF LEASE

*[Form of Lease Follows on Next Page]*

# AGREEMENT OF LEASE

**by and between**

**THE CITY OF NEW YORK,**
**as Landlord**

**and**

**ST. GEORGE OUTLET DEVELOPMENT LLC**
**as Tenant**

Premises:

[Parts of Lots 1, 5 and 20 at Block 2][1]
in the Borough of Staten Island, County of Richmond,
City and State of New York

Dated as of [_____], 20[__]

[1] TO BE INSERTED PRIOR TO CLOSING/EFFECTIVE DATE. Developer to subdivide existing Lots 1, 5 and 20 into new separate tax lot(s) prior to execution of Lease.

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## EXHIBITS AND SCHEDULES



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[2] TO BE CONFIRMED PRIOR TO CLOSING/EFFECTIVE DATE. To be included if the Ballpark Lease Amendment Documents are executed and delivered prior to the Closing/Effective Date. If they are not, then this Exhibit D to be "intentionally omitted".

**THIS AGREEMENT OF LEASE** (this "Lease"), is made as of the [___] day of [_____], 20[__] (the "Effective Date"), between THE CITY OF NEW YORK, a municipal corporation of the State of New York (the "City") having an address at City Hall, New York, New York 10007, as landlord, and ST. GEORGE OUTLET DEVELOPMENT LLC a New York limited liability company having an address at 150 Myrtle Avenue, 2nd Floor, Brooklyn, New York, as tenant ("Developer Tenant").

## RECITALS

WHEREAS, the City is the owner of good and marketable fee title in and to that certain real property (including all buildings, structures and/or improvements now or hereafter located thereat) designated as Block [__], Lot [__][3] on the Tax Map for the Borough of Staten Island, as more particularly described in Exhibit A (Legal Description of Land) attached hereto and incorporated herein (the "Premises");

WHEREAS, the City desires to encourage the development of the Premises so as to complement and bolster economic growth in St. George, Staten Island, and the City, to connect to and complement the area's existing waterfront amenities and other assets, and to improve the environmental quality of the St. George waterfront while being sensitive to the natural environment (the "Project Mission");

WHEREAS, the City has retained New York City Economic Development Corporation, a local development corporation organized pursuant to Section 1411 of the New York State Not-for-Profit Corporation Law ("NYCEDC"), pursuant to that certain Amended and Restated Maritime Contract dated as of June 30, 20[___] (as amended from time to time, the "NYCEDC Contract") to perform certain economic development services described therein;

WHEREAS, to facilitate the development of the Premises, and consistent with the NYCEDC Contract, NYCEDC issued a Request for Expressions of Interest released on August 11, 2011 (the "RFEI") with respect to the Premises and certain other property in St. George, Staten Island;

WHEREAS, based on the responses to the RFEI and certain supplementary information and materials submitted to NYCEDC in connection therewith, including the proposal and supplementary information and materials submitted by BFC Partners, L.P., a New York limited partnership ("BFC" or the "Developer"), the Developer has been selected to undertake the development of the Premises as set forth in this Lease (the "Project");

WHEREAS, NYCEDC, in selecting the Developer, and the City in authorizing this Lease, have materially relied upon the Developer's commitment to develop the Project as described in Exhibit B (Project Commitments) annexed hereto, which sets forth, among other things, (i) a detailed description of the elements of the Project to be constructed and developed and a timetable and phasing plan therefor, (ii) an operational program for the Project, and (iii) specific construction milestones for the Project which Tenant has committed to perform and

[3] Tax block and lot numbers to be inserted after new permanent tax lot number is issued for the "New Lot" (as defined in the Pre-Development Agreement), as contemplated in the Pre-Development Agreement.

maintain during the Term of this Lease (the milestones, deadlines, commitments and site plan set forth in Exhibit B (Project Commitments) are referred to herein as, the "Project Commitments");

WHEREAS, the Developer Principals caused Developer Tenant to be formed on or about August 10, 2012, as an entity wholly-owned by the Developer Principals [and subsequent to such formation the Retail Partner has become a minority, non-controlling member in Developer Tenant];

WHEREAS, in furtherance of the Project, the Developer Principals and Developer Tenant, as tenant, each desire for the Developer Tenant to lease the Premises from the City, and the City, as landlord, desires to lease the Premises to Developer Tenant, and consistent with the NYCEDC Contract, NYCEDC is appointed by the City to administer this Lease and act for and on behalf of the City with respect to the City's proprietary interest in the Premises and the City's rights, and to discharge and perform certain of the City's obligations as landlord as further provided hereunder (or cause one or more of NYCEDC's contractors to perform any such work or obligations);

WHEREAS, as of August [___], 2012, NYCEDC and Developer Tenant entered into a pre-development agreement (the "Pre-Development Agreement"), a copy of which is attached hereto at Exhibit C (Pre-Development Agreement), pursuant to which, among other provisions, NYCEDC and Developer Tenant have undertaken various obligations including, subject to the satisfaction of certain conditions set forth in the Pre-Development Agreement, the obligation to enter into this Lease;

WHEREAS, the City's Planning Commission on [_____] (Calendar No. [___]) and the New York City Council on [_____] approved the disposition and rezoning of the Premises and the development of the Premises as contemplated in the Approved ULURP Application, pursuant to the City's Uniform Land Use Review Procedure as codified under Sections 197-c and 197-d of the Charter ("ULURP") and such approval has been filed on [_____], 2012 with the Department of City Planning;

WHEREAS, the conditions precedent to the execution of this Lease as set forth in the Pre-Development Agreement have been satisfied or waived in accordance therewith.

NOW THEREFORE, it is hereby mutually covenanted and agreed by and between the parties hereto that this Lease is made upon the terms, covenants, and conditions hereinafter set forth.

## ARTICLE 1
## DEFINITIONS AND INTERPRETATION

Section 1.1 Definitions. For all purposes of this Lease and, unless otherwise indicated therein, all agreements supplemental hereto the terms defined in this Article 1 shall have the following meanings:

"AAA Rules" has the meaning provided in Section 42.1(a) hereof.

"Abatement Base" has the meaning provided in Section 3.8(e) hereof.

"Accounting Principles" means the then current generally accepted accounting principles and practices that are recognized as such by the American Institute of Certified Public