

# Loan Agreement

**LOAN AGREEMENT**

among

**TIAGO HOLDINGS, LLC,**

as Borrower

and

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION,**  
as Lender

Dated as of January 31, 2007

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**PROPERTY INFORMATION**

BLOCK: 1715      LOTS: 7, 10, 38, 42, 43, 45 and part of 22  
BLOCK: 1716      LOTS: 5, 6, 7, 8, 9, 11, 13 45 and part of 19  
BLOCK: 1815      LOTS: 34, 35, part of 23 and part of 31  
and part of East 117th Street and part of East 118th Street  
COUNTY: New York  
New York, New York

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## LOAN AGREEMENT

THIS LOAN AGREEMENT (this "Agreement" or this "Loan Agreement") dated as of January 31, 2007, by and between TIAGO HOLDINGS, LLC, a New York limited liability company (the "Borrower") and NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION, a local development corporation formed pursuant to Section 1411 of the Not-for-Profit Corporation Law of the State of New York, having its principal office at 110 William Street, New York, New York 10038, (together with its transferees, assignees and/or participants of interests in the Loan from time to time, the "Lender").

### RECITALS

- A. Borrower owns certain real property located in Manhattan, New York, between 116th and 119th Streets, (the "Retail Property") and Borrower proposes to develop and construct on the Retail Property certain improvements consisting of an approximately 528,000 square foot retail complex (together with all appurtenances, fixtures, and other improvements now or hereafter located on the Retail Property, the "Retail Project Improvements"; the Retail Property and the Retail Project Improvements are sometimes referred to herein collectively as the "Retail Project"). The Retail Project Improvements shall be developed and constructed in accordance with the Retail Project Plans and Specifications (as defined herein).
- B. Borrower also owns certain real property adjacent to the Retail Property (the "Garage Property;" the Retail Property and the Garage Property are more particularly described in Exhibit A attached hereto and made a part hereof and are sometimes referred to hereinafter, collectively, as the "Property") and Borrower proposes to develop and construct on the Garage Property certain improvements consisting of an approximately 1,248-space structured parking garage (together with all appurtenances, fixtures, and other improvements now or hereafter located on the Garage Property, the "Garage Project Improvements"; the Garage Property and the Garage Project Improvements are sometimes referred to herein collectively as the "Garage Project;" the Retail Project Improvements and the Garage Project Improvements are sometimes referred to herein, collectively, as the "Improvements"; the Retail Project and the Garage Project are sometimes referred to herein, collectively, as the "Project"). The Garage Project Improvements shall be developed and constructed in accordance with the Plans and Specifications (as defined herein).
- C. Borrower has requested financing from ING Real Estate Finance (USA) LLC, as administrative agent on behalf of ING Real Estate Finance (USA) LLC, as initial lender (collectively, the "Senior Lender") not to exceed \$285,723,288 in the aggregate for the purposes of refinancing an existing loan and financing the design, development and construction, including the Costs of the Improvement (as defined herein), of the Project



on the Property in the form of (i) three loans (collectively, the "Senior Construction Loans") to Borrower from Senior Lender in an amount not to exceed \$220,000,000 in the aggregate for the Retail Project and a portion of the Garage Project, and (ii) that certain Letter of Credit issued by the Letter of Credit Bank (as such terms are defined herein) in the amount of \$40,723,288]to enhance certain bond financing in the amount of \$40,000,000 (the "Bond Financing") issued to pay for the Costs of the Improvement of the remaining portion of the Garage Project pursuant to that certain Building Costs Reimbursement Agreement (as amended, restated, modified or supplemented from time to time, the "Senior Reimbursement Agreement") of even date herewith between Borrower and ING Bank N.V., Curacao Branch (together with its transferees, successors and assignees, the "Letter of Credit Bank") and the other Bond Facility Documents (as defined herein).

- D. Pursuant to the terms of the Senior Loan Agreements, Borrower shall have a one-time option to convert the Senior Construction Loans to permanent loans (the "Senior Permanent Loans"; the Senior Permanent Loans and the Senior Construction Loans are sometimes referred to herein, collectively, as the "Senior Loans"), such Senior Loans not to exceed \$245,000,000 in the aggregate.
- E. Borrower has requested financing from Lender not to exceed \$5,000,000 in the aggregate for the purposes of the design, development and construction of the Project on the Property in the form of a loan (the "Loan") to Borrower from Lender on the terms and conditions set forth in this Agreement.
- F. Borrower agrees to construct the Project and shall use the proceeds of the Loan to pay for the Costs of the Improvement of the Retail Project and a portion of the Garage Project in accordance with the Project Budget (Building Costs) and the terms and conditions of this Loan Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the various agreements set forth in this Agreement and intending to be legally bound, Lender and Borrower agree as follows:

#### ARTICLE 1. BASIC LOAN TERMS

1.1 Definition of Terms Used in This Agreement. Unless the context shall otherwise require, capitalized terms used and not defined herein shall have the meanings assigned thereto in Exhibit B hereto for all purposes of this Agreement; and the rules of interpretation set forth in Exhibit B to this Loan Agreement shall apply to this Loan Agreement and all of the other Loan Documents.

1.2 **Loan.** By and subject to the terms of this Agreement, Lender agrees to lend to Borrower, and Borrower agrees to borrow from Lender, the Loan, which Loan shall be evidenced by the Note. The Note and all of the Obligations shall be secured, in part, by the Mortgage encumbering the real property, improvements and all of the other Mortgaged Property (as defined in the Mortgage). Amounts disbursed to or on behalf of Borrower pursuant to the Note shall be used to pay Costs of the Improvement of the Project and for such other purposes and uses as may be permitted under this Loan Agreement and the other Loan Documents.

1.3 **Loan Fees.** In consideration of Lender making the Loan to Borrower (and in addition to other fees and other amounts payable from time to time under this Agreement and the other Loan Documents), Borrower shall pay to Lender an annual administrative fee of Five Thousand (\$5,000) Dollars, payable on the Effective Date and on each anniversary thereafter until the Loan is paid in full.

1.4 **Expenses.** Borrower shall pay all fees, reasonable, third party, out-of-pocket costs and expenses paid or incurred from time to time by Lender in connection with the Loan including, without limitation: (i) all unpaid Loan Fees; (ii) all customary and reasonable, third party, out-of-pocket costs of closing; (iii) all customary and reasonable, third-party, out-of-pocket costs of preparation, negotiation and execution of the Loan Documents and all administration documents in connection with the Loan; (iv) all costs of the Title Commitment, the Title Policy, date downs to any existing Title Commitment or Title Policy and any and all customary and reasonable endorsements to any of the foregoing, the Survey and any and all additions or updates to the Survey, UCC, tax lien and judgment and all similar searches and reports which Lender may require in assessing the status of the security for the Loan in each of the foregoing cases, as such items may be reasonably required from time to time by Lender; (v) all fees and reasonable out-of-pocket-expenses of any consultants engaged by Lender in connection with this Loan, including cost-estimators, construction inspectors, appraisers, investigators, insurance consultants, environmental consultants, and the Project Consultant; (vi) all brokerage commissions (if any); (vii) all recording and filing fees, and taxes, levies or fees required to be paid with respect to the Loan Agreement, the Note, the Mortgage or any other of the Loan Documents or the filing or recordation thereof, even if such taxes, levies or fees are levied or assessed against, or under applicable Laws are to be borne by, Lender; and (viii) all of Lender's other reasonable, third party, out-of-pocket costs. Notwithstanding the foregoing, upon the occurrence and during the continuation of an Event of Default, Borrower shall immediately pay Lender within five (5) Business Days of demand all out of pocket costs and expenses incurred by Lender in connection with the enforcement or satisfaction of any of Borrower's obligations under this Agreement or the other Loan Documents, including, without limitation, in connection with: (A) any action or proceeding related to the enforcement or interpretation of this Loan Agreement or any of the other Loan Documents; (B) any foreclosure proceedings; (C) any action to appoint a receiver; or (C) any other action or proceeding to recover from Borrower amounts owed under the Loan Documents.

1.5 **Loan Documents.** Borrower shall execute and deliver to Lender (or cause to be executed and delivered) concurrently with this Loan Agreement each of the documents, properly executed and in recordable form, as applicable, described in Exhibit C as Loan Documents, together with those documents described in Exhibit C as Other Related Documents and Bond Facility Documents.

1.6 [Intentionally Omitted]

1.7 **Maturity Date.** All sums due and owing under this Loan Agreement and the other Loan Documents shall be repaid in full on or before the Maturity Date. All payments due to Lender under this Agreement, whether at the Maturity Date or otherwise, shall be paid in Dollars in immediately available funds.

## ARTICLE 2. INTEREST RATE; PAYMENTS

### 2.1 **Interest On The Loan.**

(a) **Interest Payments.** Payments of interest at the Interest Rate on the outstanding Principal Balance of the Loan shall be due and payable, in the manner provided in Section 2.2, on the first (1st) day of each month commencing with the thirty-seventh (37th) full month after the Effective Date (the "First Payment Date").

(b) **Event of Default Interest.** Notwithstanding the payment dates specified in Section 2.1(a), the Principal Balance of the Loan then outstanding and, to the extent permitted by applicable law, any interest payments on the Loan not paid within twenty (20) days after the same shall become due, shall bear interest payable upon demand at the Alternate Rate. All other amounts due Lender (whether directly or for reimbursement) under this Agreement or any of the other Loan Documents if not paid within ten (10) days after written notice of nonpayment, shall likewise, at the option of Lender, bear interest from and after demand at the Alternate Rate.

(c) **[intentionally omitted]**

(d) **Computation of Interest.** Interest on the Principal Balance of the Loan shall be computed on the basis of a 365/366 day year for the number of days actually elapsed in each interest accrual period. In computing interest on the Loan, the date of the making of a disbursement under the Loan shall be included and the date of payment shall be excluded. Notwithstanding any provision in this Section 2.1, interest in respect of the Loan shall not exceed the maximum rate permitted by applicable law.

(e) **Interest Rate.** The "Interest Rate" upon which interest shall be calculated for the Loan shall, from and after the Effective Date of this Agreement, be at (i) a rate of four percent (4%) per annum, or (ii) at the Alternate Rate upon notice from Lender if Borrower shall

fail to pay a Monthly Payment within twenty (20) days after the applicable Payment Date more than once in any 24-month period.

(f) [Intentionally Omitted]

(g) [Intentionally Omitted]

(h) [Intentionally Omitted]

(i) Interest Laws. Notwithstanding any provision to the contrary contained in this Loan Agreement or the other Loan Documents, Borrower shall not be required to pay, and Lender shall not be permitted to collect, any amount of interest in excess of the maximum amount of interest permitted by law ("Excess Interest"). If any Excess Interest is provided for or determined by a court of competent jurisdiction to have been provided for in this Loan Agreement or in any of the other Loan Documents, then in such event: (1) the provisions of this Section shall govern and control; (2) the Borrower shall not be obligated to pay any Excess Interest; (3) any Excess Interest that Lender may have received hereunder shall be applied as a credit first to the payment of interest due and payable to the extent permitted by law and thereafter to the Principal Balance of the Loan or accrued and unpaid interest thereunder (not to exceed the maximum amount permitted by law), with any balance remaining to be refunded to the Borrower; (4) the interest rate(s) provided for herein shall be automatically reduced to the maximum lawful rate allowed from time to time under applicable law (the "Maximum Rate"), and this Loan Agreement and the other Loan Documents shall be deemed to have been and shall be, reformed and modified to reflect such reduction; and (5) Borrower shall not have any action against Lender for any damages arising out of the payment or collection of any Excess Interest. Notwithstanding the foregoing, if for any period of time interest on any monetary Obligation is calculated at the Maximum Rate rather than the interest rate otherwise applicable under this Loan Agreement, and thereafter such applicable rate becomes less than the Maximum Rate, the rate of interest payable on such Obligations shall, to the extent permitted by law, remain at the Maximum Rate until Lender shall have received or accrued the amount of interest which Lender would have received or accrued during such period on Obligations had the rate of interest not been limited to the Maximum Rate during such period. If the Alternate Rate shall be finally determined to be unlawful, then the otherwise applicable Interest Rate shall be applicable during any time when the Alternate Rate would have been applicable hereunder, provided however that if the Maximum Rate is greater than the otherwise applicable Interest Rate, then the foregoing provisions of this paragraph shall apply.

## 2.2 Payments.

(a) Monthly Payments.

(i) During the Deferred Interest Period, interest on the outstanding Principal Balance of the Loan shall be payable at the Interest Rate; provided, however, such amounts shall be deferred until the earlier to occur of (a) the First Payment Date or (b) the date the Obligations are accelerated or prepaid (such amounts together with interest accrued thereon, the "Deferred Amounts").

(ii) From and after the Deferred Interest Period and commencing on the first (1st) day of February, 2010 (the "First Payment Date") and on the first (1st) day of each calendar month thereafter (each, with the First Payment Date, a "Payment Date"), through and including the month preceding the Maturity Date, Borrower shall make monthly payments of principal and interest as set forth on Schedule 2.2 annexed hereto (each, a "Monthly Payment", and the amount thereof the "Monthly Payment Amount"). On the Maturity Date, or the date the Obligations are accelerated or prepaid in full, as the case may be, Borrower shall pay the outstanding Principal Balance, together with all interest accrued and unpaid thereon and all other sums due under the Note, this Loan Agreement and the other Loan Documents. Prior to the occurrence of an Event of Default, all Monthly Payment Amounts and Interest Payment Amounts shall be applied first to accrued and unpaid interest on the Loan, second, to the payment of fees and other outstanding payment Obligations, if any and, if applicable, the balance to the payment of the Principal Balance. While any Event of Default exists, Borrower irrevocably waives the right to direct the application of any and all payments at any time received by Lender during the continuance of any such Event of Default from or on behalf of Borrower, and Borrower irrevocably agrees that Lender shall have the continuing exclusive right during the occurrence of such Event of Default to apply any and all such payments against the then due and owing Obligations of Borrower in such order of priority as Lender may deem advisable.

(iii) Amortization of the Loan. Commencing on February 1, 2010 and continuing through January 31, 2017, the Loan in the principal amount of the original Principal Balance plus the Deferred Amounts through the calendar day immediately preceding such payment Date (the "Amortization Sum"), shall be repaid in equal monthly installments of principal and interest, based on a twenty-five year amortization schedule. Thereafter, from February 1, 2017 until the Maturity Date, the remaining Amortization Sum shall be repaid in equal monthly installments of principal and interest based on a fifteen year amortization schedule, and on February 1, 2022 the remaining Amortization Sum and all accrued but unpaid interest shall become due and payable, all as set forth on Schedule 2.2.

(b) Date and Time of Payment. All payments of principal, interest and fees hereunder payable to Lender shall be made without condition or reservation of right and free of set-off or counterclaim, in Dollars and by wire transfer (pursuant to Lender's written wire transfer instructions) of immediately available funds, to Lender, not later than 2:00 P.M. (New

York time) on the date due. Whenever any payment to be made by Borrower hereunder shall be stated to be due on a day which is not a Business Day, payments shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of the payment of interest hereunder and of any fees due under this Loan Agreement, as the case may be.

(c) Manner of Payment. Borrower promises to pay all of the Obligations relating to the Loan as such amounts become due and payable or are declared due and payable pursuant to the terms of this Loan Agreement. All payments by Borrower on the Loan shall be made without deduction, set off or counterclaim and in immediately available funds delivered to Lender by wire transfer to such single account at such bank in New York, New York, as Lender may from time to time designate.

(d) Prepayment. Subject to the terms of the Intercreditor Agreement, Borrower shall have the right to prepay the Loan in whole or in part (in integral multiples of \$100,000), together with all accrued interest and other sums due to Lender, at any time upon not less than ten (10) Business Days prior written notice of its intention to prepay (which notice may be rescinded by written notice received by Lender prior to receipt of any such prepayment). Any notice of prepayment given to Lender under this Section 2.2(d) shall specify the date of prepayment and the principal amount of the prepayment. Any such prepayment or other principal balance reduction shall reduce Lender's Commitment by a like amount, and such amount may not be reborrowed by Borrower.

(e) Late Payment. Borrower shall pay an administrative fee of 2% per month on each Monthly Payment required hereunder not paid to Lender within 15 days after it is due.

2.3 Full Repayment And Reconveyance. Upon full and final payment of all sums owing and outstanding under the Loan Documents and any Other Related Document without any further commitment by Lender to extend funds thereunder or sums being held in escrow pursuant to the Disbursement Agreement, Borrower shall be released from its obligations under the Loan Documents (except for any indemnities or other obligations which by their terms survive satisfaction of the Loan), and Lender shall issue evidence of such release upon request by Borrower and a full reconveyance of the Property and Improvements from the lien of the Mortgage; provided, however, that Lender shall have received all escrow, closing and recording costs, the costs of preparing and delivering such reconveyance and any sums then due and payable under the Loan Documents. Lender's obligations to make further disbursements under the Loan shall terminate as to any portion of the Loan undisbursed as of the date of issuance of such full release or reconveyance, and any commitment of Lender to lend any undisbursed portion of the Loan shall be canceled. In lieu of the foregoing, Lender shall assign the Note and Mortgage to the refinancing lender designated by Borrower, without charge other than Lender's reasonable, third party, out-of-pocket expenses, in form reasonably satisfactory to Lender and such refinancing lender (provided that such assignments shall not violate applicable laws and

regulations and Lender's charter or constituent documents and shall be on a non-recourse basis with no representations or warranties, express or implied).

2.4 **Reasonableness of Charges.** Borrower agrees that (i) the actual costs and damages that Lender would suffer by reason of an Event of Default (exclusive of the attorneys' fees and other costs incurred in connection with enforcement of Lender's rights under the Loan Documents) would be difficult and needlessly expensive to calculate and establish, (ii) the amount of the Alternate Rate is reasonable, taking into consideration the circumstances known to the parties at this time, (iii) such Alternate Rate and Lender's reasonable out of pocket attorneys' fees and other costs and expenses incurred in connection with enforcement of Lender's rights under the Loan Documents shall be due and payable as provided herein, and (iv) such Alternate Rate and the obligation to pay Lender's reasonable out of pocket attorneys' fees and other enforcement costs do not, individually or collectively, constitute a penalty.

2.5 **Outstanding Balance.** The balance on Lender's books and records shall be presumptive evidence (absent manifest error) of the amounts owing to Lender by Borrower; provided that any failure to record any transaction affecting such balance or any error in so recording shall not limit or otherwise affect Borrower's obligation to pay amounts owing to Lender arising from any such transaction so long as Lender is able to reasonably establish such failure or error.

### ARTICLE 3. CONDITIONS PRECEDENT TO CLOSING AND DISBURSEMENTS

3.1 **Conditions Precedent.** Except as expressly set forth below, prior to and as a condition to entering into the Loan Documents, closing the Loan, advancing the Loan Proceeds to an account administered by Senior Lender pursuant to the Disbursement Agreement and authorizing Senior Lender to make the initial advance of Loan Proceeds from such account (the initial advance and each advance of Loan Proceeds from such account thereafter, an "Advance"), the items listed in this Section 3.1 shall have been received by Lender and the conditions listed in this Section 3.1 shall have been satisfied as determined by Lender in its sole discretion.. These items must be fully executed where applicable, and all submissions which are not originals must be true and complete copies of these items and if requested by Lender, must be so certified by Borrower or Completion Guarantor, or any other applicable Person(s) (as the case may be). In the event that Lender agrees to enter into the Loan Documents, close the Loan and make the initial Advance without Lender having received and approved any of the items specified in this Section 3.1 (it being understood that Lender shall have no obligation to do so), or without Borrower satisfying any of the conditions specified in this Section 3.1 as determined by Lender in its sole discretion, then each and every such item and condition specifically required to be satisfied pursuant to the Post-Closing Agreement shall be a condition to the first Advance following the initial Advance (or for a subsequent Advance thereafter to the extent Lender waived receipt and approval of any item set forth in the Post-Closing Agreement in connection with the immediately preceding Advance) unless and until Borrower shall have satisfied such

condition or Lender shall have expressly agreed in writing to permanently waive such condition. Without limiting the generality of the foregoing and in order to eliminate any uncertainty regarding the terms and conditions under which Lender will advance the Loan Proceeds to an account administered by Senior Lender pursuant to the Disbursement Agreement and be prepared to authorize the first Advance, Borrower and Lender hereby agree that notwithstanding the satisfaction or non-satisfaction of any of the conditions precedent set forth in this Section 3.1 or otherwise, Borrower and Lender shall not be bound by any oral agreement of any kind, and no right to receive the Loan Proceeds shall arise in favor of Borrower, or be binding upon Lender, except to the extent Lender expressly approves in writing the satisfaction or waiver (as the case may be) of all of the conditions precedent to the funding of the first Advance of the Loan as set forth in this Section 3.1 or otherwise. Except as expressly set forth above, prior to and as a condition to entering into the Loan Documents, closing the Loan and making the initial Advance, the items listed below shall have been received by Lender and the conditions listed below shall have been satisfied as determined by Lender in its sole discretion. -

(a) No Event of Default. There shall exist no Event of Default as defined in this Agreement, nor shall there exist any "Event of Default" as defined in any of the other Loan Documents or the Senior Loan Documents;

(b) Borrower's Equity. Evidence, as certified by Borrower, that Borrower has invested Borrower's Minimum Initial Equity and any other required investment of Borrower's Equity as required from time to time under Section 1.6 and/or Section 9.18 of the Senior Loan Agreements; with the express understanding that Lender shall have no obligation to make any Advance until Borrower demonstrates to Lender's reasonable satisfaction that any Borrower's Equity then required to be funded (including, without limitation, any portion of the Home Depot Contribution and the Target Contribution required to be contributed under the applicable lease at such time) has been expended;

(c) Opinions of Borrower's and Completion Guarantor's Counsel. Legal opinions from Borrower's and Completion Guarantor's counsel, whose identity must be satisfactory to Lender, addressing corporate, partnership and limited liability organization, authority and good standing (which organization, authority and good standing opinions may be provided by appropriate in-house counsel for such entities), the enforceability of the Loan Document and Other Related Documents, usury and such other matters which Lender may reasonably request, subject to customary qualifications for bankruptcy and general equitable principles;

(d) Financial Statements; Operating Pro-Forma. The last quarterly financial statements available for the Completion Guarantor, together with a stabilized operating pro-forma for the Project (including projections for at least ten (10) years);



(e) Appraisal. A newly commissioned MAI Appraisal addressed to Senior Lender and Lender resulting in a maximum loan-to-value ratio of the Project of, not more than 80% of the appraised value of the Project; which loan value shall include the Senior Loan, the Bond Financing, this Loan and the Subordinate Loans;

(f) Formation, Authority and Good Standing Documents. The following items: (i) evidence of the due organization or incorporation and good standing of Borrower, its members and Completion Guarantor, as certified by the Secretary of State of such party's State of organization or incorporation, the Secretary of State of the State where the Property is located and any other jurisdiction where such party is required to qualify to do business and maintain its good standing therein; (ii) true, correct and complete copies of all organizational documents of Borrower and its members; (iii) evidence of the due authorization of this transaction and the Loan generally by Borrower, its members and Completion Guarantor, including, without limitation, corporate, partnership or limited liability company resolutions specifically authorizing this transaction and incumbency certificates with original specimen signatures for the officers signing the Loan Documents; and (iv) an organizational chart reflecting Borrower's ownership structure, to be attached hereto as Exhibit F;

(g) Title Policy. The Title Policy;

(h) Survey. The Survey shall be prepared and be certified in accordance with the survey certification furnished to Borrower by Lender;

(i) Searches. Federal, state and local tax and judgment lien searches, bankruptcy searches, pending litigation searches of Borrower, Completion Guarantor, Construction Manager and searches of the appropriate Uniform Commercial Code filing offices showing no Liens affecting the Property, Borrower, Completion Guarantor or Construction Manager other than the Permitted Exceptions and otherwise satisfactory to Lender;

(j) Pending Litigation. There shall be no pending litigation, litigation threatened in writing or, to Borrower's knowledge, other litigation threatened against the Property or Borrower or any pending litigation (that would if adversely determined have a Material Adverse Effect) against Completion Guarantor, except as set forth on Schedule 6.6 attached hereto and made a part hereof;

(k) Compliance with Laws. Lender shall have received evidence satisfactory to it that the Property is in compliance with all Laws (including all Hazardous Materials Laws) and that, except as set forth in the environmental report(s) described in Section 3.1(o) below, there are no conditions existing currently or likely to exist during the term of the Loan that require or are likely to require clean-up, removal or other remedial action pursuant to any of the aforesaid Hazardous Materials Laws;

(l) Continuing Representations. All representations and warranties of Borrower contained in this Agreement and the Mortgage shall be true and correct as of the Effective Date and as of the date of each Advance (provided, however, that (i) Borrower's representation and warranty of no Material Adverse Effect in Section 3.1(mm) hereof shall only be required as of the Effective Date and (ii) with respect to each Advance the following representations and warranties made under Section 6.1, 6.4, 6.7 - 6.11, 6.13, 6.30 and 6.36 hereof shall be deemed to be true and correct to the extent that any deviation therefrom would not result in a Material Adverse Effect;

(m) Casualty; Condemnation. Neither the Property nor any part thereof nor any of the Improvements thereon shall have suffered any casualty or be subject to any existing or threatened condemnation or taking by eminent domain proceedings or otherwise;

(n) Insurance. Evidence reasonably satisfactory to Senior Lender and Lender that all of the insurance coverages and policies required under Article 5 of this Loan Agreement are in full force and effect;

(o) Environmental Report. A complete Phase I environmental report (and any required or recommended Phase II environmental report) addressed to and approved by Senior Lender and Lender, prepared in such detail as Senior Lender and Lender may require by a firm approved by Senior Lender, together with complete copies of all existing environmental and hazardous material studies and reports and any disclosure document required pursuant to the laws of the State where the Property is located. Lender has approved IVI Due Diligence Services, Inc. and its affiliates to prepare such report;

(p) Zoning Opinion. A legal opinion from Wachtel & Masyr, LLP or such other legal counsel to Borrower, whose identity must be satisfactory to Lender, running to the benefit of Senior Lender and Lender, opining that the existing and planned development, construction, operation and use of the Project is in compliance with all applicable zoning Laws, and all other applicable Governmental Approvals and Requirements of Law generally applicable to construction projects of this type in New York City (including, without limitation, the ADA);

(q) Utilities. Evidence reasonably satisfactory to Senior Lender, Lender and the Project Consultant that all sewer, water, electrical, telephone and any other utility services are available at the Property in adequate supply for the Project at connection costs reflected in the Project Budget, and that no condition exists which materially adversely affects Borrower's right to use such services. This evidence may include letters from the applicable utility providers;

(r) Permits. Evidence satisfactory to Senior Lender, Lender and the Project Consultant that Borrower has obtained all Permits and Governmental Approvals necessary for development and construction of, respectively, the Retail Project and the Garage Project,

including a copy of building permit(s) for the Project, to the extent required through the then current stage of development of the Project. Also, evidence that any special Permits and Governmental Approvals required for the operation of the Project upon Substantial Completion have been or can and will be obtained;

(s) Management Agreements. True correct and complete copies of any management agreement (the "Management Agreement"), together with a subordination of such Management Agreement in form and substance acceptable to Lender;

(t) Construction Schedule. A detailed schedule certified by Borrower for the development and construction (through completion thereof) of the Project reasonably acceptable to Senior Lender, Lender and the Project Consultant, including, without limitation, a trade-by-trade breakdown of the estimated periods of commencement and completion of the specific work to be completed on the Project (the "Construction Schedule"), which shall be attached as Exhibit J to this Loan Agreement;

(u) Project Consultant's Report. A report from the Project Consultant addressing the status of any construction to date, the Plans and Specifications, Project Budget, Construction Schedule and such other matters as Senior Lender and Lender reasonably requests;

(v) Plans and Specifications. Borrower shall have furnished to Senior Lender, Lender and the Project Consultant a detailed set of plans and specifications certified by Borrower for construction of each of the Retail Project and the Garage Project (the "Plans and Specifications"), which Plans and Specifications shall have been approved by Senior Lender, Lender and the Project Consultant on or before the Effective Date (unless otherwise provided in section 3.5(j) below or in the Post-Closing Agreement). Approval of the Plans and Specifications will be predicated on, among other things, the floor layouts and elevations being substantially similar to the floor plans and elevations being consistent with the Project Budget. In addition, Senior Lender, Lender and the Project Consultant must also be satisfied, in their reasonable discretion, that the mechanical, electrical, plumbing, fire protection and life safety, structural and the site plans are sufficient for the Project and in compliance with all applicable Laws, including the ADA, and with the requirements of the Home Depot Lease, the Target Lease and other Permitted Leases;

(w) Project Budget; Sources and Uses Statement. No later than seven (7) days prior to the Effective Date, Lender shall have received the Project Budget certified by Borrower which shall include sufficient amounts for contingency (no less than five percent (5.0%) for hard costs and three percent (3.0%) for soft costs) and the Sources and Uses Statement (which shall include and identify total costs incurred through the date that is no later than seven (7) days prior to the Effective Date (for which Borrower shall provide reasonably acceptable documentation identifying such total costs incurred)). The Project Budget approved by Senior Lender and Lender shall contain any and all line items payable to Borrower, Completion Guarantor or any

Affiliate of Borrower or Completion Guarantor, with any exceptions to be approved by Lender on or before the Effective Date (unless otherwise provided in the Post-Closing Agreement);

(x) Leases. Senior Lender and Lender shall have received and reasonably approved (i) all existing Leases, including the executed Home Depot Lease, the executed Target Lease and all other Leases for all or any portion of the Project; (ii) executed subordination, non-disturbance and attornment agreements from Home Depot, Target and all other tenants with executed Leases greater than or equal to 10,000 square feet; and (iii) to the extent executed prior to the Effective Date, the parking lease (as reasonably approved by Lender) with Garage Lessee together with a subordination, non-disturbance and attornment agreement from Garage Lessee (the "Garage Lease"). Prior to the initial Advance, Senior Lender and Lender shall have received and approved a current rent roll for the Retail Property certified by Borrower, evidencing a minimum leasing by Home Depot and Target of fifty percent (50%) of the total rentable square feet of the Retail Project;

(y) [Intentionally Omitted]

(z) Senior Loans, Subordinate Loans; ; BofA Unsecured Loan; NMTC Loan; Intercreditor Agreements. Lender (i) shall have received and reasonably approved all documentation applicable to the Senior Loans, Subordinate Loans, NMTC Loan and the BofA Unsecured Loan, (ii) shall have received an executed Subordination and Intercreditor Agreement dated as of the date hereof (the "Intercreditor Agreement"), in form and substance reasonably satisfactory to Lender from the Senior Lender in connection with the Senior Loan and each Subordinate Lender in connection with the Subordinate Loans and (iii) shall have received an executed Intercreditor Agreement in form and substance reasonably satisfactory to Lender from Banc of America CDE I, LLC in connection with the subordinate BofA Unsecured Loan and Forest City Subsidiary CDE I, LLC in connection with the subordinate NMTC Loan;

(aa) Architect's Certification. A certification from the Architect, in form and substance reasonably satisfactory to Senior Lender and Lender, certifying compliance of the Plans and Specifications with applicable Laws, the status of Governmental Approvals for construction of the Project, the availability of utilities and the completeness of the Plans and Specifications, including status of the construction to date;

(bb) Architect's Contract. Borrower must provide Senior Lender and Lender with a copy of the Architect's Contract and any other design, consulting or engineering contracts with respect to the Project, which must be reasonably satisfactory to Senior Lender and Lender;

(cc) Construction Management Contract. Senior Lender, Lender and Project Consultant must receive and reasonably approve the Construction Management Contract;

(dd) Soil Report. A reasonably acceptable soil report for the Property prepared by a licensed soil engineer, showing the location of all borings and containing recommendations for the design of foundations, paved areas and underground utilities;

(ee) Agreements. Copies of all CC&R's and other development, redevelopment, reciprocal easement or other Material Agreements relating to the development, construction, operation or use of the Project, certified by Borrower as reasonably required by Senior Lender and Lender;

(ff) Site Plan and Lease Plan. Senior Lender and Lender shall have received and reasonably approved the site plan and lease plan, as certified by Borrower, for the Project;

(gg) Buy Out of All Construction Contracts. Evidence satisfactory to Senior Lender, Lender and the Project Consultant that approximately forty percent (40%) of the Line Item entitled Trade Base Building in the Project Budget in the amount of \$171,819,000 (which is subject to change pursuant to Project Changes permitted under this Loan Agreement), is "bought out" on or before the Effective Date and that Borrower complies with a graduated "buy-out" schedule as follows: (i) sixty percent (60%) of the Line Item entitled Trade Base Building in the Project Budget in the amount of \$171,819,000 (which is subject to change pursuant to Project Changes permitted under this Loan Agreement), shall be "bought out" on or before ninety (90) days from the Effective Date and (ii) eighty percent (80%) of the Line Item entitled Trade Base Building in the Project Budget in the amount of \$171,819,000 (which is subject to change pursuant to Project Changes permitted under this Loan Agreement), shall be "bought out" on or before one hundred and fifty (150) days from the Effective Date;

(hh) Bonding. All Major Trade Contracts (with the exceptions of the A. Williams Contract and the Skanska Contract) shall be bonded in dual obligee form in substance and with a surety reasonably acceptable to Senior Lender and Lender (with such bonding written within the limitations of the most current U.S. Department of Treasury's listing of Approved Sureties (Department Circular #570));

(ii) Patriot Act; "Know Your Customer" Compliance. All documents and information deemed necessary by Senior Lender and Lender to comply with (i) the USA Patriot Act and regulations promulgated pursuant thereto and (ii) all applicable "Know Your Customer" requirements of Senior Lender and Lender;

(jj) The Bonds. Senior Lender and Lender shall have received and reasonably approved all documentation associated with the Bond Financing and the issuance of the Bonds (including, without limitation, the Bond Facility Documents and all applications, resolutions and approvals of each applicable Governmental Authority and all other applicable Governmental Approvals in connection therewith) and the Bonds shall have been issued;

(kk) Empire Zone Tax Credit. Lender shall have received reasonably satisfactory evidence that real property taxes paid with respect to the Project qualify for the Empire Zone Real Property Tax Credit;

(ll) Foundation Survey and Title Endorsements. No later than the third Advance following completion of the foundations for the Project (and for each Advance thereafter), Borrower shall deliver an endorsement to the Title Policy reading in the updated survey showing the foundation and any other improvements as of the date of such survey. The survey reading shall read as follows: "Survey made by \_\_\_\_\_ dated \_\_\_\_\_, shows the foundation wholly within the perimeter of the Premises and the survey shows no additional variations, encroachments or other adverse matters";

(mm) Material Adverse Effect. No event or series of events shall have occurred which has resulted in a Material Adverse Effect;

(nn) Repayment of BofA Secured Loans. Borrower shall repay the BofA Secured Loans in full and Borrower shall deliver evidence satisfactory to Senior Lender and Lender, in its reasonable discretion, that Borrower has discharged all of its obligations to Bank of America, N.A. in connection with the BofA Secured Loans;

(oo) Lien Law. Borrower shall have executed, acknowledged and delivered the Lien Law Affidavit, and any Notice of Lending and any Notice of Assignment, reasonably required by Lender, each subject to the reasonable approval of Lender;

(pp) [Intentionally Omitted]; and

(qq) Additional Matters. Borrower shall have delivered to Lender such other or additional documents, instruments, information or items Lender may reasonably require.

Notwithstanding the foregoing to the contrary, so long as the Senior Loans remain outstanding and there are no Events of Default under this Agreement or the Senior Loan Documents at the time of any Advance, any Approvals (as hereinafter defined) required of Lender under this Section 3.1 (other than subparagraphs (v), (w) (x), (z) and (ii) above) shall be deemed given by Lender in the event Senior Lender has approved the same pursuant to the Senior Loan Agreements; provided, however, in no event whatsoever shall Lender be deemed to have waived its right to object to any proposed Advance as provided in the Disbursement Agreement. For the purposes of this Section 3.1 only, "Approvals" shall mean any approvals or consents required by Lender under this Section 3.1 or circumstances where Lender's discretion is involved in this Section 3.1, such as "satisfactory evidence", "not objectionable to" and "acceptable to".

3.2 **No Exercise of Remedies.** Notwithstanding anything in any Loan Document to the contrary, Lender shall have absolutely no obligation to exercise any rights or remedies against Senior Lender for Senior Lender's failure to disburse any proceeds of the Loan.

3.3 **Loan Disbursements.**

(a) **General Terms and Conditions for Advances.** Without limiting the terms and conditions set forth in Section 3.1, this Section 3.3 and Article 4 hereof, the Loan Proceeds shall be disbursed in accordance with the terms and conditions of the Disbursement Agreement. All disbursements hereunder shall be held by Borrower in trust and applied by Borrower solely for the purposes for which the funds have been disbursed. Lender may (but shall have no obligation to) monitor or determine Borrower's use or application of the disbursements.

(b) **Notice, Frequency and Amounts.** After receipt of requests for Advances delivered in accordance with this Agreement, Lender shall have at least seven (7) Business Days to review requests for Advances but no more than five (5) Business Days to deliver any Written Revocation (as defined in the Disbursement Agreement) to Senior Lender pursuant to the terms of the Disbursement Agreement. All requests for Advances must be in writing, must be delivered to Lender at least seven (7) Business Days prior to any requested Advance and must include all submissions required under this Agreement before any of the above mentioned time periods begin to run.

(c) **Purposes and Payees.** Borrower may request Advances of Loan Proceeds only for payment of the costs outlined in the Project Budget (**Building Costs**) which according to the Project Budget (**Building Costs**), are to be funded solely for the purposes of the Costs of the Improvement of the Retail Project and the Costs of the Improvement of a portion of the Garage Project ("**Building Costs**") pursuant to Construction Contracts as approved by Lender as required under this Loan Agreement. The amount of the requested Advance shall not exceed the cost of work in place for which the Advance is being requested or for Stored Materials (as defined below) or progress payments for materials in fabrication in accordance with customary practice and the requirements set forth in Section 4.13 below, subject to Retainage in accordance with Section 3.4 below, and other amounts actually paid or payable by Borrower for **Building Costs**. Lender may (but shall not be obligated to), in its sole and absolute discretion upon the occurrence and during the continuation of an Event of Default, permit Advances of Loan Proceeds from any Project Budget (**Building Costs**) category for **Building Costs** that constitute Costs of the Improvement (regardless of whether such category corresponds to the purpose for which disbursement is being made) to or for any of the following parties or purposes: (a) directly to any Person or Persons, including Lender if entitled to payment for **Building Costs**, (b) for payment or performance of any of Borrower's Obligations under any of the Loan Documents, including fees, costs, expenses owing to Lender or its consultants, or (c) to the Title Company or any Lien claimant for the indemnity over or settlement of any claim for Lien other than a Permitted Exception. Lender's failure to give notice of such advances shall not be

regarded as a default by Lender or impair any of Lender's rights. Such Advances shall be treated as an Advance as set forth in Section 3.3(f) below. This paragraph shall not limit any Lender's rights to make Advances under other provisions of the Loan Documents.

(d) Payment of Interest. Borrower authorizes Lender from time to time to make Advances to pay interest then owing on the Note regardless of whether Borrower shall have specifically requested an Advance of such amount. Any such disbursement, if made, shall be added to the outstanding Principal Balance of the Note. The authorization hereby granted, however, shall not obligate Lender to make disbursements of the Loan for interest payments (except to the extent funds are specifically allocated in the Project Budget (Building Costs) for such amounts and Borrower has complied with all conditions to disbursement), nor shall it prevent Borrower from paying accrued interest from its own funds.

(e) Title Updates. Pursuant to paragraph 8 of Schedule B to the Title Policy, the Title Policy shall be continued down to the date of each Advance and, as a condition precedent to each such Advance, Borrower shall furnish to Lender a continuation report stating whether, since the Effective Date or since the last preceding continuation report was delivered to Lender, any Liens or encumbrances have been recorded or filed, whether any taxes, assessments or other charges which have become due and payable have been paid, whether there are survey variations, encroachments or violations or whether there are any additional title exceptions or objections. No continuation report may show exceptions to title other than the Permitted Exceptions. Any new exceptions must be approved by Lender in writing, acting reasonably. Upon such approval, such new exception shall be considered a Permitted Exception.

(f) All Advances Obligatory and Secured. Any and all disbursements, payments and amounts expended by Lender pursuant to the Loan Documents, and all other Loan expenses shall, as and when advanced or incurred: (a) be deemed obligatory for Lender, regardless of the Person to whom such amounts are furnished, (b) satisfy dollar for dollar the obligations of Lender hereunder, (c) be evidenced by the Note (except to the extent that such amounts exceed the full amount of principal and interest thereunder), (d) be secured by the Mortgage and the other applicable Loan Documents, whether or not the aggregate of such indebtedness shall exceed the face amount of the Note or the principal amount of the indebtedness set out in the Mortgage and such other applicable Loan Documents and (e) bear interest at the rate provided in the Note (including the Alternate Rate if an Event of Default has occurred under any of the Loan Documents). A statement on behalf of Lender signed by an officer as to the amount of such disbursements, payments and expenditures and the reasons for the same shall be presumptive evidence of the same in any court or other proceeding. The burden of proving to the contrary shall be upon Borrower.

3.4 Retainage. No Advances shall be made with respect to amounts retained or permitted to be retained by Borrower from payments to any Contractor. Each disbursement for hard costs of construction whether or not designated in the Project Budget as a hard cost of



construction shall be subject to a holdback (the "Retainage") of ten percent (10%) of the amounts due to any Contractor (on a Construction Contract basis); provided, however, that once Senior Lender determines, in its reasonable discretion, that any given Line Item is at least fifty percent (50%) complete, no additional Retainage shall be required for that Line Item. The Retainage will be disbursed after Completion of the Project and satisfaction of the conditions set forth in Section 3.7 below. Notwithstanding the foregoing, Senior Lender shall disburse Retainage for a particular subcontractor earlier if such party's work is complete, as certified by Borrower, and such party has delivered unconditional, final lien waivers. To the extent the provisions concerning disbursement of retainage under the Construction Management Agreement are more restrictive than the terms hereof, the applicable terms of the Construction Management Agreement will govern.

**3.5 Loan Advance Payout Conditions and Deliveries.** Prior to each Advance, Borrower shall submit to Lender or Lender shall have received by the time required in Section 3.3(b) the documents set forth below, each of which must be approved by Lender, such approval to be exercised by Lender in its reasonable discretion:

(a) Borrower Submissions.

(i) An "Application for Advance" executed by Borrower, a Modified AIA Form G702 Contractor's Application and Certification for Payment executed by the Construction Manager and Architect, and each other applicable draw related document, all in substantially the form of Exhibit F of the Disbursement Agreement;

(ii) Contractors', Major Trade Contractors', architects', engineers' and other design professionals', to the extent not previously delivered, unconditional waivers of liens, subordinations of liens, and all other statements and forms required for compliance with the mechanics' lien or similar laws of the State through the date each such contractor, major trade subcontractor, architect, engineer and other design professional has been paid substantiating payment for each line item for each previous Advance, along with a log of all discrepancies between any such parties' lien waivers and payments; and

(iii) Certification from Borrower that it is in compliance as of the date of such Advance with the representations, warranties (subject to Section 3.1(l) above) and covenants as set forth in Articles 6 and 9 of this Agreement or setting forth any material changes in such representations and warranties since the date of the last certification, provided that any such changes shall be reasonably satisfactory to Lender.

(b) Title Insurer Documents. Borrower shall have furnished to the Title Company the sworn statements, lien waivers and all other documents required by the

Disbursement Agreement and all other documents required by Lender pursuant to Section 3.3(e) above. Upon request by Lender, Borrower shall furnish copies of these items to Lender.

(c) Soft Cost Backup. Copies of invoices and other reasonably requested documents to support the non-construction "soft cost" items contained in the requested Advance.

(d) Project Changes. All Project Changes in excess of \$100,000 per Project Change (including pending change orders), regardless of whether or not Lender's approval is required under this Loan Agreement.

(e) Project Consultant's Certification. A report by the Project Consultant on the progress of construction, certifying work-in-place.

(f) Loan In Balance. Senior Lender has not received a report from the Project Consultant that the Senior Loans are not In Balance or otherwise reasonably determined that the Senior Loans are not In Balance.

(g) Advances for Tenant Improvements. Borrower shall have furnished executed Permitted Leases to Lender and shall have furnished to Senior Lender, Lender and the Project Consultant a detailed set of plans and specifications for the tenant improvements required by the Permitted Leases (the "Tenant Improvements Plans and Specifications"), which shall be subject to the approval of Senior Lender, Lender and the Project Consultant to the extent such improvements (i) are required pursuant to a Major Lease or (ii) are to be performed by Borrower pursuant to a Non-Major Lease. To the extent any such improvements are to be performed by the applicable tenant under a Non-Major Lease, Borrower shall use commercially reasonable efforts to cause such tenant to deliver the Tenant Improvements Plans and Specifications to Lender upon Lender's request. In addition, Borrower shall have delivered the items listed on Schedule 3.5 attached hereto and made a part hereof.

(h) Lien Law. If required by the Lien Law, Borrower shall have delivered an updated Lien Law Affidavit, and any Notice of Lending or Notice of Assignment as reasonably required by Lender, each subject to the reasonable approval of Lender.

(i) Continuing Conditions. With respect to each Advance under this Loan Agreement, the conditions set forth in Subsections 3.1 (b), (l), (m), (gg), (ii), (hh) and (ll) of this Loan Agreement shall be satisfied as determined by Lender in its sole discretion.

(j) Building B Plans and Specifications and Building Permit. Borrower hereby acknowledges that (i) certain of the Plans and Specifications related to Building B have not been finalized or approved by Lender and the Project Consultant and (ii) a building permit for the vertical construction of Building B has not been issued. Notwithstanding anything in this Loan Agreement to the contrary, Borrower and Lender agree that no Loan Proceeds for any of

the costs of vertical construction of Building B shall be requested by Borrower or disbursed by Lender until Lender and the Project Consultant have received and approved (such approval not to be unreasonably withheld) (x) the finalized Plans and Specifications related to Building B, (y) the building permit for the vertical construction of Building B and (z) a certification from the Architect that such finalized Plans and Specifications are in conformity with, and do not conflict in any material respect with, the Zoning Plans (as defined in that certain zoning opinion dated as of the Effective Date delivered by Wachtel & Masyr, LLP for the benefit of Lender and certain other parties named therein).

(k) Other Items. Such other documents and information as Lender may reasonably request. These may include copies of any new Construction Contracts which Borrower or any Contractor may have entered into respecting the Project; customary certifications from the structural, mechanical and electrical engineers; and Project Changes not requiring approval under this Loan Agreement.

Notwithstanding the foregoing to the contrary, so long as the Senior Loans remain outstanding and there are no Events of Default under this Agreement or the Senior Loan Documents at the time of any Advance, any Approvals (as hereinafter defined) required of Lender under this Section 3.5 shall be deemed given by Lender in the event Senior Lender has approved the same pursuant to the Senior Loan Agreements; provided, however, in no event whatsoever shall Lender be deemed to have waived its right to object to any proposed Advance as provided in the Disbursement Agreement. For the purposes of this Section 3.5 only, "Approvals" shall mean any approvals or consents required by Lender under this Section 3.5 or circumstances where Lender's discretion is involved in this Section 3.5, such as "satisfactory to", "reasonably determined" and "reasonably request".

**3.6 Disbursement of Amounts in Holding Accounts.** Notwithstanding anything in this Loan Agreement to the contrary, Borrower and Lender hereby agree that in connection with each request for Advance approved by Senior Lender and Lender in accordance with the Disbursement Agreement, all funds on deposit from time to time in each of the Home Depot Proceeds Holding Account (as defined in the Senior Loan Agreements), the Target Proceeds Holding Account (as defined in the Senior Loan Agreements), the Deficiency Deposit Account (as defined in the Senior Loan Agreements) and the Excess Funds Account (collectively, the "Holding Accounts") (other than accrued interest on such funds, which shall be disbursed to or as directed by Borrower in writing from time to time, unless an Event of Default then exists) shall be disbursed pursuant to such Advance prior to any further disbursement of Loan Proceeds. Each disbursement of funds from one or more of the Holding Accounts in connection with an Advance approved by Senior Lender and Lender in accordance with the Disbursement Agreement shall be subject to satisfaction of all of the terms and conditions of this Loan Agreement and the other Loan Documents for an Advance (whether or not any of Loan Proceeds are also being advanced in connection with such disbursement).

**3.7 Final Advance for Project Construction.** Senior Lender (pursuant to the Disbursement Agreement) shall make the final Advance for costs of construction for the Project, including disbursement of Retainage not previously disbursed (subject to holdbacks for the completion of all Punchlist Items and leasing costs), upon Borrower's delivery to Lender of the following items, each to be reasonably satisfactory to Lender. These conditions shall be in addition to those set forth elsewhere in this Agreement.

(a) Request for Advance Documents, which include certifications from Borrower, the Construction Manager, the Architect and the Project Consultant that the Project has been completed (except for Punchlist Items and leasing costs);

(b) An "as-built" ALTA Survey of the completed Project showing no encroachments or other matters objectionable to Lender;

(c) Copies of the certificate of occupancy or equivalent, and all other licenses and permits necessary for the use and occupancy of the Improvements;

(d) Deletion of any pending construction exception to the Title Policy;

(e) Final lien waivers from the all trade contractors, Contractors and materialmen;

(f) A copy of the final Plans and Specifications, reflecting any previously approved modifications thereto;

(g) Evidence that Borrower has obtained all insurance required herein and such insurance is in full force and effect; and

(h) Senior Lender and Lender shall have received a satisfactory report from the Project Consultant concerning completion of the Project and such other matters as Lender reasonably requests.

(i) If any Punchlist Items remain to be completed, such items shall be subject to Lender's approval, acting reasonably. Borrower shall withhold from the applicable Contractor a sum not less than 125% of the estimated cost (as approved by Senior Lender) of such Punchlist Items. Lender shall withhold a like amount from the final Advance for Project construction costs in accordance with the Disbursement Agreement.

Notwithstanding the foregoing to the contrary, so long as the Senior Loans remain outstanding and there are no Events of Default under this Agreement or the Senior Loan Documents at the time of any Advance, any Approvals (as hereinafter defined) required of Lender under this Section 3.6 shall be deemed given by Lender in the event Senior Lender has approved the same pursuant to the Senior Loan Agreements; provided, however, in no event

whatsoever shall Lender be deemed to have waived its right to object to any proposed Advance as provided in the Disbursement Agreement. For the purposes of this Section 3.6 only, "Approvals" shall mean any approvals or consents required by Lender under this Section 3.6 or circumstances where Lender's discretion is involved in this Section 3.6, such as "satisfactory to", "objectionable to" and "reasonably request".

#### ARTICLE 4. CONSTRUCTION

4.1 Commencement and Completion. Borrower shall commence construction of the Improvements without delay after recordation of the Mortgage (subject to Permitted Delays) and shall achieve Substantial Completion thereof on or before the Completion Date (subject to Permitted Delays).

4.2 Commencement And Completion Of Offsite Improvements. Borrower shall commence work on any offsite improvements required by any Governmental Authority in connection with the construction of the Improvements without delay after recordation of the Mortgage and shall diligently complete construction of any such offsite improvements on or before the earlier of the Completion Date or the date required by each applicable Governmental Authority.

4.3 Permitted Delays. The time within which Substantial Completion of the Improvements must be completed may be extended for Permitted Delays; provided, however, that in no event shall the deadline for Substantial Completion be extended beyond the earlier to occur of (a) the Scheduled Loans Maturity Date (as defined in the Senior Loan Agreements) (including any extensions thereof pursuant to the Senior Loan Agreements) or (b) one hundred eighty (180) days beyond the Completion Date.

4.4 Construction Management Agreement. Borrower and Construction Manager have entered into the Construction Management Agreement pursuant to the terms and conditions of which Construction Manager is to construct or cause the construction of the Improvements in accordance with the Plans and Specifications, all applicable Permits, all other Governmental Approvals and all CC&R's. Borrower shall require Construction Manager to perform in accordance with the terms of the Construction Management Agreement and shall not materially amend, modify or alter the responsibilities of Construction Manager under the Construction Management Agreement without Lender's prior written consent, such consent not to be unreasonably withheld. Borrower shall execute an assignment of Borrower's rights under the Construction Management Agreement (subordinate to any such document given to Senior Lender) to Lender as security for Borrower's obligations under this Agreement and the other Loan Documents and shall cause the Construction Manager to consent to any such assignment.

4.5 Architect's Agreement. Borrower and Architect have entered into the Architect's Agreement, pursuant to which Architect is to design the Improvements. Borrower

shall require Architect to perform in accordance with the terms of the Architect's Agreement and shall not materially amend, modify or alter the responsibilities of Architect under the Architect's Agreement without Lender's prior written consent (not to be unreasonably withheld). Borrower shall execute an assignment of the Architect's Agreement and the Plans and Specifications (subordinate to any such document given to Senior Lender) to Lender, as additional security for Borrower's performance under this Agreement and the other Loan Documents and shall cause the Architect to consent to any such assignment.

4.6 **Project Changes.** Borrower must obtain Senior Lender and Lender's prior written approval (not to be unreasonably withheld) of (x) proposed changes in the Project work or materials or the Plans and Specifications or (y) proposed changes to the Architect Contract, Construction Management Agreement or to any Major Trade Contract or to any other Construction Contract or (z) any new or additional Construction Contract (each such instance in (x) or (y) or (z), a "**Project Change**"), which would have the effect of (i) an increase in any Line Item(s) by more than \$500,000 for any one Project Change or \$3,000,000 in the aggregate for all Project Changes which have not been previously approved by Lender (with all Project Changes greater than \$100,000 subject to Lender's prior written approval after such \$3,000,000 threshold has been reached), or (ii) violating the tenant work and tenant improvement requirements under the Home Depot Lease, the Target Lease or any other Major Lease, unless the applicable tenant thereunder has approved such Project Change in writing, or (each of the circumstances in clauses (i) through (ii), a "**Material Project Change**"). For each proposed Material Project Change, Borrower will furnish copies of the proposed Material Project Change to Senior Lender, Lender and the Project Consultant. In accordance with **Section 3.3**, prior to each Advance, Borrower shall submit to Senior Lender and Lender all Project Changes (including pending Project Changes), regardless of whether or not Lender's approval of such Project Change is required under this Section. Requests for any change which requires consent shall be accompanied by working drawings and a written description of the proposed change, submitted on a change order form reasonably acceptable to Senior Lender and Lender, signed by Borrower and, if required by Lender, also by the Architect, the Construction Manager and/or the Project Consultant. Lender shall accept or reject any proposed Material Project Change within ten (10) Business Days of Borrower's request therefor, provided such ten (10) Business Day-period shall not begin to run until Lender is provided with all materials reasonably required to evaluate such request, and provided further that Lender's failure to respond within such ten (10) Business Day period shall be deemed an acceptance by Lender of such proposed Material Project Change. Borrower acknowledges that Lender's review of any changes and required consent may result in delays in construction and hereby consents to any such delays provided Lender materially complies with its obligations hereunder with respect to its timely response to such report.

4.7 **Contractor/Construction Information.** Within ten (10) days of Lender's written request and to the extent not previously provided to Lender in a monthly requisition, Borrower shall deliver to Lender in a form acceptable to Lender: a cost breakdown of the projected total cost of constructing the Improvements, and that portion, if any, of each cost item

which has been incurred. Borrower agrees that Lender may disapprove any Major Trade Contractor, or material supplier pursuant to any Major Trade Contract, which, in Lender's reasonable good faith determination, is deemed financially or otherwise unqualified (to the extent not already engaged by Borrower); provided, however, that the absence of any such disapproval shall not constitute a warranty or representation of qualification by Lender. Upon the occurrence and during the continuation of an Event of Default, Lender or Project Consultant may directly contact any such Major Trade Contractor, or material supplier to discuss the course of construction. In addition, within fifteen (15) days of the execution of any Major Trade Contract, Borrower shall deliver copies to Lender of each such contract (or any material amendment thereto).

4.8 **Prohibited Contracts.** Without Lender's prior written consent (not to be unreasonably withheld), Borrower shall not contract for any materials, furnishings, equipment, fixtures or other parts or components of the Improvements, if any third party shall retain any ownership interest (other than Lien rights created by operation of law) in such items after their delivery to the Property and Improvements. Borrower shall have five (5) Business Days, from the earlier of (x) its knowledge of the existence of such retained interest and (y) written notice from Lender of the existence of such retained interest, to effect the removal of any such retained interest.

4.9 **Liens And Stop Notices.** If a claim of Lien is recorded which affects the Property or Improvements or a bonded stop notice is served upon Lender, Borrower shall, within sixty (60) calendar days of Borrower's knowledge of such recording, such service or Lender's demand, whichever occurs first: (a) pay and discharge the claim of Lien or bonded stop notice; (b) effect the release thereof by recording or delivering to Lender a surety bond in sufficient form and amount, it being acknowledged that Borrower may request an Advance from the Loan in order to pay for such surety bond (only to the extent that Loan Proceeds were not previously advanced for the work that is the subject of the lien insured by such surety bond) and Senior Lender shall disburse Lender's pro rata portion of such Advance in accordance with and subject to the terms and conditions of the Disbursement Agreement and this Loan Agreement; or (c) provide Lender with other assurances which Lender deems, in its reasonable discretion, to be satisfactory for the payment of such claim of Lien or bonded stop notice and for the full and continuous protection of Lender from the effect of such Lien or bonded stop notice; the Title Company's written agreement and commitment to insure over such liens shall be deemed satisfactory assurance.

4.10 **Construction Responsibilities.** Borrower shall construct the Improvements in a workmanlike manner substantially in accordance with the Plans and Specifications and the recommendations of any soils or engineering report approved by Senior Lender. Borrower shall comply with all Requirements of Law, building restrictions, recorded covenants and restrictions, and requirements of all regulatory authorities having jurisdiction over the Property or Improvements. Borrower shall be solely responsible for all aspects of Borrower's business and

conduct in connection with the Property and Improvements, including, without limitation, for the quality and suitability of the Plans and Specifications and their compliance with all governmental requirements, the supervision of the work of construction, the qualifications, financial condition and performance of all Contractors, including without limitation, all architects, engineers, contractors, material suppliers, consultants and property managers, and the accuracy of all applications for payment and the proper application of all disbursements. Lender is not obligated to supervise, inspect or inform Borrower or any third party of any aspect of the construction of the Improvements or any other matter referred to above.

4.11 **Cost Savings**. In the event that, upon completion of the work associated with any Line Item in the Project Budget (subject to Retainage), there is a balance remaining in any such line ("Cost Savings"), then such Cost Savings will be reallocated by Borrower to another Line Item subject to Senior Lender's reasonable approval and provided no Event of Default has occurred and is continuing. Upon Substantial Completion of the Project, Cost Savings, as reasonably determined by Senior Lender, shall be distributed to Borrower provided any sums due to Lender have been paid in full and no Event of Default has occurred and is continuing.

4.12 **Delay**. Borrower shall promptly notify Lender in writing if any event is causing (or is reasonably expected to cause) a delay or interruption of construction for a period in excess of five Business Days. The notice shall specify the particular work delayed, and the cause and expected period of each delay.

4.13 **Advances for Stored or Offsite Materials**. In addition to the conditions set forth elsewhere in this Agreement, disbursements of Loan Proceeds for materials stored offsite or delivered to the Property but not yet incorporated into the Project ("Stored Materials") shall be limited to the extent that such Stored Materials constitute Costs of the Improvement of the Project and Lender having received satisfactory evidence that the following are true:

(a) The Stored Materials are either finished components ready for installation or components in the process of being fabricated for the Project off-site, and appropriate for purchase (or progress payments) during the current stage of construction;

(b) The Stored Materials are stored either: (i) at the Project site, (ii) in a bonded public warehouse or (iii) any other facility or location acceptable to Lender and the Project Consultant in their reasonable discretion, and such Stored Materials are protected in a manner reasonably acceptable to Lender and the Project Consultant against theft or damage;

(c) Ownership of the Stored Materials has vested in Borrower free of all security interests except the liens evidenced by the Loan Documents and the Senior Loan Documents and no other Person has asserted that it has any rights to or interest in the Stored Materials;



(d) Borrower has caused the Contractor and any other Person that possesses, holds or controls access to any Stored Materials, to execute and deliver to Lender a bailment letter or other instrument in form reasonably acceptable to Lender sufficient to enable Lender to have a perfected security interest in the Stored Materials pursuant to the requirements set forth in the Uniform Commercial Code;

(e) If requested by Lender, (i) Borrower has provided Lender with the results of Uniform Commercial Code searches (from all appropriate Uniform Commercial Code offices) on the Contractors or any other bailee of Stored Materials showing no liens or other security interests affecting such Stored Materials and (ii) Borrower has caused any warehouseman (as such term is defined in Section 7-102 of the Uniform Commercial Code) that possesses, holds or controls access to any Stored Materials to execute and deliver to Senior Lender and Lender (x) a bailment letter in form and substance reasonably satisfactory to Senior Lender and Lender and (y) a nonnegotiable warehouse receipt covering the Stored Materials in its possession or under its control in a form sufficient to enable Senior Lender and Lender to have a perfected security interest in the Stored Materials pursuant to the requirements set forth in Section 9-312(d)(1) of the Uniform Commercial Code;

(f) Without limiting any of the foregoing provisions of this Section 4.13, Lender has a perfected, second-priority security interest in the Stored Materials;

(g) The Stored Materials are covered by insurance; and

(h) The materialmen have delivered invoices for the full amount of the Stored Materials (with unconditional lien waiver(s) to be delivered to Lender in arrears in accordance with Section 3(a)(ii) above as a condition precedent to the immediately subsequent Advance of Loan Proceeds).

Notwithstanding the foregoing, in no event shall disbursements for Stored Materials exceed (a) \$50,000,000 in the aggregate (of proceeds from this Loan, the Senior Loans and the Subordinate Loans) from the Effective Date to the date that is one year from the Effective Date or (b) \$30,000,000 in the aggregate (of proceeds from this Loan, the Senior Loans and the Subordinate Loans) from the date that is one year from the Effective Date through the Maturity Date. Senior Lender, Lender and the Project Consultant shall have the right at any time to inspect the Stored Materials.

4.14 **Inspections.** Lender shall have the right to enter upon the Property at all reasonable times and with reasonable notice (absent the occurrence and continuance of an Event of Default) at Borrower's cost and expense to inspect the Improvements and the construction work to verify information disclosed or required pursuant to this Agreement. Any such inspection or review of the Improvements by Lender is solely to determine whether Borrower is properly discharging its obligations under the Loan Documents and may not be relied upon by

Borrower or by any third party as a representation or warranty of compliance with this Agreement or any other agreement. The Lender does not owe a duty of care to Borrower or any third party to protect against, or to inform Borrower or any third party of, any negligent, faulty, inadequate or defective design or construction of the Improvements as determined by Lender.

Notwithstanding anything in this Article 4 to the contrary, so long as the Senior Loans remain outstanding and there are no Events of Default under this Agreement or the Senior Loan Documents at such time, any Approvals (as hereinafter defined) required of Lender under this Article 4 shall be deemed given by Lender in the event the Senior Lender has approved the same pursuant to the Senior Loan Agreements. For the purposes of this Article 4 only, "Approvals" shall mean any approvals or consents required by Lender under this Article 4 or circumstances where Lender's discretion is involved in this Article 4, such as "acceptable to", "satisfactory to" and "satisfactory evidence".

#### ARTICLE 5. INSURANCE

Borrower shall, while any obligation of Borrower or any Completion Guarantor under any Loan Document remains outstanding, maintain at Borrower's sole expense, the following policies of insurance in form and substance reasonably satisfactory to Lender. Capitalized terms used in this Article not otherwise defined herein shall have the same meaning as such terms are commonly and presently defined in the insurance industry.

5.1 **Title Insurance.** A Title Policy issued by the Title Company, together with any endorsements which Lender may reasonably require, insuring Lender in the principal amount of the Loan, of the validity and the second priority of the lien of the Mortgage (pari passu with the other Subordinate Lenders) upon the Property and Improvements, subject only to matters approved by Lender in writing.

5.2 **Insurance.** Borrower, at its sole cost and expense, shall insure and keep insured the Property and the Project against such perils and hazards, and in such amounts and with such limits and other requirements, as is set forth on Exhibit I of the Senior Loan Agreements. Each policy shall be endorsed to name Lender as an additional insured thereunder, as its interest may appear, subject and subordinate to the Senior Lender's first priority interest with loss payable (subject to Senior Lender's interest under the Senior Loan Documents and under such policies of insurance and endorsements) to Lender, without contribution or assessment, under a standard New York mortgagee clause. All notifications and deliveries required to be delivered to Senior Lender as set forth on Exhibit I of the Senior Loan Agreements shall also be delivered to Lender within the same time periods. Borrower shall provide Lender, at least ten (10) Business Days prior to the disbursement of any Advances, a certificate(s) evidencing such insurance as set forth on Exhibit I of the Senior Loan Agreements. Borrower shall provide Lender with certificate(s) evidencing each insurance policy (whether under a master blanket policy or a stand-alone policy) required as of the Effective Date prior to or on the Effective Date. Once any change(s) occur(s)

to a certificate(s) evidencing such insurance as set forth on Exhibit I of the Senior Loan Agreements, Borrower shall provide Lender copies of any modified, amended, substitute or replacement certificate within ten (10) Business Days of the date of any such modification, amendment, substitution or replacement. At Lender's option, but not more often than annually, Lender shall have the right, at Lender's sole cost and expense, to obtain a report from an independent insurance consultant of regional or national prominence, acceptable to Lender, certifying that Borrower's insurance is in compliance with this Section 5.2.

## ARTICLE 6. REPRESENTATIONS AND WARRANTIES

As a material inducement to Lender's entry into this Agreement, Borrower represents and warrants to Lender as of the Effective Date and continuing thereafter that:

6.1 **Authority/Enforceability.** Borrower is in compliance with all Laws applicable to its organization, existence and transaction of business and has all necessary rights and powers to own, develop and operate the Property and Improvements as contemplated by the Loan Documents.

6.2 **Binding Obligations.** Borrower is authorized to execute, deliver and perform its obligations under the Loan Documents, and such obligations shall be valid and binding obligations of Borrower.

6.3 **Formation And Organizational Documents.** Borrower has delivered to Lender all formation and organizational documents of Borrower, of the partners, joint venturers or members of Borrower, as applicable, and of the Completion Guarantor and Construction Manager (the "Organizational Documents"), and all such Organizational Documents remain in full force and effect and have not been materially amended or modified since they were delivered to Lender. Borrower shall immediately provide Lender with copies of any and all amendments or modifications of the Organizational Documents.

6.4 **No Violation.** Borrower's execution, delivery, and performance under the Loan Documents do not: (a) require any consent or approval not heretofore obtained under any partnership agreement, operating agreement, articles of incorporation, bylaws or other document; (b) violate any Laws applicable to the Borrower, Property and Improvements or any other statute, law, regulation or ordinance or any order or ruling of any court or Governmental Authority; (c) conflict with, or constitute a breach or default or permit the acceleration of obligations under any agreement, Construction Contract, lease, or other document by which the Borrower is or the Property and Improvements are bound or regulated; or (d) violate any order of any court or Governmental Authority.

6.5 **Compliance With Laws.** Borrower has, and at all times shall have obtained, all Permits, exemptions, and Governmental Approvals necessary to develop, construct, occupy,

operate and market the Property and Improvements, and shall maintain compliance with all Laws applicable to the Property and Improvements and all other applicable statutes, laws, regulations and ordinances necessary for the transaction of its business. The Property is one or more legal parcels lawfully created in full compliance with all subdivision laws and ordinances.

6.6 **Litigation.** Except as disclosed on Schedule 6.6 attached hereto (which disclosure schedule shall be updated in connection with Borrower's obligation to remake this representation), there is no litigation pending, litigation threatened in writing or, to Borrower's knowledge, other litigation threatened against Borrower or affecting the Project, nor is there any pending litigation against Completion Guarantor that would, if adversely determined, have a Material Adverse Effect, except as set forth on Schedule 6.6 attached hereto and made a part hereof.

6.7 **Financial Condition.** All financial statements and information heretofore and hereafter delivered to Lender by Borrower or Completion Guarantor, including, without limitation, information relating to the financial condition of Borrower, Completion Guarantor, the Property, the Improvements, fairly and accurately represent the financial condition of the subject thereof and have been prepared (except as noted therein) in accordance with generally accepted accounting principles consistently applied. Borrower acknowledges and agrees that Lender may request and obtain additional information from third parties regarding any of the above, including, without limitation, credit reports.

6.8 **No Material Adverse Change.** As of the Effective Date, there has been no material adverse change in the financial condition of Borrower or Completion Guarantor since the dates of the latest financial statements furnished to Lender and, except as otherwise disclosed to Lender in writing, Borrower has not entered into any material transaction which is not disclosed in such financial statements.

6.9 **Loan Proceeds And Adequacy.** As of the Effective Date, the Loan Proceeds, the proceeds of the Senior Loans, the proceeds of the Subordinate Loans and the proceeds of the Bonds, together with Borrower's Minimum Equity Investment, are sufficient in Borrower's judgment to achieve Substantial Completion of the Project in accordance with the Plans and Specifications and otherwise comply with all Obligations under the terms and conditions of this Agreement and all other Loan Documents.

6.10 **Accuracy.** All reports, documents, instruments, information and forms of evidence prepared by Borrower or an Affiliate of Borrower and delivered to Lender concerning the Loan or security for the Loan or required by the Loan Documents are accurate and correct in all material respects, and, to Borrower's knowledge, do not contain any misrepresentation or material omission.

6.11 **Tax Liability.** Borrower has filed all required federal, state, county and municipal tax returns and has paid all taxes and assessments owed and payable (unless Borrower has initiated a bona fide good faith dispute in connection with any of the foregoing and has complied with all applicable procedures and requirements of applicable Law and the applicable taxing authority related to any such dispute (including, without limitation, payments into escrow or bonding requirements)), and to Borrower's knowledge, there is no basis for any additional payment with respect to any such taxes and assessments.

6.12 **Title To Assets; No Liens.** Borrower has good and indefeasible title to the Property and the Improvements, free and clear of all liens and encumbrances except Permitted Encumbrances.

6.13 **Management Agreements.** Borrower is not a party or subject to any management agreement with respect to the Retail Property, except for the Management Agreement.

6.14 **Utilities.** All utility services, including, without limitation, gas, water, sewage, electrical and telephone, necessary for the development and occupancy of the Property and Improvements are available at or within the boundaries of the Property.

6.15 **Compliance.** To Borrower's knowledge, Borrower is in compliance in all material respects with all Requirements of Law, Material Agreements, Permits and CC&R's for the development, construction, use and operation of the Project and will conform to and comply in all material respects with all Requirements of Law, Material Agreements, Permits and CC&R's.

6.16 **Americans With Disabilities Act Compliance.** Based on advice from the Architect, the Improvements have been designed and shall be constructed and completed, and thereafter maintained, in full compliance with all of the applicable requirements of the ADA. Borrower shall be responsible for all ADA compliance costs related to the Project.

6.17 **Business Loan.** The Loan is a business loan transaction in the stated amount solely for the purpose of carrying on the business of Borrower and none of the proceeds of the Loan will be used for the personal, family or agricultural purposes of the Borrower.

6.18 **Tax Shelter Regulations.** Neither the Borrower, the Completion Guarantor nor any subsidiary of any of the foregoing intends to treat the Loan or the transactions contemplated by this Agreement and the other Loan Documents as being a "reportable transaction" (within the meaning of Treasury Regulation Section 1.6011-4). If the Borrower, or any other party to the Loan determines to take any action inconsistent with such intention, the Borrower will promptly notify Lender thereof. If the Borrower so notifies Lender, the Borrower acknowledges that Lender may treat its Loan as part of a transaction that is subject to Treasury Regulation

Section 301.6112-1, and Lender will maintain the lists and other records, including the identity of the applicable party to the Loan as required by such Treasury Regulation.

6.19 **Access.** The Retail Property and the Garage Property are each contiguous to public streets, roads or highways. All required dedications for public streets, roads or highways have been or will be approved by all required Governmental Authorities, and, except as approved by Senior Lender in writing, have been or will be made and completed. Vehicular and pedestrian access from the Property will be permitted to all such streets, roads or highways as shown on the Plans and Specifications.

6.20 **Permits.** Attached hereto as Exhibit E (as revised from time to time with Lender's written approval) is: (a) a true, accurate and complete schedule of all Permits, third party consents (including approvals by all Governmental Authorities) and CC&R's which are necessary or desirable to develop and construct the Project and occupy, lease and operate the Project; and (b) a schedule of the projected date of issuance of any Permit or consent or the completion and execution of CC&R's which have not been issued or completed and executed on the date hereof. Borrower will promptly deliver notice to Lender if any Governmental Authority denies any request or application for a Permit required to construct, complete, operate, lease or maintain the Project in accordance with the Plans and Specifications or Borrower's intended use thereof. Failure of Borrower to obtain the Permits or CC&R's as they become necessary for construction of the Project, which failure continues for more than thirty (30) days, shall be an Event of Default. Notwithstanding the foregoing, Senior Lender or Lender may in its sole discretion temporarily waive delivery of some or all Permits or CC&R's.

6.21 **Project Budget.** The Project Budget shall in good faith estimate all costs and expenses which will be incurred by Borrower in the acquisition, development, construction and operation of the Project through the Completion Date. The Project Budget (Building Costs) shall in good faith estimate the Costs of the Improvement of the Project through the Completion Date.

6.22 **Brokerage Fees and Commissions.** Neither Borrower nor any Person claiming by, through or under Borrower, has dealt with any Person in connection with the Loan in a manner that would entitle such Person to any brokerage fee or commission.

6.23 **ERISA.** Neither Borrower nor Completion Guarantor is an "employee benefit plan" (within the meaning of section 3(3) of ERISA) to which ERISA applies and neither Borrower's nor Completion Guarantor's assets constitute assets of any such plan.

6.24 **Regulations G, U and X.** Borrower is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock, and no proceeds of the Loan will be used for a purpose which violates, or would be inconsistent with Federal Reserve System Board of Governors' Board Regulations G, U or X. Terms for which meanings are provided in

Federal Reserve System Board of Governors' Board Regulations G, U or X or any regulations substituted therefor, as from time to time in effect, are used in this Section with such meanings.

6.25 **Government Regulation.** Neither Borrower nor Completion Guarantor is: (i) an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended; (ii) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 1935, as amended; or (iii) subject to any other federal or State Law or regulation which purports to restrict or regulate its ability to borrow money.

6.26 **Ownership Structure.** The ownership structure of Borrower (including the ownership interests of such entity) is accurately set forth on Exhibit F hereto.

6.27 **Senior Loan Documents; Subordinate Loan Documents.** Borrower has delivered to Lender true, correct and complete copies of all of the documents applicable to each of the Senior Loans, Subordinate Loans and the BofA Unsecured Loan and the NMTC loan and all such documents are in full force and effect and have not been and shall not hereafter (unless otherwise provided for in the Intercreditor Agreement with Senior Lender) be amended or modified without Lender's prior written consent (not to be unreasonably withheld).

6.28 **Borrower's Equity; Loan Proceeds.** Borrower has used (or will use) all of Borrower's Minimum Equity Investment, all of Borrower's Additional Equity, all Loan Proceeds and all proceeds of the Senior Loans solely for purposes set forth in, and consistent with, the Project Budget and the Sources and Uses Statement.

6.29 **Patriot Act.** Neither Borrower, Completion Guarantor, nor any of their respective officers, directors, shareholders, partners, members or affiliates (including the indirect holders of equity interests in Borrower but excluding third-party shareholders of Completion Guarantor) is or will be an entity or person: (i) that is listed in the Annex to, or is otherwise subject to the provisions of Executive Order 13224 issued on September 24, 2001 ("EO13224"); (ii) whose name appears on the United States Treasury Department's Office of Foreign Assets Control ("OFAC") most current list of "Specifically Designated National and Blocked Persons" (which list may be published from time to time in various mediums including, but not limited to, the OFAC website, <http://www.treas.gov/ofac/t11sdn.pdf>); (iii) who commits, threatens to commit or supports "terrorism", as that term is defined in EO13224; or (iv) who is otherwise affiliated with any entity or person listed above (any and all parties or persons described in clauses [i] - [iv] above are herein referred to as a "Prohibited Person"). Borrower covenants and agrees that neither Borrower nor Completion Guarantor, nor any of their respective officers, directors, shareholders, partners, members or any affiliates (including the indirect holders of equity interests in Borrower but excluding third-party shareholders of Completion Guarantor) will: (i) conduct any business, nor engage in any transaction or dealing, with any Prohibited Person,

including, but not limited to, the making or receiving of any contribution of funds, goods, or services, to or for the benefit of a Prohibited Person; or (ii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in EO13224. Borrower further covenants and agrees to deliver (from time to time) to Lender any such certification or other evidence as may be requested by Lender in its sole and absolute discretion, confirming that: (i) neither Borrower, Completion Guarantor, nor any of their respective officers, directors, shareholders, partners, members or affiliates (including the indirect holders of equity interests in Borrower but excluding third-party shareholders of Completion Guarantor) is a Prohibited Person; and (ii) neither Borrower, Completion Guarantor, nor any of their respective officers, directors, shareholders, partners, members or affiliates (including the indirect holders of equity interests in Borrower but excluding third-party shareholders of Completion Guarantor) has engaged in any business, transaction or dealings with a Prohibited Person, including, but not limited to, the making or receiving of any contribution of funds, goods, or services, to or for the benefit of a Prohibited Person.

6.30 **Single Purpose Entity.** Borrower shall remain a single purpose entity in accordance with the requirements of Section 9.12.

6.31 **Indebtedness.** Borrower has and shall have no indebtedness, other than (i) the Obligations evidenced hereby, (ii) the Senior Loan, (iii) the Subordinate Loans, (iv) the BofA Unsecured Loan, (v) the NMTC Loan (vi) unsecured trade indebtedness arising in the ordinary course of its business, provided that such unsecured trade indebtedness is in an amount not in excess of \$1,000,000 at any time and, provided further, that such indebtedness is not indebtedness for borrowed money and (vii) unsecured subordinated loans advanced to Borrower by the members of Borrower or an Affiliate of Borrower; provided, that any such loans in clause (viii), which shall not include the NMTC Loan, in the aggregate shall never exceed five percent (5%) of the outstanding balance of the Loan at any time during the term of the Loan; provided further, that any such loans shall be unsecured and fully subordinated to all obligations of Borrower under the Loan Documents pursuant to subordination agreements satisfactory to Lender in its sole and absolute discretion.

6.32 **Event of Default.** At the time of the execution and delivery of this Agreement, no event has occurred and no condition exists with respect to the Borrower, or the Property that constitutes an Event of Default under this Agreement, the other Loan Documents or the Senior Loan Documents or, to Borrower's knowledge, which with the lapse of time or with the giving of notice or both, would become an Event of Default under this Agreement, any of the other Loan Documents or the Senior Loan Documents. The Borrower is not in default with respect to any order of any court, or other governmental authority or in violation in any material respect of any agreement, partnership or operating agreement or other instrument to which it is a party or by which it may be bound.



6.33 **Foreign Person.** Borrower is not a "foreign person" within the meaning of the Internal Revenue Code of 1986, as amended, Sections 1445 and 7701 (that is, Borrower is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined therein and in any regulations promulgated thereunder).

6.34 **Taxpayer Identification Number.** Borrower's Taxpayer Identification Number is 11-3332179.

6.35 **Bankruptcy.** Borrower has not (i) applied for or consented in writing to the appointment of a receiver, trustee or liquidator of the Borrower or of any or all of the Property, or of all or substantially all of the other assets of the Borrower or (ii) filed a voluntary petition in bankruptcy or admitted in writing its inability to pay its debts as they become due, or (iii) made a general assignment for the benefit of creditors, or (iv) filed a petition or an answer seeking a reorganization or an arrangement with creditors or to take advantage of any insolvency law, or (v) filed an answer admitting the material allegations of a petition filed against the Borrower, in any bankruptcy, reorganization or insolvency proceeding, or (vi) transferred by merger, sale, consolidation, assignment, operation of law, or otherwise all or substantially all of the assets of the Borrower.

6.36 **Separate Tax Lot.** The Property is a series of separate tax lots that do not include any other property and may be leased, transferred or mortgaged without the approval of any governmental authority having jurisdiction to regulate or control subdivision or land development. The Property is assessed separately from all other lands for purposes of ad valorem taxation. All requirements of every governmental authority pertaining to the Property and the Improvements including, without limitation, zoning have been complied with. The present zoning classification affecting the Property permits the present and intended use of the Property. No variances, reliance on adjacent property or special exception is required for the Improvements except for a special use permit, a copy of which has been furnished to Lender. If all or any part of the Improvements are damaged or destroyed, the Improvements can, under presently applicable laws, be legally reconstructed to their condition prior to such damage or destruction, and thereafter exist without violating any zoning or other ordinances presently applicable thereto and without the necessity of obtaining any variances or other relief from local Laws. Neither the zoning classification nor any other right to construct, use or operate any Improvements or the Property is in any way dependent upon or related to any real estate other than the Property. The Property contains (or will contain) such parking spaces as are required by applicable law and by all Leases or subleases of the Property.

6.37 **Special Flood Hazard.** The Property is not in an "area of special flood hazard", as that term is defined in the National Flood Insurance Act of 1968 (as amended and supplemented by the Flood Disaster Protection Act of 1973). No portion of the Property consists of and no portion of the Improvements will be located on filled in land.

6.38 Acknowledgment of Lender's Reliance. Borrower hereby acknowledges that the Loan will be made by Lender in reliance upon the representations, warranties, and agreements contained in this Loan Agreement and the other Loan Documents or any certificate delivered to Lender pursuant to the Loan Documents. Lender shall be entitled to such reliance notwithstanding any investigation which has been or will be conducted by Lender or on its behalf.

6.39 Use. Borrower will develop, construct, occupy and operate the Project for commercial purposes only.

## ARTICLE 7. HAZARDOUS MATERIALS

7.1 Special Representations and Warranties. Without in any way limiting the other representations and warranties set forth in this Agreement, and after reasonable investigation and inquiry, Borrower hereby specially represents and warrants to Borrower's knowledge as of the date of this Agreement as follows:

(a) Hazardous Materials. Except as set forth in those certain reports listed on Schedule 7.1 attached hereto, the Property and Improvements are not and have not been a site for the use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation or presence of any Hazardous Materials. Borrower hereby represents and warrants to Lender that Schedule 7.1 is, as requested by Lender, a reduced list of all environmental reports and assessments obtained by Borrower or its members in connection with the acquisition of the Property or prepared by or at the direction of Borrower, its members or Lender in connection with the Property and Improvements.

(b) Representations and Warranties on Schedule 7.2. The representations and warranties of Borrower set forth on Schedule 7.2 to this Loan Agreement are hereby incorporated herein and made a part hereof.

7.2 Hazardous Materials Covenants. Borrower agrees as follows:

(a) No Hazardous Activities. Except for the items listed in Schedule 7.1, Borrower to its knowledge shall not cause or permit the Property or Improvements to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any Hazardous Materials.

(b) Covenants and Agreements on Schedule 7.2. The covenants and agreements of Borrower set forth on Schedule 7.2 to this Loan Agreement are hereby incorporated herein and made a part hereof.

7.3 **Inspection by Lender.** Upon reasonable prior notice to Borrower, Lender, its employees and agents, may from time to time (whether before or after the commencement of a nonjudicial or judicial foreclosure proceeding) enter and inspect the Property and Improvements for the purpose of determining the existence, location, nature and magnitude of any past or present release or threatened release of any Hazardous Materials into, onto, beneath or from the Property and Improvements.

7.4 **Hazardous Materials Indemnity.** BORROWER HEREBY AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS LENDER AND ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS FROM AND AGAINST ANY AND ALL LOSSES, DAMAGES, LIABILITIES, CLAIMS, ACTIONS, JUDGMENTS, COURT COSTS AND LEGAL OR OTHER EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND EXPENSES) WHICH LENDER MAY INCUR AS A DIRECT OR INDIRECT CONSEQUENCE OF THE USE, GENERATION, MANUFACTURE, STORAGE, DISPOSAL, THREATENED DISPOSAL, TRANSPORTATION OR PRESENCE OF HAZARDOUS MATERIALS IN, ON, UNDER OR ABOUT THE PROPERTY OR IMPROVEMENTS, PROVIDED THAT BORROWER SHALL HAVE NO INDEMNITY OBLIGATION HEREUNDER WITH RESPECT TO (i) ANY HAZARDOUS MATERIALS THAT ARE FIRST INTRODUCED TO THE PROJECT OR ANY PORTION THEREOF OR ANY NEGLIGENT ACTS OF LENDER WHICH CAUSE THE RELEASE OF HAZARDOUS MATERIALS PREVIOUSLY INTRODUCED TO THE PROJECT OR ANY PORTION THEREOF SUBSEQUENT TO THE DATE THAT THE BORROWER'S INTEREST IN AND ACTUAL OR CONSTRUCTIVE POSSESSION OF THE PROJECT OR ANY SUCH PORTION THEREOF SHALL HAVE FULLY TERMINATED BY FORECLOSURE OF THE MORTGAGE OR ACCEPTANCE OF A DEED IN LIEU THEREOF, AND (ii) ANY HAZARDOUS MATERIALS THAT ARE ACTUALLY INTRODUCED TO THE PROJECT OR ANY PORTION THEREOF BY LENDER. BORROWER SHALL IMMEDIATELY PAY TO LENDER, UPON DEMAND, ANY AMOUNTS OWING UNDER THIS INDEMNITY, TOGETHER WITH INTEREST FROM THE DATE THE INDEBTEDNESS ARISES UNTIL PAID AT THE RATE OF INTEREST APPLICABLE TO THE PRINCIPAL BALANCE OF THE LOAN. BORROWER'S DUTY AND OBLIGATIONS TO DEFEND, INDEMNIFY AND HOLD HARMLESS LENDER SHALL SURVIVE THE CANCELLATION OF THE NOTE AND THE RELEASE, RECONVEYANCE OR PARTIAL RECONVEYANCE OF THE MORTGAGE.

7.5 **Legal Effect Of Section.** Borrower and Lender agree that it is expressly understood that, except as expressly provided above, Borrower's duty to indemnify Lender hereunder shall survive: (i) any judicial or non-judicial foreclosure under the Mortgage, or transfer of the Property in lieu thereof; (ii) the release and reconveyance or cancellation of the Mortgage; and (iii) the satisfaction of all of Borrower's Obligations under the Loan Documents.

## ARTICLE 8. TRANSFERS; DUE ON SALE OR FURTHER ENCUMBRANCE

### 8.1 Transfers; Due On Sale Or Further Encumbrance.

(a) Borrower acknowledges that Lender has examined and relied on (i) the creditworthiness and experience of Borrower (ii) Borrower's ownership in owning and operating properties such as the Project and (iii) the ownership and Control (as defined) herein) of Borrower by FC East River Associates, LLC, a New York limited liability company (the "Forest City Member"), and DWD Associates, LLC, a New York limited liability company (the "Blumenfeld Member") in agreeing to make the Loan evidenced hereby, and that Lender will continue to rely on Borrower's ownership of the Project and the Forest City Member's and the Blumenfeld Member's ownership of the Borrower as a means of maintaining the value of the Project as security for repayment of the Loan. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Project so as to ensure that, should Borrower default in the repayment of the Loan, Lender can recover the outstanding indebtedness owed by Borrower to Lender by a sale of the Project. Subject to the provisions of Section 8.1(b) below, without the express written consent of Lender, which may be withheld in its sole discretion, (i) neither the Project nor any part thereof nor any interest in the Project or the Borrower shall be sold, transferred, mortgaged, encumbered, pledged or conveyed (except that the Project may be encumbered by certain Mortgages in favor of Senior Lender and certain mortgages in favor of the Subordinate Lenders (on a *pari passu* basis with Lender); (ii) no title to the Project or any interest therein shall be divested; (iii) neither the Property nor any ownership interest in the Borrower shall be further mortgaged, encumbered, pledged or conveyed; (iv) no Lease which gives the lessee any option to purchase the Property or any part thereof shall be entered into, or, (v) without limiting the generality of clause (i) above, no ownership of shares of the Borrower, if a corporation, or of any corporate general partner of Borrower, if a partnership, or the general partnership interests in any partnership which is a general partner of Borrower, or any membership interest in Borrower, if a limited liability company, or any beneficial or fiduciary interest in any Borrower which is a trust or trustee, shall be sold, transferred, mortgaged, encumbered, pledged or conveyed. A sale or transfer under this Section 8.1(a) shall include, without limitation, (A) an installment sales agreement wherein Borrower agrees to sell the Project or any portion thereof for a price to be paid in installments; and (B) an agreement by Borrower leasing all or a substantial portion of the Project for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any rents arising from the Project.

(b) Notwithstanding Section 8.1(e) below, the following shall not constitute a violation of the provisions of Section 8.1(a) above and shall not require Lender's consent except as expressly provided for in this Section 8.1(b): (i) the leasing of space within the Project under Permitted Leases and otherwise in compliance with the provisions of the Loan Documents relating to such leasing activity; (ii) transfers of beneficial ownership interests in the Borrower

among Affiliates of Borrower; (iii) transfers of up to thirty-three and three tenths percent (33.3%) of the direct or indirect interests in the Borrower (as Borrower is constituted on the date hereof) so long as, if any such transfer of the direct or indirect interests in Borrower is to (A) any person or entity to which Lender or any of Lender's Affiliates has previously made a loan and such person or entity has been in default under any such loan resulting in foreclosure or a deed-in-lieu of foreclosure or (B) any person or entity that has been the subject of a bankruptcy proceeding (such person or entity, a "Reviewable Transferee"), the prior written approval of Lender in its reasonable discretion shall be required; (iv) transfers of up to forty-nine percent (49%) of the direct or indirect interests in either of the Forest City Member and the Blumenfeld Member (as each such entity is constituted on the date hereof) to parties that are not Forest City Ratner Parties or Blumenfeld Parties (as such terms are defined herein) as the case may be, so long as, if any such transfer is to a Reviewable Transferee, the prior written approval of Lender in its reasonable discretion shall be required; (v) any transfer of shares of indirect ownership interests in each of Completion Guarantor and Borrower that are publicly traded on a nationally recognized exchange or through the "over-the-counter" market; (vi) a transfer of any direct or indirect interest in Borrower by the Forest City Ratner Parties (as defined below) as part of a transaction involving more than fifty percent (50%) of the properties owned directly or indirectly, in whole or in part, by the Forest City Ratner Parties (a "Forest City Global Transaction"); (vii) a transfer of any direct or indirect interest in Borrower by the Blumenfeld Parties (as defined below) as part of a transaction involving more than fifty percent (50%) of the properties owned directly or indirectly, in whole or in part, by the Blumenfeld Parties (a "Blumenfeld Global Transaction"; a Blumenfeld Global Transaction and/or a Forest City Global Transaction are each sometimes referred to herein as a "Global Transaction") or (viii) a sale or other disposition of obsolete or worn-out personal property which is contemporaneously replaced by comparable personal property of equal or greater value which is free and clear of liens, encumbrances and security interests other than those created by the Loan Documents; provided, however, that (A) after giving effect to any transfer(s) under clauses (ii), (iii) (iv) or (v) above, Control (hereinafter defined) of Borrower shall at all times remain vested in Forest City Enterprises, Inc., Bruce C. Ratner, the members of Bruce C. Ratner's family (which shall include so called "significant others" and their descendents or family trusts for the benefit of each of the foregoing) or senior employees of Forest City Ratner (collectively, the "Forest City Ratner Parties"), and/or Edward Blumenfeld or the members of Edward Blumenfeld's family (which shall include so called "significant others" and their descendents or family trusts for the benefit of each of the foregoing) or senior employees of Blumenfeld Development (collectively, the "Blumenfeld Parties"), and (B) after giving effect to any Global Transaction under clauses (vi) and (vii) above, Control (hereinafter defined) of the successor party or parties to such Global Transaction with respect to the Borrower and the Project shall vest in a Qualified Transferee; provided further, that only one Forest City Global Transaction and one Blumenfeld Global Transaction may occur during the term of the Loan. Borrower shall notify Lender of the identity of the proposed transferee not less than thirty (30) days prior to any such proposed transfer, and Lender shall, within 10 days after delivery of such notice advise Borrower in writing whether

such proposed transferee is a Reviewable Transferee. Lender's failure to so advise Borrower shall be deemed to mean that such proposed transferee is not a Reviewable Transferee, and that such transfer is therefore not prohibited by said clause (iii) above. If Lender advises Borrower that such proposed transferee is a Reviewable Transferee, Lender shall, within twenty (20) days after delivery of Borrower's original notification advise Borrower in writing whether such proposed transfer is permitted. Notwithstanding the foregoing, at all times during the term of the Senior Construction Loan, a Global Transaction shall require the prior written consent of Lender, which consent shall not be unreasonably withheld. Lender's consent to a proposed Global Transaction shall be deemed given if Lender does not approve or reject the proposed Global Transaction within ten (10) Business Days of receipt of Borrower's written request, which written request shall identify the properties to be transferred and the proposed transferees. For purposes of this Section 8.1(b), "Affiliate" means a person or entity that directly or indirectly, through one or more intermediaries, Controls, is controlled by, or is under common control with, the person or entity specified, or is a member of the family of any such person. For purposes of this Section 8.1(b), the terms "Control", "is controlled by" and "is under common control with" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of securities or interests or by contract or otherwise.

(c) The occurrence of any of the foregoing sales, transfers, conveyances or other occurrences described in the foregoing Section 8.1(a) shall, unless permitted under Section 8.1(b) above or otherwise expressly approved in writing by Lender, constitute an immediate Event of Default hereunder, regardless of whether any such sale, transfer, conveyance or other occurrence was instituted or caused by Borrower or any other Person, whereupon Lender at its option, without being required to demonstrate any actual impairment of its security or any increased risk of default hereunder, shall have the right to declare the Loan immediately due and payable. This provision shall apply to every sale, conveyance, mortgage, encumbrance, pledge or transfer of all or any portion of the Project or other occurrence described in Section 8.1(a) above (unless permitted under Section 8.1(b) above), regardless of whether voluntary or not, or whether or not Lender has consented to any previous sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of any portion of the Project or other occurrence described in Section 8.1(a) above.

(d) Borrower agrees to bear and shall pay or reimburse Lender on demand for all reasonable third party, out-of-pocket costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements, title search costs and title insurance endorsement premiums) incurred by Lender in connection with the review, approval and documentation of any sale, conveyance, alienation, mortgage, encumbrance, pledge, transfer or other permitted occurrence or event described in this Section 8.1.

(e) Lender's consent to one sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Project or any portion thereof or any other transaction or

event described in Section 8.1(a) above shall not be deemed to be a waiver of Lender's right to require such consent to any future occurrence of same. Any attempted or purported sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Project or of any direct or indirect interest in Borrower, and any other sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Project or of any direct or indirect interest in Borrower, if made in contravention of this Section 8.1, shall be null and void and of no force and effect and shall constitute an immediate Event of Default under this Loan Agreement.

## ARTICLE 9. COVENANTS OF BORROWER

9.1 **Expenses.** Borrower shall immediately pay Lender upon demand all reasonable third party, out-of-pocket costs and expenses incurred by Lender in connection with: (a) the preparation of this Agreement, all other Loan Documents and Other Related Documents contemplated hereby; and (b) the administration of this Agreement, the other Loan Documents and Other Related Documents for the term of the Loan. For all purposes of this Agreement, Lender's reasonable third party, out-of-pocket costs and expenses shall include, without limitation, all reasonable and customary appraisal fees, cost engineering and inspection fees, legal fees and expenses, accounting fees, environmental consultant fees, auditor fees, UCC filing fees and/or UCC vendor fees, and the cost to Lender of any title insurance premiums, title surveys, reconveyance and notary fees to the extent incurred in accordance with this Loan Agreement. Borrower recognizes and agrees that formal written Appraisals of the Property and Improvements by a licensed independent appraiser may be required (at Lender's sole cost and expense (absent the occurrence and continuation of an Event of Default), other than the initial Appraisal) by Lender's internal procedures and/or federal regulatory reporting requirements on an annual and/or specialized basis and that Lender may, at its option and Lender's sole cost and expense, require inspection of the Property and Improvements by an independent supervising architect and/or cost engineering specialist and/or the Project Consultant upon completion of the Improvements. Notwithstanding the foregoing, upon the occurrence and during the continuation of an Event of Default, Borrower shall pay Lender within five (5) Business Days of demand all out of pocket costs and expenses incurred by Lender in connection with the enforcement or satisfaction of any of Borrower's obligations under this Agreement or the other Loan Documents, including, without limitation, in connection with: (A) any action or proceeding related to the enforcement or interpretation of this Loan Agreement or any of the other Loan Documents; (B) any foreclosure proceedings; (C) any action to appoint a receiver; or (C) any other action or proceeding to recover from Borrower amounts owed under the Loan Documents.

9.2 **ERISA Compliance.** Borrower shall at all times comply with the provisions of ERISA with respect to any retirement or other employee benefit plan to which it is a party as employer, and as soon as possible after Borrower knows, or has reason to know, that any Reportable Event (as defined in ERISA) with respect to any such plan of Borrower has occurred, it shall furnish to Lender a written statement setting forth details as to such Reportable Event and

the action, if any, which Borrower proposes to take with respect thereto, together with a copy of the notice of such Reportable Event furnished to the Pension Benefit Guaranty Corporation.

9.3 **Leasing.** Borrower shall use commercially reasonable efforts to cause all leasable space in the Property to be leased at no less than fair market rental rates.

9.4 **Approval Of Leases.**

(a) Borrower shall not enter into any Leases with respect to any portion of the Premises, or amend, modify, terminate or accept a cancellation of any such Lease, without in each case obtaining the prior written consent of Lender, such consent not to be unreasonably withheld or delayed; provided, however, that Lender's consent shall not be required with respect to (i) Leases that are not Major Leases ("Non-Major Leases") or (ii) amendments or modifications to an existing Non-Major Lease that satisfies the following conditions (the "Leasing Guidelines"): (a) such proposed Lease is not a Major Lease and no such amendment or modification to an existing Lease would cause it to become a Major Lease; (b) such proposed Lease or amendment or modification to an existing Lease provides for payment of a net effective rent (after taking into account any free rent, construction allowances or other concessions granted by landlord) and other material amounts payable no less than the then effective fair market rent then prevailing for similar properties and leases in the market area (and taking into account the type and creditworthiness of the tenant, the length of the term including any renewals, and the location and size of the premises covered thereby) and is otherwise on commercially reasonable terms; (c) such proposed Lease or amendment or modification to an existing Lease is entered into on an arm's-length basis with a third-party tenant unaffiliated with Borrower; (d) such proposed Lease or amendment or modification to an existing Lease does not contain any options to purchase or other rights with respect to the ownership of the Property and does not contain any options for the tenant thereunder to terminate such Lease, other than in the event of a material casualty or condemnation; and (e) such proposed Lease calls for delivery from time to time of an estoppel substantially in the form attached hereto as Exhibit M-1. Lender will use commercially reasonable efforts to provide final approval ("Final Approval") of the proposed Lease or amendment or modification to an existing Lease to Borrower no later than ten (10) Business Days after receiving all pertinent information, including, without limitation, (i) current tenant financial information in sufficient detail to assess the experience and creditworthiness of such tenant and (ii) the form of the Lease, ("Relevant Lease Information") necessary to approve such proposed Lease (any Lease that receives Final Approval shall be referred to herein as an "Approved Lease"). In the event that Borrower requests Lender's approval or consent hereunder, and Borrower's request contains a bold-faced conspicuous legend at the top of the first page thereof stating that "IF YOU FAIL TO RESPOND TO OR TO EXPRESSLY DENY THIS REQUEST FOR APPROVAL OR CONSENT IN WRITING WITHIN TEN (10) BUSINESS DAYS, YOUR APPROVAL OR CONSENT SHALL BE DEEMED GIVEN," then if Lender fails to respond to or expressly deny such request for approval or consent in writing within ten (10) Business Days after Lender's receipt of Borrower's written request therefor and



the Relevant Lease Information, Lender shall be deemed to have approved or consented to such matter. Non-Major Lease that materially deviates from the Leasing Guidelines shall be subject to the further approval of Lender before execution.

(b) [Intentionally Omitted]

(c) For all Leases of space in the Project having a net rentable area greater than 20,000 square feet, at Lender's request, Borrower will use commercially reasonable efforts to obtain from the tenant a subordination, non-disturbance and attornment agreement ("SNDA"), which SNDA shall be substantially the same in form and substance to the form attached hereto as Exhibit M-3 and made a part hereof, subject to such changes that are reasonably satisfactory to Lender. From time to time, upon Lender's request, Borrower will use reasonable efforts to obtain a tenant estoppel certificate from such tenants as Lender may specify ("Tenant Estoppel Certificate"), which Tenant Estoppel Certificate shall be substantially the same in form and substance to the form attached hereto as Exhibit M-2 and made a part hereof, subject to such changes that are reasonably satisfactory to Lender, but not more than once every 12 months for any one tenant (provided that such limitation shall not apply (x) with respect to the estoppel delivery requirements under Section 1.9(b)(xii) above or (y) upon the occurrence and during the continuation of an Event of Default).

**9.5 Senior Loan Documents, Subordinate Loan Documents; BofA Unsecured Loan Documents NMTC Loan Documents.** Without the prior written consent of Lender, Borrower shall not amend, modify or terminate in any material respect any of the documents relating to any of the Senior Loans (unless otherwise provided for in the Intercreditor Agreement with Senior Lender), Subordinate Loans or the BofA Unsecured Loan or NMTC Loan and shall immediately notify Lender in writing upon its receipt of any notice of an "Event of Default" received with respect to any of the Senior Loans, Subordinate Loans, the BofA Unsecured Loan or the NMTC Loan.

**9.6 Subdivision Maps.** Prior to recording any final map, plat, parcel map, lot line adjustment or other subdivision map of any kind covering any portion of the Property (collectively, "Subdivision Map"), Borrower shall submit such Subdivision Map to Lender for Lender's review and approval, which approval shall not be unreasonably withheld. Within ten (10) Business Days after Lender's receipt of such Subdivision Map, Lender shall provide Borrower written notice if Lender disapproves of said Subdivision Map. Within five (5) Business Days after Lender's request, Borrower shall execute, acknowledge and deliver to Lender such amendments to the Loan Documents as Lender may reasonably require to reflect the change in the legal description of the Property resulting from the recordation of any Subdivision Map. In connection with and promptly after the recordation of any amendment or other modification to the Mortgage recorded in connection with such amendments, Borrower shall deliver to Lender, at Borrower's sole expense, a title endorsement to the Title Policy in form and substance reasonably satisfactory to Lender insuring the continued second priority lien of the

Mortgage. Subject to the execution and delivery by Borrower of any documents required under this Section, Lender shall, if required by applicable law, sign any Subdivision Map approved by Lender pursuant to this Section.

9.7 **Opinion Of Legal Counsel.** Borrower shall provide, at Borrower's expense, an opinion of legal counsel in form and content reasonably satisfactory to Lender to the effect that: (a) upon due authorization, execution and recordation or filing as may be specified in the opinion, each of the Loan Documents and Other Related Documents shall be legal, valid and binding instruments, enforceable against the makers thereof in accordance with their respective terms, subject to customary qualifications for bankruptcy and general equitable principles; (b) Borrower and Completion Guarantor are duly formed and have all requisite authority to enter into the Loan Documents and Other Related Documents (with understanding that organization, authority and good standing opinions may be provided by appropriate in-house counsel for the applicable entities); and (c) such other matters, incident to the transactions contemplated hereby, as Lender may reasonably request.

9.8 **Further Assurances.** Upon Lender's request and at Borrower's sole cost and expense, Borrower shall execute, acknowledge and deliver any other instruments and perform any other acts necessary, desirable or proper, as reasonably determined by Lender, to carry out the purposes of this Agreement and the other Loan Documents or to perfect and preserve any Liens created by the Loan Documents, provided that same shall not materially increase the obligations or decrease the rights of Borrower or Completion Guarantor.

9.9 **Assignment.** Except as expressly permitted under Article 8 of this Loan Agreement, without the prior written consent of Lender, Borrower shall not assign Borrower's interest under any of the Loan Documents, or in any monies due or to become due thereunder, and any assignment without such consent shall be void. In this regard, Borrower acknowledges that Lender would not make this Loan except in reliance on Borrower's expertise, reputation, prior experience in developing and constructing commercial real property, Lender's knowledge of Borrower, and Lender's understanding that this Loan Agreement is more in the nature of an agreement involving personal services than a standard loan where Lender would rely on security which already exists.

9.10 **Management Of Property.** Without the prior written consent of Lender (not to be unreasonably withheld), Borrower shall not enter into (except as pre-approved by Lender), materially amend or terminate any agreement providing for the management, leasing or operation of the Property or Improvements. Any and all entities that manage the operations of the Property or Improvements must be (i) an Affiliate of Borrower; (ii) an Affiliate of Forest City Ratner Companies; (iii) an Affiliate of Blumenfeld Development Group, Ltd; or (iv) approved by Lender in its reasonable discretion.

9.11 **Requirements of Law; Permits; CC&R's.** Borrower shall comply with all Laws, Permits, Governmental Approvals, Requirements of Law and CC&R's and shall use commercially reasonable and good faith efforts to cause other persons or entities to comply with same in a timely manner.

9.12 **Special Covenants; Single Purpose Entity.** Without the prior written consent of Lender, which consent shall not be unreasonably withheld, Borrower shall not (a) enter into, amend in any material respect (provided that Borrower shall provide Lender a copy of any amendments, whether or not material) or terminate any Material Agreement providing for the development, construction, management, leasing or operation of the Property or Improvements (approval of any such other Material Agreement not to be unreasonably withheld by Lender); (b) make any material amendment to Borrower's operating agreement or the organizational documents of any member of Borrower or any managing member or general partner, as applicable, of such member, in each case from the form thereof previously provided to Lender; (c) except as previously approved by Lender, engage in any transaction with any affiliate of Borrower or Completion Guarantor on other than fair market, arms'-length terms and conditions; (d) engage in any business other than the ownership, development, construction, leasing, sale and operation of the Property; (e) directly or indirectly guaranty the obligations of any other person or entity; (f) except as set forth in Section 6.31 of this Loan Agreement, incur any additional indebtedness or other material obligation, other than ordinary course obligations (excluding, however, any additional borrowed money) incurred in connection with Borrower's permitted scope of business, subject to the limitations on such additional indebtedness set forth in Section 6.31 of this Loan Agreement; or (g) suffer or permit any direct or indirect change in the ownership of Borrower without the prior written consent of Lender except as provided under Article 8 hereof. For purposes of this Section 9.12, "Material Agreement" shall mean any agreement which cannot, by its terms, be terminated upon thirty days notice, or which involves annual expenditures (on an actual or projected basis) in excess of \$250,000.

9.13 **Limitations On Distributions, Etc.** Following the occurrence and during the continuance of any Event of Default, Borrower shall not distribute any money or other property to any member of Borrower, whether in the form of earnings, income or other proceeds from the Property and Improvements.

9.14 **Project Sign/Advertisements.** If permitted by the applicable Governmental Authorities, during construction of the Project, Borrower shall cooperate with Lender in the erection and maintenance at Borrower's expense of a sign of a style, size, and location reasonably approved by Lender and Borrower indicating, among other things, that financing for the Project is being provided by Lender, and Borrower shall include reference to Lender in form and content acceptable to Lender on any Project sign that Borrower otherwise places on the Property. Lender shall have the right to publicly announce that Lender has provided the Loan. Any press releases or advertisements mentioning the Loan shall be subject to the reasonable approval of Borrower.

9.15 **Compliance; Operation.** Borrower shall comply with all Governmental Approvals and all applicable Laws pertaining to the construction, equipping, ownership, use, management and operation of the Project and each portion thereof. Other than those Permits and Governmental Approvals, if any, which Borrower is required to obtain and pay for on or prior to the Effective Date, Borrower shall obtain and pay for all Permits and other Governmental Approvals on a timely basis so that construction of the Project occurs as set forth in the Project Schedule and otherwise as set forth in the Loan Documents. Borrower shall perform, in all material respects, all of its Obligations under the Loan Documents, all Leases, all Material Agreements and all Covenants, Conditions and Restrictions affecting the Project. Except as otherwise provided elsewhere in this Agreement, Borrower shall not make or permit any material modification to or termination of any of the Major Leases, Material Agreements or Covenants, Conditions and Restrictions without Lender's prior written consent, which consent shall not be unreasonably withheld.

9.16 **New Appraisals.** Borrower acknowledges Lender's right to obtain, at Lender's sole cost and expense, a new appraisal (or update of an existing appraisal) at any time while the Loan or any portion thereof remains outstanding, (a) when, in Lender's reasonable judgment, such an appraisal is warranted as a result of Lender's internal evaluation of the subject Loan, and/or (b) to comply with statutes, rules, regulations, or directives of Governmental Authorities having jurisdiction over Lender.

9.17 **Limitations on Recourse; Exculpation.**

(a) **Limitations on Recourse.** Notwithstanding anything to the contrary contained herein, in any of the other Loan Documents, or in any other instruments, certificates, documents or agreements executed in connection with the Loan (collectively, the "**Relevant Documents**"), no recourse under or upon any obligation, representation, warranty, promise or other matter whatsoever shall be had against any of the direct or indirect constituent members, Affiliates or partners of Borrower or the direct or indirect partners, shareholders, members, officers, directors, employees, agents and representatives (collectively, the "**Non-Recourse Parties**") of Borrower or such Non-Recourse Parties, and Lender expressly waives and releases, on behalf of itself and its successors and assigns, all right to assert any liability whatsoever under or with respect to the Relevant Documents against, or to satisfy any claim or obligation arising thereunder against, any of such Non-Recourse Parties of Borrower, such constituent partners or members or out of any of their assets. **NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, BORROWER, BUT NOT THE NON-RECOURSE PARTIES, SHALL BE PERSONALLY LIABLE, SUBJECT TO LEGAL ACTION AND OBLIGATED TO PAY LENDER, FOR ANY LOSS, COST, EXPENSE, DAMAGE, CLAIM OR OTHER OBLIGATION (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES AND COURT COSTS), BUT EXCLUDING CONSEQUENTIAL DAMAGES, INCURRED OR SUFFERED BY LENDER ARISING OUT OF OR IN CONNECTION WITH THE FOLLOWING:**

(i) fraud or intentional misrepresentation by Borrower or any Affiliate thereof in this Loan Agreement or any other Loan Document or otherwise in connection with the Loan;

(ii) intentional physical waste of the Property (ordinary wear and tear excepted) by Borrower, its agents, officers or employees;

(iii) the seizure or forfeiture of the Property, or any portion thereof, or Lender's interest therein, resulting from criminal wrongdoing by Borrower, its agents, officers or employees;

(iv) gross negligence or willful misconduct by Borrower, its agents, officers or employees or tortious misconduct by Borrower; or

(v) any and all fees, costs and expenses, including without limitation reasonable attorney fees and costs, incurred by Lender in the enforcement of subparagraphs (i) - (iv) above, together with interest accrued for any such unpaid obligations at the Alternate Rate.

(b) Miscellaneous. No provision of this Section 9.17 shall (i) affect (A) the enforcement of, or (B) the personal liability of and recourse against any guarantor or indemnitor (including without limitation the Completion Guarantor) and the assets of any such guarantor and indemnitor for all liabilities and obligations under, the Hazardous Materials Indemnity, the Completion Guaranty or any guaranty or similar agreement executed in connection with the Loan, (ii) release or reduce the indebtedness evidenced by the Note, (iii) impair the lien of the Mortgage, this Loan Agreement or any other Loan Document, (iv) impair the rights of Lender to enforce any provisions of the Loan Documents, or (v) limit Lender's ability to obtain a deficiency judgment or judgment on the Loan or otherwise against Borrower to the extent necessary to obtain any amount for which Borrower is personally liable in accordance with this Section 9.17 or any other Loan Document.

9.18 Loan Balancing. The Senior Loan is required to be In Balance at all times pursuant to and as defined in the Senior Loan Agreements.

9.19 Tropical Hardwoods. Tropical hardwoods, as defined in Section 165 of the New York State Finance Law, shall not be utilized in the Project by Borrower except as expressly permitted by the foregoing provision of law.

9.20 Impositions. Borrower shall timely pay all Impositions as and when due and, in all events, prior to the occurrence of any delinquency arising in connection with any such Imposition.

9.21 **Insurance.** Borrower shall at all times comply with the insurance requirements as set forth in Article V of this Loan Agreement.

9.22 **CC&R's.** Borrower shall not amend, modify, restate or terminate any of the CC&R's, or subordinate any of the CC&R's to any lien or encumbrance (or permit any of the foregoing to occur) without the prior written consent of Lender, which consent shall not be unreasonably withheld or delayed.

9.23 **Construction Schedule.** Borrower shall at all times comply with the Construction Schedule attached hereto as Exhibit J and made a part hereof (subject to Permitted Delays).

9.24 **MacBride Principles.** The MacBride Principles Rider, attached hereto as Exhibit G, is hereby incorporated into this Agreement, and forms a part of this Agreement as if fully set forth herein.

9.25 **Maintenance of the Property.** Borrower shall at all times maintain the Property or cause the Property to be maintained in good repair, working order and condition, and will make or cause to be made all appropriate repairs, renewals and replacements thereof (subject to Permitted Delays).

9.26 **Amendments to Organizational Documents.** Borrower shall deliver to Lender copies of any and all amendments or changes to Borrower's operating agreement or any material amendments or changes to the organizational documents of any member of Borrower or any managing member or general partner, as applicable, of such member, in each case from the form thereof previously provided to Lender within thirty (30) days after any such amendment or change.

9.27 **Brownfield Program.** To the extent that the Borrower elects to remain in the Brownfield Program, Borrower covenants that it will provide to Lender and the New York State Department of Environmental Conservation the final engineering report required for the work it is performing at the Property under the New York State Brownfield Clean Program, New York Environmental Conservation Law Sec. 27-1401 et seq. ("Brownfield Program").

9.28 **Certificate of Completion.** To the extent that the Borrower elects to remain in the Brownfield Program, Borrower covenants that it will obtain a certificate of completion ("COC") from the New York State Department of Environmental Conservation for the work it is performing at the Property under the Brownfield Program which will allow for commercial development and use of the Project in accordance with the Plans and Specifications and the Project Budget. Borrower will promptly provide a copy of the COC to Lender. Borrower covenants that it will comply with any and all conditions set forth in the COC and will not take any action that will result in the revocation or modification of the COC.

9.29 **Indoor Air Quality.** To the extent that the Borrower elects to remain in the Brownfield Program, Borrower covenants that it will take any action requested by the New York State Department of Environmental Conservation or the New York State Department of Health to protect or improve indoor air quality at the Property or in the Improvements.

9.30 **Target Contribution/Home Depot Contribution.** Borrower covenants that it shall use commercially reasonable efforts to cause (i) Home Depot to deposit the Home Depot Contribution into the Home Depot Proceeds Holding Account and (ii) Target to deposit the Target Contribution into the Target Proceeds Holding Account. If Borrower receives either the Target Contribution or the Home Depot Contribution directly from Target or Home Depot, as applicable, Borrower covenants that it shall cause (i) the Target Contribution to be deposited into the Target Proceeds Holding Account and (ii) the Home Depot Contribution to be deposited into the Home Depot Proceeds Holding Account.

9.31 **No Discrimination.** Borrower shall comply with the City's equal employment requirements under mayoral Executive Order No. 50 (April 25, 1980), as amended, if applicable.

9.32 **Minority and Women Owned Business Participation.** Borrower covenants and agrees to use its reasonable good faith efforts to encourage participation by minority-owned business enterprises ("MBEs") and women-owned business enterprises ("WBEs") certified by the New York City Department of Business Services in connection with the Project, and Borrower shall make reasonable good faith efforts to use MBEs and WBEs in connection with the Project, including without limitation the Bond Financing. Borrower hereby covenants and agrees that it shall provide Lender with reports as often and with such details as may be reasonably required by Lender of any MBEs and WBEs used in the provision of services in connection with the Project, but not more than once per quarter.

## ARTICLE 10. REPORTING COVENANTS

10.1 **Financial Statements.** Borrower shall deliver to Lender (i) after Substantial Completion of the Project and as soon as available thereafter, but in no event later than one hundred twenty (120) days after Borrower's fiscal year end and certified as required by Section 10.7 below, current annual audited financial statements for such year end (including, without limitation, an income and expense statement and balance sheet) for the Borrower prepared by a "Big Four" accounting firm, (ii) after Substantial Completion of the Project and as soon as available thereafter, but in no event later than ninety (90) days after the end of each fiscal quarter and certified as required by Section 10.7 below, current annual unaudited financial statements for such period (including, without limitation, an income and expense statement and balance sheet) for the Borrower, rent roll and, upon request from Lender, but not more than one per each fiscal quarter, a billed and unpaid receivables report for the Project, (iii) after Substantial Completion of the Project, annual pro forma operating budgets for the Project, delivered to the Lender within thirty (30) days of each fiscal year end, (iv) until Substantial

Completion of the Project, monthly draw requisitions, which detail projected total costs in comparison to the existing Project Budget, prepared by the Borrower and delivered to the Lender at least monthly, (v) until the Conversion Date (as defined in the Senior Loan Documents) (if applicable), monthly leasing status reports prepared by the Borrower and delivered to the Lender within ten (10) Business Days of each month end, (vi) to the extent available, tenant sales reports within forty-five (45) days after the end of each fiscal quarter following initial occupancy by tenant, (vii) within forty-five (45) days of Lender's request, quarterly and annual audited financial statements from the Completion Guarantor should the Completion Guarantor's financial statements cease to be available through the public domain within those timeframes set forth by the Securities and Exchange Commission, and (viii) such other information as may be reasonably requested by the Lender from time to time. Except as otherwise agreed to by Lender, all such financial information shall be prepared in accordance with generally accepted accounting principles consistently applied.

#### 10.2 Employment Reporting.

(a) Borrower shall complete and return to Lender the form annexed hereto as Exhibit L (the "Borrower's Employment Report"). Borrower agrees, on behalf of itself and its successors and assigns with regard to each July 1 - June 30 period during which any part of the eight years from the date hereof falls (together, the "Reporting Period"), it will submit to Lender, by August 1, on an annual basis, a Borrower's Employment Report reporting the number of jobs created and retained at the Property, during the previous July 1 - June 30 period relating to Borrower's and its successors' and assigns' own employees at the Property, signed by an officer or member of Borrower, or its successor or assign, and the attachments required by such form. Borrower further agrees, on behalf of itself and its successors and assigns, that, for each partial or complete July 1 - June 30 period until and including the July 1 - June 30 period during which occurs the later of the eighth anniversary of (i) the date hereof and (ii) the commencement of the last Lease entered into prior to the end of the Reporting Period, it will submit to Lender, or its successors or assigns, by August 1, on an annual basis, a summary of the information contained in any Tenant's Employment Report (as hereinafter defined) received relating to the previous July 1 - June 30 period, a summary of information contained in such reports received from tenants relating to the previous July 1 - June 30 period, a list of the names and addresses of all tenants of space on the Property and a list of the names and addresses of contact persons of all tenants. Each such summary shall be signed by an officer or member of Borrower, or its successor or assign, and shall provide (i) that such summary is a correct summation of Tenant's Employment Reports received from tenants, and (ii) that Tenant's Employment Reports have been received from all tenants required to submit the same or if Borrower has not received the same from any such tenant, identifying which tenants did not submit same and certifying that Borrower, or its successor or assign, is diligently pursuing obtaining the same from such tenants.



(b) Borrower and its successors and assigns shall cause each tenant (including tenants affiliated with Borrower), at the time such Tenant enters into a Lease (provided such Lease is entered into prior to the end of the Reporting Period):

(i) to complete and return to Borrower or its successors and assigns an employment reporting form in the form annexed hereto as Exhibit P (the "Tenant's Employment Report")

(ii) to agree in writing in a legally binding document, to thereafter, with regard to each July 1 - June 30 period during which any part of the eight years from the commencement of its Lease occurs, complete and return to Borrower or its successors and assigns, by each July 15, for each prior partial or complete July 1 - June 30 period included in the specified reporting period, an accurate Tenant's Employment Report relating to the number of jobs created and retained by tenant at the Property, signed by an officer or member of tenant and the attachments required by such form.

10.3 **Books And Records.** Borrower shall maintain complete books of account and other records for the Property and Improvements and for disbursement and use of the proceeds of the Loan and Borrower's Funds, and the same shall be available for inspection and copying by Lender during business hours upon reasonable prior notice.

10.4 **Knowledge Of Event of Default; Etc.** Borrower shall promptly, upon Borrower's knowledge thereof, report in writing to Lender the occurrence of any Event of Default.

10.5 **Litigation, Arbitration Or Government Investigation.** Borrower shall promptly, upon Borrower's knowledge thereof, report in writing to Lender, (i) the institution of, or threat of, any material proceeding against or affecting Borrower or the Property, including any eminent domain or other condemnation proceedings affecting the Property, or (ii) any material development in any proceeding already disclosed, which, in either case, has a Material Adverse Effect, which notice shall contain such information as may be reasonably available to Borrower to enable Lender and its counsel to evaluate such matters.

10.6 **Environmental Notices.** Borrower shall notify Lender, in writing, as soon as practicable, and in any event within ten (10) Business Days after Borrower's learning thereof, of any notice required pursuant to Section 7.2(c).

10.7 **Certificate Of Borrower.** Borrower shall deliver to Lender a compliance certificate signed on behalf of Borrower by a Borrower Authorized Representative, substantially in the form of Exhibit O attached hereto and incorporated herein (a "Compliance Certificate") on a quarterly basis. In addition, Borrower shall deliver a Compliance Certificate together with each delivery of any financial statement required pursuant to this Article 10.

## ARTICLE 11. DEFAULTS AND REMEDIES

11.1 **Event of Default.** The occurrence of any one or more of the following shall constitute an event of default ("Event of Default") under this Agreement and the other Loan Documents:

(a) **Monetary Default.** Borrower's failure (i) to pay a Monthly Payment within twenty (20) days after the applicable Payment Date or (ii) to pay the Principal Balance and all accrued and unpaid interest thereon on the Maturity Date or (iii) to pay any other amount due hereunder or under any other Loan Document within ten (10) days after written notice of such nonpayment; or

(b) **Performance of Obligations.** Borrower breaches or defaults under any other covenant, term or provision of this Loan Agreement not specified in this Section 11.1 and Borrower fails to cure such breach or default within the cure period specified for such breach or default or, if no such cure period is specified, such breach or default continues for thirty (30) days after receipt of notice thereof by the Lender; provided, however, that if such breach or default is reasonably susceptible of cure, but not within such thirty (30) day period, then Borrower may be permitted up to an additional one hundred twenty (120) days (for a total of one hundred fifty (150) days from the notice of default) to cure such default provided that Borrower diligently and continuously pursues such cure; or

(c) [Intentionally Omitted]

(d) **Insurance.** Borrower fails to maintain at all times the insurance coverages required under Article 5 hereof or Borrower's (i) failure to deliver to Lender (A) any and all certificates evidencing issuance of renewal or replacement insurance policies for all insurance required under Article 5 hereof prior to the expiration of existing policies or (B) proof that all premiums then due are fully paid, not more than one hundred twenty (120) days after the effective date of coverage for all renewals or replacements for all policies required under Article 5 hereof (or in lieu thereof, Borrower may deliver a binder that reflects all required information) or (ii) failure in the due observance or performance of any other terms and conditions of Article 5 hereof, in the event such other failure is not cured within thirty (30) days following written notice thereof by Lender to Borrower, provided all insurance policies required under Article 5 hereof shall remain at all times in full force and effect with no outstanding premiums; or

(e) **Transfer.** Any violation of Article 8 hereof or any failure to comply in strict accordance with the terms and conditions of Article 8 hereof, unless such violation or failure is not cured within seven (7) days following Borrower's knowledge of such violation or failure, whether by written notice from Lender to Borrower or otherwise; or

(f) Construction; Use. (i) There is any material deviation in the work of construction from the Plans and Specifications or governmental requirements or the appearance or use of defective workmanship or materials in constructing the Improvements, and Borrower fails to remedy the same to Lender's reasonable satisfaction within thirty (30) days of Lender's written demand to do so; or (ii) there is a cessation of construction of the Improvements prior to completion for a continuous period of more than fifteen (15) Business Days (except as caused by a Permitted Delay, but subject to the aggregate period of all Permitted Delays); or (iii) the construction, sale or leasing of any of the Improvements in accordance with the Loan Documents is prohibited, enjoined or delayed for a continuous period of more than sixty (60) days; or (iv) utilities or other public services necessary for the full occupancy and utilization of the Property and Improvements are curtailed for a continuous period of more than sixty (60) days; or

(g) Liens, Attachment; Condemnation. (i) The recording of any claim of Lien against the Property or Improvements or the service on Lender of any bonded stop notice relating to the Loan and the continuance of such claim of Lien or bonded stop notice for sixty (60) days without discharge, satisfaction or provision for payment being made by Borrower in a manner satisfactory to Lender which may include Borrower's recording or delivering to Lender of a surety bond in form and amount satisfactory to Lender; or (ii) the sequestration or attachment of, or any levy or execution upon any of the Property or Improvements, any other collateral provided by Borrower under any of the Loan Documents, any monies in the Borrower's Funds Accounts or any substantial portion of the other assets of Borrower, which sequestration, attachment, levy or execution is not released, expunged, dismissed, insured or bonded over prior to the earlier of thirty (30) days or the sale of the assets affected thereby; or

(h) Representations and Warranties. The failure of any representation or warranty of Borrower in this Loan Agreement or the Mortgage to be true and accurate in all material respects and the continuation of such failure for more than ten (10) days after written notice to Borrower from Lender requesting that Borrower cure such failure, unless a cure cannot reasonably be effected within ten (10) days, in which case Borrower shall have a cure period of up to ninety (90) days provided Borrower commences such cure within such ten (10) day period and at all times thereafter acts diligently and in good faith to prosecute the remedy therefor, and provided further that Lender's security is not impaired by Borrower's delay in performance; or

(i) Voluntary Bankruptcy; Insolvency; Dissolution. (i) The filing of a petition by Borrower for relief under the Bankruptcy Code, or under any other present or future state or federal law regarding bankruptcy, reorganization or other debtor relief law; (ii) the filing of any pleading or an answer by Borrower in any involuntary proceeding under the Bankruptcy Code or other debtor relief law which admits the jurisdiction of the court or the petition's material allegations regarding Borrower's insolvency; (iii) a general assignment by Borrower for the benefit of creditors; or (iv) Borrower applying for, or the appointment of, a receiver, trustee, custodian or liquidator of Borrower or any of its assets or property; or

(j) Involuntary Bankruptcy. The failure of Borrower to effect a full dismissal of any involuntary petition under the Bankruptcy Code or under any other debtor relief law that is filed against Borrower or in any way restrains or limits Borrower or Lender regarding the Loan, the Property, the Project or the Improvements, prior to the earlier of the entry of any court order granting relief sought in such involuntary petition, or sixty (60) days after the date of filing of such involuntary petition; or

(k) Completion Guarantor. Until the Completion Guaranty has been terminated in accordance with the terms thereof, the occurrence of any of the events specified in Section 11.1(i) or Section 11.1(j) as to Completion Guarantor; or

(l) Loss of Priority. The failure at any time of the Mortgage to be a valid second lien (pari passu with the other Subordinate Lenders) upon the Property and Improvements or any portion thereof (subject to Permitted Encumbrances), other than as a result of any release or reconveyance of the Mortgage with respect to all or any portion of the Property and Improvements pursuant to the terms and conditions of this Agreement, unless such failure is not cured within seven (7) days following Borrower's knowledge of such failure, whether by written notice from Lender to Borrower or otherwise; or

(m) Hazardous Materials Laws. The failure of Borrower to comply with, and maintain the Property in accordance with, all applicable Hazardous Materials Laws, in the event Borrower does not commence and diligently pursue compliance within fifteen (15) Business Days following Borrower's knowledge of such failure, whether by written notice from Lender to Borrower or otherwise; or

(n) Event of Default under other Loan Documents. Until cured, the existence of any "Event of Default" under any other Loan Document (as such term "Event of Default" is defined in each applicable other Loan Document) shall constitute an Event of Default hereunder; or

(o) Cross Default; Event of Default under Senior Loan Documents or Subordinate Loan Documents. The occurrence of any "Event of Default" under any of the documents or agreements evidencing or securing any of the Senior Loans or the Subordinate Loans (as such term "Event of Default" is defined in any such document or agreement) such that Senior Lender or a Subordinate Lender is no longer obligated to and does not permit the advance by Senior Lender of funds to Borrower in connection with the Senior Loans or any Subordinate Loan, it being expressly acknowledged and agreed by Borrower that an Event of Default hereunder or under any other Loan Document shall constitute an Event of Default under the Senior Loan and the Subordinate Loans; or

(p) Cross-Default; Event of Default under the Bond Facility Documents. Until cured, the existence of any "Event of Default" under any of the Bond Facility Documents

(as such term "Event of Default" is defined in each applicable Bond Facility Document) shall constitute an Event of Default hereunder; it being expressly acknowledged and agreed by Borrower that an Event of Default hereunder or under any other Loan Document shall constitute an Event of Default under the Bond Facility Documents; or

(q) CC&R's. The occurrence of a default by Borrower beyond any applicable notice and cure periods under the CC&R's (to the extent the same have been executed and recorded) to the extent same has or is reasonably likely to have a Material Adverse Effect.

11.2 Acceleration Upon Event of Default; Remedies. Subject to the Intercreditor Agreement with Senior Lender, upon the occurrence of any Event of Default specified in this Article 11, Lender shall have the right to declare all sums owing to Lender under the Note, this Agreement and the other Loan Documents immediately due and payable. Upon such acceleration, Lender may, in addition to all other rights and remedies permitted under this Agreement and the other Loan Documents and at law or equity, apply any sums in the Borrower's Funds Account to the sums under the Loan Documents and any and all obligations of Senior Lender to fund further disbursements under the Loan shall terminate. Notwithstanding the foregoing, upon the occurrence of any Event of Default specified in this Article 11, Lender shall have the right to direct Senior Lender to cease making any Advances from the Loan Proceeds pursuant to the Disbursement Agreement.

11.3 Disbursements To Third Parties. Upon the occurrence of an Event of Default occasioned by Borrower's failure to pay money to a third party as required by this Agreement, Lender may but shall not be obligated to make such payment from the Loan Proceeds, Borrower's Funds, or other funds of Lender. If such payment is made from proceeds of the Loan or from Borrower's Funds, Borrower shall immediately deposit with Lender, upon written demand, an amount equal to such payment, it being acknowledged that if Borrower has deposited such amounts with Senior Lender, this requirement shall be deemed satisfied. If such payment is made from funds of Lender, Borrower shall immediately repay such funds upon written demand of Lender. In either case, the Event of Default with respect to which any such payment has been made by Lender shall not be deemed cured until such deposit or repayment (as the case may be) has been made by Borrower to Lender; provided, if Borrower was otherwise entitled to draw or make such payment but for such Event of Default, then such payment need not be repaid if such other Event of Default is cured.

11.4 Lender's Completion Of Construction. Subject to the terms and conditions of the Completion Guaranty and the Intercreditor Agreement, upon the occurrence and continuation of an Event of Default, Lender may (but shall have no obligation to), upon five (5) Business Days prior written notice to Borrower, and with or without legal process, take possession of the Property and Improvements, remove Borrower and all agents, employees and contractors of Borrower from the Property and Improvements, complete the work of construction and market and sell or lease the Property and/or Improvements. For this purpose, Borrower irrevocably

appoints Lender as its attorney-in-fact, which agency is coupled with an interest. As attorney-in-fact, Lender may, in Borrower's name, take or omit to take any action Lender may deem appropriate, including, without limitation, exercising Borrower's rights under the Loan Documents and all contracts concerning the Property and/or Improvements.

11.5 [Intentionally Omitted]

11.6 **Repayment Of Funds Advanced.** Any funds expended by Lender in the exercise of its rights or remedies under this Agreement and the other Loan Documents shall be payable to Lender within ten (10) days after demand, together with interest at the rate applicable to the principal balance of the Loan from the date Borrower receives notice from Lender that such funds were expended.

11.7 **Rights Cumulative, No Waiver.** All Lender's rights and remedies provided in this Agreement and the other Loan Documents, together with those granted by law or at equity (except as the same are expressly limited by the terms of this Loan Agreement), are cumulative and may be exercised by Lender at any time. Lender's exercise of any right or remedy shall not constitute a cure of any Event of Default unless all sums then due and payable to Lender under the Loan Documents are repaid and Borrower has cured all other Events of Default. No waiver shall be implied from any failure of Lender to take, or any delay by Lender in taking, action concerning any Event of Default or failure of condition under the Loan Documents, or from any previous waiver of any similar or unrelated Event of Default or failure of condition. Any waiver or approval under any of the Loan Documents must be in writing and shall be limited to its specific terms.

## ARTICLE 12.

### INVESTIGATIONS; REFUSAL TO TESTIFY

12.1 **Cooperation.** Borrower shall cooperate fully with any investigation, audit, or inquiry conducted by a New York State or City Governmental Authority or 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, permit, lease or license that is the subject of the investigation, audit or inquiry.

12.2 **Hearings.**

(a) If any person 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 and still refuses to testify before a grand jury or other Governmental Authority or 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 Lender, the City, the State or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, Lender or any local development organization, or any public benefit corporation organized under the laws of the State; or

(b) If 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 the Governmental Authority that is a party in interest in, and is seeking testimony concerning the award of, or the performance under, any transaction, agreement, lease, permit, contract or license entered into with the City, the State, or any political subdivision thereof, Lender or any local development corporation;

Then, Lender, or the City agency whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit or license may 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.

12.3 Adjournments of Hearing, Etc. If any non-governmental party to the hearing requests an adjournment, Lender or the agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit or license pending the final determination pursuant to Section 12.05 below without Lender incurring any penalty or damages for delay or otherwise.

12.4 Penalties. The penalties that may attach after the final determination by Lender 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 any adverse determination for any Person or any entity of which such Person was a member, shareholder, officer, director, employee or agent 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 Lender; and/or

(b) The cancellation or termination of any and all existing City or Lender contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Agreement, nor the proceeds of which pledged to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City or Lender incurring any penalty or damages on account of such cancellation or termination.

12.5 **Criteria for Determination.** Lender or agency head shall consider or address in reaching his or her other determination and in assessing an appropriate penalty the factors in paragraphs (a) and (b) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (c) and (d) below, in addition to any other information which may be relevant and appropriate.

(a) The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit including, but not limited to 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, but not limited to, 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 contracts, leases, permits or licenses with the City.

(d) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in a party or entity subject to penalties under Section 12.04 above, provided that the party or entity has given actual notice to Lender or agency head upon the acquisition of the interest, or at the hearing called for in Section 12.02 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 adverse impact such a penalty would have on such person or entity.

12.6 **Definitions.** For the purposes of this Article 10, the following terms will have the meanings set forth below. Capitalized terms utilized, but not otherwise defined below, will have the meanings assigned to such terms elsewhere in this Agreement.

(a) The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

(b) The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

(c) The term "entity" as used herein shall be defined as any firm, partnership, corporation, association or person that receives monies, benefits, licenses, leases or permits from or through the City or otherwise transacts business with the City.



(d) The term "member" as used herein shall be defined as any person associated with any other person or entity as a partner, director, officer, principal or employee.

12.7 **Failure to Report Solicitations.** In addition to, and notwithstanding any other provision of this Agreement, Lender or the agency head may, at his or her discretion, terminate this Agreement upon twenty-four (24) hours' written notice in the event Borrower fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or Lender or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Agreement by Borrower, or affecting the performance of this Agreement.

### ARTICLE 13.

#### MISCELLANEOUS PROVISIONS

13.1 **Indemnity.** BORROWER HEREBY AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS LENDER AND THE CITY OF NEW YORK AND, THEIR OFFICIALS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS FROM AND AGAINST ANY AND ALL LOSSES, DAMAGES, LIABILITIES, CLAIMS, ACTIONS, JUDGMENTS, COURT COSTS AND LEGAL OR OTHER EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND EXPENSES) WHICH LENDER MAY INCUR AS A RESULT OF: (A) THE PURPOSE TO WHICH BORROWER APPLIES THE LOAN PROCEEDS; (B) THE FAILURE OF BORROWER TO PERFORM ANY OBLIGATIONS AS AND WHEN REQUIRED BY THIS AGREEMENT, ANY OF THE OTHER LOAN DOCUMENTS OR ANY OTHER RELATED DOCUMENT; (C) ANY FAILURE AT ANY TIME OF ANY OF BORROWER'S REPRESENTATIONS OR WARRANTIES TO BE TRUE AND CORRECT IN ANY MATERIAL RESPECT; OR (D) ANY ACT OR OMISSION BY BORROWER, CONSTITUENT PARTNER OR MEMBER OF BORROWER, ANY CONTRACTOR OR MATERIAL SUPPLIER, ENGINEER, ARCHITECT OR OTHER PERSON OR ENTITY WITH RESPECT TO ANY OF THE PROPERTY OR IMPROVEMENTS. BORROWER SHALL IMMEDIATELY PAY TO LENDER UPON DEMAND ANY AMOUNTS OWING UNDER THIS INDEMNITY, TOGETHER WITH INTEREST, FROM THE DATE BORROWER RECEIVES NOTICE OF THE INDEBTEDNESS UNTIL PAID AT THE RATE OF INTEREST APPLICABLE TO THE PRINCIPAL BALANCE OF THE LOAN. BORROWER'S DUTY AND OBLIGATIONS TO DEFEND, INDEMNIFY AND HOLD HARMLESS LENDER SHALL SURVIVE CANCELLATION OF THE NOTES AND THE RELEASE, RECONVEYANCE OR PARTIAL RECONVEYANCE OF THE MORTGAGE. IN ORDER TO MAKE A CLAIM FOR INDEMNITY, LENDER SHALL GIVE BORROWER PRIOR WRITTEN NOTICE OF THE CLAIM SETTING FORTH SUCH CLAIM IN REASONABLE DETAIL AND IDENTIFYING LENDER'S LEGAL COUNSEL. LENDER'S LEGAL COUNSEL SHALL BE SUBJECT TO



Borrower:

Forest City Ratner Companies  
One Metrotech Center North  
Brooklyn, New York 11201  
Attn: EVP of Finance and General Counsel

Forest City Ratner Companies  
One Metrotech Center North  
Brooklyn, New York 11201  
Attn: General Counsel

Forest City Enterprises, Inc.  
1100 Terminal Tower  
50 Public Square  
Cleveland, Ohio 44113  
Attn: General Counsel

Blumenfeld Development Companies  
300 Robbins Lane  
Syosset, New York 11971  
Attn: David Blumenfeld

Blumenfeld Development Companies  
300 Robbins Lane  
Syosset, New York 11971  
Attn: David Kaplan

With a copy to:

Fried, Frank, Harris, Shriver & Jacobson LLP  
One New York Plaza  
New York, New York 10004-1980  
Attn: Jonathan Mechanic, Esq.

13.5 **Attorney-In-Fact.** During the existence of an Event of Default, Borrower hereby irrevocably appoints and authorizes Lender as Borrower's attorney-in-fact, which agency is coupled with an interest, to execute and/or record in Lender's or Borrower's name any notices, instruments or documents that Lender deems appropriate to protect Lender's interest under any of the Loan Documents or Other Related Documents.

13.6 **Actions.** Borrower agrees that Lender, in exercising the rights, duties or liabilities of Lender or Borrower under the Loan Documents or Other Related Documents, may

participate in (and during the existence of an Event of Default, commence, appear in or defend) any action or proceeding purporting to affect the Property, the Improvements, the Loan Documents or the Other Related Documents and Borrower shall promptly reimburse Lender upon demand for all reasonable out of pocket expenses so incurred or paid by Lender, including, without limitation, attorneys' fees and expenses and court costs.

13.7 **Right Of Contest.** Borrower may contest in good faith any claim, demand, levy or assessment (other than Liens and stop notices) by any person other than Lender which would constitute an Event of Default if: (a) Borrower pursues the contest diligently, in a manner which Lender reasonably determines is not prejudicial to Lender, and does not impair the rights of Lender under any of the Loan Documents or Other Related Documents; and (b) Borrower deposits with Lender any funds or other forms of assurance which Lender reasonably determines from time to time appropriate to protect Lender from the consequences of the contest being unsuccessful. Borrower's compliance with this Section shall operate to prevent such claim, demand, levy or assessment from becoming an Event of Default.

13.8 **Relationship Of Parties.** The relationship of Borrower and Lender under the Loan Documents and Other Related Documents is, and shall at all times remain, solely that of borrower and lender, and Lender neither undertakes nor assumes any responsibility or duty to Borrower or to any third party with respect to the Property or Improvements, except as expressly provided in this Agreement, the other Loan Documents and the Other Related Documents.

13.9 **Delay Outside Lender's Control.** Lender shall not be liable in any way to Borrower or any third party for Lender's failure to perform or delay in performing under the Loan Documents (and Lender may suspend or terminate all or any portion of Lender's obligations under the Loan Documents) if such failure to perform or delay in performing results directly or indirectly from, or is based upon, the action, inaction, or purported action, of any governmental or local authority, or because of war, rebellion, insurrection, strike, lock-out, boycott or blockade (whether presently in effect, announced or in the sole judgment of Lender deemed probable), or from any Act of God or other cause or event beyond Lender's control.

13.10 [Intentionally Omitted]

13.11 **Immediately Available Funds.** Unless otherwise expressly provided for in this Agreement, all amounts payable by Borrower to Lender shall be payable only in United States Dollars, immediately available funds.

13.12 **Amendments And Waivers.** No amendment, waiver or consent unless in writing and signed by the Lender shall affect the rights or duties of the Lender under this Agreement, any of the other Loan Documents or Other Related Documents. No waiver shall extend to or affect any obligation not expressly waived or impair any right consequent thereon and any amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose set

forth therein. No course of dealing or delay or omission on the part of the Lender in exercising any right shall operate as a waiver thereof or otherwise be prejudicial thereto. Except as otherwise explicitly provided for herein or in any other Loan Document, no notice to or demand upon the Borrower shall entitle the Borrower to other or further notice or demand in similar or other circumstances.

### 13.13 Successors And Assigns.

(a) Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that the Borrower may not assign or otherwise transfer any of its rights under this Agreement without the prior written consent of Lender except as otherwise provided in this Agreement.

(b) Participations. Lender may at any time grant to an affiliate of Lender, or one or more banks or other financial institutions (each a "Participant") participating interests in its Commitment or the obligations owing to Lender hereunder. No Participant shall have any rights or benefits under this Agreement or any other Loan Document. In the event of any such grant by Lender of a participating interest to a Participant, Lender shall remain responsible for the performance of its obligations hereunder, and the Borrower shall continue to deal solely and directly with Lender in connection with Lender's rights and obligations under this Agreement. Any agreement pursuant to which Lender may grant such a participating interest shall provide that Lender shall retain the sole right and responsibility to enforce the obligations of the Borrower hereunder including, without limitation, the right to approve any amendment, modification or waiver of any provision of this Agreement; provided however, Lender may agree with the Participant that it will not, without the consent of the Participant, agree to (i) increase Lender's obligations, (ii) extend the date fixed for the payment of principal on the Loan or on any portion thereof owing to Lender, or (iii) reduce the rate at which interest is payable thereon. An assignment or other transfer which is not permitted by subsection (c) below shall be given effect for purposes of this Agreement only to the extent of a participating interest granted in accordance with this subsection (b).

(c) Assignments. Lender may, without the prior consent of the Borrower, at any time assign to any Permitted Transferee (each an "Assignee") all or a portion of its rights and obligations under this Agreement and the Note. Each assignment shall be effected by means of an Assignment and Assumption Agreement. Upon execution and delivery of such instrument and payment by such Assignee to Lender of an amount equal to the purchase price agreed between Lender and such Assignee, such Assignee shall be deemed to be a Lender party to this Agreement and shall have all the rights and obligations of a Lender with a Commitment as set forth in such Assignment and Assumption Agreement, and the transferor Lender shall be released from its obligations hereunder to a corresponding extent, and no further consent or action by any party shall be required. Upon the consummation of any assignment pursuant to this subsection (c), the Lender and the Borrower shall make appropriate arrangement so the new

Notes are issued to the Assignee and Lender, as appropriate. Anything in this Section to the contrary notwithstanding, Assignee may not assign or participate any interest in the Loan to the Borrower, or any of its respective Affiliates or subsidiaries.

(d) Tax Withholding. At least five (5) Business Days prior to the first day on which interest or fees are payable hereunder for the account of Lender, if Lender is not incorporated under the laws of the United States of America, or a state thereof, Lender shall furnish the Borrower with a properly completed executed copy of either Internal Revenue Service Form W-8ECI or Internal Revenue Service Form W-8BEN and either Internal Revenue Service Form W-8 or Internal Revenue Service Form W-9 and any additional form (or such other form) as is necessary to claim complete exemption from United States withholding taxes on all payments hereunder. At all times Lender shall own or beneficially own a Note, Lender shall (i) promptly provide to the Borrower a new Internal Revenue Service Form W-8ECI or Internal Revenue Service Form W-8BEN and Internal Revenue Service Form W-8 or Internal Revenue Service Form W-9 and any additional form (or such other form) (or any successor form or forms) upon the expiration or obsolescence of any previously delivered form and comparable statements in accordance with applicable United States laws and regulations and amendments duly executed and completed by Lender, and (ii) comply at all times with all applicable United States laws and regulations, including all provisions of any applicable tax treaty, with regard to any withholding tax exemption claimed with respect to any payments on the Loan. If Lender cannot deliver such form, then Borrower may withhold from payments due under the Loan Documents such amounts as Borrower is able to determine from accurate information provided by Lender are required by the Internal Revenue Code.

(e) Federal Reserve Bank Assignments. In addition to the assignments and participations permitted under the foregoing provisions of the Section, and without the need to comply with any of the formal or procedural requirements of this Section, Lender may at any time and from time to time, pledge and assign all or any portion of its rights under all or any of the Loan Documents and Other Related Documents to a Federal Reserve Bank; provided that no such pledge of assignment shall release Lender from its obligation thereunder.

(f) Information to Assignee, Etc. Lender may furnish any information concerning the Borrower or Completion Guarantor in the possession of Lender from time to time to Assignees and Participants (including prospective Assignees and Participants). In connection with such negotiation, execution and delivery, Borrower authorizes Lender to communicate all information and documentation related to the Loan (whether to Borrower or to any Participant, Assignee, legal counsel, appraiser or other necessary party) directly by e-mail, fax, or other electronic means used to transmit information. Notwithstanding the foregoing, Lender agrees to maintain the confidentiality of the Confidential Information, except that Confidential Information may be disclosed (it being understood that the Persons to whom such disclosure is made shall be informed of the confidential nature of such Confidential Information and shall agree in writing to keep such Confidential Information confidential) (a) to it and its Affiliates',

directors, officers, employees and agents, including accountants, legal counsel and other advisors, (b) to the extent requested by any Governmental Authority and legally required to be handed over, (c) to the extent required by Applicable Law or by any subpoena or similar legal process, (d) to any Assignee or Participant (including prospective Assignees or Participants) and their respective directors, officers, employees and agent, including accountants, legal counsel and other advisers, or (g) with the consent of the Borrower. Lender, to the extent required to maintain the confidentiality of Confidential Information as provided in this Section 13.13(f), shall be considered to have complied with its obligation to do so if such Person has executed a confidentiality agreement and has exercised the same degree of care to maintain the confidentiality of such Confidential Information as a commercial banker exercising reasonable and customary business practices would accord to its own confidential information and has directed all actual or prospective Assignees or Participants to maintain the confidentiality of such Confidential Information in accordance with this Section 13.13(f). Notwithstanding the foregoing to the contrary, upon the closing of the Loan, Lender shall have the right to issue a press release relating to the Loan and the Project subject to Borrower's consent, such consent not to be unreasonably withheld or delayed.

**13.14 Certain Allowed Disclosures.** Notwithstanding anything to the contrary set forth herein or in any other written or oral understanding or agreement to which the parties hereto are parties or by which they are bound, the parties hereto acknowledge and agree that (i) any obligations of confidentiality contained herein and therein do not apply and have not applied from the commencement of discussions between the parties to the tax treatment and tax structure of the transactions contemplated by the Loan Documents or Other Related Documents (and any related transactions or arrangements), and (ii) each party (and each of its employees, representatives, or other agents) may disclose to any and all parties as required, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by the Loan Documents and Other Related Documents and all materials of any kind (including opinions or other tax analyses) that are provided to such party relating to such tax treatment and tax structure, all within the meaning of Treasury Regulations Section 1.6011-4; provided, however, that each party recognizes that the privilege each has to maintain, in its sole discretion, the confidentiality of a communication relating to the transactions contemplated by the Loan Documents and Other Related Documents, including a confidential communication with its attorney or a confidential communication with a federally authorized tax practitioner under Section 7525 of the Internal Revenue Code, is not intended to be affected by the foregoing.

**13.15 Capital Adequacy.** If Lender or any Participant or Assignee in the Loan determines that compliance with any law or regulation or with any guideline or request from any central bank or other governmental agency (whether or not having the force of law) affects or would affect the amount of capital required or expected to be maintained by Lender, such Participant or such Assignee, or any corporation controlling Lender, such Participant or such Assignee, as a consequence of, or with reference to, Lender's, such Participant's or such Assignee's or such corporation's commitments or its making or maintaining advances below the

rate which Lender, such Participant or such Assignee or such corporation controlling Lender, such Participant or such Assignee could have achieved but for such compliance (taking into account the policies of Lender, such Participant or such Assignee or corporation with regard to capital), then Borrower shall, from time to time, within thirty (30) calendar days after written demand by such Lender, such Participant or such Assignee, pay to Lender, such Participant or such Assignee additional amounts sufficient to compensate Lender, such Participant or such Assignee or such corporation controlling such Lender, such Participant or such Assignee to the extent that Lender, such Participant or such Assignee determines such increase in capital is allocable to Lender's, such Participant's or such Assignee's obligations hereunder. A certificate as to such amounts, submitted to Borrower by Lender, such Participant or such Assignee, shall be conclusive and binding for all purposes, absent manifest error. Any payment required to be made by Borrower pursuant to this Section 13.15 shall hereinafter be referred to as a "Capital Adequacy Payment".

**13.16 Borrower's Remedies.** In the event that a claim or adjudication is made that Lender has acted unreasonably or has unreasonably delayed acting in any case where by law or under this Agreement, it has an obligation to act reasonably or promptly, Lender shall not be liable for any monetary damages, and Borrower's sole remedies shall be limited to injunctive relief or declaratory judgment.

**13.17 Lender's Agents.** At any time after Borrower has achieved Substantial Completion of the Project, Lender may designate an agent or independent contractor to exercise any of such Person's rights under this Agreement, any of the other Loan Documents and Other Related Documents. Any reference to Lender in any of the Loan Documents or Other Related Documents shall include Lender and such Lender's agents, employees or independent contractors. Borrower shall pay the costs of such agent or independent contractor either directly to such person or to Lender in reimbursement of such costs, as applicable.

**13.18 Tax Service.** Lender is authorized to secure, at Borrower's expense, a tax service contract with a third party vendor which shall provide tax information on the Property and Improvements satisfactory to Lender.

**13.19 Waiver Of Right To Trial By Jury.** EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (a) ARISING UNDER THE LOAN DOCUMENTS OR OTHER RELATED DOCUMENTS, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (b) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THE LOAN DOCUMENTS OR OTHER RELATED DOCUMENTS (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR



THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF ANY RIGHT THEY MIGHT OTHERWISE HAVE TO TRIAL BY JURY.

13.20 **Severability.** If any provision or obligation under this Agreement, the other Loan Documents or Other Related Documents shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that provision shall be deemed severed from the Loan Documents and the Other Related Documents and the validity, legality and enforceability of the remaining provisions or obligations shall remain in full force as though the invalid, illegal, or unenforceable provision had never been a part of the Loan Documents or Other Related Documents, provided, however, that if the rate of interest or any other amount payable under the Note or this Agreement or any other Loan Document, or the right of collectibility therefor, are declared to be or become invalid, illegal or unenforceable, Lender's obligations to make advances under the Loan Documents shall not be enforceable by Borrower.

13.21 **Time.** Time is of the essence of each and every term of this Loan Agreement.

13.22 **Headings.** All article, section or other headings appearing in this Agreement, the other Loan Documents and Other Related Documents are for convenience of reference only and shall be disregarded in construing this Agreement, any of the other Loan Documents and Other Related Documents.

13.23 **Governing Law.** THIS LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN THE STATE OF NEW YORK AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA.

13.24 **USA Patriot Act Notice; Compliance.** The USA Patriot Act of 2001 (Public Law 107-56) and federal regulations issued with respect thereto require all financial institutions to obtain, verify and record certain information that identifies individuals or business entities which open an "account" with such financial institution. Consequently, Lender may from time-to-time request, and Borrower shall provide to Lender, Borrower's name, address, tax identification number and/or such other identification information as shall be necessary for Lender to comply with federal law. An "account" for this purpose may include, without

limitation, a deposit account, cash management service, a transaction or asset account, a credit account, a loan or other extension of credit, and/or other financial services product.

13.25 **Integration; Interpretation.** The Loan Documents and Other Related Documents contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated therein and supersede all prior negotiations or agreements, written or oral. The Loan Documents and Other Related Documents shall not be modified except by written instrument executed by all parties. Any reference to the Loan Documents or Other Related Documents includes any amendments, renewals or extensions now or hereafter approved by Lender in writing.

13.26 **Cross-Collateralization; Cross-Default; Liability for Completion of Garage Project.** Borrower hereby expressly acknowledges and agrees that the Loan Documents and the Bond Facility Documents are fully cross-collateralized and cross-defaulted. In addition, Borrower hereby expressly acknowledges and agrees that among the other terms and conditions set forth in the Loan Documents, Lenders have agreed to make the Loan and Borrower has accepted the Loan on the express understanding that the Retail Project and the Garage Project constitute a unified whole Project and Borrower's Obligations under the Loan Documents (and Completion Guarantor's obligations under the Completion Guaranty) include the express obligation to cause Borrower to achieve Substantial Completion of the Retail Project and the Garage Project on or before the Completion Date and otherwise comply with the terms and conditions of the Loan Documents.

13.27 **Schedules and Incorporated.** Schedules 2.2, 3.5, 6.6, 7.1 and 7.2, and Exhibits A-G, and J-Q, all attached hereto, are hereby incorporated into this Agreement.

13.28 **Lien Law.** A true statement under oath, verified by the Borrower as required by Section 22 of the Lien Law of the State of New York, is attached hereto as Exhibit K and made a part of this Agreement (the "Lien Law Affidavit") which Lien Law Affidavit includes an itemization of any sums paid to Borrower as reimbursement for Cost of the Improvement paid by Borrower prior to the date of the initial Advance received under the Mortgage, and subsequent to the commencement of the improvement. In addition, the Borrower, in compliance with Section 13 of the Lien Law of the State of New York, expressly agrees that it shall receive each Advance of Loan Proceeds to be made hereunder and to be secured by the Mortgage and hold the right to receive the same as a trust fund to be applied first for the purpose of paying the Costs of the Improvement and will apply the same first to the payment of the Costs of the Improvement before using any part of the total of the same for any other purpose.

13.29 **Easements Required for the Project.**

(a) Borrower shall obtain Lender's consent, such consent not to be unreasonably withheld, to the subordination or release of the lien of the Mortgage to easements

for structural support, access, mechanical engineering and the like in connection with current and future development of the Project so long as such subordination shall not adversely impair Lender's security or Collateral in any material respect, and any disputes arising under or related to such consent shall be resolved by expedited arbitration before a single arbitrator appointed by AAA who shall have not less than 10 years' experience in NYC commercial real estate. The arbitration shall be governed by the AAA's Commercial Arbitration Rules then in effect. The prevailing party shall be entitled to recover its reasonable attorney's fees, and the non-prevailing party shall bear all costs of the arbitration, including the costs of the arbitrator, the AAA and any court reporting costs.

(b) Lender acknowledges that Borrower will enter into an environmental easement (the "Environmental Easement") with The People of the State of New York, acting through their Commissioner of the Department of Environmental Conservation, pursuant to Article 71, Title 36 of the New York State Environmental Conservation Law. Upon confirmation by Lender and the Project Consultant that the Environmental Easement is substantially the same in form and in substance to the form of environmental easement attached hereto as Exhibit Q, the Environmental Easement shall be deemed approved by Lender and the Project Consultant. Any and all modifications to or deviations from the form of environmental easement attached hereto as Exhibit Q shall be subject to the review and approval of Lender and the Project Consultant, which approval shall not be unreasonably withheld or delayed. Lender hereby acknowledges that Borrower will record the Environmental Easement with the Office of the County Register, New York County, State of New York, and that any foreclosure of the Mortgage or acceptance of a deed in lieu thereof shall not extinguish the Environmental Easement as recorded.

13.30 Joint and Several Liability. If Borrower is at any time hereafter composed of more than one entity, all such entities shall be jointly and severally liable for payment and performance in full of the Obligations.

13.31 Counterparts. To facilitate execution, this document may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

13.32 Condominium Conversion. Notwithstanding anything in this Agreement to the contrary, unless Lender otherwise consents in writing, Lender shall not advance any Loan Proceeds whatsoever for the development, construction or operation of any part of the Project for

residential purposes, including without limitation, any condominium conversion approved by Senior Lender. In the event Borrower develops, constructs or operates any part of the Project for residential purposes, Lender shall have the right to declare all sums owing to Lender under the Note, this Agreement and the other Loan Documents immediately due and payable.

13.33 Consent to Jurisdiction. THE PARTIES HERETO HEREBY CONSENT TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF NEW YORK, STATE OF NEW YORK AND IRREVOCABLY AGREE THAT, SUBJECT TO LENDER'S ELECTION, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS SHALL BE LITIGATED IN SUCH COURTS. THE PARTIES HERETO ACCEPT FOR THEMSELVES AND IN CONNECTION WITH THE PROPERTY, GENERALLY AND UNCONDITIONALLY, THE NONEXCLUSIVE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF *FORUM NON CONVENIENS*, AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS AGREEMENT, THE NOTE, SUCH OTHER LOAN DOCUMENTS OR SUCH OBLIGATION.

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**Schedule 2.2 – Amortization Schedule**

**SCHEDULE 2.2**  
**Amortization Schedule**

Original Principal Amount	\$ 5,000,000
Interest Rate	4.0%
Monthly Payment (25 yr amort.)	29,754
Monthly Payment (15 yr amort.)	41,696
Loan Constant (25 yr amort.)	7.1%
Loan Constant (15 yr amort.)	10.0%
Balloon Payment (EOY 15)	\$ 2,823,063

Year	Date	Period	Principal Outstanding	Interest Accrual	Debt Service payment	Interest	Principal	Outstanding Balance
			\$	\$		\$	\$	\$
0	1/31/2007	0	5,000,000	548		-	-	5,000,548
1	2/1/2007	1	5,000,548	16,668		-	-	5,017,216
1	3/1/2007	2	5,017,216	16,724		-	-	5,033,940
1	4/1/2007	3	5,033,940	16,780		-	-	5,050,720
1	5/1/2007	4	5,050,720	16,836		-	-	5,067,558
1	6/1/2007	5	5,067,558	16,892		-	-	5,084,448
1	7/1/2007	6	5,084,448	16,948		-	-	5,101,396
1	8/1/2007	7	5,101,396	17,005		-	-	5,118,401
1	9/1/2007	8	5,118,401	17,061		-	-	5,135,462
1	10/1/2007	9	5,135,462	17,118		-	-	5,152,580
1	11/1/2007	10	5,152,580	17,175		-	-	5,169,756
1	12/1/2007	11	5,169,756	17,233		-	-	5,186,988
1	1/1/2008	12	5,186,988	17,290		-	-	5,204,278
2	2/1/2008	13	5,204,278	17,348		-	-	5,221,626
2	3/1/2008	14	5,221,626	17,405		-	-	5,239,031
2	4/1/2008	15	5,239,031	17,463		-	-	5,256,494
2	5/1/2008	16	5,256,494	17,522		-	-	5,274,016
2	6/1/2008	17	5,274,016	17,580		-	-	5,291,596
2	7/1/2008	18	5,291,596	17,639		-	-	5,309,235
2	8/1/2008	19	5,309,235	17,697		-	-	5,326,932
2	9/1/2008	20	5,326,932	17,756		-	-	5,344,689
2	10/1/2008	21	5,344,689	17,816		-	-	5,362,504
2	11/1/2008	22	5,362,504	17,875		-	-	5,380,379
2	12/1/2008	23	5,380,379	17,935		-	-	5,398,314
2	1/1/2009	24	5,398,314	17,994		-	-	5,416,308
3	2/1/2009	25	5,416,308	18,054		-	-	5,434,363
3	3/1/2009	26	5,434,363	18,115		-	-	5,452,477
3	4/1/2009	27	5,452,477	18,175		-	-	5,470,652
3	5/1/2009	28	5,470,652	18,236		-	-	5,488,888
3	6/1/2009	29	5,488,888	18,296		-	-	5,507,184
3	7/1/2009	30	5,507,184	18,357		-	-	5,525,541
3	8/1/2009	31	5,525,541	18,418		-	-	5,543,960
3	9/1/2009	32	5,543,960	18,480		-	-	5,562,440
3	10/1/2009	33	5,562,440	18,541		-	-	5,580,981
3	11/1/2009	34	5,580,981	18,603		-	-	5,599,584
3	12/1/2009	35	5,599,584	18,665		-	-	5,618,250
3	1/1/2010	36	5,618,250	18,727		-	-	5,636,977
4	2/1/2010	37	5,636,977		29,754	18,790	10,964	5,626,013
4	3/1/2010	38	5,626,013		29,754	18,753	11,001	5,615,012
4	4/1/2010	39	5,615,012		29,754	18,717	11,037	5,603,975
4	5/1/2010	40	5,603,975		29,754	18,680	11,074	5,592,901
4	6/1/2010	41	5,592,901		29,754	18,643	11,111	5,581,790
4	7/1/2010	42	5,581,790		29,754	18,606	11,148	5,570,642
4	8/1/2010	43	5,570,642		29,754	18,569	11,185	5,559,456
4	9/1/2010	44	5,559,456		29,754	18,532	11,223	5,548,234
4	10/1/2010	45	5,548,234		29,754	18,494	11,260	5,536,974
4	11/1/2010	46	5,536,974		29,754	18,457	11,297	5,525,677

Year	Date	Period	Principal Outstanding	Interest Accrual	Debt Service payment	Interest	Principal	Outstanding Balance
4	12/1/2010	47	5,525,677		29,754	18,419	11,335	5,514,341
4	1/1/2011	48	5,514,341		29,754	18,381	11,373	5,502,969
5	2/1/2011	49	5,502,969		29,754	18,343	11,411	5,491,558
5	3/1/2011	50	5,491,558		29,754	18,305	11,449	5,480,109
5	4/1/2011	51	5,480,109		29,754	18,287	11,487	5,468,622
5	5/1/2011	52	5,468,622		29,754	18,229	11,525	5,457,097
5	6/1/2011	53	5,457,097		29,754	18,190	11,564	5,445,533
5	7/1/2011	54	5,445,533		29,754	18,152	11,602	5,433,931
5	8/1/2011	55	5,433,931		29,754	18,113	11,641	5,422,290
5	9/1/2011	56	5,422,290		29,754	18,074	11,680	5,410,610
5	10/1/2011	57	5,410,610		29,754	18,035	11,719	5,398,891
5	11/1/2011	58	5,398,891		29,754	17,996	11,758	5,387,133
5	12/1/2011	59	5,387,133		29,754	17,957	11,797	5,375,337
5	1/1/2012	60	5,375,337		29,754	17,918	11,836	5,363,500
6	2/1/2012	61	5,363,500		29,754	17,878	11,876	5,351,625
6	3/1/2012	62	5,351,625		29,754	17,839	11,915	5,339,709
6	4/1/2012	63	5,339,709		29,754	17,799	11,955	5,327,754
6	5/1/2012	64	5,327,754		29,754	17,759	11,995	5,315,759
6	6/1/2012	65	5,315,759		29,754	17,719	12,035	5,303,725
6	7/1/2012	66	5,303,725		29,754	17,679	12,075	5,291,650
6	8/1/2012	67	5,291,650		29,754	17,639	12,115	5,279,534
6	9/1/2012	68	5,279,534		29,754	17,598	12,156	5,267,379
6	10/1/2012	69	5,267,379		29,754	17,558	12,196	5,255,183
6	11/1/2012	70	5,255,183		29,754	17,517	12,237	5,242,946
6	12/1/2012	71	5,242,946		29,754	17,476	12,278	5,230,668
6	1/1/2013	72	5,230,668		29,754	17,436	12,318	5,218,350
7	2/1/2013	73	5,218,350		29,754	17,394	12,360	5,205,990
7	3/1/2013	74	5,205,990		29,754	17,353	12,401	5,193,590
7	4/1/2013	75	5,193,590		29,754	17,312	12,442	5,181,148
7	5/1/2013	76	5,181,148		29,754	17,270	12,484	5,168,664
7	6/1/2013	77	5,168,664		29,754	17,229	12,525	5,156,139
7	7/1/2013	78	5,156,139		29,754	17,187	12,567	5,143,572
7	8/1/2013	79	5,143,572		29,754	17,145	12,609	5,130,983
7	9/1/2013	80	5,130,983		29,754	17,103	12,651	5,118,312
7	10/1/2013	81	5,118,312		29,754	17,061	12,693	5,105,619
7	11/1/2013	82	5,105,619		29,754	17,019	12,735	5,092,884
7	12/1/2013	83	5,092,884		29,754	16,976	12,778	5,080,106
7	1/1/2014	84	5,080,106		29,754	16,934	12,820	5,067,286
8	2/1/2014	85	5,067,286		29,754	16,891	12,863	5,054,423
8	3/1/2014	86	5,054,423		29,754	16,848	12,906	5,041,517
8	4/1/2014	87	5,041,517		29,754	16,805	12,949	5,028,568
8	5/1/2014	88	5,028,568		29,754	16,762	12,992	5,015,576
8	6/1/2014	89	5,015,576		29,754	16,719	13,035	5,002,540
8	7/1/2014	90	5,002,540		29,754	16,675	13,079	4,989,461
8	8/1/2014	91	4,989,461		29,754	16,632	13,123	4,976,339
8	9/1/2014	92	4,976,339		29,754	16,588	13,166	4,963,173
8	10/1/2014	93	4,963,173		29,754	16,544	13,210	4,949,962
8	11/1/2014	94	4,949,962		29,754	16,500	13,254	4,936,708
8	12/1/2014	95	4,936,708		29,754	16,456	13,298	4,923,410
8	1/1/2015	96	4,923,410		29,754	16,411	13,343	4,910,067
9	2/1/2015	97	4,910,067		29,754	16,367	13,387	4,896,680
9	3/1/2015	98	4,896,680		29,754	16,322	13,432	4,883,248
9	4/1/2015	99	4,883,248		29,754	16,277	13,477	4,869,772
9	5/1/2015	100	4,869,772		29,754	16,233	13,521	4,856,250
9	6/1/2015	101	4,856,250		29,754	16,188	13,567	4,842,684
9	7/1/2015	102	4,842,684		29,754	16,142	13,612	4,829,072
9	8/1/2015	103	4,829,072		29,754	16,097	13,657	4,815,415
9	9/1/2015	104	4,815,415		29,754	16,051	13,703	4,801,712
9	10/1/2015	105	4,801,712		29,754	16,006	13,748	4,787,964

Year	Date	Period	Principal Outstanding	Interest Accrual	Debt Service payment	Interest	Principal	Outstanding Balance
9	11/1/2015	106	4,787,964		29,754	15,960	13,794	4,774,170
9	12/1/2015	107	4,774,170		29,754	15,914	13,840	4,760,330
9	1/1/2016	108	4,760,330		29,754	15,868	13,886	4,746,443
10	2/1/2016	109	4,746,443		29,754	15,821	13,933	4,732,511
10	3/1/2016	110	4,732,511		29,754	15,775	13,979	4,718,532
10	4/1/2016	111	4,718,532		29,754	15,728	14,026	4,704,506
10	5/1/2016	112	4,704,506		29,754	15,682	14,072	4,690,434
10	6/1/2016	113	4,690,434		29,754	15,635	14,119	4,676,314
10	7/1/2016	114	4,676,314		29,754	15,588	14,166	4,662,148
10	8/1/2016	115	4,662,148		29,754	15,540	14,214	4,647,935
10	9/1/2016	116	4,647,935		29,754	15,493	14,261	4,633,674
10	10/1/2016	117	4,633,674		29,754	15,446	14,308	4,619,365
10	11/1/2016	118	4,619,365		29,754	15,398	14,356	4,605,009
10	12/1/2016	119	4,605,009		29,754	15,350	14,404	4,590,605
10	1/1/2017	120	4,590,605		29,754	15,302	14,452	4,576,153
11	2/1/2017	121	4,576,153		41,696	15,254	26,442	4,549,711
11	3/1/2017	122	4,549,711		41,696	15,166	26,530	4,523,181
11	4/1/2017	123	4,523,181		41,696	15,077	26,619	4,496,562
11	5/1/2017	124	4,496,562		41,696	14,989	26,707	4,469,854
11	6/1/2017	125	4,469,854		41,696	14,900	26,797	4,443,058
11	7/1/2017	126	4,443,058		41,696	14,810	26,886	4,416,172
11	8/1/2017	127	4,416,172		41,696	14,721	26,975	4,389,196
11	9/1/2017	128	4,389,196		41,696	14,631	27,065	4,362,131
11	10/1/2017	129	4,362,131		41,696	14,540	27,156	4,334,975
11	11/1/2017	130	4,334,975		41,696	14,450	27,246	4,307,729
11	12/1/2017	131	4,307,729		41,696	14,359	27,337	4,280,392
11	1/1/2018	132	4,280,392		41,696	14,268	27,428	4,252,964
12	2/1/2018	133	4,252,964		41,696	14,177	27,519	4,225,445
12	3/1/2018	134	4,225,445		41,696	14,085	27,611	4,197,834
12	4/1/2018	135	4,197,834		41,696	13,993	27,703	4,170,130
12	5/1/2018	136	4,170,130		41,696	13,900	27,796	4,142,335
12	6/1/2018	137	4,142,335		41,696	13,808	27,888	4,114,446
12	7/1/2018	138	4,114,446		41,696	13,715	27,981	4,086,465
12	8/1/2018	139	4,086,465		41,696	13,622	28,074	4,058,391
12	9/1/2018	140	4,058,391		41,696	13,528	28,168	4,030,223
12	10/1/2018	141	4,030,223		41,696	13,434	28,262	4,001,961
12	11/1/2018	142	4,001,961		41,696	13,340	28,356	3,973,605
12	12/1/2018	143	3,973,605		41,696	13,245	28,451	3,945,154
12	1/1/2019	144	3,945,154		41,696	13,151	28,546	3,916,608
13	2/1/2019	145	3,916,608		41,696	13,055	28,641	3,887,968
13	3/1/2019	146	3,887,968		41,696	12,960	28,736	3,859,232
13	4/1/2019	147	3,859,232		41,696	12,864	28,832	3,830,400
13	5/1/2019	148	3,830,400		41,696	12,768	28,928	3,801,472
13	6/1/2019	149	3,801,472		41,696	12,672	29,024	3,772,447
13	7/1/2019	150	3,772,447		41,696	12,575	29,121	3,743,326
13	8/1/2019	151	3,743,326		41,696	12,478	29,218	3,714,108
13	9/1/2019	152	3,714,108		41,696	12,380	29,316	3,684,792
13	10/1/2019	153	3,684,792		41,696	12,283	29,413	3,655,378
13	11/1/2019	154	3,655,378		41,696	12,185	29,511	3,625,867
13	12/1/2019	155	3,625,867		41,696	12,086	29,610	3,596,257
13	1/1/2020	156	3,596,257		41,696	11,988	29,709	3,566,549
14	2/1/2020	157	3,566,549		41,696	11,888	29,808	3,536,741
14	3/1/2020	158	3,536,741		41,696	11,789	29,907	3,506,834
14	4/1/2020	159	3,506,834		41,696	11,689	30,007	3,476,828
14	5/1/2020	160	3,476,828		41,696	11,589	30,107	3,446,721
14	6/1/2020	161	3,446,721		41,696	11,489	30,207	3,416,514
14	7/1/2020	162	3,416,514		41,696	11,388	30,308	3,386,206
14	8/1/2020	163	3,386,206		41,696	11,287	30,409	3,355,798
14	9/1/2020	164	3,355,798		41,696	11,186	30,510	3,325,288



Year	Date	Period	Principal Outstanding	Interest Accrual	Debt Service payment	Interest	Principal	Outstanding Balance
14	10/1/2020	165	3,325,288		41,696	11,084	30,612	3,294,676
14	11/1/2020	166	3,294,676		41,696	10,982	30,714	3,263,962
14	12/1/2020	167	3,263,962		41,696	10,880	30,816	3,233,146
14	1/1/2021	168	3,233,146		41,696	10,777	30,919	3,202,227
15	2/1/2021	169	3,202,227		41,696	10,674	31,022	3,171,205
15	3/1/2021	170	3,171,205		41,696	10,571	31,125	3,140,080
15	4/1/2021	171	3,140,080		41,696	10,467	31,229	3,108,851
15	5/1/2021	172	3,108,851		41,696	10,363	31,333	3,077,518
15	6/1/2021	173	3,077,518		41,696	10,258	31,438	3,046,080
15	7/1/2021	174	3,046,080		41,696	10,154	31,542	3,014,537
15	8/1/2021	175	3,014,537		41,696	10,048	31,648	2,982,890
15	9/1/2021	176	2,982,890		41,696	9,943	31,753	2,951,137
15	10/1/2021	177	2,951,137		41,696	9,837	31,859	2,919,278
15	11/1/2021	178	2,919,278		41,696	9,731	31,965	2,887,313
15	12/1/2021	179	2,887,313		41,696	9,624	32,072	2,855,241
15	1/1/2022	180	2,855,241		41,696	9,517	32,179	2,823,063

**Schedule 3.5 - Delivery Requirements for Advances for Tenant Improvements**

In connection with any Advances for tenant improvement work, Borrower shall comply with Section 3.5 of this Agreement and Schedule 3.5 of the Senior Loan Agreements.

**SCHEDULE 5.2**

INTENTIONALLY OMITTED

**Schedule 6.6 - Litigation Disclosure**

Schedule 6.6 to LOAN AGREEMENT between TIAGO HOLDINGS, LLC, a New York limited liability company, as "Borrower", and NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION, as "Lender", dated as of January \_\_, 2007.

none

### Schedule 7.1 - Environmental Reports

Schedule 7.1 to LOAN AGREEMENT between TIAGO HOLDINGS, LLC, a New York limited liability company, as "Borrower", and NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION, as "Lender", dated as of January 31, 2007.

February 2000 ERP 528-534 E. 119<sup>th</sup> St. Phase I environmental site assessment report

February 2000 ERP 506-508 E. 118<sup>th</sup> St. Phase I environmental site assessment report

February 23, 2000 letter re: Phase I environmental site assessment 528-534 E. 119<sup>th</sup> St. from AKRF

February 23, 2000 letter re: Phase I environmental site assessment 536-538 E. 119<sup>th</sup> St. from AKRF

February 24, 2000 letter re: Phase I environmental Site Assessment 520-522 E. 117<sup>th</sup> St. from AKRF

February 25, 2000 cursory asbestos survey report re: 506-508 E. 118<sup>th</sup> St. from Hygenix

March 8, 2000 memo re: asbestos surveys from Hygenix

March 2000 ERP 515-521 E. 117<sup>th</sup> St. Phase I environmental site assessment report

March 2002 Phase I environmental site assessment re: 509-511 E. 117<sup>th</sup> St. prepared by FPM

June 2002 draft Phase I environmental site assessment re: 324 Pleasant Ave., NY, NY prepared by FPM

August 2002 draft Phase I environmental site assessment re: 536-538 E. 119<sup>th</sup> St. prepared by FPM

August 2002 draft Phase I environmental site assessment re: 524-534 E. 117<sup>th</sup> St. prepared by FPM

February 10, 2003 asbestos handling license issued by the State of NY Dept. of Labor

July 14, 2003 letter re: UST removal, site assessment and remediation plan from FPM

September 30, 2003 letter re: 506 E. 118<sup>th</sup> St. by Seasons Industrial

October 2003 Phase I environmental site assessment for 517-544 E. 116<sup>th</sup> St., 539-555 E. 117<sup>th</sup> St., 527-549 E. 118<sup>th</sup> St., 540-546 E. 119<sup>th</sup> St. prepared by FPM

October 2003 Phase I environmental site assessment for 523-525 and 527-529 E. 117<sup>th</sup> St. prepared by FPM

October 13, 2003 NYC Dept. of Environmental Protection Asbestos Control Program

November 2003 Phase I environmental site assessment for 524-534 E. 117<sup>th</sup> St. prepared by FPM

November 4, 2003 letter re: 506-508 E. 118<sup>th</sup> St. from BDG

December 1, 2003 letter re: ERP from BDG

December 8, 2003 non-hazardous waste manifest from Tri State Transfer Assoc.

January 6, 2004 letter re: 524-534 E. 117<sup>th</sup> St. and 523-527 E. 117<sup>th</sup> St. from CBAH

January 26, 2004 letter re: 550-gallon UST removal from FPM

February 4, 2004 Seasons Industrial closeout package for 527-529 E. 118<sup>th</sup> St.

February 20, 2004 letter re: invoices for tank cleaning services

February 28, 2004 non-hazardous manifest

March 4, 2004 letter re: invoice for services re: 524-526 E. 117<sup>th</sup> St. from Brookside Environmental

April 14, 2004 fax re: manifests for 524 from FPM

April 22, 2004 fax re: missing manifests from BDG

April 26, 2004 letter re: certificate affidavit from A-1 Crown Leak

May 12, 2004 letter re: Brookside invoices, tank decommission at E. 117<sup>th</sup> and E. 118<sup>th</sup> Sts.  
from FPM

May 28, 2004 letter re: petroleum bulk storage tank removal and site assessment re: 524-534 E.  
117<sup>th</sup> St. from FPM

May 28, 2004 letter re: completion of tank, drum and container removal re: 524-534 E. 117<sup>th</sup> St.  
from FPM

June 16, 2004 Order to BDG from NYC Dept. of Environmental Protection

June 17, 2004 fax to Mahendra Ramnarine from CBAH

June 16, 2004 EPA Provisional number

June 30, 2004 letter re: hazardous materials removed and soil sampling report from FPM

June 30, 2004 letter re: Hazardous materials removal and soil sampling report re: 525 E. 117<sup>th</sup>  
St. from FPM

July 1, 2004 letter re: completed waste manifest re: 525 E. 117<sup>th</sup> St. from FPM

July 8, 2004 letter re: ERP from BDG

September 2004 Asbestos Project Documentation re: 511 E. 117<sup>th</sup> St., NY, NY by GCI  
Environmental Advisory

September 2004 Draft Phase I environmental site assessment re: 505-509 and 511-515 E. 116<sup>th</sup>  
St. and 513, 514, 516-518 and 520 E. 117<sup>th</sup> St. prepared by FPM

September 30, 2004 letter re: ERP/asbestos abatement closeout document from FPM

October 14, 2004 asbestos abatement document from Seasons Contracting

October 27, 2004 GCI environmental Advisory executive summary

November 5, 2004 letter re: ERP/building addresses from BDG

November 30, 2004 asbestos project closeout documentation re: 536 E. 119<sup>th</sup> St. from Seasons Industrial

December 14, 2004 letter re: Brookside 10/5/04 invoice from FPM

October 31, 2004 fax re: results for 513 E. 117<sup>th</sup> St. from Seasons Industrial

January 4, 2005 NYC Dept. of Environmental Protection Asbestos Control Program re: 536 E. 119<sup>th</sup> St.

January 17, 2005 letter re: visual inspection results re: 513 E. 117<sup>th</sup> St.

February 4, 2005 closeout documentation for 513 E. 117<sup>th</sup> St. from Seasons Industrial

February 4, 2005 closeout documentation for 514 E. 117<sup>th</sup> St. from Seasons Industrial

February 4, 2005 closeout documentation for 528-534 E. 119<sup>th</sup> St. from Seasons Industrial

March 4, 2005 letter re: 514 E. 117<sup>th</sup> St. from GCI Environmental Advisory

March 28, 2005 letter re: 514 E. 117<sup>th</sup> St. scope of work/variance request from Seasons Industrial

April 5, 2005 fax re: variance request to NYC DEP for 514 E. 117<sup>th</sup> St. from Seasons Industrial [w/no attachment]

May 2, 2005 e-mail re: 514 E. 117<sup>th</sup> St. attaching specifications from Jim Twitchell

June 30, 2005 letter re: visual inspection results re: 520 E. 117<sup>th</sup> St. from FPM

July 26, 2005 letter re: subsurface investigation results from FPM

July 5, 2005 pre-demolition asbestos survey report re: 520 E. 117<sup>th</sup> St. prepared by CNS Management

July 5, 2005 pre-demolition asbestos survey report re: 511 E. 116<sup>th</sup> St. prepared by CNS Management



July 5, 2005 pre-demolition asbestos survey report re: 505 E. 116<sup>th</sup> St. prepared by CNS Management

September 13, 2005 letter re: subsurface investigation and remedial action plan from FPM

September 22, 2005 letter re: visual inspection results re: 514 E. 117<sup>th</sup> St. from FPM

Copy of business card for Mahendra Ramnarine of DEP

Summons dated December 31, 1990

May 4, 1993 letter re: Hazardous Waste Transporter License from NYSDEC

May 1, 1995 letter re: Report of Phase I Environmental Site Assessment from Law Environmental

February 14, 1996 Report re: Big Apple Industrial buildings, Inc. from Blumenfeld Development Group

February 16, 1996 memo re: BDG/Foreclosure Sale of Property at 116<sup>th</sup> St. and FDR Drive from Benjamin Suckewer

February 16, 1996 fax re: Washburn Harlem site proposal from Roux

February 20, 1996 letter re: Phase I and Soil Sampling Proposal for Site in Manhattan from FPM

February 22, 1996 fax re: revised proposal from Roux

February 29, 1996 letter re: analytical results of bulk samples from Rapid Environmental Management

March 5, 1996 Modified Phase I Environmental Assessment prepared by Roux

July 10, 1997 letter re: technical and cost proposal, update from Roux

November 20, 1997 letter re: technical and cost proposal, supplemental site investigation and remediation

November 25, 1997 Background report re: Washburn Wire from Hygenix

December 2, 1997 Lead Consulting Services Proposal prepared by Hygenix

December 5, 1997 letter re: Washburn Wire authorization with signature pages from MRBR

December 1997-February 1998 Asbestos and Lead Survey Report from Hygenix

December 1997-February 1998 and April 1998-May 1998 Asbestos and Lead Survey Report [Revised] from Hygenix

February 11, 1998 Pollution Legal Liability policy from Roux

May 20, 1998 memo re: Washburn Wire summary of bids for asbestos abatement from Hygenix

October 15, 1998 letter re: proposal for limited Phase II investigation at former Washburn Wire Facility from Roux

October 20, 1998 letter re: proposal for limited Phase II investigation at former Washburn Wire Facility from Roux

October 26, 1998 Program prepared by Roux

October 30, 1998 asbestos schedule

November 9, 1998 ERP memo re: East River Retail Center prepared by Vollmuth & Brush

November 11, 1998 letter re: East Plaza Retail Development from Seasons Contracting

November 12, 1998 memo re: ERP Tanks prepared by AKRF

November 16, 1998 fax cover sheet re: enclosure of letter received from Jeff Vollmuth for review, from Blumenfeld Development Group

November 23, 1998 letter re: ERP by Wachtel & Masyr

January 6, 1998 fax re: revised insurance certificate, disposal facility permit/insurance and UST signed registration form from Roux

March 2, 1998 Supplemental Investigation and Remediation report prepared by Roux

December 2, 1998 East River Plaza preliminary draft environmental impact statement prepared by Allee King Rosen & Fleming

December 17, 1998 letter re: Task Force meeting from Community Board No. 11, City of New York

December 18, 1998 East River Plaza preliminary draft environmental impact statement prepared by Allee King Rosen & Fleming

January 11, 1999 letter re: asbestos abatement, Washburn Wire from Emteque

February 24, 1999 letter re: DEC Hazardous Waste Fee and Reporting Information from MRBR

March 10, 1999 memo re: ERP Hazardous Materials Work from Alee King Rosen & Fleming

March 19, 1999 memo from Vollmuth & Brush

March 31, 1999 letter proposal from AKRF

March 31, 1999 letter proposal from AKRF

Sampling Protocol prepared by AKRF

April 15, 1999 letter re: ERP Water Level Measurements from AKRF

April 29, 1999 memo re: ERP Sampling Protocol from Vollmuth & Brush

April 29, 1999 memo re: Estimated cost for testing from AKRF

April 30, 1999 testing protocol report from AKRF

May 20, 1999 revised testing protocol report from AKRF

June 3, 1999 letter re: ERP Sampling from AKRF

June 8, 1999 letter re: ERP Sampling from AKRF

July 1999 Phase II Environmental Site Assessment prepared by AKRF

August 19, 1999 ERP Final Environmental Impact Statement prepared by Alee King Rosen & Fleming

August 26, 1999 letter re: ERP from AKRF

September 14, 1999 memo re: NYSDEC proposed scope of work for additional sampling from Empire State Development Corp.

September 15, 1999 memo re: State environmental quality review findings statement from Empire State Development

September 30, 1999 memo re: ERP hazardous materials/subsurface contamination issues from MRBR

September 30, 1999 letter re: ERP/additional testing requested by DEC from AKRF

October 15, 1999 letter re: ERP/laboratory analysis results for groundwater samples from AKRF

October 19, 1999 figure 1 soil sampling locations from FPM

October 19, 1999 letter re: soil sampling results from FPM

October 19, 1999 letter re: ERP/work plan to begin 10/22 from AKRF

October 22, 1999 fax to AKRF re: NYSDEC's comments from NYSDEC

October 22, 1999 letter re: ERP re: data re: possible on-site disposal of waste from AKRF

October 25, 1999 letter re: waste characterization and disposal costs from FPM

October 29, 1999 fax re: Remedial work plan, former Washburn Wire prepared by AKRF

November 1, 1999 letter re: ERP/supplementary documentation from BDG

November 2, 1999 letter re: ERP/soil excavation work from AKRF

November 4, 1999 letter re: remediation work plan, 10/99 from NYSDOH

November 9, 1999 letter attaching work plan for soil excavation from AKRF

November 17, 1999 letter re: Outstanding DEC issues from BDG

November 30, 1999 letter attaching lab analysis results from samples collected 10/29/99 from AKRF

December 1, 1999 letter re: time line re: DEC open items from BDG

December 3, 1999 letter re: Washburn Wire between 116<sup>th</sup> and 119<sup>th</sup> St. and FDR from DEC

December 10, 1999 letter re: ERP/Open DEC Submittals from BDG

December 10, 1999 letter re: underground petroleum storage tanks never properly closed from AKRF

December 17, 1999 letter re: outstanding DEC issues from BDG

December 17, 1999 letter re: investigation and remediation from NYSDEC [w/JPR comments]

December 17, 1999 letter re: investigation and remediation from NYSDEC [w/other comments]

December 17, 1999 letter re: attempt to bring toward full agreement w/client from NYSDEC

December 17, 1999 letter re: lab analysis results for water sample from AKRF

December 20, 1999 fax attaching DEC 12/20/99 letter to Mr. Rudko of AKRF from NYSDEC

December 20, 1999 letter re: follow-up to 12/17/99 letter from BDG

December 23, 1999 letter re: DEC 12/17/99 letter from BDG

December 29, 1999 letter re: response to 12/21/99 letter from BDG

December 29, 1999 letter re: proposal to continue work from AKRF

January 3, 2000 letter attaching construction health and safety plan from AKRF

January 3, 2000 letter responding to 12/17 letter from AKRF

January 4, 2000 letter confirming 12/29/99 proposal acceptance from BDG

January 5, 2000 letter responding to 12/17 letter from AKRF

January 11, 2000 ERP field notes for lead contaminated soil excavation from AKRF

January 12, 2000 letter re: 1/11/00 proposal from Fenley & Nicol from MRBR

January 12, 2000 letter re: ERP/field notes and air monitoring results

January 12, 2000 fax re: AKRF proposals/contracts from BDG

January 13, 2000 letter re: lead contaminated soil removal and tank content disposal from AKRF

January 14, 2000 letter re: lead contaminated soil removal and tank content disposal from AKRF

January 14, 2000 letter re: UST removal/spill remediation plan from BDG

January 17, 2000 copy of \$5,000 check from Tiago Holdings payable to Fenley & Nicol

January 26, 2000 non-hazardous/non-regulated waste manifest from Fenley & Nicol

January 28, 2000 letter re: soil removal on 2/1/00 from AKRF

January 31, 2000 letter re: lead contaminated soil removal and pumping of tank contents from AKRF

February 1, 2000 letter re: lead contaminated soil removal scheduled for 2/3/00 from AKRF

March 8, 2000 fax re: progress report from DEC to AKRF

March 9, 2000 letter re: summarization of outstanding issues with DEC from AKRF

March 16, 2000 fax re: memo to BDG re: alternative to using Allied from AKRF

March 27, 2000 letter re: ERP/soil remediation from BDG

April 3, 2000 copy of \$26,946.96 check payable to Fenley & Nicol from Tiago Holdings

April 3, 2000 letter re: ERP/site remediation work from BDG

April 3, 2000 letter enclosing checks on behalf of Allied Waste Services from BDG

April 10, 2000 Tiago Holdings/BDG Subcontractors Certification and Final Waiver of Lien

May 2, 2000 letter re: BDG sign-off from BDG

May 4, 2000 letter AKRF release of money to Fenley & Nicol from BDG

June 16, 2000 letter re: lead contaminated soil remediation activities from AKRF

June 20, 2000 letter re: ERP/Alee King Rosen & Fleming billings from BDG

June 22, 2000 letter enclosing final remediation report from AKRF

June 26, 2000 fax re: groundwater sampling results from AKRF

June 27, 2000 letter re: final remediation report from AKRF

August 3, 2000 letter re: Washburn Wire between 116<sup>th</sup> and 119<sup>th</sup> St. and the FDR Drive from NYSDEC

August 18, 2000 letter re: obtaining access to the site from BDG

August 31, 2000 retainer agreement from w/FPM and MRBR re: east end of 118<sup>th</sup> St., NY from MRBR

September 5, 2000 letter re: underground storage tanks/ERP - E. 116<sup>th</sup> St. to E. 119<sup>th</sup> St., NY from BDG

September 21, 2000 letter re: petroleum bulk storage application from BDG

September 28, 2000 petroleum bulk storage registration certificate from NYSDEC

October 11, 2000 letter enclosing copy of petroleum bulk storage registration certificate from BDG

October 23, 2000 petroleum bulk storage registration certificate from NYSDEC

October 26, 2000 letter enclosing copy of petroleum bulk storage registration certificate from BDG

November 26, 2001 letter re: ConEd excavation subsurface investigation proposal from FPM

January 17, 2002 fax re: Washburn Wire maps, cross sections, data and scoping cost estimate from FPM

August 4, 2002 fax re: report on findings on UST area from FPM

September 2002 Phase I Environmental Site Assessment prepared by FPM

September 23, 2002 letter enclosing permit from NYSDEC

November 22, 2002 second set of photos from FPM

February 10, 2003 letter re: consulting services for tank removals cost estimate from FPM

February 19, 2003 letter re: Stage 1B archaeological testing from Historical Perspectives, Inc.

March 28, 2003 letter re: closure of tanks - E. 118<sup>th</sup> St. from Brookside Environmental

April 3, 2003 letter re: cost estimates for tank closure activities from FPM

April 22, 2003 letter re: ERP/historical preservation from BDG

May 7, 2003 letter re: petroleum bulk storage/ERP from BDG

May 12, 2003 fax re: Mt. Hope waste analytical requirements and soil sample results from FPM

May 19, 2003 letter re: executed contract covering decommissioning of USTs @ ERP from BDG

May 20, 2003 fax re: need to know status tank No. 06 from NYSDEC

May 27, 2003 letter re: disposal of contaminated mud from Brookside Environmental, Inc.

June 16, 2003 letter re: invoice of services, closure of tanks and disposal services from Brookside Environmental

July 14, 2003 letter re: UST removal, site assessment and remediation plan from FPM

July 18, 2003 letter re: product removal work plan from FPM

July 21, 2003 fax re: cost estimate for additional work from Brookside Environmental

July 22, 2003 fax re: proposal for additional costs from Brookside Environmental

July 24, 2003 letter re: petroleum bulk storage application form from FPM

July 29, 2003 e-mail re: third product removal event from FPM

July 29, 2003 e-mail re: product removal to date from FPM



August 11, 2003 memo re: condemnation sites from CBAH

August 20, 2003 memo re: ERP Vault from FPM

August 25, 2003 e-mail re: 545 E. 118<sup>th</sup> St., Harlem from FPM

September 24, 2003 letter re: remediation progress from FPM

October 2003 Phase I Environmental Site Assessment prepared by FPM

October 2003 Asbestos Project Documentation re: 524 E. 117<sup>th</sup> St., NY, NY within the roof area prepared by GCI

October 2003 Asbestos Project Documentation re: 506 E. 118<sup>th</sup> St., NY, NY within the roof and basement areas prepared by GCI

October 2, 2003 letter re: petroleum bulk storage application form from FPM

October 2, 2003 letter enclosing original non-hazardous waste manifests from Brookside Environmental

October 6, 2003 e-mail re: 545 E. 118<sup>th</sup> St., Harlem from FPM

October 8, 2003 letter enclosing 10/2/03 letter from Brookside w/copies of original non-hazardous waste manifests from BDG

October 14, 2003 e-mail re: 545 E. 118<sup>th</sup> St. from FPM

November 24, 2003 letter re: remediation report from FPM

December 1, 2003 e-mail re: ERP from FPM

January 22, 2004 letter re: affidavit of tank removal from FPM

September 3, 2004 letter re: Con Edison Test Pit #2 soil results from FPM

October 7, 2004 letter re: ERP, Con Edison test hole dewatering application from Vollmuth & Brush

November 15, 2004 letter re: Brookside soil disposal proposal from FPM

December 2004 Remediation Work Plan to address environmental issues associated w/excavation at E. 118<sup>th</sup> St. prepared by FPM

January 11, 2005 letter re: brownfield cleanup program application for ERP by CBAH

February 9, 2005 letter enclosing remediation reports by CBAH

March 2005 fact sheet #1 by NYSDEC

July 1, 2004 letter enclosing fully executed original copy of brownfield cleanup agreement from NYSDEC

August 2005 Soil Management Plan by FPM

August 26, 2005 letter re: addendum to remedial work plan by FPM

September 2005 final investigation report and remedial work plan (Vol. 1 of 2 including report and appendices A-J) by FPM

September 2005 final investigation report and remedial work plan (Vol. 2 of 2 including appendices K-U) by FPM

October 27, 2005 Fact Sheet #2 by NYSDEC

October 27, 2005 letter re: Site # C231045 from DEC

January 17, 2006 letter re: soil endpoint sampling from FPM

February 6, 2006 letter re: soil vapor sampling results from FPM

June 9, 2006 letter re: endpoint sampling results - E. 116<sup>th</sup> St. to E. 117<sup>th</sup> St. by FPM

July 31, 2006 letter re: proposed site-specific soil cleanup objectives from FPM

August 1, 2006 letter re: revised proposed site-specific soil cleanup objectives from FPM

August 7, 2006 letter re: 505-509 & 511 and 515 E. 116<sup>th</sup> St. from FPM

August 14, 2006 e-mail re: NYSDEC spill closure letter from FPM

August 23, 2006 letter re: revised proposed site-specific soil cleanup objectives from FPM

September 12, 2006 letter re: revised proposed site-specific soil cleanup objectives from FPM

September 12, 2006 e-mail re: ERP revised SSCO letter from FPM

September 13, 2006 letter re: revised site specific soil cleanup objectives from NYSDEC

September 26, 2006 e-mail re: ERP from FPM

October 4, 2006 letter re: Brownfield cleanup program from NYSDEC

October 4, 2006 letter re: soil removal work plan from FPM

October 16, 2006 e-mail from NYSDEC

October 16, 2006 letter from NYSDEC

October 23, 2006 letter from NYSDEC

November 20, 2006 letter from NYSDEC

December 6, 2006 e-mails between FPM and DEC

December 7 and 8, 2006 e-mails from DEC

December 21, 2006 e-mail from FPM to DEC

December 2006 Final Engineering Report and Site Management Plan

## **Schedule 7.2 - Environmental Representations, Warranties and Covenants**

Schedule 7.2 to LOAN AGREEMENT between TIAGO HOLDINGS, LLC, a New York limited liability company, as "Borrower" and NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION, as "Lender", dated as of January \_\_, 2007 (the "Loan Agreement").

1. Warranties and Representations. Borrower, after reasonable inquiry, warrants and represents that, except as expressly disclosed in those certain items listed on Schedule 7.1 attached to the Loan Agreement:
  - A. No Hazardous Materials are being discharged, disbursed, released, stored, treated, generated, disposed of or allowed to escape or migrate (collectively referred to as a "release") on or from the Project.
  - B. No asbestos or asbestos-containing materials have been installed, incorporated into, placed on or disposed of on the Project.
  - C. No polychlorinated biphenyls ("PCBs") are located on or in the Project, in the form of electrical transformers, fluorescent light fixtures with ballasts, cooling oils or any other device.
  - D. No underground storage tanks have been located on the Project. .
  - E. Borrower has not received any notice of any investigation, administrative order, consent order or agreement, litigation, settlement, lien or encumbrance with respect to Hazardous Materials in connection with the Project and, to the best of Indemnitor's knowledge, no investigation, administrative order, consent order or agreement, litigation, settlement, lien or encumbrance with respect to Hazardous Materials is proposed, threatened, anticipated or in existence in connection with the Project.
  - F. The Project and Borrower's operations at the Project have been in compliance with all applicable Hazardous Materials Laws. No notice has been served on Borrower, or any affiliate or subsidiary of Borrower, from any entity, government body or individual claiming any violation of any law, regulation ordinance or code, or requiring compliance with any law, regulation, ordinance or code, or demanding payment or contribution for environmental damage or injury to natural resources in connection with the Project.
  - G. Borrower has no knowledge of any release or threat of release of any Hazardous Materials from any land adjoining or in the immediate vicinity of the Project.

- H. No portion of the Project is a wetland or other water of the United States subject to jurisdiction under Section 404 of the Clean Water Act (33 U.S.C. §1344) or any comparable state or local ordinance or regulation defining or protecting wetlands or other special aquatic areas.
- I. There are no concentrations of radon or other radioactive gases or materials in any buildings or structures on the Project that exceed background ambient air levels.
- J. There have been no complaints of illness or sickness alleged to have resulted from conditions inside any buildings or structures on the Project.
- K. The Project is presently free from contamination by fungus or mildew, the presence of which would pose a hazard to human health or the environment or that would be reasonably likely to require corrective action, clean up and/or remediation.

2. Covenants. Borrower hereby covenants that for so long as Borrower leases or owns the Property:

- A. Borrower shall not permit the release of any Hazardous Materials on or from the Project.
- B. Borrower shall not permit the installation, use, incorporation into, placement or disposal on the Project of any asbestos or asbestos-containing materials.
- C. Borrower shall not permit any PCBs to be located on or in the Project.
- D. Borrower shall not permit any underground storage tanks to be located on the Project.
- E. The Project and Borrower's operations at the Project shall be in compliance with all applicable Hazardous Materials Laws.
- F. Borrower shall immediately notify Lender in writing of: (i) the discovery of any Hazardous Materials on, under or about the Property and Improvements except for Hazardous Materials excavated as part of construction that are handled in accordance with Hazardous Material Laws; (ii) Borrower's knowledge that the Property or Improvements do not comply with any Hazardous Materials Laws; or (iii) any Hazardous Materials Claims.
- G. In response to the presence of any Hazardous Materials on, under or about the Property or Improvements, Borrower shall immediately take, at Borrower's sole expense, all Remedial Action required by any Hazardous Materials Laws or any

judgment, consent decree, settlement or compromise in respect to any Hazardous Materials Claims.

3. Failure to comply with any provision in Section 2 of this Schedule 7.2, shall be deemed to be an Event of Default under the Loan Agreement. Any capitalized term used in this Schedule 7.2 and not defined herein shall have the meaning set forth in the Loan Agreement.

## EXHIBIT A - DESCRIPTION OF PROPERTY

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

BEGINNING at a point on the Northerly side of East 116<sup>th</sup> Street (100 feet in width), said point being distant 98.00 feet Easterly from the corner formed by the intersection of the Northerly side of East 116<sup>th</sup> Street with the Easterly side of Pleasant Avenue (a.k.a. Avenue A, a.k.a. Paladino Avenue, 100 feet in width) and from said point of beginning;

RUNNING THENCE Northerly parallel with the Easterly side of Pleasant Avenue, North 29 degrees 00 minutes 00 seconds East, a distance of 100.92 feet (100 feet 11 inches) to a point on the centerline of Block 1715;

THENCE Easterly along said centerline of the Block, South 61 degrees 00 minutes 00 seconds East, a distance of 60.00 feet to a point;

THENCE Northerly parallel with the Easterly side of Pleasant Avenue, North 29 degrees 00 minutes 00 seconds East, a distance of 100.92 feet (100 feet 11 inches) to a point in the Southerly side of East 117<sup>th</sup> Street (60 feet in width);

THENCE Easterly along the Southerly side of East 117<sup>th</sup> Street, South 61 degrees 00 minutes 00 seconds East, a distance of 44.48 feet (44 feet 5-3/4 inches) to a point;

THENCE Northerly across East 117<sup>th</sup> Street and being parallel with the Easterly side of Pleasant Avenue, North 29 degrees 00 minutes 00 seconds East, a distance of 60.00 feet to a point on the Northerly side of East 117<sup>th</sup> Street;

THENCE Westerly along the Northerly side of East 117<sup>th</sup> Street, North 61 degrees 00 minutes 00 seconds West, a distance of 104.48 feet to a point;

THENCE Northerly parallel with the Easterly side of Pleasant Avenue, North 29 degrees 00 minutes 00 seconds East, a distance of 100.92 feet (100 feet 11 inches) to a point on the centerline of Block 1716;

THENCE Easterly along said centerline of the Block, South 61 degrees 00 minutes 00 seconds East, a distance of 50.00 feet to a point;

THENCE Northerly parallel with the Easterly side of Pleasant Avenue, North 29 degrees 00 minutes 00 seconds East, a distance of 100.92 feet (100 feet 11 inches) to a point on the Southerly side of East 118<sup>th</sup> Street (60 feet in width);

THENCE Easterly along the Southerly side of East 118<sup>th</sup> Street, South 61 degrees 00 minutes 00 seconds East, a distance of 206.94 feet (206 feet 11-1/4 inches) to a point;

THENCE Northerly across East 118<sup>th</sup> Street and parallel with the Easterly side of Pleasant Avenue, North 29 degrees 00 minutes 00 seconds East, a distance of 160.92 feet (160 feet 11 inches) to a point on the centerline of Block 1815;

THENCE Easterly along said centerline of the Block, South 61 degrees 00 minutes 00 seconds East, a distance of 18.06 feet (18 feet 3/4 inches) to a point;

THENCE Northerly parallel with the Easterly side of Pleasant Avenue, North 29 degrees 00 minutes 00 seconds East, a distance of 100.92 feet (100 feet 11 inches) to a point on the Southerly side of East 119<sup>th</sup> Street (60 feet in width);

THENCE Easterly along the Southerly side of East 119<sup>th</sup> Street, South 61 degrees 00 minutes 00 seconds East, a distance of 236.84 feet (236 feet 10-1/8 inches) to a point;

THENCE South 19 degrees 45 minutes 52 seconds West, a distance of 77.74 feet (77 feet 8-7/8 inches) to a point of curvature;

THENCE along a curve to the right, having a radius of 1000.00 feet, a central angle of 25 degrees 27 minutes 37 seconds, an arc length of 444.37 feet (444 feet 4-1/2 inches), bearing a chord of South 32 degrees 29 minutes 41 seconds West, a chord distance of 440.72 feet (440 feet 8-5/8 inches) to a point of tangency;

THENCE South 45 degrees 13 minutes 29 seconds West, a distance of 87.41 feet (87 feet 4-7/8 inches) to a point of curvature;

THENCE South 54 degrees 25 minutes 53 seconds West, a distance of 138.35 feet (138 feet 4-1/4 inches) to the corner formed by the intersection of the Westerly side of Franklin D. Roosevelt Drive with the Northerly side of East 116<sup>th</sup> Street;

THENCE Westerly along the Northerly side of East 116<sup>th</sup> Street, North 61 degrees 00 minutes 00 seconds West, a distance of 413.62 feet (413 feet 7-1/2 inches) to the point and place of BEGINNING.

**The above description consists of Block 1715, Lots 7, 10, 38, 42, 43, 45 and part of 22; Block 1716, Lots 5, 6, 7, 8, 9, 11, 13, 45 and part of 19; Block 1815, Lots 34, 35, part of 23 and part of 31, and part of East 117<sup>th</sup> Street and part of East 118<sup>th</sup> Street.**



## EXHIBIT B - DEFINITIONS AND INTERPRETATION

### INTERPRETATION

In the Agreement and in each other Loan Document which incorporates or uses the definitions set forth in this Exhibit B, unless a clear contrary intention appears, the following rules of interpretation shall apply:

A. Amendments Included. Definitions contained in the Agreement or any other Loan Documents which identify documents, including the Agreement or any other Loan Documents, shall be deemed to include all amendments, modifications, supplements, restatements, renewals, and replacements to such documents which may be entered into from time to time in compliance with the requirements of the Agreement or otherwise with the consent of Lender.

B. Use of "Including". When the term "include" or "including" is used in the Agreement, it shall be construed to mean "include or including but not limited to" the things specifically mentioned.

C. Captions. Captions and headings used in the Agreement and the other Loan Documents are for convenience of reference only, and shall not affect the construction or interpretation of the Agreement or the other Loan Documents.

D. Gender, Number, Etc. Any word in the Agreement which is expressed in the masculine or neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular or plural number shall be deemed, whenever appropriate in the context, to include the singular and the plural. Any Exhibit, Schedule or other item referred to herein as being "attached" to the Agreement shall be construed to mean "attached to and made a part of the Agreement".

E. Laws. Reference to any Law means such Law as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder and reference to any section or other provision of any Law means that provision of such Law from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision.

### DEFINITIONS

Defined Terms. The following capitalized terms generally used in this Loan Agreement shall have the meanings defined or referenced below. Certain other capitalized terms used only in specific sections of this Loan Agreement are defined in such sections.

"A. Williams Contract" - means that certain Contract by and between Borrower and A. Williams Trucking & Backhoe Trenching, dated as of October 12, 2006..

**"Account Collateral"** - means, collectively, all of the right, title and interest of all Borrower in and to each Borrower's Funds Accounts, all monies and amounts which may from time to time be on deposit therein, all monies, checks, notes, instruments, documents, deposits, and credits from time to time in the possession of Lender representing or evidencing such Borrower's Funds Accounts and all earnings and investments held therein and proceeds thereof.

**"ADA"** - means the Americans with Disabilities Act, of July 26, 1990, Pub. L. No. 101-336, 104 Stat. 327, 42 U.S.C. § 12101, et. seq., as amended or modified from time to time.

**"Advance"** - shall have the meaning given to such term in Section 3.1.

**"Affiliate"** - means, with respect to any Person, (a) in the case of any such Person which is a partnership or limited liability company, any partner or member in such partnership or limited liability company, respectively, (b) any other Person which is directly or indirectly controlled by, controls or is under common control with such Person or one or more of the Persons referred to in the preceding clause (a), (c) any other Person who is an officer, director, trustee or employee of, or partner in, such Person or any Person referred to in the preceding clauses (a) and (b), (d) any other Person who is a member of the immediate family of such Person or of any Person referred to in the preceding clauses (a) through (c), and (e) any other Person that is a trust solely for the benefit of one or more Persons referred to in clause (d) and of which such Person is sole trustee; provided, however, in no event shall Lender or any of its Affiliates be an Affiliate of Borrower. For purposes of this definition, "control" (including with correlative meanings, the terms "controlling", "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities or by contract or otherwise.

**"Agreement"** - shall have the meaning given to such term in the preamble hereto.

**"Alternate Rate"** - is, at the time of any determination thereof, a rate of interest per annum of four percent (4%) in excess of the Prime Rate.

**"Amortization Sum"** shall have the meaning given to such term in Section 2.2(a)(iii). **"Application for Payment"** - shall have the meaning given to such term in Exhibit D attached hereto.

**"Appraisal"** - means a written appraisal prepared by an independent MAI appraiser reasonably acceptable to Lender and subject to Lender's reasonable and customary independent appraisal requirements and prepared in compliance with all applicable regulatory requirements, including the Financial Institutions Recovery, Reform and Enforcement Act of 1989, as amended from time to time.

**“Approved Lease”** - shall have the meaning given to such term in Section 9.4(a).

**“Architect”** - means Greenberg Farrow Associates.

**“Architect’s Agreement”** - means that certain Agreement for Architectural Services dated January 19, 2007 by and between Borrower and Architect.

**“Assignee”** - shall have the meaning given in Section 13.13(c).

**“Assignment and Assumption Agreement”** - means an Assignment and Assumption Agreement among Lender and an Assignee.

**“Bankruptcy Code”** - means the Bankruptcy Reform Act of 1978 (11 USC § 101-1330) as now or hereafter amended or recodified.

**“Blumenfeld Global Transaction”** - shall have the meaning given to such term in Section 8.1(b).

**“Blumenfeld Interest”** - shall mean the share of ownership interests in Borrower that is owned by DWD Associates, LLC, its principals or any Affiliate thereof.

**“Blumenfeld Member”** shall have the meaning given to such term in Section 8.1(a).

**“Blumenfeld Parties”** - shall have the meaning given to such term in Section 8.1(b).

**“BoFA Secured Loans”** - means those certain loans in the maximum aggregate amount of \$65,000,000, made by Bank of America, N.A., to Tiago Holdings, LLC.

**“BoFA Unsecured Loan”** - means that certain unsecured loan in the maximum amount of \$20,000,000, made by Bank of America, N.A., to Tiago Holdings, LLC.

**“Bond Facility Documents”** - means those documents, as hereafter amended, supplemented, replaced or modified from time to time, properly executed and in recordable form, if necessary, listed in Exhibit C as Bond Facility Documents.

**“Bond Financing”** - shall have the meaning given to such term in Recital C.

**“Bonds”** - shall mean \$40,000,000 in tax exempt Variable Rate Demand Industrial Development Empowerment Zone Revenue Bonds, Series 2007 (Tiago Holdings, LLC Project) issued by the New York City Industrial Development Agency on behalf of the Borrower.

**“Borrower”** - shall have the meaning given in the preamble hereto.

"Borrower Authorized Representative" means, with respect to Borrower, the President, the Vice President for Finance or the Treasurer of Borrower, or any other officer of Borrower duly authorized by the members of Borrower, written notice of which shall be given to Lender.

"Borrower's Additional Equity" - shall have the meaning given in the Senior Loan Agreements.

"Borrower's Employment Report" - shall have the meaning given in Section 10.2.

"Borrower's Equity" - shall have the meaning given in the Senior Loan Agreements.

"Borrower's Funds" - means all Loan Proceeds or other funds of Borrower deposited with Senior Lender, pursuant to the terms and conditions of this Agreement, the Disbursement Agreement, the Intercreditor Agreement or the other Loan Documents.

"Borrower's Funds Account(s)" - means each account (or sub-account thereof) with Senior Lender into which any Borrower's Funds are deposited with Senior Lender pursuant to this Agreement, the Disbursement Agreement, the Intercreditor Agreement or the other Loan Documents, including, without limitation, those certain bank accounts (or sub-accounts thereof) listed on Exhibit A to the Project Account Assignment and Security Agreement (as defined in the Senior Loan Agreements).

"Borrower's Minimum Initial Equity" - shall have the meaning given in the Senior Loan Agreements.

"Borrower's Minimum Equity Investment" - shall have the meaning given in the Senior Loan Agreements.

"Brownfield Program" - shall have the meaning given in Section 9.31.

"Building B" - shall mean that certain four story building being designed to contain approximately leasable 11,025 square feet of retail and office space, which building is intended to, and shall, constitute a portion of the Retail Project. "Building Costs" - shall have the meaning given in Section 3.3.

"Business Day" - means a day of the week (but not a Saturday, Sunday or holiday) on which the offices of Lender in New York, New York are open for carrying on substantially all of Lender's business functions. Unless specifically referenced in this Agreement as a Business Day, all references to "days" shall be to calendar days.

"Capital Adequacy Payment" - shall have the meaning given in Section 13.15.

**"CC&R's"** - means, collectively: (1) Covenants and Restrictions as contained in deeds in Reel 3681 P. 591 and Reel 3681 P. 596 as modified by CRFN 2005000204531, and as further modified by CRFN (to be recorded) (affects Block 1716 Lots 8 and 9); (2) Party Wall Agreement in Liber 187 Sec. 6 P. 295; (3) Covenants and Restrictions in Liber 1036 P. 247, as recited in Liber 1102 P. 582; (4) Declaration of Easement in CRFN 2005000686942; (5) Declaration of Maintenance Easement in CRFN 2005000686943; (6) Construction Restrictive Declaration in CRFN 2007000014489; (7) Reciprocal Easement, Restriction and Common Area Maintenance Agreement, dated as of the date hereof, to be recorded in the Office of the Register (Land Records) of the City of New York, County of New York, by and between Tiago Holdings, LLC, a New York limited liability company, and Tiago Holdings, LLC, a New York limited liability company; (8) Mapping Agreement, dated September 15, 2006, to be recorded in the Office of the Register (Land Records) of the City of New York, County of New York, by and between Tiago Holdings, LLC, a New York limited liability company, and The City of New York, a municipal corporation; (9) Resolution C 990100 ZSM, duly adopted by the City Planning Commission on September 7, 1999 (Calendar No.6), as filed with the Office of the Speaker, City Council, and the Borough President in accordance with the requirements of Section 197-d of the New York City Charter; (10) Resolution C 990099(A) ZSM, duly adopted by the City Planning Commission on September 7, 1999 (Calendar No.5), as filed with the Office of the Speaker, City Council, and the Borough President in accordance with the requirements of Section 197-d of the New York City Charter; and (11) Zoning Lot Agreements in CRFN 2006000157743 and CRFN 2006000157744.

**"COC"** - shall have the meaning given in Section 9.28.

**"Collateral"** - means the Property, the Garage Property, all of the Improvements, the Account Collateral and any other personal property or other property or collateral with respect to which a Lien or security interest is being granted to Lender, pursuant to this Agreement, the Disbursement Agreement, the Intercreditor Agreement or any of the other Loan Documents.

**"Commitment"** - means Lender's obligation to make disbursements pursuant to Section 3.4, in an amount up to, but not exceeding the amount of the Loan.

**"Completion Guarantor"** - means Forest City Enterprises, Inc., an Ohio corporation.

**"Completion Guaranty"** - means that certain Completion Guaranty of even date herewith by Completion Guarantor in favor of Lender, as hereafter amended, supplemented, replaced or modified.

**"Completion Date"** - means thirty two (32) months from the Effective Date, which is the date by which Substantial Completion of the Project must occur, free and clear of all liens, subject only to Permitted Delays.

"Completion Date" - means thirty two (32) months from the Effective Date, which is the date by which Substantial Completion of the Project must occur, free and clear of all liens, subject only to Permitted Delays.

"Compliance Certificate" shall have the meaning ascribed to such term in Section 10.7 of this Agreement.

"Confidential Information" -- includes all internal, confidential, proprietary, non-public and secret, written information which is marked as confidential and is received from or on behalf of Borrower relating to Borrower, its Affiliates or their respective businesses.

"Confirming Bank" - means Lloyds TSB Bank plc, a foreign bank acting through its New York Branch, or another institution acceptable to Lender and Borrower.

"Construction Contracts" - shall mean, collectively, all contracts entered into by Borrower with Trade Contractors, Materials Contractors and Equipment Contractors covering all labor, materials and equipment supplied to Borrower in connection with the design, development and construction of the Project, which contracts Borrower estimates will be required to complete the Project.

"Construction Schedule" - shall have the meaning ascribed to such term in Section 3.1(t).

"Construction Manager" - means Tishman Construction Corp.

"Construction Management Agreement" - means that certain Construction Management Agreement dated as of December 1, 2006 by and between Construction Manager and Borrower.

"Contingency Line Items" - means the contingency Line Items in the Project Budget identified on lines 13 and 27.

"Contractors" - shall mean Trade Contractors, Materials, Contractors and Equipment Contractors.

"Cost Savings" - shall have the meaning ascribed to such term in Section 4.11.

"Costs of the Improvement" means those items defined as cost of improvement under Section 2(5) of the Lien Law.

"Deferred Interest Period" - means the period commencing on the date hereof and terminating on the First Payment Date.

"Disbursement Agreement" - means that certain Disbursement Agreement of even date herewith by and among Borrower, Lender, Senior Lender, the Title Company and each of the Subordinate Lenders.

"Dollars" and "\$" - means the lawful money of the United States of America.

"Effective Date" - means the execution date of this Loan Agreement as set forth on the first page hereof.

"Empire Zone Real Property Tax Credit" - means the credit against tax for eligible real property taxes allowed, pursuant to section 15 of Article 1 of Chapter 60 of the Consolidated Laws of New York State as in effect on the date hereof, to a taxpayer which is a qualified empire zone enterprise ("QEZE"), or which is a sole proprietor of a QEZE or a member of a partnership which is a QEZE, and which is subject to tax under article 9-A, 22, 32, or 33 of Chapter 60 of the Consolidated Laws of New York State.

"Environmental Easement" - shall have the meaning given to such term in Section 13.29.

"Equipment Contractor" - means a contractor who has contracted with Borrower to furnish or provide certain equipment for the completion of the Project.

"ERISA" - means the Employee Retirement Income Security Act of 1974, as in effect from time to time.

"Event of Default" - shall have the meaning given to such term in Section 11.1.

"Excess Interest" - shall have the meaning given to such term in Section 2.1(i).

"Final Approval" - shall have the meaning given to such term in Section 9.4(a).

"First Payment Date" - shall have the meaning given to such term in Section 2.2(a).

"Forest City Global Transaction" - shall have the meaning given to such term in Section 8.1(b).

"Forest City Interest" - shall mean the share of ownership interests in Borrower that is owned directly or indirectly by Forest City Enterprises, Inc., Bruce C. Ratner the Forest City Ratner Parties or any of their respective Affiliates.

"Forest City Member" - shall have the meaning given to such term in Section 8.1(a).

"Forest City Ratner Parties" - shall have the meaning given to such term in Section 8.1(b).

"Garage Lease" - shall have the meaning given to such term in Section 3.1(x).

"Garage Lessee" - shall mean the lessee (as approved by Lender, which approval shall not be unreasonably withheld or delayed) of the Garage Project Improvements pursuant to the terms of the Garage Lease. The Parties hereto agree that Central Parking Systems of New York, Inc. is approved as the initial Garage Lessee.

"Garage Project" - shall have the meaning given in Recital B of this Loan Agreement.

"Garage Project Budget" - means the Garage Project Budget approved by Lender attached as part of Exhibit D hereto, showing all sources of funds to be used (including Borrower's Equity), all costs and expenses to be incurred, and all reserves to be maintained in connection with the Garage Project during the term of the Loan.

"Garage Project Improvements" - shall have the meaning given in Recital B of this Loan Agreement.

"Garage Property" - shall have the meaning given in Recital B of this Loan Agreement.

"Global Transaction" - shall have the meaning given to such term in Section 8.1(b).

"Governmental Approval" - means any Law of any Governmental Authority, including, without limitation, any zoning, subdivision or building ordinance or environmental protection law or regulation or any requirement of any kind which must be complied with in connection with the construction or operation of the Property or for the issuance or continuing effectiveness of any Permit of any kind required by any Governmental Authority in connection with the transactions contemplated by this Loan Agreement and the other Loan Documents.

"Governmental Authority" - means any nation or government, any federal, state, local, municipal or other political subdivision thereof or any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"Hazardous Materials" - means all or any of the following: (i) substances, materials, compounds, wastes, products, emissions and vapors that are defined or listed in, regulated by, or otherwise classified pursuant to, any applicable Hazardous Materials Laws, including any so defined, listed, regulated or classified as "hazardous substances", "hazardous materials", "hazardous wastes", "toxic substances", "pollutants", "contaminants", or any other formulation intended to regulate, define, list or classify substances by reason of deleterious, harmful or dangerous properties; (ii) waste oil, oil, petroleum or petroleum derived substances, natural gas, natural gas liquids or synthetic gas and drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources; (iii) any flammable substances or explosives or any radioactive materials;



(iv) fungus, mold, mildew or other biological agents the presence of which may adversely affect the health of individuals or animals or materially adversely affect the value or utility of the Property; (v) asbestos in any form; (vi) electrical or hydraulic equipment which contains any oil or dielectric fluid containing polychlorinated biphenyls; (vii) radon; (viii) urea formaldehyde; or (ix) any other substance, material, waste or mixture which is or shall be listed, defined, or otherwise determined by any governmental authority to be hazardous, toxic, dangerous or otherwise regulated, controlled or giving rise to liability under any Hazardous Materials Laws. Notwithstanding anything to the contrary herein, the term "Hazardous Materials" shall not include commercially sold products otherwise within the foregoing definition of the term "Hazardous Materials," but which are used, stored or disposed of by Borrower or used, stored or disposed of by tenants of the Project in the ordinary course of their respective businesses or in connection with the construction of the Project or routine maintenance, provided, the presence, use, storage, discharge, disposal and transportation of any such products is in compliance with all applicable Hazardous Materials Laws.

"Hazardous Materials Claims" - means any civil, criminal or administrative actions, suits, claims, hearings, investigations or proceedings pending or threatened against Borrower or the Property by any governmental entity or agency or by any other person or entity relating to Hazardous Materials or pursuant to the Hazardous Materials Laws.

"Hazardous Materials Laws" - means any federal, state or local laws, ordinances administrative or judicial orders (which orders are in effect after any appeal of them by Borrower has concluded or after the time for Borrower to appeal them has expired) and regulations (whether any of the foregoing are imposed by statute, or common law), now or hereafter enacted, governing health, safety, industrial hygiene, the environment or natural resources, or Hazardous Materials, and all such laws, ordinances, administrative or judicial orders and regulations governing or regulating the use, generation, storage, removal, recovery, treatment, handling, transport, disposal, control, discharge of, or exposure to, Hazardous Materials including, without limitation: the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 et seq.; the Comprehensive Environment Response, Compensation and Liability Act of 1980, as amended (including the Superfund Amendments and Reauthorization Act of 1986, "CERCLA"), 42 U.S.C. Section 9601 et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601 et seq.; the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651, the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 et seq.; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. Section 801 et seq.; and the Safe Drinking Water Act, as amended, 42 U.S.C. Section 300f et seq.

"Holding Accounts" - shall have the meaning ascribed to such term in Section 3.6.

**"Home Depot"** - shall mean Home Depot U.S.A., Inc., a Delaware corporation.

**"Home Depot Contribution"** - shall have the meaning ascribed to such term in the Senior Loan Agreements.

**"Home Depot Lease"** - means that certain Agreement of Lease by and between Borrower and Home Depot, dated as of December 14, 2005.

**"Impositions"** - means all taxes (including, without limitation, all real estate, ad valorem, excise and sales (including those imposed on lease rentals), use, single business, gross receipts, value added, intangible transaction privilege, privilege, license or similar taxes), assessments, ground rents, water, sewer or other rents and charges, excises, levies, fees (including, without limitation, license, permit, inspection, authorization and similar fees), and all other governmental charges, in each case whether general or special, ordinary or extraordinary, foreseen or unforeseen, of every character in respect of the Property and the Improvements (including all interest and penalties thereon), which at any time prior to, during or in respect of the term hereof may be assessed or imposed on or in respect of or be a lien upon (i) Borrower, the Property and the Improvements or any part thereof. Nothing contained in this Loan Agreement shall be construed to require Borrowers to pay (and Impositions shall not include) any tax, assessment, levy or charge imposed on Lender, in the nature of a franchise, capital levy, estate, inheritance, succession, income or net revenue tax.

**"Improvements"** - shall have the meaning given to such term in Recital B.

**"In Balance"** - shall have the meaning given to such term in the Senior Loan Agreements.

**"Intercreditor Agreement"** - shall have the meaning given to such term in Section 3.1(z).

**"Interest Rate"** - shall have the meaning given in Section 2.1(e).

**"Involuntary Borrower Bankruptcy"** - means any involuntary case under the Bankruptcy Code or any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, in which any Borrower is a debtor or all or any portion of such Borrower's Property is property of the estate therein.

**"Laws"** - means collectively, all federal, State and local laws, statutes, codes, ordinances, orders, rules and regulations which have been duly authorized and are currently in effect and/or hereinafter enacted, including judicial opinions or precedential authority in the applicable jurisdiction, and including, without limitation, all environmental laws, all Hazardous Materials Laws, all rules and regulations relating to life safety and the ADA.

**"Lease"** - means each lease, tenancy, license or occupancy agreement relating to any space in the Project.

"Leasing Guidelines" - shall have the meaning ascribed to such term in Section 9.4(a) of this Agreement.

"Lender" - means New York City Economic Development Corporation, together with its successors and/or assignees of the Loan.

"Letter of Credit" - shall mean, collectively, the Letter of Credit (as defined in the Senior Reimbursement Agreement) issued by the Letter of Credit Bank and the Confirming Letter of Credit (as defined in the Senior Reimbursement Agreement) issued by the Confirming Bank.

"Letter of Credit Bank" - means ING Bank N.V., Curacao Branch.

"Lien" - means any mortgage, deed of trust, pledge, hypothecation, assignment, deposit arrangement, security interest, encumbrance (including, but not limited to, easements, rights-of-way, zoning restrictions and the like), lien (statutory or other), preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever, including without limitation any conditional sale or other title retention agreement, the interest of a lessor under a capital lease, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement or document having similar effect (other than a financing statement filed by a "true" lessor pursuant to Section 9-408 (or a successor section) of the Uniform Commercial Code) naming the owner of the asset to which such Lien relates as debtor, under the Uniform Commercial Code or other comparable law of any jurisdiction.

"Lien Law" - shall mean the Lien Law of the State of New York.

"Lien Law Affidavit" - shall have the meaning given to such term in Section 13.28.

"Line Item" - shall mean each category of expense set forth in the Project Budget.

"Loan" - shall have the meaning given to such term in Recital E of the Loan Agreement.

"Loan Agreement" - shall have the meaning given in the preamble hereto.

"Loan Documents" - means those documents, as hereafter amended, supplemented, replaced or modified, listed in Exhibit C as Loan Documents.

"Loan Fees" - shall have the meaning given to such term in Section 1.3.

"Loan Proceeds" - shall mean proceeds of the Loan advanced to Borrower pursuant to the terms of this Loan Agreement and as evidenced by the Note for the Costs of the Improvement of the design, development and construction of the Project on the Property in accordance with the Plans and Specifications and the Project Budget (Building Costs).

**“Major Lease”** - means any Lease which, together with any other Lease(s) to the same tenant, demises more than 40,000 square feet in the aggregate and any lease with the Garage Lessee.

**“Major Trade Contractors”** - shall mean each contractor, subcontractor or material supplier, which is party to a Major Trade Contract.

**“Major Trade Contracts”** - means any contracts or subcontracts in connection with the Project having aggregate payment obligations in excess of \$2,500,000.

**“Management Agreement”** - shall have the meaning given to such term in Section 3.1(s).

**“Material Adverse Effect”** - means (a) any effect in the business, assets, operations, results of operations or financial or other condition of the Property or of Borrower or Completion Guarantor which materially and adversely affects the ability of Borrower or Completion Guarantor to pay or perform its respective obligations under the Loan Documents in accordance with the terms thereof, or (b) any other effect which materially and adversely affects the rights and remedies of Lender under the Loan Documents. The foregoing definition of Material Adverse Effect is only applicable with respect to the Completion Guarantor for as long as the Completion Guaranty remains in full force and effect.

**“Material Agreement”** - shall have the meaning given to such term in Section 9.12.

**“Material Project Change”** - shall have the meaning given to such term in Section 4.6.

**“Materials Contractor”** – means a contractor who has contracted with Borrower to furnish or provide certain materials and supplies for the completion of the Project.

**“Maturity Date”** - shall mean (i) February 1, 2022 or (ii) such other date on which the final payment of principal of the Note becomes due and payable as therein or herein provided, whether by acceleration or otherwise.

**“Maximum Loan Amount”** - shall mean \$5,000,000.

**“Maximum Rate”** – shall have the meaning given to such term in Section 2.1(i).

**“Monthly Payment”** - shall have the meaning given to such term in Section 2.2(a).

**“Monthly Payment Amount”** - shall have the meaning given to such term in Section 2.2(a).

**"Mortgage"** - means the Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing of even date herewith executed by Borrower, as mortgagor, and Lender, as mortgagee, as hereafter amended, supplemented, replaced or modified from time to time.

**"NMTC Loan"** - means that certain loan advanced by Forest City Subsidiary CDE I, LLC to Borrower in the principal sum of \$51,000,000 as evidenced by that certain Promissory Note made by Borrower in favor of Forest City Subsidiary CDE I, LLC dated as of December 26, 2006.

**"Non-Major Leases"** - shall have the meaning given to such term in Section 9.4(a).

**"Non-Recourse Parties"** - shall have the meaning given to such term in Section 9.17(a).

**"Note"** - means that certain Promissory Note Secured by the Mortgage of even date herewith in the original principal amount of the Loan, executed by Borrower and payable to the order of Lender, together with such other replacement notes as may be issued from time to time pursuant to Section 13.13, as hereafter amended, supplemented, replaced or modified from time to time.

**"Notice of Assignment"** means the notice by Borrower made in compliance with Section 15 of the Lien Law.

**"Notice of Lending"** means the notice by Borrower made in compliance with Section 73 of the Lien Law.

**"Obligations"** - means the Loan and all other obligations, liabilities and indebtedness of every nature of Borrower from time to time owed to Lender under the Loan Documents, including the principal amount of the Note advanced to Borrower and all debts, claims and indebtedness, accrued and unpaid interest and all fees, costs and expenses, whether primary, secondary, direct, contingent, fixed or otherwise, heretofore, now and/or from time to time hereafter owing, due or payable under the Loan Documents, howsoever created, evidenced or arising and howsoever acquired by Borrower, and any and all renewals, extensions or refinancings thereof, whether before or after the filing of a proceeding under the Bankruptcy Code by or against Borrower.

**"Organizational Documents"** - shall have the meaning given to such term in Section 6.3.

**"Other Related Documents"** - means those documents, as hereafter amended, supplemented, replaced or modified from time to time, properly executed and in recordable form, if necessary, listed in Exhibit C as Other Related Documents.

**"Participant"** - shall have the meaning given to such term in Section 13.13.

"Participant/Assignee Capital Adequacy Payment Event" - shall have the meaning given to such term in Section 13.15.

"Payment Date" - shall have the meaning given to such term in Section 2.2(a)(ii).

"Permit" - means any permit, approval, authorization, license, variance or permission required from a Governmental Authority under any applicable Requirement of Law.

"Permitted Delay" - means any delay(s) in construction, which in the aggregate (together with all other Permitted Delays) do not exceed one hundred eighty (180) days, caused by unforeseen physical conditions at the Property, litigation resulting in injunctive relief, strike, lockout, war, terrorism, act of God, fire or other casualty, tropical storms, hurricanes, inability to obtain labor or materials or governmental restriction, or other act, occurrence or thing (except the Borrower's lack of funds) beyond the reasonable control of the Borrower or the Construction Manager which in fact materially interferes with the ability of the Borrower or the Construction Manager to complete the Project, provided in each case the Borrower has notified the Lender (1) within ten (10) days of receipt by Borrower of notice or otherwise having knowledge of the onset of any such delay specifying the event which may result in such delay and (2) within ten (10) days of the termination of any such delay. In no event shall Permitted Delays in connection with the Project exceed one hundred eighty (180) days without Lender's prior written consent. A delay otherwise constituting a Permitted Delay shall not be a Permitted Delay unless such delay has been consented to by, or will not affect the obligations of, the sureties under any payment or performance bonds. For avoidance of doubt, "Permitted Delay" shall exclude claims of inclement weather conditions that could have been "reasonably anticipated". For purposes hereof, inclement weather conditions greater in duration or frequency than the most recent ten-year average for weather conditions reported by the office of the National Oceanographic & Atmospheric Administration nearest to the Project, shall be deemed not to have been "reasonably anticipated."

"Permitted Encumbrances" - means Liens (other than environmental Liens and any Lien imposed under ERISA) for real estate taxes, assessments or charges not yet due and payable; any laws, ordinances or regulations affecting the Property; all matters shown on the Title Policy as exceptions to Lender's coverage thereunder; and Liens in favor of Lender under the Mortgage, Senior Lender under the mortgages for the Senior Loans and the Subordinate Lenders under the mortgages for the Subordinate Loans.

"Permitted Leases" - shall mean Non-Major Leases and Approved Leases.

"Permitted Transferee" - means "Permitted Transferee" - means any of the following entities which has, as of the later to occur of (x) the day that Lender makes a firm proposal on or after the date hereof to such entity for such entity to become a Lender hereunder and (y) ninety (90) days prior to the date that such entity makes a binding acceptance of such offer, (i) an Issuer

Financial Strength Rating from S&P of A - or better or, if not rated by S&P, a Senior Unsecured Debt Rating or Issuer Rating from Moody's of A3 or better or (in the case of clauses (a), (b) and (c) of this definition) (ii) at least \$10,000,000,000 in assets and at least \$1,000,000,000 in capital surplus: (a) a commercial bank or trust company organized under the laws of the United States or any state thereof; (b) a savings and loan association or savings bank organized under the laws of the United States or any state thereof; (c) a commercial bank organized under the laws of any other country or a political subdivision thereof (A "Non-US Lender"); provided that in the case of clause (c) such bank is organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development of a political subdivision of such country; (d) any other entity which is an "accredited investor" (as defined in Regulation D under the Securities Act) which extends credit or buys loans as one of its businesses, including, without limitation, insurance companies, mutual funds, real estate investment trusts and pension funds; (e) the City of New York or any of its agencies or other Person controlled by any of them or (f) (v) any Person consented to in writing by Senior Lender, which consent shall not be unreasonably withheld and shall be deemed given if not objected to in writing within ten (10) Business Days. Notwithstanding the foregoing, no real estate "opportunity funds", hedge funds or lease financing companies shall be Permitted Transferees.

"Person" - means any natural person, corporation, limited partnership, general partnership, joint stock company, limited liability company, limited liability partnership, joint venture, association, company, trust, bank, trust company, land trust, business trust or other organization, whether or not a legal entity, or any other nongovernmental entity, or any Governmental Authority.

"Plans and Specifications" - shall have the meaning given to such term in Section 3.1(v).

"Post-Closing Agreement" - shall mean a Post-Closing Agreement by and between Lender and Borrower dated as of the Effective Date, if any.

"Prime Rate" - means at the time any determination thereof is to be made, the annual interest rate as published, from time to time, in The Wall Street Journal as the "Prime Rate" in its column entitled "Money Rate". In the event The Wall Street Journal ceases publication or ceases to publish the "Prime Rate" as described above, the Prime Rate shall be the average per annum discount rate (the "Discount Rate") on ninety-one (91) day bills ("Treasury Bills") issued from time to time by the United States Treasury at its most recent auction, plus two hundred seventy-five (275) basis points. If no such Treasury Bills are then being issued, the Discount Rate shall be the discount rate on Treasury Bills then being issued for the period of time closest to ninety-one (91) days.

**"Principal Balance"** - means, as of any date of determination, the outstanding principal balance of the Loan as of such date of determination.

**"Prohibited Person"** - shall have the meaning given to such term in Section 6.29.

**"Project"** - shall have the meaning given to such term in Recital B.

**"Project Budget"** - means, collectively, the Retail Project Budget, the Garage Project Budget, and the Project Budget (Building Costs) each as approved by Lender and attached as Exhibit D, showing Borrower's projection of all sources of funds to be used (including Borrower's Equity), all costs to be incurred, and all customary reserves to be maintained in connection with the Project during the term of the Loan.

**"Project Budget (Building Costs)"** means that certain Project Budget (Building Costs) as approved by Lender and attached as Exhibit D hereto, showing Borrower's projection of all sources of funds to be used (including Borrower's Equity), all costs to be incurred, and all customary reserves to be maintained in connection with the Costs of the Improvement of the Project during the term of the Loan.

**"Project Change"** - shall have the meaning given to such term in Section 4.6.

**"Project Consultant"** - means the architect, engineer, agent, consultant or other inspector selected and retained by Senior Lender, at Borrower's expense, to inspect the work on behalf of the Senior Lender and Lender. The initial Project Consultant shall be Inspection and Valuation International, Inc.

**"Project Costs"** - shall have the meaning given in the Senior Loan Agreements.

**"Property"** - shall have the meaning given to such term in Recital B.

**"Punchlist Items"** - means (a) those items of construction and development that would be regarded as punchlist items in accordance with local customary trade practice, and (b) unfinished, minor or cosmetic items of construction of the Project, which are not necessary for the commencement and continuation of leasing or sales operations at the Project or the safe use or legal occupancy of the Project.

**"Qualified Insurer"** - shall have the meaning given to such term in Exhibit I.

**"Qualified Transferee"** - shall mean a Person (i) with substantial experience in the development, management and operations of properties of the same nature in the same general geographic area as the properties acquired under a Global Transaction; (ii) that is not a Reviewable Transferee; (iii) with total real estate assets (in name or under management) in excess of \$2,500,000,000 and capital/statutory surplus or shareholder's equity of \$300,000,000;



(iv) that will not cause Lender to violate any applicable regulatory capital loan restrictions; and (v) that has been approved by Lender, which approval shall not be unreasonably withheld and shall be deemed given if Lender does not approve or reject the proposed transferee within ten (10) Business Days of receipt of Borrower's written request, which written request shall identify the proposed transferee and shall include such financial and organizational information as may be necessary to evaluate such proposed transferee. Notwithstanding anything to the contrary in this Loan Agreement or in any other Loan Document, in the event such Person is not approved by Lender in accordance with (v) above, Borrower shall promptly prepay the Loan in full, including any accrued interest and any other sums due the Loan Documents.

"Relevant Documents" - shall have the meaning given to such term in Section 9.17(a).

"Relevant Lease Information" - shall have the meaning given to such term in Section 9.4(a).

"Remedial Action" - means actions to investigate, clean up, remove, treat, monitor, or respond to in any other way address Hazardous Materials in the indoor or outdoor environment, including actions to prevent or minimize the release of Hazardous Materials.

"Request for Advance Documents" - shall have the meaning given in Section 3.5(a).

"Requirements of Law" - mean, as to any entity, the charter and by-laws, partnership agreement or other organizational or governing documents of such entity, and any law, rule or regulation, Permit, or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such entity or any of its property or to which such entity or any of its property is subject, including without limitation, applicable securities laws and any certificate of occupancy, zoning ordinance, building, environmental or land use requirement or Permit or occupational safety or health law, rule or regulation.

"Retail Project" - shall have the meaning given to such term in Recital A of this Loan Agreement.

"Retail Project Budget" - means the Retail Project Budget approved by Lender attached as part of Exhibit D hereto, showing all sources of funds to be used (including Borrower's Equity), all costs and expenses to be incurred, and all reserves to be maintained in connection with the Retail Project during the term of the Loan.

"Retail Project Improvements" - shall have the meaning given in Recital A of this Loan Agreement.

"Retail Property" - shall have the meaning given in Recital A of this Loan Agreement.

"Retainage" - shall have the meaning given to such term in Section 3.4.

"Reviewable Transferee" - shall have the meaning given to such term in Section 8.1(b).

"Senior Construction Loans" shall have the meaning given to such term in Recital C of this Loan Agreement.

"Senior Lender" - shall have the meaning given to such term in Recital C of this Loan Agreement.

"Senior Loan" - shall have the meaning given to such term in Recital D of this Agreement.

"Senior Loan Agreements" - shall mean collectively (i) that certain Acquisition Costs Loan Agreement dated of even date herewith by and among Borrower and Senior Lender, (ii) that certain Building Costs Loan Agreement dated of even date herewith by and among Borrower and Senior Lender and (iii) that certain Project Costs Loan Agreement dated of even date herewith by and among Borrower and Senior Lender.

"Senior Loan Documents" - shall have the meaning given the term "Loan Documents" in the Senior Loan Agreements.

"Senior Permanent Loans" - shall have the meaning given to such term in Recital D of this Loan Agreement.

"Senior Reimbursement Agreement" - shall have the meaning given to such term in Recital C of this Loan Agreement.

"Skanska Contract" means that certain Contract by and between Borrower and Underpinning & Foundation Skanska, Inc., dated as of July 24, 2006.

"SNDA" shall have the meaning ascribed to such term in Section 9.4 of this Agreement.

"Sources and Uses Statement" shall mean the Sources and Uses Statement approved by Lender and attached hereto as Exhibit D and made a part hereof.

"State" - means any state or commonwealth in the United States of America.

"Stored Materials" - shall have the meaning given to such term in Section 4.13.

"Subdivision Map" - shall have the meaning given to such term in Section 9.6.

"Subordinate Lenders" - means, collectively, the Upper Manhattan Empowerment Zone Development Corporation and the Empire State Development Corporation.

**“Subordinate Loans”** - means, collectively, (i) that certain subordinate loan in the maximum principal amount of \$15,000,000, made to Borrower by the Upper Manhattan Empowerment Zone Development Corporation, and (ii) that certain subordinate loan in the maximum principal amount of \$5,000,000, made to Borrower by the New York State Urban Development Corporation d/b/a/ Empire State Development Corporation.

**“Substantial Completion”** - means the point in time when Senior Lender and the Project Consultant shall have determined that construction of the Project has been completed on a lien-free basis in a good and workmanlike manner, subject only to the Punchlist Items, in accordance with the Plans and Specifications and all applicable Laws (as evidenced by the delivery of the documents and the satisfaction of the undertakings set forth under Subsections 3.7(a) (limited however to certifications from the Architect and the Project Consultant in form and substance reasonably satisfactory to Lender provided that Lender shall use commercially reasonable efforts to cause the Project Consultant to deliver such certification on a timely basis so long as Borrower promptly supplies such information as the Project Consultant reasonably requires in connection therewith) and 3.7(e) (it being acknowledged that Borrower may escrow any amounts in dispute (or post an Acceptable Collateral L/C in any such amounts) and bond or insure over any filed mechanic’s liens) of this Agreement), with the payment of all Project Costs (as defined in the Senior Loan Agreements) and Building Costs (including escrowing of any amounts in dispute (or posting an Acceptable Collateral L/C in any such amounts) and bonding or insuring over any filed mechanic’s liens) in accordance with the Project Budget, and with all applicable Governmental Approvals, and when final or temporary certificates of occupancy (subject to Borrower’s escrowing an amount, as reasonably determined by Senior Lender and the Project Consultant reasonably necessary for the completion of all Punchlist Items, all leasing costs and Borrower’s construction obligations for tenant space for Approved Leases executed during the course of construction, taking into account Loan Proceeds and proceeds of the Senior Loans and the proceeds of the Subordinate Loans to the extent any such proceeds remain available under this Loan Agreement, the Senior Loan Agreements and the Project Budget) are issued for the core and shell of the Improvements. Without limiting the foregoing, Substantial Completion shall not be deemed to have occurred until there are in place and available for use a sufficient number of parking spaces to obtain a temporary certificate of occupancy.

**“Survey”** - means a current survey of the Property, prepared by a surveyor licensed in the State in which the Property is located and reasonably acceptable to the Lender and the Title Company as having been prepared in accordance with the “Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys,” jointly established and adopted by ALTA, NSPS and ACSM in 2005, including items 1, 2, 3, 4, 6, 7(a), 7(b-1), 7(c), 8, 9, 10, 11(a), 13, 14, 15 and 16 of Table A thereof.

**“Target”** - shall mean Target Corporation, a Minnesota corporation.

**"Target Contribution"** - shall have the meaning ascribed to such term in the Senior Loan Agreements.

**"Target Lease"** - means that certain Agreement of Lease by and between Borrower and Target, dated as of August 14, 2006.

**"Tenant Estoppel Certificate"** shall have the meaning ascribed to such term in Section 9.4(c) of this Agreement.

**"Tenant Improvements Plans and Specifications"** shall have the meaning ascribed to such term in Section 3.5(g).

**"Tenant's Employment Report"** - shall have the meaning given in Section 10.2.

**"Term Sheet"** - shall have the meaning given to such term in Section 1.3.

**"Title Company"** - means Fidelity National Title Insurance Company, Guardian Land Abstract Corp. and New York Land Services, Inc., collectively.

**"Title Policy"** - means an ALTA Mortgagee's Policy (1992) of title insurance, with extended coverage, issued by the Title Company as of the date and time of the recording of the Mortgage, in the maximum amount of the Loan, containing, to the extent such endorsements are available under the laws of the State in which the Property is located, (i) affirmative insurance which is customary in New York in lieu of an ALTA 9 (which is not customary in New York), (ii) access, (iii) location (survey legal matches title legal), (iv) separate tax lot, (v) plat act/subdivision or legal lot, (vi) contiguity (if applicable), (vii) variable rate, (viii) pending construction disbursement, and (ix) such other endorsements as the Lender may reasonably require based upon its counsel's review of the title commitment and Survey, insuring the Mortgage on the Property as a second lien thereon (pari passu with the other Subordinate Lenders), subject only to the Permitted Exceptions.

**"Trade Contractor"** - means a contractor retained by Borrower for the performance of construction trade work for the Project.

## EXHIBIT C - LOAN DOCUMENTS

Exhibit C to LOAN AGREEMENT between TIAGO HOLDINGS, LLC, a New York limited liability company, as "Borrower", and NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION, as "Lender", dated as of January \_\_, 2007.

1. Loan Documents. The documents listed below, numbered 1.1 through \_\_, inclusive, and amendments, modifications and supplements thereto which have received the prior written consent of Lender, together with any documents executed in the future that are approved by Lender and that recite that they are "Loan Documents" for purposes of this Agreement are collectively referred to herein as the Loan Documents.

- 1.1 This Agreement.
- 1.2 Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated of even date herewith made by Borrower in favor of Lender.
- 1.3 Promissory Note Secured by Mortgage dated of even date herewith executed by Borrower and payable to the order of Lender..
- 1.4 Assignment of Leases, Rents and Profits dated of even date herewith executed by Borrower in favor of Lender.
- 1.5 Completion Guaranty dated of even date herewith executed by Completion Guarantor for the benefit of Lender.
- 1.6 Hazardous Substances Indemnification Agreement dated of even date herewith executed by Borrower for the benefit of Lender.
- 1.7 Disbursement Agreement dated of even date herewith by and among Lender, Subordinate Lenders, Senior Lender and Guardian Land Abstract Corp..
- 1.8 Conditional Assignment of Retail Management Agreement dated of even date herewith executed by Borrower and Blumenfeld Development Group, Ltd., as agent, in favor of Lender.
- 1.9 Assignment of Construction Manager's Agreement dated of even date herewith executed by Borrower in favor of Lender.

- 1.10 Construction Manager's Certification, Consent and Agreement dated of even date herewith made by Tishman Construction Corporation of New York, Inc. in favor of Lender.
  - 1.11 UCC-1 Financing Statement with Borrower as Debtor and Lender as Secured Party, as filed with the Secretary of State of New York.
  - 1.12 Subordination and Intercreditor Agreement dated of even date herewith by and among Lender, Subordinate Lenders and Senior Lender.
  - 1.13 Subordination and Intercreditor Agreement dated of even date herewith by and among Lender, Subordinate Lenders and Banc of America CDE I, LLC.
  - 1.14 Subordination and Intercreditor Agreement dated of even date herewith by and among Lender, Subordinate Lenders and Forest City Subsidiary CDE I, LLC.
2. Bond Facility Documents:
  3. Other Related Documents (Which Are Not Loan Documents):

**EXHIBIT D - PROJECT BUDGET AND SOURCES AND USES STATEMENT**

**[Retail Project Budget, Garage Project Budget, Project Budget (Building Costs) and Sources and  
Uses Statement]**

**East River Plaza  
Budget and Sources and Uses**

**USES**

Site Acquisition	58,071,873
Trades: Base Building	171,819,000
Tenant Contributions	11,595,000
General Conditions / CM Fee	23,750,000
Pre-construction services	925,000
Demolition / Environmental	19,390,037
On-Sitework General	6,768,000
Off-Sitework	4,800,000
Permits	935,000
Bonds	1,543,000
Owner's Testing / Survey	809,000
Signage	500,000
Construction Contingency	11,102,218
<b>TOTAL HARD COSTS &amp; SITE ACQUISITION</b>	<b>312,008,128</b>

Architecture & Engineering	4,774,000
Leasing Commissions	8,437,000
Legal	4,048,741
Construction Interest	17,273,090
Pre-Development Loan Interest	4,087,782
Financing Fees & Out-of-Pocket	6,760,000
Title Insurance Fee	1,580,545
Bank Inspection	125,000
Site Management	16,387,000
Project Expenses	627,000
RE Taxes	1,667,000
Insurance	800,000
Mortgage Recording Tax	7,140,890
Development Contingency	2,091,259
Development Costs	3,646,000
<b>TOTAL SOFT COSTS</b>	<b>79,385,307</b>

**TOTAL PROJECT COSTS** **391,393,435**

**SOURCES**

ING Construction Loan	220,000,000
Empowerment Zone Bonds	40,000,000
UMEZ	15,000,000
ESDC	5,000,000
EDC	5,000,000
Borrower's Minimum Equity	106,393,435
<b>TOTAL SOURCES</b>	<b>391,393,435</b>



**EXHIBIT E - SCHEDULE OF PERMITS REQUIRED AND PERMITS OUTSTANDING**



**JAM CONSULTANTS INC.**  
104 West 29th Street, 9th Fl., New York, N.Y. 10001  
Tel: 212 244-4427 Fax: 212-244-4497

ZONING & CODE ANALYSIS DEPT. OF TRANSPORTATION EXPEDITING FIRE DEPARTMENT

## MEMORANDUM

TO: Adam Schwartz  
CC: Greg Lowe  
FROM: Robert Anderson  
RE: River East  
DATE: Monday, January 8, 2007

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The following is a list of permits required for the East River Project.

### Entire Project

- City Planning Special permit - complete
- Demolition permits - complete

### Retail A

- New building excavation/foundation permit - complete
- New building full permit - open
- Sprinkler - open
- Standpipe - open
- Emergency generator - open
- Fire alarm - open
- Boiler - open
- Elevator & escalators - open

### Retail B

- New building excavation/foundation permit - complete
- New building full permit - open
- Sprinkler - open
- Fire alarm - open
- Boiler - open
- Elevator & escalators - open

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Garage

- New Building excavation/foundation permit - complete
- New Building full permit - open
- Standpipe - open
- Fire alarm - open
- Elevator - open

**EXHIBIT F - ORGANIZATIONAL CHART**

# TIAGO HOLDINGS, LLC

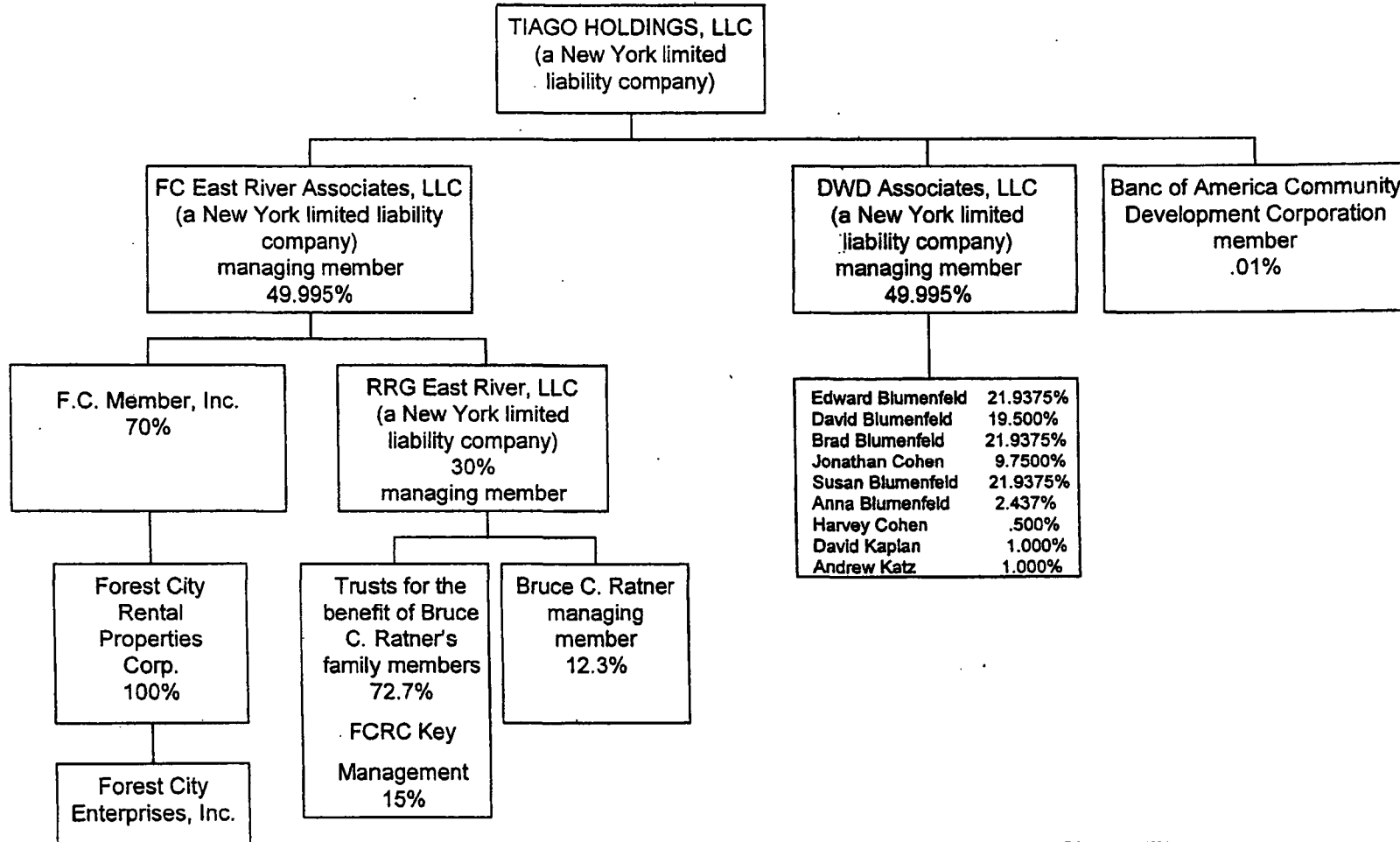


Chart A-77  
Tiago Holdings External.ppt

## **EXHIBIT G**

### **MACBRIDE PRINCIPLES**

(Note: for purposes of this rider, the "contractor" means Borrower and the "contracting entity" means Lender.)

#### **ARTICLE I. MACBRIDE PRINCIPLES**

##### **PART A**

The contractor stipulates that such contractor and any individual or legal entity in which the contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.

##### **PART B**

For purposes of this section, "MacBride Principles" shall mean those principles relating to nondiscrimination in employment and freedom of workplace opportunity which require employers doing business in Northern Ireland to:

- (1) increase the representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;
- (2) take steps to promote adequate security for the protection of employees from underrepresented religious groups both at the workplace and while traveling to and from work;
- (3) ban provocative religious or political emblems from the workplace;
- (4) publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;
- (5) establish layoff, recall and termination procedures which do not in practice favor a particular religious group;
- (6) abolish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;

- (7) develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of workers from underrepresented religious groups;
- (8) establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and
- (9) appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

#### **ARTICLE II. ENFORCEMENT OF ARTICLE I.**

The contractor agrees that the covenants and representations in Article I above are material conditions to this contract. In the event the contracting entity receives information that the contractor who made the stipulation required by this section is in violation thereof, the contracting entity shall review such information and give the contractor an opportunity to respond. If the contracting entity finds that a violation has occurred, the entity shall have the right to declare the contractor in default and/or terminate this contract for cause and procure the supplies, services or work from another source in any manner the entity deems proper. In the event of such termination, the contractor shall pay to the entity, or the entity in its sole discretion may withhold from any amounts otherwise payable to the contractor, the difference between the contract price for the uncompleted portion of this contract and the cost to the contracting entity of completing performance of this contract either itself or by engaging another contractor or contractors. In the case of a requirements contract, the contractor shall be liable for such difference in price for the entire amount of supplies required by the contracting entity for the uncompleted term of its contract. In the case of a construction contract, the contracting entity shall also have the right to hold the contractor in partial or total default in accordance with the default provisions of this contract, and/or may seek debarment or suspension of the contractor. The rights and remedies of the entity hereunder shall be in addition to, and not in lieu of, any rights and remedies the entity has pursuant to this contract or by operation of law.

**EXHIBIT H - INTENTIONALLY OMITTED**



**EXHIBIT I - INTENTIONALLY OMITTED**

**EXHIBIT J - CONSTRUCTION SCHEDULE**



Activity ID	Activity Description	Start	Finish	Orig Dur	Calendar																			
					AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR
TP1603	Sublet & Receive Bids	11-23-06	01-10-07	28																				
TP1604	Bid Review	01-11-07	01-24-07	10																				
TP1605	TCC Negotiate & Award	01-25-07	01-31-07	5																				
<b>Mechanical</b>																								
TP1701	Receive A/E Doc's	11-08-06		0																				
TP1702	Prep of Bid Packages	11-08-06	11-15-06	6																				
TP1703	Sublet & Receive Bids	11-16-06	12-14-06	28																				
TP1704	Bid Review	12-15-06	12-27-06	8																				
TP1705	TCC Negotiate & Award	12-28-06	01-04-07	5																				
<b>Electrical</b>																								
TP1801	Receive A/E Doc's	11-08-06		0																				
TP1802	Prep of Bid Packages	11-08-06	11-15-06	6																				
TP1803	Sublet & Receive Bids	11-16-06	12-14-06	28																				
TP1804	Bid Review	12-15-06	12-27-06	8																				
TP1805	TCC Negotiate & Award	12-28-06	01-04-07	5																				
<b>Plumbing</b>																								
TP1901	Receive A/E Doc's	11-08-06		0																				
TP1902	Prep of Bid Packages	11-08-06	11-29-06	15																				
TP1903	Sublet & Receive Bids	11-30-06	01-03-07	23																				
TP1904	Bid Review	01-04-07	01-17-07	10																				
TP1905	TCC Negotiate & Award	01-18-07	01-24-07	5																				
<b>Structural &amp; Excavation</b>																								
TP2001	Prepare & Issue Addenda	09-28-06A	10-11-06	5																				
TP2002	Revised Bids By Contractors	10-12-06	10-26-06	7																				
TP2003	Bid Review #2	10-23-06	10-27-06	5																				
TP2004	TCC Negotiate & Award	10-30-06	11-30-06	23																				
<b>Procurement Architectural Packages</b>																								
TP2100	Prepare Initial Bid Pkg	10-12-06	11-02-06	20																				
TP2101	Receive A/E Doc's	11-09-06		0																				
TP2102	Final Prep of Bid Packages	11-09-06	02-05-07	60																				
TP2103	Sublet & Receive Bids	02-03-06	05-01-07	80																				
TP2104	TCC Negotiate & Award	01-02-07	05-01-07	83																				
<b>Health &amp; Safety Plan</b>																								
AV0010	Prepare Health & Safety Plan	10-12-06	10-19-06	6																				
AV0020	Review Health & Safety Plan	10-19-06	10-25-06	6																				
<b>Excavation &amp; Foundation</b>																								
AV0060	Hazwoper Training	10-16-06	11-02-06	15																				
<b>Demolition</b>																								
AV0100	Prepare Demolition Procedure/Equip Submittal	10-12-06	10-20-06	8																				
AV0110	Review Demolition Information	10-24-06	10-29-06	5																				
AV0120	Deliver Demolition Materials to site	10-31-06	11-09-06	9																				
<b>Below Slab Work</b>																								
AV0200	Prepare Underlaid Gravel Submittal/Samples	10-12-06	10-19-06	6																				
AV0210	Review/Approve Underlaid Gravel Submittal/Samples	10-19-06	11-01-06	10																				
AV0220	Deliver Underlaid Gravel to site	11-02-06	11-09-06	6																				
<b>Shower Sub Pressure Jumper Piping</b>																								
AV0300	Prepare Under Slab Pressure Retaining Submittal	10-12-06	11-09-06	21																				
AV0310	Review/Approve	11-10-06	11-24-06	10																				
AV0320	Deliver	11-27-06	12-09-06	10																				

Activity ID	Activity Description	Start	Finish	OTs	Dur	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	
Poly Sheets & Membr																										
Revisions & Footnotes																										
AV0510	Prepare Membr Catalog Cuts for Submittal	10-12-06	10-30-06	11																						
AV0548	Review/Approve Membr Submittal	10-27-06	11-03-06	10																						
AV0550	Deliver Membr to site	11-10-06	11-15-06	5																						
AV0500	Prepare Poly Sheet Catalog Cuts	10-12-06	10-30-06	11																						
AV0510	Review/Approve Poly Sheet Catalog Cuts	10-19-06	11-01-06	10																						
AV0520	Deliver Poly Rolls to site	11-02-06	11-08-06	5																						
Concrete Design Mx																										
Structures & Foundations																										
AV0600	Prepare Concrete Design Mx Information	10-12-06	10-30-06	11																						
AV0610	Review/Approve Concrete Design Mx	10-27-06	11-03-06	10																						
AV0620	Concrete Available	11-09-06	11-09-06	0																						
Concrete Placement Procedures																										
Structures & Foundations																										
AV0700	Prepare Concrete Placement Procedures for PC03B	10-12-06	11-01-06	15																						
AV0710	Review/Approve Concrete Placement Procedures Pile Cap/GCB	11-02-06	11-15-06	10																						
AV0720	Ready To Place Pile Caps & Grade Beams	11-14-06	11-14-06	0																						
AV0700	Prepare Concrete Placement Procedures for Walls	10-12-06	11-01-06	15																						
AV0710	Review/Approve Concrete Placement Procedures	11-02-06	11-15-06	10																						
AV0720	Ready To Place Wall Concrete	11-14-06	11-14-06	0																						
Water Drainage - Areas 2, 3 & 4																										
Structures & Foundations																										
AV0810	Prepare Area AB Fdn Wall & Perimeter Slab Drgs	11-17-06	11-24-06	5																						
AV0820	Review/Approve Area AB Pile Cap/Grade Beam Drgs	11-27-06	12-03-06	10																						
AV0830	Fabricate and Deliver Area AB Wall/Slab Rebar	12-11-06	12-15-06	5																						
AV0800	Prepare Area AB Pilecap & Grade Beam drawings	10-12-06	11-18-06	20																						
AV0810	Review/Approve Area AB Pile Cap/Grade Beam Drgs	11-02-06	12-01-06	20																						
AV0820	Fabricate and Deliver Area AB Pile Cap Rebar	11-18-06	12-22-06	26																						
Water Drainage - Areas 5 & 6																										
Structures & Foundations																										
AV0910	Prepare Area CD Fdn Wall & Perimeter Slab Drgs	11-27-06	12-01-06	5																						
AV0920	Review/Approve Area CD Wall & Slab Drgs	12-04-06	12-15-06	10																						
AV0930	Fabricate and Deliver Area CD Wall/Slab Rebar	12-18-06	12-22-06	5																						
AV0900	Prepare Area CD Pilecap & Grade Beam drawings	11-17-06	12-01-06	10																						
AV0910	Review/Approve Area CD Pile Cap/Grade Beam Drgs	12-04-06	12-15-06	10																						
AV0920	Fabricate and Deliver Area CD Pile Cap Rebar	12-18-06	01-02-07	10																						
Water Drainage - Areas 7																										
Structures & Foundations																										
AV0510	Prepare Area E Fdn Wall & Perimeter Slab Drgs	12-11-06	12-15-06	5																						
AV0511	Review/Approve Area CD Wall & Slab Drgs	12-18-06	01-02-07	10																						
AV0512	Fabricate and Deliver Area CD Wall/Slab Rebar	01-03-07	01-09-07	6																						
AV0500	Prepare Area E Pile Cap & Grade Beam Drawings	12-04-06	12-15-06	10																						
AV0510	Review/Approve Area E Pile Cap & Grade Beam Drgs	12-11-06	12-22-06	10																						
AV0520	Fabricate/Deliver Area E Pile Cap Rebar	12-22-06	01-09-07	10																						
Water Drainage - Area 8																										
Structures & Foundations																										
AV0510	Prepare Area F Rebar Drawings	12-18-06	01-02-07	10																						
AV0511	Review/Approve Area F Rebar Drgs	12-22-06	01-09-07	10																						
AV0520	Fabricate/Deliver Area F Rebar	01-10-07	01-23-07	10																						
Water Drainage - Areas 9																										
Structures & Foundations																										
AV0510	Prepare Mega Column Rebar Drawings	10-12-06	11-09-06	21																						
AV0511	Review/Approve Mega Column Rebar Drawings	11-02-06	11-23-06	15																						
AV0520	Fabricate/Deliver Mega Column Rebar	11-17-06	12-01-06	10																						



AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
21	22	23	24	25	26	27	28	29	30	31	1	2	3	4	5	6	7	8	9
12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31

Activity ID	Activity Description	Start	Finish	Orig Dur
TM105	Start Present Garage	03-05-07		0
TM106	Start Struct Steel	03-07-07		0
TM104	Foundations Complete		07-13-07	0
TM112	Struct Steel/Metal Deck Complete - Retail A		01-07-08	0
TM120	Struct Steel/Metal Deck Complete - Retail B		05-14-08	0
TM114	Retail A Structure Waterproof		05-14-08	0
TM116	Exterior Facade Complete		05-15-08	0
TM122	Turnover to (Cellar, 1st, 2nd Floors) to Tenants		05-30-08	0
TM110	Present Garage Complete		05-31-08	0
TM108	Turnover (2nd & 4th Floors) to Tenants		05-31-08	0
TM107	Vertical Transportation Operational		07-09-08	0
TM102	Emergency Power (Generator) Available		07-31-08	0
TM104	Activate Dam Water/Fire Protection/Fire/Gas		07-31-08	0
TM118	Permanent Power Available Retail A & B		07-31-08	0
TM119	Substantial Completion (Construction Complete)		09-01-08	0
TM200	Project Completion & Close-Out		09-05-08	0

Activity ID	Activity Description	Start	Finish	Orig Dur
LW07	Floor & Slab complete		01-17-08	0
LW04	Leading Deck Pad Completion, DDW		01-24-08	0
LW08	Superstructure Complete and Fireproofed DDW		03-22-08	0
LW11	Commons Elevator Equipment Installation DDW	02-25-08		0
LW06	Roofing DDW		03-14-08	0
LW02	Area Ready for Air Cooled Chiller DDW		03-14-08	0
LW05	Leading Deck Completion ADD		03-21-08	0
LW09	Exterior Doors, Stairfront and Handrails DDW		05-14-08	0
LW40	Sanitary Dish Support Complete DDW		05-14-08	0
LW28	Domestic Water Terminated and Capped DDW		05-15-08	0
LW14	1 Passenger elevator to Tenant Mezz DDW		05-20-08	0
LW23	Natural Gas Lines Valved & Capped DDW		05-22-08	0
LW25	Temporary Power Available DDW		05-22-08	0
LW27	Spinkler System Valved & Capped DDW		05-22-08	0
LW29	Sanitary Waste and Vent Lines Complete DDW		05-22-08	0
LW30	Telephone Conduit and Temp Service Available DDW		05-22-08	0
LW01	Fire Alarm System Complete DDW		05-22-08	0
LW16	Perfing Garage Available OW		06-24-08	0
LW10	Common Area Elevators & Escalators DDW		07-04-08	0
LW12	3 Freight Elevators Available DDW		07-04-08	0
LW13	2 Freight Elevators @ FDR DDW		07-04-08	0
LW24	Permanent Power Available DDW		07-31-08	0
LW26	Emergency Power Available DDW		07-31-08	0
LW03	Exterior Signage OW		10-01-08	0
TM11	Opening		11-15-08	0

Activity ID	Activity Description	Start	Finish	Orig Dur
TC1020	Production Pipe Piles Area B	09-13-08A	10-20-08	35
TC1022	Excavation of East Barn in A	10-27-08	10-31-08	3
TC1023	Complete Production Pipe Piles in Area A	10-31-08	11-05-08	7
TC1028	H Pile Test Piles	11-03-08	11-05-08	2
TC1027	Drive H Piles	11-07-08	11-15-08	7

Activity ID	Activity Description	Start	Finish	Orig Dur
TC1027	Drive (H) Test Piles & Load Test	11-06-08	12-28-08	35

Start Present Garage  
 Start Struct Steel  
 Foundations Complete  
 Struct Steel/Metal Deck Complete - Retail A  
 Struct Steel/Metal Deck Complete - Retail B  
 Retail A Structure Waterproof  
 Exterior Facade Complete  
 Turnover to (Cellar, 1st, 2nd Floors) to Tenants  
 Present Garage Complete  
 Turnover (2nd & 4th Floors) to Tenants  
 Vertical Transportation Operational  
 Emergency Power (Generator) Available  
 Activate Dam Water/Fire Protection/Fire/Gas  
 Permanent Power Available Retail A & B  
 Substantial Completion (Construction Complete)  
 Project Completion & Close-Out

Target Milestones  
 Floor & Slab complete  
 Leading Deck Pad Completion, DDW  
 Superstructure Complete and Fireproofed DDW  
 Commons Elevator Equipment Installation DDW  
 Roofing DDW  
 Area Ready for Air Cooled Chiller DDW  
 Leading Deck Completion ADD  
 Exterior Doors, Stairfront and Handrails DDW  
 Sanitary Dish Support Complete DDW  
 Domestic Water Terminated and Capped DDW  
 1 Passenger elevator to Tenant Mezz DDW  
 Natural Gas Lines Valved & Capped DDW  
 Temporary Power Available DDW  
 Spinkler System Valved & Capped DDW  
 Sanitary Waste and Vent Lines Complete DDW  
 Telephone Conduit and Temp Service Available DDW  
 Fire Alarm System Complete DDW  
 Perfing Garage Available OW  
 Common Area Elevators & Escalators DDW  
 3 Freight Elevators Available DDW  
 2 Freight Elevators @ FDR DDW  
 Permanent Power Available DDW  
 Emergency Power Available DDW  
 Exterior Signage OW  
 Opening

Start Struct Steel  
 Foundations Complete  
 Struct Steel/Metal Deck Complete - Retail A  
 Struct Steel/Metal Deck Complete - Retail B  
 Retail A Structure Waterproof  
 Exterior Facade Complete  
 Turnover (2nd & 4th Floors) to Tenants  
 Vertical Transportation Operational  
 Emergency Power (Generator) Available  
 Activate Dam Water/Fire Protection/Fire/Gas  
 Permanent Power Available Retail A & B  
 Substantial Completion (Construction Complete)  
 Project Completion & Close-Out

Prior & Slab complete  
 Leading Deck Pad Completion DDW  
 Superstructure Complete and Fireproofed DDW  
 Commons Elevator Equipment Installation DDW  
 Roofing DDW  
 Area Ready for Air Cooled Chiller DDW  
 Leading Deck Completion ADD  
 Exterior Doors, Stairfront and Handrails DDW  
 Sanitary Dish Support Complete DDW  
 Domestic Water Terminated and Capped DDW  
 1 Passenger elevator to Tenant Mezz DDW  
 Natural Gas Lines Valved & Capped DDW  
 Temporary Power Available DDW  
 Spinkler System Valved & Capped DDW  
 Sanitary Waste and Vent Lines Complete DDW  
 Telephone Conduit and Temp Service Available DDW  
 Fire Alarm System Complete DDW  
 Perfing Garage Available OW  
 Common Area Elevators & Escalators DDW  
 3 Freight Elevators Available DDW  
 2 Freight Elevators @ FDR DDW  
 Permanent Power Available DDW  
 Emergency Power Available DDW  
 Exterior Signage OW  
 Opening

Production Pipe Piles Area B  
 Excavation of East Barn in A  
 Complete Production Pipe Piles in Area A  
 H Pile Test Piles  
 Drive H Piles

Drive (H) Test Piles & Load Test







Activity ID	Description	Start	Finish	Orig Dur
AWC4330	Four Interior Pile Caps & Grade Beams Area E	03-12-07	04-23-07	31

Activity ID	Description	Start	Finish	Orig Dur
AWC4400	Shoring for First 5 Mega Columns	11-17-06	11-24-06	5
AWC4410	Excavate/Chop Rock for 2 Mega Columns(1)	11-27-06	12-01-06	5
AWC4420	Form 2 Mega Columns (1)	12-01-06	12-04-06	2
AWC4430	Rebar for 2 Mega Columns (1)	12-05-06	12-14-06	8
AWC4440	Pour 2 Mega Columns (1)	12-14-06	12-15-06	2
AWC4500	Excavate/Chop Rock for 2 Mega Columns(2)	12-15-06	12-21-06	5
AWC4510	Strip & Backfill 2 Mega Columns (1)	12-15-06	12-22-06	5
AWC4510	Form 2 Mega Columns (2)	12-21-06	12-22-06	2
AWC4510	Rebar for 2 Mega Columns (2)	12-22-06	12-23-06	3
AWC4520	Pour 2 Mega Columns (2)	12-25-06	01-05-07	2
AWC4600	Excavate/Chop Rock for 2 Mega Columns(3)	01-05-07	01-12-07	5
AWC4610	Strip & Backfill 2 Mega Columns (2)	01-05-07	01-15-07	5
AWC4610	Form 2 Mega Columns (3)	01-12-07	01-15-07	2
AWC4620	Rebar for 2 Mega Columns (3)	01-15-07	01-18-07	3
AWC4630	Pour 2 Mega Columns (3)	01-18-07	01-25-07	8
AWC4700	Excavate/Chop Rock for 2 Mega Columns(4)	01-25-07	02-01-07	5
AWC4710	Form 2 Mega Columns (4)	01-25-07	02-02-07	2
AWC4720	Rebar for 2 Mega Columns (4)	02-01-07	02-07-07	3
AWC4730	Pour 2 Mega Columns (4)	02-07-07	02-14-07	8
AWC4800	Excavate/Chop Rock for 2 Mega Columns(5)	02-14-07	02-15-07	2
AWC4810	Strip & Backfill 2 Mega Columns (4)	02-15-07	02-22-07	5
AWC4820	Form 2 Mega Columns (5)	02-15-07	02-23-07	3
AWC4830	Rebar for 2 Mega Columns (5)	02-22-07	02-27-07	2
AWC4840	Pour 2 Mega Columns (5)	02-27-07	03-07-07	8
AWC4900	Strip & Backfill 2 Mega Columns (5)	03-07-07	03-08-07	2
AWC4910	Pour 2 Mega Columns (5)	03-08-07	03-15-07	5
<b>Area D - East Central</b>				
AWC5000	Excavate/Chop Rock for 2 Mega Columns(6)	02-05-07	02-14-07	8
AWC5010	Form/Rebar/Postmeter Pile Caps Area D	03-14-07	03-27-07	10
AWC5020	Form/Rebar/Postmeter Pile Caps Area D	03-21-07	03-28-07	6
AWC5015	UGD Pressure Relief Piping and Stone	03-28-07	04-17-07	15
AWC5030	Form/Rebar/Postmeter Slab and Wall Area D	05-08-07	07-11-07	25
AWC5040	Four Postmeter Wall and Slab Area D	06-13-07	07-12-07	21
AWC5050	Strip Wall & Cure Area D	07-13-07	08-09-07	20
AWC5060	Waterproof and Backfill Wall Area D	08-10-07	08-13-07	2
<b>Area D - East Grade Beams</b>				
AWC3100	Excavate/Chop Rock for 2 Mega Columns	11-27-06	12-04-06	5
AWC3110	Excavate/Chop Rock for 2 Mega Columns	03-08-07	03-14-07	5
AWC3180	Form 2 Mega Columns	03-14-07	03-19-07	2
AWC3200	Rebar for 2 Mega Columns	03-16-07	03-25-07	7
AWC3220	Pour 2 Mega Columns	03-26-07	03-27-07	2
AWC3300	Excavate/Chop Rock for 2 Mega Columns(2)	03-27-07	04-02-07	5
AWC3340	Strip & Backfill 2 Mega Columns	03-28-07	04-03-07	5
AWC3310	Form 2 Mega Columns (2)	04-03-07	04-03-07	2
AWC3320	Rebar for 2 Mega Columns (2)	04-04-07	04-13-07	8
AWC3330	Pour 2 Mega Columns (2)	04-13-07	04-16-07	2

Activity ID	Description	Start	Finish	Orig Dur
AWC3300	Shoring for First 4 Mega Columns	11-27-06	12-04-06	5
AWC3310	Excavate/Chop Rock for 2 Mega Columns	03-08-07	03-14-07	5
AWC3380	Form 2 Mega Columns	03-14-07	03-19-07	2
AWC3400	Rebar for 2 Mega Columns	03-16-07	03-25-07	7
AWC3420	Pour 2 Mega Columns	03-26-07	03-27-07	2
AWC3500	Excavate/Chop Rock for 2 Mega Columns(2)	03-27-07	04-02-07	5
AWC3540	Strip & Backfill 2 Mega Columns	03-28-07	04-03-07	5
AWC3510	Form 2 Mega Columns (2)	04-03-07	04-03-07	2
AWC3520	Rebar for 2 Mega Columns (2)	04-04-07	04-13-07	8
AWC3530	Pour 2 Mega Columns (2)	04-13-07	04-16-07	2

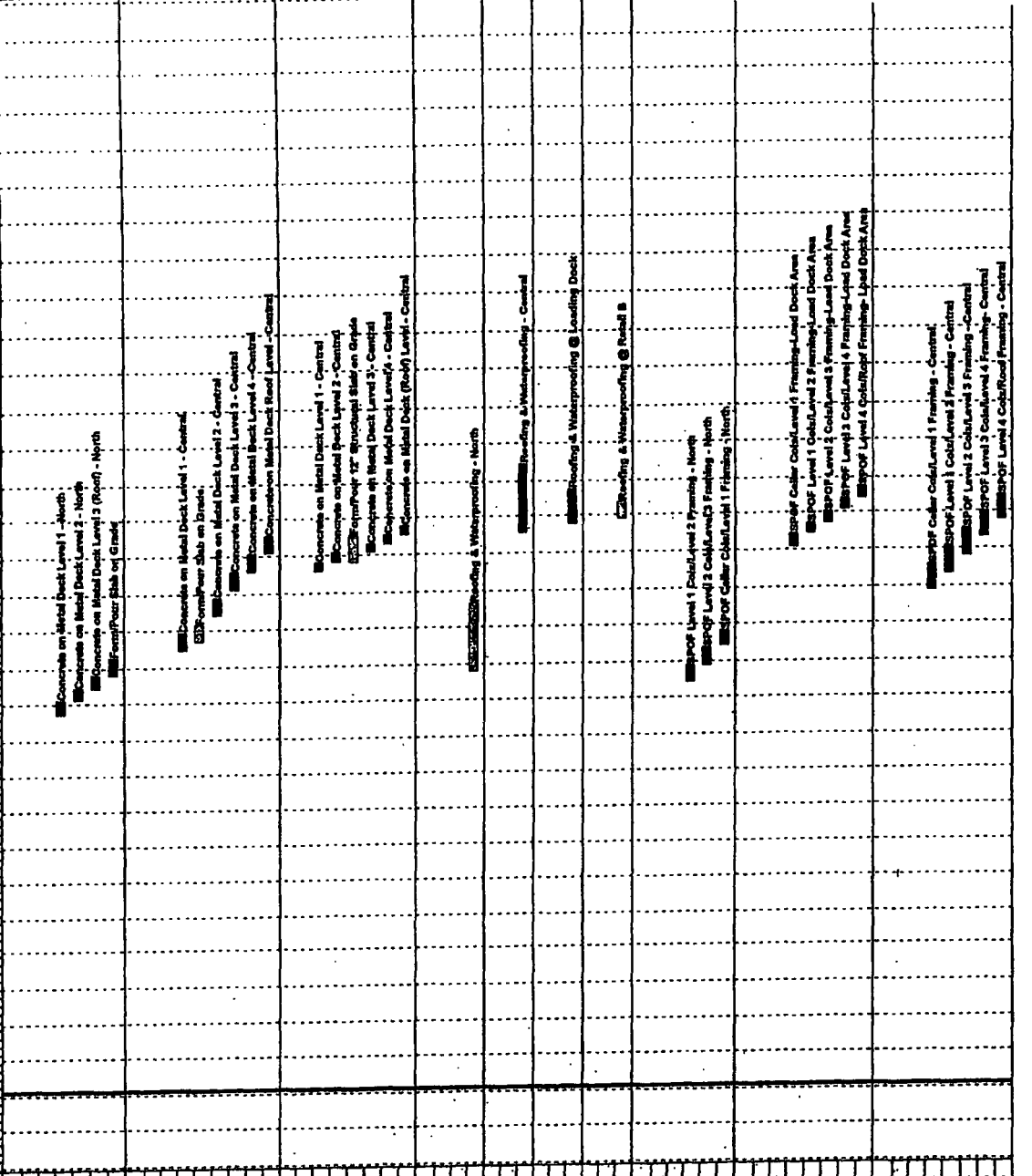


AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR

Activity ID	Activity Description	Start	Finish	Orig Dur
TC1051	Caulding & Scaffing	01-23-08	05-01-08	85
TC1052	Build out Elevator Machine Rooms & Waterlight	01-27-08	01-18-08	10
TC1053	Precast detail work-final welding & grinding	01-27-08	02-15-08	30
TC1054	Roofing & Waterproofing (Bulkhead)	01-27-08	02-05-08	40
TC1055	Exterior Facade	01-27-08	04-03-08	63
TC1056	Finishes	01-27-08	04-14-08	70
TC1057	Lifting	01-27-08	04-14-08	70
TC1058	Exterior CE 1-4	01-27-08	05-20-08	110
TC1059	Form/Pour Slab on Grade	01-25-08	02-22-08	20
TC1060	Garage Complete	05-24-08	05-24-08	0

Activity ID	Activity Description	Start	Finish	Orig Dur
TC1016	Form/Rebar/Pour Mega Cof's Ground to 1st Flr	05-22-07	06-26-07	10
TC1042	Prep Area for Steel Erection	05-31-07	06-06-07	5
TC1050	Erect Street Steel Level 1	06-07-07	06-27-07	15
TC1017	Form/Rebar/Pour Mega Cof's 1st to 2nd Flr	06-14-07	06-27-07	10
TC1018	Form/Rebar/Pour Mega Cof's 2nd to 3rd Flr	06-26-07	07-12-07	10
TC1019	Form/Rebar/Pour Mega Cof's 3rd to 4th Flr	06-26-07	07-26-07	20
TC1020	Form/Rebar/Pour Mega Cof's 4th to 5th Flr	06-26-07	07-26-07	20
TC1021	Form/Rebar/Pour Mega Cof's 5th to 6th Flr	06-26-07	07-26-07	20
TC1022	Form/Rebar/Pour Mega Cof's 6th to 7th Flr	06-26-07	07-26-07	20
TC1023	Form/Rebar/Pour Mega Cof's 7th to 8th Flr	06-26-07	07-26-07	20
TC1024	Form/Rebar/Pour Mega Cof's 8th to 9th Flr	06-26-07	07-26-07	20
TC1025	Form/Rebar/Pour Mega Cof's 9th to 10th Flr	06-26-07	07-26-07	20
TC1026	Form/Rebar/Pour Mega Cof's 10th to 11th Flr	06-26-07	07-26-07	20
TC1027	Form/Rebar/Pour Mega Cof's 11th to 12th Flr	06-26-07	07-26-07	20
TC1028	Form/Rebar/Pour Mega Cof's 12th to 13th Flr	06-26-07	07-26-07	20
TC1029	Form/Rebar/Pour Mega Cof's 13th to 14th Flr	06-26-07	07-26-07	20
TC1030	Form/Rebar/Pour Mega Cof's 14th to 15th Flr	06-26-07	07-26-07	20
TC1031	Form/Rebar/Pour Mega Cof's 15th to 16th Flr	06-26-07	07-26-07	20
TC1032	Form/Rebar/Pour Mega Cof's 16th to 17th Flr	06-26-07	07-26-07	20
TC1033	Form/Rebar/Pour Mega Cof's 17th to 18th Flr	06-26-07	07-26-07	20
TC1034	Form/Rebar/Pour Mega Cof's 18th to 19th Flr	06-26-07	07-26-07	20
TC1035	Form/Rebar/Pour Mega Cof's 19th to 20th Flr	06-26-07	07-26-07	20
TC1036	Form/Rebar/Pour Mega Cof's 20th to 21st Flr	06-26-07	07-26-07	20
TC1037	Form/Rebar/Pour Mega Cof's 21st to 22nd Flr	06-26-07	07-26-07	20
TC1038	Form/Rebar/Pour Mega Cof's 22nd to 23rd Flr	06-26-07	07-26-07	20
TC1039	Form/Rebar/Pour Mega Cof's 23rd to 24th Flr	06-26-07	07-26-07	20
TC1040	Form/Rebar/Pour Mega Cof's 24th to 25th Flr	06-26-07	07-26-07	20
TC1041	Form/Rebar/Pour Mega Cof's 25th to 26th Flr	06-26-07	07-26-07	20
TC1042	Form/Rebar/Pour Mega Cof's 26th to 27th Flr	06-26-07	07-26-07	20
TC1043	Form/Rebar/Pour Mega Cof's 27th to 28th Flr	06-26-07	07-26-07	20
TC1044	Form/Rebar/Pour Mega Cof's 28th to 29th Flr	06-26-07	07-26-07	20
TC1045	Form/Rebar/Pour Mega Cof's 29th to 30th Flr	06-26-07	07-26-07	20
TC1046	Form/Rebar/Pour Mega Cof's 30th to 31st Flr	06-26-07	07-26-07	20
TC1047	Form/Rebar/Pour Mega Cof's 31st to 32nd Flr	06-26-07	07-26-07	20
TC1048	Form/Rebar/Pour Mega Cof's 32nd to 33rd Flr	06-26-07	07-26-07	20
TC1049	Form/Rebar/Pour Mega Cof's 33rd to 34th Flr	06-26-07	07-26-07	20
TC1050	Form/Rebar/Pour Mega Cof's 34th to 35th Flr	06-26-07	07-26-07	20
TC1051	Form/Rebar/Pour Mega Cof's 35th to 36th Flr	06-26-07	07-26-07	20
TC1052	Form/Rebar/Pour Mega Cof's 36th to 37th Flr	06-26-07	07-26-07	20
TC1053	Form/Rebar/Pour Mega Cof's 37th to 38th Flr	06-26-07	07-26-07	20
TC1054	Form/Rebar/Pour Mega Cof's 38th to 39th Flr	06-26-07	07-26-07	20
TC1055	Form/Rebar/Pour Mega Cof's 39th to 40th Flr	06-26-07	07-26-07	20
TC1056	Form/Rebar/Pour Mega Cof's 40th to 41st Flr	06-26-07	07-26-07	20
TC1057	Form/Rebar/Pour Mega Cof's 41st to 42nd Flr	06-26-07	07-26-07	20
TC1058	Form/Rebar/Pour Mega Cof's 42nd to 43rd Flr	06-26-07	07-26-07	20
TC1059	Form/Rebar/Pour Mega Cof's 43rd to 44th Flr	06-26-07	07-26-07	20
TC1060	Form/Rebar/Pour Mega Cof's 44th to 45th Flr	06-26-07	07-26-07	20
TC1061	Form/Rebar/Pour Mega Cof's 45th to 46th Flr	06-26-07	07-26-07	20
TC1062	Form/Rebar/Pour Mega Cof's 46th to 47th Flr	06-26-07	07-26-07	20
TC1063	Form/Rebar/Pour Mega Cof's 47th to 48th Flr	06-26-07	07-26-07	20
TC1064	Form/Rebar/Pour Mega Cof's 48th to 49th Flr	06-26-07	07-26-07	20
TC1065	Form/Rebar/Pour Mega Cof's 49th to 50th Flr	06-26-07	07-26-07	20
TC1066	Form/Rebar/Pour Mega Cof's 50th to 51st Flr	06-26-07	07-26-07	20
TC1067	Form/Rebar/Pour Mega Cof's 51st to 52nd Flr	06-26-07	07-26-07	20
TC1068	Form/Rebar/Pour Mega Cof's 52nd to 53rd Flr	06-26-07	07-26-07	20
TC1069	Form/Rebar/Pour Mega Cof's 53rd to 54th Flr	06-26-07	07-26-07	20
TC1070	Form/Rebar/Pour Mega Cof's 54th to 55th Flr	06-26-07	07-26-07	20
TC1071	Form/Rebar/Pour Mega Cof's 55th to 56th Flr	06-26-07	07-26-07	20
TC1072	Form/Rebar/Pour Mega Cof's 56th to 57th Flr	06-26-07	07-26-07	20
TC1073	Form/Rebar/Pour Mega Cof's 57th to 58th Flr	06-26-07	07-26-07	20
TC1074	Form/Rebar/Pour Mega Cof's 58th to 59th Flr	06-26-07	07-26-07	20
TC1075	Form/Rebar/Pour Mega Cof's 59th to 60th Flr	06-26-07	07-26-07	20
TC1076	Form/Rebar/Pour Mega Cof's 60th to 61st Flr	06-26-07	07-26-07	20
TC1077	Form/Rebar/Pour Mega Cof's 61st to 62nd Flr	06-26-07	07-26-07	20
TC1078	Form/Rebar/Pour Mega Cof's 62nd to 63rd Flr	06-26-07	07-26-07	20
TC1079	Form/Rebar/Pour Mega Cof's 63rd to 64th Flr	06-26-07	07-26-07	20
TC1080	Form/Rebar/Pour Mega Cof's 64th to 65th Flr	06-26-07	07-26-07	20
TC1081	Form/Rebar/Pour Mega Cof's 65th to 66th Flr	06-26-07	07-26-07	20
TC1082	Form/Rebar/Pour Mega Cof's 66th to 67th Flr	06-26-07	07-26-07	20
TC1083	Form/Rebar/Pour Mega Cof's 67th to 68th Flr	06-26-07	07-26-07	20
TC1084	Form/Rebar/Pour Mega Cof's 68th to 69th Flr	06-26-07	07-26-07	20
TC1085	Form/Rebar/Pour Mega Cof's 69th to 70th Flr	06-26-07	07-26-07	20
TC1086	Form/Rebar/Pour Mega Cof's 70th to 71st Flr	06-26-07	07-26-07	20
TC1087	Form/Rebar/Pour Mega Cof's 71st to 72nd Flr	06-26-07	07-26-07	20
TC1088	Form/Rebar/Pour Mega Cof's 72nd to 73rd Flr	06-26-07	07-26-07	20
TC1089	Form/Rebar/Pour Mega Cof's 73rd to 74th Flr	06-26-07	07-26-07	20
TC1090	Form/Rebar/Pour Mega Cof's 74th to 75th Flr	06-26-07	07-26-07	20
TC1091	Form/Rebar/Pour Mega Cof's 75th to 76th Flr	06-26-07	07-26-07	20
TC1092	Form/Rebar/Pour Mega Cof's 76th to 77th Flr	06-26-07	07-26-07	20
TC1093	Form/Rebar/Pour Mega Cof's 77th to 78th Flr	06-26-07	07-26-07	20
TC1094	Form/Rebar/Pour Mega Cof's 78th to 79th Flr	06-26-07	07-26-07	20
TC1095	Form/Rebar/Pour Mega Cof's 79th to 80th Flr	06-26-07	07-26-07	20
TC1096	Form/Rebar/Pour Mega Cof's 80th to 81st Flr	06-26-07	07-26-07	20
TC1097	Form/Rebar/Pour Mega Cof's 81st to 82nd Flr	06-26-07	07-26-07	20
TC1098	Form/Rebar/Pour Mega Cof's 82nd to 83rd Flr	06-26-07	07-26-07	20
TC1099	Form/Rebar/Pour Mega Cof's 83rd to 84th Flr	06-26-07	07-26-07	20
TC1100	Form/Rebar/Pour Mega Cof's 84th to 85th Flr	06-26-07	07-26-07	20
TC1101	Form/Rebar/Pour Mega Cof's 85th to 86th Flr	06-26-07	07-26-07	20
TC1102	Form/Rebar/Pour Mega Cof's 86th to 87th Flr	06-26-07	07-26-07	20
TC1103	Form/Rebar/Pour Mega Cof's 87th to 88th Flr	06-26-07	07-26-07	20
TC1104	Form/Rebar/Pour Mega Cof's 88th to 89th Flr	06-26-07	07-26-07	20
TC1105	Form/Rebar/Pour Mega Cof's 89th to 90th Flr	06-26-07	07-26-07	20
TC1106	Form/Rebar/Pour Mega Cof's 90th to 91st Flr	06-26-07	07-26-07	20
TC1107	Form/Rebar/Pour Mega Cof's 91st to 92nd Flr	06-26-07	07-26-07	20
TC1108	Form/Rebar/Pour Mega Cof's 92nd to 93rd Flr	06-26-07	07-26-07	20
TC1109	Form/Rebar/Pour Mega Cof's 93rd to 94th Flr	06-26-07	07-26-07	20
TC1110	Form/Rebar/Pour Mega Cof's 94th to 95th Flr	06-26-07	07-26-07	20
TC1111	Form/Rebar/Pour Mega Cof's 95th to 96th Flr	06-26-07	07-26-07	20
TC1112	Form/Rebar/Pour Mega Cof's 96th to 97th Flr	06-26-07	07-26-07	20
TC1113	Form/Rebar/Pour Mega Cof's 97th to 98th Flr	06-26-07	07-26-07	20
TC1114	Form/Rebar/Pour Mega Cof's 98th to 99th Flr	06-26-07	07-26-07	20
TC1115	Form/Rebar/Pour Mega Cof's 99th to 100th Flr	06-26-07	07-26-07	20

JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR										
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32



Activity ID	Activity Description	Start	Finish	Orig Dur
<b>Concrete on Deck/Slab on Grade - North</b>				
TC1000	Concrete on Metal Deck Level 1 - North	08-24-07	09-04-07	7
TC1002	Concrete on Metal Deck Level 2 - North	09-05-07	09-13-07	7
TC1004	Concrete on Metal Deck Level 3 (Roof) - North	09-14-07	09-24-07	7
TC1006	Form/Pour Slab on Grade	09-25-07	10-09-07	10
<b>Concrete on Deck/Slab on Grade - Central</b>				
<b>Concrete - East of Col Line MW Area "B"</b>				
TC1008	Concrete on Metal Deck Level 1 - Central	10-16-07	10-26-07	10
TC1144	Form/Pour Slab on Grade	10-25-07	11-05-07	10
TC1008	Concrete on Metal Deck Level 2 - Central	11-27-07	11-27-07	10
TC1010	Concrete on Metal Deck Level 3 - Central	12-05-07	12-18-07	10
TC1012	Concrete on Metal Deck Level 4 - Central	12-19-07	01-03-08	10
TC1014	Concrete on Metal Deck Roof Level - Central	01-04-08	01-17-08	10
<b>Central - West of Col Line MW Area "B"</b>				
TC1200	Concrete on Metal Deck Level 1 - Central	12-19-07	12-26-07	5
TC1202	Concrete on Metal Deck Level 2 - Central	12-27-07	01-03-08	5
TC1078	Form/Pour 12" Structural Slab on Grade	12-27-07	01-17-08	15
TC1204	Concrete on Metal Deck Level 3 - Central	01-04-08	01-10-08	5
TC1206	Concrete on Metal Deck Level 4 - Central	01-11-08	01-17-08	5
TC1208	Concrete on Metal Deck (Roof) Level - Central	01-18-08	01-24-08	5
<b>Roofing</b>				
<b>North - Area "B"</b>				
TC1140	Roofing & Waterproofing - North	09-25-07	11-26-07	40
<b>Roofing - East of Col Line MW Area "B"</b>				
TC1142	Roofing & Waterproofing - Central	01-18-08	03-14-08	40
<b>Central - West of Col Line MW Area "B"</b>				
TC1142	Roofing & Waterproofing @ Loading Dock	01-25-08	02-22-08	20
<b>Roofing - Area "B"</b>				
TC1093	Roofing & Waterproofing @ Retail B	01-29-08	02-11-08	10
<b>Spray Fireproofing - North</b>				
TC1104	SPOF Level 1 Cold/Level 2 Framing - North	09-14-07	09-27-07	10
TC1106	SPOF Level 2 Cold/Level 3 Framing - North	09-28-07	10-19-07	10
TC1100	SPOF Cold/Level 1 Framing - North	10-15-07	10-28-07	10
<b>Spray Fireproofing - Load Dock Area</b>				
TC1101	SPOF Cold/Level 1 Framing-Load Dock Area	01-04-08	01-14-08	7
TC1102	SPOF Level 1 Cold/Level 2 Framing-Load Dock Area	01-15-08	01-22-08	7
TC1103	SPOF Level 2 Cold/Level 3 Framing-Load Dock Area	01-24-08	02-01-08	7
TC1104	SPOF Level 3 Cold/Level 4 Framing-Load Dock Area	02-04-08	02-12-08	7
TC1105	SPOF Level 4 Cold/Roof Framing-Load Dock Area	02-13-08	02-22-08	7
<b>Spray Fireproofing - Central</b>				
TC1109	SPOF Cold/Level 1 Framing - Central	11-26-07	12-18-07	15
TC1111	SPOF Level 1 Cold/Level 2 Framing - Central	12-15-07	01-02-08	15
TC1113	SPOF Level 2 Cold/Level 3 Framing - Central	12-27-07	01-17-08	15
TC1115	SPOF Level 3 Cold/Level 4 Framing - Central	01-11-08	01-31-08	15
TC1117	SPOF Level 4 Cold/Roof Framing - Central	01-24-08	02-14-08	15

Activity ID	Activity Description	Start	Finish	Orig Dur	AUG												SEP												OCT												NOV												DEC												JAN												FEB												MAR												APR												MAY												JUN												JUL												AUG												SEP												OCT												NOV												DEC												JAN												FEB												MAR																																																																																																																																																																																																																																							
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<b>Exterior Facade</b>																																																																																																																																																																																																																																																																																																																																																																																																																																																																																
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<b>North - Area "E"</b>																																																																																																																																																																																																																																																																																																																																																																																																																																																																																
TC1121	Exterior Facade - North Elevation	10-23-07	12-10-07	30																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
TC1130	Windows North Elev 119th St	12-11-07	01-02-08	15																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
TC1125	Exterior Facade - West Elevation	12-11-07	01-16-08	25																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
TC1127	Exterior Facade - East Elevation (FDR)	12-11-07	01-16-08	25																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
<b>Central West - Area "D" (FDR Drive)</b>																																																																																																																																																																																																																																																																																																																																																																																																																																																																																
TC1122	Exterior Facade - East Side (FDR)	01-16-08	02-14-08	20																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
TC1124	Exterior Facade - South Elev @ Ped Circulation	02-15-08	04-11-08	40																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
TC1146	Storefronts @ Pedestrian Circulation	03-06-08	05-14-08	50																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
<b>Central East - Area "C" (Loading Dock)</b>																																																																																																																																																																																																																																																																																																																																																																																																																																																																																
TC1123	Exterior Facade - Loading Dock North Elevation	01-25-08	02-22-08	20																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
TC1129	Exterior Facade - Loading Dock West Elevation	02-25-08	03-21-08	20																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
TC1135	Windows North Elevation	03-21-08	04-03-08	10																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
TC1138	Windows West Elevation	04-04-08	04-17-08	10																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
<b>Retail B - Area "F"</b>																																																																																																																																																																																																																																																																																																																																																																																																																																																																																
TC1131	Exterior Facade Retail B - Area "F" All Sides	03-24-08	04-18-08	20																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
TC1133	Windows All Elevations	04-17-08	05-14-08	20																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
TC1134	Final Flashing & Roofing Details Retail A	01-17-08	05-14-08	84																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
TC1132	Caulking & Sealants	01-17-08	08-12-08	146																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
TC1700	Finish Stairwork (Sidewalks, Paving & Landscaping)	02-15-08	10-01-08	160																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
TC1148	Final Flashing & Roofing Details Retail B	05-15-08	05-30-08	11																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
<b>Retail Core &amp; Shell Fit-Out - North</b>																																																																																																																																																																																																																																																																																																																																																																																																																																																																																
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TC1012	Level 1 Core & Shell Fit-Out - North	12-11-07	02-21-08	50																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
TC2912	Level 2 Core & Shell Fit-Out - North	01-03-08	03-13-08	50																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
TC1992	Cellar Core & Shell Fit-Out - North	01-24-08	04-03-08	50																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
<b>Retail Core &amp; Shell Fit-Out - Central</b>																																																																																																																																																																																																																																																																																																																																																																																																																																																																																
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TC4014	Cellar Core & Shell Fit-Out - Central	01-16-08	04-11-08	50																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
TC4016	Level 1 Core & Shell Fit-Out - Central	02-09-08	05-02-08	50																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
TC4016	Level 2 Core & Shell Fit-Out - Central	02-21-08	05-14-08	50																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
TC4017	Level 3 Core & Shell Fit-Out - Central	03-13-08	06-05-08	50																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
TC4018	Level 4 Core & Shell Fit-Out - Central	04-03-08	06-26-08	60																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
<b>Central East - Area "C" (Loading Dock)</b>																																																																																																																																																																																																																																																																																																																																																																																																																																																																																
TC4030	Cellar Core & Shell Fit-Out - Area C (Load Dock)	02-07-08	04-17-08	50																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
TC4032	Level 1 Core & Shell Fit-Out - Area C (Load Dock)	03-07-08	05-15-08	50																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
TC4034	Level 2 Core & Shell Fit-Out - Area C (Load Dock)	03-14-08	05-22-08	50																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
TC4035	Level 3 Core & Shell Fit-Out - Area C (Load Dock)	03-28-08	06-08-08	50																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
TC4038	Level 4 Core & Shell Fit-Out - Area C (Load Dock)	04-15-08	06-24-08	50																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
<b>Pedestrian Circulation Finishes</b>																																																																																																																																																																																																																																																																																																																																																																																																																																																																																
TC4020	Pedestrian Circulation Finishes	03-17-08	10-01-08	140																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
<b>Tenant Turnover Milestones</b>																																																																																																																																																																																																																																																																																																																																																																																																																																																																																
TC4022	Tenant Turnover 1st Floor	05-15-08		0																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
TC4024	Tenant Turnover 2nd Floor	05-15-08		0																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
TC4025	Tenant Turnover 3rd Floor	06-27-08		0																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
TC4028	Tenant Turnover 4th Floor	06-27-08		0																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
<b>Temp Electric Vaults</b>																																																																																																																																																																																																																																																																																																																																																																																																																																																																																
<b>Submit/Approve Vault Details</b>																																																																																																																																																																																																																																																																																																																																																																																																																																																																																
TC3030	Scheme Approval by CE	10-27-09	11-02-09	5																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
TC3032	Design Team Submission of Vault Details	11-08-09	11-17-09	10																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
TC3034	Vault Design & Details Submit to CE & Approve	11-20-09	12-04-09	10																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
<b>Bid/Award Structural Vault Work</b>																																																																																																																																																																																																																																																																																																																																																																																																																																																																																
TC3036	Bid & Award Structural Vault Work	12-05-09	12-18-09	10																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
TC3038	Shop Drawings Submit/Approve for Struct Vault Work	12-18-09	01-11-07	16																																																																																																																																																																																																																																																																																																																																																																																																																																																																												

Activity ID	Activity Description	Start	Finish	Orig Dur	AUG SEP OCT NOV DEC JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC JAN FEB MAR																															
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<b>Bid/Award Specialty Items</b>																																				
TC3040	Bid/Award CE Specialty Items	12-05-06	12-16-06	10	B/Award CE Specialty Items																															
TC3042	Bid/Award Encased Conduits	12-05-06	12-16-06	10	B/Award Encased Conduits																															
TC3044	Shop Drawg Submit & Approve for CE Specialties	12-19-06	01-03-07	10	Shop Drawg Submit & Approve for CE Specialties																															
TC3046	Release CE Long Lead Specialty Items	01-04-07	03-08-07	45	Release CE Long Lead Specialty Items																															
TC3048	Install CE Specialty Items for Vault & Chambers	03-14-07	03-27-07	10	Install CE Specialty Items for Vault & Chambers																															
TC3050	Install Encased Conduits	03-14-07	03-27-07	10	Install Encased Conduits																															
TC3052	All TCC Work Completed		03-27-07	0	All TCC Work Completed																															
<b>Temp Vault Construction</b>																																				
TC3054	Seasons Turnover of North Area to TCC	10-30-06	10-30-06	1	Seasons Turnover of North Area to TCC																															
TC3056	Perform Pipe Pile Load Test-Partial North Area	11-01-06	11-14-06	10	Perform Pipe Pile Load Test-Partial North Area																															
TC3058	Setup Local Dewatering Pumps	11-15-06	11-21-06	5	Setup Local Dewatering Pumps																															
TC3060	Drive Piles in North Area for Fdn & Temp Vault	11-22-06	11-29-06	5	Drive Piles in North Area for Fdn & Temp Vault																															
TC3062	FR/P Pile Caps for Vault Area & Fdn Wall	11-30-06	12-14-06	11	FR/P Pile Caps for Vault Area & Fdn Wall																															
TC3064	Fdn Wall in Vault Area (includes bracing)	12-15-06	01-08-07	15	Fdn Wall in Vault Area (includes bracing)																															
TC3066	FR/P Temp Vault Floor & Grade Beams(CE Inspect)	01-12-07	01-23-07	10	FR/P Temp Vault Floor & Grade Beams(CE Inspect)																															
TC3068	FR/P Temp Vault Walls with CE Sleeves & Inspect	01-26-07	02-09-07	10	FR/P Temp Vault Walls with CE Sleeves & Inspect																															
TC3070	FR/P Temp Vault Ceiling & Rebar/Inspect	02-09-07	02-23-07	10	FR/P Temp Vault Ceiling & Rebar/Inspect																															
TC3072	Turnover Vault Structure To CE	02-26-07		0	Turnover Vault Structure To CE																															
TC3074	CE Flout of Vaults	02-26-07	05-04-07	60	CE Flout of Vaults																															
TC3076	Temp Power Activated	05-07-07		0	Temp Power Activated																															
<b>West Foundation Wall Construction</b>																																				
TC3078	Drive Pipe Piles West Fdn Wall	11-30-06	12-06-06	5	Drive Pipe Piles West Fdn Wall																															
TC3080	FR/P Pile Caps West Fdn Wall	12-07-06	12-11-06	3	FR/P Pile Caps West Fdn Wall																															
TC3082	FR/P West Fdn Wall Work with Splice Chambers	01-09-07	01-22-07	10	FR/P West Fdn Wall Work with Splice Chambers																															
<b>Electrical Switchgear</b>																																				
TC3016	Masonry @ Switchgear/ATS/Generator/Vault Rooms	05-25-07	10-23-07	20	Masonry @ Switchgear/ATS/Generator/Vault Rooms																															
TC3018	Roofing @ Switchgear Rooms	10-24-07	11-06-07	10	Roofing @ Switchgear Rooms																															
TC3014	Rig & Set Switchgear Equip	11-07-07	11-20-07	10	Rig & Set Switchgear Equip																															
TC3022	Electrical Room Fin-Out	11-21-07	07-31-08	176	Electrical Room Fin-Out																															
<b>Elevators &amp; Escalators</b>																																				
TC1160	Elevator Machine Rm Buildout & Watertight-Area D	01-19-08	02-14-08	20	Elevator Machine Rm Buildout & Watertight-Area D																															
TC1162	Elevator Machine Rm Buildout & Watertight-Area C	01-25-08	02-22-08	20	Elevator Machine Rm Buildout & Watertight-Area C																															
TC1158	Retail Elevator PE-1 @ Retail B	02-12-08	05-20-08	70	Retail Elevator PE-1 @ Retail B																															
TC1154	Retail Elevators CE 5 @ Area D	02-15-08	06-11-08	82	Retail Elevators CE 5 @ Area D																															
TC1166	Retail Elevators FE 1,2,3,4,5,9,10 @ Area D	02-15-08	07-09-08	100	Retail Elevators FE 1,2,3,4,5,9,10 @ Area D																															
TC1162	Retail Elevators FE 6,7,8 @ Area C	02-26-08	07-15-08	100	Retail Elevators FE 6,7,8 @ Area C																															
TC1150	Escalators	03-17-08	07-09-08	80	Escalators																															
<b>Completion/Punchlist/Close-out</b>																																				
TC5006	Substantial Complete(Construction Complete)/TCO		10-01-08	0	Substantial Complete(Construction Complete)/TCO																															
TC5010	Punch Lists / Project Close-Out	10-02-08	01-05-09	64	Punch Lists / Project Close-Out																															
TC5020	Project Completion (Includes Close Out)		01-05-09	0	Project Completion (Includes Close Out)																															
<b>Target Dates</b>																																				
TAR1000	General Target Build-out	05-15-08	10-26-08	119	General Target Build-out																															
TAR2000	Target Fixturing	10-29-08	12-10-08	30	Target Fixturing																															
TAR3000	Target Store Operations	12-11-08	01-23-09	30	Target Store Operations																															
TAR5000	Soft Opening		01-23-09	0	Soft Opening																															
TAR10000	Grand Opening		01-27-09	0	Grand Opening																															

**EXHIBIT K - LIEN LAW SECTION 22 STATEMENT**



**AFFIDAVIT PURSUANT TO SECTION 22  
OF THE LIEN LAW OF THE STATE OF NEW YORK**

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

Joanne M. Minieri, being duly sworn, deposes and says:

I, am the Senior Vice President and Treasurer of RRG East River, LLC, the managing member of FC East River Associates, LLC, a managing member of Tiago Holdings, LLC, the borrower under that certain Building Loan Agreement, dated as of \_\_\_\_\_, between New York City Economic Development Corporation, the lender and the Borrower (the "Building Loan Agreement").

The amount of the Building Loan is \$5,000,000

The consideration paid, or to be paid, by the Borrower for the Building Loan described therein from the proceeds of the Building Loan is zero. Other expenses constituting cost of the improvements incurred, or to be incurred, in connection with the Building Loan and advanced or to be advanced pursuant to the Building Loan Agreement are as follows:

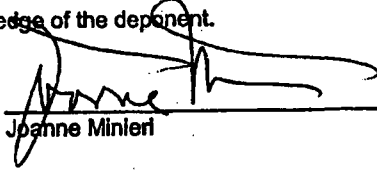
(a)	Interest on the Building Loan during construction.....	-0-
(b)	Taxes, payments in lieu of taxes, assessments, water rents and sewer rents, paid or to be paid for periods prior to during construction .....	-0-
(c)	Mortgage Recording Tax .....	\$140,000.00
(d)	Architect's Fees, Engineer's Fees and Prints .....	-0-
(e)	Building and other Permits.....	-0-
(f)	Premiums on Contractors' Payments and Performance Bonds.	-0-
(g)	Sums paid for the assignment or discharge of an existing mortgage .....	-0-
(h)	The amount, to be advanced from the Loan to reimburse Borrower for costs of the Improvements expended by Borrower after the commencement of the Improvements but prior to the date of the initial advance of the Loan are itemized as follows:	
	i. Base Building Trades	\$46,952.53
	ii. Demolition/Environmental	391,232.83
	iii. Site Work	<u>180,567.38</u>
		\$618,752.74

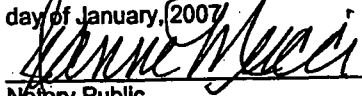
The amounts allocated to the items specified above may be reallocated among such items.

The net sum available to the Borrower for the improvements is \$4,241,247.26.

This statement is made pursuant to Section 22 of the Lien Law of the State of New York and is hereby made a part of the Building Loan Agreement.

The facts herein stated are true to the knowledge of the deponent.

  
\_\_\_\_\_  
Joanne Minieri

Sworn to before me this <sup>30</sup>  
day of January, 2007  
  
\_\_\_\_\_  
Notary Public

JEANNE MUCCI  
Notary Public, State of New York  
No. 30-4834577  
Qualified in Nassau County  
Commission Expires March 30, 2007

**EXHIBIT L – BORROWER’S EMPLOYMENT REPORTING FORM**



Do the Company and its Affiliates offer health benefits to all Part-Time Employees? .....

If the answer to item 6 above is 250 or more employees, please complete Item 9 through 13 below:

- 9. Number of employees in Item 6 who are "Exempt" ..... \_\_\_\_\_
- 10. Number of employees in Item 6 who are "Non-Exempt" ..... \_\_\_\_\_
- 11. Number of employees in item 10 that earn up to \$25,000 annually ..... \_\_\_\_\_
- 12. Number of employees in item 10 that earn \$25,001 - \$40,000 annually ..... \_\_\_\_\_
- 13. Number of employees in item 10 that earn \$40,001 - \$50,000 annually ..... \_\_\_\_\_

4 through 16, indicate the value of the benefits realized at Project Locations during FY'06:

- 14. Value of sales and use tax exemption benefits ..... \$ \_\_\_\_\_
- 15. Value of Commercial Expansion Program ("CEP") benefits ..... \$ \_\_\_\_\_
- 16. Value of Relocation and Employment Assistance Program ("REAP") benefits ..... \$ \_\_\_\_\_

17. Were physical improvements made to any Project Location during FY'\_\_ at a cost exceeding 10% of the current assessed value of the existing improvements at such Project Location? ..... Y N (please circle Y)

If the Company and/or its Affiliates have applied for Industrial and Commercial Incentive Program ("ICIP") benefits for new physical improvements at Project Location(s), please provide the ICIP application number(s) . # \_\_\_\_\_

Certification: I, the undersigned, an authorized officer or principal owner of the Company/Affiliate/Tenant, hereby certify to the best of my knowledge and belief, that all information contained in this report is true and complete. This form and information provided pursuant hereto may be disclosed to the New York City Economic Development Corporation ("NYCEDC") and may be disclosed by NYCEDC in connection with the administration of the programs of NYCEDC and/or the City of New York; and, without limiting the foregoing, such information may be included in (x) reports prepared by NYCEDC pursuant to New York City Charter Section 1301 et. seq., (y) other reports required of NYCEDC, and (z) any other reports or disclosure required by law.

Entity Name: \_\_\_\_\_

Signature By: \_\_\_\_\_ Date: \_\_\_\_\_

Name (print): \_\_\_\_\_ Title: \_\_\_\_\_

**DEFINITIONS:**

**"Affiliate"** is (i) a business entity in which more than fifty percent is owned by, or is subject to a power or right of control of, or is managed by, an entity which is a party to a Project Agreement, or (ii) a business entity that owns more than fifty percent of an entity which is a party to a Project Agreement or that exercises a power or right of control of such entity.

**"Company"** includes any entity that is a party to a Project Agreement.

**"Contract Employee"** is a person who is an independent contractor (i.e., a person who is not an "employee"), or is employed by an independent contractor (an entity other than the Company or its Affiliate, a Tenant or a subtenant of a Tenant), who provides services at a Project Location.

**"Full-Time Employee"** is an employee who works at least 35 hours per week at a Project Location.

**"Part-Time Employee"** is an employee who works less than 35 hours per week at a Project Location.

**"Project Agreement"** is any agreement or instrument (such as a lease agreement or deed) pursuant to which an entity purchases or leases (directly or by assignment from NYCEDC) property from NYCEDC.

**"Project Location"** is any location that is leased (directly or by assignment from NYCEDC) or purchased by the Company from NYCEDC.

**"Tenant"** is a tenant or subtenant (excluding the Company and its Affiliates) that leases or subleases facilities from the Company or its Affiliates at any Project Location.

**VI INSTRUCTIONS** For each Project Agreement, please submit one report that covers (i) the Company and its Affiliates and (ii) Tenants and subtenants of Tenants at all Project Locations covered by the Project Agreement. Each Tenant must complete items 1-5, 15 and 16 on this form with regard to itself and its subtenants and return it to the Company. The Company must include in its report information collected by the Company from its Affiliates and Tenants. The Company must retain for six (6) years all forms completed by its Affiliates and Tenants and at NYCEDC's request must permit NYCEDC upon reasonable notice to inspect such forms and provide NYCEDC with a copy of such forms. The Company must submit to NYCEDC copies of this form completed by each Tenant.

Items 1, 2, 3 and 4 must be determined as of **June 30, 20\_\_** and must include all permanent and non-permanent Full-Time Employees and Part-Time Employees at all Project Locations, including, without limitation, those employed by the Company or its Affiliates and by Tenants and subtenants of Tenants at the Project Locations. **Do not include Contract Employees in Items 1, 2, 3 and 4.**

Report all Contract Employees providing services to the Company and its Affiliates and Tenants and subtenants of Tenants at all Project Locations.

Report information requested only with respect to the Company and its Affiliates at all Project Locations. For item 6, report only the permanent and non-permanent Full-Time Employees and Part-Time Employees of the Company and its Affiliates. **Do not report employees of Tenants. Do not report Contract Employees.**

Indicate the number of employees included in item 6 who are classified as "Exempt", as defined in the federal Fair Labor Standards Act. Generally, an Exempt employee is not eligible for overtime compensation.

Indicate the number of employees included in item 6 who are classified as "Non-Exempt", as defined in the federal Fair Labor Standards Act. Generally, a Non-Exempt employee is eligible for overtime compensation.

Report all sales and use tax exemption benefits realized at all Project Locations by the Company and its Affiliates and granted by virtue of the exemption authority of the City of New York. Do not include any sales and use tax savings realized under the NYS Empire Zone Program.

Report all CEP benefits received by the Company and its Affiliates and any Tenants and subtenants of Tenants at all Project Locations. CEP is a package of tax benefits designed to help qualified businesses to relocate or expand in designated relocation areas in New York City. For more information regarding CEP, please visit <http://www.nyc.gov/dof>

Report all REAP benefits received by the Company and its Affiliates and any Tenants and subtenants of Tenants at all Project Locations. REAP is designed to encourage qualified businesses to relocate employees to targeted areas within New York City. REAP provides business income tax credits based on the number of qualified jobs connected to the relocation of employees. For more information regarding REAP, please visit <http://www.nyc.gov/dof>



**EXHIBIT M-1 - FORM OF ESTOPPEL CERTIFICATE**

**ESTOPPEL CERTIFICATE**

To: New York City Economic Development Corporation  
110 William Street  
New York, New York 10038  
Attn: President

[Landlord]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

Re: Lease between \_\_\_\_\_, a \_\_\_\_\_, as  
Landlord or its assignees ("Landlord"), and \_\_\_\_\_, a  
\_\_\_\_\_ as Tenant ("Tenant") for space in the \_\_\_\_\_,  
(the "Building"), located at \_\_\_\_\_ (the "Land"), dated as  
of \_\_\_\_\_, and amended by that certain \_\_\_\_\_ (if no amendments  
or modifications, then state "none"), dated as of \_\_\_\_\_, (collectively referred  
to as the "Lease").

Tenant acknowledges that New York City Economic Development Corporation (together with its successors, transferees and assigns, collectively hereinafter referred to as the "Lender") has made a loan to Landlord to be secured by the Building and the Land (collectively, the "Real Estate"). Tenant presently leases premises from Landlord within the Building pursuant to the Lease (the "Premises"). In connection with the foregoing, Tenant does hereby certify to Landlord and Lender and their respective successors, assigns and affiliates, and acknowledges and agrees as follows:

1. Tenant understands and acknowledges that Lender made a loan to Landlord and received as part of the security for such loan (i) a certain mortgage encumbering Landlord's fee interest in the Real Estate (of which the Premises are a portion) and the rents, issues and profits of the Lease (as the same may be amended, restated, extended, or otherwise modified from time to time, the "Mortgage"), and (ii) an assignment of leases and rents (as the same may be amended, restated, extended, or otherwise modified from time to time, the "Assignment of Leases") which affects the Lease. Further, Tenant has notice

that the Lease and the rent and all other sums due thereunder have been assigned or are to be assigned to Lender as security for the aforesaid loan secured by the Mortgage.

2. Tenant is in full and complete possession of the Premises demised under the Lease, such possession having been delivered by the Landlord pursuant to the Lease and having been accepted by Tenant.
3. All contributions required to be paid by the Landlord under the Lease to Tenant in connection with improvements to the Premises have been completed in all respects to the satisfaction of Tenant.
4. The improvements to the Premises required to be furnished by the Landlord under the Lease have been completed in all respects to the satisfaction of Tenant, and all common areas of the Real Estate (including, without limitation, parking areas, sidewalks, access ways and landscaping) are in compliance with the Lease and are satisfactory for Tenant's purposes.
5. To the best of Tenant's knowledge and belief, there are no rental, lease, or similar commissions payable with respect to the Lease.
6. The Premises are open for the use of Tenant, its customers, employees and invitees, and Tenant is in actual occupancy of the Premises.
7. All duties and obligations of Landlord required under the Lease which were an inducement to Tenant to enter into the Lease have been fully performed.
8. To the best of Tenant's knowledge, no default exists on the part of Landlord or Tenant under the Lease, nor does any circumstance currently exist that, but for the giving of notice or the passage of time, or both, would be such a default. The Lease constitutes the entire rental agreement between Landlord and Tenant with respect to the Premises and has not been amended, modified or supplemented, except for such amendments, modifications or supplements attached hereto as Exhibit A, and has not been superseded. There are no oral agreements between Landlord and Tenant with respect to the Premises. A true and correct copy of the Lease (including all amendments thereto) is attached to this Tenant Estoppel Certificate as Exhibit A and Tenant agrees not to further amend or modify the Lease without the prior written consent of Lender.
9. No rents under the Lease have been prepaid, except the current month's rent. Tenant agrees that it shall not prepay any rents under the Lease more than one month from the date when such rents are due. Tenant does not now have or hold any claim or defense against Landlord which might be set off or credited against future accruing rents or which might otherwise excuse Tenant's performance under the Lease.

10. Tenant has received no notice of a prior sale, transfer, assignment, hypothecation, or pledge of the Lease or of the rents secured therein.
11. Tenant does not have any outstanding options or rights of first refusal to purchase the Premises, or any part thereof, or to purchase or lease any other part of the Real Estate.
12. No actions, whether voluntary or involuntary, are pending against Tenant or any guarantor of the Lease under any bankruptcy, insolvency or similar laws of the United States of America or any state thereof.
13. The term of the Lease commenced on \_\_\_\_\_ and terminates on \_\_\_\_\_, subject to options to renew, if any, set forth in the Lease.
14. The current monthly base rental payable by Tenant to Landlord under the Lease is \$ \_\_\_\_\_ and the monthly rental for the remainder of the initial Lease term is \$ \_\_\_\_\_. Tenant is current with respect to, and is paying the full rent and other charges stipulated in the Lease (including, without limitation, common area maintenance charges) with no offsets, deductions, defenses or claims.
15. The security deposit under the Lease is currently \$ \_\_\_\_\_.
16. Tenant has not assigned any of its rights under the Lease and Tenant has not sublet all or any portion of the Premises.

[NO FURTHER TEXT ON THIS PAGE]

17. The undersigned representative of Tenant is duly authorized and fully qualified to execute this Tenant Estoppel Certificate on behalf of Tenant thereby binding Tenant.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Tenant:

\_\_\_\_\_

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

Name:

Title:

**EXHIBIT A**  
**COPY OF LEASE**  
**(ATTACHED HERETO)**

**EXHIBIT M-2 - FORM OF SUBORDINATION, NON-DISTURBANCE AND  
ATTORNMENMENT AGREEMENT**

**THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT** (the "Agreement") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2006 by and among \_\_\_\_\_, a \_\_\_\_\_, with its principal office at \_\_\_\_\_, Attention: \_\_\_\_\_ (together with its successors and assigns, "Tenant"), TIAGO HOLDINGS, LLC, a New York limited liability company, with its principal office at \_\_\_\_\_, Attention: \_\_\_\_\_ (together with its successors and assigns, "Landlord") and NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION, a local development corporation formed pursuant to Section 1411 of the Not-for-Profit Corporation Law of the State of New York, having its principal office at 110 William Street, New York, New York 10038 (together with its successors and assigns, "Lender").

**RECITALS:**

A. Pursuant to the terms of that certain Loan Agreement, dated as of January \_\_\_\_, 2007, by and among Lender and Landlord, Lender has made or agreed to make a loan (the "Loan") in the approximate amount of \$5,000,000 to Landlord, which Loan is or will be evidenced by a certain promissory note or notes, given by Landlord to Lender (collectively, the "Note");

B. The Loan is secured by, among other things, one or more mortgages, security agreements and like instruments, given by Landlord to Lender (collectively, the "Security Instrument"), which encumber, among other things, the fee estate of Landlord in certain premises described in Exhibit "A" attached hereto (the "Property");

C. Tenant is entering into or has entered into a lease for a portion of the Property under and pursuant to the provisions of a certain Agreement of Lease dated as of \_\_\_\_\_, 200\_\_ between Landlord, as landlord, and Tenant, as tenant (the "Lease"); and

D. Tenant has agreed to subordinate the Lease to the Security Instrument and to the lien thereof and Lender has agreed to grant non-disturbance to Tenant under the Lease, all on and subject to the terms and conditions hereinafter set forth.

**AGREEMENT:**

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. Subordination. Tenant agrees that the Lease, as the same may hereafter be modified, amended or extended, and all of the terms, covenants and provisions thereof and all

rights, remedies and options of Tenant thereunder are and shall at all times continue to be subject and subordinate in all respects to the Security Instrument and the lien thereof, including without limitation all renewals, increases, modifications, consolidations and extensions thereof.

2. Non-Disturbance. So long as Tenant is not in default under the Lease beyond any applicable notice and cure periods, Lender agrees for itself and its successors in interest and for any purchaser of the Property upon a foreclosure of the Security Instrument for the foreclosure of the Security Instrument or the sale of the Property, Tenant shall not be named as a party therein unless such joinder shall be required by law, provided, however, such joinder shall not result in the termination of the Lease or disturb the Tenant's possession, quiet enjoyment or use of the premises demised thereunder, and the sale of the Property in any such action or proceeding and the exercise by Lender of any of its other rights under the Security Instrument shall be made subject to all rights of Tenant under the Lease. For purposes of this Agreement, a "foreclosure" shall include (but not be limited to) a sheriff's or trustee's sale under the power of sale contained in the Security Instrument, and any other transfer of the Landlord's interest in the Property under peril of foreclosure, including, without limitation to the generality of the foregoing, an assignment or sale in lieu of foreclosure.

3. Attornment. After its receipt of notice from Lender or any person or entity which acquires the Property through a foreclosure (an "Acquiring Party") of the completion of a foreclosure under the Security Instrument or that Lender or Acquiring Party has received a conveyance of the Property in lieu of foreclosure or otherwise obtained the right to possession of the Property, Tenant will be considered to have attorned to and recognized Lender or Acquiring Party as its substitute landlord under the Lease, and Tenant's possession, quiet enjoyment and use of the Property will not be disturbed. The foregoing provision will be self-operative, and will not require the execution of any further instrument or agreement by Tenant to effectuate the attornment and recognition. The attornment and recognition of a substitute landlord will be upon all of the terms set forth in the Lease.

4. No Liability. Lender and Tenant agree that if Lender or any Acquiring Party shall become the owner of the Property by reason of the foreclosure of the Security Instrument or the acceptance of a deed or assignment in lieu of foreclosure or otherwise, the Lease shall not be terminated or affected thereby but shall continue in full force and effect as a direct lease between Lender or any Acquiring Party and Tenant upon all of the terms, covenants and conditions set forth in the Lease and in that event, Tenant agrees to attorn to Lender or Acquiring Party and Lender or Acquiring Party agree to accept such attornment, provided, however, that Lender or Acquiring Party shall not be:

(a) liable for any act or omission of any prior landlord (including Landlord), unless Lender has been given written notice thereof and the same time to cure as afforded Landlord under the Lease, or

(b) subject to any offsets or defenses that Tenant might have against any prior landlord (including Landlord), unless Lender has been given written notice thereof and the same time to cure as afforded Landlord under the Lease,; or

(c) bound by any rent or additional rent which is payable on a monthly basis and which Tenant might have paid for more than one (1) month in advance to any prior landlord (including Landlord), unless such prepayment is required under the Lease;

(d) bound by any amendment or modification of the Lease which would change the term of the Lease or the fixed rent specified therein made without Lender's prior written consent;

(e) be liable to Tenant for any security or other deposits given to secure the performance of Tenant's obligations under the Lease unless and until it receives same; or

(e) bound by any obligation to perform any work or to make improvements to the premises demised under the Lease, except for (i) repairs and maintenance pursuant to the provisions of the Lease, (ii) repairs to the premises demised under the Lease or any part thereof as a result of damage by fire or other casualty pursuant to Article [ ] of the Lease, but, with respect to a fire or other casualty that occurs prior to the date that such Acquiring Party succeeds to the interest of the Landlord under the Lease, only to the extent that such repairs can be reasonably made from the net proceeds of any insurance actually made available to such Acquiring Party, and (iii) repairs to the premises demised under the Lease as a result of a partial condemnation pursuant to Article [ ] of the Lease, but only to the extent that such repairs can be reasonably made from the net proceeds of any award made available to such Acquiring Party.

5. Rent. Tenant hereby agrees to and with Lender that upon receipt from Lender of a notice of any default by Landlord under the Security Instrument, Tenant will pay to Lender directly all rents, additional rents, and other sums due under the Lease. Tenant shall have no responsibility to ascertain whether such demand by Lender is permitted under the Security Instrument, or to inquire into the existence of default by Landlord under the Security Instrument. In the event of the foregoing, Landlord hereby authorizes Tenant to pay to Lender directly all rents, additional rents, and other sums due under the Lease and hereby waives any right, claim or demand it may now or hereafter have against Tenant by reason of such payment to Lender, and any such payment shall discharge the obligations of Tenant under the Lease to make such payment to Landlord. In addition, Landlord hereby indemnifies and holds Tenant harmless from and against any and all claims, causes of actions, demands, liabilities and losses of any kind or nature, including but not limited to attorney's fees and expenses, sustained by Tenant as a result of its payment of the rent, additional rents, and other sums due under the Lease directly to Lender in accordance with the terms and conditions hereof.



6. Lender's Consent. Unless Lender shall give its written consent to the same (which consent shall be obtained by Landlord), (a) Lender shall not be bound by any agreement amending or modifying the Lease which would change the term of the Lease or the fixed rent specified therein and (b) Lender shall not be responsible for any prepayment of the rents, additional rents or other sums due under the Lease for more than one (1) month in advance of the due dates thereof, unless such prepayment is required under the terms of the Lease.

7. Lender to Receive Notices. Tenant shall provide Lender with copies of all written notices of default and written notices seeking to invoke any dispute resolution provisions of the Lease and any other material written notice of a fact or circumstance that could give rise to a right on Tenant's behalf to terminate the Lease, in any case, sent to Landlord pursuant to the Lease simultaneously with the transmission of such notices to the Landlord. Lender shall have the right to remedy any Landlord default under the Lease, or to cause any default of Landlord under the Lease to be remedied during the same time period as Landlord as set forth in the Lease. Tenant shall accept performance by Lender of any term, covenant, condition or agreement to be performed by Landlord under the Lease with the same force and effect as though performed by Landlord.

8. Notices. All notices or other written communications hereunder shall be deemed to have been properly given if given in accordance with the provisions of the Lease and addressed as follows:

If to Tenant:	
with a copy to:	
If to Lender:	New York City Economic Development Corporation 110 William Street New York, New York 10038 Attn: President Fax: 212-312-3916 with a copy via ordinary mail to General Counsel, at the same address
With a copy to:	New York City Corporation Counsel 100 Church Street New York, New York Attention: Economic Development, Division Chief  Fax: 212-227-5648

Landlord:	Forest City Ratner Companies One Metrotech Center North Brooklyn, NY 11201 Attn: EVP of Finance and General Counsel Blumenfeld Development Companies 300 Robbins Lane Syosset, NY 11971 Attn: David Blumenfeld and David Kaplan
With a copy to:	Fried, Frank, Harris, Shriver & Jacobsen LLP ("FF") One New York Plaza New York, NY 10004-1980 Attn: Jonathan Mechanic, Esq.

or to such other address in the United States as such party from may from time to time designate by written notice to the other parties.

9. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Lender, Landlord and Tenant and their respective successors and assigns.

10. Definitions. The term "Lender" as used herein shall include the successors and assigns of Lender and any person, party or entity which shall become the owner of the Property by reason of a foreclosure of the Security Instrument or the acceptance of a deed or assignment in lieu of foreclosure or otherwise to which Tenant has received written notice of. The terms "Tenant" and "Landlord" as used herein include any successor and assign of the named Tenant and Landlord herein, respectively.

11. No Oral Modifications. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by all the parties hereto, or if the Note is paid in full, this Agreement shall automatically terminate.

12. Governing Law. This Agreement shall be governed, construed, applied and enforced in accordance with the laws of the State where the Property is located.

13. Inapplicable Provisions. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to be enforceable, or if such modification is not practicable, such provision shall be deemed deleted from this Agreement, and the other provisions of this Agreement shall remain in full force and effect.

14. Duplicate Originals; Counterparts. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single agreement. This Agreement shall not be binding on Tenant until a fully-executed and recorded copy hereof has been returned to it.

15. Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular forms of nouns and pronouns shall include the plural and vice versa.

[NO FURTHER TEXT ON THIS PAGE]

16. Tenant's Personal Property. It is expressly agreed to between Lender, Landlord and Tenant that in no event shall the Security Instrument cover or encumber (shall not be construed as subjecting in any manner to the lien thereof) any of Tenant's moveable trade fixtures, business equipment, furniture, signs, inventory, or other personal property at any time placed in, on or about the Property.

IN WITNESS WHEREOF, Lender, Landlord and Tenant have duly executed this Agreement as of the date first above written.

**[SIGNATURES ON FOLLOWING PAGES]**



TENANT:

WITNESSES:

\_\_\_\_\_

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

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

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

Name:

Its:

Date:

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

) ss.

COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2006, before me, \_\_\_\_\_, a Notary Public in and for said State, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, of the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

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

My Commission Expires: \_\_\_\_\_







**EXHIBIT A**

**Description of Property**

**[see attached] EXHIBIT N - LIST OF CONSTRUCTION CONTRACTS**

**EXHIBIT O**

**FORM OF QUARTERLY COMPLIANCE CERTIFICATE OF BORROWER**

The undersigned, as the \_\_\_\_\_ of TIAGO HOLDINGS, LLC, a New York limited liability company ("Borrower") is/are each a "Borrower Authorized Representative" as such term is defined in that certain Loan Agreement dated as of January \_\_, 2007 (the "Loan Agreement," to which reference is made for the definition of capitalized terms not otherwise defined herein), by and between Borrower and NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION, (together with its transferees, assignees and/or participants of interests in the Loan from time to time, the "Lender"), relating to that certain loan from Lender to Borrower in an amount in the aggregate not to exceed \$5,000,000 (the "Loan"), as required by Section 10.7 of the Loan Agreement, hereby certifies as follows:

- (a) Attached hereto is a copy of the financial statements for the immediately preceding [fiscal year]/[fiscal quarter][,along with an audit report thereon prepared by an independent public accountant,] covering the operations of Borrower for such [fiscal year]/[fiscal quarter] and containing a statement of financial position statement of activities, and statement of cash flows, showing in each case in comparative form the financial figures for the preceding [fiscal year]/[fiscal quarter].
- (b) Borrower has made a review of the activities of Borrower and its Affiliates during the preceding [fiscal year]/[fiscal quarter] for the purpose of determining whether or not Borrower has complied with all of the terms, provisions and conditions of the Loan Agreement and Borrower has kept, observed, performed and fulfilled each and every covenant, provision and condition of the Loan Agreement and the other Loan Documents on its part to be performed.
- (c)
  - No Event of Default has occurred and is continuing; or
  - An Event of Default has occurred and is continuing, under the following circumstances:  
  
[insert details or attach description]
- (d) During the preceding fiscal year, Borrower has not incurred any debt (other than the Senior Loans, Subordinate Loans, the NMTC Loan, the Bonds and the BofA Unsecured Loan).

[if Borrower has incurred any debt (other than the Senior Loans, Subordinate Loans, the Bonds, the NMTC Loan and the BofA Unsecured Loan), insert details or attach description]

- (e) During the preceding fiscal year and as of the date hereof Borrower had and has in place insurance on the Property with responsible and reputable insurance companies satisfactory to Lender in such amounts and against such risks as is required pursuant Article 5 of the Loan Agreement [and Section 4.5 of the Installment Sale Agreement].
- (f) Borrower is not in default under any of the Loan Documents, Senior Loan Documents, Bond Facility Documents, Subordinate Loan Documents, or any of the Other Related Documents.

Dated: \_\_\_\_\_

**BORROWER:**

**TIAGO HOLDINGS, LLC,**  
a New York limited liability company

By: **FC East River Associates, LLC,**  
a New York limited liability company,  
its managing member

By: **RRG East River, LLC**  
a New York limited liability company,  
its managing member

\_\_\_\_\_  
Name:

Title:

By: **F.C. Member, Inc.**  
a New York corporation

**EXHIBIT P**  
**FORM OF TENANT'S EMPLOYMENT REPORT**

Exhibit "P"

**TENANT'S EMPLOYMENT and BENEFITS REPORT**  
**Semi-Annual Employment Reporting Form**

In order to comply with New York State, New York City and UMEZ reporting requirements please complete this form and return to: **Larry Rose**

Forest City Ratner Companies  
1 MetroTech Center North  
Brooklyn, New York 11201

Due no later than **February 1<sup>st</sup>** and **August 1<sup>st</sup>** of each calendar year.

Tenant Name: \_\_\_\_\_

Project Location: \_\_\_\_\_

**PLEASE SEE BELOW FOR THE INSTRUCTIONS AND DEFINITIONS OF CAPITALIZED TERMS USED ON THIS PAGE AND THE ATTACHED EMPLOYMENT REPORTING TABLE.**

**DEFINITIONS:**

**"CEP"** Commercial Expansion Program, which is a package of tax benefits designed to help qualified businesses to relocate or expand in designated relocation areas in New York City. For more information regarding CEP, please visit <http://www.nyc.gov/dof>.

**"Contract Employee"** is an employee who is an independent contractor (i.e., a person who is not an "employee"), or is employed by an independent contractor (an entity other than the Tenant), who provides services at a Project Location.

**"EZ"** The New York Empowerment Zone, which can be determined by using the EZ address locator at [www.hud.gov/crlocator](http://www.hud.gov/crlocator).

**"Full-Time Employee"** is an employee who has worked at a Project Location for at least 35 hours per week for not less than 4 consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended by Tenant to other employees with comparable rank and duties.

**"Non-Permanent Employee"** is an employee who is hired with a specific termination date, which includes a temporary worker, seasonal worker, etc.

**"Part-Time Employee"** is an employee who has worked at a Project Location for less than 35 hours per week for not less than 4 consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended by Tenant to other employees with comparable rank and duties.

**"REAP"** Relocation and Employment Assistance Program, which is designed to encourage qualified businesses to relocate employees to targeted areas within New York City. REAP provides business income tax credits based on the number of qualified jobs connected to the relocation of employees. For more information regarding REAP, please visit <http://www.nyc.gov/dof>.

**"UM"** Upper Manhattan, which is the geographical footprint that consist of (i) north of East 96<sup>th</sup> Street and (ii) north of West 110<sup>th</sup> Street to the tip of Inwood from river to river. UM zip codes include 10026, 10027, 10029, 10030, 10031, 10032, 10033, 10034, 10035, 10037, 10039, and 10040

**Employment Reporting**

Number of Employees as of the last payroll date on or prior to the end of the quarterly period

Semi-Annual Period Ending: \_\_\_\_\_

	March 31	June 30	Sept. 30	Dec. 31	Annual Average
<b>Full-Time Employees:</b>					
EZ Permanent Employees <sup>(2)</sup>					
UM Permanent Employees <sup>(3)</sup>					
Other Permanent Employees <sup>(4)</sup>					
<b>Total Permanent Full-Time Employees</b>					
Non-permanent Full-Time Employees					
<b>Total Full-Time Employees</b>					
<b>Part-Time Employees:</b>					
EZ Permanent Employees <sup>(2)</sup>					
UM Permanent Employees <sup>(3)</sup>					
Other Permanent Employees <sup>(4)</sup>					
<b>Total Permanent Part-Time Employees</b>					
Non-permanent Part-Time Employees					
<b>Total Part-Time Employees</b>					
<b>Contract Employees</b>					
Value of CEP benefits	\$	\$	\$	\$	
Value of REAP benefits	\$	\$	\$	\$	

**Notes:**

- To be completed by Governmental Agencies ONLY
- Please use EZ Address Locator at [www.hud.gov/crlocator](http://www.hud.gov/crlocator) to verify. Excludes non-permanent employees
- Do not include the EZ employees or non-permanent employees
- Do not include EZ employees, UM employees or non-permanent employees

**Note:** if the reported employment figures vary in a material respect from those reported to the New York State Department of Labor on Form NYS-45, which by signing below you authorize the Empire State Development Corporation ("ESDC") to view, please attach an explanation identifying reasons for the differences.

**Certification:** I, the undersigned, an authorized officer or principal owner of the Tenant, hereby certify to the best of my knowledge and belief, that all information contained in this report is true and complete. This form and information provided pursuant hereto may be disclosed to the New York City Economic Development Corporation ("NYCEDC"), New York City Industrial Development Agency ("NYCIDA"), ESDC, Upper Manhattan Empowerment Zone Development Corporation ("UMEZ") (collective known as the "Agencies") and may be disclosed by the Agencies in connection with the administration of the programs of NYCEDC and/or NYCIDA and/or the City of New York and/or ESDC and/or UMEZ; and, without limiting the foregoing, such information may be included in (x) reports prepared by NYCEDC pursuant to New York City Charter Section 1301 et. seq., (y) other reports required of the Agencies, and (z) any other reports or disclosure required by law.

Any false statement herein may cause the Tenant to be in default with Tenant's lease and may cause the landlord to be in default under the loan agreements with the Agencies.

Tenant Name: \_\_\_\_\_  
 Signature By: \_\_\_\_\_ Date: \_\_\_\_\_  
 Name (print): \_\_\_\_\_ Title: \_\_\_\_\_  
 Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

EXHIBIT Q - FORM OF ENVIRONMENTAL EASEMENT

## ENVIRONMENTAL EASEMENT

THIS INDENTURE made this \_\_\_ day of \_\_\_\_\_, 200\_\_\_, between Tiago Holdings, LLC ("Grantor Fee Owner"), a New York corporation, having an office at 300 Robbins Lane, Syosset, New York, and The People of the State of New York (the "Grantee"), acting through their Commissioner of the Department of Environmental Conservation (the "Commissioner", or "NYSDEC" or "Department" as the context requires) with its headquarters located at 625 Broadway, Albany, New York 12233,

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to encourage the remediation of abandoned and likely contaminated properties ("brownfield sites") that threaten the health and vitality of the communities they burden while at the same time ensuring the protection of public health and the environment; and

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to establish within the Department a statutory environmental remediation program that includes the use of environmental easements as an enforceable means of ensuring the performance of operation, maintenance, and/or monitoring requirements and of ensuring the potential restriction of future uses of the land, when an environmental remediation project leaves residual contamination at levels that have been determined to be safe for a specific use, but not all uses, or which includes engineered structures that must be maintained or protected against damage to perform properly and be effective, or which requires groundwater use or soil management restrictions; and

WHEREAS, the Legislature of the State of New York has declared that environmental easement shall mean an interest in real property, created under and subject to the provisions of Article 71, Title 36 of the New York State Environmental Conservation Law ("ECL") which contains a use restriction and/or a prohibition on the use of land in a manner inconsistent with engineering controls which are intended to ensure the long term effectiveness of a brownfield site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and

WHEREAS, Grantor Fee Owner, is the owner of real property located in the City of New York, New York County, New York known and designated on the tax map of the Borough of Manhattan Block 1715, Lot 22, Block 1716, p/o Lot 19, Block 1815, Lot 23, and Block 1815, Lot 31, which is designated as Site No. C231045 under the Brownfield Cleanup Agreement which is comprised of approximately 4.5 acres, hereinafter described in Schedule A attached hereto and made a part hereof (the "Controlled Property"); and

WHEREAS, the Commissioner does hereby acknowledge that the Department accepts this Environmental Easement in order to ensure the protection of human health and the environment and to achieve the requirements for remediation established at this Controlled Property until such time as this Environmental Easement is extinguished pursuant to ECL Article 71, Title 36; and

NOW, THEREFORE, in consideration of the covenants and mutual promises contained herein



and the terms and conditions of Brownfield Cleanup Agreement Index No.: W2-1068-05-06, Grantor grants, conveys and releases to Grantee a permanent Environmental Easement pursuant to Article 71, Title 36 of the ECL in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement").

1. Purposes. Grantor and Grantee acknowledge that the Purposes of this Environmental Easement are: to convey to Grantee real property rights and interests that will run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of this Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements; and to ensure the potential restriction of future uses of the land that are inconsistent with the above-state purpose.

2. Institutional and Engineering Controls. The following controls apply to the use of the Controlled Property, run with the land are binding on the Grantor and the Grantor's successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any leases, and any person using the Controlled property:

A. The Controlled Property may be used for commercial use.

B. The Controlled Property may be used for restricted residential use as long as the following long-term engineering and institutional controls are employed:

a) all engineering controls (including the site cap) must be operated and maintained as specified in the Site Management Plan approved by the Department for the Controlled Property (the "Site Management Plan");

b) annual inspections and certifications must be conducted in accordance with the Site Management Plan;

c) groundwater and other environmental or public health monitoring, and reporting of information thus obtained, must be performed in a manner specified in the Site Management Plan;

d) onsite environmental monitoring devices, including but not limited to, groundwater monitor wells, will be protected and replaced as necessary to ensure continued functioning in the manner specified in the Site Management Plan; and

e) vegetable gardens are prohibited, and residential habitation will not take place in the basement or first floor.

C. All future soil disturbance activities, including building renovation/expansion, subgrade utility line repair/relocation, and new construction are conducted in accordance with the NYSDEC-approved Site Management Plan.

D. The use of the groundwater underlying the Controlled Property is prohibited without treatment rendering it safe for intended purpose.

E. The Controlled Property may not be used for a higher level of use such as unrestricted use and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

F. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of Article 71, Title 36 of the ECL, the property deed and all subsequent instruments of conveyance relating to the Controlled Property shall state in at least fifteen-point bold-faced type:

**This property is subject to an environmental easement held by the New York State Department of Environmental Conservation pursuant to Title 36 to Article 71 of the Environmental Conservation Law.**

G. Grantor covenants and agrees that this Environmental Easement shall be incorporated in full or by reference in any commercial leases, license, or other instruments granting a right to use the Controlled Property.

H. Grantor covenants and agrees that it shall annually, or such time as NYSDEC may allow, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury that the controls employed at the Controlled Property are unchanged from the previous certification or that any changes to the controls employed at the Controlled Property were approved by the NYSDEC, and that nothing has occurred that would impair the ability of such control to protect the public health and environment or constitute a violation or failure to comply with any Site Management Plan for such controls and giving access to such Controlled Property to evaluate continued maintenance of such controls.

3. Right to Enter and Inspect. Grantee, its agents, employees, or other representatives of the State may enter and inspect the Controlled Property in a reasonable manner and at reasonable times to assure compliance with the above-stated restrictions.

4 Reserved Grantor's Rights. Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights as fee owner of the Controlled Property, including:

A. Use of the Controlled Property for all purposes not inconsistent with, or limited b' the terms of this Environmental Easement;

B. The right to give, sell, assign, or otherwise transfer the underlying fee interest to the Controlled Property by operation of law, by deed, or by indenture, subject and subordinate to this Environmental Easement.

5. Enforcement

A. This environmental easement is enforceable in law or equity in perpetuity by Grantor, Grantee, or any affected local government, as defined in ECL Section 71-3603, against the owner of the Property, any lessees, and any person using the land. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel, or waiver. It is not a defense in any action to enforce this environmental easement that: it is not appurtenant to an interest in real property; it is not of a character that has been recognized traditionally at common law; it imposes a negative burden; it imposes affirmative obligations upon the owner of any interest in the burdened property; the benefit does not touch or concern real property; there is no privity of estate or of contract; or it imposes an unreasonable restraint on alienation.

B. If any person intentionally violates this environmental easement, the Grantee may revoke the Certificate of Completion provided under ECL Article 27, Title 14, or the Satisfactory Completion of Project provided under ECL Article 56, Title 5 with respect to the Controlled Property.

C. Grantee shall notify Grantor of a breach or suspected breach of any of the terms of this Environmental Easement. Such notice shall set forth how Grantor can cure such breach or suspected breach and give Grantor a reasonable amount of time from the date of receipt of notice in which to cure. At the expiration of such period of time to cure, or any extensions granted by Grantee, the Grantee shall notify Grantor of any failure to adequately cure the breach or suspected breach. Grantor shall then have a reasonable amount of time from receipt of such notice to cure. At the expiration of said second period, Grantee may commence any proceedings and take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement in accordance with applicable law to require compliance with the terms of this Environmental Easement.

D. The failure of Grantee to enforce any of the terms contained herein shall not be deemed a waiver of any such term nor bar its enforcement rights in the event of a subsequent breach of or noncompliance with any of the terms of this Environmental easement.

6. Notice. Whenever notice to the State (other than the annual certification) or approval from the State is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing its County tax map number or the Liber and Page or computerized system tracking /identification number and address correspondence to:

Division of Environmental Enforcement  
Office of General Counsel  
New York State Department of Environmental Conservation

625 Broadway  
Albany, New York 12233-5500

Such correspondence shall be delivered by hand, or by registered mail or by Certified mail and return receipt requested. The Parties may provide for other means of receiving and communicating notices and responses to requests for approval.

7. Recordation. Grantor shall record this instrument, within thirty (30) days of execution of this instrument by the Commissioner or her/his authorized representative in the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

8. Amendment. This environmental easement may be amended only by an amendment executed by the Commissioner of the New York State Department of Environmental Conservation and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

9. Extinguishment. This environmental easement may be extinguished only by a release by the Commissioner of the New York State Department of Environmental Conservation and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

10. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its name.

Tiago Holdings, LLC

By: FC East River Associates, LLC

By: RRG East River, LLC

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: DWD Associates, LLC

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

THIS ENVIRONMENTAL EASEMENT IS HEREBY  
ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK,  
Acting By and Through the Department of Environmental Conservation

By: \_\_\_\_\_  
Denise M. Sheehan, Commissioner

Grantor Fee Owner's Acknowledgment

STATE OF NEW YORK    )  
  )ss:  
COUNTY OF            )

On the \_\_\_\_\_ day of, in the year 200\_, 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 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

Grantee's Acknowledgment

STATE OF NEW YORK    )  
  )ss:  
COUNTY OF            )

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 200\_, 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 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.

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Notary Public State of New York