

SIXTH AMENDMENT TO THE LEASE
DATED AS OF NOVEMBER 18, 1969
BETWEEN THE CITY OF NEW YORK AND
K.F.I. DISTRIBUTORS, INC.

THIS SIXTH AMENDMENT (the "Sixth Amendment") is executed on the 22 day of June, 2021, by and between CITY OF NEW YORK ("Lessor"), a municipal corporation of the State of New York State, acting by and through its Department of Small Business Services, having an office at 1 Liberty Plaza, New York, New York 10006, and K.F.I. FOOD DISTRIBUTORS, INC., a New York corporation, having its principal place of business at Hunts Point Food Distribution Center, 400 Food Center Drive, Bronx, New York ("Lessee").

WITNESSETH:

WHEREAS, the Board of Estimate of the City of New York ("BOE") pursuant to law, by resolution adopted at a meeting held on October 9, 1969 (Cal. No. 18), did approve and authorize and the parties did execute a lease, made November 19, 1969, upon the terms and conditions in said original resolution ("Original Lease"); and

WHEREAS, the BOE, pursuant to law, by resolution adopted at a meeting held on November 16, 1978 (Cal. No. 7), did authorize and the parties did execute a First Amendatory Agreement, made October 25, 1979 ("First Amendment"); and

WHEREAS, pursuant to Local Law No. 61 of 1991, the Department of Business Services has succeeded to all the rights, duties and responsibilities of the Department of Ports and Terminals; and

WHEREAS, the Department of Small Business Services and Lessee, did execute a Second Amendment dated as of October 11, 1991 ("Second Amendment"), a Third Amendment dated as of May 4, 1994 ("Third Amendment"), a Fourth Amendment dated as of February 15, 1997 ("Fourth Amendment"), and a Fifth Amendment dated as of June 1, 2006 ("Fifth Amendment"); and together with the Original Lease, the First Amendment, the Second Amendment, the Third Amendment and the Fourth Amendment, hereinafter referred to as the "Lease"); and

WHEREAS, Lessor and Lessee desire to amend and modify the Lease to alter the demised premises, extend the term of the Lease, and provide for additional capital work to be performed at the demised premises among other things set forth in this Sixth Amendment; and

WHEREAS, Lessor and Lessee have entered into that certain "Access and Indemnification Agreement for Site Testing Work" dated as of April 21, 2020 wherein Lessee has permitted Lessor to enter upon the demised premises and to conduct environmental testing thereat

so as to develop and propose an environmental remediation work plan in accordance with the Brownfield Cleanup Program (“BCP”) of the New York State Department of Environmental Conservation (“NYSDEC”); and

WHEREAS, the Lessor has retained New York City Economic Development Corporation (“NYCEDC”), a New York not-for-profit corporation pursuant to that certain Amended and Restated Maritime Contract dated as of June 30, 2020 (as amended from time to time, the “NYCEDC Contract”) to perform certain economic development services described therein; and

WHEREAS, NYCEDC, in accordance with the NYCEDC Contract, shall function as Lease Administrator (as defined in Paragraph 2 hereof); and

WHEREAS, Lessor and Lessee are desirous of amending and modifying the Lease to allow Lessor, Lease Administrator and its contractors to enter upon the demised premises for the purposes of performing certain environmental remediation work in accordance with the “Remedial Action Work Plan”, as shall be approved by NYSDEC (the “Environmental Remediation”)]; and

WHEREAS, Lessee currently employs 200 union members at the demised premises and is committed to maintaining this level of employment; and

WHEREAS, the Department of Small Business Services is authorized to enter into this Sixth Amendment pursuant to the New York City Charter, Section 1301.2(a);

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee do hereby mutually agree to amend the Lease as follows:

1. Definitions. All capitalized terms used in this Sixth Amendment but not otherwise defined in this Sixth Amendment shall have the meanings ascribed to such terms in the Lease.
2. Lease Administrator. Article FIRST is hereby amended by replacing the word “Administrator” with, “Lease Administrator”. Article FIRST is hereby further amended by adding the following as the third paragraph of Article FIRST:

“Pursuant to the NYCEDC Contract, NYCEDC will administer this Lease and act for and on behalf of Lessor with respect to Lessor’s proprietary interest and, unless otherwise specified, Lessor’s rights and obligations as Lessor under this Lease (NYCEDC in such capacity or its successor as lease administrator, “Lease Administrator”). Except as may be expressly provided herein, unless and until Lessee is notified in writing to the contrary by Lease Administrator or the Commissioner, without limitation: (i) submissions of documents or deposits of funds to Lessor shall be given or made solely to Lease Administrator, (ii) all approvals, consents and waivers by Lessor shall be sought from and granted or denied by Lease Administrator, (iii) all communications to Lessee from Lease Administrator, including but not limited to notices of default, notices of termination, bills, invoices and any other notices and

demands executed and/or delivered by Lease Administrator (or any entity designated by Lease Administrator to act on its behalf) shall be deemed as having been fully authorized by Lessor and having the same force, effect and validity as if executed and/or delivered by Lessor, (iv) all rights of Lessor with respect to inspection and other aspects of Lease enforcement shall be exercised by Lease Administrator, and (v) some or all of Lessor's functions hereunder may be performed by the Lease Administrator. Anything above to the contrary notwithstanding, the City's Commissioner ("Commissioner") of the Department of Small Business Services or his or her jurisdictional successor, or the authorized representative of either and the Deputy Mayor to whom the Commissioner reports may directly exercise Lessor's rights under this Lease and it is understood that Lease Administrator has no authority to bind Lessor to any amendments to this Lease. In the event Lessor notifies Lessee in writing that there is no longer any Lease Administrator, all references to Lease Administrator in this Lease shall become references to Lessor.

3. Demised Premises. The demised premises in the Lease are hereby amended to exclude the rip rap from the demised premises as further depicted on the illustration and described in the survey, attached hereto on Exhibit A.
4. Use. Article First is further amended and supplemented to include the following paragraph at the end of said Article:

Lessee acknowledges and understands that Lessor has agreed to the restrictive covenant set forth below pursuant to a lease between Lessor and Fulton Fish Market Cooperative at Hunts Point (the "Fish Covenant"), and Lessee shall not use the demised premises nor permit the demised premises to be used in a manner such that Lessor would be in violation of the Fish Covenant.

Fish Covenant: "Restriction on New Seafood Markets. During the Term, Lessor shall not actively promote or develop in the City of New York any other "public wholesale market" (as defined in Section 22-251(h) of the City's Administrative Code) for the wholesale distribution of seafood, provided that this provision is not intended to and shall not preclude Lessor, acting in its governmental capacity, from designating any area(s) in the City as a public wholesale market or a public seafood market for the primary purpose of regulating the same."

5. Assignment and Transfer. Article SECOND of the Lease is hereby amended such that the Original Lease paragraphs are hereby given the heading, "Section 2.1". Article SECOND is further amended and supplemented to include the following Section at the end of said Article:

Section 2.2 Lessee's Right to Mortgage, Assign and Transfer.

- (a) Notwithstanding the foregoing, following completion of the Solar Project (defined in Article EIGHTH), Lessee may, without Lessor's consent but subject to the requirements of Section 2.2(c), Section 2.2(e)(i) and Section 2.2(e)(iv) and other provisions of this Article SECOND (including the provision of notice to Lessor):

- (i) Mortgage its interest in this Lease and the leasehold estate in the demised premises created hereby to one or more Recognized Mortgagees in accordance with the provisions of this Article 2A;
 - (ii) Assign or Transfer this Lease pursuant to a bona fide foreclosure proceeding or a bona fide Assignment or Transfer in lieu of foreclosure, to a Recognized Mortgagee or designee of a Recognized Mortgagee, provided, however, that such Assignee or Transferee must meet the requirements of Section 2.2(c) hereof;
 - (iii) Make to an Affiliate, an Assignment or Transfer; or
 - (iv) Transfer, directly or indirectly, an Equity Interests in Lessee, provided that such Transfer does not effect a change in Control (as defined in Article FORTYFIRST of this Lease) of Lessee.
 - (v) Provided, however, that in each of the foregoing instances, Lessee shall provide Lessor with thirty (30) days' prior written notice of any such Assignment or any Transfer of more than a 5% direct or indirect Equity Interest in Lessee.
 - (vi) Notwithstanding anything in this Section 2.2(a) to the contrary, prior to effecting any Assignment or Transfer of Equity Interests as described in this Section 2.2(a), Lessee or any holder of a direct or indirect Equity Interest in Lessee shall submit the Due Diligence Requirements set forth in Section 2.2(e)(iv) below regarding any proposed party to any such transaction and request a determination by Lessor of its status as a Permitted Person prior to consummating such transaction, which determination shall be valid so long as such transaction is consummated within sixty (60) days following such determination (provided no material adverse change to such prospective party has occurred prior to the expiration of such 60 day period).
- (b) Definitions.
- (i) "Assignment" means the sale, exchange or assignment of all or any portion of Lessee's interest in this Lease or the leasehold estate created hereby whether by operation of law or otherwise, including a foreclosure sale or an assignment in lieu of foreclosure.
 - (ii) "Assignee" means an assignee under an Assignment.
 - (iii) "Equity Interest" means, with respect to any Entity, (A) the ownership of (i) outstanding stock of such Entity if such Entity is a corporation, a real estate investment trust or a similar Entity, (ii) a capital, profits, membership, or partnership interest in such Entity if such Entity is a limited liability company, partnership or joint venture, (iii) interest in a trust if such Entity is a trust.

- (iv) “Permitted Person” means any Person that shall have met all of the following conditions:
- (a) such Person is properly submitted to the PASSPort review process (or any successor system serving the same function) at least sixty days prior to the anticipated date of any proposed transaction (including but not limited to mortgages, transfers, assignments, subleases, and construction contracts).
 - (b) such Person is properly enrolled in PASSPort and provided all required information for a complete PASSPort review and such information does not indicate a lack of business integrity.
 - (c) such Person is registered pursuant to any then existing governmental market regulations governing the Premises.
 - (d) such Person is not (1) in default or in breach, beyond any applicable grace period, of its obligations under any material written agreement with the City and (2) directly or indirectly controlled, controlled by, or under common control with a Person that is in default or in breach, beyond any applicable grace period, of its obligation under any material written agreement with the City, in each case unless such default or breach has been waived in writing by the entity with which such agreement was made.
 - (e) such Person has not (1) been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure, and (2) been directly or indirectly controlled, controlled by, or under common control with a Person that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure. The determination as to whether any Person is an organized crime figure or directly or indirectly controls, is controlled by, or is under common control with a Person that an organized crime figure shall be within the sole discretion of the City.
 - (f) any government, or any Person that (i) is not directly or indirectly controlled by a government that is finally determined to be in violation of (including, but not limited to, any participant in an international boycott in violation of) the Federal Export Administration Act of 1979, as amended, or any successor statute, or the regulations issued pursuant thereto and (ii) is not controlled by a government that is subject to the regulations or controls thereof. Such control shall not be deemed to exist in the absence of a determination to that effect by a Federal court, beyond right of appeal, or by the Federal government or the appropriate agency thereof.
 - (g) any government, or any Person that, directly or indirectly, is not controlled by a government, the effects of the activities of which are regulated or controlled pursuant to regulations of the United States Treasury Department or executive orders of the President of the United States of America issued pursuant to the federal Trading with the Enemy Act of 1917, as amended.

- (h) such Person has not received written notice of default in the payment to the City of any real estate taxes, sewer rents, water charges, or other Imposition totaling more than Ten Thousand Dollars (\$10,000) that have not been cured or satisfied (also any Person that is not directly controlled, controlled by, or under common control with a Person in such default), unless such default is then being contested in good faith in accordance with the law or an agreed payment plan has been approved by the office of the Commissioner of Finance.
- (i) such Person (1) has not, at any time in the preceding three (3) years, owned any property which, while in the ownership of such Person, was acquired by the City by in rem tax foreclosure, other than a property in which the City has released or is in the process of releasing its interest pursuant to the Administrative Code of the City, and (2) has not, directly or indirectly controlled, been controlled by, or been under common control with a Person that has, at any time in the preceding three (3) years, owned any property which, while in the ownership of such Person, was acquired by the City by in rem tax foreclosure, other than a property in which the City has released or is in the process of releasing its interest pursuant to the Administration Code of the City.
- (v) “Transfer“ means (A) the sale, assignment or transfer of the Equity Interests of any Entity that is Lessee or that is a general partner or managing member of any Entity that is Lessee or Krasdale Food Inc.; or (B) the issuance of additional stock or Equity Interests in any Entity that is Lessee or that is a general partner of any Entity that is Lessee; or (C) the sale, assignment, redemption or transfer of any general partner’s or managing member’s Equity Interests in a partnership or limited liability company that is Lessee or in a partnership or limited liability company that is a general partner or managing member in Lessee; or (D) a change in the capacity to direct the business policies or management of Lessee or of the Entity that is the general partner or managing member of Lessee. However, the term “Transfer” shall not include the sale, issuance or exchange of shares in a company whose shares are or become publicly traded on a national or regional stock exchange.
- (vi) “Transferee“ means a Person to which a Transfer is made.
- (c) Assignment or Transfer Instruments and Requirements. As a condition to Lessor consenting to any Assignment or Transfer, or even if Lessor consent is not required, all Assignees and Transferees and their subsequent assignees and transferees and so forth, as applicable, shall deliver to Lessor, or shall cause to be delivered to Lessor, within thirty (30) days after the execution thereof:
- (i) in the case of an Assignment, an executed counterpart of the instrument of Assignment and an executed counterpart of the instrument of assumption by the Assignee of Lessee’s obligations under this Lease, to be in form and substance reasonably satisfactory to Lessor, pursuant to which such Assignee shall:
- A. assume in writing the obligations of Lessee under this Lease arising from and after the date of the Assignment;

- B. take its interest subject to the terms hereunder;
 - C. confirm that the representations of Lessee as set forth in this Lease are true with respect to the Assignee; and
 - D. deliver or cause to be delivered to the Lessor and Lease Administrator certificates of insurance (with copies of actual endorsements) signed by a person authorized by that insurer to bind coverage on its behalf in form satisfactory to Lessor or Lease Administrator.
 - E. comply with Lessee's requirements set forth herein; provided that in the case of an Assignment pursuant to a bona fide foreclosure proceeding, or a bona fide assignment in lieu of foreclosure, the Assignee's obligations shall be limited to payment of rental and the satisfaction of the other obligations of Lessee, subject to any legal limitations imposed pursuant to the foreclosure proceedings, whether accruing prior to, on, or after the effective date of such Assignment.
- (ii) in the case of a Transfer, an executed counterpart of the instrument of Transfer, and if the Transfer is effected through admission of a new or substitute partner of Lessee all relevant amendments to the partnership or related agreement and, if applicable, the certificate of limited partnership or related certificate.
- (d) Release of Assignor. If, as and when Lessee consummates an Assignment permitted in accordance with this Article SECOND and the Assignee assumes Lessee's obligations under this Lease, then from and after the date of such Assignment, Lessee who so Assigned this Lease shall have no further obligations or liability hereunder, other than any obligations that arose before the effective date of such Assignment (unless such obligations are expressly assumed by the Assignee).
- (e) Additional Requirements for Assignments and Transfers. Prior to Lessee's request for consent to an Assignment or Transfer following completion of the Solar Project, Lessee must satisfy the following requirements.
- (i) Lessee shall give Lessor not less than thirty (30) days' prior notice of the proposed Assignment or Transfer, which notice shall be treated confidentially by Lessor and shall not be disclosed to any Person other than officers, employees, agents and designees of Lessee who need knowledge thereof to perform their duties in respect of this Lease (except to the extent any such disclosure is required by law, including without limitation the Freedom of Information Law); such notice shall state the name of the proposed assignee and the material terms thereof, including the basic material economic terms;
 - (ii) The Assignment or Transfer complies with the requirements of Section 2.2(c) above;

- (iii) As of the effective date of the Assignment or Transfer, the proposed assignee shall be a Qualified Transferee, as defined in Section 2.2(e)(v), below;
- (iv) Not less than sixty (60) days prior to any proposed Assignment or Transfer, any proposed Assignee or Transferee shall deliver to Lease Administrator the Required Disclosure Statement in the form attached hereto as Exhibit F. Additionally, any proposed Assignee or Transferee hereunder shall be subject to the other due diligence requirements hereunder, including, but not limited to the NYCEDC Internal Background Investigation Questionnaire (such due diligences requirements hereinafter collectively referred to as the “Due Diligence Requirements”). Lessee understands and agrees that if the information set forth in the Required Disclosure Statement or in connection with the Due Diligence Requirements reveals that the proposed Assignee or Transferee is not a Permitted Person or otherwise is a person with whom the City will generally not do business, then the Assignment or Transfer shall not be permitted.
- (v) For purposes of this Section 2.2(e), “Qualified Transferee” means an assignee of this Lease where such assignee (A) is a regional or national food distributor, (B) has a gross minimum revenue of not less than Two Hundred Million Dollars (\$200,000,000), (C) has been in operation as a regional or national food distributor for at least ten (10) years and (D) demonstrates to Lessor in Lessor’s reasonable discretion that the assignee has the ability to perform or cause the performance of Lessee’s obligations under this Lease. Furthermore, the applicable assignee and each of its Principals or any Person in Control of the applicable assignee shall be a Permitted Person.
- (f) Limitations on Right to Assign or Transfer. Notwithstanding anything set forth in this Article SECOND to the contrary, Lessee shall have no right to enter into an Assignment or Transfer:
 - (i) if on the effective date of such Assignment or Transfer there is an Event of Default (as defined in Article TWENTIETH of this Lease) that has occurred and is continuing;
 - (ii) if the proposed Assignee or Transferee fails to deliver a Required Disclosure Statement, as provided in Section 2.2(e)(iv), in form and substance acceptable to Lessor acting in its sole discretion;
 - (iii) if the proposed Assignee or Transferee is not a Permitted Person; or
 - (iv) if the proposed Assignee or Transferee does not comply with the Due Diligence Requirements herein prior to the commencement date of the applicable transaction.
- (g) Requirement of Lessor. Lessor shall respond to any request for approval of an Assignment or Transfer within ninety (90) days of submission of the request and all documents required to be submitted pursuant to this Article 2.

6. The Lease is amended to include a new Article 2A entitled “Mortgages”, as set forth below:

Section 2A.1 Mortgages.

(a) Definitions:

- (i) “Mortgage” means any mortgage or deed of trust that now or hereafter constitutes a Lien on all or any portion of Lessee's interest in this Lease and the leasehold estate created hereby.
- (ii) “Recognized Mortgage” means a Mortgage (A) that is held by an Institutional Lender (or a corporation or other entity wholly owned by an Institutional Lender) that is a Permitted Person; (B) which shall comply with the provisions of this Article 2A; (C) an Electronic Copy of which has been delivered to Lessor, together with a certification by Lessee and the Mortgagee confirming that such Electronic Copy is a true and accurate copy of the Mortgage and giving the name and post office address of the holder thereof; and (D) which is recorded in the Office of the City Register, County of the Bronx, City of New York.

- (b) No Effect on Lessor’s Interest in demised premises. No Mortgage shall extend to, affect or be a lien or encumbrance upon, the estate and interest of Lessor in the demised premises or any part thereof.

Section 2A.2 Mortgagee’s Rights.

- (a) Mortgagee's Rights Not Greater than Lessee’s. With the exception of the rights granted to Recognized Mortgagees pursuant to the provisions of Section 2A.3, Section 2A.4, Section 2A.5, and Section 2A.9, the execution and delivery of a Mortgage or a Recognized Mortgage shall not give nor shall be deemed to give a Mortgagee or a Recognized Mortgagee any greater rights against Lessor than those granted to Lessee hereunder.
- (b) Prospective Recognized Mortgage. A prospective Recognized Mortgage shall be permitted to submit documentation and request a determination by Lease Administrator of its status as a Permitted Person prior to its making its loan to be secured by a Recognized Mortgage, which determination shall be valid so long as such Recognized Mortgage is executed within sixty (60) days following such determination; provided, that no material adverse change to such prospective Recognized Mortgagee has occurred prior to the expiration of such 60 day period.

Section 2A.3 Notice and Right to Cure Lessee's Defaults.

- (a) Notice to Recognized Mortgagee. Lessor shall give to Recognized Mortgagee, at the address of the Recognized Mortgagee stated in a notice given by the Recognized Mortgagee to Lessor, a copy of each notice of Default at the same time as it gives notice of Default to Lessee.
- (b) Right and Time to Cure. Subject to the provisions of this Article 2A, each Recognized Mortgagee shall, in the case of any default hereunder, have a period of (i) fifteen (15) days more, in the case of a Default in the payment of Rent, and (ii) thirty (30) days

more, in the case of any other Default, than is given Lessee under the provisions of this Lease to remedy the Default or cause it to be remedied, provided such Recognized Mortgagee delivers to Lessor, within ten (10) days after the expiration of the time given to Lessee pursuant to the provisions of this Lease to remedy the event or condition which would otherwise constitute a Default hereunder, its written agreement to take the action described in clauses (i) and (ii) herein, including but not limited to taking possession of the demised premises. At any time after the delivery of the aforementioned agreement and commencing to proceed in the manner described in this Section 2A.3, the Recognized Mortgagee may notify Lessor, in writing, that it has relinquished possession of the demised premises or that it will not institute foreclosure proceedings or, if such proceedings shall have been commenced, that it has discontinued such proceedings, and, in either event the Recognized Mortgagee shall have no further liability in connection therewith from and after the date on which it delivers such notice to Lessor. Thereupon, Lessor shall have the unrestricted right to terminate this Lease and to take any other action it deems appropriate by reason of any Default or Event of Default which occurred prior to Lessor's delivery of notice of the termination of this Lease, and, upon any such termination, the provisions of Section 2A.4 shall apply.

- (c) Acceptance of Recognized Mortgagee's Performance. Subject to the provisions of this Article 2A hereof, Lessor shall accept performance by a Recognized Mortgagee of any covenant, condition or agreement on Lessee's part to be performed hereunder, except for the requirements of Lessee which are not susceptible of being performed by a Recognized Mortgagee, with the same force and effect as though performed by Lessee.
- (d) Commencement of Performance by Recognized Mortgagee for Non-Rent Defaults. No Event of Default (other than an Event of Default arising from the nonpayment of Rent) shall be deemed to have occurred if, within the period set forth in (b), a Recognized Mortgagee shall have:
- (i) In the case of a Default that is curable without possession of the demised premises by the Recognized Mortgagee, cured the Default within the periods provided in (b) above; or
 - (ii) In the case of a Default where possession of the demised premises is required in order to cure such Default, or is a Default that is otherwise not susceptible of being cured by a Recognized Mortgagee (*e.g.* Lessee bankruptcy), if a Recognized Mortgagee shall proceed promptly to institute foreclosure proceedings, and shall prosecute the foreclosure proceedings in good faith and with reasonable diligence, but no more than two (2) years from the date of the written agreement in this Section 2A.3, from Recognized Mortgagee to Lessee to obtain possession of the demised premises and, upon obtaining possession of the demised premises, shall promptly commence to cure the Default (other than a Default which is not susceptible of being cured by a Recognized Mortgagee) and prosecute such cure to completion with reasonable diligence. In addition, upon the completion of (A) such a foreclosure proceeding or (B) the acquisition of the Lessee's interest in this Lease by assignment in lieu of foreclosure or similar transfer, where such assignment or

transfer was done in accordance with the terms hereof, Lessor shall recognize the Recognized Mortgagee or its designee as the assignee of Lessee's interest in this Lease after receipt of a written request therefor from such Recognized Mortgagee or such designee; provided that (i) the terms and conditions of this (d) are satisfied; (ii) with respect to an assignment in lieu of foreclosure or similar transfer, such assignment or transfer was permitted hereunder; and (iii) such Recognized Mortgagee or its designee is a Permitted Person and delivers to Lease Administrator (y) a Required Disclosure Statement and such Required Disclosure Statement does not reveal that such Recognized Mortgagee or its designee is a Person with whom Lessor and/or Lease Administrator will generally not do business and does not contain information that is unacceptable to the Lease Administrator, acting in its sole but reasonable discretion, and (z) any other documents or information required hereunder.

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

Section 2A.4 Execution of New Lease.

- (a) Notice of Termination. If this Lease is terminated by reason of an Event of Default or otherwise, Lessor shall give prompt notice thereof to each applicable Recognized Mortgagee. Such notice shall set forth in reasonable detail a description of all Defaults, to the actual knowledge of Lessor, in existence at the time this Lease was terminated by Lessor.
- (b) Request for and Execution of New Lease. If, within thirty (30) days of the receipt (as shown on proof of service or return receipt) of the notice referred to in (a), a Recognized Mortgagee shall request a new lease (which shall take the form of a direct lease between Lessor and a Recognized Mortgagee or its designee, in accordance with the terms below), then subject to the provisions of (c) and Section 2A.5, within thirty (30) days after Lessor shall have received such request, Lessor shall execute and deliver a new lease of the demised premises for the remainder of the Term to such Recognized Mortgagee, or designee of Recognized Mortgagee provided that (i) such designee delivers to Lessor a Required Disclosure Statement having no information that is unacceptable to Lessor acting in its sole discretion, and (ii) the Recognized Mortgagee is a Permitted Person.

If Lessor is not then allowed to enter into such new lease by order of a court of competent jurisdiction, the Recognized Mortgagee shall be deemed to have properly requested a new lease pursuant to this (b) and Lessor, subject to the provisions of (c), shall deliver such new lease promptly after the restriction on such new lease by order of a court of competent jurisdiction is lifted. The new lease shall contain all of the covenants, conditions, limitations and agreements contained in this Lease, provided

however, that Lessor shall not be deemed to have represented or covenanted that such new lease shall be superior to claims of Lessee, its other creditors or a judicially appointed receiver or trustee for Lessee. Notwithstanding the foregoing, if the Recognized Mortgagee shall request a new lease pursuant to this (b), Lessor shall not voluntarily encumber or consent to the encumbrance of the demised premises during the period following termination of this Lease and delivery of a new lease pursuant to this (b).

In no event shall Lessor be obligated to pay any transfer or other taxes or recording charges in connection with such new lease, and any taxes or recording charges due with respect to such new lease shall be the sole obligation of the Recognized Mortgagee; and any risk of the invalidity or non-legal recognition of the new lease by reason of non-payment of any transfer or other tax or recording charge owed on account of the new lease shall rest solely upon the Recognized Mortgagee who sent the request for the new lease.

- (c) Conditions Precedent to Lessor's Execution of New Lease. The provisions of (b) notwithstanding, Lessor shall not be obligated to enter into a new lease with a Recognized Mortgagee or its designee unless the Recognized Mortgagee (i) shall pay to Lessor or cause to be paid to Lessor, concurrently with the execution and delivery of the new lease, all Rent due under this Lease up to and including the date of the commencement of the term of the new lease (excluding penalties and interest thereon) and all expenses, including, without limitation, reasonable attorneys' fees and disbursements and court costs, incurred in connection with the Default or Event of Default, the termination of this Lease and the preparation of such new lease, if and to the extent such expenses would be collectible under this Lease from Lessee, (ii) except in the case of an Event of Default or Default not susceptible to cure by the Recognized Mortgagee, shall promptly after receipt from Lessor of a statement of the Default required to be cured, cure all Defaults then existing under this Lease (as though the Term had not been terminated), and (iii) shall deliver to Lessor a statement, in writing, acknowledging that Lessor, by entering into such new lease with such Recognized Mortgagee or its designee, shall not have or be deemed to have waived any Defaults or Events of Default then existing under this Lease (to the extent not otherwise cured by the Recognized Mortgagee) notwithstanding that any such Defaults or Events of Default existed prior to the execution of such new lease and that the breached obligations which gave rise to the Defaults or Events of Default are also obligations under such new lease.
- (d) No Waiver of Default. The execution of a new lease shall not constitute a waiver of any Default existing immediately before termination of this Lease and, except for a Default which is not susceptible of being cured by the Recognized Mortgagee, the tenant under the new lease shall cure, within the applicable periods set forth in this Lease as applicable, as extended by Section 2A.3**(b)**, all Defaults specified in Lessor's statement of Defaults referred to in (c) existing under this Lease immediately before its termination.

- (e) Assignment of Depositary Proceeds. Concurrently with the execution and delivery of a new lease pursuant to the provisions of Section 2A.4, Lessor shall assign to the tenant named therein all of its right, title in and interest to moneys (including insurance proceeds and Condemnation Awards), if any, then held by, or payable to, Lessor or Depositary that Lessee would have been entitled to receive but for the termination of this Lease. Any sums then held by, or payable to, Depositary, shall be deemed to be held by, or payable to, a depositary under the new lease.

Section 2A.5 Continuation of Lease.

- (a) Notice of Termination. A Recognized Mortgagee shall have the right, within thirty (30) days after the receipt of a notice of termination under Section 2A.4(a), to elect to continue this Lease in lieu of requesting a new lease by notice to Lessor, subject to the further conditions of this Section 2A.5.
- (b) Assignment or Continuation of Lease. If a Recognized Mortgagee elects to continue this Lease by notice given to Lessor within such thirty (30) day period (the "Continuation Notice"), then, with respect to an election by a Recognized Mortgagee, effective upon the delivery of such notice by a Recognized Mortgagee, Lessee shall be deemed to have assigned to such Recognized Mortgagee or its designee, provided that (i) such designee delivers to Lessor a Required Disclosure Statement having no information that is unacceptable to Lessor acting in its sole discretion, and (ii) the Recognized Mortgagee is a Permitted Person. Lessee shall assign to Recognized Mortgagee or its designee, as the case may be, all of Lessee's right, title and interest in and to this Lease and the leasehold estate in the demised premises created hereunder and Lessee and Recognized Mortgagee shall, at Lessor's request, execute and deliver to Lessee such instruments of assignment, assumption and related transfer tax documents as Lessor may request (in form reasonably satisfactory to Lessor and such Recognized Mortgagee, after review by their respective counsel) to evidence such assignment and assumption, it being agreed that Lessor shall have no duty to request such documents and instruments and shall have no liability to Lessee or any Recognized Mortgagee for failure to do so. If Lessee fails to execute and deliver any such instrument of assignment or related transfer tax documents, such Recognized Mortgagee shall be entitled to do so on Lessee's behalf, and Lessee hereby appoints such Recognized Mortgagee as its attorney-in-fact, which appointment shall be deemed to be coupled with an interest and is irrevocable, for the sole purpose of executing and delivering such assignment and any transfer tax documents, provided that Lessor shall have no duty to deliver possession of the demised premises or any portion thereof to Recognized Mortgagee if Lessee fails to surrender possession of the demised premises or any portion thereof, and Recognized Mortgagee's sole recourse shall be against Lessee. In no event shall Lessor be obligated to pay any transfer or other taxes or recording charges in connection with such assignment and assumption, and any taxes or recording charges due with respect to such an assignment and assumption shall be the sole obligation of the Recognized Mortgagee or its recognized designee; and any risk of the invalidity or non-legal recognition of the transfer by reason of non-payment of any transfer or other tax or recording charge owed on

account of the assignment and assumption shall rest solely upon the Recognized Mortgagee that sent the Continuation Notice.

- (c) **Conditions Precedent to Assignment or Continuation of Lease.** The provisions of Section 2A.5(a) and (b) notwithstanding, a Recognized Mortgagee shall have no right to continue this Lease (i) unless the Recognized Mortgagee (A) pays to Lessor, concurrently with the delivery of the Continuation Notice, all Rent due under this Lease up to and including the date of the Continuation Notice and all expenses, including reasonable attorney's fees and disbursements and court costs, incurred by Lessor in connection with (1) the enforcement of Lessor's rights and remedies with respect to all Defaults or Events of Default in existence at the time of the termination notice (to the extent set forth in the notice delivered pursuant to (a)), and (2) the review of any assignments/assumptions and other instruments or documents prepared in connection with the Recognized Mortgagee's election, if and to the extent such expenses would be collectible under this Lease from Lessee, and (B) delivers to Lessor a statement, in writing, acknowledging (1) that Lessor, by continuing this Lease with such Recognized Mortgagee (or designee), shall not have or be deemed to have waived any Defaults or Events of Default then existing under this Lease (other than Defaults or Events of Default that are not susceptible to cure by the Recognized Mortgagee all of which shall be deemed to have been waived) notwithstanding that any such Defaults or Events of Default existed prior to the continuation of this Lease and (2) that the breached obligations which gave rise to the Defaults or Events of Default remain obligations under such continued Lease to the extent not otherwise cured, or (ii) if by order of a court of competent jurisdiction the parties are not entitled to continue this Lease and, in the case of a Recognized Mortgagee, effect the assignment thereof to such Recognized Mortgagee, in which case the Recognized Mortgagee, as the case may be, shall have a period of thirty (30) days from the date it receives such order to elect a new lease (in which case the provisions of Section 2A.4 shall be applicable).
- (d) **No Waiver of Default.** The continuation of this Lease pursuant to this Section 2A.5 shall not constitute a waiver of any existing Default, and Lessee and/or Recognized Mortgagee under the continued Lease shall cure all Defaults (other than Defaults which are not susceptible to cure by the Recognized Mortgagee, existing under this Lease immediately before its continuation of which the Recognized Mortgagee has been given notice pursuant to this Section 2A.5. Such cure shall be accomplished within the longer of (i) the period of cure remaining to the Recognized Mortgagee or (ii) the applicable periods set forth in Section 2A.3(b) of this Lease (which applicable periods shall commence with the execution and delivery of the assignment of this Lease in the case of a Recognized Mortgagee for each such Default of which the Recognized Mortgagee received notice prior to the delivery of the Continuation Notice) or, if notice of any such Default has not been given until after delivery of the Continuation Notice, upon the delivery of such notice). Notwithstanding anything to the contrary, if after the Recognized Mortgagee delivers a Continuation Notice pursuant to (a), the Recognized Mortgagee is given notice of a Default existing before the Continuation Notice and which was not previously disclosed to the Recognized Mortgagee by a notice from Lessor, then at any time within thirty (30) days after such notice is given the assignee may relinquish possession of the demised premises and cancel this Lease by notice to

Lessor. Thereupon, Lessor shall have the right to terminate this Lease without offering the Recognized Mortgagee a new lease pursuant to Section 2A.4, and the Recognized Mortgagee shall have no further rights to a new lease or a continued Lease thereunder or thereunder.

- (e) New Lease. Notwithstanding anything to the contrary contained in this Section 2A.5, if a Recognized Mortgagee fails to elect to reinstate and continue this Lease or request a new lease within the thirty (30) day period referred to in Section 2A.4(b) or (a), as applicable, then this Lease shall terminate effective upon the expiration of such thirty (30) day period and such Recognized Mortgagee's rights to continue this Lease or to enter into a new lease shall likewise terminate.
- (f) Credits. Any rent credits to which Lessee may be entitled under this Lease and which have not been exhausted at the time this Lease is assigned shall inure to the benefit of the tenant under this Lease, as assigned pursuant to (b).

Section 2A.6 No Lessee Enforcement. The provisions of Article 2A may be enforced solely by a Recognized Mortgagee, and not by Lessee. Without limiting Lessee's rights to contest or raise a good faith defense to an Event of Default or Lessor's termination of this Lease, Lessee shall have no right to, and shall not, raise any defense to the termination of this Lease or seek or be entitled to any injunctive relief or restraining order, with respect to the termination of this Lease, based solely upon the provisions of this Article 2A.

Section 2A.7 Recognition by Lessor of Recognized Mortgagee Most Senior in Lien. If more than one Recognized Mortgagee has exercised any of the rights afforded by Section 2A.3, Section 2A.4, or Section 2A.5, only that Recognized Mortgagee, to the exclusion of all other Recognized Mortgagees, whose Recognized Mortgage is most senior in lien shall be recognized by Lessor as having exercised such right, for so long as such Recognized Mortgagee shall be diligently exercising its rights under this Lease with respect thereto, and thereafter only the Recognized Mortgagee whose Recognized Mortgage is next most senior in lien shall be recognized by Lessor, unless such Recognized Mortgagee has designated a Recognized Mortgagee whose Mortgage is junior in lien to exercise such right. If the parties shall not agree on which Recognized Mortgage is prior in lien, such dispute shall be determined by a title insurance company chosen by Lessor, and such determination shall bind the parties.

Section 2A.8 Application of Proceeds from Insurance or Condemnation Awards. No Mortgage shall contain any provisions with respect to the application of (a) insurance proceeds payable in connection with any damage or destruction to the improvements on the demised premises or (b) the proceeds of any award payable in connection with a taking referred to in Article NINTH, as amended, which are inconsistent with the requirements of this Lease.

Section 2A.9 Appearance at Condemnation Proceedings. A Recognized Mortgagee shall have the right to appear in any condemnation proceedings and to participate in any and all hearings, trials and appeals in connection therewith to the extent Lessee would have such a right.

Section 2A.10 Rights of Recognized Mortgagees. The rights granted to a Recognized Mortgagee under the provisions of Section 2A.3, Section 2A.4, Section 2A.5, and Section 2A.9 shall not apply in the case of any Mortgagee that is not a Recognized Mortgagee.

Section 2A.11 Lessor's Right to Mortgage its Interest. Lessor shall have the right to mortgage its interest in the demised premises, as long as such mortgage is subject to this Lease and any new lease executed pursuant to the provisions of Section 2A.4. Anything in this Lease to the contrary notwithstanding, Lessor covenants and agrees that neither Lessee's interest in this Lease, Lessee's interest in any Sublease nor any Mortgagee's interest in this Lease or a new lease obtained pursuant to Section 2A.4, shall be subordinate to any mortgage on Lessor's interest in the demised premises. Lessor agrees to include in such mortgage a subordination clause reasonably satisfactory to Lessee and to the Recognized Mortgagee most senior in lien in order to accomplish such subordination. If the mortgagee refuses to include such provisions, Lessor shall not enter into the mortgage and to do so shall constitute a material default by Lessor under the terms of this Lease. For the purposes of this provision, it is understood and agreed that the lien of any such mortgage shall be subordinate to the lien of this Lease, and to Lessee's interest in this Lease and Lessee's leasehold estate or any new lease granted pursuant to Section 2A.4, notwithstanding that as a technical legal matter the leasehold estate created pursuant to this Lease may have terminated prior to the execution, delivery and recordation of a memorandum of such new lease. Any such mortgage shall, upon foreclosure under such mortgage, be entitled to succeed only to the interest of Lessor.

Section 2A.12 Confirmation. The provisions of this Article 2A are deemed self-executing but either Lessor, Lessee and/or a Recognized Mortgagee shall execute an instrument confirming the same in recordable form upon request therefore.

7. Rent. Article THIRD of the Lease is hereby amended and supplemented by the insertion of the following provisions at the end of the Article:

(e) Commencing on November 1, 2026, Lessee shall pay or cause to be paid to Lessor as annual rent, without any setoff or deduction whatsoever, such amounts for those periods as set forth on Exhibit B attached hereto and made a part hereof.

(f) Hunts Point Improvement Fund Fee. In the event Lessee has exercised the New Renewal Option, then, commencing on November 1, 2026, and annually thereafter throughout the Term, lessee shall pay to Lessor, as additional rent, a "Hunts Point Improvement Fund" payment (the "HPIF Fee") at the annual rate per square foot set forth on Exhibit B. The HPIF Fee amount is based on square footage of the building and any other improvements constructed on the demised premises. The existing square footage of the demised premises as of the date of this Sixth Amendment shall be deemed to be 324,600 square feet. Accordingly, in the event Lessee causes the construction of new improvements at the demised premises, the amount of the HPIF Fee will increase commensurate with additional square footage built and the increased HPIF Fee shall be due and payable on the earlier of issuance of a temporary certificate of occupancy or commencement of Lessee's operations at the expanded improvements.

8. Extension Term. The parties acknowledge that the Lease is currently due to expire on October 31, 2026 and, subject to Lessee's completion of the Solar Project (defined in Article EIGHTH below), hereby agree that Lessee is granted an additional fifteen (15) year renewal option (the "New Renewal Option") pursuant to this Sixth Amendment. Lessee may exercise the New Renewal Option by providing written notice to Lessor, in the manner required in the Lease, no later than February 1, 2026. If exercised, the New Renewal Option would extend the term of the Lease until October 31, 2041.
9. Option for Early Termination. Article FIFTH of the Lease, "Option For Early Termination", is hereby amended and supplemented to include the following sentence at the end of said Article:

"Notwithstanding anything to the contrary contained in this Lease, in the event Lessee exercises the New Renewal Option, Lessee may terminate this Lease at any time after October 31, 2036 by giving Lessor not less than nine months written notice of its intention to terminate the Lease in the manner so prescribed in the Lease and by paying to Lessor a termination fee in an amount equal to three months of then current annual rent."

10. Security Deposit. Article SEVENTH is hereby renamed, "Security Deposit". Article SEVENTH is further amended by deleting the word "Comptroller" and replacing it in each subsequent instance in Article SEVENTH with "Lease Administrator". The parties acknowledge that Lease Administrator currently holds a letter of credit from Lessee in the amount of Three Hundred and Ninety Nine Thousand Dollars (\$399,000.00) and that such letter of credit currently satisfies the requirements for the "Security Deposit" as set forth in this Article SEVENTH.
11. Work To Be Performed. Article EIGHTH of the Lease is hereby amended such that the first and second Original Lease paragraphs are hereby given the heading, "Section 8.1 Initial Work." Article EIGHTH is further amended such that the third and all subsequent Original Lease paragraphs are hereby given the heading, "Section 8.2 Conditions to Performing Any Work.". Finally, Article EIGHTH is further amended and supplemented to include the following new Sections at the end of said Article:

Section 8.3 Solar Project.

- (a) As a pre-condition to Lessee's right to exercise the New Renewal Option, Lessee, at its sole cost and expense, shall construct, or cause to be constructed, a solar panel project (the "Solar Project") on the roof of the building which shall provide not less than 2,749.6 kWDC and 1,980 kWAC per year. Lessee shall perform the Solar Project in accordance with the "Scope of Work" attached hereto and made a part hereof as Exhibit E and shall comply with all requirements set forth in the Lease for performing work at the demised premises, including but not limited to Article EIGHTH, "Work to be Performed", and Article SEVENTEENTH, "Insurance".
- (b) Lessee agrees to collaborate with the Lease Administrator for the programming of the Solar Project and will participate in good faith

negotiations with Lease Administrator at a later date if Lease Administrator chooses to pursue a campus wide energy plan.

- (c) Upon termination of the Lease, Lessor will own all capital improvements on the demised premises related to the Solar Project. If the Lease is assigned pursuant to the terms of this Lease, Lessee shall also assign ownership of all capital improvements on the demised premises related to the Solar Project to such assignee for the remainder of the Lease term.

Section 8.4 Bondable Work. Prior to the commencement of any Bondable Work (as hereinafter defined), Lessee shall deliver or cause to be delivered to Lessor a payment bond in an amount equal to 100% of the aggregate costs and expenses of any Bondable Work, guaranteeing prompt payment of monies due to all Persons furnishing labor or materials for such Bondable Work meeting the requirements of Section 5 of the N.Y. Lien Law. Each bond shall be reasonably satisfactory to Lessor in form and substance and shall be issued by a surety company licensed or authorized to do business in New York State that is approved by the Comptroller. Such payment bond shall remain in full force and effect until such time as the Bondable Work is completed. For the purposes hereof, “Bondable Work” means any construction work, the cost of which (as determined by the total contract price for the planned construction work), is greater than \$250,000.

12. Requirements of Law. Article TENTH of the Lease is hereby amended such that the second paragraph of the Original Lease is deleted and replaced with the paragraphs set forth below:

“Lessee shall also comply with and observe, and this Lease shall be subject to any and all existing and future Requirements.

“Requirements” means:

- (i) the Zoning Resolution, the Americans with Disabilities Act of 1990, 42 U.S.C *et seq.*, the Market Rules, the laws referenced in Section 26 hereof, and any and all laws, rules, regulations, orders, ordinances, statutes, codes, executive orders and requirements of all Governmental Authorities applicable to the demised premises or any street, road, avenue, sidewalk, comprising a part of, or immediately adjacent to, the demised premises or any vault in, or under the demised premises (including, without limitation, the Building Code of the City and the laws, rules, regulations, orders, ordinances, statutes, codes and requirements of any applicable Fire Rating Bureau or other body exercising similar functions);
- (ii) the certificate or certificates of occupancy or certificate(s) of completion or other licenses or permits required for lawful occupancy and use and operation, as applicable, issued for the Building as then in force;
- (iii) the provisions of applicable resolutions and/or special permits of the City Planning Commission;

- (iv) any and all federal, state or local environmental, health and/or safety-related laws, regulations, standards, environmental impact filings and disclosure requirements, decisions of the courts, permits or permit conditions, relating to the protection of the environment, including but not limited to those regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Substances, currently existing or as amended or adapted in the future which are or become applicable to Lessee or the demised premises (“Environmental Laws”);
- (v) the requirements of any applicable urban renewal plan; and
- (vi) the directives of any applicable business improvement district.

“Market Rules” means the rules and regulations relating to the operation of Hunts Point, as the same may be amended from time to time, promulgated by the Department of Small Business Services and/or the Commissioner of the Business Integrity Commission as currently promulgated under Title 66 RCNY Chapter 1 and Title 22 AC Chapter 1-B, if applicable.”

13. Insurance. Article SEVENTEENTH of the Lease is hereby deleted and replaced in its entirety with a new Article SEVENTEENTH, set forth below:

Section 17.1 Insurance Coverage: At all times throughout the Term (except as otherwise provided below), Lessee shall secure and maintain in full force and effect, at Lessee's expense the following insurance:

- (a) Commercial General Liability insurance, on an occurrence basis and written on ISO Form CG 00 01 or its equivalent, without modification to the contractual liability coverage provided therein, naming the City and Lease Administrator as additional insureds, with coverage at least as broad as the most recent edition of ISO Form CG 2011 and 2026, on a primary and non-contributory basis, providing coverage against claims for personal injury, bodily injury, death and property damage with no designated premises exclusion and with limits as reasonably designated by Lessor or Lease Administrator from time to time, which in any event shall not be less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate.
- (b) Automobile Liability insurance, naming the City and Lease Administrator as additional insureds, covering all vehicles (including owned, hired, rented, leased and non-owned vehicles) used in connection with Lessee's business, with limits as reasonably designated by Lessor or Lease Administrator from time to time, but in any event, with limits of not less than one million dollars (\$1,000,000) combined single limit with respect to bodily injury, death and property damage per occurrence;
- (c) Commercial Umbrella Liability/Excess Liability coverage at least following form of all of the primary Coverages other than Workers Compensation, Disability, and Property/Equipment Breakdown, naming the City and Lease Administrator as additional insureds on a primary and non-contributory basis. A minimum limit of \$25,000,000 per occurrence and in the aggregate is required.

- (d) Equipment Breakdown insurance, covering Lessee and any subtenant for machinery and equipment located at or about the demised premises, effective from the date of delivery of such articles of property to the demised premises, in an amount equal to their full replacement value, naming Lessee as named insured and Lessor as loss payee. All proceeds paid under such policy shall be in the form of trust funds to be held and applied by Lessee solely for the repair and restoration of such damaged or destroyed property before being employed for any other purpose. If this Lease shall terminate or expire before the completion of the repair and restoration of the property, all proceeds of insurance received or receivable by Lessee with respect thereto and not previously employed by Lessee for the repair and restoration thereof shall be assigned and paid over to Lessor on the Expiration Date;
- (e) Worker's Compensation Insurance and Employer's Liability Insurance in statutory limits and New York State disability benefits insurance, in form and limits as required by law, and other statutory forms of insurance for all persons who under applicable law shall be required to be covered thereby;
- (f) Property insurance with respect to the demised premises, including the following coverage or clauses:
 - (i) property insurance providing coverage at least as broad as ISO Form CP 10 30 (Special Cause of Loss Form) covering the full replacement cost of the demised premises, including any improvements and betterments made by Lessee or any subtenant. This coverage shall be written on an Agreed Amount basis which waives or eliminates co-insurance, and shall be primary insurance;
 - (ii) property insurance covering Lessee and any subtenant providing coverage at least as broad as ISO Form CP 10 30 (Special Cause of Loss Form) for 100% of the replacement value of all Lessee and/or subtenant equipment located at or about the demised premises, effective from the date of delivery of such articles of property to the demised premises (Lessee and / or subtenant may self insure for this coverage);
 - (iii) Flood coverage to the maximum extent available under the National Flood Insurance Act of 1968;
 - (iv) Insurance covering loss or damage from leakage of sprinkler systems now or hereafter at the Property, water damage or any other hazard customarily covered by such insurance in such amounts as Lessor may reasonably require; and
 - (v) Business Interruption Insurance insuring rent payable by Lessee under this Lease in an amount at least equal to the aggregate amount of rent payable for a period of not less than two (2) Lease Years.
 - (vi) Such other insurance as may be reasonably required by Lessor from time to time against other insurable hazards which at the time are customarily insured against in the case of premises used for similar purposes.

- (g) Such additional insurance coverage as Lessor or Lease Administrator may reasonably require from time to time.
- (h) Contractor's Pollution Liability Insurance; Pollution Legal Liability Insurance.
- (i) In the event Lessee enters into a contract with another party that involves abatement, removal, Repair, replacement, enclosure, encapsulation and/or delivery, receipt, or disposal of any Hazardous Substances, Lessee shall cause the Insured Contractor to procure and maintain contractor's pollution liability insurance covering bodily injury, property damage, clean-up costs/remediation expenses and legal defense costs. Such insurance shall provide coverage for sudden and non-sudden pollution conditions arising out of the Insured Contractor's operations at the demised premises and off-demised premises, non-owned disposal sites, and transit. Such coverage must (i) cover the risk associated with any actual, alleged, or threatened emission, discharge, dispersal, seepage, release or escape of pollutants (including, without limitation, any Hazardous Substances in violation of applicable Environmental Laws); (ii) cover the investigation, settlement or defense of any claim, suit or proceeding; and (iii) provide products/completed operations coverage for a period of no less than six (6) years.
- (ii) The Insured Contractors' contractor's pollution liability insurance shall have a limit of at least two million dollars (\$2,000,000) per occurrence and aggregate, and provide coverage for Lessee and the Additional Insureds for both ongoing and completed operations for the length of time specified in Section 7.4(a) and without regard to privity of contract using designated entity endorsements. The coverage provided by the Insured Contractor's contractor's pollution liability insurance to each Additional Insured shall be primary and non-contributory at all levels (including any umbrella and excess coverage) and shall be exhausted vertically (including deductibles and SIRs) prior to any insurance (or self-insurance) carried by any of the Additional Insureds. Coverage for the Additional Insureds shall be at least as broad as Lessee's. If this insurance is issued on a claims-made basis, such policy or policies shall have a retroactive date on or before the beginning of the Insured Contractor's work, and continuous coverage shall be maintained, or an extended discovery period exercised, for a period of not less than eight (8) years after the termination of such work.
- (iii) Lessee shall cause the Insured Contractors to request that any non-owned disposal facility(ies) add the Additional Insureds as additional insureds to the facility's(ies') pollution legal liability insurance policy or policies without regard to privity of contract. If the facility's(ies') insurance carrier(s) agree to add the Additional Insureds, copies of applicable certificates of insurance and additional insured endorsements received by Lessee shall be provided to the Lease Administrator.

Section 17.2 Insurance During Construction: Except as otherwise agreed to in writing with the Lessor or Lease Administrator for certain small-scale projects, during any period

throughout the Term when any work is being performed at the demised premises by Lessee, Lessee shall require any and all of Lessee's or subtenant's contractors or subcontractors to secure and maintain in full force and effect until such construction work is completed, and at no expense to Lessor or Lease Administrator the following insurance:

- (a) Commercial General Liability Insurance, on an occurrence basis, and written on ISO Form CG 00 01 or its equivalent, including, without limitation contractual liability coverage (designating the indemnity provisions of any construction contracts), completed operations coverage, broad form property damage endorsement covering the operations of all contractors and subcontractors, providing that the Lessee, the City, and Lease Administrator and, at Lessor's or Lease Administrator's election, Lessor's and Lease Administrator's construction managers are named as additional insured on ISO Forms CG 20 10, CG 20 38 and CG 20 37 or their equivalents on a primary and non-contributory basis, and providing liability limits as reasonably required by Lessor or Lease Administrator from time to time, taking into account the hazards associated with the work, but in any event, not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate, with respect to bodily and personal injury, death and property damage, the required limits of coverage can be secured through a combination of General Liability and Umbrella Liability policies;
- (b) Automobile Liability Insurance, covering all vehicles (including owned, hired, rented, leased and non-owned vehicles) with limits as reasonably required by Lessor from time to time, but, in any event, with limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence with respect to bodily and personal injury, death and property damage;
- (c) Commercial Umbrella Liability/Excess Liability coverage at least following form of all of the primary Coverages other than Workers Compensation, Disability, and Property/Equipment Breakdown, naming the Lessee, the City, and Lease Administrator and, at Lessor's or Lease Administrator's election, Lessor's and Lease Administrator's construction managers as additional insureds as additional insureds on a primary and non-contributory basis. A minimum limit of \$25,000,000 per occurrence and in the aggregate is required.
- (d) All-Risk Property Insurance (builder's risk completed value non-reporting form or installation floater, as applicable) naming, among others, Lessee, subtenant, if applicable, Lessor, Lease Administrator, the general contractor and all subcontractors employed by Lessee, subtenant, or by the general contractor, as insureds, as their respective interests may appear;
- (e) Worker's Compensation and Employer's Liability Insurance in statutory limits, and New York State disability benefits and other statutory forms of insurance in form and limits as required by law covering all persons employed by Lessee's or subtenant's contractors or subcontractors; and
- (f) such additional insurance coverage as Lessor or Lease Administrator may reasonably require from time to time.

Section 17.3 Form of Policies; Evidence of Insurance: All of the insurance required to be secured and maintained or caused to be maintained by Lessee, as well as the form and issuer of such insurance shall be subject to Lessor's or Lease Administrator's approval and shall be issued by companies licensed to do business in the State of New York. Prior to Lessee or its contractors entering into possession of the demised premises and at least five (5) days prior to the expiration of any of the policies to be maintained or caused to be maintained by Lessee, Lessee shall deliver or cause to be delivered to the Lessor and Lease Administrator certificates of insurance (with copies of actual endorsements) signed by a person authorized by that insurer to bind coverage on its behalf in form satisfactory to Lessor or Lease Administrator. All certificates and endorsements are to be received and approved by Lessor or Lease Administrator before Lessee may occupy the demised premises. If Lessee shall fail to maintain or cause to be maintained any of such insurance from and after the date of its or its contractors entering into possession of the demised premises or at any time during the Term, Lessor or Lease Administrator may obtain such insurance, at Lessee's expense, and the cost thereof shall be deemed to be additional rent and shall be payable by Lessee to Lessor on demand. Lessee shall comply, and shall cause its contractors and subcontractors to comply, with the provisions of all insurance policies required to be maintained pursuant to this Article. Lessee shall give, and shall cause its contractors and subcontractors to give, the insurer, City and Lease Administrator notice of all claims, accidents and losses immediately, but in any event no later than three (3) days after Lessee, or its contractors or its subcontractors, as the case may be, acquires knowledge of the same. Lessor reserves the right to require complete, certified copies of all required policies at any time.

Section 17.4 Subrogation: All policies of insurance required under this Lease other than Disability shall include a waiver of the right of subrogation with respect to all the additional insureds.

Section 17.5 Additional Policy Provisions: The policies of insurance to be maintained or caused to be maintained by Lessee shall contain provisions, if applicable and obtainable, substantially as follows:

- (a) Notices from the insurer to the City and Lease Administrator, respectively, until further notice is given to the insurer, shall be addressed as follows:

To Lessor:
New York City Law Department
100 Church Street
New York, New York, 10007
Attention: Chief, Economic Development Division

To Lease Administrator:
New York City Economic Development Corporation
1 Liberty Plaza, New York, New York 10006
Attention: Senior Vice President, Asset Management

- (b) The insurer shall accept notices of accident from the City and/or Lease Administrator as soon as practicable after receipt by the City and/or Lease Administrator of notice of such accident as valid and timely notice;
- (c) The insurer shall accept notices of claim from the City and/or Lease Administrator as soon as practicable after any such claim has been filed with Lessor and/or the Comptroller of The City of New York and/or Lease Administrator as valid and timely notice under such policy;
- (d) Notices of accidents or claims to the insurer by the City, Lease Administrator or Lessee shall be deemed notice by all insureds under the policy;
- (e) The policy shall not be canceled, modified or denied renewal by the insurer unless at least thirty (30) days prior written notice is sent by registered mail or certified mail to Lessee, the City and Lease Administrator; Lessee shall not cancel or modify the policy without the prior written consent of the City and Lease Administrator; and
- (f) That no act or omission of Lessee, or subtenant, if applicable, its agents or contractors shall affect or limit the obligations of the insurer to pay the amount of any loss.

14. Condemnation. Article NINTH of the Lease is hereby deleted and replaced in its entirety with a new Article NINTH, as set forth below:

Section 9.1. Certain Definitions. For the purposes hereof the following terms shall have the following meanings:

- (a) “Date of Taking” means the earlier of (i) the date on which actual possession of all or Substantially All of the demised premises, or any part thereof, as the case may be, is acquired by any lawful power or authority pursuant to the provisions of applicable law or (ii) the date on which title to all or Substantially All of the demised premises, or any part thereof, as the case may be, has vested in any lawful power or authority pursuant to the provisions of applicable law.
- (b) “Depository” means an Institutional Lender selected by Lessee and, to the extent required pursuant to the terms of the definition of Institutional Lender, approved by Lessor (which approval shall not be unreasonably withheld, delayed or conditioned), except that any Recognized Mortgagee which is an Institutional Lender shall be deemed approved by Lessor; provided, that if Lessee has not designated an Institutional Lender ready, willing and able to be Depository within ten (10) Business Days of written demand for Lessee to do same, Lessor may designate such Depository in lieu thereof.
- (c) “Index” means the Dodge Building Cost Index or such other published index of construction costs which shall be selected from time to time by the Lessor, but not more

often than once every three (3) years, provided that such Index shall be a widely recognized measure of construction costs in the insurance industry and appropriate to the type and location of the Insured Improvements.

- (d) “Replacement Value of the Improvements” means the full costs of replacing the improvements erected on the demised premises on an agreed value basis without a coinsurance requirement and without accounting for depreciation or obsolescence including, without limitation, the costs of debris removal, grading and fencing, and soft costs related to a casualty or partial taking. The Replacement Value of the Improvements shall be adjusted each thirty-six (36) month period throughout the term of the Lease hereof alternating between (i) an adjustment made by increasing such value by a percentage equal to the percentage change in the Index in effect on such date as compared to the Index in effect on the date of the last adjustment, and (ii) an adjustment made by determining the value from a construction cost survey to be conducted at Lessee’s expense by a disinterested general contractor or construction manager, or by a recognized independent appraisal firm, located in New York City, who shall be satisfactory to Lease Administrator. Such construction cost survey shall determine the current cost (including all hard and soft costs) of reconstructing all of the improvements erected on the demised premises at the time of such adjustment, which amount shall then be deemed to be Replacement Value of the Improvements. Within six (6) months after completion of the Solar Project, Lessee shall deliver an appraisal to Lease Administrator as reasonably estimated by Lessee’s contractor or other person reasonably acceptable to Lease Administrator, setting forth the amount of the Replacement Value of the Improvements, which shall be subject to approval by Lease Administrator.
- (e) “Substantially All of the demised premises” means such portion of the demised premises as, when so taken, would leave a balance of the demised premises that, due either to the area so taken or the location of the part so taken in relation to the part not so taken, would not, under economic conditions, zoning laws and building regulations then existing, and after performance by Lessee of all covenants, agreements, terms and provisions contained herein or by applicable “Requirements of Law” as described in Article TENTH of this Lease and required to be observed by Lessee, readily accommodate a new or reconstructed building or buildings of a type and size generally similar to the improvements existing at the Date of Taking and capable of producing a fair and reasonable net annual income and being used for the use of the premises (“Permitted Uses”) as described in Article FIRST of the Lease or capable of supporting substantially similar activities as the demised premises, in each case in the condition thereof immediately prior to the Date of Taking.
- (f) “Taking” means a taking of the demised premises or any part thereof for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement among Lessor, Lessee and those authorized to exercise such right, irrespective of whether the same affects the whole or Substantially All of the demised premises or a lesser portion thereof, but shall not include a taking of the fee interest in the demised premises or any portion thereof.

- (g) “Threshold Amount” means five percent (5%) of the Replacement Value of the Improvements.

Section 9.2 Permanent Taking.

- (a) Termination of Lease for Substantial Taking. If during the Term of this Lease, a Taking occurs of all or Substantially All of the demised premises, (i) this Lease shall terminate on the day immediately prior to the Date of Taking, (ii) the Rent payable by Lessee hereunder shall be apportioned and paid to that termination date, and (iii) the Security Deposit (described in Article SEVENTH) remaining after applicable reductions is returned to Lessee minus any amount which may be due to Lessor, and (iv) Lessee and Lessor shall thereafter have no further obligations hereunder other than those obligations expressly stated herein to survive such termination.
- (b) Disbursement of Award. If a Taking occurs with respect to all or Substantially All of the demised premises whereupon this Lease will terminate as provided in (a), the entire award paid in connection with such taking or condemnation (net of reimbursement to Depository, Lessor and Lessee of any reasonable costs of collection) shall be apportioned as follows: (i) there shall first be paid to Lessor so much of the award which is for or attributable to the value of the Land so taken, considered as encumbered by this Lease, and (ii) there shall next be paid (A) to Lessee (or, as directed by Lessee, to any Recognized Mortgagee in the order of the priority of their liens) so much of the award as is attributable to the value of the improvements erected on the demised premises (the “Improvement Award”), subject to the reversionary interest of Lessor, (B) to Lessor of so much of the Improvement Award as is for, or attributable to, the value of Lessor’s reversionary interest, if any, in the improvements erected on the demised premises. Lessee shall have the right to claim separately Personal Property, intangibles and contract rights of Lessee and any Subtenants and for their Trade Fixtures and moving and relocation costs for itself and any Subtenant and any award on account of Lessee’s or its Subtenants’ Trade Fixtures or other Personal Property shall be paid to Lessee. To the extent the award is insufficient to cover the costs listed above or in the event an award is not paid, Lessor shall not be responsible to make any payments.

Section 9.3 Less Than a Substantial Taking.

- (a) Taking of Less Than Substantially All of the demised premises. If a Taking occurs with respect to less than Substantially All of the demised premises, this Lease shall continue for the remainder of the Term without diminution of any of Lessee’s obligations hereunder, except that all Rent, shall be reduced in proportion the percentage of the demised premises which (i) is so taken and/or (ii) has been rendered unusable as a result of such Taking. To the extent the award is insufficient to fully reimburse Lessee for the cost listed above or in the event an award is not paid, Lessor shall not be responsible to make any payments.
- (b) Obligation to Restore the Demised demised premises. If a Taking occurs with respect to less than Substantially All of the demised premises as provided in (a), Lessee shall, as required by (d), after settlement of the award, restore the remaining portion of the

improvements not so taken so that the demised premises and improvements shall be a complete functioning structure, in good condition and repair and, consisting of self-contained architectural units to the extent practicable, of a size and condition substantially similar to the size and condition of, and of character similar to the character of, the improvements as they existed immediately before such Taking (a “Condemnation Restoration”). Lessor, in no event, shall be obligated to restore any remaining portion of the demised premises not so taken or to pay any costs or expenses thereof. All plans for construction (the “Construction Work”) in connection with a Condemnation Restoration are subject to review and approval of Lessor in accordance with the Lease, which approval shall not be unreasonably withheld, delayed or conditioned. No holder of any Mortgage shall have the right to apply the proceeds of any award paid in connection with any Taking toward payment of the sum secured by its Mortgage if and to the extent that this Lease requires that Lessee restore the portion of the demised premises remaining after such Taking.

- (c) Payment of Award. In the event of any Taking described in (a), the entire award, excluding any separate award for or attributable to the land (excluding the improvements), shall be paid to the Depositary if the estimated cost of the Condemnation Restoration is in excess of the Threshold Amount or to Lessee in trust, if the estimated cost of the Condemnation Restoration is equal to or less than the Threshold Amount. Following completion of such Condemnation Restoration and disbursement of funds relating thereto, the remainder of any award so held by Depositary shall be paid to Lessee, subject to the rights of Recognized Mortgagees.
- (d) Performance of Condemnation Restoration. The Construction Work in connection with a Condemnation Restoration, submission of the estimated cost thereof by Lessee and approval thereof by Lessor, Lessee’s obligation to provide additional security, and disbursement of the Condemnation Award by Depositary shall be done, determined, made and governed in accordance with the provisions of Article EIGHTH and Article FOURTH. If the portion of the award made available by Depositary is insufficient for the purpose of paying for the cost of the Construction Work in connection with the Condemnation Restoration, Lessee shall nevertheless be required to perform such Construction Work as required hereby and pay any additional sums required for such Construction Work. Any balance of the award held by Depositary and any cash and the proceeds of any security deposited with Depositary remaining after the final completion of the Condemnation Restoration shall be disbursed in accordance with (c) and shall be paid to Lessee, subject to the rights of Recognized Mortgagees. Neither Lessor nor Lease Administrator shall be called upon to restore any remaining portion of the demised premises not so taken, or to pay any costs or expenses thereof.

Section 9.4 Temporary Taking.

- (a) Notice of Temporary Taking. If the demised premises or any portion thereof is taken for a public or quasi-public purpose by a lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement between Lessee and those authorized to exercise such right for temporary use not exceeding one year (a “Temporary Taking”), Lessee shall give Lessor immediate notice thereof. The Term

shall not be reduced or affected in any way by reason of such Temporary Taking and Lessee shall continue to pay Rent to Lessor without reduction or abatement, it being understood that (i) Lessee shall be entitled to the Condemnation Award for the Temporary Taking, if any, unless provided for otherwise in this Lease and (ii) the foregoing shall not preclude Lessee from seeking reduction of PILOT in proportion to the extent that Taxes would otherwise be reduced by reason of such taking as determined by DOF.

- (b) Obligation to Restore for Temporary Taking Not Extending Beyond the Term. If the Temporary Taking is for a period not extending beyond the Term, and (i) the Condemnation Award by reason of the Temporary Taking is paid less frequently than in monthly installments, such Condemnation Award shall be paid to, and held by, Depositary as a fund that Depositary shall apply from time to time, first to the payment of the Rent payable by Lessee hereunder for the period in question and any remaining balance to be paid to Lessee, or (ii) such award is paid in monthly installments, such award shall be paid to Lessee. Notwithstanding the foregoing, if the Taking results in changes or alterations in the improvements that would necessitate an expenditure to restore such improvements to their former condition, then Lessee shall restore such improvements in the same manner, and subject to the same terms and conditions, as if such restoration were a Condemnation Restoration. If the estimated cost of such Restoration is in excess of one percent (1%) of the Replacement Value of the Improvements, a portion of such award equal to the estimated cost of Condemnation Restoration shall be paid to and held by Depositary and applied to the Condemnation Restoration of the improvements as provided in Section 9.3.
- (c) Temporary Taking Extended Beyond the Expiration of the Term. If the Temporary Taking is for a period extending beyond the Expiration Date, such award or payment shall be apportioned between Lessor and Lessee as of the Expiration Date with the portion allocable to the period during the Term to be paid and applied in accordance with Section 9.3 hereof and the portion allocable to the period post Term to be paid to Lessor. If this Lease shall terminate for any reason before completion of the Construction Work related to such Taking, Depositary shall pay Lessor the remaining Restoration Funds retained by Depositary for that purpose.

Section 9.5 Governmental Action Not Resulting in a Taking. In case of any governmental action not resulting in a Taking of any portion of the demised premises but creating a right to compensation therefor, such as the changing of the grade of any street upon which the demised premises abuts, then this Lease shall continue in full force and effect without reduction or abatement of Rent. However, if such governmental action results in changes or alterations of the demised premises, then Lessee shall effect a Condemnation Restoration with respect thereto. Any award payable in connection with such governmental action, shall be applied first to reimburse Lessee for any Construction Work performed by Lessee resulting from such governmental action and any balance shall be paid to Lessor. Lessor shall have no obligation to perform or bear any cost incurred for any Construction Work required as a result of any such governmental action.

Section 9.6 Collection of Awards. Each of the parties shall execute documents that are reasonably required to facilitate collection of any awards made in connection with any condemnation referred to in this Article and shall cooperate with each other to permit collection of the award.

Section 9.7 Negotiated Sale. In the event of a negotiated sale of all or a portion of the demised premises in lieu of condemnation, the proceeds shall be distributed as provided in cases of condemnation in accordance with Section 9.2.

Section 9.8 Lessee's Appearance at Condemnation Proceedings. Lessee shall have the right to appear in any condemnation proceedings and to participate in any and all hearings, trials, and appeals in connection therewith, however, Lessee shall not have the right to file any claim against Lessor's reversionary interest in the demised premises. Nothing in this Section 9.8 shall preclude Lessee from protecting or exercising any rights it may have to pursue any claims it may be entitled to under applicable law.

Section 9.9 Waiver of Rights under Statute. The existence of any present or future law or statute notwithstanding, except as otherwise provided herein, Lessee waives all rights to quit or surrender the demised premises or any part thereof by reason of any Taking of less than Substantially All of the demised premises. It is the intention of Lessor and Lessee that the provisions of this Article NINTH shall constitute an "express agreement to the contrary" as provided in Section 227 of the Real Property Law of the State of New York and shall govern and control in lieu thereof.

Section 9.10 Survival. The provisions of this Article NINTH shall survive the expiration or earlier termination of this Lease.

15. Title in Lessor. The last paragraph of Article THIRTEENTH of the Lease is amended following the phrase, "shall become the property of", to include, ",", and title shall vest in,".
16. Event of Default. Article TWENTIETH of the Lease is amended by the addition of the following sentence as the first sentence of Article TWENTIETH: "Each of the following shall constitute an "Event of Default".
17. Notices. Article TWENTY-FIRST of the Lease is hereby deleted and replaced in its entirety with a new Article TWENTY-FIRST, as set forth below:

Except with respect to notices required to be delivered under Section 41.1 and Section 41.2, which shall be given only to Lease Administrator and DCWP, all notices, demands, requests, consents, approvals and other communications hereunder shall be in writing and shall be deemed to have been duly given if (i) personally delivered with proof of delivery thereof, (ii) sent by United States certified mail, return receipt requested, postage prepaid or (iii) sent by reputable overnight courier service, in each case addressed to the respective parties as follows:

If to Lessor: The City of New York
Department of Small Business Services
One Liberty Plaza
New York, New York 10006
Attention: Andy Schwartz, Deputy Commissioner for Legal & Regulatory
Affairs

with copies thereof to:

New York City Law Department
100 Church Street
New York, New York 10007
Attention: Chief, Economic Development Division
EcoDevNotices@law.nyc.gov

If to Lease Administrator: New York City Economic Development Corporation
One Liberty Plaza
New York, New York 10006
Attention: Lease Administrator, Asset Management

and

New York City Economic Development Corporation
One Liberty Plaza
New York, New York 10006
Attention: General Counsel

and

New York City Economic Development Corporation
One Liberty Plaza
New York, New York 10006
Attention: Executive Vice President, Real Estate Transactions Services

and for notices under Article Seventeenth, a copy to:

Comptroller of the City of New York
Attn: Office of Contract Administration
Municipal Building
One Centre Street
Room 1005
New York, New York 10007

and for notices under Section 41.2, with a copy to:

Department of Consumer and Worker Protection
of the City of New York
42 Broadway
New York, New York 10004
Attention: Living Wage Division

If to Lessee: KFI Food Distributors
Att: President, Thatcher Krasne
65 West Red Oak Lane
White Plains, NY 10604

With copies to:

Krasdale Foods, Inc.
Att: President, Kostanty “Gus” Lebiak
65 West Red Oak Kane
White Plains, NY 10604

and

Krasdale Foods, Inc.
Att: Legal Department
65 West Red Oak Lane
White Plains, NY 10604

or to such other address or party as either party may have furnished to the other in writing in accordance herewith, except that notices of change of address or addresses shall only be effective upon receipt. Notices may be given on behalf of a party by its attorneys. Notices shall be deemed given when received if delivered personally or by overnight courier, or if mailed then five (5) Business Days after such mailing in the United States, with failure to accept delivery to constitute delivery for purposes hereof

18. Utility Charges. Article TWENTY-NINTH of the Lease is amended by the addition of the following phrase, “Except for electricity produced and sold to the grid as part of the Solar Project, ...” at the beginning of the second paragraph and both instances of the words “or electricity” shall be deleted from the second paragraph.

19. Workforce Commitment and Development. The Lease is hereby amended to include a new Article FORTYFIRST entitled, “Workforce Commitment and Development”, as set forth below:

“FORTYFIRST”: Lessee further covenants and agrees as follows:

Section 41.1 Living Wage/Prevailing Wage.

- (a) With regard to all operations at the demised premises, Lessee shall comply with the terms of this Section 41.1. Lessee acknowledges that the terms and conditions set forth in this Section 41.1 are intended to implement the Mayor's Executive Order No. 7 dated September 30, 2014, with such modifications as shall be expressly provided herein.
- (b) Solely for the purposes of this Section 41.1, the following capitalized terms shall have the respective meanings specified below:
- (i) "Affiliate" means, with respect to a given Person, any other Person that directly or indirectly through one or more intermediaries Controls, is Controlled by, or is under common Control with such given Person.
 - (ii) "Asserted Cure" has the meaning specified in Section 41.1(k)(i).
 - (iii) "Asserted LW Violation" has the meaning specified in Section 41.1(k)(i).
 - (iv) "Comptroller" means the Comptroller of The City of New York or his or her designee.
 - (v) "Concessionaire" means a Person that has been granted the right by Lessee or an Affiliate of Lessee to operate at the demised premises for the primary purpose of selling goods or services to natural persons at the demised premises.
 - (vi) "Control" or "Controls", including the related terms "Controlled by" and "under common Control with", means the power to direct the management and policies of a Person (a) through the ownership, directly or indirectly, of not less than a majority of its voting equity, (b) through the right to designate or elect not less than a majority of the members of its board of directors, board of managers, board of trustees or other governing body, or (c) by contract or otherwise.
 - (vii) "Covered Counterparty" means a Covered Employer whose Specified Contract is directly with Lessee or one of its Site Affiliates to lease, occupy, operate or perform work at the demised premises.
 - (viii) "Covered Employer" means any of the following Persons: (a) Lessee, (b) a Site Affiliate, (c) a tenant, subtenant, leaseholder or subleaseholder of Lessee or of an Affiliate of Lessee that leases any portion of the demised premises (or an Affiliate of any such tenant, subtenant, leaseholder or subleaseholder if such Affiliate has one or more direct Site Employees), (d) a Concessionaire that operates on any portion of the demised premises, and (e) a Person that contracts or subcontracts with any Covered Employer described in clauses (a), (b), (c) or (d) above to perform work for a period of more than ninety days on any portion of the demised premises, including temporary services or staffing agencies, food service contractors, and other on-site service contractors; provided, however, that the term "Covered Employer" shall not include (i) a Person of the type described in Section 6-134(d)(2), (3), (4) or (5) of the New York City Administrative Code, (ii) a Person that has annual consolidated gross revenues that are less than the Small Business Cap unless the revenues of the Person are included in the consolidated gross

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

- (ix) “DCWP” means the Department of Consumer and Worker Protection (formerly Department of Consumer Affairs) of the City of New York, acting as the designee of the Mayor of The City of New York, or such other agency or designee that the Mayor of The City of New York may designate from time to time.
- (x) “LW” has the same meaning as the term “living wage” as defined in Section 6-134 of the New York City Administrative Code and shall be adjusted annually in accordance therewith, except that as of April 1, 2015, the “living wage rate” component of the LW shall be eleven dollars and sixty-five cents per hour (\$11.65/hour) and the “health benefits supplement rate” component of the LW shall be one dollar and ninety-five cents per hour (\$1.95/hour). The annual adjustments to the “living wage rate” and “health benefits supplement rate” will be announced on or around January 1 of each year by the DCWP and will go into effect on April 1 of such year.
- (xi) “LW Agreement” means, with respect to any Covered Counterparty, an enforceable agreement in the form attached hereto as Exhibit K (except only with such changes as are necessary to make such Covered Counterparty the obligor thereunder).
- (xii) “LW Agreement Delivery Date” means, with respect to any Covered Counterparty, the latest of (a) the effective date of such Covered Counterparty’s Specified Contract, (b) the date that such Covered Counterparty becomes a Covered Employer at the demised premises and (c) the date of this Lease.
- (xiii) “LW Law” means the Fair Wages for New Yorkers Act, constituting Section 6-134 of the New York City Administrative Code, as amended, supplemented or otherwise modified from time to time, and all rules and regulations promulgated thereunder.

- (xiv) “LW Term“ means the period commencing on the Commencement Date and ending on the date that is ten years after the Commencement Date.
- (xv) “LW Violation Final Determination” has the meaning specified in Section 41.1(k)(i)(1), Section 41.1(k)(i)(2)(A) or Section 41.1(k)(i)(2)(B), as applicable.
- (xvi) “LW Violation Initial Determination” has the meaning specified in Section 41.1(k)(i)(2).
- (xvii) “LW Violation Notice” has the meaning specified in Section 41.1(k)(i).
- (xviii) “LW Violation Threshold“ means \$100,000 multiplied by 1.03ⁿ, where “n” is the number of full years that have elapsed since January 1, 2015.
- (xix) “Owed Interest“ means the interest accruing on Owed Monies, which interest shall accrue from the relevant date(s) of underpayment to the date that the Owed Monies are paid, at a rate equal to the interest rate then in effect as prescribed by the superintendent of banks pursuant to Section 14-a of the New York State Banking Law, but in any event at a rate no less than six percent per year.
- (xx) “Owed Monies“ means, as the context shall require, either (a) the total deficiency of LW required to be paid by Lessee in accordance with this Section 41.1 to Lessee’s or its Site Affiliate’s (as applicable) direct Site Employee(s) after taking into account the wages actually paid (which shall be credited towards the “living wage rate” component of the LW), and the monetary value of health benefits actually provided (which shall be credited towards the “health benefits supplement rate” component of the LW), to such direct Site Employee(s), all as calculated on a per pay period basis; or (b) if Lessee or its Site Affiliate failed to obtain a LW Agreement from a Covered Counterparty as required under Section 41.1(f) below, the total deficiency of LW that would have been required to be paid under such Covered Counterparty’s LW Agreement to its direct Site Employee(s) after taking into account the wages actually paid (which shall be credited towards the “living wage rate” component of the LW), and the monetary value of health benefits actually provided (which shall be credited towards the “health benefits supplement rate” component of the LW), to such direct Site Employee(s), all as calculated on a per pay period basis, during the period commencing on the LW Agreement Delivery Date applicable to such Covered Counterparty and ending immediately prior to the execution and delivery by such Covered Counterparty of its LW Agreement (if applicable).
- (xxi) “Prevailing Wage Law“ means Section 6-130 of the New York City Administrative Code, as amended, supplemented or otherwise modified from time to time, and all rules and regulations promulgated thereunder.
- (xxii) “Qualified Workforce Program“ means a training or workforce development program that serves youth, disadvantaged populations or traditionally hard-to-employ populations and that has been determined to be a Qualified

Workforce Program by the Director of the Mayor's Office of Workforce Development.

- (xxiii) "Site Employee" means, with respect to any Covered Employer, any natural person who works at the demised premises and who is employed by, or contracted or subcontracted to work for, such Covered Employer, including all employees, independent contractors, contingent workers or contracted workers (including persons made available to work through the services of a temporary services, staffing or employment agency or similar entity) that are performing work on a full-time, part-time, temporary or seasonal basis; provided that the term "Site Employee" shall not include any natural person who works less than seventeen and a half (17.5) hours in any consecutive seven day period at the demised premises unless the primary work location or home base of such person is at the demised premises (for the avoidance of doubt, a natural person who works at least seventeen and a half (17.5) hours in any consecutive seven day period at the demised premises shall thereafter constitute a Site Employee).
- (xxiv) "Small Business Cap" means three million dollars; provided that, beginning in 2015 and each year thereafter, the Small Business Cap shall be adjusted contemporaneously with the adjustment to the "living wage rate" component of the LW using the methodology set forth in Section 6-134(b)(9) of the New York City Administrative Code.
- (xxv) "Specified Contract" means, with respect to any Person, the principal written contract that makes such Person a Covered Employer hereunder.
- (c) During the LW Term, Lessee shall pay each of its direct Site Employees no less than an LW. During the LW Term, Lessee shall cause each of its Site Affiliates that is a Covered Employer to pay their respective Site Employees no less than an LW.
- (d) During the LW Term, Lessee shall (or shall cause the applicable Site Affiliate to, as applicable), on or prior to the day on which each direct Site Employee of Lessee or of a Site Affiliate begins work at the demised premises, (i) post a written notice detailing the wages and benefits required to be paid to Site Employees under this Section 41.14 in a conspicuous place at the demised premises that is readily observable by such direct Site Employee and (ii) provide such direct Site Employee with a written notice detailing the wages and benefits required to be paid to Site Employees under this Section 41.1. Such written notice shall also provide a statement advising Site Employees that if they have been paid less than the LW they may notify the Comptroller and request an investigation. Such written notice shall be in English and Spanish.
- (e) During the LW Term, Lessee shall not (or the applicable Site Affiliate shall not, as applicable) take any adverse employment action against any Site Employee for reporting or asserting a violation of this Section 41.1.
- (f) During the LW Term, Lessee shall cause each Covered Counterparty to execute an LW Agreement on or prior to the LW Agreement Delivery Date applicable to such Covered

Counterparty. Lessee shall deliver a copy of each Covered Counterparty's LW Agreement to the Lessor, the DCWP and the Comptroller at the notice address specified herein and promptly upon written request. Lessee shall retain copies of each Covered Counterparty's LW Agreement until six years after the expiration or earlier termination of such Covered Counterparty's Specified Contract.

- (g) During the LW Term, , in the event that an individual with managerial authority at Lessee or at a Site Affiliate receives a written complaint from any Site Employee (or such individual otherwise obtains actual knowledge) that any Site Employee has been paid less than an LW, Lessee shall deliver written notice to the Lessor, the DCWP and the Comptroller within 30 days thereof.
- (h) Lessee hereby acknowledges and agrees that the Lessor, the DCWP and the Comptroller are each intended to be third party beneficiaries of the terms and provisions of this Section 41.1. Lessee hereby acknowledges and agrees that the DCWP, the Comptroller and the Lessor shall each have the authority and power to enforce any and all provisions and remedies under this Section 41.1 in accordance with paragraph (k) below. Lessee hereby agrees that the DCWP, the Comptroller and the Lessor may, as their sole and exclusive remedy for any violation of Lessee's obligations under this Lease, bring an action for damages (but not in excess of the amounts set forth in paragraph (k) below), injunctive relief or specific performance or any other non-monetary action at law or in equity, in each case subject to the provisions of paragraph (k) below, as may be necessary or desirable to enforce the performance or observance of any obligations, agreements or covenants of Lessee (or of any Site Affiliate) under this Section 41.1. The agreements and acknowledgements of Lessee set forth in this Section 41.1 may not be amended, modified or rescinded by Lessee without the prior written consent of the Lessor or the DCWP.
- (i) No later than 30 days after Lessee's receipt of a written request from the Lessor, the DCWP and/or the Comptroller (but in no event more than once per calendar year), Lessee shall provide to the Lessor, the DCWP and the Comptroller (i) a certification stating that all of the direct Site Employees of Lessee and its Site Affiliates are paid no less than an LW (if such obligation is applicable hereunder) and stating that Lessee and its Site Affiliates are in compliance with this Section 41.1 in all material respects, (ii) a written list of all Covered Counterparties, together with the LW Agreements of such Covered Counterparties, (iii) certified payroll records in respect of the direct Site Employees of Lessee or of any Site Affiliate (if applicable), and/or (iv) any other documents or information reasonably related to the determination of whether Lessee or any Site Affiliate is in compliance with their obligations under this Section 41.1.
- (j) Annually, by August 1 of each year during the LW Term, Lessee shall (i) submit to the Lessor a written report in respect of employment, jobs and wages at the demised premises as of June 30 of such year, in a form provided by the Lessor to all projects generally, and (ii) submit to the Lessor and the Comptroller the annual certification required under Section 6-134(f) of the LW Law (if applicable).
- (k) Violations and Remedies.

- (i) If a violation of this Section 41.1 shall have been alleged by the Lessor, the DCWP and/or the Comptroller, then written notice will be provided to Lessee for such alleged violation (an "LW Violation Notice"), specifying the nature of the alleged violation in such reasonable detail as is known to the Lessor, the DCWP and the Comptroller (the "Asserted LW Violation") and specifying the remedy required under Section 41.1(k)(ii), (iii), (iv), (v) and/or (vi) (as applicable) to cure the Asserted LW Violation (the "Asserted Cure"). Upon Lessee's receipt of the LW Violation Notice, Lessee may either:
- A. Perform the Asserted Cure no later than 30 days after its receipt of the LW Violation Notice (in which case a "LW Violation Final Determination" shall be deemed to exist), or
 - B. Provide written notice to the Lessor, the DCWP and the Comptroller indicating that it is electing to contest the Asserted LW Violation and/or the Asserted Cure, which notice shall be delivered no later than 30 days after its receipt of the LW Violation Notice. Lessee shall bear the burdens of proof and persuasion and shall provide evidence to the DCWP no later than 45 days after its receipt of the LW Violation Notice. The DCWP shall then, on behalf of the City, the Lessor and the Comptroller, make a good faith determination of whether the Asserted LW Violation exists based on the evidence provided by Lessee and deliver to Lessee a written statement of such determination in reasonable detail, which shall include a confirmation or modification of the Asserted LW Violation and Asserted Cure (such statement, a "LW Violation Initial Determination"). Upon Lessee's receipt of the LW Violation Initial Determination, Lessee may either:
 - I. Accept the LW Violation Initial Determination and shall perform the Asserted Cure specified in the LW Violation Initial Determination no later than 30 days after its receipt of the LW Violation Initial Determination (after such 30 day period has lapsed, but subject to clause (II) below, the LW Violation Initial Determination shall be deemed to be a "LW Violation Final Determination"), or
 - II. Contest the LW Violation Initial Determination by filing in a court of competent jurisdiction or for an administrative hearing no later than 30 days after its receipt of the LW Violation Initial Determination, in which case, Lessee's obligation to perform the Asserted Cure shall be stayed pending resolution of the action. If no filing in a court of competent jurisdiction or for an administrative hearing is made to contest the LW Violation Initial Determination within 30 days after Lessee's receipt thereof, then the LW Violation Initial Determination shall be deemed to be a "LW

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

- (ii) For the first LW Violation Final Determination imposed on Lessee or any Site Affiliate in respect of any direct Site Employees of Lessee or of a Site Affiliate, at the direction of the Lessor or the DCWP (but not both), (A) Lessee shall pay the Owed Monies and Owed Interest in respect of such direct Site Employees of Lessee or of a Site Affiliate to such direct Site Employees; and/or (B) in the case of a violation that does not result in monetary damages owed by Lessee, Lessee shall cure, or cause the cure of, such non-monetary violation.
- (iii) For the second and any subsequent LW Violation Final Determinations imposed on Lessee or any Site Affiliate in respect of any direct Site Employees of Lessee or of a Site Affiliate, at the direction of the Lessor or the DCWP (but not both), (A) Lessee shall pay the Owed Monies and Owed Interest in respect of such direct Site Employees of Lessee or of a Site Affiliate to such direct Site Employees, and Lessee shall pay fifty percent (50%) of the total amount of such Owed Monies and Owed Interest to the DCWP as an administrative fee; and/or (B) in the case of a violation that does not result in monetary damages owed by Lessee, Lessee shall cure, or cause the cure of, such non-monetary violation.
- (iv) For the second and any subsequent LW Violation Final Determinations imposed on Lessee or any Site Affiliate in respect of any direct Site Employees of Lessee or of a Site Affiliate, if the aggregate amount of Owed Monies and Owed Interest paid or payable by Lessee in respect of the direct Site Employees of Lessee or of a Site Affiliate is in excess of the LW Violation Threshold for all past and present LW Violation Final Determinations imposed on Lessee or any Site Affiliate, then in lieu of the remedies specified in subparagraph (iii) above and at the direction of the Lessor or the DCWP (but not both), Lessee shall pay (A) two hundred percent (200%) of the Owed Monies and Owed Interest in respect of the present LW Violation Final Determination to the affected direct Site Employees of Lessee or of a Site Affiliate, and (B) fifty percent (50%) of the total amount of such Owed Monies and Owed Interest to the DCWP as an administrative fee.
- (v) If Lessee fails to obtain an LW Agreement from its Covered Counterparty in violation of paragraph (f) above, then at the discretion of the Lessor or the DCWP (but not both), Lessee shall be responsible for payment of the Owed Monies, Owed Interest and other payments described in subparagraphs (ii), (iii) and (iv) above (as applicable) as if the direct Site Employees of such Covered Counterparty were the direct Site Employees of Lessee.
- (vi) Lessee shall not renew the Specified Contract of any specific Covered Counterparty or enter into a new Specified Contract with any specific Covered

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

- (vii) It is acknowledged and agreed that (A) other than as set forth in this Lease, the sole monetary damages that Lessee may be subject to for a violation of this Section 41.1 are as set forth in this paragraph 41.1(k), and (B) in no event will the Specified Contract between Lessee and a given Covered Counterparty be permitted to be terminated or rescinded by the Lessor, the DCWP or the Comptroller by virtue of violations by Lessee or another Covered Counterparty.

Section 41.2 HireNYC

- (a) No later than six (6) months after the execution of this Amendment, Lessee shall submit to Lease Administrator a HireNYC Program (“Lessee’s HireNYC Permanent Program”) which states Lessee’s proposed plans for participation in NYCEDC’s hiring and workforce development program which aims to create employment opportunities for low-income persons and includes certain hiring, retention, advancement and training goals (“Goals”) as well as other requirements, as more particularly described in Lessee’s HireNYC Permanent Program.
- (b) Lessee agrees that from the date of submission of Lessee’s HireNYC Permanent Program through the conclusion of the Lease Term (“HireNYC Permanent Program Term”), Lessee and its successors and assigns shall use good faith efforts to reach the Goals set forth in the Lessee’s HireNYC Permanent Program. Lessee further agrees to be bound by all the covenants and requirements in Lessee’s HireNYC Permanent Program, including the provision of all notices, documents, compliance reports and payment of any liquidated damages as set forth in Exhibit H hereto.

Section 41.3 Job Retention. Lessee shall use its best efforts to maintain or increase the number of Union member employment opportunities available at the demised premises.

Section 41.4 M/WBE Practices and Program.

- (a) Following completion of the Solar Project, with respect to any other Work to be Performed, Lessee shall submit to Lease Administrator an M/WBE Participation Proposal which states Lessee's proposed plans for participation by minority-owned business enterprises ("MBEs") and women-owned business enterprises ("WBEs", together with MBEs collectively referred to as "M/WBEs") in the work to be Performed. Any M/WBE Participation Proposal shall include the "MWBE Participation Goal", defined as the target percentage of the hard costs and Soft Costs associated with the work to be Performed (the "Eligible Costs") that will be paid to M/WBEs firms which are certified by DSBS (defined in Exhibit G-3) to credit such firms' participation toward attainment of the M/WBE Participation Goal ("Certified Firms").
- (b) No later than one hundred and twenty days (120) days prior to the commencement of the Work to be Performed, Lessee will submit to Lease Administrator, for Lease Administrator's review and approval, a M/WBE Participation Plan in the form attached hereto as Exhibit G-2
- (c) Lessee agrees that during the Term of this Lease, Lessee and its successors and assigns shall (i) use good faith efforts to comply with the terms and conditions of and to reach the M/WBE Participation Goal outlined in Lessee's M/WBE Participation Proposal set forth in Exhibit G-1, (ii) comply with the M/WBE Participation Plan submitted in accordance with this Section 41.4, and (iii) comply with the M/WBE Program Requirements set forth in Exhibit G-3. Lessee agrees to be bound by all the covenants in Lessee's M/WBE Participation Proposal, M/WBE Participation Plan and the M/WBE Program Requirements, including the provision of all Compliance Reports, as defined and shown in Exhibit G-3, and payment of any liquidated damages as set forth in Exhibit H hereto.

Section 41.5 Employment Reporting and Requirements.

- (a) If applicable, Lessee shall comply with the following employment reporting and related requirements.
- (b) If applicable, on or before the date hereof, Lessee, if it has not already done so, shall complete and return to Lease Administrator a questionnaire (the "Employment Questionnaire") in the form annexed hereto as Exhibit J (pursuant to City Admin. Code Section 22- 823) asking, in substance, how many and what types of jobs Lessee in good faith estimates will be created and retained with regard to the demised premises when developed as contemplated by this Lease.
- (c) If applicable, with regard to each period from July 1 through June 30 (a "Fiscal Year") any part of which falls within the seven (7) year period following the Lease Commencement Date (such seven (7) year period, the "Reporting Period"), Lessee shall submit to Lessor, for each Fiscal Year, by

August 1 following the end of such Fiscal Year, an employment and benefits report (the "Employment Report") in the form annexed hereto as Exhibit I (Form of Employment Report) (with the dates therein updated to reflect the applicable Fiscal Year). Lessee shall take all appropriate measures, including such as Lease Administrator may direct to cause its Subtenants to furnish employee information with respect to such Subtenants to Lease Administrator in a manner equivalent to that provided above. Lessee shall include in such Employment Report information collected by Lessee from Subtenants.

- (d) During the Reporting Period, Lessee shall (i) receive and in good faith consider such reasonable proposals as the City and/or any City-related entities may make with regard to jobs Lessee may seek to fill in relation to its activities in or concerning the demised premises and shall provide the City and such entities with the opportunity to (A) refer candidates who are City residents having the requisite education and experience for the positions in question, and/or (B) create a program to train City residents for those jobs (it being understood that Lessee shall not be required to hire any candidate which Lessee, in good faith, considers unqualified for the applicable position) and (ii) with regard to each Fiscal Year that falls in whole or in part within the Reporting Period, report to Lease Administrator, by August 1, on an annual basis, with regard to the previous Fiscal Year, its response to any proposals, job referrals and training programs made and/or created by the City and/or City-related entities pursuant to this Section 41.5(c). Lessee shall be deemed to have fully complied with the provisions of this Section 41.5(c) so long as Lessee is in full compliance with the provisions of Section 41.4(a) and Section 42.4(b), if applicable.
- (e) Lessee shall retain for six (6) years all forms required by this Section 41.5(a), Section 41.5(b) and Section 41.5(c) completed by Lessee and any Subtenants and, at Lessor's request, shall permit Lessor upon reasonable notice, to inspect such forms and provide Lessor copies thereof.
- (f) Lessee acknowledges that accurate and complete information concerning employment opportunities generated at the demised premises is of material concern to Lessor and agrees that Lessee's covenants in this Section 41.5 are a material inducement for Lessor to enter into this Lease.
- (g) To the extent applicable, Lessee shall comply with the provisions of Executive Order No. 50 (1980), as amended, ("E.O. 50") or any successor thereto, and the regulations promulgated thereunder, or any successor thereto and shall incorporate the language required thereby in any construction contract related to Construction Work. Lessee shall further comply with the provisions of Exhibit I.

- (h) Local Law 34. If applicable, Lessee shall complete and submit all necessary documents in connection with Local Law 34 which basic form is attached hereto as Exhibit L.
- (i) Survival. The obligations of Lessee under this Section 41.5 shall survive the Expiration of the Term.

Section 41.6 Compliance with Revised Program. In the event that a “Pre-apprenticeship” or similar program is developed after the date of this Lease by the Division of Labor Services of the Department of Small Business Services of the City in consultation with New York State and City agencies and construction industry representatives, to provide opportunities for and recruitment of economically disadvantaged persons, women and minorities in the construction trades (a “Revised Program”), Lessee shall also implement and comply with the requirements of such Revised Program if, as and when such requirements are incorporated into the provisions of E.O. 50 and/or the regulations in connection therewith, and if it is applicable to Lessee, provided Lease Administrator has so notified Lessee.

20. Impositions. The Lease is hereby amended to include a new Article FORTYSECOND entitled, “Impositions”, as set forth below:

Section 42.1 Payment of Impositions.

- (a) Obligation to Pay Impositions. Lessee shall pay, in the manner provided in Article THIRD hereof, all Impositions that at any time during the Term are or, if the demised premises or any part thereof were not owned by the City, would be assessed, levied, confirmed, imposed upon, or would grow out of, become due and payable out of, or with respect to, or would be charged with respect to the ownership, leasing, operation, use, occupancy and possession of (i) the demised premises or any part thereof, or (ii) the sidewalks or streets in front of or adjoining the demised premises or any part thereof, or (iii) any vault, passageway or space in, over or under such sidewalk or street, or (iv) any other appurtenances of the demised premises or any part thereof, or (v) any Personal Property or other facility used in the operation of the demised premises, or (vi) the Rental (or any portion thereof) of any other amount payable by Lessee hereunder, or (vii) any documents to which Lessee is a party creating or transferring an interest or estate in the demised premises or any portion thereof, (viii) the use and occupancy of the demised premises, or (ix) the transaction contemplated by this Lease.
- (b) Certain Definitions. For the purposes hereof “Imposition” or “Impositions” means:
 - (i) real property general and special assessments (including, without limitation, any special assessments or fees for or imposed by any business improvement district or by any special assessment district) other than Taxes;
 - (ii) personal property taxes;

- (iii) occupancy and rent taxes;
- (iv) water, water meter and sewer rents, rates and charges;
- (v) license and permit fees;
- (vi) service charges with respect to police and fire protection, street and highway construction, maintenance and lighting, sanitation and water supply;
- (vii) except for Taxes, any other governmental excises, fines, levies, fees, rents, assessments or taxes and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind whatsoever now or hereafter enacted, including but not limited to commercial occupancy taxes and sales and compensating use taxes with respect to construction materials incorporated into the demised premises, and any interest or costs with respect thereto, which at any time during the Term may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of, are charged with respect to, or may become a Lien on, the demised premises, the sidewalks or streets immediately abutting or on the Land, and/or any business improvement district of which the same may form a part, and/or the demised premises, or the fixtures, equipment, machinery or other Personal Property used in the operation of the demised premises or installed by Lessee in the demised premises, or the Rents payable by Lessee to Lessor hereunder, or charged with respect to any document to which Lessee is a party creating or transferring any interest or estate in the demised premises, or Lessee's use or occupancy thereof, or this transaction;
- (viii) any municipal, state or federal inheritance, estate, succession, transfer or gift taxes of Lessee, but only to the extent that such taxes become, or would become, by reason of the nonpayment thereof, a Lien upon the demised premises or any portion thereof, the sidewalks or streets in front of or adjoining the demised premises or any portion thereof, any vault, passageway or space in, over or under such sidewalks or streets, or any other appurtenances of the demised premises or any portion thereof or the Rental (or any portion thereof) payable by Lessee hereunder; and
- (ix) any fines, penalties and other similar governmental charges applicable to the foregoing, together with any interest or costs with respect to the foregoing, incurred by reason of Lessee's failure to make any payments as herein provided.
 - (c) Payments of Impositions. Subject to the provisions of Section 42.2 hereof, Lessee shall pay each Imposition or installment thereof not later than the last date the same may be paid without incurring any interest or penalty. However, if by law, at the taxpayer's option, any Imposition may be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Lessee may exercise the option to pay the Imposition in such installments when due and shall be responsible for the payment of such installments with interest, if any, imposed thereon. If Lessee fails twice to make any payment of an Imposition (or installment thereof) on or

before the due date thereof, Lessee shall, at Lessor's request, be required for a period of two (2) years following the second such failure to pay all Impositions or installments thereof thereafter payable by Lessee not later than ten (10) days before the due date thereof.

- (d) Rules and Regulations. Lessee shall pay Impositions in the form, to the entity and at the location provided by the rules and regulations governing the payment of such Impositions as if Lessee owned the demised premises.
- (e) Income or Franchise Tax of Lessor. Lessee shall not be required to pay any municipal, state or federal corporate income or franchise tax imposed upon Lessor, whether based upon the income or capital of Lessor; nor shall Lessee be required to pay any municipal, state or federal inheritance, estate, succession, transfer or gift taxes of Lessor.

Section 42.2 Evidence of Payment. Lessee shall furnish to Lessor, within ten (10) Business Days following the date of such request, official receipts of the appropriate taxing authority or other proof reasonably satisfactory to Lessor, evidencing the payment of any Impositions.

Section 42.3 Evidence of Nonpayment. Any certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition asserting nonpayment of such Imposition shall be *prima facie* evidence that such imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill, at the time or date stated herein; *provided, however*, that Lessee shall have the right to dispute in good faith the accuracy of any such certificate, advice or bill. Notices given by Lessor under this Lease shall not be deemed to be such certificate, advice or bill.

Section 42.4 Apportionment of Imposition. Any Imposition relating to a fiscal period of the taxing authority, a part of which is included within the Term and a part of which is included in a period of time before the Commencement Date or after the Expiration Date, shall be apportioned between Lessor and Lessee as of the Commencement Date or the Expiration Date (unless the Expiration Date has occurred as a result of an Event of Default, in which case Lessee shall not be entitled to an apportionment) so that Lessee shall pay that portion of such Imposition which that part of such fiscal period included in the Term bears to the fiscal period of the taxing authority.

Section 42.5 Taxes. Provided the City shall be Lessor, Lessor shall pay or, on or before the last date the same may be paid without incurring any interest or penalty (which may be by bookkeeping entry, interdepartmental direction or other manner or procedure selected by Lessor), cancel or otherwise satisfy and discharge of record any and all Taxes. If the City shall cease to be Lessor, Lessor shall pay the Taxes on or before the last date the same may be paid without incurring any interest or penalty. Lessor, from time to time, upon request of Lessee, shall furnish to Lessee and any Recognized Mortgagee designated in writing by Lessee, within forty-five (45) days of such request, official receipts of the appropriate

taxing authority or other proof, reasonably satisfactory to Lessee, evidencing the cancellation, satisfaction or discharge of record of the Taxes.

Section 42.6 Sales Tax. Lessee acknowledges that Lessee may incur New York City and New York State sales and/or compensating use taxes imposed pursuant to Sections 1105, 1107, 1109 and 1110 of the New York State Tax Law, as each of the same may be amended from time to time (including any successor provisions to such statutory sections) (collectively, “Sales Taxes”) on tangible personal property incorporated into or otherwise in connection with the Construction Work. Lessee shall pay all Sales Taxes as may be imposed by the New York State Department of Taxation and Finance or the DOF (collectively, together with any successor in function, the “Taxing Authorities”) as if Lessee were the fee owner of the demised premises, and without regard to any exemption that may arise or be available solely on account of Lessor’s ownership of the demised premises. Lessee acknowledges that (i) Lessor shall have no liability to Lessee therefor, nor be required to provide any exemption (including, without limitation, the delivery of a sales tax exemption letter), and (ii) if and to the extent Lessee is required to pay Sales Taxes, Lessee shall pay all such amounts as and when due together with any interest or penalty charges imposed thereon by the Taxing Authorities. This Section 42.6 shall not be construed to prevent Lessee from claiming any exempt status (without regard to any exemption that may arise or be available solely on account of Lessor’s ownership of the demised premises), including any available exemption if Lessee were the fee owner of the demised premises or if due to Lessee’s tax exempt status or the tax exempt use of the demised premises, if applicable, *provided, however*, that Lessor makes no representation with respect to the ability of Lessee to acquire any exemption from Sales Taxes.

Section 42.7 Application. Neither Lessee nor any other Person may claim any sales or compensating use tax exemption solely by virtue of the City’s holding fee title to the demised premises, and Lessee shall include such restriction in all direct Subleases and require inclusion of such in all indirect Subleases, but without restricting any rights of Lessee to accept benefits that Lessee would otherwise be entitled to.

Section 42.8 Survival. The provisions of Sections 42.1 through 42.7 (inclusive) of this Article 42 shall survive the expiration or earlier termination of this Lease.

21. Reports; Books and Records; Inspection and Audit. The Lease is hereby amended to include a new Article FORTYTHIRD entitled, “Reports; Books and Records; Inspection and Audit”, as set forth below:

Section 43.1 Statement. Effective upon the date of this Sixth Amendment, if applicable, Lessee shall furnish to Lessor, for as long as the City is the owner of the demised premises and to the extent that the Administrative Code of the City Section 11-208.1 (or successor thereto) is then in force and effect, income and expense statements of the type required by such code Section (or successor thereto) as if Lessee were the “owner” of the demised premises as such term is used in said Section 11-208.1, such statements to be submitted within the time periods and to the address provided for in said Section 11-208.1 and shall

be submitted notwithstanding that the City holds fee title to the demised premises, that the demised premises may therefore not be “income-producing property” as that concept is used in Section 11-208.1.

Section 43.2 Maintenance of Books and Records. If applicable, Lessee shall keep and maintain, at an office in New York City, complete and accurate books and records and all other papers and files of Lessee relating to the operations of the demised premises from which Lessor may determine for each Lease Year the items to be shown or set forth on the statements to be delivered to Lessor pursuant to Section 43.1 hereof (“demised premises Operations Records”) and shall preserve, for a period of at least six (6) years after the end of each applicable period of time, the demised premises Operations Records. However, if, at the expiration of such six (6) year period, Lessor is seeking to contest or is contesting any matter relating to such demised premises Operations Records or any matter to which such demised premises Operations Records may be relevant, Lessee shall preserve such demised premises Operations Records until one (1) year after the final adjudication, settlement or other disposition of any such contest.

Section 43.3 Inspection and Audits of Books and Records. Lessor, the Comptroller and/or Lessor’s agents or representatives shall have the right from time to time during regular business hours, upon ten (10) Business Days’ notice, to inspect, audit and, at its option, duplicate, at Lessor’s expense, all of Lessee’s demised premises Operations Records. If the Comptroller establishes a policy allowing the City to provide in future leases similar to this Lease for a right to audit that extends less than the six (6) year period provided in Section 43.2 hereof, then such shorter period shall be applicable hereunder, but in no event shall such period be less than one (1) year. Lessee shall produce such books, records, papers and files upon request of Lessor, the Comptroller and/or Lessor’s agents or representatives. Subject to applicable law, Lessor and the Comptroller shall hold in confidence, and shall cause Lessor’s agents and representatives to hold in confidence, all information obtained from Lessee’s books, records, papers and files, except as may be necessary for the enforcement of Lessor’s rights under this Lease.

Section 43.4 Certified Public Accountant. All reports under this Article FORTYTHIRD shall be prepared by a Certified Public Accountant.

22. Lessor’s Right to Perform. The Lease is hereby amended to include a new Article FORTYFOURTH entitled, “Lessor’s Right to Perform”, as set forth below:

Section 44.1 Lessor’s Right to Perform. If at any time Lessee shall fail to pay for or maintain any of the insurance policies required to be provided by Lessee pursuant to Article SEVENTEENTH hereof, or to make any other payment or perform any other act on its part to be made or performed hereunder, including, without limitation, the obligation to cause the discharge of Liens pursuant to this Lease, then, upon not less than fifteen (15) days’ prior notice to Lessee with respect to a payment failure or a failure to maintain insurance required by this Lease or thirty (30) days’ prior notice to Lessee with respect to a performance failure (or, in case of any emergency or any other circumstances that may

materially adversely affect Lessor, or Lessor's interest in the demised premises, on such notice as may be reasonable under the circumstances), and without either releasing Lessee from any obligation of Lessee hereunder, or waiving Lessor's right to terminate this Lease upon an Event of Default in accordance with the provisions hereof, or any other right or remedy available to Lessor hereunder, at law or at equity, Lessor may (but shall not be obligated to):

- (a) pay for and maintain any of the insurance policies required to be furnished by Lessee pursuant to Article SEVENTEENTH hereof, or
- (b) make any other payment or perform any other act on Lessee's part to be made or performed in accordance with this Lease, *provided* that Lessor may undertake (i) any obligation imposed on Lessee pursuant to this Lease, or (ii) any act that would require Lessor, its representatives, employees, contractors, or any other Person acting on Lessor's behalf to enter upon the demised premises, or any portion thereof, for any such purpose, only in the case of an emergency or an Event of Default.

Section 44.2 Reimbursement for Amounts Paid by Lessor Pursuant to this Article. Any amounts paid by Lessor pursuant to Section 44.1 hereof, including all costs and expenses incurred by Lessor in connection therewith, shall be paid to Lessor within thirty (30) days of Lessor's demand, together with a late charge on the amounts so paid by Lessor, calculated at the Late Charge Rate from the date of any such payment by Lessor to the date on which payment of such amounts is received by Lessor.

Section 44.3 Right to Use Restoration/Deposited Funds. In the event that a casualty or a Taking affecting the demised premises occurs, and an Event of Default has occurred as a result of Lessee's failure to undertake its obligations under this Lease to complete a Restoration, if Lessor subsequently elects to undertake or complete any Restoration pursuant to this Lease, upon thirty (30) days' notice to Lessee or, if thirty (30) days is not practicable, a commercially reasonable period of time after the casualty and/or Taking in question, (a) Lessee shall pay immediately, or cause to be paid immediately, to Lessor, all insurance proceeds that have been received by Lessee in connection with a casualty and/or proceeds of a condemnation award received by Lessee in connection with a condemnation, reduced by (i) the costs reasonably incurred by Lessee in the collection of such proceeds and (ii) reasonable amounts actually incurred and paid by Lessee in connection with the Restoration of the demised premises, and if such insurance proceeds and/or condemnation awards are insufficient to complete the Restoration, Lessee, on Lessor's demand shall pay the deficiency to Lease Administrator, only if and to the extent that Lessee is obligated by this Lease to pay any such deficiency, and (b) Lease Administrator shall pay all undisbursed moneys held by it to Lessor.

Section 44.4 Waiver, Release and Assumption of Obligations. Lessor's payment or performance pursuant to the provisions of this Article FORTYFOURTH shall not be, nor be deemed to be (a) a waiver or release of the Default or Event of Default with respect thereto (or any past or future Default or Event of Default) or of Lessor's right to take such

action as may be permissible hereunder, or (b) Lessor's assumption of Lessee's obligations to pay or perform any of Lessee's past, present or future obligations hereunder.

Section 44.5 Proof of Damages. Lessor shall not be limited in the proof of any damages that it may claim against Lessee arising out of, or by reason of, Lessee's failure to provide and keep insurance in force in accordance with the provisions of this Lease to the amount of the insurance premium or premiums not paid. However, subject to the other provisions of of this Lease to the contrary, Lessor shall be entitled to seek, and if successful, to recover, as damages for such Default or Event of Default, the uninsured amount of any loss and damage sustained or incurred by it and the costs and expenses of any suit in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements.

23. Lessor's Brownfield Remediation at the demised premises. The Lease is hereby amended to include a new Article FORTYFIFTH entitled, "Lessor's Brownfield Remediation at the demised premises", as set forth below:

Section 45.1 Remediation Project. Following completion of the work described in the "Access and Indemnification Agreement for Site Testing Work", Lease Administrator shall develop and propose an environmental remediation work plan to NYSDEC. Upon approval by NYSDEC of the Remedial Action Work Plan ("RAWP"), Lease Administrator shall provide Lessee with a copy thereof. Following approval of the RAWP by the NYSDEC, Lease Administrator, its consultants, and Lessee shall coordinate a phasing schedule (the "Phasing Schedule") of the environmental remediation work (collectively, the "Remediation Project"). The terms of access for purposes of completing the Remediation Project are further described in and shall be performed in accordance with Exhibit C, attached hereto and made a part hereof. The Phasing Schedule shall identify those portions of the demised premises (each a "Remediation Parcel", together the "Remediation Parcels") to be subject to the Remediation Project and shall state the date Lease Administrator intends to commence the Remediation Project for such Remediation Parcel. Lease Administrator shall notify Lessee of changes to the Phasing Schedule as soon as reasonably possible. Following issuance by NYSDEC of a certificate of completion ("COC"), Lessor shall provide Lessee with a schedule for implementation of the site management plan, which plan shall be approved by NYSDEC and shall include annual certification to NYSDEC (the "Site Management Plan").

Section 45.2 Access. Lessee grants Lessor, Lease Administrator and its consultants unimpeded and uninterrupted access to the Remediation Parcels at all times during performance of the Remediation Project in accordance with the Phasing Schedule. The parties shall coordinate access through the demised premises to each Remediation Parcel for the purpose of performing the Remediation Project in accordance with the provisions of Exhibit C.

Section 45.3 Post-Completion Site Management Plan. Following completion of the Remediation Project and issuance of the COC, for the purpose of performing the Site Management Plan (the "Post-Completion Site Management Plan"), Lessee shall continue to grant Lessor, Lease Administrator and its consultants access to the demised premises in accordance with the provisions of Exhibit C.

Section 45.4 Lessor's Undertakings during the Remediation Project. During the term of the Remediation Project, issuance of the COC and for the duration of implementation of the Post-Completion Site Management Plan, as applicable, Lessor shall cause Lease Administrator to engage, procure and pay for consultants to complete the Remediation Plan and Post-Completion Site Management Plan, as described herein and Lease Administrator shall cause its consultants to comply with substantially those requirements set forth on Exhibit M with respect to performance of the Services as set forth therein, and shall cause its consultants and subconsultants (if applicable) to maintain substantially the same insurance set forth on Exhibit N.

24. Counterparts: Validity. This Sixth Amendment may be executed in multiple counterparts and all counterparts collectively shall constitute an original Sixth Amendment. This Sixth Amendment shall not be or become binding to any extent or for any purpose unless and until it is fully executed.
25. Terms and Conditions. In all other respects, except as hereinabove amended and modified by this Sixth Amendment, all terms and conditions contained in the Lease shall remain in full force and effect and continue to apply and bind the parties.
26. Benefit. This Sixth Amendment shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.
27. Laws of the State of New York. This Sixth Amendment shall be governed by and construed and enforced in accordance with the laws of the State of New York. This Sixth Amendment shall be construed without regard to any presumption or rule requiring construction against the party that caused this Sixth Amendment to be drafted.

(remainder of page intentionally left blank; signature page follows)

IN WITNESS WHEREOF, the parties hereto have duly executed this Sixth Amendment to the Lease as of the day and year first above written.

THE CITY OF NEW YORK

By: Andrew Schwartz
Name: Andrew Schwartz
Title: Deputy Commissioner

K.F.I. FOOD DISTRIBUTORS, INC.

By: Thatcher Krasne
Name: Thatcher Krasne
Title: President

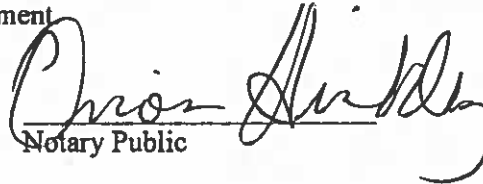
Approved as to Form:

Betty C. Woo (KR)
Acting Corporation Counsel

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

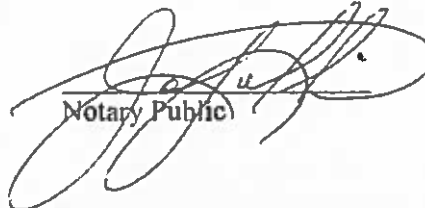
On June 22, 2021, before me, the undersigned, personally appeared Andrew Schwartz personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

ORION HITE HINKLEY
Notary Public, State of New York
Reg. No. 01HI6319049
Qualified in Kings County
Commission Expires 02/09/2023


Notary Public

STATE OF NEW YORK)
 Westchester : SS.:
COUNTY OF ~~NEW YORK~~)

On June 4, 2021, before me, the undersigned, personally appeared Thatcher Krasne, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.


Notary Public

JOSEPH SUNDHEIM
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01SU6151349
Qualified in Westchester County
Commission Expires August 14, 2022

EXHIBIT A
Demised Premesis

November 5, 2020

Ref: 20322.01



DESCRIPTION – Lease Exhibit

**Portion of Block 2781 Lot 500 (400 Food Center Drive)
Bronx, New York**

ALL THE CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE, LYING AND BEING IN THE BOROUGH AND COUNTY OF BRONX, CITY AND STATE OF NEW YORK, BEING A PORTION OF TAX LOT 500 IN BLOCK 2781 AS SHOWN ON TAX MAP OF THE BOROUGH & COUNTY OF THE BRONX, CITY & STATE OF NEW YORK, AND MORE PARTICULARLY DESCRIBED AS:

BEGINNING AT A POINT ON THE EASTERLY SIDE OF FOOD CENTER DRIVE (100' WIDE), POINT BEING 2598.70' NORTHERLY OF THE INTERSECTION FORMED BY THE EASTERLY SIDE OF FOOD CENTER DRIVE AND THE NORTHERLY SIDE OF FARRAGUT STREET THENCE:

1. DEPARTING SAID STREET LINE, N 66° 50' 50"E, 37.85' TO THE POINT OF BEGINNING, THENCE;
2. N 66° 51' 56" E, 635.73' TO A POINT, THENCE;
3. S 23° 08' 05" E, 1,090.07', TO A POINT, THENCE;
4. S 66° 51' 56" W, 13.00' TO A POINT, THENCE;
5. S 23° 08' 05" E, 235.01', TO A POINT, THENCE;
6. S 19° 17' 58" W, 100.64' TO A POINT, THENCE;
7. S 87° 32' 42" W, 623.87' TO A POINT ON A CURVE, THENCE;
8. CONTINUING ALONG THE SAME WITH A CURVE TO THE LEFT HAVING A RADIUS OF 447.42', A DELTA OF 20° 41' 09" A CHORD BEARING OF N 12° 47' 31" W A CHORD OF 160.66' AND AN ARC LENGTH OF 161.53' TO A POINT OF TANGENCY, THENCE;
9. N 23° 08' 05" W, 1021.00' TO THE POINT OF TRUE BEGINNING

Engineers | Scientists | Planners | Designers

100 Motor Pa
Suite 350
Hauppauge, N
P 631.787.34
F 631.813.25



Description - Kressville

- 1. THE PROPERTY IS BEING SUBMITTED FOR REVIEW AND APPROVAL FOR THE PROPOSED DEVELOPMENT OF THE PROPERTY AS SHOWN ON THE ATTACHED LAYOUTS AND SPECIFICATIONS. THE PROPERTY IS BEING SUBMITTED FOR REVIEW AND APPROVAL FOR THE PROPOSED DEVELOPMENT OF THE PROPERTY AS SHOWN ON THE ATTACHED LAYOUTS AND SPECIFICATIONS.
- 2. THE PROPOSED DEVELOPMENT OF THE PROPERTY IS SUBJECT TO THE APPROVAL OF THE BOARD OF BOARD OF REVIEW.
- 3. THE PROPOSED DEVELOPMENT OF THE PROPERTY IS SUBJECT TO THE APPROVAL OF THE BOARD OF BOARD OF REVIEW.
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- 9. THE PROPOSED DEVELOPMENT OF THE PROPERTY IS SUBJECT TO THE APPROVAL OF THE BOARD OF BOARD OF REVIEW.
- 10. THE PROPOSED DEVELOPMENT OF THE PROPERTY IS SUBJECT TO THE APPROVAL OF THE BOARD OF BOARD OF REVIEW.

General Notes

- 1. THE PROPERTY IS BEING SUBMITTED FOR REVIEW AND APPROVAL FOR THE PROPOSED DEVELOPMENT OF THE PROPERTY AS SHOWN ON THE ATTACHED LAYOUTS AND SPECIFICATIONS. THE PROPERTY IS BEING SUBMITTED FOR REVIEW AND APPROVAL FOR THE PROPOSED DEVELOPMENT OF THE PROPERTY AS SHOWN ON THE ATTACHED LAYOUTS AND SPECIFICATIONS.
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- 10. THE PROPOSED DEVELOPMENT OF THE PROPERTY IS SUBJECT TO THE APPROVAL OF THE BOARD OF BOARD OF REVIEW.

- Legend**
- FRANCHISE UNIT AREA 132,717 AC
 - BLK 102 LOT 102
 - BLK 102 LOT 101
 - BLK 102 LOT 100
 - BLK 102 LOT 99
 - BLK 102 LOT 98
 - BLK 102 LOT 97
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 - BLK 102 LOT 67
 - BLK 102 LOT 66
 - BLK 102 LOT 65
 - BLK 102 LOT 64
 - BLK 102 LOT 63
 - BLK 102 LOT 62
 - BLK 102 LOT 61
 - BLK 102 LOT 60

Kressville
400 Food Center Drive
Bronx, New York 10474

NO.	DATE	DESCRIPTION

Lease Exhibit

November 4, 2020

Project No. [blank]
For Review By
November 3, 2020

Sv-1

1 = 1

SCALE: 1" = 10'

November 3, 2020
2022.00

EXHIBIT B

Rent Schedule

Building SF	324,600																
Lot SF	541,024																
	Lease Year	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	
Base Rent	PSF	\$ 2.13	\$ 2.13	\$ 5.21	\$ 8.29	\$ 11.37	\$ 14.45	\$ 15.00	\$ 15.38	\$ 15.76	\$ 16.15	\$ 16.56	\$ 16.97	\$ 17.40	\$ 17.83	\$ 18.28	
	Annual	\$ 691,398	\$ 691,398	\$1,691,398	\$2,691,398	\$3,691,398	\$4,691,398	\$4,869,000	\$4,990,725	\$5,115,493	\$5,243,380	\$5,374,465	\$5,508,827	\$5,646,547	\$5,787,711	\$5,932,404	
Additional Rent Base Rent	PSF	\$ 0.39	\$ 0.40	\$ 0.41	\$ 0.43	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
	Annual	\$ 126,594	\$ 130,392	\$ 134,304	\$ 138,333	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
		<i>Escalate Lot at CPI/2.5%</i>															
Parking Lot Rent	PSF	0.02	\$ 0.02	\$ 0.02	\$ 0.02	\$ 0.02	\$ 0.03	\$ 0.03	\$ 0.03	\$ 0.03	\$ 0.03	\$ 0.03	\$ 0.03	\$ 0.03	\$ 0.03	\$ 0.03	
	Annual	\$ 12,100	\$ 12,713	\$ 13,030	\$ 13,356	\$ 13,690	\$ 14,032	\$ 14,383	\$ 14,743	\$ 15,111	\$ 15,489	\$ 15,876	\$ 16,273	\$ 16,680	\$ 17,097	\$ 17,524	
Hunts Point Improvement Fund	PSF	0.44	\$ 0.45	\$ 0.47	\$ 0.48	\$ 0.50	\$ 0.51	\$ 0.53	\$ 0.54	\$ 0.56	\$ 0.57	\$ 0.59	\$ 0.61	\$ 0.63	\$ 0.65	\$ 0.67	
	Annual	\$ 142,824	\$ 147,109	\$ 151,522	\$ 156,068	\$ 160,750	\$ 165,572	\$ 170,539	\$ 175,656	\$ 180,925	\$ 186,353	\$ 191,944	\$ 197,702	\$ 203,633	\$ 209,742	\$ 216,034	
TOTAL PAYMENT TO EDC		\$ 972,916	\$ 981,612	\$1,990,254	\$2,999,154	\$3,865,838	\$4,871,002	\$5,053,922	\$5,181,123	\$5,311,529	\$5,445,222	\$5,582,285	\$5,722,801	\$5,866,860	\$6,014,550	\$6,165,962	

EXHIBIT C

Remediation Access

1) Lessee grants to Lessor, Lease Administrator and its consultants and/or contractors (collectively, “Lessor Parties”), access to the demised premises for the purposes of performing the Remediation Project pursuant to applicable RAWP. It should be noted that Lessee has already granted access to the demised premises to conduct “Remedial Investigation” activities pursuant to, and as defined in, a DEC-approved Remedial Investigation Workplan pursuant to an Access and Indemnification Agreement between Lessor and Lessee, dated April 21, 2020. The access granted under this Exhibit C relates to access by Lessor Parties for the purposes of performing the Remediation Project consistent with the RAWP and applicable laws, regulations and NYSDEC guidance. Access will be provided as follows:

a) Preparation Access. Access to the demised premises to enable preparation for the remediation will be provided to Lessor Parties, by Lessee upon NYSDEC’s determination that the Draft RAWP is administratively complete and NYSDEC has published public notice in NYSDEC’s Environmental Notice Bulletin that the Draft RAWP is available for review and public comment (i.e. the 45-day public comment period has started). The conditions of this access are set forth in section 2, below. Preparation Access shall solely consist of preliminary site visits by Lessor Parties, non-invasive investigations, and other non-invasive work related to the RAWP.

b) Work Access. Work access to the demised premises to complete the remedial activities consistent with the RAWP will be granted to Lessor Parties following NYSDEC’s issuance of a Decision Document and written approval and acceptance of the RAWP. The conditions of this access are outlined in section 2, below.

c) Site Management/Post-Work Access. Site management access to the demised premises will be granted to Lessor Parties upon completion of the Remediation Project and NYSDEC’s issuance of a COC for the Site (as defined in the Brownfield Cleanup Agreement C203101). The conditions applicable to this access are set forth in sections 2 and 3, below.

2) General Conditions of Access.

a) Review and Approval. Upon completion of the RAWP (but prior to NYSDEC’s issuance of a Decision Document), in addition to and not in any way limiting the rights otherwise set forth herein, Lessee will review bid documents for the Remediation Project and Lessee may comment and approve the bid documents solely with respect to:

i) logistics and defining areas of the leased premises that will be inaccessible to Lessee for a period of time.

- ii) notification process for when the contractor(s) will move to new areas or begin a new phase of remediation.
- iii) hours of work.
- iv) review of final capping plans with regard to access, slopes and traffic circulation, and parking.

Lessee may not unreasonably withhold its approval and must provide feedback and/or approval within ten (10) business days of receipt, or such other time as agreed to by the parties.

b) Coordination Meetings. Lessee and Lease Administrator shall schedule coordination and approval meetings at a minimum of at the following milestones:

- i) After completion of site testing conducted pursuant to the Remediation Investigation Work Plan.
- ii) Upon 30% completion of the remedial design.
- iii) Upon 70% completion of the remedial design.
- iv) On a monthly basis during all activities covered by this Exhibit C.

c) Shared Access. During the Remediation Project, Lessor Parties and Lessee will share the access road to Food Center Drive as shown in Attachment A.

d) Notice. Lease Administrator must provide Lessee at least seven (7) business days' notice prior to commencement of the Remediation Project and shall provide such prior notice to Lessee prior to commencing work on an additional Remediation Parcel.

e) Review of Reports. Lease Administrator or its consultants/contractor(s) shall promptly provide Lessee with a copy of any and all final draft reports, documents and data (including laboratory analytical data) (together, the "Final Draft Report") pertaining to the Remediation Project and Lessee shall have the opportunity to provide comments to the Final Draft Report before the Final Draft Report is finalized.

f) Minimal Disturbance

i) The warehouse building will not be disturbed in any way during the Remediation Project. In the event remedial investigation results indicate that additional access is required to conduct further investigation and/or mitigation to address possible soil vapor intrusion conditions in the warehouse building, such access will be limited to visual inspections and installation of floor sealants and vapor mitigation systems, if required. Any access to the warehouse will be on terms consistent with this Exhibit C, will have no impact to Lessee's operations in any way, nor will Lessee incur any cost or expense associated with such access.

ii) The parties will enter good faith negotiations during the remedial investigation and design process to ensure that the following operational needs are adequately addressed, with the understanding that nonetheless, some disturbance will occur:

(A) Truck Circulation

1. The parties acknowledge that truck circulation is essential to Lessee's core operations and agree that Lessor will cause the following measures to be taken to mitigate any net loss ("NL") of area for truck circulation on the demised premises during performance of the Remediation Project. Employee parking needs should also be contemplated when designing truck circulation. The threshold of NL is subject to Lessee's review and approval.
2. Lessor shall cause a temporary southern entrance (the "Southern Entrance") to be constructed on the demised premises to accommodate and improve traffic circulation during the Remediation Project. In the event Lessee desires to have this entrance designed as a permanent improvement to the demised premises, Lessee must give Lessor written notice at or prior to the "70% design meeting" as referenced in Paragraph 2(b)(iii), above. Lessor will construct the Southern Entrance as a permanent improvement provided there is no increase in the cost estimate of such permanent construction. If Lessee does not desire the Southern Entrance to be a permanent entrance, the temporary entrance will be removed at the conclusion of the Remediation Project.

(B) Temporary Parking Spaces

1. The parties acknowledge that truck and trailer parking is essential to Lessee's core operations and agree that Lessor will cause the following measures to be taken to mitigate any NL of the parking lot for truck, trailer, and employee parking on the demised premises during or as a result of the Remediation Project.
2. In the event that truck and trailer parking areas must be temporarily utilized to accommodate the Remediation Project, functionally equivalent accommodations for truck and trailer parking area (assuming 53-foot trailers) will be provided either on the demised premises or directly adjacent to the demised premises on Site D, as to be verified by a qualified logistics engineer/firm whose selection shall be subject to Lessee's approval, which shall not be unreasonable withheld, at no cost to Lessee.
3. The parties agree that Attachment B, attached hereto and made a part of this Exhibit C, identifies Lessee's current truck and passenger parking capacity. There will be no NL if this overall capacity is maintained.

g) Business Interruption Costs

i) Out of pocket costs incurred by Lessee associated with accommodations made by Lessee on the demised premises to enable the uninterrupted continuation of Lessee's business operations during the Remediation Project or during performance of the Post-Completion Site Management Plan ("SMP", described in Paragraph 3, below), including costs associated with maintaining access (by way of example and not limitation, to address additional ice and snow treatment and/or removal), additional site security, lighting, additional labor and machinery necessary to facilitate the alternate parking on the demised premises, shall be deducted from Lessee's Rent (a "Reimbursement Deduction"), on a quarterly basis, notwithstanding anything to the contrary in the Lease. Provided, however that Reimbursement Deductions shall not exceed \$12,100 per year (i.e. the amount of annual Rent Lessee pays for the southern parking lot area) for a total of two years during the Lease Term.

ii) Out of pocket costs incurred by Lessee on "Site D" (depicted in the third image of Attachment A hereto) to accommodate and enable the uninterrupted continuation of Lessee's business operations during the Remediation Project or during performance of the SMP, including costs associated with maintaining access (by way of example and not limitation, to address ice and snow treatment and/or removal, and installation of a stairway for employee access to the Lessee building from Site D), additional site security, lighting, additional labor and machinery necessary to facilitate the alternate parking on Site D will be solely at Lessor's expense.

3) Post-Completion Site Management Plan Period.

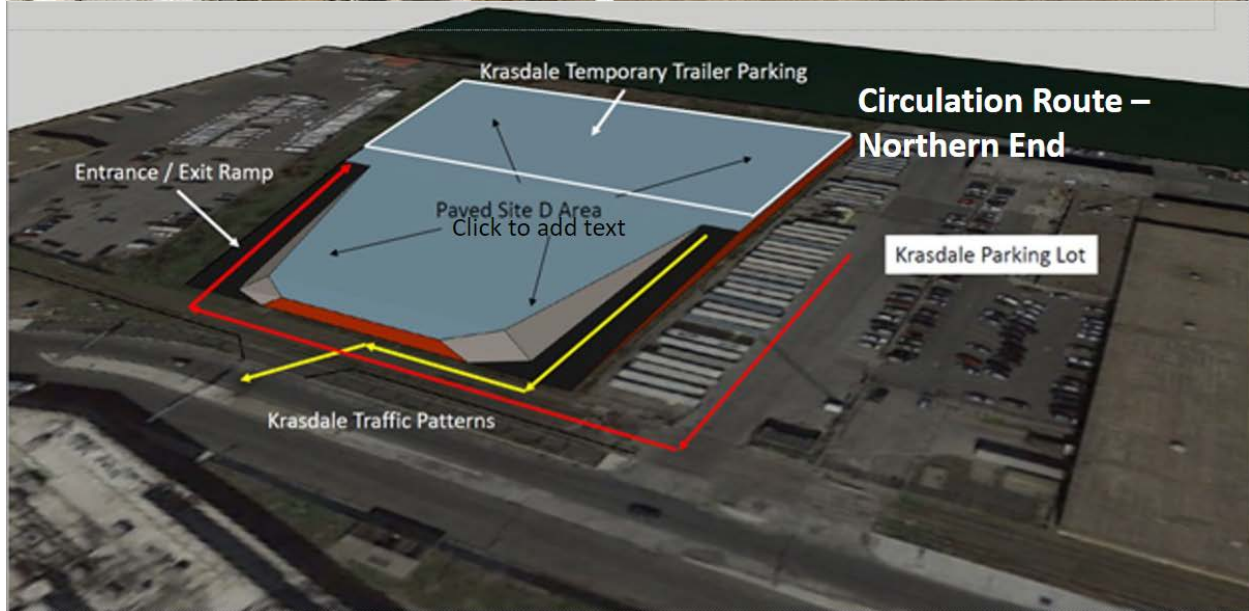
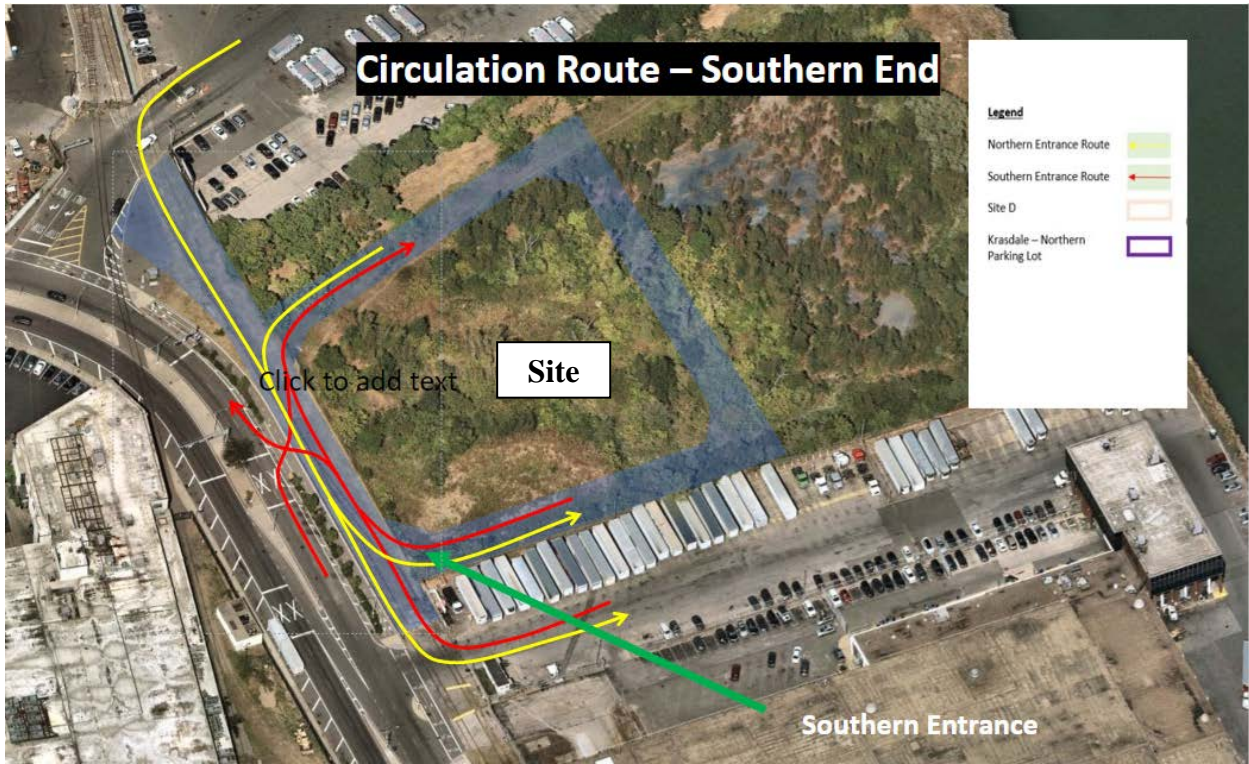
- a) Following completion of the Remediation Project, Lessor Parties may only access the demised premises to perform the SMP. Access for monitoring and/or sampling activities set forth in the SMP will be permitted on the same terms as access for the Remediation Project as set forth herein. Lessee acknowledges that future construction activities on the demised premises will be subject to the workplans and constraints as set forth in the SMP.
- b) In the event that the Remediation Project causes the loss of more than the five trailer parking spots (the "Lost Trailer Spots") as such trailer parking spots are illustrated in Attachment B, and functionally equivalent truck and trailer circulation and parking area(s) cannot reasonably be provided on the demised premises (either as a result of post-remedial increases in grade elevation or otherwise), Lessee agrees that Lessor may provide functionally equivalent truck and trailer circulation and parking areas (assuming 53-foot trailers) solely at Site D, during performance of the Remediation Project. Lessor shall cause, at its sole cost and expense, a qualified logistics engineer/firm, whose selection shall be subject to Lessee's approval which shall not be unreasonably withheld, to certify the Lost Trailer Spots and to determine the functional equivalent of the Lost Trailer Spots and trailer circulation at Site D. If a determination of Lost Trailer Spots is made, Lessor shall provide the determined functional equivalent of the Lost Trailer Spots at Site D at no cost

or expense to Lessee. If, following completion of the Remediation Project, the Lost Trailer Spots and trailer circulation or the functional equivalent thereof has not been made available to Lessee within the Leased Premises then Lessor and Lessee shall amend the Lease to incorporate the functional equivalent of the Lost Trailer Spots and trailer circulation area on Site D into the demised premises.

- c) In the event that the Remediation Project causes the loss of between one and five trailer parking spots (an “Insignificant Loss”) from the Lessee’s parking capacity at the demised premises as illustrated on Attachment B, NYCEDC will reduce Lessee’s “Parking Lot Rent” to \$0 per year for the remainder of the Lease term. Parking Lot Rent is outlined in Exhibit B of the Lease. However, if the Insignificant Loss is due to the creation of the Southern Entrance (as depicted in Attachment B), Lessor reserves the right to not include the loss of these parking spots in the calculation of Insignificant Loss.

- d) Repair After Remediation - Upon the completion of Remediation Project, if Lessee determines repairs must be made to continue its operations at the demised premises, Lessee can submit a repair scope request with a cost estimate to Lessor. Within 180 days of receipt of the repair scope, Lease Administrator shall submit a plan that satisfies Lessee’s repair scope. If Lessor fails to do so within 180 days, Lessee can perform such repair work and Lessor shall apply a rent credit for the cost of performing such repair work, as evidenced by receipts for the payment of such repair, which rent credit shall not to exceed \$126,000. Provided, however, that Lessee must obtain prior approval from NYSDEC before performing any such repairs that may cause the cap or soil to be disturbed and Lessee must cause the correction of such disturbance in accordance with the SMP, including monitoring as required, and shall have the corrective measure approved by the NYSDEC once accomplished.

Attachment A: Proposed Access Roads



Attachment B: Krasdale 2020 Parking Capacity



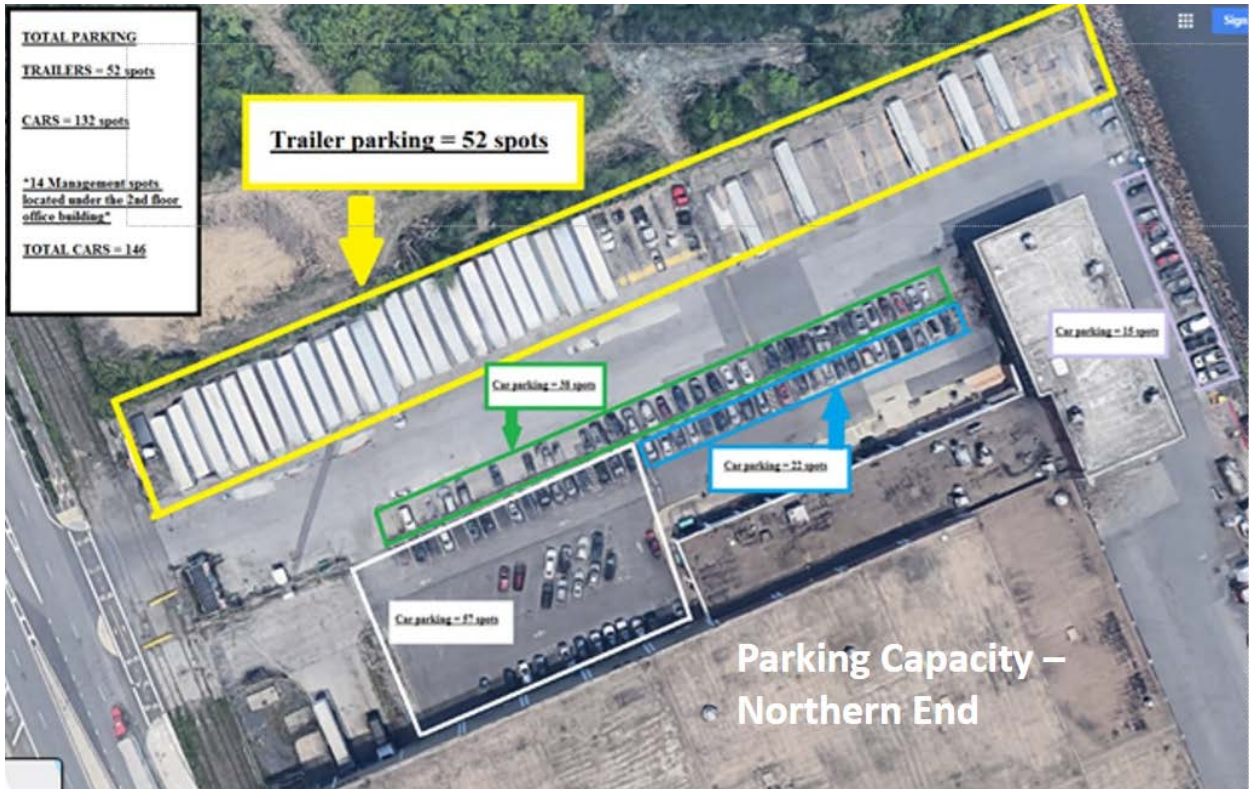


EXHIBIT D

(Intentionally Omitted)

EXHIBIT E

Solar Project Scope of Work

Tenant will design, install, and test the Solar PV System and make any necessary alterations and install necessary fixtures in order to connect the Solar PV System to the power grid in conjunction and with the written approval of the Lessor.

General Requirements

The design, installation, and implementation of the Solar PV System shall adhere to the following conditions:

1. The solar array will be designed and built in accordance with all national and local building and electrical codes
2. The panels should be grouped in such a way that there's adequate space to move around them.
3. The dunnage and roofing connection will be installed by the certified contractor who will continue the warranty.
4. Any electrical cables leading to the inverters will be adequately protected from trip and fall hazards.
5. Any penetrations into roof will be watertight and warrantied.
6. Proper signage must be provided on all roof access doors and on the array groups.

Specific Requirements – Installation of Solar PV System

- The Solar PV System installed at the Premises will be used for the purpose of generating electricity. The electricity produced by the Solar PV System will be separately metered. Though the Solar PV System will primarily be located on the upper rooftop of Building, some components of the Solar PV System will be located in the Auxiliary Premises.
- The array conduit will run down the exterior of the building to be connected to the new electrical gear as required by Con Edison. Tenant will perform the interconnection after the meters on the Con Edison side of the service line.
- Expected system size: 2,749.6 kW DC, and 1,980 kW AC.

- Expected PV module specification: (6,874) Hanwha Solar Q.PEAK DUO L-G5.2 400 (400-Watts DC)
- Expected inverter specification: (33) Yaskawa Solectria PVI 60 (60kW AC)
- Expected racking specification: Panelclaw PB3, 10-degree tilt ballast-mounted racking system

Specific Requirements – Removal of Solar PV System

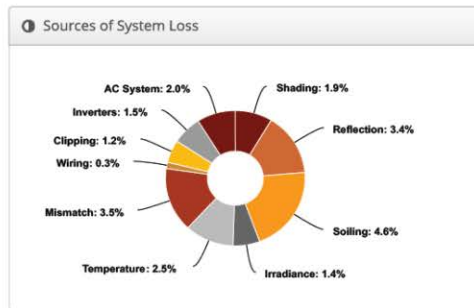
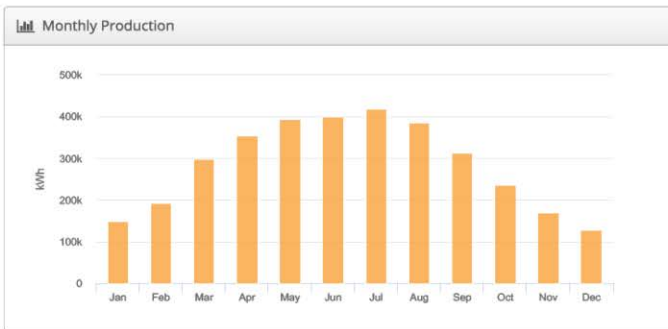
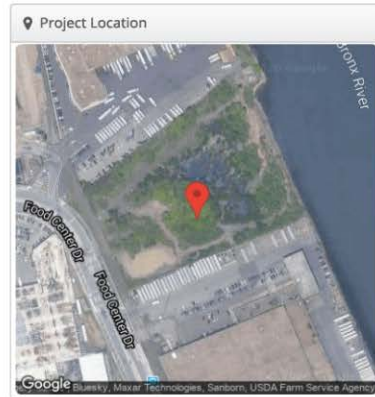
- At the time of uninstillation, all components of the Solar PV will be removed. If Tenant removes the Solar PV System, the uninstillation will be completed over the course of no more than 150 days. The portion of the building where the system is located will be returned to substantially its original condition (excluding ordinary wear and tear), including the removal of system mounting pads or other support structures. Lessor will provide sufficient access, space and cooperation as reasonably necessary to facilitate System removal. After removal of all electrical equipment and/or components, all façade piping penetrations including all mounted conduit bracket holes must be sealed and waterproofed. Any damages to the spray foam roof during removal must be immediately repaired.

2020-06-19 10 Deg Max Roof (HW 400, Sol 60TL, Post Structural Update) v9 (PC spacing)

Krasdale Foods - Bronx - NY, 400 Food Center Dr, Bronx, NY 10474

Report	
Project Name	Krasdale Foods - Bronx - NY
Project Address	400 Food Center Dr, Bronx, NY 10474
Prepared By	Akshay Wadgaonkar awadgaonkar@globusthenken.com

System Metrics	
Design	2020-06-19 10 Deg Max Roof (HW 400, Sol 60TL, Post Structural Update) v9 (PC spacing)
Module DC Nameplate	2.75 MW
Inverter AC Nameplate	1.98 MW Load Ratio: 1.39
Annual Production	3,442 GWh
Performance Ratio	80.3%
kWh/kWp	1,251.8
Weather Dataset	TMY, NY_Bronx_v3.2_SA, null (custom)
Simulator Version	f899f52eda-b47c748d08-a4b7c942ee-9a23df64f4



Annual Production			
	Description	Output	% Delta
Irradiance (kWh/m ²)	Annual Global Horizontal Irradiance	1,448.9	
	POA Irradiance	1,559.6	7.6%
	Shaded Irradiance	1,529.5	-1.9%
	Irradiance after Reflection	1,477.9	-3.4%
	Irradiance after Soiling	1,409.3	-4.6%
	Total Collector Irradiance	1,409.3	0.0%
Energy (kWh)	Nameplate	3,905,430.7	
	Output at Irradiance Levels	3,850,883.7	-1.4%
	Output at Cell Temperature Derate	3,753,011.3	-2.5%
	Output After Mismatch	3,623,351.1	-3.5%
	Optimal DC Output	3,610,923.8	-0.3%
	Constrained DC Output	3,567,021.2	-1.2%
	Inverter Output	3,512,190.0	-1.6%
Energy to Grid	3,441,950.0	-2.0%	
Temperature Metrics			
	Avg. Operating Ambient Temp		15.3 °C
	Avg. Operating Cell Temp		22.9 °C
Simulation Metrics			
	Operating Hours		4597
	Solved Hours		4597

Condition Set												
Description	10 Degree Ballast NY: Bronx (3.0 mi) LaGuardia Soiling Losses											
Weather Dataset	TMY, NY_Bronx_v3.2_SA, null (custom)											
Solar Angle Location	Project Lat/Lng											
Transposition Model	Perez Model											
Temperature Model	Diffusion Model											
Temperature Model Parameters	Rack Type	U _{const}					U _{wind}					
	Fixed Tilt	29					0					
	Flush Mount	15					0					
	East-West	29					0					
	Carport	29					0					
Soiling (%)	J	F	M	A	M	J	J	A	S	O	N	D
	12	13	8	3	3	3	3	3	3	3	3	10
Irradiation Variance	5%											
Cell Temperature Spread	4° C											
Module Binning Range	0% to 1.5%											
AC System Derate	2.00%											
Module Characterizations	Module	Uploaded By	Characterization									
	JAM72509-385/PR (JA Solar)	Folsom Labs	JA_Solar_JAM_72_D_09_385_BP.PAN, PAN									
	Q.PEAK DUO L-G5.2 400 (144Cell) (Hanwha Q Cells)	EnterSolar	Hanwha_Qcells_QPEAK_DUO_L-G5.2_400_Rev6.PAN, PAN									
Component Characterizations	Device	Uploaded By	Characterization									
	PVI 60TL 2-21-2017 (Solectria (Yaskawa Solectria Solar))	Folsom Labs	Default Characterization									

Components		
Component	Name	Count
Inverters	PVI 60TL 2-21-2017 (Solectria (Yaskawa Solectria Solar))	33 (1.98 MW)
Strings	10 AWG (Copper)	396 (91,514.1 ft)
Module	Hanwha Q Cells, Q.PEAK DUO L-G5.2 400 (144Cell) (400W)	6,874 (2.75 MW)

Wiring Zones			
Description	Combiner Poles	String Size	Stringing Strategy
Wiring Zone	13	15-18	Along Racking

Field Segments									
Description	Racking	Orientation	Tilt	Azimuth	Intrarow Spacing	Frame Size	Frames	Modules	Power
Field Segment 4	Fixed Tilt	Landscape (Horizontal)	10°	156.811°	0.9 ft	1x1		0	
Field Segment 5	Fixed Tilt	Landscape (Horizontal)	10°	156.811°	0.9 ft	1x1		0	
Field Segment 6	Fixed Tilt	Landscape (Horizontal)	10°	156.811°	0.9 ft	1x1		0	
Field Segment 1	Fixed Tilt	Landscape (Horizontal)	10°	156.811°	0.9 ft	1x1	6,796	6,796	2.72 MW
Field Segment 6	Fixed Tilt	Landscape (Horizontal)	10°	156.811°	0.9 ft	1x1	78	78	31.2 kW

Detailed Layout

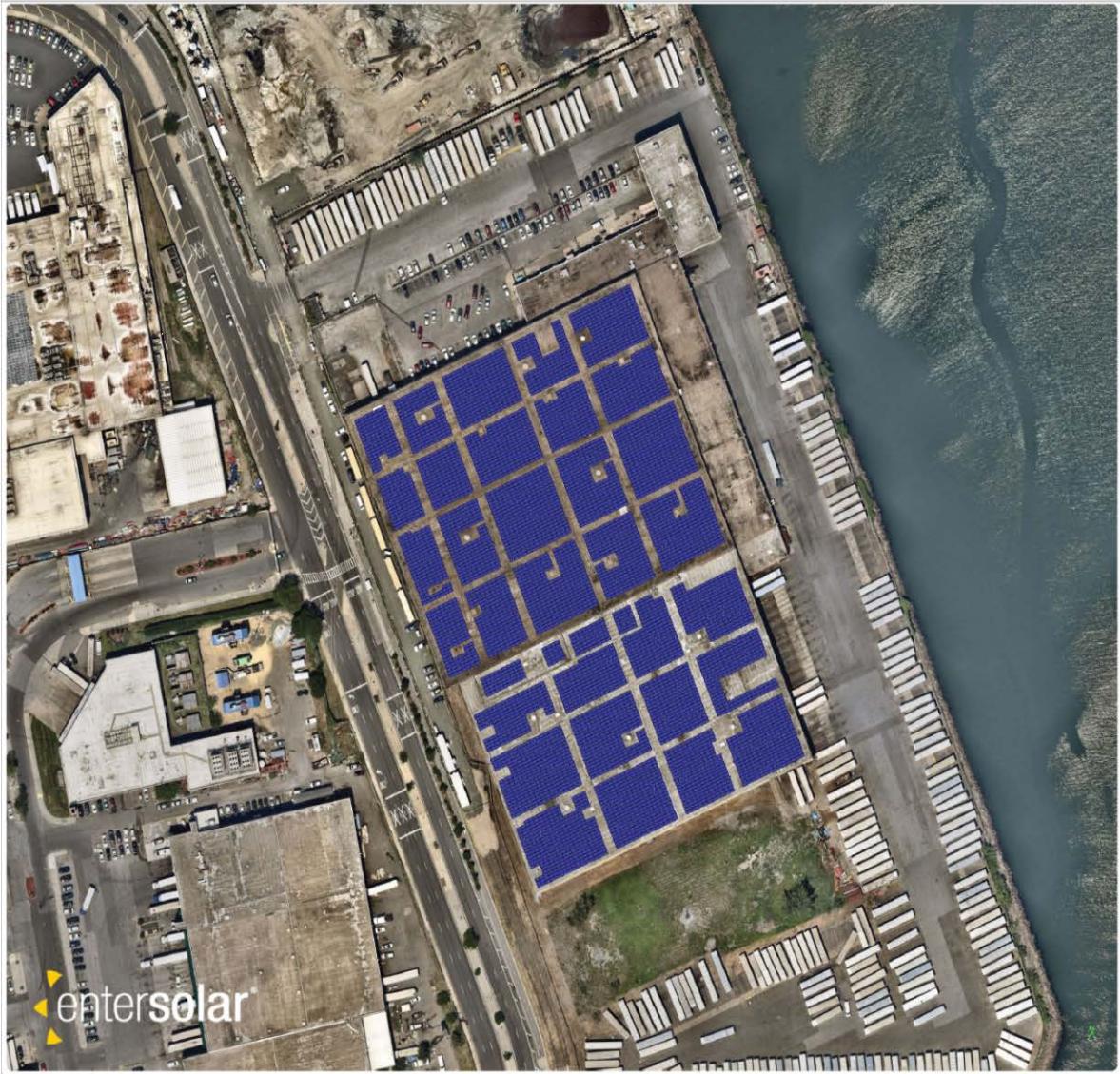


EXHIBIT F

Required Disclosure Statement

The undersigned, an authorized representative of _____, a _____ organized and existing under the laws of the State of _____, DOES HEREBY CERTIFY, REPRESENT AND WARRANT to the City of New York (the “City”) pursuant to Section [10.1(d)/ 10.6(a)/ 11.4(b)/ 42.17(c)] of that certain Lease Agreement, dated as of _____ 1, 20____, between the Lessor and _____, a _____ organized and existing under the laws of the State of _____ (the “Lease Agreement”) THAT:

None of the assignee, transferee, successor or sublessee Entity, any of the Principals of such Entity, or any Person that directly or indirectly Controls, is Controlled by, or is under common Control with such Entity:

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

2. _____ has been convicted of a felony and/or any crime involving moral turpitude in the preceding ten (10) years;

3. _____ has received written notice of default in the payment to the City of any taxes, sewer rents or water charges in excess of \$5,000 that has not been cured or satisfied, unless such default is then being contested with due diligence in proceedings in a court or other appropriate forum; or

4. _____ has, at any time in the three (3) preceding years, owned any property which, while in the ownership of such Person, was acquired by the City by in rem tax foreclosure, other than a property in which the City has released or is in the process of releasing its interest to such Person pursuant to the City Admin. Code.

As used herein, the following capitalized terms shall have the respective meanings set forth below:

“City” shall mean The City of New York.

“Control” or “Controls” shall mean the power to direct the management and policies of a Person (x) through the ownership, directly or indirectly, of not less than a majority of its voting securities, (y) through the right to designate or elect not less than a majority of the members of its board of directors or trustees or other Governing Body, or (z) by contract or otherwise.

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

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

“Person” shall mean an individual or any Entity.

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

Person as shall have the power to Control such Entity, and “principal” shall mean any of such Persons.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this ____ day of _____, 20__.

[NAME OF CERTIFYING ENTITY]

By: _____

Name:

Title:

EXHIBIT G
Participation Plan

EXHIBIT G-1

M/WBE Participation Proposal

[TO BE PROVIDED BY TENANT AND CREATED IN COORDINATION WITH LEASE ADMINISTRATOR'S M/WBE TEAM (MUST INCLUDE STATEMENT OF M/WBE PARTICIPATION GOAL)]

EXHIBIT G-2

M/WBE Participation Plan

Electronic copies of forms may be obtained by emailing opportunity MWDBE@nycedc.com

MWBE Participation Plan					Check One: <input type="checkbox"/> Initial Plan <input type="checkbox"/> Amended Plan		7/3/2014
<p>The purpose of this form is to ensure that appropriate planning and consideration go into the consultant and contractor utilization process, and to serve as documentation of your commitment to attain at least the minimum level of MWBE participation as represented by the goal(s) you committed to in the MWBE Participation Proposal. Please complete the forms and return (1) an Excel copy of the form and (2) an executed PDF to opportunityMWDBE@nycedc.com. Any questions should also be directed to this email address.</p> <p>I affirm that the following statements are true and accurate:</p> <ul style="list-style-type: none"> 1. I will make and thoroughly document every good faith effort to meet the Participation Goal. 2. This MWBE Participation Plan lists all consultants and contractors that are expected to work on this project as of the date above, whether MWBE or not. 3. I will immediately provide an updated MWBE Participation Plan to NYCEDC when consultants and contractors are added to or removed from the project, or if contract values change materially. 							
<p><u>X</u> Signature of Authorized Representative</p>	<p>_____ Name & Title</p>			<p>_____ Date</p>			
Project Information				Project Calculations			
Site of Activity				Total Hard and Soft Cost Projection	\$0.00		
Developer/Purchaser				Costs Allocated to Date	\$0.00		
Project Manager				Total Amount to Count toward MWBE Goal	\$0.00		
Email				Projected MWBE Goal Attainment (Allocated Costs Only)	0.00%		
Phone				Projected MWBE Goal Attainment (Total Hard and Soft Costs)	0%		
Design Consultants & Construction Contractors							
Company	MWBE? (“Y” or “N”)	Award Amount	Services to be Provided	Hiring Company <small>List only direct sub relationships. Should be the entity that will make payments to the company</small>	Is Hiring Company MWBE? (“Y” or “N”)	Amount to Count	
							\$0
							\$0
							\$0
							\$0
							\$0
							\$0
							\$0
							\$0
							\$0
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							\$0
							\$0

EXHIBIT G-3

M/WBE Program Requirements

1.1 M/WBE Program. Section 6-129 of the Administrative Code of the City of New York (hereinafter “Section 6-129”) establishes a program for participation in City procurement by M/WBEs, certified in accordance with Section 1304 of the City Charter by the New York City Department of Small Business Services (“DSBS”). The Lease Administrator has adopted an M/WBE program to further participation by MBEs and WBEs in projects administered by Lease Administrator. The Tenant shall comply with all requirements of the Lease Administrator’s M/WBE program set forth herein.

Minority and Women-Owned Business Enterprises. M/WBE firms must be certified by DSBS or New York State Urban Development Corporation d/b/a Empire State Development (“ESD”) to credit such firms’ participation toward attainment of the Participation Goal. Such certification must occur prior to the firms’ commencement of work.

Participation Goal.

Tenant commits to a Participation Goal of 24% for the Construction of the Building (the “Work”), as is set forth in the M/WBE Participation Proposal.

The Participation Goal represents percentage of the hard costs and soft costs associated with the Initial Construction Work (the “Eligible Costs”) that may be calculated as follows:

Contractors: The total dollar amount that Tenant has paid or is obligated to pay to contractors certified with DSBS or ESD as MBEs or WBEs for Eligible Costs shall be credited toward fulfilment of the Participation Goal, provided that the value of such a contractor’s participation shall be determined by subtracting from this total dollar amount any amounts that the contractor has paid or is obligated to pay to direct subcontractors or suppliers upon completion of such subcontractors or suppliers work or services.

Direct Subcontractors: The total dollar amount that a contractor has paid or is obligated to pay to subcontractors certified with DSBS or ESD as MBEs or WBEs for Eligible Costs shall be credited toward fulfilment of the Participation Goal, provided that the value of such a direct subcontractor’s participation shall be determined by subtracting from this total dollar value any amounts that the direct subcontractor has paid or is obligated to pay to indirect subcontractors or suppliers upon completion of such indirect subcontractors or suppliers work or services.

Indirect Subcontractors: The total dollar amount that a subcontractor has paid or is obligated to pay to its subcontractors certified with DSBS or ESD as MBEs or WBEs for Eligible Costs shall be credited toward fulfilment of the Participation Goal.

Suppliers: 60% of the dollar amount spent on materials or supplies as a part of the Eligible Costs, when such materials or supplies are purchased by the Tenant, contractors or direct subcontractors from suppliers certified with DSBS or ESD as MBEs or WBEs, shall be credited toward fulfilment of the Participation Goal.

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

Participation Goal Calculation Example (for illustrative purposes only):

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

Subcontractors on supplies. Of that, \$4 million is spent on supplies purchased from M/WBE suppliers.		suppliers = \$2.4 million	
		TOTAL:	27.4%

M/WBE Compliance Reports.

The Tenant, or a designee on behalf of the Tenant, shall provide the Lease Administrator with written statements in the form attached hereto as Exhibit G-4 (“M/WBE Compliance Reports”), certified under penalty of perjury, reporting the status of the Tenant’s compliance with its M/WBE Participation Plan and Participation Goal for the period covered by the report. The Tenant shall submit an M/WBE Compliance Report to the Lease Administrator quarterly.

In addition to the foregoing, the Tenant shall submit a final, cumulative M/WBE Compliance Report to the Lease Administrator within thirty (30) days of the completion of the Initial Construction Work. The Tenant shall set forth in such final report the information required in prior M/WBE Compliance Reports, including information for all M/WBE contractors, subcontractors and suppliers who were paid for Eligible Costs during the Initial Construction Work.

Modification of the Tenant’s Participation Plan.

The Tenant may request modification of its M/WBE Participation Plan after it has been approved. The Lease Administrator may grant such request if it determines that the Tenant has established, with appropriate documentary and other evidence, that the Tenant has made good faith efforts to meet the Participation Goal.

Good faith efforts shall be documented by Tenant requesting a modification and such documentation shall be provided to the Lease Administrator upon the Lease Administrator’s request. In determining whether the Tenant has made good faith efforts to meet the Participation Goal, the Lease Administrator will consider, along with any other relevant factors, evidence submitted by the Tenant showing that the Tenant or Tenant’s contractors or subcontractors, as appropriate, have, without limitation, conducted the following:

Direct Outreach. The Tenant, or Tenant’s contractors or subcontractors, as appropriate, (i) reached out to M/WBEs identified on the “Interested Subcontractor” list maintained by Lease Administrator, and provided timely notice to those identified M/WBEs and (ii) provided notice directly to M/WBEs or to business organizations made up of M/WBEs of specific opportunities to participate in the Initial Construction Work;

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

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

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

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

M/WBE Suppliers. The Tenant, or Tenant's contractors or subcontractors, as appropriate, made efforts to identify materials or supplies that could be purchased from suppliers certified with DSBS or ESD as MBEs or WBEs.

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

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

The Lease Administrator's M/WBE Director or Senior Vice President for Contracts will provide written notice to the Tenant of the determination on whether the Tenant has made all good faith efforts to meet the Participation Goal.

Compliance Audits. This Contract may be audited by the Lease Administrator to determine the Tenant's compliance with the requirements of the Tenant's M/WBE Participation Proposal and M/WBE Participation Plan.

Enforcement. In the event the Lease Administrator determines that the Lessee, its contractors or subcontractors have violated the M/WBE Program Requirements set forth herein or the M/WBE Participation Plan including, without limitation, a determination that the Tenant has failed to use good faith efforts to fulfill its Participation Goal, the Lease Administrator may (i) assess liquidated damages set forth in Section 8, below; and/or (ii) assert any other right or remedy it has under the Lease.

Liquidated Damages. If the Lessee fails to use good faith efforts to fulfill its Participation Goal, the Lessor and/or Lease Administrator may assess liquidated damages in the amount of ten percent (10%) of the difference between the dollar amount of Work required to be awarded to M/WBE contractors, subcontractors and suppliers to meet the Participation Goal and the dollar amount the Lessee actually awarded and paid to such M/WBEs. In view of the difficulty of accurately

ascertaining the loss which the Lessor or Lease Administrator will suffer by reason of the Lessee's failure to meet the Participation Goals, the foregoing amount is hereby fixed and agreed as the liquidated damages that the Lessor or Lease Administrator will suffer by reason of such failure, and not as a penalty.

Evaluations. The Tenant's record in implementing its M/WBE Participation Plan shall be a factor in the evaluation of its performance. If Lessee's compliance with its M/WBE Participation Plan and/or the M/WBE Program Requirements is found to be unsatisfactory, including but not limited to, Lessee's failure to use good faith efforts to fulfill its Participation Goal, Lessor or Lease Administrator may, after consultation with the Director of the Mayor's Office for Contracts, file an advice of caution form in PASSPort as caution data.

EXHIBIT G-4

M/WBE Compliance Report

Electronic copies of forms may be obtained by emailing opportunityMWDBE@nycedc.com

Project Information			Project Calculations			
Site of Activity			Total Hard and Soft Costs Projection	\$0.00		
Developer/Purchaser			Hard and Soft Costs to Date	\$0.00		
Project Manager			Total Payment Amounts to Count toward MWBE Goal	\$0.00		
Email			MWBE Goal Attainment to Date (based on costs incurred to date)	0.00%		
Phone			Portion of MWBE Goal Fulfilled to Date (based on total expected cost of the project)	0%		
Payment Data						
Company	MWBE? ("Y" or "N")	Payments (cumulative)	Services Provided	Hiring Company <small>List only direct sub relationships. Should be the entity that will make payments to the company</small>	Is Hiring Company MWBE? ("Y" or "N")	Amount to Count
						\$0
						\$0
						\$0
						\$0
						\$0
						\$0
						\$0
						\$0
						\$0
						\$0
						\$0
						\$0
						\$0
						\$0
						\$0
						\$0

EXHIBIT H

HireNYC

NYCEDC recognizes the importance of creating employment opportunities for low-income persons, enabling them to participate in the City’s economic growth. To this end, NYCEDC has developed HireNYC: Permanent for all Operating Agreements expected to produce ten (10) or more permanent jobs over the life of the project. Participation in this program requires the successful Respondent to use good faith efforts to achieve the hiring and workforce development goals and perform the requirements of NYCEDC’s HireNYC program requirements for permanent positions.

Each Respondent for projects expected to produce ten (10) or more permanent jobs over the life of the project must submit within its response a HireNYC: Permanent Program Plan addressing how Respondent will seek to achieve the goals and other requirements set forth below and describing its experience, if any, conducting similar hiring and workforce development programs or undertaking other efforts to create employment opportunities for low-income persons (such plan, “Respondent’s HireNYC Permanent Program”). Please see the HireNYC: Permanent Program Plan Template at the end of this Appendix 3 for assistance in preparing Respondent’s HireNYC Permanent Program.

Respondent’s HireNYC Permanent Program must include all programmatic details listed below, including collaboration with a New York City agency designated by NYCEDC in a notice to Respondent (“Designated City Agency”). The Designated City Agency will assist Respondent in implementing Respondent’s HireNYC Permanent Program including the screening of candidates from the target population (“Target Population”) defined as persons who have an income that is below two hundred percent (200%) of the poverty level as determined by the New York City Center for Economic Opportunity (a description of the income level meeting this threshold for each household size is available at:

http://www.nyc.gov/html/ceo/downloads/pdf/ceo_poverty_measure_2005_2013.pdf

Respondent’s HireNYC Permanent Program Plan will be in effect for a period of eight (8) years from the commencement of the first business operations at the project location (“HireNYC Permanent Program Term”).

Respondent’s HireNYC Permanent Program will apply to Respondent, its successors and assigns, and to all Operators (which term also includes subcontractors) at the project location during the HireNYC Permanent Program Term.

I. Goals. Respondent’s HireNYC Permanent Program must include, at a minimum, the following hiring and workforce development goals or, at each Respondent’s discretion, higher goals (collectively, the “Goals”):

Hiring Goal: Fifty percent (50%) of all new permanent jobs created in connection with the project (including jobs created by operators, but excluding

jobs relocated from other sites) will be filled by members of the Target Population referred by the Designated City Agency for a period beginning, for each employer, at commencement of business operations and continuing through the end of the HireNYC Permanent Program Term. Notwithstanding the foregoing, the Hiring Goal shall only apply to hiring on occasions when Respondent is hiring for five (5) or more permanent jobs.

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

Advancement Goal: Thirty percent (30%) of all employees whose hiring satisfied the Hiring Goal will be promoted to a higher paid position within one (1) year of date of hire.

Training Goal: Cooperation with NYCEDC and the Designated City Agency to provide skills-training or higher education opportunities to members of the Target Population.

II. Program Requirements. Respondent's HireNYC Permanent Program must also include all of the following requirements:

1. Designation of a workforce development liaison by Respondent to interact with NYCEDC and the Designated City Agency during the course of Respondent's HireNYC Permanent Program.
2. Commitment by Respondent to do the following:
 - a. use good faith efforts to achieve the Goals;
 - b. notify NYCEDC six (6) weeks prior to commencing business operations;
 - c. with respect to initial hiring for any new permanent jobs associated with the commencement of business at the project location (but only if initial hiring is for five (5) or more permanent jobs):
 - (i) provide NYCEDC and the Designated City Agency with the approximate number and type of jobs that will become available, and for each job type a description of the basic job qualifications, at least three (3) months before commencing hiring; and
 - (ii) consider only applicants referred by the Designated City Agency for the first ten (10) business days, until the Hiring Goal is achieved or until all open positions are filled, whichever occurs first;
 - d. with respect to ongoing hiring on occasions when hiring for five (5) or more permanent jobs:
 - (i) provide NYCEDC and the Designated City Agency with the approximate number and type of jobs that will become available, and for each job type a description of the basic job qualifications, at least one (1) month before

- commencing hiring or as soon as information is available, but in all cases not later than one (1) week before commencing hiring; and
- (ii) consider only applicants referred by the Designated City Agency for the first five business days, until the Hiring Goal is achieved or until all open positions are filled, whichever occurs first.
 - e. notify NYCEDC thirty (30) days prior to execution of any tenant or subtenant lease at the project location;
 - f. provide NYCEDC with one (1) electronic copy of all tenant and subtenant leases at the project location within fifteen (15) days of execution;
 - g. submit to NYCEDC quarterly HireNYC Employment Reports in the form provided by NYCEDC;
 - h. cooperate with annual site visits and, if requested by NYCEDC, employee satisfaction surveys relating to employee experience with Respondent's HireNYC Permanent Program;
 - i. provide information related to Respondent's HireNYC Permanent Program and the hiring process to NYCEDC upon request; and
 - j. allow information collected by NYCEDC and the Designated City Agency to be included in public communications, including press releases and other media events.

III. Optional Provisions. NYCEDC strongly encourages Respondents to include one or more of the following elements in Respondent's HireNYC Permanent Program:

1. Commitment by Respondent of resources for training efforts, such as making financial investments in employee training and creating technology-based tools to:
 - a. promote and track workforce development efforts;
 - b. notify jobseekers of job opportunities; and
 - c. provide information and assistance to tenants to in need of training options for new and current employees.
2. Commitment by Respondent, if the project is expected to produce 1,000 or more permanent jobs, to provide temporary space and personnel for a satellite outreach or workforce development site to provide outreach and screening of local jobseekers, distribute job applications and inform the public of available job opportunities leading up to the commencement of business operations.
3. Commitment by Respondent to support connections to education and training. NYCEDC staff will be available to work with Respondent's workforce development liaison to connect individuals interested and in need of education and training to training and other educational programs available at Designated City Agency service provider locations or through relationships with other accredited training providers.

IV. General Requirements. The following general requirements also must be included in Respondent's HireNYC Permanent Program

1. Respondent's HireNYC Permanent Program must provide that it applies to Respondent, its successors and assigns, and to all tenants and subtenants at the project location during the HireNYC Permanent Program Term. Respondent is required to incorporate the terms of

Respondent's HireNYC Permanent Program into all tenant and subtenant leases obligating tenants and subtenants to comply with the Goals and other requirements in Respondent's HireNYC Permanent Program to the same extent as Respondent is required to comply with such Goals and other requirements.

2. Enforcement. In the event NYCEDC determines that Respondent, its tenants or subtenants, have violated any of Respondent's HireNYC Permanent Program requirements, including, without limitation, a determination that Respondent, its tenants or subtenants, have failed to use good faith efforts to fulfill the Goals, NYCEDC may (1) assess liquidated damages set forth immediately below; and/or (2) assert any other right or remedy it has under the project agreements to which Respondent's HireNYC Permanent Program applies.
3. Liquidated Damages. If Respondent, its tenants or subtenants, do any of the following:

(i) fail to comply with their obligations set forth in Section II(2) clauses (a)(with respect to the Hiring Goal), (c), and/or (d), and as a result the Designated City Agency was unable to refer applicants or participate in the hiring process as required by the program; or

(ii) fail to comply with their obligations set forth in Section II(2) clauses, (f), (g), (h), (i), and/or (j) and such failure shall continue for a period of thirty (30) days after receipt of notice from NYCEDC, then, in the case of clause (i), NYCEDC may assess liquidated damages in the amount of \$2,500 for each position for which the Designated City Agency was unable to refer applicants or otherwise participate in hiring as required by the program; and in the case of clause (ii), NYCEDC may assess damages for breach of each requirement in the amount of \$1,000. In view of the difficulty of accurately ascertaining the loss which NYCEDC will suffer by reason of Respondent's failure to comply with program requirements, the foregoing amounts are hereby fixed and agreed as the liquidated damages that NYCEDC will suffer by reason of such failure, and not as a penalty.

Respondent shall be liable for and shall pay to NYCEDC all damages assessed against Respondent, any tenant or subtenant at the project upon receipt of demand from NYCEDC.

- V. Project Agreement. The successful Respondent's HireNYC Permanent Program will be incorporated into the project Operating Agreement to be entered into with the successful Respondent.

HireNYC: Permanent Program Plan Template

Please follow this template as a guide in creating Respondent’s HireNYC Permanent Program.

All hiring and workforce development goals and Program requirements, as set forth below and further described on the previous pages of HireNYC: Permanent Appendix 3, must be set forth in full in each Respondent’s HireNYC Permanent Program Plan.

Respondent’s HireNYC Permanent Program Plan

Project Name:

Respondent Name:

Date:

1. Program Goals
 - a. Set forth in full the hiring and workforce development goals for your operations or, at Respondent’s discretion, higher goals (collectively, the “Goals) as outlined in HireNYC: Permanent Appendix 3 section I Goals.
 - b. Include the Hiring Goal, Retention Goal, Advancement Goal and Training Goal.

2. Program Requirements
 - a. Set forth in full all HireNYC: Permanent requirements as outlined in HireNYC: Permanent Appendix 3, section II Program Requirements, clauses 1 and 2 (a), (b), (c), (d), (e), (f), (g), (h), (i), and (j).
 - b. Set forth in full the requirements in HireNYC: Permanent Appendix 3, section IV General Requirements

3. Program Implementation
 - a. Discuss how you intend to work with tenants and subtenants at the project location to implement Respondent’s HireNYC Permanent Program.
 - b. Discuss how your workforce development liaison will promote and track workforce development efforts, including the completion of HireNYC reporting forms.
 - c. Discuss how you will facilitate targeted hiring such as a) arranging meetings at which NYCEDC and the Designated City Agency staff can discuss the Respondent’s HireNYC Permanent Program and b) assist with information sharing, including results from hiring efforts and providing resources for hiring activities.
 - d. Discuss how you will support connections to education and/or training either in partnership with NYCEDC and the Designated City Agency or through relationships with other accredited training providers.

- e. Discuss any additional elements that you will include in Respondent's HireNYC Permanent Program. Please see, for example, the items set forth in HireNYC: Permanent Appendix 3 section III Optional Provisions.

4. Additional Information

- a. New Jobs and Skill Level
 - i. Number of projected permanent jobs at the project location (including projected jobs of tenants and subtenants)
 - ii. Number and type of projected skilled/semi-skilled permanent jobs at the project location (including projected jobs of tenants and subtenants)
 - iii. Number and type of projected unskilled permanent jobs at the project location (including projected jobs of tenants and subtenants)
- b. Training and Certifications
 - i. Training required for skilled/semi-skilled permanent jobs
- c. Workforce Development Liaison
 - i. Contact name, number and e-mail address

Job Type Examples:

Skilled/Semi-skilled: Any job or labor that requires special training or education attainment (i.e., certifications, higher education degree) for its satisfactory performance. Examples include Commercial Vehicle Operators, Bookkeepers, Accountants, and Supervisors/Managers.

Unskilled: Any job or labor that requires relatively little or no training or experience for its satisfactory performance. Examples include Warehouse Clerks, Office Clerks, Laborers, Packers, Assemblers, Cashiers, and Customer Service Representatives.

HireNYC: Construction

HireNYC: Construction applies to all contracts related to Tenant's Construction Activities (as defined below) for goods, services, and construction with a value of \$1,000,000 or more. With respect to this program, "Construction Activities" are any endeavors, actions and processes undertaken in furtherance of the Project (i) to improve, alter, build or demolish the Premises; (ii) as a prerequisite to improve, alter, build, or demolish the Premises; or (iii) to facilitate, monitor or supervise the improvement, alteration, building or demolition of the Premises.

The requirements of HireNYC: Construction do not limit Tenant's ability to assess the qualifications of prospective workers or to make final hiring and retention decisions. The program does not require Tenant to employ any particular worker.

HireNYC: Construction will apply to Tenant and its successors and assigns. Consistent with these obligations, Tenant will also incorporate the requirements of HireNYC: Construction into all contracts related to Construction Activities for goods, services and construction with a value of \$1,000,000 or more between Tenant and any contractor and will require its contractors to include the requirements in their subcontracts with a value of \$1,000,000 or more.

Tenant will participate in HireNYC: Construction from the time it enters into its initial contract for Construction Activities until the end of the Construction Activities. After or near the end of the Construction Activities, Tenant will transition into HireNYC: Permanent, applicable to permanent positions.

I. HireNYC: Construction Requirements.

- a. Enrollment. Tenant must enroll in the program through the HireNYC portal (http://www.nyc.gov/html/sbs/wf1/html/contact/targeted_hiring.shtml) within 20 Business Days of full execution of the Lease. Tenant will provide information about its Project, designate a primary contact and state whether it intends to hire for any entry to mid-level job opportunities arising from Construction Activities related to the Lease that are located in the City, and, if so, the approximate start date of the first hire. For the purposes of HireNYC: Construction “entry to mid-level job opportunities” are employment opportunities that require, as determined by the New York State Department of Labor,¹ any of the following minimum levels of education: less than a high school diploma, a high school diploma or equivalent, postsecondary non-degree award, some college, no degree or an associate’s degree.
- b. Job Recruitment Requirements.
 - i. Tenant must update the HireNYC portal with:
 - all new and replacement entry to mid-level job opportunities arising from Construction Activities related to the Lease that are located in the City, if any,
 - the requirements of the jobs to be filled,
 - the number of positions,
 - the anticipated schedule of initiating the hiring process for these positions, and
 - the contact information for Tenant’s representative charged with overseeing hiring.
 - ii. Tenant must provide this information for such an entry or mid-level job opportunity no fewer than 30 Business Days prior to the intended first day of employment for the applicable entry or mid-level position (although Tenant is encouraged to provide that information as early as practicable). With respect to such an available entry or mid-level position, the period beginning on the date that Tenant provides that information and ending on the date 15 Business Days later will be known as the “Recruitment Period.” During the Recruitment Period for an entry or mid-level position, Tenant must exclusively consider and only hire candidates provided by DSBS; *provided* that after the tenth Business Day of that Recruitment Period, DSBS will not send any additional candidates for the applicable position to Tenant for exclusive consideration.

¹See Columns F and G of <https://labor.ny.gov/stats/2012-2022-NYS-Employment-Prospects.xls>.

- iii. At the request of DSBS, Tenant will also be required to provide information on Tenant's construction schedule for Project milestones, deadlines or delivery dates and expected new hiring required, which information may be used by DSBS to create a tailored recruitment plan.
 - iv. DSBS will screen applicants based on Tenant's employment requirements and refer applicants whom DSBS believes are qualified to Tenant for interviews. Tenant must interview referred applicants whom it believes are qualified for the available position.
 - v. After completing an interview of a candidate referred through HireNYC: Construction, Tenant must provide feedback through the portal within 20 Business Days to indicate whether the candidate was hired. If a candidate is not interviewed, Tenant must provide information on why such candidate was not qualified for consideration within 20 Business Days of the candidate's referral. In addition, Tenant must provide the start date of and compensation for new hires, and additional information reasonably requested by DSBS about such hires, within 20 Business Days after the start date.
 - vi. This Section I(b) shall not apply to positions that Tenant intends to fill with employees employed pursuant to the job retention provision of Section 22-505 of the Administrative Code of the City of New York (the "Building Service Code"). Tenant shall not be required to report such openings through the HireNYC portal. However, Tenant shall enroll through the HireNYC portal pursuant to Section I(a), above, and, if additional positions that are not governed by the Building Service Code subsequently become open, the provisions of this Section I(b) will apply.
- c. Reporting Requirements. In the event Tenant does not have any job openings covered by HireNYC: Construction in any given year, Tenant must provide an annual update through the HireNYC portal to that effect. For this purpose, the reporting year will run from the date of the full execution of the Lease and each anniversary date, until the end of the Project's Construction Activities.²

II. Construction Requirements.

- a. Tenant's construction contractors or consultants must comply with HireNYC: Construction requirements set forth above for all non-trades jobs (*e.g.*, for an administrative position arising out of the work of the Construction Activities and located in the City) and for all nonunion trade jobs as set forth above.
- b. In addition, Tenant's construction contractors or consultants shall reasonably cooperate with DSBS and the NYCEDC on specific outreach events, including Hire on the Spot events, for the hiring of trades workers for the work of this Project.

III. Breach and Liquidated Damages.

²In the event that this Project includes a federal funding agreement, additional reporting and federal hiring requirements may apply.

- a. If Tenant or its contractors or their subcontractors fail to comply with the terms of HireNYC: Construction (1) by not enrolling its business through the HireNYC portal; (2) by not informing DSBS through the HireNYC portal, as required, of open positions; or (3) by failing to interview a qualified candidate, NYCEDC may assess liquidated damages in the amount of \$2,500 per breach. For all other events of noncompliance with the terms of HireNYC: Construction, NYCEDC may assess liquidated damages in the amount of \$500 per breach.
- b. The failure of Tenant or its contractors or their subcontractors to interview a qualified candidate will be determined by NYCEDC in its sole discretion based on factors such as, and without limitation, the information provided through the HireNYC portal, the recruitment plan, if any, and an assessment of whether Tenant or its contractors or their subcontractors acted in good faith with respect to a referred candidate. If no reason is provided for failing to interview a referred candidate or if only insufficient information is provided within 20 Business Days of a candidate's referral, then such candidate will be deemed to be qualified (and liquidated damages may apply). Regardless as to the number of candidates that Tenant may fail to interview for a particular job opening, no more than five candidates will be used to calculate the total amount of liquidated damages attributable to that job opening.

C. IN THE EVENT TENANT OR ITS CONTRACTORS OR THEIR SUBCONTRACTORS BREACHES THE REQUIREMENTS OF HIRENYC: CONSTRUCTION DURING THE TERM OF THE LEASE, NYCEDC MAY HOLD THE TENANT IN DEFAULT.

EXHIBIT H-2

HireNYC: Permanent

NYCEDC recognizes the importance of creating employment opportunities for low-income persons, enabling them to participate in the City's economic growth. To this end, NYCEDC has developed HireNYC: Permanent for all land sales and leases expected to produce ten (10) or more permanent jobs over the life of the project. Participation in this program requires Tenant to use good faith efforts to achieve the hiring and workforce development goals and perform the requirements of NYCEDC's HireNYC program requirements for permanent positions.

Tenant for projects expected to produce ten (10) or more permanent jobs over the life of the project must submit within its response a HireNYC: Permanent Program Plan addressing how Tenant will seek to achieve the goals and other requirements set forth below and describing its experience, if any, conducting similar hiring and workforce development programs or undertaking other efforts to create employment opportunities for low-income persons (such plan, "Tenant's HireNYC Permanent Program"). Please see the HireNYC: Permanent Program Plan Template at the end of this Exhibit for assistance in preparing Tenant's HireNYC Permanent Program.

Tenant's HireNYC Permanent Program must include all programmatic details listed below, including collaboration with a New York City agency designated by NYCEDC in a notice to Tenant ("Designated City Agency"). The Designated City Agency will assist Tenant in implementing Tenant's HireNYC Permanent Program including the screening of candidates from the target population ("Target Population") defined as persons who have an income that is below two hundred percent (200%) of the poverty level as determined by the New York City Center for Economic Opportunity (a description of the income level meeting this threshold for each household size is available at

http://www.nyc.gov/html/ceo/downloads/pdf/ceo_poverty_measure_2005_2013.pdf). Tenant's HireNYC Permanent Program Plan will be in effect for a period of eight (8) years from the commencement of the first business operations at the project location ("HireNYC Permanent Program Term").

Tenant's HireNYC Permanent Program will apply to Tenant, its successors and assigns, and to all tenants (which term also includes subtenants) at the project location during the HireNYC Permanent Program Term.

- I. **Goals.** Tenant's HireNYC Permanent Program must include, at a minimum, the following hiring and workforce development goals or, at each Tenant's discretion, higher goals (collectively, the "Goals"):

Hiring Goal:	Fifty percent (50%) of all new permanent jobs created in connection with the project (including jobs created by tenants, but excluding jobs relocated from other sites) will be filled by members of the Target Population referred by the Designated City Agency for a period beginning, for each employer, at commencement of business operations and continuing through the end of the HireNYC Permanent Program Term. Notwithstanding the foregoing, the
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- Hiring Goal shall only apply to hiring on occasions when Tenant is hiring for five (5) or more permanent jobs.
- Retention Goal: Forty percent (40%) of all employees whose hiring satisfied the Hiring Goal will be retained for at least nine (9) months from date of hire.
- Advancement Goal: Thirty percent (30%) of all employees whose hiring satisfied the Hiring Goal will be promoted to a higher paid position within one (1) year of date of hire.
- Training Goal: Cooperation with NYCEDC and the Designated City Agency to provide skills-training or higher education opportunities to members of the Target Population.

- II. Program Requirements. Tenant's HireNYC Permanent Program must also include all of the following requirements:
1. Designation of a workforce development liaison by Tenant to interact with NYCEDC and the Designated City Agency during the course of Tenant's HireNYC Permanent Program.
 2. Commitment by Tenant to do the following:
 - a. use good faith efforts to achieve the Goals;
 - b. notify NYCEDC six (6) weeks prior to commencing business operations;
 - c. with respect to initial hiring for any new permanent jobs associated with the commencement of business at the project location (but only if initial hiring is for five (5) or more permanent jobs):
 - (i) provide NYCEDC and the Designated City Agency with the approximate number and type of jobs that will become available, and for each job type a description of the basic job qualifications, at least three (3) months before commencing hiring; and
 - (ii) consider only applicants referred by the Designated City Agency for the first ten (10) Business Days, until the Hiring Goal is achieved or until all open positions are filled, whichever occurs first;
 - d. with respect to ongoing hiring on occasions when hiring for five (5) or more permanent jobs:
 - (i) provide NYCEDC and the Designated City Agency with the approximate number and type of jobs that will become available, and for each job type a description of the basic job qualifications, at least one (1) month before commencing hiring or as soon as information is available, but in all cases not later than one (1) week before commencing hiring; and
 - (ii) consider only applicants referred by the Designated City Agency for the first five Business Days, until the Hiring Goal is achieved or until all open positions are filled, whichever occurs first.
 - e. notify NYCEDC thirty (30) days prior to execution of any tenant or subtenant lease at the project location;
 - f. provide NYCEDC with one (1) electronic copy of all tenant and subtenant leases at the project location within fifteen (15) days of execution;
 - g. submit to NYCEDC quarterly HireNYC Employment Reports in the form provided by NYCEDC;

- h. cooperate with annual Site visits and, if requested by NYCEDC, employee satisfaction surveys relating to employee experience with Tenant’s HireNYC Permanent Program;
 - i. provide information related to Tenant’s HireNYC Permanent Program and the hiring process to NYCEDC upon request; and
 - j. allow information collected by NYCEDC and the Designated City Agency to be included in public communications, including press releases and other media events.
- III. Optional Provisions. NYCEDC strongly encourages Tenants to include one or more of the following elements in Tenant’s HireNYC Permanent Program:
- 1. Commitment by Tenant of resources for training efforts, such as making financial investments in employee training and creating technology-based tools to:
 - a. promote and track workforce development efforts;
 - b. notify jobseekers of job opportunities; and
 - c. provide information and assistance to tenants to in need of training options for new and current employees.
 - 2. Commitment by Tenant, if the project is expected to produce 1,000 or more permanent jobs, to provide temporary space and personnel for a satellite outreach or workforce development site to provide outreach and screening of local jobseekers, distribute job applications and inform the public of available job opportunities leading up to the commencement of business operations.
 - 3. Commitment by Tenant to support connections to education and training. NYCEDC staff will be available to work with Tenant’s workforce development liaison to connect individuals interested and in need of education and training to training and other educational programs available at Designated City Agency service provider locations or through relationships with other accredited training providers.
- IV. General Requirements. The following general requirements also must be included in Tenant’s HireNYC Permanent Program
- 1. Tenant’s HireNYC Permanent Program must provide that it applies to Tenant, its successors and assigns, and to all tenants and subtenants at the project location during the HireNYC Permanent Program Term. Tenant is required to incorporate the terms of Tenant’s HireNYC Permanent Program into all tenant and subtenant leases obligating tenants and subtenants to comply with the Goals and other requirements in Tenant’s HireNYC Permanent Program to the same extent as Tenant is required to comply with such Goals and other requirements.
 - 2. Enforcement. In the event NYCEDC determines that Tenant, its tenants or subtenants, have violated any of Tenant’s HireNYC Permanent Program requirements, including, without limitation, a determination that Tenant, its tenants or subtenants, have failed to use good faith efforts to fulfill the Goals, NYCEDC may (1) assess liquidated damages set forth immediately below; and/or (2) assert any other right or remedy it has under the project agreement to which Tenant’s HireNYC Permanent Program applies.
 - 3. Liquidated Damages. If Tenant , its tenants or subtenants, do any of the following:

(i) fail to comply with their obligations set forth in Section II(2) clauses (a)(with respect to the Hiring Goal), (c), and/or (d), and as a result the Designated City Agency was unable to refer applicants or participate in the hiring process as required by the program; or

(ii) fail to comply with their obligations set forth in Section II(2) clauses, (f), (g), (h), (i), and/or (j) and such failure shall continue for a period of thirty (30) days after receipt of notice from NYCEDC, then, in the case of clause (i), NYCEDC may assess liquidated damages in the amount of \$2,500 for each position for which the Designated City Agency was unable to refer applicants or otherwise participate in hiring as required by the program; and in the case of clause (ii), NYCEDC may assess damages for breach of each requirement in the amount of \$1,000. In view of the difficulty of accurately ascertaining the loss which NYCEDC will suffer by reason of Tenant's failure to comply with program requirements, the foregoing amounts are hereby fixed and agreed as the liquidated damages that NYCEDC will suffer by reason of such failure, and not as a penalty.

Tenant shall be liable for and shall pay to NYCEDC all damages assessed against Tenant, any tenant or subtenant at the project upon receipt of demand from NYCEDC.

- V. Project Agreement. Tenant's HireNYC Permanent Program will be incorporated into the project agreement to be entered into with Tenant.

EXHIBIT H-3

HireNYC: Permanent Program Plan Template

All hiring and workforce development goals and Program requirements, as set forth below and further described on the previous pages of HireNYC: Permanent Exhibit H-2, must be set forth in full in Tenant’s HireNYC Permanent Program Plan.

Tenant’s HireNYC Permanent Program Plan

Project Name: _____

Tenant Name: _____

Date: _____

1. Program Goals
 - a. Set forth in full the hiring and workforce development goals for your operations or, at Tenant’s discretion, higher goals (collectively, the “Goals) as outlined in HireNYC: Permanent Exhibit H-2, Section I Goals.
 - b. Include the Hiring Goal, Retention Goal, Advancement Goal and Training Goal.

2. Program Requirements
 - a. Set forth in full all HireNYC: Permanent requirements as outlined in HireNYC: Permanent Exhibit H-2, Section II Program Requirements, clauses 1 and 2 (a), (b), (c), (d),(e), (f), (g), (h), (i), and (j).
 - b. Set forth in full the requirements in HireNYC: Permanent Exhibit H-2, Section IV General Requirements

3. Program Implementation
 - a. Discuss how you intend to work with tenants and subtenants at the project location to implement Tenant’s HireNYC Permanent Program.
 - b. Discuss how your workforce development liaison will promote and track workforce development efforts, including the completion of HireNYC reporting forms.
 - c. Discuss how you will facilitate targeted hiring such as a) arranging meetings at which NYCEDC and the Designated City Agency staff can discuss the Tenant’s HireNYC Permanent Program and b) assist with information sharing, including results from hiring efforts and providing resources for hiring activities.
 - d. Discuss how you will support connections to education and/or training either in partnership with NYCEDC and the Designated City Agency or through relationships with other accredited training providers.

- e. Discuss any additional elements that you will include in Tenant’s HireNYC Permanent Program. Please see, for example, the items set forth in HireNYC: Permanent Exhibit H-2, Section III Optional Provisions.
- 4. Additional Information
 - a. New Jobs and Skill Level
 - i. Number of projected permanent jobs at the project location (including projected jobs of tenants and subtenants)
 - ii. Number and type of projected skilled/semi-skilled permanent jobs at the project location (including projected jobs of tenants and subtenants)
 - iii. Number and type of projected unskilled permanent jobs at the project location (including projected jobs of tenants and subtenants)
 - b. Training and Certifications
 - i. Training required for skilled/semi-skilled permanent jobs
 - c. Workforce Development Liaison
 - i. Contact name, number and e-mail address

Job Type Examples:

Skilled/Semi-skilled: Any job or labor that requires special training or education attainment (*i.e.*, certifications, higher education degree) for its satisfactory performance. Examples include Commercial Vehicle Operators, Bookkeepers, Accountants, and Supervisors/Managers.

UNSKILLED: ANY JOB OR LABOR THAT REQUIRES RELATIVELY LITTLE OR NO TRAINING OR EXPERIENCE FOR ITS SATISFACTORY PERFORMANCE. EXAMPLES INCLUDE WAREHOUSE CLERKS, OFFICE CLERKS, LABORERS, PACKERS, ASSEMBLERS, CASHIERS, AND CUSTOMER SERVICE REPRESENTATIVES.

EXHIBIT I

E.O. 50 Employment Report

E.O. 50 EMPLOYMENT REPORT FORM

The Lessee shall complete and submit, and if applicable, shall require its Subcontractors to complete and submit, Employment Reports (as required by E.O. 50) to the Lessor or Lease Administrator which can be found at www.nycedc.com in the following section (as set forth below):

“Projects Opportunities/Working With NYCEDC/Vendex Other Forms”.

If the Lessee cannot access or download these forms, the Lessor or Lease Administrator will, upon request, send the Consultant the required forms.



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
Bureau of LABOR LAW

PAYROLL REPORT
(TO BE SUBMITTED WITH REQUISITION FOR PAYMENT)

Agency

NAME OF CONTRACTOR/CONTRACTOR	ADDRESS	PHONE No.
CONTRACT NO./No.	JOB CODE	PAYROLL No.
	WEEK ENDING DATE	TOTAL No.
	PROJECT NAME & LOCATION	

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)		(11)	(12)	(13)
								TOTAL HOURS	PAID TO TOTAL PAID GROSS PAY			
NAME, ADDRESS, SOCIAL SECURITY No.	LETTER & FORCE CLASSIFICATION	1	DAY AND DATE	BASE RATE OF PAY PER HOUR	TOTAL BASE PAY HOUR	RATE PER HOUR	PAID TO Total if Illinois is checked	TOTAL PAID GROSS PAY	TOTAL TAX DEDUCTIONS	NET PAY		
HOURS WORKED EACH DAY												
J A H	RT						U Local No.					
J A H	RT						E 0					
J A H	RT						U Local No.					
J A H	RT						E 0					
J A H	RT						U Local No.					
J A H	RT						E 0					
J A H	RT						U Local No.					
J A H	RT						E 0					
J A H	RT						U Local No.					
J A H	RT						E 0					
J A H	RT						U Local No.					
J A H	RT						E 0					

(INSTRUCTIONS ON REVERSE SIDE)

FALSIFICATION OF STATEMENT IS A PUNISHABLE OFFENSE
I hereby certify that the above information represents wages and supplemental benefits as paid to all persons employed by my firm for construction work upon the above project during the period shown.
I understand that the Agency relies upon the information as being complete and accurate in making payments to the undersigned.

SIGNATURE _____ NAME (Print) _____ TITLE _____ DATE _____

INSTRUCTIONS FOR PREPARING AND SUBMITTAL OF A PAYROLL REPORT

1. All persons who perform any on-site construction activity during the period of requisition, shall be listed on the Payroll Report.
2. Separate Payroll Reports shall be submitted by the prime contractor and each sub-contractor who performs any on-site construction activity during the period of the requisition.
3. Failure to provide the required Payroll Report may result in the requisition for payment being returned unpaid or the payment reduced.
4. **PAYROLL REPORT HEADING:** The spaces between the first set of double lines shall be referred to as the Payroll Report Heading and shall require the following information:
 - NAME OF CONTRACTOR / SUB-CONTRACTOR:** Circle either the word CONTRACTOR or SUB-CONTRACTOR as applicable. The legal name of the firm submitting the Payroll Report shall be placed immediately below this designation.
 - ADDRESS:** Insert the current address (i.e. Street, City, State & Zip Code) of the firm submitting the Payroll Report.
 - PHONE No.:** Enter the telephone number of the firm in the space provided.
 - PAYROLL No.:** In the space provided, enter the Payroll Number of the Contractor or Sub-Contractor.
 - CONTRACT REG. No.:** Enter the Contract Registration Number here. This may be obtained from the "Notice of Award" and / or the "Order to Commence Work" letters.
 - JOB CODE:** In the space provided enter the Contractor / Sub-Contractor's in-house labor distribution code or job number where applicable.
 - WEEK ENDING - DATE:** In the space provided enter the last date of the payweek (i.e. month, day, year).
 - PROJECT NAME & LOCATION:** In this space enter the Project Name & Location where contract work is being performed.
 - TAX ID. No.:** Enter in this space the Federal Tax Identification Number of the Contractor or Sub-Contractor as applicable.
5. For every employee who performs any on-site construction activity during the period of the Payroll Report, the following information shall be provided:

- 1) **NAME, ADDRESS, SOCIAL SECURITY NO.:** The legal name, current address and social security number of each employee.
- 2) **LIST TRADE & CIRCLE WORK CLASSIFICATION:** Specify & insert the Trade applicable to the work performed by each employee. The Trade identified must be one listed on the Prevailing Wage & Supplemental Benefits Schedule of the Comptroller. Circle the letter J if the individual is a journeyman, the letter A if the person is a Registered Apprentice with the Department of Labor of the State of New York, or the letter H if the person is a Helper and listed as such against the appropriate Trade on the Comptroller's Schedule of Prevailing Wages.
- 3) **TIME:** RT relates to Regular Time, and OT relates to Over Time.
- 4) **DAY AND DATE:** Below this heading, in the first row enter the appropriate sequence of the contractor's pay records, MTWTFSS, for example, is the sequence to use if the workweek ends on a Sunday and SSMNTWTF is the sequence if the workweek ends on a Friday. In the second row, below each letter representing the day of the payweek, insert the corresponding date. Below the heading **HOURS WORKED EACH DAY** at the intersection of the column of the particular day and date and the horizontal row of the employee's name, insert the hours worked each day in the appropriate Box either for RT (Regular Time) and / or OT (Over Time). If an employee worked Shift Time the RT (Regular Time) row shall be used and adjusted accordingly.
- 5) **TOTAL HOURS:** Sum the hours worked for Regular and / or Shift Time, the hours worked Overtime, and enter separate totals in this column.
- 6) **BASE RATE OF PAY PER HOUR:** Specify the actual base rate of pay per hour paid to the employee. Do not include supplemental benefits in this amount.
- 7) **TOTAL BASE PAY:** Total amount earned by the employee, not including benefits.

SUPPLEMENTAL BENEFITS:

- 8) **RATE PER HOUR:** Amount of Supplemental Benefits paid / provided per hour.
- 9) **TO:** Place a check mark in the appropriate box: U for Union, E for Employee if benefits paid in cash (or check) directly to the Employee or O for other, if benefits otherwise paid / provided. If U is checked, you must insert the "Local" number of the union in that box.
- 10) **TOTAL PAID:** Total amount of Supplemental Benefits paid / provided for the payweek.
- 11) **GROSS PAY:** Total amount earned for payweek. This amount comprises the Total Base Pay plus any benefit paid in cash (or check) directly to the employee (i.e. column 7) + column (9) E if Box E is checked and payment made directly to employee). No other type of benefit must be included in this column's total.
- 12) **TOTAL TAX AND OTHER DEDUCTIONS:** Enter the sum total of all deductions in this column (including FICA, Federal, State & City Taxes, etc.). This does not absolve you from maintaining appropriate tax & other records required by law.
- 13) **NET PAY:** Total amount of pay after all deductions (i.e. the actual "Take-Home Pay").

EXHIBIT J

Employment Questionnaire



EMPLOYMENT & BENEFITS REPORT
For the Fiscal Year July 1, 2019 – June 30, 2020 (FY '20)

In order to comply with State and Local Law reporting requirements, the Company is required to complete and return this form to your Compliance Project Manager. **PLEASE SEE BELOW FOR THE INSTRUCTIONS AND DEFINITIONS OF CAPITALIZED TERMS USED ON THIS PAGE.**

1. Number of **Permanent Full-Time Employees** (including those of **Tenants**) as of June 30, 2020..... _____
2. Number of **Non-Permanent Full-Time Employees** (including those of **Tenants**) as of June 30, 2020..... _____
3. Number of **Permanent Part-Time Employees** (including those of **Tenants**) as of June 30, 2020..... _____
4. Number of **Non-Permanent Part-Time Employees** (including those of **Tenants**) as of June 30, 2020..... _____
- 5a. Number of **Contract Employees** (excluding those of the **Tenants**) as of June 30, 2020..... _____
- 5b. Average number of **Contract Construction Employees** (excluding those of the **Tenants**) during Fiscal Year ending June 30, 2020..... _____
- 6a. Total Number of employees of the **Company and its Affiliates** included in **Items 1, 2, 3 and 4** _____
(Excluding those of Tenants)

For each employee included in this Item 6a, attach the Summary Page of the NYS-45 Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Return for the period including June 30, 2020.

- 6b. Total Number of employees of the **Company and its Affiliates** included in **Items 1, 2, 3, 4 and 5a** _____
(Including those of Tenants)
- 6c. Total Number of employees of the **Company and its Affiliates** included in **Items 1, 2, 3, 4, 5a and 5b** _____
(Including those of Tenants)
7. Number of employees in Item 6b who live in:

Brooklyn	_____
Bronx	_____
Manhattan	_____
Queens	_____
Staten Island	_____
Outside NYC	_____

8. Does the Company and its Affiliates offer health benefits to all Full-Time Employees? Yes No Part-Time Employees? Yes No

Please skip questions 9 & 9a if item 6a is less than 250.

9. Number of Employees in item 6a who are: Exempt: _____ Non-Exempt: _____
- 9a. Number of Non-Exempt employees in item 6a who earn annual salaries of:

\$0 - \$25,000	_____
\$25,001 - \$40,000	_____
\$40,001 - \$50,000	_____

10. Number of employees in Item 6b who have completed one of the following degrees (please select highest level):

Did not finish high school	_____
Received high school diploma	_____
Received 2-year college / Associates degree	_____
Received 4-year college / Bachelor's degree	_____
Received Master's degree or higher	_____
Other / Did not specify	_____

11. Number of employees in Item 6b who earn an Annual Salary of:

\$0 - \$25,000	_____
\$25,001 - \$40,000	_____
\$40,001 - \$50,000	_____
\$50,001 - \$70,000	_____
\$70,001 - \$99,999	_____
\$100,000+	_____



EMPLOYMENT & BENEFITS REPORT
For the Fiscal Year July 1, 2019 – June 30, 2020 (FY '20)

- 12. Number of employees in Item 6b who can be identified as one of the following racial/ethnic categories:
American Indian or Alaskan Native
Asian
Black or African American
Native Hawaiian or Pacific Islander
Hispanic or Latin American
White
Two or more races
Decline to self-identify

13. Number of employees in Item 6b who are:
Male
Female
Other/did not specify

For Items 14-16, indicate the value of the benefits realized by the Company and its Affiliates at Project Locations during FY'20.

- 14. Does the Company and/or its Affiliates receive Commercial Expansion Program ("CEP") benefits?
If yes, what was the value realized during FY'20
15. Does the Company and/or its Affiliates receive Relocation and Employment Assistance Program ("REAP") benefits?
If yes, what was the value realized during FY'20
16. Has the Company and/or its Affiliates applied for Industrial and Commercial Abatement Program ("ICAP") benefits for new physical improvements at the Project Location(s)?
If yes, please provide the application number(s).

Include all employees reported in questions 1, 2, 3, 4, 5a and 5b as of June 30, 2020 in your response below.

- 17a. Total Number of Industrial Jobs:
17b. Number of Industrial Jobs Earning a Living Wage or more:
18a. Total Number of Restaurant Jobs:
18b. Number of Restaurant Jobs Earning a Living Wage or more:
19a. Total Number of Retail Jobs:
19b. Number of Retail Jobs Earning a Living Wage or more:
20a. Total Number of Other Jobs:
20b. Number of Other Jobs Earning a Living Wage or more:
21a. Total Number of Jobs:
21b. Number of Jobs Earning a Living Wage or more:

For Items 22-23, indicate the value of the benefits realized by the Company and its Affiliates at Project Locations during FY'20.

- 22. What was the value of sales and use tax exemption savings realized by the Company and its Affiliates as a result of the Company's receipt of NYCIDA Financial Assistance during the FY'18. (Do not include any sales and use tax savings realized under the NYS Empire Zone Program or through a not-for-profit exemption)
23. What was the value of BIR Energy Assistance realized by the Company and its Affiliates during the FY'20.

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"), New York City Industrial Development Agency ("NYCIDA"), Build NYC Resource Corporation ("BUILD NYC") and/or New York City Neighborhood Capital Corporation ("NYCNCC") and may be disclosed by NYCEDC, NYCIDA, BUILD NYC and/or NYCNCC in connection with the administration of the programs of NYCEDC, NYCIDA, BUILD NYC and/or NYCNCC 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 Administrative Code §22-823 et. seq., (y) other reports required of NYCIDA, NYCEDC, BUILD NYC and/or NYCNCC, and (z) any other reports or disclosure required by law.

Project Name:
Signature: Date:
Name: Title:



DEFINITIONS & INSTRUCTIONS

For the Fiscal Year July 1, 2010 – June 30, 2020 (FY '20)

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 Construction Employee" is a person who is an independent contractor or subcontractor, or an employee thereof, who provides construction services to the Company, an Affiliate or a Tenant at a Project Location.

"Contract Employee" is a person, other than a Contract Construction Employee, who is an independent contractor (i.e., a person who is not an "employee"), or is employed by an independent contractor, who provides services at a Project Location.

"Financial Assistance" is any of the following forms of financial assistance provided or administered by NYCIDA: a loan, grant, tax benefits or energy assistance benefits through any discretionary program, such as the Business Incentive Rate (BIR) Program, in each case in excess of \$160,000, and any sale or lease of City-owned land where the project is estimated to retain or create not less than 25 jobs.

"Living Wage" is an hourly compensation package as of April 1, 2019 that is no less than the sum of \$11.20 per hour (paid in cash wages) and \$1.85 per hour (paid in health benefits, cash, or any combination of the two). The value of any health benefits received shall be determined based on the prorated hourly cost to the employer of the health benefits received by the employee. For employees who customarily and regularly receive tips, any tips received and retained by the employee may be credited towards the living wage rate.

"Non-Permanent Full-Time Employee" is an employee, other than a Contract Employee, hired for temporary employment for seasonal or other temporary purposes, who works at least 35 hours per week at a Project Location.

"Non-Permanent Part-Time Employee" is an employee, other than a Contract Employee, hired for temporary employment for seasonal or other temporary purposes, who works on average at least 17.5 hours, but less than 35 hours, per week at a Project Location.

"Permanent Full-Time Employee" is an employee, other than a Contract Employee, hired for permanent employment and not for seasonal or temporary purposes, who works at least 35 hours per week at a Project Location.

"Permanent Part-Time Employee" is an employee, other than a Contract Employee, hired for permanent employment and not for seasonal or temporary purposes, who works on average at least 17.5 hours, but less than 35 hours, per week at a Project Location.

"Project Agreement" is any agreement pursuant to which NYCIDA provides Financial Assistance in connection with a project.

"Project Location" is any location (a) with regard to which Financial Assistance has been provided to the Company and/or its Affiliates during the fiscal year reporting period covered by the Employment and Benefits Report, or (b) that is occupied by the Company and/or its Affiliates at which such entities have employees who are eligible to be reported per the terms of the Agreement with the Company and/or its Affiliates.

"Tenant" is any entity other than the Company and its Affiliates that occupies space at any Project Location.

INSTRUCTIONS

For each Project Agreement, please submit one report that covers (i) the Company and its Affiliates and (ii) Tenants at all Project Locations covered by the Project Agreement. All Tenant employment info should be aggregated, combined with employment information for the Company and its Affiliates at all Project Locations and reported on the Company's Employment and Benefits Report. Please include the completed Tenant's Employment and Benefits Report(s) along with the Company's Employment and Benefits Report when submitting to NYCIDA. The Company must retain for six (6) years all forms completed by its Affiliates and Tenants and at NYCIDA's request must permit NYCIDA upon reasonable notice to inspect such forms and provide NYCIDA with a copy of such forms.

1-4. Items 1, 2, 3 and 4 must be determined as of June 30, 2020 and must include all Permanent Full-Time Employees, Permanent Part-Time Employees, Non-Permanent Full-Time Employees, Non-Permanent Part-Time Employees at all Project Locations, including those employed by the Company or its Affiliates and by Tenants at the Project Locations. Do not include Contract Employees or Contract Construction Employees in Items 1, 2, 3 and 4.

5a. Report all Contract Employees providing services to the Company and its Affiliates and Tenants at all Project Locations. Do not include Contract Construction Employees in Item 5a.

5b. Report the 12-month average of Contract Construction Employees providing services to the Company and its Affiliates and Tenants at all Project Locations for the previous fiscal year. Use the number of construction employees on the last payroll date of each month to compute this average.

6a. Report the total number of Permanent Full-Time Employees, Permanent Part-Time Employees, Non-Permanent Full-Time Employees, Non-Permanent Part-Time Employees of the Company and its Affiliates at all Project Locations. Do not include employees of Tenants. Do not include Contract Employees or Contract Construction Employees.

6b. This is the sum of Items 1,2,3,4, and 5a.

6c. This is the sum of Items 1,2,3,4, 5a and 5b.

7. Indicate the location of primary residence for all employees reported in Item 6b.

8. Indicate whether the Company and its Affiliates offer health benefits to all employees reported in Item 6b.

9. Indicate the number of employees included in Item 6a who are classified as "Exempt" or "Non-Exempt". Generally, an Exempt employee is not eligible for overtime compensation and a Non-Exempt employee is eligible for overtime compensation.

9a. Indicate the Annual Salary range for all "Non-Exempt" employees reported in Item 9.

10. Indicate the highest-level of education obtained for all employees reported in Item 6b.

11. Indicate the Annual Salary for all employees reported in Item 6b.

12. To the best of the Company's knowledge, indicate the identified Racial or Ethnic category for all employees reported in Item 6b.

13. To the best of the Company's knowledge, indicate the gender for all employees reported in Item 6b.



DEFINITIONS & INSTRUCTIONS

For the Fiscal Year July 1, 2010 – June 30, 2020 (FY '20)

14. Report all CEP benefits received by the Company and its Affiliates and any Tenants at all Project Locations. CEP is a package of tax benefits, administered by the New York City Department of Finance, 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>.

15. Report all REAP benefits received by the Company and its Affiliates and any Tenants at all Project Locations. REAP is administered by the New York City Department of Finance, and 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.

16. Report all ICAP or ICIP benefits received by the Company and its Affiliates and any Tenants at all Project Locations. ICAP and ICIP are administered by the New York City Department of Finance and are tax benefits for eligible industrial or commercial buildings. For more information regarding ICAP and ICIP, please visit <http://www.nyc.gov/dof>.

17a-21b. Include Living Wage information for Permanent Full-Time Employees, Permanent Part-Time Employees, Non-Permanent Full-Time Employees, Non-Permanent Part-Time Employees, Contract Employees and Contract Construction Employees (including, in each case, those of Tenants). The sum for 21a should equal the sum of lines 17a-20a, which should also equal the sum of lines 1-5a plus the average number of contract construction employees as of June 30, 2020. The sum for 21b should equal the sum of lines 17b-20b.

22. If applicable, 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 NYCIDA. Do not include any sales and use tax savings realized under the NYS Empire Zone Program, a not-for-profit exemption or any other sales and use tax exemption.

23. If applicable and for purposes of this form, "BIR Energy Assistance" is any reduction in energy delivery charges or other benefits or energy discounts provided pursuant to the Business Incentive Rate (BIR) program administered by Consolidated Edison Company of New York, Inc.

EXHIBIT K

Living Wage Agreement

ATTACHMENT 1
FORM OF LW AGREEMENT

LIVING WAGE AGREEMENT

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

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

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

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

“City” means The City of New York.

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

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

(as defined in the Prevailing Wage Law), or (vii) a Person exempted by a Deputy Mayor of the City of New York in accordance with the Mayor's Executive Order No. 7 dated September 30, 2014.

"DCWP" means the Department of Consumer and Worker Protection (formerly Department of Consumer Affairs) of the City of New York, acting as the designee of the Mayor of The City of New York, or such other agency or designee that the Mayor of The City of New York may designate from time to time.

"Lease Administrator" means New York City Economic Development Corporation, having its principal office at One Liberty Plaza, New York, New York 10006.

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

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

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

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

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

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

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

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

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

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

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

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

“Premises” means the land and real property improvements located at the real property designated as Block 2781, Lot 500 on the Tax Map for the Borough of the Bronx.

“Prevailing Wage Law” means Section 6-130 of the City Admin. Code, as amended, supplemented or otherwise modified from time to time, and all rules and regulations promulgated thereunder.

“Project Agreement” means that certain Sixth Amendment to the Lease dated as of November 18, 1969 between the City of New York and K.F.I. Distributors, Inc (as amended, restated, supplemented or otherwise modified from time to time), pursuant to which the Tenant has or will receive financial assistance from the City.

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

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

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

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

“Tenant” means K.F.I. Distributors, Inc. a corporation organized and existing under the laws of the State of New York, having its principal office at 65 West Red Oak Lane, White Plains, New York, 10604.

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

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

9. Violations and Remedies.

- (a) If a violation of this Agreement shall have been alleged by the Lease Administrator, the DCWP and/or the Comptroller, then written notice will be provided to Obligor for such alleged violation (an “LW Violation Notice”), specifying the nature of the alleged violation in such reasonable detail as is known to the Lease Administrator, the DCWP and the Comptroller (the “Asserted LW Violation”) and specifying the remedy required under paragraph 9(b), (c) and/or (d) (as applicable) to cure the Asserted LW Violation (the “Asserted Cure”). Upon Obligor’s receipt of the LW Violation Notice, Obligor may either:
- (i) Perform the Asserted Cure no later than 30 days after its receipt of the LW Violation Notice (in which case a “LW Violation Final Determination” shall be deemed to exist), or
 - (ii) Provide written notice to the Lease Administrator, the DCWP and the Comptroller indicating that it is electing to contest the Asserted LW Violation and/or the Asserted Cure, which notice shall be delivered no later than 30 days after its receipt of the LW Violation Notice. Obligor shall bear the burdens of proof and persuasion and shall provide evidence to the DCWP no later than 45 days after its receipt of the LW Violation Notice. The DCWP shall then, on behalf of the City, the Lease Administrator and the Comptroller, make a good faith determination of whether the Asserted LW Violation exists based on the evidence provided by Obligor and deliver to Obligor a written statement of such determination in reasonable detail, which shall include a confirmation or modification of the Asserted LW Violation and Asserted Cure (such statement, a “LW Violation Initial Determination”). Upon Obligor’s receipt of the LW Violation Initial Determination, Obligor may either:
 - (1) Accept the LW Violation Initial Determination and shall perform the Asserted Cure specified in the LW Violation Initial Determination no later than 30 days after its receipt of the LW Violation Initial Determination (after such 30 day period has lapsed, but subject to clause (2) below, the LW Violation Initial Determination shall be deemed to be a “LW Violation Final Determination”), or
 - (2) Contest the LW Violation Initial Determination by filing in a court of competent jurisdiction or for an administrative hearing no later than 30 days after its receipt of the LW Violation Initial Determination, in which case, Obligor’s obligation to perform the Asserted Cure shall be stayed pending resolution of the action. If no filing in a court of competent jurisdiction or for an administrative hearing is made to contest the LW Violation Initial Determination within 30 days after Obligor’s receipt thereof, then the LW Violation Initial Determination shall be deemed to be a “LW Violation Final Determination”. If such a

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

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

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

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

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

(b) If to the Lease Administrator, to New York City Economic Development Corporation, One Liberty Plaza, New York, NY, 10006, Attention: General Counsel.

(c) If to the DCWP, to Department of Consumer and Worker Protection of the City of New York, 42 Broadway, New York, NY, 10004, Attention: Living Wage Division.

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

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

13. Obligor hereby irrevocably and unconditionally (a) agrees that any suit, action or other legal proceeding arising out of this Agreement may be brought in the courts of record of the State of New York in New York County or the United States District Court for the Southern District of New York; (b) consents to the jurisdiction of each such court in any such suit, action or proceeding; (c) waives any objection which it may have to the venue of any such suit, action or proceeding in such courts; and (d) waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of forum non conveniens, (ii) to remove to any federal court other than the United States District Court for the Southern District of New York, and (iii) to move for a change of venue to a New York State Court outside New York County.

14. Notwithstanding any other provision of this Agreement, in no event shall the partners, members, counsel, directors, shareholders or employees of Obligor have any personal obligation or liability for any of the terms, covenants, agreements, undertakings, representations or warranties of Obligor contained in this Agreement.

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

[_____]

By: _____
Name:
Title:

EXHIBIT L

Local Law 34



Doing Business Data Form Real Property Transactions

To be completed by the City agency prior to distribution Agency _____ Transaction ID _____

Check One

Competative Solicitation (P) Application or Award (A) Acquisition (ACQ) Disposition (DIS) Leasing to City (LES) Leasing From City (LOR)

Any entity participating in a transaction for the acquisition or disposition of real property with the City of New York must complete a Doing Business Data Form (see Q&A sheet for more information). Please either type responses directly into this fillable form or print answers by hand in black ink, and be sure to fill out the certification box on the last page. **Submission of a complete and accurate form is required for a proposal to be considered responsive or for any entity to receive an award or enter into an agreement.**

This Data Form requires information to be provided on principal officers, owners and senior managers. The name, employer and title of each person identified on the Data Form will be included in a public database of people who do business with the City of New York, as will the organizations that own 10% or more of the entity. No other information reported on this form will be disclosed to the public. **This Data Form is not related to the City's PASSPORT registration or VENDEX requirements.**

Please return the completed Data Form to the City office that supplied it. Please contact the Doing Business Accountability Project at DoingBusiness@mocs.nyc.gov or 212-788-8104 with any questions regarding this Data Form. Thank you for your cooperation.

Entity Information *If you are completing this form by hand, please print clearly.*

Entity EIN/TIN _____ Entity Name _____

Filing Status (Select One)

NEW: Data Forms submitted now must include the listing of organizations, as well as individuals, with 10% or more ownership of the entity. Until such certification of ownership is submitted through a change, new or update form, a no change form will not be accepted.

Entity has never completed a Doing Business Data Form. Fill out the entire form.
 Change from previous Data Form dated _____ . Fill out only those sections that have changed, and indicate the name of the persons who no longer hold positions with the entity.
 No Change from previous Data Form dated _____ . Skip to the bottom of the last page.

Entity is a Non-Profit Yes No

Entity Type Corporation (any type) Joint Venture LLC Partnership (any type) Sole Proprietor Other (specify) _____

Address _____

City _____ State _____ Zip _____

Phone _____ E-mail _____

Provide your e-mail address in order to receive notices regarding this form by e-mail.

Principal Officers

Please fill in the required identification information for each officer listed below. If the entity has no such officer or its equivalent, please check "This position does not exist." If the entity is filing a Change Form and the person listed is replacing someone who was previously disclosed, please check "This person replaced..." and fill in the name of the person being replaced so his/her name can be removed from the *Doing Business Database*, and indicate the date that the change became effective.

Chief Executive Officer (CEO) or equivalent officer This position does not exist

The highest ranking officer or manager, such as the President, Executive Director, Sole Proprietor or Chairperson of the Board.

First Name _____ MI _____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

This person replaced former CEO _____ on date _____

Chief Financial Officer (CFO) or equivalent officer This position does not exist

The highest ranking financial officer, such as the Treasurer, Comptroller, Financial Director or VP for Finance.

First Name _____ MI _____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

This person replaced former CFO _____ on date _____

Chief Operating Officer (COO) or equivalent officer This position does not exist

The highest ranking operational officer, such as the Chief Planning Officer, Director of Operations or VP for Operations.

First Name _____ MI _____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

This person replaced former COO _____ on date _____

1/2018 *For information or assistance, please contact the Doing Business Accountability Project at DoingBusiness@mocs.nyc.gov or 212-788-8104.*

Principal Owners

Please fill in the required identification information for all individuals or organizations that, through stock shares, partnership agreements or other means, own or control 10% or more of the entity. If no individual or organization owners exist, please check the appropriate box to indicate why and skip to the Senior Managers section. If the entity is owned by other companies that control 10% or more of the entity, those companies must be listed. If an owner was identified on the previous page, fill in his/her name and write "See above." If the entity is filing a Change Form, list any individuals or organizations that are no longer owners at the bottom of this section. If more space is needed, attach additional pages labeled "Additional Owners."

There are no owners listed because (select one):

The entity is not-for-profit The entity is an individual No individual or organization owns 10% or more of the entity

Other (explain) _____

Individual Owners (who own or control 10% or more of the entity)

First Name _____ MI _____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

First Name _____ MI _____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

Organization Owners (that own or control 10% or more of the entity)

Organization Name _____

Organization Name _____

Organization Name _____

Remove the following previously-reported Principal Owners

Name _____ Removal Date _____

Name _____ Removal Date _____

Name _____ Removal Date _____

Senior Managers

Please fill in the required identification information for all senior managers who oversee any of the entity's relevant transactions with the City (e.g., contract managers if this form is for a contract award/proposal, grant managers if for a grant, etc.). Senior managers include anyone who, either by title or duties, has substantial discretion and high-level oversight regarding the solicitation, letting or administration of any transaction with the City. At least one senior manager must be listed, or the Data Form will be considered incomplete. If a senior manager has been identified on a previous page, fill in his/her name and write "See above." If the entity is filing a Change Form, list individuals who are no longer senior managers at the bottom of this section. If more space is needed, attach additional pages labeled "Additional Senior Managers."

Senior Managers

First Name _____ MI _____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

First Name _____ MI _____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

First Name _____ MI _____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

Remove the following previously-reported Senior Managers

Name _____ removal date _____

Name _____ removal date _____

Certification

I certify that the information submitted on these two pages and _____ additional pages is accurate and complete. I understand that willful or fraudulent submission of a materially false statement may result in the entity being found non-responsible and therefore denied future City awards.

Name _____ Title _____

Entity Name _____ Work Phone # _____

Signature _____ Date _____

Please return this form to the City agency that supplied it to you, not to the Doing Business Accountability Project.

Form /RP

EXHIBIT M

LESSOR'S CONSULTANT REQUIREMENTS DURING THE REMEDIATION PROJECT

- a. Time for Performance of Services/Term/Delays and Force Majeure.
- i. The Consultant shall commence the “Services” (defined as work in connection with completing the Remediation Project described above, through obtaining a Certificate of Completion) upon or promptly after the date in a Notice to Proceed for each individual Project Assignment and shall complete the Services and each phase of the Services within the time or times stated for Final Completion, all to be set forth in a separate Consultant Contract to be entered into between the Consultant and the Lease Administrator for purposes of completing the Services.
 - ii. The Consultant Contract shall be for the term of the Services, unless sooner terminated in accordance with its terms.
 - iii. If the Consultant has been delayed in performance of the Services, through no fault of the Consultant and as a result of such delay will be unable to complete performance fully and satisfactorily within the time fixed for such Services, the Consultant may be granted an extension of time fixed for performance equal to the period the Consultant was actually and necessarily delayed upon submission of evidence of the causes of the delay, subject to the written approval of Lease Administrator’s “Director” in his or her sole discretion and in accordance with the Consultant Contract. The decision of the Director as to the granting of the extension and its length shall be binding upon the Consultant.
 - iv. Subject to the Lease Administrator’s determination and approval, the Lease Administrator may extend the time or times for performance of the Services by the Consultant where such performance has been substantially obstructed, hindered or delayed by reason of acts of Force Majeure.³ The Consultant shall have

³ Under the Consultant Contract, “Force Majeure” shall be defined as any of the following acts and events that occur without the negligence or fault, and beyond the reasonable control, of Consultant and that of any of its successors, heirs, assigns, and/or Representatives and of which Consultant has given the Lease Administrator express written notice within five (5) days after the commencement of the alleged cause of the delay, hindrance, or obstruction: governmental preemption in connection with a national

no claim against Lease Administrator, Lessor or Lessee for any loss or damage sustained by the Consultant nor for any extra compensation in the form of an increase in the Maximum Contract Price under the Consultant Contract, or otherwise, through such delay, hindrance or obstruction.

- b. Complete Work and Timing and Sequence/Meetings. It is the intent of the parties that the provisions of the Consultant Contract shall not be construed to limit the Services, but that the Services shall include all acts necessary to fully and finally complete the Services. The Consultant shall schedule and perform the Services in a manner so as to permit their completion diligently and expeditiously. The Principal, the Person in Charge, and/or such other Representatives of the Consultant as may be required under the circumstances shall be available to meet with the Director of the Lease Administrator or her or his designee as often as necessary to effectively perform the Services, and as often as may be specified.

emergency, war or act of war, insurrection, riot, act of public enemy, terrorist acts, labor disputes, accidents, mechanical failure and acts of God (including fire, flood or abnormal adverse weather conditions not reasonably anticipatable).

EXHIBIT N

Insurance and Indemnification Requirements of Lessor's Consultants During the Remediation Project

- c. Indemnification of the Lessor, Lease Administrator and Lessee.
 - i. To the fullest extent permissible by law, the Consultant shall indemnify, defend and hold harmless Lessor, Lease Administrator and Lessee, their respective agents and employees from any and all claims, judgments or liabilities to which they may be subject because of any negligence or any fault or default of the Consultant, its agents, employees or Subcontractors or the breach of the Consultant's obligations under the Consultant Contract between the Consultant and the Lease Administrator.
 - ii. Pursuant to the Consultant Contract, to the greatest extent permissible by law, the Consultant shall be solely responsible for all injuries to persons, including death, or damage to property sustained during its operations and work under the Consultant Contract resulting from any negligence, fault or default of the Consultant or of its employees, authorized agents, servants, independent contractors or Subcontractors retained by Consultant pursuant to the Consultant Contract. The Consultant will agree in the Consultant Contract to the greatest extent permissible by law, to indemnify, defend and hold harmless each of Lessor, Lease Administrator and Lessee from any liability upon any and all claims for injuries to persons (including death) and damage to property on account of negligence, fault or default of the Consultant, its employees, authorized agents, servants, independent contractors and Subcontractors retained by the Consultant.

- d. Insurance.
 - i. At all times during the performance of the work or Services in connection with this Contract or for such other time periods as Lease Administrator may require, the Consultant, at its sole cost and expense included in the Consultant's multiplier, shall purchase and maintain the insurance described in this Section 6.3, Appendix D(II) (Subsection E) and Appendix F (collectively, the "Insurance Provisions"), as may be applicable and as may be required by the Corporation, from time to time.

- ii. Pursuant to the Consultant Contract, Consultant shall purchase and maintain insurance with insurance companies that:
 - (i) are acceptable to the Lease Administrator;
 - (ii) are rated A:X or better by A.M. Best Company for the Consultant and are rated A:VII or better by A.M. Best Company for the Subcontractors, unless otherwise approved by the Lease Administrator; and
 - (iii) are licensed to issue such insurance by the New York State Insurance Department.

- iii. The insurance policies to be purchased and maintained by the Consultant pursuant to the Consultant Contract shall:
 - (iv) be in form and substance satisfactory to the Lease Administrator;
 - (v) be in the minimum face policy amounts set forth in the Insurance Provisions, which amounts may be increased at Lease Administrator's discretion, from time to time;
 - (vi) list the Lessor, Lessee and Lease Administrator including, without limitation, their Representatives, as Additional Insureds without regard to privity of contract, except in the case of any workers' compensation, U.S. Harbor Workers' Long Shoremens' Compensation Act, automobile liability and professional liability policies required to be maintained hereunder;
 - (vii) include a waiver of the right of subrogation with respect to the Additional Insureds on (1) All policies that provide coverage to the Additional Insureds; and (2) the Workers' Compensation policy; and
 - (viii) contain such other provisions as are set forth in the Consultant Contract.

- iv. Coverage for the individuals and entities identified in the Consultant Contract as Additional Insureds shall be written into those policies set forth in Section 6.3.3(iii) above as an endorsement at least as broad as the most recently issued Insurance Services Office ("ISO") Forms CG 20 10 or GC 20 37 if construction is performed as part of the Services. Subcontractor may not use blanket additional insured endorsements to provide coverage to Additional Insureds "by written contract" other than ISO Form CG 20 38. Consultant shall provide a copy of any endorsements to Lease Administrator, who shall make such endorsements available to Lessee upon request.

- v. The Consultant Contract shall require the Consultant to make and maintain timely premium payments for all policies required hereunder.
- vi. The Consultant Contract shall require that each of the Consultant's Subcontractors as part of Subcontractor costs, prior to the commencement of their work, purchase and maintain, or be covered by, at no cost or expense to Lessor, Lease Administrator and Lessee, the same types and amounts of insurance and meet all of the same requirements as required of the Consultant as set forth in the Consultant Contract. The Consultant shall, pursuant to the Consultant Contract covenant and warrant that (1) its Subcontractors shall purchase and maintain the policies required by the Consultant Contract in the amounts and for the periods required by the Consultant Contract and (2) the Consultant shall contractually require its Subcontractors to add the Additional Insureds as set forth in the Consultant Contract, and as summarized herein, and (3) it shall review and ensure that its Subcontractors are in compliance with the requirements in the Consultant Contract and provide the required documentation as needed to the Lease Administrator evidencing such compliance. The cost of Subcontractor insurance shall be included in the Subcontractors' respective bids including, (as applicable) any asbestos or other toxic or hazardous material remediation, removal, storage, or disposal work in the type and limits described in Exhibit N-1 hereto.
- vii. The Consultant Contract shall state that unless otherwise agreed to in writing by Lease Administrator, the types of insurance to be purchased and maintained by the Consultant and its Subcontractors are as follows:
 - (ix) Workers' Compensation, Disability Benefits, and Employer's Liability Insurance. The Consultant shall purchase and maintain and shall require each of its Subcontractors to purchase and maintain workers' compensation and disability benefits insurance in statutory amounts, and employer's liability insurance, for all of its employees engaged in the Services.
 - (x) Commercial General Liability. The Consultant shall purchase and maintain commercial general liability insurance to protect Lessor, Lease Administrator and Lessee, the Additional Insureds and the Consultant and its consultants (if any) against any and all claims for property damage, personal injury and death arising out of the Services performed by the Consultant (including, but not limited to, at-risk construction management services), and any work incidental thereto. The certificate of insurance must indicate that such insurance is on a "per occurrence" and a "per project" aggregate basis. The commercial general liability policy shall be in a form at least as broad in coverage as as the most recently issued ISO Form CG 00 01 in effect as of date hereof and shall not contain any modifications to the ISO CG 0001 severability of interests, contractual liability, and employer's

liability coverages. Coverage must not exclude any claims under the Labor Law Sections 200, 240(1) or 241(6). The liability policy(ies) certificate of insurance must indicate cross-liability coverage providing severability of interests so that, except with respect to the limits of insurance, and any rights or duties specifically assigned to the first named insured, coverage will respond as if separate policies were in force for each insured. If at any time the commercial general liability policy should be canceled, terminated, or modified so that the insurance is not in effect as above required, then the Consultant Contract shall direct that the Consultant shall suspend performance of the Services if the Lease Administrator shall so direct. If the Consultant Contract is so suspended, no extension of time shall be due on account thereof. If the Consultant Contract is not suspended, whether or not because of omission of Lease Administrator to order suspension, then Lease Administrator may, at its sole option, obtain insurance affording coverage equal to that required hereunder, the cost of such insurance to be payable by the Consultant to Lease Administrator. When providing evidence of insurance, the Consultant and its Subcontractor(s) must include a satisfactory completed ACORD 855 NY form.

- (xi) **Automobile Liability Insurance.** The Consultant shall purchase and maintain automobile liability insurance covering all automobiles used in connection with the work or Services under this Contract whether owned, non-owned and/or hired automobiles. If vehicles are used for transporting any Hazardous Substances, such Automobile Liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (ISO Form endorsement CA 99 48 or its reasonable equivalent, if hauling outside of New York state) as well as proof of an MCS-90 endorsement or equivalent insurance shall be obtained by the entity retained to transport such Hazardous Substances. Both shall be furnished on a primary basis with limits of liability of at least \$5,000,000 providing coverage for bodily injury or property damage including liability for environmental restoration resulting from negligence in the operation, maintenance or use of any motor vehicle involved in the transportation of hazardous substances or any other environmentally regulated substance as required by pursuant to any federal, state or local laws, rules and regulations. A copy of each endorsement, if applicable, shall be submitted for review as part of the insurance submission showing the \$5,000,000 limits if required by the Lease Administrator.

- (xii) **Umbrella/Excess Liability Coverage.** The Consultant shall purchase and maintain umbrella/excess liability insurance, specifically listing commercial general liability, comprehensive automobile liability and employer's liability as primary coverages, to protect Lessor, Lease Administrator and Lessee, the Additional Insureds, the Consultant and its subconsultants (if any) from any and all claims in excess of the underlying policy limits for such primary coverages and the policy shall be endorsed to provide primary and non-contributory coverage as respect to any other insurance carried by the Additional Insureds on a vertical exhaustion basis. The certificate of

insurance must indicate that such insurance is on a “per occurrence” basis and an aggregate basis. Coverage shall be follow form to primary policies or as broad as the coverage required for the commercial general liability, automobile liability, and employer’s liability policies.

- (xiii) Builders Risk Insurance. [*Builders risk may not be applicable here where there is no building involved in the Remediation Project.*] The Consultant shall purchase and maintain (if the Services involve new construction or improvements to real property) builders “all risk” insurance (completed value none reporting form or installation floater, as applicable) as indicated in the Consultant Contract.

- (xiv) Professional Liability/Errors & Omissions Insurance. The Consultant (including, at a minimum, the architect, engineer, interior designer, landscape architect, land surveyor, LEED consultant, and construction manager, and other parties involved in design and other Soft Cost activities or requiring a license to practice their profession) shall purchase and maintain professional liability/errors & omissions insurance, to the extent applicable to the work performed on the Remediation Project, covering the liability assumed by the Consultant and its Subcontractors or anyone employed, including independent contractors, by the Consultant under the Consultant Contract arising out of the performance of professional services or caused by an error, omission, or negligent act, including any resulting bodily injury, property damage, and emotional distress, including coverage for (i) failure to render services or to perform the function intended and (ii) defamation, invasion of privacy, news-gathering torts, intellectual property violations (such as infringement of copyright /trademark, misappropriation, and plagiarism), and breach of license. Such policy shall provide coverage for settlement, fees, expenses, and defense costs. All Subcontractors of the Consultant providing professional services under this Consultant Contract for which professional liability insurance/errors and omissions insurance is reasonably commercially available shall also maintain such insurance. The policy shall have a professional services definition that encompasses all work contemplated under this Consultant Contract, must not have exclusions for faulty workmanship, contractual liability and warranty/guaranty, and should include protective indemnity and rectification/mitigation coverages with the same aforementioned professional services definition throughout. If policy is claims-made, it must meet the requirements of Article 6 of the Consultant Contract. If Contractor is an architect or engineer, policy must include coverage for mold, asbestos, and pollution. Coverage and must be maintained for a period from prior to the start of Services until three (3) years or for the statute of limitations (whichever is longer) applicable to the Consultant’s work after the completion of services under this Contract.

- (xv) If applicable, the insurance coverages and limits set forth in Exhibit N-1 herein and the Consultant Contract.

- viii. As a condition precedent to payment of any amounts owing to the Consultant by the Lease Administrator, the Consultant shall, unless otherwise expressly agreed to in writing by the Lease Administrator, provide to Lease Administrator the original certificates of insurance and endorsements to policies applicable to the Additional Insureds required under the Consultant Contract and shall on demand provide true copies of policies and endorsements to policies showing compliance with the insurance requirements set forth in the Consultant Contract.
- ix. The policies to be maintained by the Consultant hereunder that are subject to the Additional Insured requirements set forth in the Consultant Contract above shall constitute the primary coverage for claims arising out of this Contract, and shall state that insurance, if any, carried by Lessor, Lease Administrator and Lessee or the Additional Insureds will not be called upon to contribute to a loss that would otherwise be paid by the Consultant's insurer. The Consultant shall comply with the provisions of all policies required pursuant to the Consultant Contract, and shall give the insurer, Lessor, Lease Administrator and Lessee and the Additional Insureds due and timely Notice of all claims, accidents and losses promptly upon its acquiring knowledge of the same, but in no event later than 5 business days following knowledge of any claims, accidents and losses.
- x. The Consultant Contract may have provisions related to insurance that shall be in addition to any rights Lessor, Lease Administrator and Lessee and the Additional Insureds may have under any hold harmless and indemnification provisions of this Contract and any other right provided by the Consultant Contract or by law. The Consultant shall not violate or permit to be violated any term or condition of the policies.
- xi. All required policies, except Disability Benefits insurance, shall include a waiver of the right of subrogation, with respect to Lessor, Lease Administrator and Lessee and any other Additional Insureds.
- xii. Claims-made coverage will be accepted for the Professional/Errors & Omissions policy subject to a retroactive date prior to the effective date of the Consultant Contract and must be maintained for a period from prior to the start of Services until three (3) years after the completion of services under the Consultant Contract. The Consultant shall purchase an extended reporting period coverage of not less than three (3) years or the applicable statute of limitations (whichever is longer) effective on cancellation or termination of such policy unless a new policy is secured with a retroactive coverage for full prior acts.

- xiii. The limits of coverage for all types of insurance required under Exhibit N-1 shall be the greater of (A) the minimum limits set forth in Exhibit N-1 or (B) the limits provided to the Consultant and its Subcontractors under all primary, excess and umbrella policies covering operations under the Consultant Contract.
- xiv. There shall be no self-insurance program or self-insured retention with regard to any insurance required under the Consultant Contract unless approved in writing by Lease Administrator. Under no circumstances shall Lease Administrator be responsible for the payment of any deductible or self-insured retention (or any other aspect of a self-insurance program). Further, Consultant shall ensure that any such self-insurance program provides Additional Insureds with all rights that would be provided by traditional insurance under the Consultant Contract, including but not limited to the defense and indemnification obligations that insurers are required to undertake in liability policies.
- xv. Contractor Controlled Insurance Program Requirements : Provided that the terms and limits of coverage provided thereunder conform to the requirements of Part II, Section 6 of the Contract, the Lease Administrator may agree to a Contractor Controlled Insurance Program (“CCIP”) proposed by the Consultant or Construction Manager that will provide Project specific workers’ compensation, employer’s liability, commercial general liability and excess liability insurance for the Consultant and enrolled parties. The CCIP shall be described in an Insurance Manual for the Project and may be incorporated into the Consultant Contract pursuant to an approval letter between Lease Administrator and the Consultant or Construction Manager.

EXHIBIT N-1

INSURANCE REQUIREMENTS

1. Required Policies and Amounts. The limits of coverage for all types of insurance for the Lease Administrator and the Lessor and Lessee, including each of their respective officials and employees, and Additional Insureds that must be provided to such Additional Insured(s) shall be the greater of (i) the minimum limits set forth in this Exhibit N-1 or (ii) the limits provided to the Consultant and Subcontractors in the Consultant Contract as named insured under all primary, excess, and umbrella policies of that type of coverage.

Workers' Compensation/
Disability Benefits:

In statutory amounts

Employer's Liability:

The greater of statutory amounts or \$1,000,000

Commercial General
Liability:

A minimum of \$1,000,000 per occurrence, with an annual aggregate of not less than \$2,000,000 in the aggregate applying on a per project basis

The maximum deductible or self-insured retention (“SIR”) for the Commercial General Liability policy shall be \$10,000. Any such self-insurance program shall provide the Lease Administrator, Lessor and any other Additional Insureds with all rights that would be provided by traditional insurance required under the Consultant Contract, including but not limited to the defense obligations that insurers are required to undertake in liability policies.

Automobile Liability:

\$1,000,000 combined single limit per occurrence

Umbrella/Excess Liability:

\$20,000,000 on a per occurrence and aggregate basis, and shall be excess of primary general, automobile and employer’s primary liability limits

**** Umbrella/Excess Liability coverage is not required for Subcontractors, with the exception of site inspection Subcontractor team members that are performing active site investigations.**

Builders Risk: **Required. See attached Builders Risk Requirements**
 Not Required.

[Builders risk may not be applicable here where there is no building involved in the Remediation Project.]

If the Consultant or its Subcontractors use boats, vessels, or any other floating equipment, barges or floats, or performs marine-related construction, the Consultant and as applicable, its Subcontractors, shall purchase and maintain additional insurance of the following types and in the following amounts in connection with the performance of the Services:

U.S. Harbor Workers'
Long Shoremens'
Compensation Act: In statutory amounts

Marine Protection and
Indemnity: \$25,000,000 per occurrence, but if an annual aggregate is applicable to the policy not less than
 \$25,000,000 in the aggregate per year

If the Project is adjacent to or includes an existing railroad or subway line, the Consultant, or its Subcontractors, shall purchase and maintain the following insurance in the following amounts in connection with the performance of the Services by the Consultant and its Subcontractors, and any work incidental thereto:

Railroad Protective Liability: \$2,000,000 per occurrence, but if an annual aggregate is applicable to the policy not less than
 \$6,000,000 in the aggregate

If the Consultant or any of its Subcontractors is performing asbestos or other toxic or hazardous materials remediation, removal, abatement, storage or disposal work including, without limitation, related demolition work, the Consultant or its Subcontractors shall purchase and maintain additional insurance of the following types and in the following amounts in connection with the performance of the Services and any work incidental thereto:

Contractor Pollution Liability (“CPL”) Policy \$5,000,000 combined single limit per occurrence

and, as applicable, Asbestos Abatement Liability Policy, Lead Abatement Contractors Liability Policy, Stop Loss Policy, Professional Services Policy, Pollution Legal Liability (“PLL”) Policy, Transportation Coverage and Non-Owned Disposal Site Coverage:	for bodily injury or death, and property damage, but if an annual aggregate is applicable to the policy not less than \$5,000,000 in the aggregate per year dedicated to this Project, on an “occurrence” basis, with a term of not less than ten (10) years
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Such CPL and PLL policies shall be for a term of not less than ten (10) years, on an “occurrence” basis, and any aggregate applicable to such policies shall be dedicated to this Project. In addition, such policies shall include, without limitation, and as applicable, (a) bodily injury and defense coverage for asbestos and lead; (b) coverage for unknown UST’s; (c) a definition of “property damage” that includes diminution in value of third-party properties; (d) a statement that such insurance is primary and over any surety contracts or bonds covering the Services; (e) a statement that the insured’s rights will not be prejudiced if there is a failure to give notice due to the insured’s belief that the occurrence was not covered; (f) coverage for products brought onto the work site where Services are being performed; (g) a definition of “stop loss” or “cleanup cost cap” that includes monitoring activities; (h) a definition of “cleanup costs” that includes any costs associated with natural resources damages; and (i) a statement that exclusions for modifications of remedial action plans (“RAP”) shall not include changes required by regulatory agencies (either via a change in regulations or as a result of governmental entity oversight, increased levels or quantities of pollutants within the boundary of the RAP, discovery of pollutants not identified in the exclusion, and amendments to the RAP because of a change in technological approach) (j) coverage on a suspected release basis with no natural resource damage or non-compliance exclusions.

If the Consultant or any of its Subcontractors is performing professional services in its capacity as a professional, including as may be evidenced by a license to practice that profession, the Consultant or its Subcontractors shall purchase and maintain additional insurance of the following type and in the following amount in connection with the performance of the Services and any work incidental thereto:

1.

Professional Liability/Errors & Omissions Insurance:

Professional liability (“PL”) and/or errors and omissions (“E & O”) insurance policies shall be written with a minimum amount of \$1,000,000 per claim and \$2,000,000 in the aggregate for a period from prior to the start of services until three (3) years after the completion of services under this Contract.

The policy or policies shall cover the liability assumed by the Consultant under the Consultant Contract arising out of the negligent performance of professional services or caused by an error, omission, or negligent act of the Consultant or anyone employed by the Consultant. All Subcontractors of the Consultant providing professional services under the Consultant Contract for which professional

liability insurance or errors and omissions insurance is reasonably commercially available shall also maintain such insurance in the amount specified above. If the PL coverage lapses or is cancelled within a year of the completion of services, the contractor must obtain tail coverage, or an extended reporting period endorsement for a period of at least three years effective on cancellation or termination of such insurance unless a new policy is secured with a retroactive date prior to the Commencement Date of the Consultant Contract. The policy shall have a professional services definition that encompasses all work in this Remediation Project, must not have exclusions for faulty workmanship, contractual liability and warranty/guaranty, and should include protective indemnity and rectification/mitigation coverages with the same professional services definition throughout. If policy is claims-made, any retroactive date must be prior to the Commencement Date. If Contractor is an architect or engineer, policy must include coverage for mold, asbestos, and pollution.

BUILDERS RISK REQUIREMENTS

[BUILDERS RISK MAY NOT BE APPLICABLE HERE WHERE THERE IS NO BUILDING INVOLVED IN THE REMEDIATION PROJECT.]

The Consultant shall carry Builders Risk coverage in an amount not less than 115% of the Maximum Contract Price of the Consultant Contract. Coverage must be written on *ISO Special Form CP 10 30 04 02* or its equivalent on a completed value non-reporting basis and provide coverage for the Lease Administrator, Lessor, Lessee, the Consultant and all Subcontractors. Coverage must also include an “Agreed Amount” provision which eliminates any coinsurance provision.

Mandatory Extensions and Provisions:

- Soft Costs, including architectural, engineering, financing, legal fees and all other pre- and post-construction expenses
- Flood Coverage, including Water Damage other than Flood
- Earthquake Coverage
- Mechanical / Electrical Breakdown or Failure Exclusion Deleted
- Testing Exclusion Deleted
- Terrorism Coverage
- Permission to Occupy Endorsement
- Covered Property while in Offsite Storage
- Covered Property while in Transit
- Demolition, Increased Cost of Construction & Ordinance Or Law

Due to the nature of the Work being performed under this Contract, the following coverage extensions and provisions are also required:

- Plans, Blueprints & Drawings Renderings Specifications and other Contract Documents or Models;
- Trees, Shrubs, Plants, Landscaping
- Delay in Opening / Business Income coverage
- Expediting Expenses / Extra Expense
- Debris Removal
- Fire Department Service & Extinguishing Expenses
- Emergency Property Protection Expenses

- Existing Property (damage due to building activities only)
- Loss Adjustment Expense
- Pollution Clean Up & Removal
- Mold & Fungus Remediation
- Earlier Notice of Cancellation (60 days)
- Blanket Loss Payee Endorsement
- Escalation Coverage Applies

***All required policies shall include a waiver of the right of subrogation with respect to all additional insureds named therein as well as the required Workers' Compensation coverage.**