

AGENCY LEASE AGREEMENT

Dated as of March 1, 2022

by and between

NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY

and

GMDC BROWNSVILLE LLC,

a limited liability company organized and existing under the laws of the State of Delaware, having its principal office in New York City at 1155 Manhattan Avenue, Brooklyn, New York 11222, as Lessee

2022 GMDC Brownsville LLC Project

Affecting Unit 1 in the condominium known as
Bridge Rockaway Condominium,
generally known by the street address
805 Rockaway Avenue, Brooklyn, New York 11212
Borough of Kings, constituting Lot 1001 in Block 3603

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

Record and Return to:

KATTEN MUCHIN ROSENMAN LLP
50 Rockefeller Plaza
New York, New York 10020
Attention: Patricia A. Mollica, Esq.

File No. 389205.00070

AGENCY LEASE AGREEMENT

This **AGENCY LEASE AGREEMENT**, dated as of March 1, 2022 (this “Agreement”), is by and between **NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York, having its principal office at One Liberty Plaza, New York, New York 10006, party of the first part, and the Lessee, party of the second part (capitalized terms used herein shall have the respective meanings assigned to such terms throughout this Agreement).

WITNESSETH:

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish land, any building or other improvement, and all real and personal properties, including machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial purposes, to the end that such agencies may be able to promote, develop, encourage, assist and advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their prosperity and standard of living; and

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act, the Agency was established by the Agency Act for the benefit of the City and the inhabitants thereof; and

WHEREAS, to accomplish the purposes of the Act, the Agency has entered into negotiations with the Lessee for a “project” within the meaning of the Act within the territorial boundaries of the City and located on the Land described in Exhibit A — “Description of the Land and the Project Unit”; and

WHEREAS, the Project will further the purposes of the Act and promote job opportunities for the benefit of the City and the inhabitants thereof; and

WHEREAS, to facilitate the Project, the Agency and the Lessee have entered into negotiations to enter into a Straight-Lease Transaction pursuant to which (i) the Lessee has leased the Facility Realty to the Agency pursuant to the Company Lease, (ii) the Agency will sublease the Facility Realty, and lease the Facility Personalty, to the Lessee pursuant to this Agreement, and (iii) the Lessee will further sublease the Facility Realty and the Facility Personalty, to Facility Tenants; and

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

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

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

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

ARTICLE I

DEFINITIONS AND CONSTRUCTION

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

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

Additional Improvements shall mean any improvements constructed, erected, placed and/or installed on the Project Unit, when such improvements are not part of the Project Work and are assessed by NYCDOF after the first assessment following the Project Completion Date, including but not be limited to all replacements, improvements, additions, extensions and substitutions to the Existing Improvements and/or the Project Improvements.

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

Adjusted PILOT Amount shall mean, with respect to the determination of PILOT for any semi-annual period with respect to Land, Existing Improvements, Project Improvements or Additional Improvements, as applicable, an amount equal to the Full PILOT Amount for such semi-annual period applicable to Land, Existing Improvements, Project Improvements or Additional Improvements, respectively, as adjusted by (y) any Qualified As-of-Right Benefit applicable thereto, and (z) any reduction in such Qualified As-of-Right Benefit over the prescribed term of such benefit.

Affiliate means, with respect to a given Person, any other Person that directly or indirectly through one or more intermediaries Controls, is Controlled by, or is under common Control with such given Person.

Agency shall mean the New York City Industrial Development Agency, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State, duly organized and existing under the laws of the State, and any body, board, authority, agency or other governmental agency or instrumentality which shall hereafter succeed to the powers, duties, obligations and functions thereof.

Agency Act shall mean Chapter 1082 of the 1974 Laws of New York, as amended.

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

Agreement shall mean this Agency Lease Agreement, dated as of the date set forth in the first paragraph hereof, between the Agency and the Lessee, and shall include any and all amendments hereof and supplements hereto hereafter made in conformity herewith.

Annual Administrative Fee shall mean that annual administrative fee established from time to time by the Agency's Board of Directors as generally applicable to Entities receiving or that have received Financial Assistance (subject to such exceptions from such general applicability as may be established by the Agency's Board of Directors).

Application Date shall mean the date on which the Inducement Resolution was adopted with respect to the Lessee's application for Financial Assistance.

Approved Facility shall mean the Facility as occupied, used and operated by the Lessee substantially for the Approved Project Operations, including such other activities as may be substantially related to or substantially in support of such operations, all to be effected in accordance with this Agreement.

Approved Project Operations shall mean the leasing of the Project Unit to Facility Tenants for a Qualified Use.

As-of-Right Benefit shall mean, for any period of determination, any as-of-right incentives that would otherwise be applied in the absence of the Agency's interest in the Facility Realty to reduce Real Estate Taxes applicable to the Facility Realty and for which the Agency has been advised by NYCDOF that Lessee has met all application, eligibility and qualification requirements.

Asserted Cure has the meaning specified in Section 8.24(k)(i).

Asserted LW Violation has the meaning specified in Section 8.24(k)(i).

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

Authorizing Resolution shall mean the resolution of the Agency adopted on November 16, 2021 providing for Financial Assistance and authorizing the Project Documents to which the Agency is a party.

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

Benefits shall mean, collectively, (i) all PILOT Benefits realized by the Lessee on and after the PILOT Commencement Date; and (ii) all miscellaneous monetary benefits derived from the Agency's participation in the Straight-Lease Transaction contemplated by this Agreement, including any exemption from any applicable mortgage recording taxes, Sales and Use Taxes, and filing and recording fees.

Business Day shall mean any day that shall not be:

- (i) a Saturday, Sunday or legal holiday;

(ii) a day on which banking institutions in the City are authorized by law or executive order to close; or

(iii) a day on which the New York Stock Exchange is closed.

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

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

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

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

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

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

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

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

Commencement Date shall mean March 30, 2022, on which date this Agreement was executed and delivered.

Commissioner shall have the meaning specified in Section 5.2(h(ii)).

Common Elements shall have the meaning assigned to such term in the Condominium Documents.

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

Completed Improvements Rentable Square Footage shall mean approximately 39,012 rentable square feet, the rentable square footage of the Improvements upon completion of the Project Work.

Completion Deadline shall mean March 1, 2027.

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

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

Condominium Act shall mean Article 9-B of the New York Real Property Law (339-d et seq.) of the State of New York and all modifications, supplements and replacements thereof and all regulations with respect thereto, now or hereafter enacted or promulgated.

Condominium Board shall mean the Governing Body under the Condominium Documents.

Condominium Documents shall mean the declaration of condominium, by-laws and rules and regulations of a condominium association and any and all other documentation related to the proper formation and operation of the condominium regime established at the Project Building under State law.

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

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

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

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

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

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

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

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

Eligible Items shall mean the following items of personal property and services, but excluding any Ineligible Items, with respect to which the Lessee and any Agent shall be entitled to claim a Sales Tax Exemption in connection with the Project:

- (i) purchases of materials, goods, personal property and fixtures and supplies that will be incorporated into and made an integral component part of the Facility Realty;
- (ii) purchases or leases of any item of materials, goods, machinery, equipment, furniture, furnishings, trade fixtures and other tangible personal property having a useful life of one year or more;
- (iii) with respect to the eligible items identified in (ii) above: purchases of freight, installation, maintenance and repair services required in connection with the shipping, installation, use, maintenance or repair of such items; provided that maintenance shall mean the replacement of parts or the making of repairs;
- (iv) purchases of materials, goods and supplies that are to be used and substantially consumed in the course of construction or renovation of the Facility Realty (but excluding fuel, materials or substances that are consumed in the course of operating machinery and

equipment or parts containing fuel, materials or substances where such parts must be replaced whenever the substance is consumed); and

- (v) leases of machinery and equipment solely for temporary use in connection with the construction or renovation of the Facility Realty.

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

Enabling Act shall mean the New York State Industrial Development Agency Act, constituting Title I of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended.

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

Estimated Project Cost shall mean \$[18,036,788].

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

Excluded As-of-Right Benefit shall mean any As-of-Right Benefit that is either (i) not allowed by law for any period for which the Facility Realty is exempt from Real Estate Taxes because it is leased or controlled by the Agency or (ii) whose application arises from the eligibility and acceptance of the Project Improvements under the As-of-Right Benefit program in question.

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

Existing Improvements shall mean, the Project Unit and related Common Elements pertaining to the Project Unit existing on the Application Date other than all or any part of the foregoing that (i) is intended to be demolished as part of the Project Work, and (ii) is in fact demolished by the Completion Deadline.

Expiration Date shall mean June 30, 2048.

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

Facility Personalty shall mean those Eligible Items consisting of personal property, together with all repairs, replacements, improvements, substitutions and renewals thereof or therefor, and all parts, additions and accessories incorporated therein or affixed thereto. Facility Personalty shall, in accordance with the provisions of Sections 3.6 and 6.4, include all property substituted for or replacing items of Facility Personalty and exclude all items of Facility Personalty so substituted for or replaced, and further exclude all items of Facility Personalty removed as provided in Section 3.6.

Facility Realty shall mean, collectively, the Project Unit and the Common Elements with respect to the Project Building and the Land.

Facility Tenant shall have the meaning specified in Section 8.9(b) hereof.

Final Project Cost Budget shall mean that certain budget of costs paid or incurred for the Project to be submitted by the Lessee pursuant to Section 3.3(f) upon completion of the Project.

Financial Assistance shall have the meaning assigned to that term in the Enabling Act.

Fiscal Year shall mean a year of 365 or 366 days, as the case may be, commencing on January 1 and ending on December 31 of each calendar year, or such other fiscal year of similar length used by the Lessee for accounting purposes as to which the Lessee shall have given prior written notice thereof to the Agency at least ninety (90) days prior to the commencement thereof.

Fixed Date Deliverables shall have the meaning set forth in Section 9.8(a)(ii).

Form ST-123 shall mean NYSDTF Form ST-123 “IDA Agent or Project Operator Exempt Purchase Certificate” or such additional or substitute form as is adopted by NYSDTF for use in completing purchases that are exempt from Sales and Use Taxes with respect to industrial development agency transactions.

Form ST-340 shall mean NYSDTF Form ST-340 “Annual Report of Sales and Use Tax Exemptions Claimed by Project Operator of Industrial Development Agency/Authority” or such additional or substitute form as is adopted by NYSDTF to report Sales Tax Savings with respect to industrial development agency transactions.

Form ST-60 shall mean NYSDTF Form ST-60 “IDA Appointment of Project Operator or Agent” or such additional or substitute form as is adopted by NYSDTF to report the appointment of project operators or agents with respect to industrial development agency transactions.

GAAP shall mean those generally accepted accounting principles and practices that are recognized as such by the American Institute of Certified Public Accountants or by the Financial Accounting Standards Board or through other appropriate boards or committees thereof, and that are consistently applied for all periods, after the Commencement Date, so as to properly reflect the financial position of the Lessee, except that any accounting principle or practice required to be changed by the Financial Accounting Standards Board (or other appropriate board or committee of the said Board) in order to continue as a generally accepted accounting principle or practice may be so changed.

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

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

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

Ground Lease shall mean that certain Agreement of Lease by and among Bridge Rockaway Managers, LLC, a New York limited liability company (the “Company”), and Bridge Rockaway Housing Development Fund Company, Inc., a New York not-for-profit corporation, (the “HDFC”); and together with the Company, “Landlord”) each with an address at 290 Lenox Avenue, 3rd Floor, New York, New York 10027, and the Lessee, dated March 30, 2022, pursuant to which Landlord leases the Facility Realty to the Lessee.

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

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

Hazardous Materials shall include any petroleum, flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 5101, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental law, ordinance, rule, or regulation.

HPD Regulatory Agreement shall mean that certain Affordable Housing Regulatory Agreement dated March 30, 2022, by and among Bridge Rockaway L.P., Bridge Rockaway Housing Development Fund Company, Inc., and The City of New York, acting by and through its Department of Housing Preservation and Development.

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

Improvements shall mean, collectively, the Existing Improvements, if any, and the Project Improvements and any Additional Improvements. In the alternative, “Improvements” shall mean: (i) all buildings, structures, foundations, related facilities, fixtures and other improvements existing on the Commencement Date and erected or situated on the Land, if any, (ii) any other buildings, structures, foundations, fixtures and related facilities and other improvements erected or constructed on the Land throughout the Term (including any improvements or demolitions made as part of the Project Work pursuant to Section 3.3), and (iii) all other replacements, improvements, additions, extensions, substitutions, restorations and repairs to any of the foregoing.

Improvements Percentage shall have the meaning set forth in Section 5.1(i).

Indemnification Commencement Date shall mean January 19, 2021, the date on which the Agency first adopted a resolution with respect to the Project.

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

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

Inducement Resolution shall mean the resolution of the Agency adopted on January 19, 2021 inducing the Project.

Ineligible Items shall mean the following items of personal property and services with respect to which the Lessee and any Agent shall not be entitled to claim a Sales Tax Exemption in connection with the Project:

- (i) vehicles of any sort, including watercraft and rolling stock;
- (ii) personalty having a useful life of one year or less;
- (iii) any cost of utilities, cleaning services or supplies or other ordinary operating costs;

- (iv) fine art and other similar decorative items;
- (v) plants, whether potted or landscaped;
- (vi) ordinary office supplies such as pencils, paper clips and paper;
- (vii) any materials or substances that are consumed in the operation of machinery;
- (viii) equipment or parts containing materials or substances where such parts must be replaced whenever the substance is consumed; and
- (ix) maintenance of the type as shall constitute janitorial services.

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

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

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

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

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

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

Land shall mean that certain lot, piece or parcel of land in the Borough of Kings, Block 3603 and Lot 1001, generally known by the street address 805 Rockaway Avenue, Brooklyn, New York 11212, all as more particularly described in Exhibit A - "Description of the Land and Project Unit", together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto.

Land PILOT shall have the meaning set forth in Section 5.1(c).

Land PILOT shall have the meaning set forth in Section 5.1(c).

Land Square Footage shall mean approximately 39,012 square feet.

Land Taxes shall mean, with respect to any semi-annual period, an amount equal to Real Estate Taxes for such semi-annual period applicable to the Land.

Legal Requirements shall mean the Constitutions of the United States and the State of New York and all laws, statutes, codes, acts, ordinances, resolutions, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, certificates of occupancy, directions and requirements (including zoning, land use, planning, environmental protection, air, water and land pollution, toxic wastes, hazardous wastes, solid wastes, wetlands, health, safety, equal opportunity, minimum wage, living wage, prevailing wage, sick leave, healthcare, benefits and employment practices) of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, including those of the City, foreseen or unforeseen, ordinary or extraordinary, that are applicable now or may be applicable at any time hereafter to (i) the Lessee, (ii) the Facility or any part thereof, or (iii) any use or condition of the Facility or any part thereof.

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

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

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

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

Loss Event shall have the meaning specified in Section 6.1.

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

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

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

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

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

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

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

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

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

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

Maximum Sales Tax Savings Amount shall mean the aggregate maximum dollar amount of Sales Tax Savings that the Lessee and all Agents acting on behalf the Lessee are permitted to receive under this Agreement, which shall equal \$606,062.

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

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

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

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

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

MWBE Program shall have the meaning set forth in Section 8.25.

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

Non-Qualified Use shall mean any use other than a Qualified Use.

Non-Qualified USF shall mean Usable Square Feet of the Improvements that on the date(s) of determination does not qualify as Qualified USF.

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

NYCDOF shall mean the New York City Department of Finance.

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

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

Operations Commencement Date shall mean, as stated in a Project Completion Certificate in the Form attached hereto as Exhibit G signed and certified by an Authorized Representative of the Lessee and delivered to the Agency, the date the Lessee has lawfully commenced use and occupancy of the Project Improvements on or after the Project Completion Date, subject to the review, verification and acceptance of such certification and related documentation by the Agency, in its sole discretion.

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

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

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

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

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

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

Per Diem Late Fee shall mean that per diem late fee established from time to time by the Agency's Board of Directors generally imposed upon Entities receiving or that have received Financial Assistance (subject to such exceptions from such general applicability as may be established by the Agency's Board of Directors) and that have not (x) paid to the Agency the Annual Administrative Fee on the date required under Section 8.3, (y) delivered to the Agency all or any of the Fixed Date Deliverables on the respective dates required under Section 8.14 or 8.16, and/or (z) delivered to the Agency all or any of the Requested Document Deliverables under Section 8.15 within five (5) Business Days of the Agency having made the request therefor.

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

Permitted Encumbrances shall mean:

- (i) this Agreement, the Company Lease, the Ground Lease, the Restrictive Declaration, the HPD Regulatory Agreement, any Mortgages and any housing financing mortgages which may encumber all or a portion of the fee simple interest in the Project Building;
- (ii) liens for Real Estate Taxes, assessments, levies and other governmental charges, the payment of which is not yet due and payable;
- (iii) any mechanic's, workmen's, repairmen's, materialmen's, contractors', warehousemen's, carriers', suppliers' or vendors' lien, security interest, encumbrance or charge or right in respect thereof, placed on or with respect to the Facility or any part thereof, if payment is not yet due and payable, or if such payment is being disputed pursuant to Section 8.11(b);
- (iv) utility, access and other easements and rights of way, restrictions and exceptions that an Authorized Representative of the Lessee certifies to the Agency will not materially interfere with or impair the Lessee's use and enjoyment of the Facility for Approved Project Operations as herein provided;
- (v) such minor defects, irregularities, encumbrances, easements, rights of way and clouds on title as normally exist with respect to property similar in character to the Facility as do not, as set forth in a certificate of an Authorized Representative of the Lessee delivered to the Agency, either singly or in the aggregate, render title to the Facility unmarketable or materially impair the property affected thereby for the purpose for which it was leased by the Agency under the Company Lease or purport to impose liabilities or obligations on the Agency;
- (vi) those exceptions to title to the Facility Realty enumerated in any title insurance policy insuring the lien of any Mortgage Loan on the Facility Realty, so long as such exceptions are reflected in the title report delivered to the Agency pursuant to Section 3.8;
- (vii) liens arising by reason of good faith deposits with the Lessee in connection with the tenders, leases of real estate, bids or contracts (other than contracts for the payment of money), deposits by the Lessee to secure public or statutory obligations, or to secure, or in lieu of, surety, stay or appeal bonds, and deposits as security for the payment of taxes or assessments or other similar charges;

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

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

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

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

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

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

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

(xv) leases to Facility Tenants.

Person shall mean an individual or any Entity.

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

PILOT Benefits shall mean, for any period of determination, the dollar amount of all benefits that accrued during such period due to the exemption from Real Estate Taxes resulting from the Agency's leasehold interest in the Facility Realty, such amount to be computed by subtracting (y) the aggregate amount of PILOT paid by the Lessee during such period from (z) Real Estate Taxes that would have been levied by the City on the Facility Realty, as reduced by As-of-Right Benefits, during such period in the absence of the Agency's leasehold interest in the Facility Realty.

PILOT Bill shall mean the semi-annual statement of account sent by NYCDOF for the payment of PILOT for the immediately succeeding semi-annual period in respect of the Facility Realty. For purposes of clarification, PILOT must be paid not less than seven (7) Business Days prior to the commencement of the semi-annual period to which a PILOT Bill relates. NYCDOF will send PILOT Bills to the Lessee prior to the due dates therefor, but failure to receive a PILOT Bill shall not relieve, or otherwise affect, the Lessee of its obligation to pay the amount of PILOT required under this Agreement.

PILOT Commencement Date shall mean July 1, 2023.

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

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

PILOT Reconciliation shall have the meaning set forth in Section 5.1(d).

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

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

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

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

Project shall the acquisition, construction, renovation, equipping and furnishing of an approximately 38,690 square foot condominium unit to be located within the Project Building, all lease by the Lessee to various Facility Tenants.

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

Project Building shall mean an approximately 214,117 square foot mixed-use building on an approximately 39,102 square foot parcel of land located at 805 Rockaway Avenue, Brooklyn, New York 11212 of which certain building is subject to a condominium regime.

Project Completion Date shall mean the date by which all of the following conditions have been satisfied: (i) the Agency shall have received a signed and complete certificate of an Authorized Representative of the Lessee in substantially the form set forth in Exhibit G – “Form of Project Completion Certificate”, together with all attachments required thereunder, (ii) the Project Work shall have been finished and the Project Improvements shall have been completed substantially in accordance with the plans and specifications therefor, (iii) the Agency shall have received a copy of a certificate of occupancy issued by the New York City Department of Buildings from the Lessee, (iv) there shall be no certificate, license, permit, authorization, written approval or consent or other document required to permit the occupancy, operation and use of the Facility as the Approved Facility that has not already been obtained or received, except for such certificates, licenses, permits, authorizations, written approvals and consents that will be obtained in the ordinary course of business and the issuance of which are ministerial in nature, and (v) the Facility shall be ready for occupancy, use and operation for the Approved Project Operations in accordance with all applicable laws, regulations, ordinances and guidelines.

Project Cost Budget shall mean that certain budget as set forth by the Lessee in Exhibit E — “Project Cost Budget”.

Project Counsel shall mean attorneys or a firm of attorneys that are recognized for their expertise in municipal finance law and are selected by the Agency to render legal advice to the Agency in connection with the transactions contemplated by this Agreement.

Project Documents shall mean the Company Lease, this Agreement, the Guaranty Agreement, the Condominium Documents, the Ground Lease, each Mortgage, each Mortgage Note and the Tenant Leases.

Project Fee shall mean \$206,619, representing the \$211,619 Agency financing fee, less the application fee of \$5,000.

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

Project Improvements shall mean all alterations, additions and other improvements to the Project Unit and related Common Elements.

Project Improvements Investment shall mean the costs and expenses to be incurred by the Lessee after the Commencement Date and prior to the Completion Deadline for the construction, reconstruction, acquisition or installation of the Project Improvements in connection with the Project Work which are (a) described in the Project Cost Budget, and (b) considered hard costs of construction under normal industry standards, including, without limitation: (1) payments to contractors, subcontractors, suppliers and materialmen for labor performed and materials supplied, and (2) costs and expenses for labor, services, facilities or equipment customarily considered as "general conditions" items, including the premium paid for payment and performance bonds and/or insurance policies that may be required in connection with the Project Work pursuant to this Agreement.

Project Improvements PILOT shall have the meaning set forth in Section 5.1(e).

Project Improvements PILOT Amount shall have the meaning set forth in Section 5.1(e).

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

Project Unit shall mean Unit 1 located at 805 Rockaway Avenue, Brooklyn, New York at Block 3603, Lot 1001 under the Condominium Documents and any directly related Common Elements to the Project Unit all as more particularly described in Exhibit A hereto.

Project Work shall mean the work required to complete the construction and/or renovation portion of the Project as such work is further explained by reference to the Project Cost Budget.

Qualified As-of-Right Benefit means an As-of-Right Benefit other than an Excluded As-of-Right Benefit.

Qualified Use shall mean use by small industrial and manufacturing Tenants, including such other activities as may be substantially related to or substantially in support of such use or operations, provided, that such Tenant is occupying a portion of the Facility pursuant to Tenant Lease.

Qualified USF shall mean Usable Square Feet of the Improvements that on the date(s) of determination are being used by the Lessee, an Affiliate of the Lessee approved by the Agency, in its sole

discretion, and Tenants (pursuant to a Tenant Lease entered into in accordance with Section 8.9) for a Qualified Use.

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

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

Recapture Event shall mean any one of the following events:

(i) the failure by the Lessee to cause the Project Completion Date to occur by the Completion Deadline;

(ii) the liquidation of all or substantially all operating assets of the Lessee at the Facility Realty and/or cessation of all or substantially all of the operations of the Lessee at the Facility Realty;

(iii) the transfer of all or substantially all of the employees of the Lessee to a location outside of the City;

(iv) the Facility shall have ceased to be the Approved Facility and/or the Lessee shall have substantially changed the scope and nature of their operations at the Facility Realty;

(v) prior to the Operations Commencement Date, the Lessee shall have sold, transferred or disposed of, directly or indirectly, all or substantially all of the Facility Realty, or a change in Control of the Lessee shall have occurred;

(vi) the Lessee shall have subleased all or part of the Facility Realty in violation of Section 8.9; or

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

Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event is deemed, in the sole discretion of the Agency, to be a cause of undue hardship to the Lessee were the Agency to recapture any Benefits, including, but not limited to, Recapture Events arising as a direct, immediate result of (x) force majeure as defined in Section 11.1, (y) a taking or condemnation by governmental authority of all or substantially all of the Facility Realty, or (z) the inability at law of the Lessee to rebuild, repair, restore or replace the Facility Realty after the occurrence of a Loss Event to substantially its condition prior to such Loss Event, which inability shall have arisen in good faith through no fault on the part of the Lessee or any Affiliate.

Recapture Percentage shall have the meaning specified in Section 5.4(a).

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

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

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

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

Restrictive Declaration shall mean that certain Restrictive Declaration made by Bridge Rockaway Housing Development Fund Company, Inc. , as Declarant, dated as of December 29, 2020.

Sales Tax Agent Authorization Letter shall mean the Sales Tax Agent Authorization Letter, substantially in the form set forth in Exhibit H – “Form of Sales Tax Agent Authorization Letter” and to be delivered in accordance with Section 5.2(e).

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

Sales Tax Registry shall mean the Sales Tax Registry in the form set forth in Exhibit I.

Sales Tax Savings shall mean all Sales Tax Exemption savings realized by or for the benefit of the Lessee, including any savings realized by any Agent, pursuant to this Agreement and each Sales Tax Agent Authorization Letter issued in connection with the Project.

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

Sign shall have the meaning set forth in Section 8.5.

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

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

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

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

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

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

Stabilized PILOT Amount shall mean, with respect to the determination of PILOT for any semi-annual period for Land or Existing Improvements, as applicable, an amount equal to the Adjusted PILOT Amount applicable to the Land or Existing Improvements, respectively, for the semi-annual period that includes the Commencement Date, provided that if Adjusted PILOT Amount as of such date includes a reduction as a result of any Qualified As-of-Right Benefit, such amount shall be adjusted as such Qualified As-of-Right Benefit decreases over its prescribed term.

State shall mean the State of New York.

State Sales and Use Taxes shall mean sales and compensating use taxes and fees imposed by Article 28 or 28-A of the New York State Tax Law but excluding such taxes imposed in a city by Section 1107 or 1108 of such Article 28, as the same may be amended from time to time.

State Sales Tax Savings shall mean all Sales Tax Exemption savings relating to State Sales and Use Taxes realized by or for the benefit of the Lessee, including any savings realized by any Agent, pursuant to this Agreement and each Sales Tax Agent Authorization Letter issued in connection with the Project.

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

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

Tenant shall mean any subtenant, sub-subtenant or permittee occupying all or a portion of the Facility Realty.

Tenant Lease shall mean any agreement with a Tenant relating to the use and occupancy of all or a portion of the Facility Realty in accordance with Section 8.9.

Term shall have the meaning set forth in Section 4.2.

Termination Date shall mean such date on which this Agreement may terminate pursuant to its terms and conditions prior to the Expiration Date.

Total Improvements USF shall mean total USF of the Improvements, which as of the Commencement Date is estimated to be 38,780 USF upon completion of the Project Improvements based on the Architect's Certificate provided by Think! Architecture + Design and delivered to the Agency on or before the Commencement Date.

Transfer shall have the meaning set forth in Section 8.20(a)(iv).

Unit or **Units** shall mean each individual condominium unit (including any residential, commercial, retail unit), together with any appurtenant interest thereto in the Common Elements, created by the submission of the Project Building to the provisions of the Condominium Act in accordance with the Condominium Documents.

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

Usable Square Footage or **Usable Square Feet** or **USF** shall mean square footage within the Improvements, including revenue-generating below-grade, cellar and sub-surface space, excluding (i) public elevator shafts and elevator machines and their enclosing walls; (ii) public stairs shafts and elevator machines and their enclosing walls; (iii) heating, ventilating and air conditioning facilities (including pipes, ducts and shafts) and their enclosing walls, except equipment, mechanical room space or shafts serving a specific floor; (iv) fire towers and fire tower courts and their enclosing walls; (v) main telephone equipment rooms and main electrical switchgear rooms, except telephone equipment, and electric switchgear serving a specific floor; and (vi) with respect to revenue-generating below grade, cellar and sub-surface space, excluding machine rooms and pump rooms and their enclosing walls, electrical switchgear rooms and their enclosing walls; telephone equipment rooms and their enclosing walls, and all space devoted to servicing the operation of the Improvements, i.e., cleaning contractors, storage, building maintenance shop, building engineers office, etc.

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

Zone shall mean an Industrial Business Zone designated pursuant to Section 22-626 of the New York City Administrative Code, or any successor provision.

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

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

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

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

(d) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

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

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

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

(h) Any definition of or reference to any agreement, instrument or other document herein shall be construed to refer to such agreement, instrument or other document as from time to time

amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth therein or herein).

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

ARTICLE II

REPRESENTATIONS AND WARRANTIES

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

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

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

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

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

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

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

(c) The execution, delivery and performance of this Agreement and each other Project Document to which the Lessee is or shall be a party and the consummation of the transactions herein and therein contemplated will not (x) violate any provision of law, any order of any court or agency of government, or any of the Lessee's Organizational Documents, or any indenture, agreement or other instrument to which the Lessee is a party or by which it or any of its property is bound or to which it or any of its property is subject (including, without limitation, the Condominium Documents), (y) be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument or (z) result in the imposition of any lien, charge or encumbrance of any nature whatsoever other than Permitted Encumbrances.

(d) There is no action or proceeding pending or, to the best of the Lessee's knowledge, after diligent inquiry, threatened, by or against the Lessee by or before any court or administrative agency that would adversely affect the ability of the Lessee to perform its obligations under this Agreement or any other Project Document (including, without limitation, the Condominium Documents) to which it is or shall be a party.

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

(f) The transactions contemplated by this Agreement shall not result in the removal of any facility or plant of the Lessee or any other occupant or user of the Facility from one area of the State outside of the City to within the City or in the abandonment of one or more facilities or plants of the Lessee or any other occupant or user of the Facility located within the State, but outside of the City.

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

(h) Undertaking the Project is anticipated to serve the public purposes of the Act by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the State.

(i) No funds of the Agency shall be used by the Lessee in connection with the transactions contemplated by this Agreement for the purpose of preventing the establishment of an industrial or manufacturing plant or for the purpose of advertising or promoting materials which depict elected or appointed government officials in either print or electronic media, nor shall any funds of the Agency be given hereunder to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State.

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

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

(l) The Lessee has obtained all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by it as of the Commencement Date in connection with the execution and delivery of this Agreement and each other Project Document to which it shall be a party or in connection with the performance of its obligations hereunder and under each of the Project Documents.

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

(n) The Lessee (i) is in compliance, and will continue to comply, with all applicable Legal Requirements relating to the Project, the Project Work and the operation of the Facility, including, without limitation, the terms and condition set forth in the Condominium Documents, and (ii) certifies, under penalty of perjury, that each is in substantial compliance with all local, state and federal tax, worker protection and environmental laws, rules and regulations.

(o) Reserved.

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

(q) The Project Cost Budget attached as Exhibit E – "Project Cost Budget" represents a true, correct and complete budget as of the Commencement Date of the proposed costs of the Project; the Estimated Project Cost is a fair and accurate estimate of the Project Cost as of the Commencement Date; and that portion of the Estimated Project Cost as shall not derive from Mortgage Loans shall be provided from the sources set forth on Exhibit E - "Project Cost Budget". The Lessee has no reason to believe that funds or financing sufficient to complete the Project will not be obtainable.

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

(s) The Project Unit comprises one complete tax lot and no portion of any other tax lot.

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

(u) The Usable Square Footage and the Land Square Footage are true and correct.

(v) The Fiscal Year is true and correct.

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

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

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

(iii) has been convicted of a felony in the past ten (10) years;

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

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

(x) The Project Application Information was true, correct and complete as of the date submitted to the Agency, and no event has occurred or failed to occur since such date of submission which would cause any of the Project Application Information to include any untrue statement of a material fact or omit to state any material fact required to be stated therein to make such statements not misleading.

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

(z) The Condominium Documents are in full force and effect and each of the Lessees are in compliance in all material respects with the terms thereof. Neither this Agreement nor any other Project Document conflicts with the terms of any of the Condominium Documents and no consent (other than consents that have been obtained) is needed from the board of managers of the Condominium with respect to the execution and delivery by the Lessees of this Agreement or any other Project Document.

ARTICLE III

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

Section 3.1. The Company Lease.

(a) Pursuant to the Company Lease, the Lessee has leased its interest in the Facility Realty to the Agency, and all rights or interests therein or appertaining thereto, together with all Improvements existing thereon or therein as of the date thereof, free and clear of all liens, claims, charges, encumbrances, security interests and servitudes other than Permitted Encumbrances.

(b) A valid leasehold interest in all Improvements incorporated or installed in the Facility Realty as part of the Project shall vest in the Agency immediately upon delivery to or installation or incorporation into the Facility Realty or payment therefor, whichever shall occur first.

(c) The Lessee shall take all action necessary to so vest a valid leasehold interest in such Improvements in the Agency and to protect such leasehold interest and title claims against claims of any third parties.

Section 3.2. Appointment as Agent.

The Agency hereby appoints the Lessee its true and lawful agent, and the Lessee hereby accepts such agency for purposes of undertaking the Project Work, with the same powers and with the same validity and effect as the Agency could do if acting in its own behalf, including:

- (i) effecting the Project Work,
- (ii) making, executing, acknowledging and delivering any contracts, orders, receipts, writings and instructions with any other Persons (subject in each case to Section 5.2), and in general doing all things which may be requisite or proper, all for the purposes of undertaking the Project Work,
- (iii) paying all fees, costs and expenses incurred in the Project Work from funds made available therefor in accordance with or as contemplated by this Agreement, and
- (iv) asking, demanding, suing for, levying, recovering and receiving all such sums of money, debts due and other demands whatsoever that may be due, owing and payable to the Agency under the terms of any contract, order, receipt or writing in connection with the Project Work and to enforce the provisions of any contract, agreement, obligation, bond or other performance security entered into or obtained in connection with the Project Work.

Section 3.3. Manner of Project Completion.

(a) The Lessee will complete the Project Work, or cause the Project Work to be completed, by the Completion Deadline, in a first class workmanlike manner, free of defects in materials and workmanship (including latent defects); provided, however, the Lessee may revise the scope of the Project Work, subject to the prior written consent of the Agency (which consent shall not be unreasonably withheld, delayed or conditioned). The Lessee will cause the Project Completion Date to occur by the Completion Deadline.

(b) In undertaking the Project Work, the Lessee shall take such action and institute such proceedings as shall be necessary to cause and require all contractors, manufacturers and suppliers to complete their agreements relating to the Project Work in accordance with the terms of the contracts therefor including the correction of any defective work.

(c) The cost of the Project Work shall be financed in accordance with the Project Finance Plan. In the event moneys derived from the Mortgage Loans, if any, are not sufficient to pay the costs necessary to complete the Project Work in full, the Lessee shall pay or cause to be paid that portion of such costs of the Project Work as may be necessary to complete the Project Work and shall not be entitled to any reimbursement therefor from the Agency, nor shall the Lessee be entitled to any diminution of the Rental Payments to be made under this Agreement.

(d) The Lessee shall pay (i) all of the costs and expenses in connection with the preparation of any instruments of conveyance, the delivery thereof and of any instruments and documents relating thereto and the filing and recording of any such instruments of conveyance or other instruments or documents, if required, (ii) all taxes and charges payable in connection with the vesting with the Agency of a leasehold estate in the Facility Realty and title to the Facility Personalty, or attributable to periods prior to such vesting, as set forth in Sections 3.1 and 3.2, and (iii) all shipping and delivery charges and other expenses or claims incurred in connection with the Project Work.

(e) The Lessee will perform or cause to be performed the Project Work in accordance with all applicable Legal Requirements and in accordance with the Condominium Documents and with the conditions and requirements of all policies of insurance with respect to the Facility and the Project Work. Promptly upon finishing of the Project Work and the completion of the Project Improvements, the Lessee will obtain or cause to be obtained all required permits, authorizations and licenses from appropriate authorities, if any be required, authorizing the occupancy, operation and use of the Facility as an Approved Facility and shall furnish copies of same to the Agency immediately upon the Agency's demand therefor.

(f) Upon completion of the Project Work, the Lessee shall (x) deliver to the Agency the Final Project Cost Budget, which budget will include a comparison with the Project Cost Budget, and indicate the source of funds (i.e., borrowed funds, equity, etc.) for each cost item, (y) evidence the completion of the Project and the occurrence of the Project Completion Date by delivering to the Agency a certificate of an Authorized Representative of the Lessee in substantially the form set forth in Exhibit G – "Form of Project Completion Certificate", together with all attachments required thereunder, and (z) deliver and surrender to the Agency all original Sales Tax Agent Authorization Letters issued by the Agency in connection with the Project.

(g) Upon request by the Agency, the Lessee shall make available to the Agency copies of any bills, invoices or other evidences of costs as shall have been incurred in the effectuation of the Project Work.

(h) In the event that the aggregate costs of the Project Work upon the completion thereof shall be significantly different from the estimated costs thereof set forth in the Project Cost Budget (i.e., more than a ten percent (10%) difference in either total Project costs or in major categories of Project Work cost), on request of the Agency, the Lessee shall provide evidence to the reasonable satisfaction of the Agency as to the reason for such discrepancy, and that the scope of the Project Work as originally approved by the Agency has not been modified in a material manner without the prior written consent of the Agency.

(i) The Lessee covenants to invest or cause the investment of at least \$ 13,274,617 as its Project Improvements Investment.

Section 3.4. Maintenance.

(a) During the Term, the Lessee will:

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

(ii) occupy, use and operate the Facility, or cause the Facility to be occupied, used and operated, as the Approved Facility and in accordance with the Condominium Documents, and

(iii) make or cause to be made all replacements, renewals and repairs thereto (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen) necessary to ensure that the operations of the Lessee at the Facility shall not be materially impaired or diminished in any way.

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

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

Section 3.5. Alterations and Improvements.

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

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

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

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

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

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

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

(d) In addition to the Facility Personalty, the Lessee shall have the right to install or permit to be installed at the Facility Realty, machinery, equipment and other personal property at the Lessee's own cost and expense (the "**Lessee's Property**"). Once so installed, the Lessee's Property shall not constitute Facility Personalty and shall not be subject to the Company Lease or this Agreement, nor constitute part of the Facility, provided that the same is not made fixtures appurtenant to the Facility Realty. The Lessee shall have the right to create or permit to be created any mortgage, encumbrance, lien or charge on, or conditional sale or other title retention agreement with respect to, the Lessee's Property, without the consent of or notice to the Agency.

Section 3.6. Removal of Property of the Facility.

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

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

(ii) no such removal shall be effected if (w) such removal would change the nature of the Facility as the Approved Facility and a qualified "project" within the meaning of the Act, (x) such removal would materially impair the usefulness, structural integrity or operating efficiency of the Facility, (y) such removal would materially reduce the fair market value of the Facility below its value immediately before such removal, or (z) there shall exist and be continuing an Event of Default hereunder.

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

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

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

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

(b) The Lessee agrees to pay all costs and expenses (including reasonable counsel fees) incurred by the Agency in subjecting to, or releasing from, the Company Lease and this Agreement any property installed or placed on, or removed from, the Facility as part of the Facility pursuant to Section 3.5 or 3.6.

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

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

ARTICLE IV

LEASE OF FACILITY AND RENTAL PROVISIONS

Section 4.1. Lease of the Facility. The Agency hereby leases the Facility Personalty and subleases the Facility Realty to the Lessee, and the Lessee hereby leases the Facility Personalty and subleases the Facility Realty from the Agency, for and during the term herein and subject to the terms and conditions herein set forth. The Agency hereby delivers to the Lessee, and the Lessee hereby accepts sole and exclusive possession of the Facility.

Section 4.2. Duration of Term. The term of this Agreement (the "Term") shall commence on the Commencement Date and shall expire at 11:58 p.m. (New York City time) on the earlier of the Expiration Date or the Termination Date, if any.

Section 4.3. Rental Provisions.

(a) The Lessee shall pay Base Rent to the Agency, without demand or notice, on the Commencement Date in the amount of \$1.00 (receipt of which is acknowledged by the Agency), which shall constitute the entire amount of Base Rent payable hereunder.

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

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

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

Section 4.5. Nature of Lessee's Obligation Unconditional. The Lessee's obligations under this Agreement to pay Rental Payments shall be absolute, unconditional and general obligations, irrespective of any defense or any rights of set-off, recoupment or counterclaim or deduction and without any rights of suspension, deferment, diminution or reduction it might otherwise have against the Agency or any other Person. Such obligations of the Lessee shall arise whether or not the Project has been completed as provided in this Agreement and whether or not any Mortgagee shall be honoring its obligations under the related financing documents. The Lessee will not suspend or discontinue payment of any Rental Payment due and payable hereunder or terminate this Agreement (other than such termination as is provided for hereunder) or suspend the performance or observance of any covenant or agreement required on the part of the Lessee hereunder for any cause whatsoever, and the Lessee waives all rights now or hereafter conferred by statute or otherwise to quit, terminate, cancel or surrender this

Agreement or any obligation of the Lessee under this Agreement except as provided in this Agreement or to any abatement, suspension, deferment, diminution or reduction in the Rental Payments hereunder.

Section 4.6. Reserved.

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

Section 4.8. No Warranty of Condition or Suitability. THE AGENCY HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE FACILITY, OR THE SUITABILITY OF THE FACILITY FOR THE PURPOSES OR NEEDS OF THE LESSEE OR THE EXTENT TO WHICH FUNDS AVAILABLE TO THE LESSEE WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE PROJECT. THE LESSEE ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE FACILITY PERSONALTY NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE LESSEE, ON BEHALF OF ITSELF, IS SATISFIED THAT THE FACILITY IS SUITABLE AND FIT FOR PURPOSES OF THE LESSEE. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE LESSEE OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF THE FACILITY OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

Section 4.9. Contemplated Purchase of Facility Realty. Pursuant to a Purchase and Sale Agreement, dated March 31, 2022, by and among Bridge Rockaway Housing Development Company, Inc. ("HDFC"), Bridge Rockaway L.P. ("Beneficial Owner"; and together with the HDFC, the "Seller") and the Lessee, the Lessee intends to purchase the Facility Realty from the Seller on or before February 28, 2025. Upon purchasing the Facility Realty, the Lessee shall promptly notify the Agency and shall cooperate with the Agency in entering into any required amendments or other documents and shall record any necessary documents in connection therewith. The Agency will also provide to NYCDOF any documents required to continue any then-existing exemption from Real Estate Taxes with respect to the Facility Realty.

ARTICLE V
**AGENCY FINANCIAL ASSISTANCE (PAYMENTS IN LIEU OF TAXES,
AND SALES TAX EXEMPTION); RECAPTURE OF BENEFITS**

Section 5.1. Payments in Lieu of Real Estate Taxes

(a) Real Estate Taxes to be Paid Prior to PILOT Commencement Date. Until the PILOT Commencement Date (or such later date as the Facility Realty is determined to be exempt from Real Estate Taxes), the Lessee shall pay to the City all Real Estate Taxes in respect of the Facility Realty for the periods of time occurring prior to such date at such times, in such manner and in such amounts as would be applicable if the Facility Realty were not leased to the Agency.

(b) PILOT Generally.

(i) It is recognized that under the provisions of the Act the Agency is required to pay no Real Estate Taxes upon any of the property acquired by it or under its jurisdiction or control or supervision or upon its activities. The Agency and the Lessee agree, however, that the Lessee shall be required to pay PILOT with respect to the Facility Realty in accordance with the provisions of this Section 5.1.

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

(iii) The Lessee acknowledges that PILOT will equal the Full PILOT Amount until such time as all Real Estate Taxes due prior to the PILOT Commencement Date are paid in full, including any interest that may be due thereon.

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

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

(vi) Notwithstanding any other provision of this Agreement, if a PILOT calculation results in a negative amount due for any period of calculation, PILOT shall be deemed to equal zero for such period and the Lessee shall not be entitled to any credit or refund.

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

During the PILOT Term, the Lessee shall pay PILOT with respect to the Land (“**Land PILOT**”) in the amounts described below.

(i) For each semi-annual period occurring within the period commencing on the PILOT Commencement Date to and including June 30, 2038, Land PILOT shall equal the product of (y) 0.0 and (z) the Land PILOT Amount.

(ii) For each semi-annual period occurring within the period commencing on July 1, 2038 to and including June 30, 2039, Land PILOT shall equal the product of (y) 0.0909 and (z) the Land PILOT Amount.

(iii) For each semi-annual period occurring within the period commencing on July 1, 2039 to and including June 30, 2040, Land PILOT shall equal the product of (y) 0.1818 and (z) the Land PILOT Amount.

(iv) For each semi-annual period occurring within the period commencing on July 1, 2040 to and including June 30, 2041, Land PILOT shall equal the product of (y) 0.2727 and (z) the Land PILOT Amount.

(v) For each semi-annual period occurring within the period commencing on July 1, 2041 to and including June 30, 2042, Land PILOT shall equal the product of (y) 0.3636 and (z) the Land PILOT Amount.

(vi) For each semi-annual period occurring within the period commencing on July 1, 2042 to and including June 30, 2043, Land PILOT shall equal the product of (y) 0.4545 and (z) the Land PILOT Amount.

(vii) For each semi-annual period occurring within the period commencing on July 1, 2043 to and including June 30, 2044, Land PILOT shall equal the product of (y) 0.5455 and (z) the Land PILOT Amount.

(viii) For each semi-annual period occurring within the period commencing on July 1, 2044 to and including June 30, 2045, Land PILOT shall equal the product of (y) 0.6364 and (z) the Land PILOT Amount.

(ix) For each semi-annual period occurring within the period commencing on July 1, 2045 to and including June 30, 2046, Land PILOT shall equal the product of (y) 0.7273 and (z) the Land PILOT Amount.

(x) For each semi-annual period occurring within the period commencing on July 1, 2046 to and including June 30, 2047, Land PILOT shall equal the product of (y) 0.8182 and (z) the Land PILOT Amount.

(xi) For each semi-annual period occurring within the period commencing on July 1, 2047 to and including June 30, 2048, Land PILOT shall equal the product of (y) 0.9091 and (z) the Land PILOT Amount.

(d) Reserved.

(e) Project Improvements PILOT.

During the PILOT Term, the Lessee shall pay PILOT with respect to the Project Improvements (the “**Project Improvements PILOT**”) in the amounts described below.

(i) For each semi-annual period occurring within the period commencing on the PILOT Commencement Date to and including June 30, 2038, Project Improvements PILOT shall equal the product of (y) 0.0 and (z) the Project Improvements PILOT Amount.

(ii) For each semi-annual period occurring within the period commencing on July 1, 2038 to and including June 30, 2039, Project Improvements PILOT shall equal the product of (y) 0.0909 and (z) the Project Improvements PILOT Amount.

(iii) For each semi-annual period occurring within the period commencing on July 1, 2039 to and including June 30, 2040, Project Improvements PILOT shall equal the product of (y) 0.1818 and (z) the Project Improvements PILOT Amount.

(iv) For each semi-annual period occurring within the period commencing on July 1, 2040 to and including June 30, 2041, Project Improvements PILOT shall equal the product of (y) 0.2727 and (z) the Project Improvements PILOT Amount.

(v) For each semi-annual period occurring within the period commencing on July 1, 2041 to and including June 30, 2042, Project Improvements PILOT shall equal the product of (y) 0.3636 and (z) the Project Improvements PILOT Amount.

(vi) For each semi-annual period occurring within the period commencing on July 1, 2042 to and including June 30, 2043, Project Improvements PILOT shall equal the product of (y) 0.4545 and (z) the Project Improvements PILOT Amount.

(vii) For each semi-annual period occurring within the period commencing on July 1, 2043 to and including June 30, 2044, Project Improvements PILOT shall equal the product of (y) 0.5455 and (z) the Project Improvements PILOT Amount.

(viii) For each semi-annual period occurring within the period commencing on July 1, 2044 to and including June 30, 2045, Project Improvements PILOT shall equal the product of (y) 0.6364 and (z) the Project Improvements PILOT Amount.

(ix) For each semi-annual period occurring within the period commencing on July 1, 2045 to and including June 30, 2046, Project Improvements PILOT shall equal the product of (y) 0.7273 and (z) the Project Improvements PILOT Amount.

(x) For each semi-annual period occurring within the period commencing on July 1, 2046 to and including June 30, 2047, Project Improvements PILOT shall equal the product of (y) 0.8182 and (z) the Project Improvements PILOT Amount.

(xi) For each semi-annual period occurring within the period commencing on July 1, 2047 to and including June 30, 2048, Project Improvements PILOT shall equal the product of (y) 0.9091 and (z) the Project Improvements PILOT Amount.

(f) Additional Improvements PILOT. During the PILOT Term, the Lessee shall pay PILOT with respect to the Additional Improvements (the "Additional Improvements PILOT") as follows: for each semi-annual period occurring during the PILOT Term, the Additional Improvements PILOT shall equal the Adjusted PILOT Amount with respect to such Additional Improvements for such semi-annual period. Upon completion of Additional Improvements, if any, the Lessee shall promptly comply with the requirements of Section 3.5 and request the appropriate officers of the City to reassess the Improvements.

(g) Payment Provisions.

(i) The Lessee agrees to pay all PILOT required to be paid under this Section 5.1 seven (7) Business Days prior to the commencement of the semi-annual period which relates to such PILOT (i.e., July 1 or January 1 (as the case may be)), in the amounts specified in PILOT Bills. The Lessee also agrees to pay with seven (7) business days of receipt of a PILOT Bill from NYCDOF, any PILOT Reconciliation amount required to be paid by the Lessee in accordance with Section 5.1(i)(ii). The Agency agrees to request appropriate officers of NYCDOF to provide the Lessee with PILOT Bills. The Lessee understands and agrees that the failure of NYCDOF to send the Lessee a PILOT Bill shall not relieve the Lessee of its obligation hereunder to pay the amount of PILOT required in accordance with this Section 5.1. The Lessee may send all inquiries concerning PILOT Bills to pilot1@finance.nyc.gov or: **PILOT Unit, NYC Department of Finance, 59 Maiden Lane, 22nd floor, New York, New York 10038.**

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

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

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

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

(2) to apply for As-of-Right Benefits that would reduce Real Estate Taxes with respect to the Facility Realty (as if the Facility Realty were not exempt from Real Estate Taxes); *provided, however*, that the foregoing shall not be construed to reduce PILOT payable under this Section 5.1 except as expressly contemplated by the provisions of Section 5.1(c), (e) and (f).

(h) Apportionment of Payments after Transfer.

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

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

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

(i) *Additional PILOT.* If any portion of the Facility Realty is used for Non-Qualified Use by the Lessee or any Tenant (whether pursuant to a Tenant Lease, occupancy or use), with respect to the period of such use, the Lessee shall pay additional PILOT in accordance with Section 5.1(g) in advance of each semi-annual period during which such Non-Qualified Use shall occur (in addition to amounts payable pursuant to Section 5.1(c), (e) and (f) hereof) as follows:

(1) With respect to the Improvements, if any portion of the Improvements is used for Non-Qualified Use, an amount, equal to the product of (y) the positive difference, if any, between (A) the Adjusted PILOT Amount with respect to the Improvements and (B) the PILOT amounts applicable to the Improvements calculated pursuant to Section 5.1(e) and (f) hereof, in each case, determined on a per diem basis for the period of such Non-Qualified Use, and (z) a fraction, expressed as percentage (the "Improvements Percentage"), the numerator of which is (A) the total Non-Qualified USF and the denominator of which is (B) the Total Improvements USF; or

(2) With respect to the Land:

(A) if any portion of the Improvements is used for such Non-Qualified Use, the Lessee shall pay additional PILOT in an amount equal to the greater of:

(i) the product of (y) the difference between (A) the Adjusted PILOT Amount with respect to the Land and (B) the PILOT amounts with respect to the Land calculated pursuant to Section 5.1(c) hereof, in each case, determined on a per diem basis for the period of such Non-Qualified Use, and (z) a fraction, expressed as a percentage (the "Land Percentage") the numerator of which is (A) the total gross square footage the Land used for such Non-Qualified Use and the denominator of which is (B) the total gross square footage of the Land; and

(ii) the product of (y) the difference between (A) the Adjusted PILOT Amount with respect to the Land and (B) the PILOT amounts with respect to the Land calculated pursuant to Section 5.1(c) hereof, in each case, determined on a per diem basis for the period of such Non-Qualified Use, and (z) the Improvements Percentage; or

(B) If no portion of the Improvements is subleased, occupied or used for such Non-Qualified Use, the Lessee shall pay additional PILOT in an amount equal to the product of (y) the difference between (A) the Adjusted

PILOT Amount with respect to the Land in the absence of the Agency's exemption and (B) the PILOT amounts with respect to the Land calculated pursuant to Section 5.1(c) hereof, in each case, determined on a per diem basis for the period of such Non-Qualified Use and (z) the Land Percentage.

(ii) *PILOT Reconciliation.* Lessee shall submit semi-annually pursuant to Section 8.16(d) a certificate that includes a PILOT Reconciliation for each semi-annual period ending on the prior June 30th or December 31st. Any additional PILOT due as a result of the PILOT Reconciliation shall be payable within seven (7) business days of the issuance of a PILOT bill by NYCDOF in accordance with Section 5.1(g). Failure by the Lessee to submit a PILOT Reconciliation by the due date for the certification specified in Section 8.16(d) will result in the imposition of interest and fees specified in Section 5.1(g)(ii) for any PILOT Reconciliation amount otherwise due, and such interest and fees shall accrue from the required certification due date.

(iii) *Events of Default.* Upon the occurrence of an Event of Default, including but not limited to a PILOT Payment Default, the Agency may increase PILOT temporarily or permanently, in its sole discretion, and without notice other than the prior notice required for certain Events of Default, to an amount equal to the Full PILOT Amount as to the Land and the Improvements.

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

Section 5.2. Sales Tax Exemption.

(a) **Agency's Exempt Status.** The Agency constitutes a corporate governmental agency and a public benefit corporation under the laws of the State of New York, and therefore, in the exercise of its governmental functions, is exempt from the imposition of Sales and Use Taxes. As an exempt governmental entity, no exempt organization identification number has been issued to the Agency nor is one required. Notwithstanding the foregoing, the Agency makes no representation to the Lessee, any Agent or any third party that any Sales Tax Exemption is available under this Agreement.

(b) **Scope of Authorization of Sales Tax Exemption.** The Agency hereby authorizes the Lessee, subject to the terms and conditions of this Agreement, to act as its agent in connection with the Project for the purpose of effecting purchases and leases of Eligible Items so that such purchases and leases are exempt from the imposition of Sales and Use Taxes. The Agency's authorization with respect to such Sales Tax Exemption provided to the Lessee and its Agents pursuant to this Agreement and any Sales Tax Agent Authorization Letters issued hereunder shall be subject to the following limitations:

(i) The Sales Tax Exemption shall be effective only for a term commencing on the Commencement Date and expiring upon the earliest of (A) the termination of this Agreement, (B) the Completion Deadline, (C) the Project Completion Date, or (D) the termination of the Sales Tax Exemption authorization pursuant to Section 9.2.

(ii) The Sales Tax Exemption authorization set forth herein shall automatically be suspended upon written notice to the Lessee that the Lessee is in default under this Agreement until such default is cured to the satisfaction of the Agency.

(iii) The Sales Tax Exemption authorization shall be subject to all of the terms, conditions and provisions of this Agreement.

(iv) The Sales Tax Exemption shall only be utilized for Eligible Items which shall be purchased, incorporated, completed or installed for use only by the Lessee at the Facility Realty (and not with any intention to sell, transfer or otherwise dispose of any such Eligible Item to a Person as shall not constitute the Lessee), it being the intention of the Agency and the Lessee that the sales and use tax exemption shall not be made available with respect to any Eligible Item unless such item is used solely by the Lessee at the Facility Realty.

(v) The Sales Tax Exemption shall not be used for any Ineligible Item.

(vi) The Sales Tax Exemption shall not be used to benefit any person or entity, including any tenant or subtenant located at the Facility Realty, other than the Lessee, without the prior written consent of the Agency.

(vii) By execution by the Lessee of this Agreement, the Lessee agrees to accept the terms hereof and warrants to the Agency that the use of the Sales Tax Exemption by the Lessee or by any Agent is strictly for the purposes stated herein.

(viii) Upon the Termination Date, the Lessee and each Agent shall cease being agents of the Agency, and the Lessee shall immediately notify each Agent in writing of such termination and that the Sales Tax Agent Authorization Letter issued to any such Agent is likewise terminated and that the original executed Sales Tax Agent Authorization Letter must be returned to the Lessee so that the Lessee can return the same to the Agency.

(ix) The Lessee agrees that the aggregate amount of Sales Tax Savings realized by the Lessee and by each Agent in connection with the Project shall not exceed in the aggregate the Maximum Sales Tax Savings Amount.

(c) **Procedures for Appointing Agents.** If the Lessee desires to seek the appointment of a contractor, a subcontractor or other party to act as the Agency's agent (an "Agent") for the purpose of effecting purchases which are eligible for the Sales Tax Exemption pursuant to authority of this Agreement, it must complete the following steps:

(i) General Municipal Law Section 874(9) and Form ST-60 and the regulations relating thereto require that within thirty (30) days of the date that the Agency appoints a project operator or other person or entity to act as agent of the Agency for purposes of extending a sales or use tax exemption to such person or entity, the Agency must file a completed Form ST-60 with respect to such person or entity. Accordingly, for each Agent, the Lessee must complete and submit Form ST-60 to the Agency. The Agency requires Form ST-60 to be submitted electronically. Please download Form ST-60 via the internet by typing http://www.tax.ny.gov/pdf/current_forms/st/st60_fill_in.pdf into the address bar of your internet browser and saving the "fill-in" PDF of the form (using Adobe Acrobat). The downloaded form may then be completed electronically, saved and transmitted to the Agency by emailing it to Compliance@nycedc.com.

(ii) The appointment of each such Agent as an agent for the Agency shall be effective only upon execution by the Agency and the Agent of a Sales Tax Agent Authorization Letter in the form attached hereto as Exhibit H, following receipt of the completed Form ST-60

by the Agency. The determination whether or not to approve the appointment of an Agent shall be made by the Agency, in its sole discretion. If executed, a completed copy of the Sales Tax Agent Authorization Letter shall be sent to the Lessee within five (5) Business Days following such execution. The Lessee shall provide a copy of such executed Sales Tax Agent Authorization Letter together with a copy of this Agreement to the Agent within five (5) Business Days after receipt thereof by the Lessee.

(iii) The Lessee shall ensure that each Agent shall observe and comply with the terms and conditions of its Sales Tax Agent Authorization Letter and this Agreement, and upon the termination, expiration or cancellation of each Sales Tax Agent Authorization Letter, the Lessee shall retrieve and promptly surrender the same to the Agency.

(d) **Form ST-60 Not an Exemption Certificate.** The Lessee acknowledges that the executed Form ST-60 designating the Lessee or any Agent as an agent of the Agency shall not serve as a sales or use tax exemption certificate or document. Neither the Lessee nor any other Agent may tender a copy of the executed Form ST-60 to any person required to collect sales tax as a basis to make such purchases exempt from tax. No such person required to collect sales or use taxes may accept the executed Form ST-60 in lieu of collecting any tax required to be collected. THE CIVIL AND CRIMINAL PENALTIES FOR MISUSE OF A COPY OF FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT OR FOR FAILURE TO PAY OR COLLECT TAX SHALL BE AS PROVIDED IN THE TAX LAW. IN ADDITION, THE USE BY AN AGENT, PROJECT OPERATOR, OR OTHER PERSON OR ENTITY OF SUCH FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT SHALL BE DEEMED TO BE, UNDER ARTICLES TWENTY EIGHT AND THIRTY SEVEN OF THE TAX LAW, THE ISSUANCE OF A FALSE OR FRAUDULENT EXEMPTION CERTIFICATE OR DOCUMENT WITH THE INTENT TO EVADE TAX.

(e) **Form ST-123 Requirement.** As an agent of the Agency, the Lessee agrees that it will, and will cause each Agent to, present to each seller or vendor a completed and signed Form ST-123 for each contract, agreement, invoice, bill or purchase order entered into by the Lessee or by any Agent, as agent for the Agency, for the renovation, repair and equipping of the Project. Form ST-123 requires that each seller or vendor accepting Form ST-123 identify the Project on each bill and invoice and invoice for purchases and indicate on the bill or invoice that the Agency or Agent or Lessee, as Project operator of the Agency, was the purchaser. The Lessee shall retain copies of all such contracts, agreements, invoices, bill and purchase orders for a period of not less than six years from the date thereof. For each Agent the Form ST-123 shall be completed as follows: (i) the "Project Information" section of Form ST-123 should be completed using the name and address of the Project as indicated on the Form ST-60 used to appoint the Agent; (ii) the date that the Agent was appointed as an agent should be completed using the date of the Agent's Sales Tax Agent Authorization Letter; and (iii) the "Exempt purchases" section of Form ST-123 should be completed by marking "X" in box "A" only.

(f) **Form ST-340 Filing Requirement.** The Lessee shall annually (currently, by each February 28th with respect to the prior calendar year) file a Form ST-340 with NYSDTF, in a manner and consistent with such regulations as is or may be prescribed by the Commissioner of NYSDTF, of the value of all Sales Tax Savings claimed by the Lessee and each Agent in connection with the Project. Should the Lessee fail to comply with the foregoing requirement, the Lessee and each Agent shall immediately cease to be agents of the Agency in connection with the Project without any further action of the Agency and the Lessee shall immediately and without demand notify each Agent appointed by the Agency in connection with the Project of such termination. The Lessee shall annually file with the Agency a copy of the Form ST-340 filed with NYSDTF for the prior calendar year.

(g) **Sales Tax Registry Filing Requirement.** No later than August 1st of each year, the Lessee shall file with the Agency a completed Sales Tax Registry, in the form attached hereto as Exhibit I, which accounts for all Sales Tax Savings realized by the Lessee and each Agent during the prior annual period ending on the preceding June 30th (or such shorter period beginning on the Commencement Date and ending on the preceding June 30th), unless the Termination Date occurred prior to such June 30th. Within ten (10) days after the Termination Date, the Lessee shall file with the Agency a completed Sales Tax Registry which accounts for all Sales Tax Savings realized by the Lessee and each Agent during the period from the preceding July 1st to the Termination Date.

(h) **Special Provisions Relating to State Sales Tax Savings.**

(i) The Lessee covenants and agrees to comply, and to cause each of its contractors, subcontractors, Agents, persons or entities to comply, with the requirements of General Municipal Law Sections 875(1) and (3) (the “**Special Provisions**”), as such provisions may be amended from time to time. In the event of a conflict between the other provisions of this Agreement and the Special Provisions, the Special Provisions shall control.

(ii) The Lessee acknowledges and agrees that pursuant to General Municipal Law Section 875(3) the Agency shall have the right to recover, recapture, receive, or otherwise obtain from the Lessee State Sales Tax Savings taken or purported to be taken by the Lessee, any Agent or any other person or entity acting on behalf of the Lessee to which Lessee is not entitled or which are in excess of the Maximum Sales Tax Exemption Amount or which are for property or services not authorized or taken in cases where the Lessee, any Agent or any other person or entity acting on behalf of the Lessee failed to comply with a material term or condition to use property or services in the manner required by this Agreement. The Lessee shall, and shall require each Agent and any other person or entity acting on behalf of the Lessee to, cooperate with the Agency in its efforts to recover, recapture, receive, or otherwise obtain such State Sales Tax Savings and shall promptly pay over any such amounts to the Agency that it requests. The failure to pay over such amounts to the Agency shall be grounds for the Commissioner of the New York State Department of Taxation and Finance (the “**Commissioner**”) to assess and determine State Sales and Use Taxes due from the Lessee under Article Twenty-Eight of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

(iii) The Lessee is hereby notified (provided that such notification is not a covenant or obligation and does not create a duty on the part of the Agency to the Lessee or any other party) that the Agency is subject to certain requirements under the General Municipal Law, including the following:

(1) In accordance with General Municipal Law Section 875(3)(c), if the Agency recovers, recaptures, receives, or otherwise obtains, any amount of State Sales Tax Savings from the Lessee, any Agent or other person or entity, the Agency shall, within thirty days of coming into possession of such amount, remit it to the Commissioner, together with such information and reports that the Commissioner deems necessary to administer payment over of such amount. The Agency shall join the Commissioner as a party in any action or proceeding that the Agency commences to recover, recapture, obtain, or otherwise seek the return of, State Sales Tax Savings from any Agent, the Lessee or other person or entity.

(2) In accordance with General Municipal Law Section 875(3)(d), the Agency shall prepare an annual compliance report detailing its terms and conditions described in General Municipal Law Section 875(3)(a) and its activities and efforts to

recover, recapture, receive, or otherwise obtain State Sales Tax Savings described in General Municipal Law Section 875(3)(b), together with such other information as the Commissioner and the New York State Commissioner of Economic Development may require. The report shall be filed with the Commissioner, the Director of the Division of the Budget of The State of New York, the New York State Commissioner of Economic Development, the New York State Comptroller, the Council of the City of New York, and may be included with the annual financial statement required by General Municipal Law Section 859(1)(b). Such report required by this subdivision shall be filed regardless of whether the Agency is required to file such financial statement described by General Municipal Law Section 859(1)(b). The failure to file or substantially complete the report required by General Municipal Law Section 875(3)(b) shall be deemed to be the failure to file or substantially complete the statement required by such General Municipal Law Section 859(1)(b), and the consequences shall be the same as provided in General Municipal Law Section 859(1)(e).

(iv) The foregoing requirements shall apply to any amounts of State Sales Tax Savings that the Agency recovers, recaptures, receives, or otherwise obtains, regardless of whether the Agency or the Lessee, any Agent or other person or entity acting on behalf of the Lessee characterizes such benefits recovered, recaptured, received, or otherwise obtained, as a penalty or liquidated or contract damages or otherwise. The foregoing requirements shall also apply to any interest or penalty that the Agency imposes on any such amounts or that are imposed on such amounts by operation of law or by judicial order or otherwise. Any such amounts or payments that the Agency recovers, recaptures, receives, or otherwise obtains, together with any interest or penalties thereon, shall be deemed to be State Sales and Use Taxes and the Agency shall receive any such amounts or payments, whether as a result of court action or otherwise, as trustee for and on account of the State.

(i) Subject to the provisions of Section 5.2(h) hereof, in the event that the Lessee or any Agent shall utilize the Sales Tax Exemption in violation of the provisions of this Agreement or any Sales Tax Agent Authorization Letter, the Lessee shall promptly deliver notice of same to the Agency, and the Lessee shall, upon demand by the Agency, pay to or at the direction of the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the rate of twelve percent (12%) per annum compounded daily from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was availed of by the Lessee or any Agent (as applicable).

(j) Upon request by the Agency with reasonable notice to the Lessee, the Lessee shall make available at reasonable times to the Agency and/or the Independent Accountant all such books, records, contracts, agreements, invoices, bills or purchase orders of the Lessee and any Agent, and require all appropriate officers and employees of the Lessee to respond to reasonable inquiries by the Agency and/or the Independent Accountant, as shall be necessary (y) to indicate in reasonable detail those costs for which the Lessee or any Agent shall have utilized the Sales Tax Exemption and the dates and amounts so utilized, and (z) to permit the Agency to determine any amounts owed by the Lessee under this Section 5.2.

Section 5.3. Reserved.

Section 5.4. Recapture of Benefits.

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

(a) If there shall occur a Recapture Event during the Recapture Period, the Lessee shall pay to the Agency as a return of Financial Assistance conferred by the Agency, a recapture amount (the "Recapture Amount") equal to the product of (y) all Benefits realized by the Lessee and the Sublessee and (z) the recapture percentage below (the "Recapture Percentage") for the period during which the Recapture Event occurs, as determined by the Agency:

(i) if the Recapture Event occurs during the period commencing on the Commencement Date and ending on the day before the third anniversary of the Operations Commencement Date, the Recapture Percentage is 130%;

(ii) if the Recapture Event occurs during the period commencing on the third anniversary of the Operations Commencement Date and ending on the day before the fourth anniversary of the Operations Commencement Date, the Recapture Percentage is 120%;

(iii) if the Recapture Event occurs during the period commencing on the fourth anniversary of the Operations Commencement Date and ending on the day before the fifth anniversary of the Operations Commencement Date, the Recapture Percentage is 110%;

(iv) if the Recapture Event occurs during the period commencing on the fifth anniversary of the Operations Commencement Date and ending on the day before the sixth anniversary of the Operations Commencement Date, the Recapture Percentage is 100%; or

(v) if the Recapture Event occurs during the period commencing on the sixth anniversary of the Operations Commencement Date and ending on or before the tenth anniversary of the Operations Commencement Date, the Recapture Percentage is 100% minus the product of (y) 1.666% and (z) the number of months elapsed since the sixth anniversary of the Operations Commencement Date.

(b) Interest on any Recapture Amount due pursuant to the provisions of Section 5.4(a) shall accrue at a rate equal to the higher of nine percent (9%) per annum, or the amount of interest and penalties imposed by the Act or other law, from the date that the Recapture Event occurred until the date of repayment of the Recapture Amount to the Agency.

(c) Notwithstanding the foregoing, with respect to State Sales Tax Savings, the computation of the amount of State Sales Tax Savings to be recaptured shall equal the greater of the amount determined pursuant to this Section 5.4 and the amount due to the State pursuant to the Special Provisions.

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

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

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

ARTICLE VI

DAMAGE, DESTRUCTION AND CONDEMNATION

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

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

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

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

Section 6.2. Loss Proceeds.

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

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

Section 6.3. Election to Rebuild or Terminate.

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

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

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

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

(b) As soon as practicable but no later than ninety (90) days after the occurrence of the Loss Event, the Lessee shall advise the Agency in writing of the action to be taken by the Lessee under this Section 6.3, a failure to advise the Agency timely being deemed an election in favor of Section 6.3(a)(ii).

Section 6.4. Effect of Election to Build.

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

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

(ii) be effected only if the Lessee shall deliver to the Agency an Opinion of Counsel acceptable to the Agency to the effect that such rebuilding, replacement, repair or restoration shall not change the nature of the Facility as the Approved Facility and a qualified “project” as defined in the Act,

(iii) be effected with due diligence in a good and workmanlike manner, in compliance with all applicable Legal Requirements and be promptly and fully paid for by the Lessee in accordance with the terms of the applicable contract(s) therefor,

(iv) restore the Facility to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, and to a state and condition that will permit the Lessee to use and operate the Facility as the Approved Facility that will qualify as a qualified “project” as defined in the Act, and

(v) be effected only if the Lessee shall have complied with Section 8.1(c).

(b) The date of completion of the rebuilding, replacement, repair or restoration of the Facility shall be evidenced to the Agency by a certificate of an Authorized Representative of the Lessee stating (i) the date of such completion, (ii) that all labor, services, machinery, equipment, materials and supplies used therefor and all costs and expenses in connection therewith have been paid for or arrangement for payment, reasonably satisfactory to the Agency, has been made (iii) that the Facility has been rebuilt, replaced, repaired or restored to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, (iv) that the Agency has good and merchantable title to all Facility Personalty and a good and valid leasehold interest in all property constituting part of the Facility Realty, and all property of the Facility is subject to the Company Lease (except in the case of the Facility Personalty) and this Agreement, subject to Permitted Encumbrances, and (v) that the restored Facility is ready for occupancy, use and operation for the Approved Project Operations. Notwithstanding the foregoing, such certificate may state (x) that it is given without prejudice to any rights against third parties by the Lessee that exist at the date of such certificate or that may subsequently come into being, (y) that it is given only for the purposes of this Section and (z) that no Person other than the Agency may benefit therefrom.

(c) The certificate delivered pursuant to Section 6.4(b) shall be accompanied by (i) a certificate of occupancy (either temporary or permanent, provided that if it is a temporary certificate of

occupancy, the Lessee will proceed with due diligence to obtain a permanent certificate of occupancy and obtain renewals of such temporary certificate of occupancy as needed), if required, and any and all permissions, licenses or consents required of governmental authorities for the occupancy, operation and use of the Facility for the purposes contemplated by this Agreement; (ii) a certificate of an Authorized Representative of the Lessee that all costs of rebuilding, repair, restoration and reconstruction of the Facility have been paid in full, together with releases of mechanics' liens by all contractors and materialmen who supplied work, labor, services, materials or supplies in connection with the rebuilding, repair, restoration and reconstruction of the Facility (or, to the extent that any such costs shall be the subject of a bona fide dispute, evidence to the Agency that such costs have been appropriately bonded or that the Lessee shall have posted a surety or security at least equal to the amount of such costs); and (iii) a search prepared by a title company, or other evidence satisfactory to the Agency, indicating that there has not been filed with respect to the Facility any mechanic's, materialmen's or any other lien in connection with the rebuilding, replacement, repair and restoration of the Facility and that there exist no encumbrances or those encumbrances consented to by the Agency.

ARTICLE VII

COVENANT OF THE AGENCY

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

ARTICLE VIII

COVENANTS OF THE LESSEE

Section 8.1. Insurance.

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

Certificate means an ACORD certificate evidencing insurance.

CGL means commercial general liability insurance.

CM means a construction manager providing construction management services in connection with any Construction.

Construction means any construction, reconstruction, restoration, renovation, alteration and/or repair on, in, at or about the Facility Realty, including the Project Work or any other construction, reconstruction, restoration, alteration and/or repair required under this Agreement in connection with the Facility.

Contractor(s) means, individually or collectively, a contractor or subcontractor providing materials and/or labor and/or other services in connection with any Construction, but not including a GC, CM or any architect or engineer providing professional services.

GC means any general contractor providing general contracting services in connection with any Construction.

Insured(s) means the Lessee.

Insurer means any entity writing or issuing a Policy.

ISO means the Insurance Services Office or its successor.

ISO Form CG-0001 means the CGL form published by ISO at the Commencement Date.

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

SIR means self-insured retention.

U/E means Umbrella or Excess Liability insurance.

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

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

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

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

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

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

(v) All such other insurance required under the Condominium Documents.

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

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

(ii) Any GC or CM shall obtain and maintain for itself as a primary insured the following Policies:

(A) CGL and U/E in accordance with the requirements in Section 8.1(b), subject to the following modifications: (x) coverage shall be in an aggregate minimum amount of \$10,000,000 per project aggregate, and (y) completed operations coverage shall extend (or be extended) for an additional five (5) years after completion of the Construction (which will be deemed to be the Project Completion Date unless the Lessee shall have provided written notice and satisfactory evidence to the Agency that the Construction was completed as of a specified earlier date);

(B) Auto liability insurance in accordance with the requirements in Section 8.1(b); and

(C) Workers' Compensation in accordance with the requirements in Section 8.1(b).

(iii) Notwithstanding preceding subsections "i" and "ii", during Construction aggregate minimum coverage in the amount of \$15,000,000 (combined CGL and U/E as required

by Sections 8.1(b) and 8.1(c)) may be achieved by any combination of coverage amounts among the Insureds and the GC or CM.

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

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

(B) Auto Liability insurance in accordance with the requirements in Section 8.1(b); and

(C) Workers' Compensation in accordance with the requirements in Section 8.1(b).

(d) Required Policy Attributes. Except as the Agency shall expressly otherwise agree in writing in its sole and absolute discretion:

(i) The Lessee shall cause each Policy (other than Worker's Compensation insurance and auto liability insurance) to name the Agency as an additional insured on a primary and non-contributory basis as more particularly required in Section 8.1(f)(i).

(ii) No Policy shall have a deductible.

(iii) CGL shall not be subject to SIR.

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

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

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

(B) employer's liability coverage;

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

(D) the right of the Insureds to name additional insureds including the Agency;

(E) the applicability of CGL coverage to the Agency as an additional insured in respect of liability arising out of any of the following claims: (x) claims against the Agency by employees of an Insured, or (y) claims against the Agency by any GC, CM, Contractor, architect or engineer or by the employees of any of the foregoing, or (z) claims against the Agency arising out of any work performed by a GC, CM, Contractor, architect or engineer.

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

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

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

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

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

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

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

(iii) Insurers must be admitted in the State; provided, however, that if an Insured requests the Agency to accept a non-admitted Insurer, and if the Agency reasonably determines that for the kind of operations performed by the Insured an admitted Insurer is commercially unavailable to issue a Policy or is non-existent, then the Agency shall provide its written consent to a non-admitted Insurer. For purposes of this paragraph, an “admitted” Insurer means that the Insurer’s rates and forms have been approved by the State Department of Financial Services and that the Insurer’s obligations are entitled to be insured by the State’s insurance guaranty fund.

(f) Required Evidence of Compliance. The Lessee shall deliver or cause to be delivered, throughout the Term, evidence of all Policies required hereunder as set forth in this Section 8.1(f):

(i) All Policies. With respect to all Policies on which an Insured is to be a primary insured, the Insured shall deliver to the Agency a Certificate or Certificates evidencing all Policies required by this Section 8.1: (x) at the Commencement Date, (y) prior to the expiration or sooner termination of Policies, and (z) prior to the commencement of any

Construction. If the Certificate in question evidences CGL, such Certificate shall name the Agency as an additional insured in the following manner:

New York City Industrial Development Agency is an additional insured on a primary and non-contributory basis for both CGL and Umbrella/Excess. The referenced CGL is written on ISO Form CG-0001 without modification to the contractual liability, employer's liability or waiver-of-subrogation provisions thereof, and contains no endorsement limiting or excluding coverage for claims arising under New York Labor Law, covering the following premises: Unit 1 of 805 Rockaway Avenue, Brooklyn, New York 11212 and all Common Elements relating to such Unit.

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

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

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

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

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

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

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

(h) Miscellaneous.

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

(ii) In the event that any of the Policies pertain to and cover properties (other than the Facility Realty) that are not set forth in subsection "i" preceding, the Agency shall have the right to demand higher Policy amounts therefor provided that the incremental coverage demanded by the Agency is reasonably related to such additional or substitute properties and the operations carried out or to be carried out thereon.

(iii) If, in accordance with the terms and conditions of this Section 8.1, an Insured is required to obtain the Agency's consent, the Lessee shall request such consent in a writing provided to the Agency at least thirty (30) days in advance of the commencement of the effective period (or other event) to which the consent pertains.

(iv) Throughout the Term, delivery by an Insured of a Certificate evidencing auto liability insurance for hired and non-owned vehicles shall, unless otherwise stated by the Lessee to the contrary, constitute a representation and warranty from the Insured to the Agency that the Insured does not own vehicles.

(v) An Insured shall neither do nor omit to do any act, nor shall it suffer any act to be done, whereby any Policy would or might be terminated, suspended or impaired.

(vi) If, throughout the Term, insurance industry standards applicable to properties similar to the Facility Realty and/or operations similar to the operations of the Lessee materially change; and if, as a consequence of such change, the requirements set forth in this Section 8.1 become inadequate in the reasonable judgment of the Agency for the purpose of protecting the Agency against third-party claims, then the Agency shall have the right to supplement and/or otherwise modify such requirements, provided, however, that such supplements or modifications shall be commercially reasonable.

(vii) Nothing contained in this Agreement shall be deemed to modify the obligations of the Lessee pursuant to any Mortgage with respect to property insurance or the application of proceeds thereof and said Mortgage. The obligations of the Lessee hereunder shall be independent of any such other obligations relating to insurance.

(viii) The Agency, in its sole discretion and without obtaining the consent of any Mortgagee or any Guarantor or any other party to the transactions contemplated by this Agreement, may waive particular requirements under this Section 8.1. Notwithstanding, the Lessee shall be estopped from claiming that the Agency has made any such waiver unless the Agency has executed and delivered a written instrument for the purpose of effectuating such waiver.

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

Section 8.2. Indemnity.

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

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

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

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

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

(v) any damage or injury to the person or property of any Person in or on the premises of the Facility, the Project Building, the Common Elements, the Project Building or the Condominium,

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

(vii) the presence, disposal, release, or threatened release of any Hazardous Materials that are on, from, or affecting the Facility, the Project Building, the Common Elements, the Project Building or the Condominium; any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials, and/or any violation of Legal Requirements, including demands of

government authorities, or any policies or requirements of the Agency, which are based upon or in any way related to such Hazardous Materials.

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

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

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

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

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

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

(c) The Lessee further agrees to pay the Annual Administrative Fee to the Agency on each July 1 following the Commencement Date until the earlier of the Expiration Date or the Termination Date. In the event the Lessee shall fail to pay the Annual Administrative Fee on the date due, the Agency shall have no obligation to deliver notice of such failure to the Lessee.

Section 8.4. Current Facility Personalty Description. The Lessee covenants and agrees that throughout the Term, including upon the completion of the Project or of any replacement, repair, restoration or reconstruction of the Facility pursuant to Article VI, it will cause Exhibit B – “Description of the Facility Personalty” to be an accurate and complete description of all current items of Facility Personalty. To this end, the Lessee covenants and agrees that (y) no item of Facility Personalty shall be substituted or replaced by a new item of machinery, equipment or other tangible personal property except pursuant to Section 3.6(a) or Article VI, and (z) no item of Facility Personalty shall be delivered and installed at the Facility Realty as part of the Facility, unless in each case such item of machinery, equipment or other item of tangible personal property shall be accurately and sufficiently described in Exhibit B – “Description of the Facility Personalty”, and the Lessee shall from time to time prepare and deliver to the Agency supplements to such Appendices in compliance with the foregoing. Such supplements shall be executed and delivered by the appropriate parties.

Section 8.5. Signage at Facility Site. Upon commencement of the Project renovations and/or construction of the Project Improvements at the Facility (including the commencement of any demolition and/or excavation), the Lessee shall erect on the Facility site, at its own cost and expense, within easy view of passing pedestrians and motorists, a large and readable sign with the following information upon it (hereinafter, the “Sign”):

*FINANCIAL ASSISTANCE PROVIDED
THROUGH THE
NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY
Mayor Eric Adams*

In addition, the Sign shall satisfy the following requirements: (x) format and appearance generally shall be as stipulated by the Agency in writing or electronically; (y) the minimum size of the Sign shall be four (4) feet by eight (8) feet; and (z) the Sign shall have no other imprint upon it other than that of the Agency. The Sign shall remain in place at the Facility until completion of the renovations and/or construction. The Lessee may erect other signs in addition to the Sign.

Section 8.6. Environmental Matters.

(a) On or before the Commencement Date, the Lessee shall provide to the Agency a letter from the Environmental Auditor addressed to the Agency, stating that the Agency may rely upon the Environmental Audit as if it was prepared for the Agency in the first instance.

(b) The Lessee shall not cause or permit the Facility or any part thereof to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all applicable Legal Requirements, nor shall the Lessee cause or permit, as a result of any intentional or unintentional act or omission on the part of the Lessee or any occupant or user of the Facility, a release of Hazardous Materials onto the Facility or onto any other property.

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

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

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

Section 8.7. Employment Matters.

(a) Except as is otherwise provided by collective bargaining contracts or agreements, new employment opportunities created as a result of the Project shall be listed with the New York State Department of Labor Community Services Division, and with the administrative entity of the service

delivery area created by the Workforce Investment Act of 1998 (29 U.S.C. §2801) in which the Facility Realty is located. Except as is otherwise provided by collective bargaining contracts or agreements, the Lessee agrees, where practicable, to consider first, and cause each of its Affiliates at the Facility to consider first, persons eligible to participate in the Workforce Investment Act of 1998 (29 U.S.C. §2801) programs who shall be referred by administrative entities of service delivery areas created pursuant to such Act or by the Community Services Division of the New York State Department of Labor for such new employment opportunities.

(b) Upon the Agency's written request, the Lessee shall provide to the Agency any employment information in the possession of the Lessee which is pertinent to the Lessee and the employees of the Lessee to enable the Agency and/or NYCEDC to comply with its reporting requirements required by City Charter §1301 and any other applicable laws, rules or regulations.

(c) The Lessee hereby authorizes any private or governmental entity, including The New York State Department of Labor ("DOL"), to release to the Agency and/or NYCEDC, and/or to the successors and assigns of either (collectively, the "Information Recipients"), any and all employment information under its control and pertinent to the Lessee and the employees of the Lessee to enable the Agency and/or NYCEDC to comply with its reporting requirements required by City Charter §1301 and any other applicable laws, rules or regulations. Information released or provided to Information Recipients by DOL, or by any other governmental entity, or by any private entity, or by the Lessee or any information previously released as provided by all or any of the foregoing parties (collectively, "Employment Information") may be disclosed by the Information Recipients in connection with the administration of the programs of the Agency, and/or NYCEDC, and/or the successors and assigns of either, and/or the City, and/or as may be necessary to comply with law; and, without limiting the foregoing, the Employment Information may be included in (x) reports prepared by the Information Recipients pursuant to City Charter §1301, (y) other reports required of the Agency, and (z) any other reports required by law. This authorization shall remain in effect throughout the Term.

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

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

Section 8.8. Non-Discrimination.

(a) At all times during the maintenance and operation of the Facility, the Lessee shall not discriminate nor permit any of its Affiliates to discriminate against any employee or applicant for employment because of race, color, creed, age, sex or national origin. The Lessee shall use its best efforts to ensure that employees and applicants for employment with any subtenant of the Facility are treated without regard to their race, color, creed, age, sex or national origin. As used herein, the term "treated" shall mean and include the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.

(b) The Lessee shall, in all solicitations or advertisements for employees placed by or on behalf of the Lessee state that all qualified applicants will be considered for employment without regard to race, color, creed or national origin, age or sex.

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

Section 8.9. Assignment or Sublease.

(a) The Lessee shall not at any time except as permitted by Section 8.20 hereof, assign or transfer this Agreement.

(b) The Lessee shall have the right to permit other Persons to utilize space in the Facility (such Persons, collectively, “**Facility Tenants**”) from time to time and to enter into Tenant Leases in connection therewith without the Agency’s prior approval or consent; provided however, that in each case, (1) each Facility Tenant engages in manufacturing and/or industrial use (consisting of the type and size as set forth in the North American Industry Classification System (“NAICS”) Schedule I attached thereto; (2) rent to be charged by the Lessee in each of the Tenant Leases at the Facility shall be at below-market rates not to exceed eighty (80%) of the Fair Market Rental Value; (3) Lessee shall submit to the Agency on an annual basis, commencing on the August 1st following the earlier of (i) the first Tenant Lease, or (ii) Completion Deadline, a Certificate in the form attached as Exhibit K, which Certificate shall contain a breakdown of the Tenant Leases at the Facility and attach the most recent appraisal providing the market rent per square foot for the Facility; (4) prior to commencement of a Tenant Lease, each Facility Tenant delivers to the Agency a Required Disclosure Statement in the form set forth in Schedule f hereto without any modifications thereto unless such modifications have been previously approved by the Agency in writing; (5) the Lessee shall remain liable to the Agency for the payment of all rent and for the full performance of all the terms, covenants and conditions of this Agreement; (6) the Facility Tenant shall utilize the Facility as an Approved Facility and a qualified “project” as defined in the Act, (7) each Tenant Lease will not diminish or impair the obligation of the Lessee to carry the insurance required under Section 8.1 hereof, and that such insurance coverage shall in no manner be limited by such sublease or use of the Facility, and (8) each Tenant Lease contains (i) a representation from the Facility Tenant stating either of the following (A) that such Facility Tenant’s occupancy at the Facility will not result in the removal of a plant or facility of such Tenant located outside of the City, but within the State, to the Facility or in the abandonment of one or more of such plants or facilities of such Tenant located outside of the City but within the State or (B) that such Facility Tenant’s location at the Facility is reasonably necessary to discourage such Facility Tenant from removing its business to a location outside of the State or is reasonably necessary to preserve such Facility Tenant’s competitive position in its industry, (ii) provisions requiring the Facility Tenant to deliver to the Lessee, upon the Lessee’s request, the Facility Tenant’s most recently filed Form NYS-45 and Form NYS-45-ATT (or any successor forms therefor), (iii) provisions requiring the Facility Tenant to provide to the Lessee (which shall provide to the Lessee) such information as the Lessee may need to enable the Lessee to annually submit to the Agency a subtenant survey in a form acceptable to the Agency, (iv) a provision providing that it shall be an event of default under the Tenant Lease subject to termination by the Lessee, at the direction of the Agency, if the information contained in the Required Disclosure Statement delivered by the Facility Tenant to the Agency should prove to be false, misleading or incorrect in any material respect; and (v) provisions requiring the Facility Tenant to annually submit to the Lessee an annual employment report in a form acceptable to the Agency. Upon the Agency’s request, the Lessee shall deliver to the Agency a copy of each Tenant Lease in effect.

(c) Any consent by the Agency to any act of assignment, transfer or sublease shall be held to apply only to the specific transaction thereby authorized. Such consent shall not be construed as a waiver of the duty of the Lessee, or the successors or assigns of the Lessee, to obtain from the Agency consent to any other or subsequent assignment, transfer or sublease, or as modifying or limiting the rights of the Agency under the foregoing covenant by the Lessee.

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

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

(f) For purposes of this Section 8.9, "Fair Market Rental Value" shall mean the annual fair market rental value of the Facility in its "as-is" condition as of the date that such valuation is agreed to or made by an appraiser(s), but not more than two (2) years prior to the date on which either a new Tenant Lease at the Facility or a Tenant Lease renewal term is expected to commence. The Fair Market Rental Value appraisal shall be made by a competent, independent and impartial appraiser who is a member of the Appraisal Institute (or a successor organization), experienced in the appraisal of small manufacturing properties and shall have been doing business in New York City for a period of at least five (5) years prior to the date of such appointment. Any such appraiser's fees and expenses shall be paid for by the Lessee.

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

(a) Neither the Lessee nor the Agency shall sell, assign, encumber (other than Permitted Encumbrances), convey or otherwise dispose of its respective title to or leasehold estate in the Facility, including the Improvements, or any part of the Facility or interest therein during the Term, except as set forth in Sections 3.6, Article VI, 8.9, 8.20 and 9.2 or in this Section, without the prior written consent of the other, and any purported disposition without such consent shall be void. Notwithstanding the foregoing, the sale by the Lessee of a controlling interest in the Facility Realty to a Person that is not an Affiliate of the Lessee prior to the Operations Commencement Date is a Recapture Event. The Agency requires a minimum of fifteen (15) business days' notice in order to consider any request to approve any such lien, security interest, encumbrance, or charge.

(b) The Lessee may, upon prior written notice to the Agency, so long as there exists no Event of Default hereunder, grant such rights of way or easements over, across, or under, the Facility Realty, or grant such permits or licenses in respect to the use thereof, free from the leasehold estate of the Company Lease and of this Agreement as shall be necessary or convenient in the opinion of the Lessee for the operation or use of the Facility, or required by any utility company for its utility business, provided that, in each case, such rights of way, easements, permits or licenses shall not adversely affect the use or operation of the Facility as the Approved Facility. The Agency agrees, at the sole cost and expense of the Lessee, to execute and deliver any and all instruments necessary or appropriate to confirm and grant any such right of way or easement or any such permit or license and to release the same from the leasehold estate of the Company Lease and of this Agreement.

(c) So long as there exists no Event of Default hereunder, the Lessee may from time to time request in writing to the Agency the release of and removal from the leasehold estate of the Company Lease and this Agreement any unimproved part of the Land (on which none of the Improvements, including the buildings, structures, major appurtenances, fixtures or other property

comprising the Facility Realty, is situated) provided that such release and removal will not adversely affect the use or operation of the Facility as the Approved Facility. Upon any such request by the Lessee, the Agency shall, at the sole cost and expense of the Lessee, execute and deliver any and all instruments necessary or appropriate to so release and remove such unimproved Land from the leasehold estates of the Company Lease and of this Agreement, subject to the following: (i) any liens, easements, encumbrances and reservations to which title to said property was subject on the Commencement Date, (ii) any liens, easements and encumbrances created at the request of the Lessee or to the creation or suffering of which the Lessee consented; (iii) any liens and encumbrances or reservations resulting from the failure of the Lessee to perform or observe any of the agreements on its respective part contained in this Agreement or any other Project Document; (iv) Permitted Encumbrances (other than the liens of the Company Lease and of this Agreement); and (v) any liens for taxes or assessments not then delinquent; provided, however, no such release shall be effected unless there shall be delivered to the Agency a certificate of an Authorized Representative of the Lessee, dated not more than sixty (60) days prior to the date of the release, stating that, in the opinion of the Person signing such certificate, the unimproved Land and the release thereof so proposed to be made is not needed for the operation of the Facility, will not adversely affect the use or operation of the Facility as the Approved Facility and will not destroy the means of ingress thereto and egress therefrom.

(d) No conveyance or release effected under the provisions of this Section 8.10 shall entitle the Lessee to any abatement or diminution of the Rental Payments payable under Section 4.3 or any other payments required to be made by the Lessee under this Agreement or any other Project Document to which it shall be a party.

Section 8.11. Discharge of Liens.

(a) If any lien, encumbrance or charge is filed or asserted (including any lien for the performance of any labor or services or the furnishing of materials), or any judgment, decree, order, levy or process of any court or governmental body is entered, made or issued or any claim (such liens, encumbrances, charges, judgments, decrees, orders, levies, processes and claims being herein collectively called “**Liens**”), whether or not valid, is made against the Facility, the Project Building, the Condominium Documents or any part thereof or the interest therein of the Agency, the Lessee or against any of the Rental Payments payable under the Company Lease or under this Agreement or the interest of the Agency, the Lessee under the Company Lease or under this Agreement, other than Liens for Impositions not yet payable, Permitted Encumbrances, or Liens being contested as permitted by Section 8.11(b), the Lessee forthwith upon receipt of notice of the filing, assertion, entry or issuance of such Lien (regardless of the source of such notice) shall give written notice thereof to the Agency and take all action (including the payment of money and/or the securing of a bond) at its own cost and expense as may be necessary or appropriate to obtain the discharge in full thereof and to remove or nullify the basis therefor. Nothing contained in this Agreement shall be construed as constituting the express or implied consent to or permission of the Agency for the performance of any labor or services or the furnishing of any materials that would give rise to any Lien against the Agency’s interest in the Facility.

(b) The Lessee may at its sole cost and expense contest (after prior written notice to the Agency), by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Lien, if (i) such proceeding shall suspend the execution or enforcement of such Lien against the Facility or any part thereof or interest therein, or in the Company Lease or in this Agreement, of the Agency, the Lessee or against any of the Rental Payments payable under the Company Lease, under this Agreement, (ii) neither the Facility nor any part thereof or interest therein would be in any danger of being sold, forfeited or lost, (iii) neither the Lessee nor the Agency would be in any danger of any civil or any criminal liability, other than normal accrual of interest, for

failure to comply therewith, and (iv) the Lessee shall have furnished such security, if any, as may be required in such proceedings or as may be reasonably requested by the Agency.

Section 8.12. Recording and Filing. This Agreement, as originally executed, or a memorandum hereof, shall be recorded by the Lessee at its sole cost and expense in the appropriate office of the Register of The City of New York, or in such other office as may at the time be provided by law as the proper place for the recordation thereof.

Section 8.13. No Further Encumbrances Permitted. The Lessee shall not create, permit or suffer to exist any mortgage, encumbrance, lien, security interest, claim or charge against the Facility or any part thereof, or the interest of the Agency, the Lessee in the Facility, in the Condominium Documents, the Company Lease or this Agreement, except for Permitted Encumbrances. Notwithstanding the foregoing, in no event shall the lien of any Mortgage include the rights of the Lessee under this Agreement or any rentals or other amounts paid or payable hereunder or thereunder.

Section 8.14. Automatically Deliverable Documents.

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

(b) The Lessee shall promptly provide written notice to the Agency if any representation or warranty made by the Lessee pursuant to Section 2.2(w) would, if made on any date during the term of the Agreement and deemed made as of such date, be false, misleading or incorrect in any material respect.

(c) Within five (5) Business Days after receipt from the Agency of any subtenant survey and questionnaire pertaining to the Facility, the Lessee shall complete and execute such survey and questionnaire and return the same to the Agency, unless a different deadline is provided by such survey or questionnaire.

(d) The Lessee shall deliver all insurance-related documents required by Sections 8.1(f) and 8.1(g).

(e) Within 120 days after the close of each Fiscal Year during which action was taken by the Lessee pursuant to Section 3.5, the Lessee shall deliver written notice of the Additional Improvement(s) to the Agency.

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

(g) Promptly following completion of the Project, but no later than five (5) Business Days following the receipt of a temporary or permanent certificate of occupancy with respect to the Facility, the Lessee shall deliver to the Agency the Final Project Cost Budget together with a certificate as to Project completion in substantially the form set forth in Exhibit G – “Form of Project Completion Certificate”, together with all attachments required thereunder.

(h) Prior to the appointment of an Agent in connection with the use of the Sales Tax Agent Authorization Letter as provided in Section 5.2(e), the Lessee shall submit Form ST-60 electronically to the Agency as provided therein.

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

(j) No later than August 1st of each year, the Lessee shall file with the Agency a completed Sales Tax Registry which accounts for all Sales Tax Savings realized by the Lessee, t and each Agent during the prior annual ending on the preceding June 30th (or such shorter period beginning on the Commencement Date and ending on the preceding June 30th).

(k) Within 10 days after the Termination Date, the Lessee shall (x) file with the Agency a completed Sales Tax Registry which accounts for all Sales Tax Savings realized by the Lessee and each Agent during the period from the preceding July 1st to the Termination Date; and (y) deliver and surrender to the Agency each Sales Tax Agent Authorization Letter and all copies thereof for cancellation.

(l) a certificate of an Authorized Representative of the Lessees as to whether any of the Condominium Documents have been amended or terminated, whether each continues to be in full force and effect, and whether any default exists under any of the Condominium Documents.

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

(a) a copy of the most recent annual audited financial statements of the Lessee and of their subsidiaries, if any (including balance sheets as of the end of the Fiscal Year and the related statement of revenues, expenses and changes in fund balances and, if applicable, income, earnings, and changes in financial position) for such Fiscal Year, prepared in accordance with GAAP and certified by an Independent Accountant;

(b) a certificate of an Authorized Representative of the Lessee that the insurance the Lessee maintains complies with the provisions of Section 8.1, that such insurance has been in full force and effect at all times during the preceding Fiscal Year, and that duplicate copies of all policies or certificates thereof have been filed with the Agency and are in full force and effect and the evidence required by Section 8.1(f);

(c) copies of any (x) bills, invoices or other evidences of cost as shall have been incurred in connection with the Project Work, and (y) permits, authorizations and licenses from appropriate authorities relative to the occupancy, operation and use of the Facility;

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

(e) if action was taken by the Lessee pursuant to Section 3.5 or involving the removal of property having a value in the aggregate exceeding \$250,000 pursuant to Section 3.6(a), a

written report of an Authorized Representative of the Lessee summarizing the action taken by the Lessee and stating that, in his/her opinion, such action complied with the provisions of Section 3.5 or 3.6(a), as applicable;

(f) a certificate of an Authorized Representative of the Lessee as to whether or not, as of the close of the immediately preceding Fiscal Year, and at all times during such Fiscal Year, the Lessee was in compliance with all the provisions that relate to the Lessee in this Agreement and in any other Project Document to which it shall be a party, and if such Authorized Representative shall have obtained knowledge of any default in such compliance or notice of such default, he shall disclose in such certificate such default or defaults or notice thereof and the nature thereof, whether or not the same shall constitute an Event of Default hereunder, and any action proposed to be taken by the Lessee with respect thereto;

(g) upon twenty (20) days prior request by the Agency, a certificate of an Authorized Representative of the Lessee either stating that to the knowledge of such Authorized Representative after due inquiry there is no default under or breach of any of the terms hereof that, with the passage of time or the giving of notice or both, would constitute an Event of Default hereunder, exists or specifying each such default or breach of which such Authorized Representative has knowledge;

(h) employment information requested by the Agency pursuant to Section 8.7(b);
and

(i) information regarding non-discrimination requested by the Agency pursuant to Section 8.8.

Section 8.16. Periodic Reporting Information for the Agency.

(a) The Lessee shall not assert as a defense to any failure of the Lessee to deliver to the Agency any reports specified in this Section 8.16 that the Lessee shall not have timely received any of the forms from or on behalf of the Agency unless, (i) the Lessee shall have requested in writing such form from the Agency not more than thirty (30) days nor less than fifteen (15) days prior to the date due, and (ii) the Lessee shall not have received such form from the Agency at least one (1) Business Day prior to the due date. For purposes of this Section 8.16, the Lessee shall be deemed to have "received" any such form if it shall have been directed by the Agency to a website at which such form shall be available. In the event the Agency, in its sole discretion, elects to replace one or more of the reports required by this Agreement with an electronic or digital reporting system, the Lessee shall make its reports pursuant to such system.

(b) Annually, by August 1 of each year, commencing on the August 1 immediately following the Commencement Date, until the termination of this Agreement, the Lessee shall submit to the Agency in the form approved by the Agency the employment and benefits report relating to the period commencing July 1 of the previous year and ending June 30 of the year of the obligation of the filing of such report, in the form prescribed by the Agency, certified as to accuracy by an officer of the Lessee. Upon termination of this Agreement, the Lessee shall submit to the Agency the employment and benefits report relating to the period commencing the date of the last such Report submitted to the Agency and ending on the last payroll date of the preceding month in the form prescribed by the Agency, certified as to accuracy by the Lessee. Nothing herein shall be construed as requiring the Lessee to maintain a minimum number of employees on its respective payroll.

(c) If and for so long as the same shall be required by law, the Lessee shall annually (currently, by each February 28 with respect to the prior calendar year) file a statement with the New

York State Department of Taxation and Finance, on a form and in a manner and consistent with such regulations as is or may be prescribed by the Commissioner of the New York State Department of Taxation and Finance (Form ST-340 or any successor or additional mandated form), of the value of Sales Tax Savings claimed by the Lessee and all Agents in connection with the Project and the Facility as required by Section 874(8) of the New York State General Municipal Law (as the same may be amended from time to time), under the authority granted pursuant to this Agreement. The Lessee shall furnish a copy of such annual statement to the Agency at the time of filing with the Department of Taxation and Finance. Should the Lessee fail to comply with the foregoing requirement, the Lessee shall immediately cease to be the agent for the Agency in connection with the Project (such agency relationship being deemed to be immediately revoked) without any further action of the parties, each of the Lessee and any Agent shall be deemed to have automatically lost its authority as agent of the Agency to purchase and/or lease Eligible Items in the Agency's behalf, and shall desist immediately from all such activity, and shall immediately and without demand return to the Agency any Sales Tax Agent Authorization Letter in the possession of any Agent. Nothing herein shall be construed as a representation by the Agency that any property acquired as part of the Project is or shall be exempt from Sales and Use Taxes under the laws of the State. To the extent that the Lessee and any Agent shall have received Sales Tax Savings, the Lessee agrees to include information with respect thereto in its Sales Tax Exemption Report required to be filed pursuant to Section 8.16(e).

(d) On August 1st of each year, the Lessee shall file with the Agency, a certificate of an Authorized Representative of the Lessee with respect to the twelve-month reporting period ending on the prior June 30th, a certificate listing all Tenants at the Facility during such reporting period, in the form prescribed by the Agency. The certification shall include: (i) a list of all Tenant Leases in effect at any time during the reporting period; (ii) the rentable square footage specified in each Tenant Lease; (iii) the Usable Square Footage applicable to such Tenant Lease; (iv) the Name, Employer Identification Number, contact person and telephone number for each Tenant; (v) a summary of the uses permitted under each Tenant Lease; (vi) the number of days such Tenant Lease was in effect during the reporting period; (vii) a reconciliation of PILOT paid for such reporting and PILOT due for such Reporting Period based on the provisions of Article V of this Agreement, which shall include a per diem calculation of PILOT based on Non-Qualified Use pursuant to Section 5.1(i) (the "PILOT Reconciliation"); and (viii) any other information requested by the Agency. The Agency reserves the right to review and verify information submitted by the Lessee. At the Agency's request, the Lessee will promptly retain, at its own cost, a third party acceptable to the Agency with expertise in building measurement to verify the USF calculations submitted by the Lessee to the Agency and such third party shall submit such verification in writing to the Agency.

(e) If the Sales Tax Exemption shall have been in effect at any time during the twelve-month period terminating on the immediately preceding June 30, the Lessee shall file with the Agency by the next following August 1, a certificate of an Authorized Representative of the Lessee with respect to Sales Tax Savings with respect to such twelve-month period, in the form prescribed by the Agency.

(f) If there shall have been a Tenant, other than the Lessee, with respect to all or part of the Facility, at any time during the twelve-month period terminating on the immediately preceding June 30, the Lessee shall deliver to the Agency by the next following August 1, a completed employment and benefits report for all such Tenants with respect to such twelve-month period, in the form prescribed by the Agency.

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

connection with the Business Incentive Rate program with respect to such twelve-month period, in the form prescribed by the Agency.

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

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

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

(c) The Lessee may at its sole cost and expense contest (after prior written notice to the Agency), by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Imposition, if (i) such proceeding shall suspend the execution or enforcement of such Imposition against the Facility or any part thereof or interest therein, or in the Company Lease or in this Agreement, of the Agency or the Lessee or against any of the Rental Payments payable under the Company Lease or under this Agreement, (ii) neither the Facility nor any part thereof or interest therein would be in any danger of being sold, forfeited or lost, (iii) neither the Lessee nor the Agency would be in any danger of any civil or any criminal liability, other than normal accrual of interest, for failure to comply therewith, and (iv) the Lessee shall have furnished such security, if any, as may be required in such proceedings or as may be reasonably requested by the Agency.

Section 8.18. Compliance with Legal Requirements.

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

(b) Throughout the Term and at its sole cost and expense, the Lessee shall promptly observe and comply with all applicable Legal Requirements (including, without limitation, as applicable, the LW Law), whether foreseen or unforeseen, ordinary or extraordinary, that shall now or at any time hereafter be binding upon or applicable to the Lessee, the Facility, any occupant, user or operator of the Facility or any portion thereof, and will observe and comply with all conditions, requirements, and schedules necessary to preserve and extend all rights, licenses, permits (including zoning variances, special exception and non-conforming uses), privileges, franchises and concessions. The Lessee will not,

without the prior written consent of the Agency (which consent shall not be unreasonably withheld or delayed), initiate, join in or consent to any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses that may be made of the Facility or any part thereof.

(c) The Lessee may at its sole cost and expense contest in good faith the validity, existence or applicability of any of the matters described in Section 8.18(b) if (i) such contest shall not result in the Facility or any part thereof or interest therein being in any danger of being sold, forfeited or lost, (ii) such contest shall not result in the Lessee or the Agency being in any danger of any civil or any criminal liability for failure to comply therewith, and (iii) the Lessee shall have furnished such security, if any, as may be reasonably requested by the Agency for failure to comply therewith.

Section 8.19. Operation as Approved Facility and as a “Project”.

(a) The Lessee will not take any action, or suffer or permit any action, if such action would cause the Facility not to be the Approved Facility or a qualified “project” within the meaning of the Act.

(b) The Lessee will not fail to take any action, or suffer or permit the failure to take any action, if such failure would cause the Facility not to be the Approved Facility or a qualified “project” within the meaning of the Act.

(c) The Lessee will permit the Agency, or its duly authorized agent, upon reasonable notice, at all reasonable times, to enter the Facility, but solely for the purpose of assuring that the Lessee is operating the Facility, or is causing the Facility to be operated, as the Approved Facility and a qualified “project” within the meaning of the Act consistent with the Approved Project Operations and with the public purposes of the Agency.

Section 8.20. Restrictions on Dissolution and Merger.

(a) The Lessee covenants and agrees that at all times during the Term, it will

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

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

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

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

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

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

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

(b) After the Operations Commencement Date, and with the prior written consent of the Agency, the Lessee may Merge or participate in a Transfer if the following conditions are satisfied on or prior to the Merger or Transfer, as applicable:

(i) when the Lessee is the surviving, resulting or transferee Entity,

(1) the Lessee shall have a net worth (as determined by an Independent Accountant in accordance with GAAP) at least equal to that of the Lessee immediately prior to such Merger or Transfer, and

(2) the Lessee shall deliver to the Agency a Required Disclosure Statement with respect to itself as surviving Entity in form and substance satisfactory to the Agency; or

(ii) when the Lessee is not the surviving, resulting or transferee Entity (the “**Successor Lessee**”),

(1) the predecessor Lessee (the “**Predecessor Lessee**”) shall not have been in default under this Agreement or under any other Project Document,

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

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

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

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

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

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

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

(d) After the Operations Commencement Date, if there is a change in Principals of the Lessee, or a change in the relative ownership and/or Control of the Lessee or any of the existing Principals, the Lessee shall deliver to the Agency prompt written notice thereof to the Agency together with a Required Disclosure Statement in form and substance acceptable to the Agency acting in its sole discretion.

Section 8.21. Reserved.

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

Section 8.23. Reserved.

Section 8.24. Living Wage.

(a) Lessee acknowledges and agrees that it and its Site Affiliates have received “financial assistance” as defined in the LW Law. Lessee agrees to comply with all applicable requirements of the LW Law. Lessee acknowledges that the terms and conditions set forth in this Section 8.24 are intended to implement the Mayor’s Executive Order No. 7 dated September 30, 2014.

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

Asserted Cure has the meaning specified in Section 8.24(k)(i).

Asserted LW Violation has the meaning specified in Section 8.24(k)(i).

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

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

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

Covered Employer means any of the following Persons: (a) Lessee, (b) a Site Affiliate, (c) a tenant, subtenant, leaseholder or subleaseholder of Lessee or of an Affiliate of Lessee that leases any portion of the Facility Realty (or an Affiliate of any such tenant, subtenant, leaseholder or subleaseholder if such Affiliate has one or more direct Site Employees), (d) a Concessionaire that operates on any portion of the Facility

Realty, and (e) a Person that contracts or subcontracts with any Covered Employer described in clauses (a), (b), (c) or (d) above to perform work for a period of more than ninety days on any portion of the Facility Realty, including temporary services or staffing agencies, food service contractors, and other on-site service contractors; provided, however, that the term “Covered Employer” shall not include (i) a Person of the type described in Section 6-134(d)(2), (3), (4) or (5) of the New York City Administrative Code, (ii) a Person that has annual consolidated gross revenues that are less than the Small Business Cap unless the revenues of the Person are included in the consolidated gross revenues of a Person having annual consolidated gross revenues that are more than the Small Business Cap, in each case calculated based on the fiscal year preceding the fiscal year in which the determination is being made, and in each case calculated in accordance with generally accepted accounting principles, (iii) any otherwise covered Person operating on any portion of the Facility Realty if residential units comprise more than 75% of the total Facility Realty area and all of the residential units are subject to rent regulation, (iv) any otherwise covered Person that the Agency has determined (in its sole and absolute discretion) in writing to be exempt on the basis that it works significantly with a Qualified Workforce Program, (v) a Person whose Site Employees all are paid wages determined pursuant to a collective bargaining or labor agreement, or (vi) a Person exempted by a Deputy Mayor of The City of New York in accordance with the Mayor’s Executive Order No. 7 dated September 30, 2014.

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

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

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

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

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

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

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

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

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

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

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

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

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

Owed Monies means, as the context shall require, either (a) the total deficiency of LW required to be paid by Lessee or a Site Affiliate in accordance with this Section 8.24 to Lessee’s or its Site Affiliate’s (as applicable) direct Site Employee(s) after taking into account the wages actually paid (which shall be credited towards the “living wage rate” component of the LW), and the monetary value of health benefits actually provided (which shall be credited towards the “health benefits supplement rate” component of the LW), to such direct Site Employee(s), all as calculated on a per pay period basis; or (b) if Lessee or its Site Affiliate failed to obtain a LW Agreement from a Covered Counterparty as required under Section 8.24(f) below, the total deficiency of LW that would have been required to be paid under such Covered Counterparty’s LW Agreement to its direct Site Employee(s) after taking into account the wages actually paid (which shall be credited towards the “living wage rate” component of the LW), and the monetary value of health benefits actually provided (which shall be credited towards the “health benefits supplement rate” component of the LW), to such direct Site Employee(s), all as calculated on a per pay period basis, during the period commencing on the LW Agreement Delivery Date applicable to such Covered Counterparty and ending immediately prior to the execution and delivery by such Covered Counterparty of its LW Agreement (if applicable).

Qualified Workforce Program means a training or workforce development program that serves youth, disadvantaged populations or traditionally hard-to-employ

populations and that has been determined to be a Qualified Workforce Program by the Director of the Mayor's Office of Workforce Development.

Site Affiliates means, collectively, all Affiliates of Lessee that lease, occupy, operate or perform work at the Facility Realty and that have one or more direct Site Employees.

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

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

Specified Contract means, with respect to any Person, the principal written contract that makes such Person a Covered Employer hereunder.

(c) During the LW Term, if and for so long as Lessee is a Covered Employer, Lessee shall pay each of its direct Site Employees no less than an LW. During the LW Term, Lessee shall cause each of its Site Affiliates that is a Covered Employer to pay their respective Site Employees no less than an LW.

(d) During the LW Term, if and for so long as Lessee is a Covered Employer (or if and so long as a Site Affiliate is a Covered Employer, as applicable), Lessee shall (or shall cause the applicable Site Affiliate to, as applicable), on or prior to the day on which each direct Site Employee of Lessee or of a Site Affiliate begins work at the Facility Realty, (i) post a written notice detailing the wages and benefits required to be paid to Site Employees under this Section 8.24 in a conspicuous place at the Facility Realty that is readily observable by such direct Site Employee and (ii) provide such direct Site Employee with a written notice detailing the wages and benefits required to be paid to Site Employees under this Section 8.24. Such written notice shall also provide a statement advising Site Employees that if they have been paid less than the LW they may notify the Comptroller and request an investigation. Such written notice shall be in English and Spanish.

(e) During the LW Term, if and for so long as Lessee is a Covered Employer (or if and for so long as a Site Affiliate is a Covered Employer, as applicable), Lessee shall not (or the applicable Site Affiliate shall not, as applicable) take any adverse employment action against any Site Employee for reporting or asserting a violation of this Section 8.24.

(f) During the LW Term, regardless of whether Lessee is a Covered Employer, Lessee shall cause each Covered Counterparty to execute an LW Agreement on or prior to the LW Agreement Delivery Date applicable to such Covered Counterparty. Lessee shall deliver a copy of each Covered Counterparty's LW Agreement to the Agency, the DCA and the Comptroller at the notice address specified in Section 12.5 and promptly upon written request. Lessee shall retain copies of each Covered Counterparty's LW Agreement until six (6) years after the expiration or earlier termination of such Covered Counterparty's Specified Contract.

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

(h) Lessee hereby acknowledges and agrees that the City, the DCA and the Comptroller are each intended to be third party beneficiaries of the terms and provisions of this Section 8.24. Lessee hereby acknowledges and agrees that the DCA, the Comptroller and the Agency shall each have the authority and power to enforce any and all provisions and remedies under this Section 8.24 in accordance with paragraph (k) below. Lessee hereby agrees that the DCA, the Comptroller and the Agency may bring an action for damages (but not in excess of the amounts set forth in paragraph (k) below), injunctive relief or specific performance or any other non-monetary action at law or in equity, in each case subject to the provisions of paragraph (k) below, as may be necessary or desirable to enforce the performance or observance of any obligations, agreements or covenants of Lessee (or of any Site Affiliate) under this Section 8.24. Notwithstanding anything herein to the contrary, no default or Event of Default under this Agreement shall occur by reason of Lessee's failure to perform or observe any obligation, covenant or agreement contained in this Section 8.24 unless and until an LW Event of Default shall have occurred. The agreements and acknowledgements of Lessee set forth in this Section 8.24 may not be amended, modified or rescinded by Lessee without the prior written consent of the Agency or the DCA.

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

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

(k) Violations and Remedies.

(i) If a violation of this Section 8.24 shall have been alleged by the Agency, the DCA and/or the Comptroller, then written notice will be provided to Lessee for such alleged violation (an "LW Violation Notice"), specifying the nature of the alleged violation in such reasonable detail as is known to the Agency, the DCA and the Comptroller (the "Asserted LW

Violation”) and specifying the remedy required under Section 8.24(k)(ii), (iii), (iv), (v) and/or (vi) (as applicable) to cure the Asserted LW Violation (the “Asserted Cure”). Upon Lessee’s receipt of the LW Violation Notice, Lessee may either:

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

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

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

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

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

(iii) For the second and any subsequent LW Violation Final Determinations imposed on Lessee or any Site Affiliate in respect of any direct Site Employees of Lessee or of a Site Affiliate, at the direction of the Agency or the DCA (but not both), (A) Lessee shall pay the

Owed Monies and Owed Interest in respect of such direct Site Employees of Lessee or of a Site Affiliate to such direct Site Employees, and Lessee shall pay fifty percent (50%) of the total amount of such Owed Monies and Owed Interest to the DCA as an administrative fee; and/or (B) in the case of a violation that does not result in monetary damages owed by Lessee, Lessee shall cure, or cause the cure of, such non-monetary violation.

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

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

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

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

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

Section 8.25. M/WBE Program.

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

(b) The Lessee agrees that from the Commencement Date until the Completion Deadline, Lessee and its successors and assigns shall use its good faith efforts to efforts to comply with the terms and conditions and reach the goals outlined in Lessee's M/WBE Participation Plan set forth in Exhibit M-1 and the M/WBE Program Requirements set forth in Exhibit M-2. The Lessee agrees to be bound by each of the provisions in such M/WBE Participation Plan and the M/WBE Program Requirements, including without limitation, the provision of all Compliance Reports (as defined therein) and the payment of any liquidated damages set forth therein.

Section 8.26. Prevailing Wages for Construction. Pursuant to Labor Law Section 224-a(8)(d), the Agency hereby notifies the Lessee that it is the intended recipient of "public funds" as such term is defined in Labor Law Section 224-a(2), in connection with the Project. The nature and dollar value of such public funds is set forth in Exhibit O to this Agreement. The Agency has determined that such public funds are not excluded under Labor Law Section 224-a(3). The Lessee is hereby further notified that the prevailing wage requirements set forth in Labor Law Section 224-a shall apply to each "covered project" as defined therein. In accordance with Labor Law Section 224-a(8)(a), if the Project is a "covered project" the Lessee is required to certify under penalty of perjury within five days of commencement of construction work whether the Project is subject to the provisions of Labor Law Section 224-a through the use of a standard form developed by the Commissioner of the Department of Labor.

ARTICLE IX

REMEDIES AND EVENTS OF DEFAULT

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

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

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

(c) The occurrence of a Recapture Event;

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

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

(f) Failure of the Lessee to observe and perform any covenant, condition or agreement on its part to be performed under Sections 5.1 (except as set forth in Section 9.1(a)), 5.2, 5.4, 8.2, 8.3, 8.8, 8.9, 8.11, 8.13, 8.17, 8.18, 8.20, 8.25, 8.26, 9.8, 11.2 or 11.3 or Article VI, and continuance of such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nature of such default from the Agency;

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

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

(i) The Lessee or any other Guarantor shall (i) apply for or consent to the appointment of or the taking of possession by a receiver, liquidator, custodian or trustee of itself or of all or a substantial part of its property, (ii) admit in writing its inability, or be generally unable, to pay its debts as such debts generally become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or adjustment of debts, (vi) fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against itself in an involuntary case

under the Federal Bankruptcy Code, (vii) take any action for the purpose of effecting any of the foregoing, or (viii) be adjudicated a bankrupt or insolvent by any court;

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

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

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

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

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

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

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

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

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

an agency coupled with an interest) with full power of substitution to file on its behalf all affidavits, questionnaires and other documentation necessary to accomplish the recording of such termination agreements;

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

(iii) The Agency may take whatever action at law or in equity as may appear necessary or desirable to collect the Rental Payments then due, or to enforce performance or observance of any obligations, agreements or covenants of the Lessee under this Agreement; or

(iv) The Agency may suspend or terminate its authorization hereunder and pursuant to any Sales Tax Agent Authorization Letter with respect to the Sales Tax Exemption.

(b) No action taken pursuant to this Section 9.2 (including termination of this Agreement pursuant to this Section 9.2 or by operation of law or otherwise) shall, except as expressly provided herein, relieve the Lessee from the Lessee's obligations hereunder, including the obligations of the Lessee under Sections 5.1 (until such time as a Cessation Date occurs and, by reason thereof, the Lessee shall again pay Real Estate Taxes with respect to the Facility Realty), 5.2, 5.4, 8.2, 8.24, 9.2, 9.6, 9.7, 9.8, 11.4, 11.5, 11.6, 11.11, 11.13 and 11.14, all of which shall survive any such action.

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

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

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

Section 9.6. Agreement to Pay Fees and Expenses of Attorneys and Other Consultants. In the event the Lessee should default under any of the provisions of this Agreement and the Agency should employ outside attorneys or other consultants or incur other out of pocket expenses for the collection of the Rental Payments payable hereunder or the enforcement of performance or observance of any obligation or agreement on the part of the Lessee herein contained or contained in any

other Project Document, the Lessee agrees that it will on demand therefor pay to the Agency the reasonable fees and disbursements of such attorneys or other consultants and such other expenses so incurred.

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

Section 9.8. Late Delivery Fees.

(a) In the event the Lessee shall fail:

(i) to pay the Annual Administrative Fee on the date required under Section 8.3,

(ii) to file and/or deliver any of the documents required of the Lessee under Section 8.14 or Section 8.16 by the date therein stated (collectively, the “**Fixed Date Deliverables**”), or

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

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

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

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

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

ARTICLE X

TERMINATION

Section 10.1. Lessee's Option to Terminate Company Lease and this Agreement.

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

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

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

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

Section 10.3. Actions Upon Termination.

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

- (i) pay to NYCDOF any amounts due and payable pursuant to Section 5.1(i),
- (ii) pay any and all other Project Payments then due plus one dollar (\$1.00),
- (iii) perform all accrued obligations hereunder.

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

- (i) termination agreements and all other necessary documents confirming the release of the Agency's right, title and interest in and to the Facility Realty and terminating the Company Lease and this Agreement,
- (ii) a bill of sale with respect to the Facility Personalty (to the extent of any interest, if any, of the Agency in the Facility Personalty), and

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

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

Section 10.4. Survival of Lessee Obligations. Upon release of the Agency's interest in the Facility pursuant to Section 10.2 or 10.3, this Agreement and all obligations of the Lessee hereunder shall be terminated except the obligations of the Lessee under Sections 5.1 (until such time as the Agency shall cease to have a leasehold estate in the Facility and, by reason thereof, the Lessee shall again pay Real Estate Taxes with respect to the Facility Realty), 5.2, 5.4, 8.2, 8.24, 8.25, 8.26, 9.2, 9.6, 9.7, 9.8, 11.4, 11.5, 11.6, 11.11, 11.13 and 11.14 shall survive such termination.

ARTICLE XI

MISCELLANEOUS

Section 11.1. Force Majeure. In case by reason of *force majeure* either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then except as otherwise expressly provided in this Agreement, if such party shall give notice and full particulars of such *force majeure* in writing to the other party within a reasonable time after occurrence of the event or cause relied on, the obligations of the party giving such notice (other than (i) the obligations of the Lessee to make the Rental Payments required under the terms hereof, or (ii) the obligations of the Lessee to comply with Sections 5.1, 5.4, 8.1 or 8.2), so far as they are affected by such *force majeure*, shall be suspended during the continuance of the inability then claimed, which shall include a reasonable time for the removal of the effect thereof, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "*force majeure*" shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of any kind of the Government of the United States or of the State or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrest, restraining of government and people, war, terrorism, civil disturbances, explosions, partial or entire failure of utilities, shortages of labor, material, supplies or transportation, or any other act or event so long as such act or event is not reasonably foreseeable and is not reasonably within the control of the party claiming such inability. Notwithstanding anything to the contrary herein, in no event shall the Lessee's financial condition or inability to obtain financing constitute a *force majeure*. It is understood and agreed that the requirements that any *force majeure* shall be reasonably beyond the control of the party and shall be remedied with all reasonable dispatch shall be deemed to be satisfied in the event of a strike or other industrial disturbance even though existing or impending strikes or other industrial disturbances could have been settled by the party claiming a *force majeure* hereunder by acceding to the demands of the opposing person or persons.

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

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

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

Section 11.4. Service of Process. The Lessee represents that it is subject to service of process in the State and covenants that it will remain so subject until all obligations, covenants and agreements of the Lessee under this Agreement shall be satisfied and met. If for any reason the Lessee should cease to be so subject to service of process in the State, the Lessee hereby irrevocably consents to the service of all process, pleadings, notices or other papers in any judicial proceeding or action by designating and appointing Brian T. Coleman, at 1155 Manhattan Avenue, Brooklyn, New York 11222, the Chief Executive Officer of the Lessee, as its agent upon whom may be served all process, pleadings, notices or other papers which may be served upon the Lessee as a result of any of its obligations under

this Agreement. If such appointed agent shall cease to act or otherwise cease to be subject to service of process in the State, the Lessee hereby irrevocably designates and appoints the Secretary of State of the State of New York as its agent upon whom may be served all process, pleadings, notices or other papers which may be served upon the Lessee as a result of any of its obligations under this Agreement; provided, however, that the service of such process, pleadings, notices or other papers shall not constitute a condition to the Lessee's obligations hereunder.

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

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

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

- (1) if to the Agency, to

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

- (2) if to the Lessee, to

GMDC Brownsville LLC
1155 Manhattan Avenue
Brooklyn, New York 11416
Attention: Brian T. Coleman

with a copy to

Cozen O'Connor
277 Park Avenue
New York, New York 10172
Attention: William Davis, Esq.

- (3) if to the DCA, to

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

- (4) if to the Comptroller, to

Office of the Comptroller of The City of New York
One Centre Street
New York, New York 10007
Attention: Chief, Bureau of Labor Law

- (5) if to the City, to

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

The Agency shall deliver to any Mortgagee (to the extent that the Lessee shall have delivered to the Agency the written notice address for such Mortgagee) a copy of any notice of default or notice of its intent to convey its leasehold interest in the Facility to the Lessee that the Agency delivers to the Lessee. Such copies shall be delivered at the same time and in the same manner as such notice is required to be given to the Lessee.

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

Section 11.6. Consent to Jurisdiction. The Lessee irrevocably and unconditionally (i) agrees that any suit, action or other legal proceeding arising out of this Agreement or any other Project Document, the Facility, the Project, the relationship between the Agency and the Lessee, the Lessee's ownership, use or occupancy of the Facility and/or any claim for injury or damages may be brought in the courts of record of the State in New York County or the United States District Court for the Southern District of New York; (ii) consents to the jurisdiction of each such court in any such suit, action or proceeding; (iii) waives any objection which it may have to the venue of any such suit, action or proceeding in such courts; and (iv) waives and relinquishes any rights it might otherwise have (w) to move to dismiss on grounds of forum non conveniens, (x) to remove to any federal court other than the United States District Court for the Southern District of New York, and (y) to move for a change of venue to a New York State Court outside New York County.

If the Lessee commences any action against the Agency in a court located other than the courts of record of the State in New York County or the United States District Court for the Southern District of New York, the Lessee shall, upon request from the Agency, either consent to a transfer of the

action or proceeding to a court of record of the State in New York County or the United States District Court for the Southern District of New York, or, if the court where the action or proceeding is initially brought will not or cannot transfer the action, the Lessee shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of record of the State in New York County or the United States District Court for the Southern District of New York.

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

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

Section 11.9. Effective Date; Counterparts. The date of this Agreement shall be for reference purposes only and shall not be construed to imply that this Agreement was executed on the date first above written. This Agreement was delivered on the Commencement Date. This Agreement shall become effective upon its delivery on the Commencement Date. It may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.10. Binding Effect. This Agreement shall inure to the benefit of the Agency, the Lessee and the Indemnified Parties, and shall be binding upon the Agency and the Lessee and their respective successors and assigns.

Section 11.11. Third Party Beneficiaries. It is the intention of the parties hereto that nothing contained herein is intended to be for, or to inure to, the benefit of any Person other than the parties hereto and the Indemnified Parties.

Section 11.12. Law Governing. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without regard or giving effect to the principles of conflicts of laws thereof.

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

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

Section 11.14. Recourse Under This Agreement. All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency, and not of any member, director, officer, employee or agent of the Agency or any natural person executing this Agreement on behalf of the Agency in such person's individual capacity, and no recourse shall be had for any reason whatsoever hereunder against any member, director, officer, employee or agent of the Agency or any natural person executing this Agreement on behalf of the Agency. In addition, in the performance of the

agreements of the Agency herein contained, any obligation the Agency may incur for the payment of money shall not subject the Agency to any pecuniary or other liability or create a debt of the State or the City, and neither the State nor the City shall be liable on any obligation so incurred and any such obligation shall be payable solely out of amounts payable to the Agency by the Lessee hereunder.

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

[Signature Page Follows]

IN WITNESS WHEREOF, the Agency has caused its corporate name to be subscribed unto this Agency Lease Agreement by its duly authorized Chairman, Vice Chairman, Executive Director, Deputy Executive Director or General Counsel and the Lessee has caused its name to be hereunto subscribed by its duly Authorized Representative, all being done as of the year and day first above written.

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**

By: Emily Marcus
Name: Emily Marcus
Title: Executive Director

GMDC BROWNSVILLE LLC

By: _____
Name: Brian T. Coleman
Title: Chief Executive Officer


[Signature Page to Agency Lease Agreement]

IN WITNESS WHEREOF, the Agency has caused its corporate name to be subscribed unto this Agency Lease Agreement by its duly authorized Chairman, Vice Chairman, Executive Director, Deputy Executive Director or General Counsel and the Lessee has caused its name to be hereunto subscribed by its duly Authorized Representative, all being done as of the year and day first above written.

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Name: Emily Marcus
Title: Executive Director

GMDC BROWNSVILLE LLC

By:  _____
Name: Brian T. Coleman
Title: Chief Executive Officer

[Signature Page to Agency Lease Agreement]

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

On the 24 day of March, in the year 2022, before me, the undersigned, personally appeared Emily Marcus, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Arthur Hauser
Notary Public

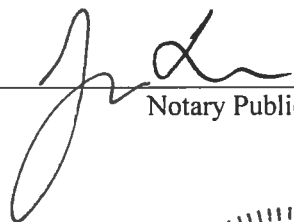
Arthur Hauser
Notary Public, State of New York
NO. 01HA6276327
Qualified in Kings County
Certificate Filed in New York County
Commission Expires 2/11/2025



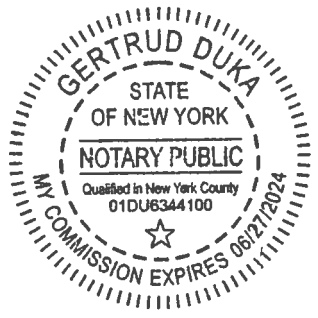
[Notary Page to Agency Lease Agreement]

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

On the 23rd day of March, in the year 2022, before me, the undersigned, personally appeared Brian T. Coleman, personally known to me or proved to me on the basis of satisfactory evidence to me the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public



[Notary Page to Agency Lease Agreement]

APPENDICES

DESCRIPTION OF THE LAND AND PROJECT UNIT

The Unit (hereinafter called the “Unit”) in the building (hereinafter called the “Building”) known as Bridge Rockaway Condominium and by the street address 805 Rockaway Avenue, Borough of Brooklyn, County of Kings, City and State of New York, said Unit being designated and described as Unit 1 in that certain declaration dated as of March 5, 2021, made by Sponsor (in such capacity, “Declarant”) pursuant to Article 9-B of the Real Property Law of the State of New York (hereinafter called the “Condominium Act”) establishing condominium ownership of the Building and the land upon which the Building is situate, which declaration was recorded in the New York County office of the City Register’s Office (the “City Register’s Office”), on October 19, 2021 as CRFN 2021000412929, as amended by First Amendment to Condominium Declaration of Bridge Rockaway Condominium dated as of the date hereof and submitted for recording in the City Register’s Office (collectively, with any amendments thereto, hereinafter the “Declaration”). The Unit is also designated as Tax Lot 1001 in Block 3603 of the Borough of Brooklyn on the Tax Map of the Tax Map Unit of NYC Department of Finance and on the Floor Plans of the Building certified by Jack Esterson, Principal of THINK! Architecture and Design PLLC, and filed with the Tax Map Unit of NYC Department of Finance on October 7, 2021, as Condominium Plan No. 4935 and also filed in the City Register’s Office on October 19, 2021, Map as CRFN 2021000412930.

Together with an undivided 15.63% interest in the Common Elements (as such term is defined in the Declaration).

The land on which the Building is located is more particularly described as follows:

ALL that certain plot, piece or parcel of land, situated, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, being more particularly bounded and described as follows:

BEGINNING at the corner formed by the intersection of the westerly side of Thatford Avenue (60 feet wide), with the northerly side of Newport Street (70 feet wide);

RUNNING THENCE westerly, along the northerly side of Newport Street, a distance of 100.00 feet to a point;

THENCE northerly, parallel with Thatford Avenue, a distance of 60.00 feet to a point;

THENCE westerly, parallel with Newport Street, a distance of 100.17 feet surveyed (100.00 feet Deed) to a point on the easterly side of Rockaway Avenue (variable width);

THENCE northerly, along the easterly side of Rockaway Avenue, a distance of 210.00 feet to a point;

THENCE easterly, parallel with Newport Street, a distance of 100.17 feet surveyed (100.00 feet Deed) to a point;

THENCE southerly, parallel with Rockaway Avenue, a distance of 20.00 feet to a point;

THENCE easterly, parallel with Newport Street, a distance of 100.00 feet to a point on the westerly side of Thatford Avenue;

THENCE southerly, along the westerly side of Thatford Avenue, a distance of 250.00 feet to the point or place of beginning.

EXHIBIT B

DESCRIPTION OF THE FACILITY PERSONALTY

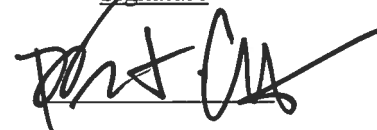
Machinery, equipment and other items of personalty (exclusive of Exempt Materials and Exempt Fixtures), if any, to be acquired as part of the Project Work for installation and use at the Facility Realty.

EXHIBIT C

AUTHORIZED REPRESENTATIVE

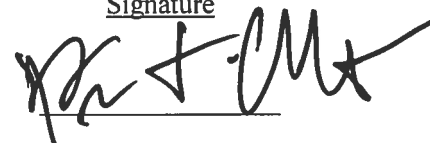
(i) of the Lessee:

<u>Name</u>	<u>Title</u>
Brian T. Coleman	Chief Executive Officer

Signature


(ii) of the Guarantor:

<u>Name</u>	<u>Title</u>
Brian T. Coleman	Chief Executive Officer

Signature


Principals

Lessee:

Name

Greenpoint Manufacturing and Design Center
Local Development Corporation

Brian T. Coleman

Michael Cavagnaro

Title

Sole Member

Chief Executive Officer

Chief Financial Officer

OWNERS OF THE LESSEE

INDIVIDUAL OWNERS	
Name	% Ownership or Control of the Lessee

ENTITY OWNERS	
Name	% Ownership or Control of the Lessee
Greenpoint Manufacturing and Design Center Local Development Corporation, a not-for-profit local development corporation organized under the laws of the state of New York	100%

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

EXHIBIT E

EXHIBIT E

PROJECT COST BUDGET

	NYS Grant Funds	Senior Loan	The Bridge/Mega Loan	The Bridge/Mega Cash	The Bridge Equity	GMDC Equity	NMTC	TOTALS
Acquisition							\$740,252	\$ 740,252
Construction	\$ 1,600,000	\$2,243,784	\$652,193		\$3,103,000		\$ 2,348,548	\$9,947,525
Equipment								\$ -
Fees / Other Soft Costs			\$1,147,807	\$1,400,000	\$752,933	\$ 1,500,000		\$4,800,740
TOTALS	\$ 1,600,000	\$2,243,784	\$1,800,000	\$1,400,000	\$3,855,933	\$ 1,500,000	\$ 3,088,800	\$15,488,517

[FORM OF REQUIRED DISCLOSURE STATEMENT]

The undersigned, an authorized representative of _____, a _____ organized and existing under the laws of the State of _____, DOES HEREBY CERTIFY, REPRESENT AND WARRANT to the New York City Industrial Development Agency (the “Agency”) pursuant to [Section 8.20] [Section 8.9] of that certain Agency Lease Agreement, dated as of _____ 1, 2022, between the Agency and GMDC Brownsville LLC, a limited liability company organized and existing under the laws of the State of Delaware (the “Lease Agreement”) THAT:

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

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

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

2. _____ has been convicted of a misdemeanor related to truthfulness and/or business conduct in the past five (5) years;

3. _____ has been convicted of a felony in the past ten (10) years;

4. _____ has received formal written notice from a federal, state or local governmental agency or body that such Person is currently under investigation for a felony criminal offense; or

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

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

“City” shall mean The City of New York.

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

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

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

“NYCEDC” shall mean New York City Economic Development Corporation, a New York not-for-profit corporation, and any successor thereof.

“Person” shall mean an individual or any Entity.

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

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

[NAME OF CERTIFYING ENTITY]

By: _____
Name:
Title:

**PROJECT COMPLETION CERTIFICATE OF LESSEE AS
REQUIRED BY SECTIONS 3.3(f) AND 8.14(g) OF THE LEASE AGREEMENT**

The undersigned, an Authorized Representative (as defined in the Lease Agreement referred to below) of GMDC Brownsville LLC, a limited liability company organized and existing under the laws of the State of Delaware (the “Lessee”), HEREBY CERTIFIES that this Certificate is being delivered in accordance with the provisions of Section 3.3(f) and 8.14(g) of that certain Agency Lease Agreement, dated as of _____, 2022 (the “Lease Agreement”), between the New York City Industrial Development Agency (the “Agency”) and the Lessee, and FURTHER CERTIFIES THAT (capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in the Lease Agreement):

(i) the Project Work is finished and the Project Improvements have been completed substantially in accordance with the plans and specifications therefor;

(ii) attached hereto is a copy of one of the following (check only one and attach a copy of the indicated document):

certificate of occupancy

(iii) there is no certificate, license, permit, written approval or consent or other document required to permit the occupancy, operation and use of the Facility as the Approved Facility that has not already been obtained or received, except for such certificates, licenses, permits, authorizations, written approvals and consents that will be obtained in the ordinary course of business and the issuance of which are ministerial in nature;

(iv) the Facility is ready for occupancy, use and operation for the Approved Project Operations in accordance with all applicable laws, regulations, ordinances and guidelines;

(v) check as applicable:

all costs for Project Work have been paid, or

all costs for Project Work have been paid except for

amounts not yet due and payable (attach itemized list) and/or

amounts the payments for which are being contested in good faith (attach itemized list with explanations); and

(vi) releases of mechanics’ liens have been obtained from the general contractor and from all contractors and materialmen who supplied work, labor, services, machinery, equipment, materials or supplies in connection with the Project Work, except for releases-of-liens pertinent to (y) amounts not yet due and payable, or (z) any amount the payment of which is being contested in good faith; copies of all such releases of mechanics’ liens are attached hereto.

[ATTACH to this Certificate copies of all such releases of liens.]

Notwithstanding anything herein or elsewhere that may be inferred to the contrary, the undersigned hereby understands and agrees on behalf of the Lessee as follows: (a) the Agency does not waive its right to require delivery of releases-of-liens in connection with the costs of Project Work; (b) the Agency does not waive its right under the Lease Agreement to demand the discharge of mechanics' and materialmens' liens encumbering the Facility Realty, whether by bond or otherwise; and (c) the Certificate shall be deemed incomplete if, in the Agency's sole discretion, the Lessee has unreasonably failed to bond or otherwise discharge any liens in respect of the costs of Project Work when payment for the same is due.

This Certificate is given without prejudice to any rights of the Lessee against third parties existing on the date hereof or which may subsequently come into being and no Person other than the Agency may benefit from this Certificate.

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

GMDC BROWNSVILLE LLC

By: _____
Name:
Title:

[FORM OF SALES TAX AGENT AUTHORIZATION LETTER]

SALES TAX AGENT AUTHORIZATION LETTER

EXPIRATION DATE: MARCH 1, 2027

ELIGIBLE LOCATION:

**Unit 1 in the Condominium known as Bridge Rockaway Condominium,
805 Rockaway Avenue, Brooklyn, New York 11212**

March 30, 2022

TO WHOM IT MAY CONCERN

Re: New York City Industrial Development Agency
(2022 GMDC Brownsville LLC Project)

Ladies and Gentlemen:

The New York City Industrial Development Agency (the “Agency”), by this notice, hereby advises you as follows:

1. Pursuant to a certain Agency and Lease Agreement, dated as of March 1, 2022 (the “Agreement”), between the Agency and GMDC Brownsville LLC, a limited liability company organized and existing under the laws of the State of Delaware (the “Lessee”), the Agency has authorized the Lessee to act as its agent for the in connection with the Project described therein including the Facility Realty located at the Eligible Location described above. Certain capitalized terms used herein and not defined shall have the respective meanings given to such terms in the Agreement.

2. Upon the Lessee’s request, the Agency has appointed Greenpoint Manufacturing and Design Center Local Development Corporation (the “Agent”), pursuant to this Sales Tax Agent Authorization Letter (the “Sales Tax Agent Authorization Letter”) to act as the Agency’s agent for the purpose of effecting purchases exempt from sales or use tax in accordance with the terms, provisions of this Sales Tax Agent Authorization Letter and the Agreement. **The Agent should review the definitions of Eligible Items and Ineligible Items in Exhibit A hereto with respect to the scope of Sales Tax Exemption provided under the Agreement and hereunder.**

3. The effectiveness of the appointment of the Agent as an agent of the Agency is expressly conditioned upon the execution by the Agency of New York State Department of Taxation and Finance Form ST-60 “IDA Appointment of Project or Agent” (“Form ST-60”) to evidence that the Agency has appointed the Agent as its agent (the form of which to be completed by Agent and the Lessee). Pursuant to the exemptions from sales and use taxes available to the Agent under this Sales Tax Agent Authorization Letter, the Agent shall avail itself of such exemptions when purchasing eligible materials and services in connection with the Project and shall not include such taxes in its contract price, bid or reimbursable costs, as the case may be.

4. The Agent acknowledges that the executed Form ST-60 shall not serve as a sales or use tax exemption certificate or document. No agent or project operator may tender a copy of the executed

Form ST-60 to any person required to collect sales tax as a basis to make such purchases exempt from tax. No such person required to collect sales or use taxes may accept the executed Form ST-60 in lieu of collecting any tax required to be collected. THE CIVIL AND CRIMINAL PENALTIES FOR MISUSE OF A COPY OF FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT OR FOR FAILURE TO PAY OR COLLECT TAX SHALL BE AS PROVIDED IN THE TAX LAW. IN ADDITION, THE USE BY AN AGENT, PROJECT OPERATOR, OR OTHER PERSON OR ENTITY OF SUCH FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT SHALL BE DEEMED TO BE, UNDER ARTICLES TWENTY EIGHT AND THIRTY SEVEN OF THE TAX LAW, THE ISSUANCE OF A FALSE OR FRAUDULENT EXEMPTION CERTIFICATE OR DOCUMENT WITH THE INTENT TO EVADE TAX.

5. As agent for the Agency, the Agent agrees that it will present to each seller or vendor a completed and signed **NYSDTF Form ST-123 “IDA Agent or Project Operator Exempt Purchase Certificate”** or such additional or substitute form as is adopted by NYSDTF for use in completing purchases that are exempt from Sales and Use Taxes (“Form ST-123”) for each contract, agreement, invoice, bill or purchase order entered into by the Agent, as agent for the Agency, for the renovation, repair and equipping of the Project. Form ST-123 requires that each seller or vendor accepting Form ST-123 identify the Project on each bill and invoice and indicate on the bill or invoice that the Agency or Agent or Lessee, as Project operator of the Agency, was the purchaser. The Agent shall complete Form ST-123 as follows: (i) the “Project Information” section of Form ST-123 should be completed using the name and address of the Project as indicated on the Form ST-60 used to appoint the Agent; (ii) the date that the Agent was appointed as an agent should be completed using the date of the Agent’s Sales Tax Agent Authorization Letter; and (iii) the “Exempt purchases” section of Form ST-123 should be completed by marking “X” in box “A” only.

6. The Agent agrees to comply with the terms and conditions of the Agreement. The Agent must retain for at least six (6) years from the date of expiration of its Contract copies of (a) its contract with the Lessee to provide services in connection with the Project, (b) all contracts, agreements, invoices, bills or purchases entered into or made by such Agent using the Letter of Authorization for Sales Tax Exemption, and (c) the executed Form ST-60 appointing the Agent as an agent of the Agency, and shall make such records available to the Agency upon reasonable notice. This provision shall survive the expiration or termination of this Sales Tax Agent Authorization Letter.

7. In order to assist the Lessee in complying with its obligation to file New York State Department of Taxation and Finance Form ST-340 “Annual Report of Sales and Use Tax Exemptions Claimed by Project Operator of Industrial Development Agency/Authority” (“Form ST-340”), the Agent covenants and agrees that it shall file semi-annually with the Lessee (no later than January 15th and July 15th of each calendar year in which it has claimed sales and use tax exemptions in connection with the Project) a written statement of all sales and use tax exemptions claimed by such Agent for the preceding six-month period (ending on June 30th or December 31st, as applicable) in connection with the Project and the Facility by completing and submitting to the Lessee the **Sales Tax Registry** attached hereto as **Exhibit B**. If the Agent fails to comply with the foregoing requirement, the Agent shall immediately cease to be the agent for the Agency in connection with the Project (such agency relationship being deemed to be immediately revoked) without any further action of the parties, the Agent shall be deemed to have automatically lost its authority to make purchases as agent for the Agency, and shall desist immediately from all such activity.

8. The Agent agrees that if it fails to comply with the requirements for sales and use tax exemptions, as described in this Sales Tax Agent Authorization Letter, it shall pay any and all applicable Sales Tax Savings and any interest and penalties thereon. This provision shall survive the expiration or termination of this Sales Tax Agent Authorization Letter.

9. **Special Provisions Relating to State Sales Tax Savings.**

(b) The Agent covenants and agrees to comply, and to cause each of its contractors, subcontractors, persons or entities to comply, with the requirements of General Municipal Law Sections 875(1) and (3) (the “Special Provisions”), as such provisions may be amended from time to time. In the event of a conflict between the other provisions of this Sales Tax Agent Authorization Letter or the Agreement and the Special Provisions, the Special Provisions shall control.

(c) The Agent acknowledges and agrees that pursuant to General Municipal Law Section 875(3) the Agency shall have the right to recover, recapture, receive, or otherwise obtain from the Agent State Sales Tax Savings taken or purported to be taken by the Agent or any other person or entity acting on behalf of the Agent to which Agent or the Lessee is not entitled or which are in excess of the Maximum Sales Tax Exemption Amount or which are for property or services not authorized or taken in cases where the Lessee, any Agent or any other person or entity acting on behalf of the Lessee or the Agent failed to comply with a material term or condition to use property or services in the manner required by this Sales Tax Agent Authorization Letter or the Agreement. The Agent, and any other person or entity acting on behalf of the Agent, shall cooperate with the Agency in its efforts to recover, recapture, receive, or otherwise obtain such State Sales Tax Savings and shall promptly pay over any such amounts to the Agency that it requests. The failure to pay over such amounts to the Agency shall be grounds for the Commissioner of the New York State Department of Taxation and Finance (the “Commissioner”) to assess and determine State Sales and Use Taxes due from the Lessee and/or the Agent under Article Twenty-Eight of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

(d) The Agent is hereby notified (provided that such notification is not a covenant or obligation and does not create a duty on the part of the Agency to the Agent, the Lessee or any other party) that the Agency is subject to certain requirements under General Municipal Law, including the following:

(i) In accordance with General Municipal Law Section 875(3)(c), if the Agency recovers, recaptures, receives, or otherwise obtains, any amount of State Sales Tax Savings from the Agent, the Agency shall, within thirty days of coming into possession of such amount, remit it to the Commissioner, together with such information and report that the Commissioner deems necessary to administer payment over of such amount. The Agency shall join the Commissioner as a party in any action or proceeding that the Agency commences to recover, recapture, obtain, or otherwise seek the return of, State Sales Tax Savings from the Agent, the Lessee or other person or entity.

(ii) In accordance with General Municipal Law Section 875(3)(d), the Agency shall prepare an annual compliance report detailing its terms and conditions described in General Municipal Law Section 875(3)(a) and its activities and efforts to recover, recapture, receive, or otherwise obtain State Sales Tax Savings described in General Municipal Law Section 875(3)(b), together with such other information as the Commissioner and the New York State Commissioner of Economic Development may require. The report shall be filed with the Commissioner, the Director of the Division of the Budget of The State of New York, the New York State Commissioner of Economic Development, the New York State Comptroller, the Council of the City of New York, and may be included with the Annual financial statement required by General Municipal Law Section 859(1)(b). Such report required by this subdivision shall be filed regardless of whether the Agency is required to file such financial statement described by General Municipal Law Section 859(1)(b). The failure to file or substantially complete the report required by General Municipal Law Section 875(3)(b) shall be deemed to be the failure to file or substantially complete the statement required by such General Municipal Law

Section 859(1)(b), and the consequences shall be the same as provided in General Municipal Law Section 859(1)(e).

(e) The foregoing requirements shall apply to any amounts of State Sales Tax Savings that the Agency recovers, recaptures, receives, or otherwise obtains, regardless of whether the Agency or the Lessee or other person or entity acting on behalf of the Lessee characterizes such benefits recovered, recaptured, received, or otherwise obtained, as a penalty or liquidated or contract damages or otherwise. The foregoing requirements shall also apply to any interest or penalty that the Agency imposes on any such amounts or that are imposed on such amounts by operation of law or by judicial order or otherwise. Any such amounts or payments that the Agency recovers, recaptures, receives, or otherwise obtains, together with any interest or penalties thereon, shall be deemed to be State Sales and Use Taxes and the Agency shall receive any such amounts or payments, whether as a result of court action or otherwise, as trustee for and on account of the State.

10. Subject to the provisions of Section 9 hereof, in the event that the Agent shall utilize the Sales Tax Exemption in violation of the provisions of the Agreement or this Sales Tax Agent Authorization Letter, the Agent shall promptly deliver notice of same to the Lessee and the Agency, and the Agent shall, upon demand by the Agency, pay to or at the direction of the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the rate of twelve percent (12%) per annum compounded daily from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was availed of by the Agent.

11. Upon request by the Agency with reasonable notice to the Agent, the Agent shall make available at reasonable times to the Agency all such books, records, contracts, agreements, invoices, bills or purchase orders of the Agent, and require all appropriate officers and employees of the Agent to respond to reasonable inquiries by the Agency as shall be necessary (y) to indicate in reasonable detail those costs for which the Agent shall have utilized the Sales Tax Exemption and the dates and amounts so utilized, and (z) to permit the Agency to determine any amounts owed by the Agent under Section 10.

12. The Agent represents and warrants that, except as otherwise disclosed to the Agency, none of the Agent, the Principals of the Agent, or any Person that directly or indirectly Controls, is Controlled by, or is under common Control with the Agent:

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

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

(c) has been convicted of a felony in the past ten (10) years;

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

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

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

“City” shall mean The City of New York.

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

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

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

“Person” shall mean an individual or any Entity.

13. By execution of this Sales Tax Agent Authorization Letter, the Agent agrees to accept the terms hereof and represent and warrant to the Agency that the use of this Sales Tax Agent Authorization Letter by the Agent is strictly for the purposes stated herein.

14. The Agent acknowledges that this Sales Tax Agent Authorization Letter will terminate on the date (the “Termination Date”) that is the earlier of (i) the Expiration Date referred to above, and (ii) the expiration or termination of the Agreement. Upon the Termination Date, the agency relationship between the Agency and the Agent shall terminate.

The signature of a representative of the Agent where indicated below will indicate that the Agent accepted the terms hereof.

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Name:
Title:

ACCEPTED AND AGREED TO BY:

**GREENPOINT MANUFACTURING
AND DESIGN CENTER LOCAL
DEVELOPMENT CORPORATION**

By: _____
Name:
Title:

Exhibit A

To

SALES TAX AGENT AUTHORIZATION LETTER

Set forth below is a description of items that are eligible for the Sales Tax Exemption

Eligible Items shall mean the following items of personal property and services, but excluding any Ineligible Items, with respect to which the Agent shall be entitled to claim a Sales Tax Exemption in connection with the Project:

- (i) purchases of materials, goods, personal property and fixtures and supplies that will be incorporated into and made an integral component part of the Facility Realty;
- (ii) purchases or leases of any item of materials, goods, machinery, equipment, furniture, furnishings, trade fixtures and other tangible personal property having a useful life of one year or more;
- (iii) with respect to the eligible items identified in (ii) above: purchases of freight, installation, maintenance and repair services required in connection with the shipping, installation, use, maintenance or repair of such items; provided that maintenance shall mean the replacement of parts or the making of repairs;
- (iv) purchases of materials, goods and supplies that are to be used and substantially consumed in the course of construction or renovation of the Facility Realty (but excluding fuel, materials or substances that are consumed in the course of operating machinery and equipment or parts containing fuel, materials or substances where such parts must be replaced whenever the substance is consumed); and
- (v) leases of machinery and equipment solely for temporary use in connection with the construction or renovation of the Facility Realty.

Ineligible Items shall mean the following items of personal property and services with respect to which the Agent shall not be entitled to claim a Sales Tax Exemption in connection with the Project:

- (i) vehicles of any sort, including watercraft and rolling stock;
- (ii) personalty having a useful life of one year or less;
- (iii) any cost of utilities, cleaning services or supplies or other ordinary operating costs;
- (iv) fine art and other similar decorative items;
- (v) plants, whether potted or landscaped;
- (vi) ordinary office supplies such as pencils, paper clips and paper;
- (vii) any materials or substances that are consumed in the operation of machinery;

- (viii) equipment or parts containing materials or substances where such parts must be replaced whenever the substance is consumed; and
- (ix) maintenance of the type as shall constitute janitorial services.

Exhibit B

To

**SALES TAX AGENT AUTHORIZATION LETTER
SALES TAX REGISTRY**

Please Complete: **REPORTED PERIOD:** SEMI-ANNUAL PERIOD FROM [JANUARY 1][JULY 1], 202__ to [JUNE 30][DECEMBER 31], 202__

Description of Item (incl. Serial #,if applicable)	Location of Item	Dollar Amount	Vendor Description	Date of Payment	Purchase order or invoice number	Sales Tax Savings

TOTAL SALES TAX SAVINGS REALIZED DURING THE SEMI-ANNUAL REPORTED PERIOD:	
---	--

Certification: I, the undersigned, an authorized officer or principal owner of the company identified below, hereby certify to the best of my knowledge and belief that all information contained in this report is true and complete. The information reported in this form includes all Sales Tax Savings realized by the company identified below and its principals, affiliates, tenants, subtenants, contractors and subcontractors. This form and information provided pursuant hereto may be disclosed to the New York City Industrial Development Agency (“NYCIDA”) and New York City Economic Development Corporation (“NYCEDC”), and may be disclosed by NYCIDA and/or NYCEDC in connection with the administration of the programs by NYCIDA and/or NYCEDC; and, without limiting the foregoing, such information may be included in reports or disclosure required by law.

Name of Agent: _____

Signature By: _____

Name (print): _____

Title: _____

Date: _____

EXHIBIT I

Sales Tax Registry

Please Complete: **REPORTED PERIOD:** ANNUAL PERIOD FROM JULY 1, 201__ to JUNE 30, 201__

Description of Item (incl. Serial #,if applicable)	Location of Item	Dollar Amount	Vendor Description	Date of Payment	Purchase order or invoice number	Sales Tax Savings
SEMI-ANNUAL PERIOD FROM JULY 1, [] to DECEMBER 31, []						
TOTAL SALES TAX SAVINGS REALIZED DURING THE SEMI-ANNUAL PERIOD						
FROM JULY 1, [] to DECEMBER 31, []:						
SEMI-ANNUAL PERIOD FROM JANUARY 1, [] to JUNE 30, []						
TOTAL SALES TAX SAVINGS REALIZED DURING THE SEMI-ANNUAL PERIOD						
FROM JANUARY 1, [] to JUNE 30, []:						
TOTAL SALES TAX SAVINGS REALIZED DURING THE ANNUAL REPORTED PERIOD:						

Certification: I, the undersigned, an authorized officer or principal owner of the Lessee, hereby certify to the best of my knowledge and belief that all information contained in this report is true and complete. The information reported in this form includes all Sales Tax Savings realized by the Lessee below and its principals, affiliates, tenants, subtenants, contractors, subcontractors and any other person or entity pursuant to the LETTER OF AUTHORIZATION FOR SALES TAX EXEMPTION issued to the Lessee, and any SALES TAX AGENT AUTHORIZATION LETTER issued to any other person or entity at the direction of the Lessee, by New York City Industrial Development Agency. This form and information provided pursuant hereto may be disclosed to the New York City Economic Development Corporation ("NYCEDC"), and may be disclosed by NYCEDC in connection with the administration of the programs by NYCEDC; and, without limiting the foregoing, such information may be included in reports or disclosure required by law.

Lessee Name: _____

Signature By: _____

Name (print): _____

Title: _____

Date: _____

EXHIBIT J

PROJECT FINANCE PLAN

The plan for financing the cost of the Project Work, which the Lessee estimates to be approximately \$15,488,517.00, from the following sources:

(i) a building loan in the principal amount of \$7,225,653.00 be made by the Mortgagee to the Lessee (the "Building Loan") on to the Commencement Date, and to be evidenced by certain mortgage notes (as the same may be amended or supplemented, collectively, the "Building Loan Note") and in the principal amount of the Building Loan, and to be secured by a second mortgage on the Facility Realty pursuant to a certain Building Loan Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated the Commencement Date (as the same may be amended or supplemented, the "Second Mortgage") from the Lessee and the Agency to the Second Mortgagee;

(ii) a project loan in the principal amount of \$3,594,347.00 to be made by the Mortgagee to the Lessee (the "Project Loan") on the Commencement Date, and to be evidenced by certain mortgage notes (as the same may be amended or supplemented, collectively, the "Project Loan Note") dated the Commencement Date and in the principal amount of the Project Loan, and to be secured by a third mortgage on the Facility Realty pursuant to a certain Project Loan Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated the Commencement Date (as the same may be amended or supplemented, the "Project Loan Mortgage") from the Lessee and the Agency to the First Mortgagee; and

(iii) equity from lessee for the balance of the cost of the Project Work, which equity shall ultimately be funded from contributions from affiliates of The Bridge Inc. and a capital contribution from Lessee's member.

EXHIBIT K

GMDC BROWNSVILLE LLC FACILITY TENANT – ANNUAL CERTIFICATE

I, _____, am an authorized officer of GMDC Brownsville, LLC and I certify as to the truth of the responses provided herein.

In the space below (or as separate attachments) for the preceding twelve (12) month period, please describe how the Facility Realty has been used in accordance with Approved Project Operations and provide the following: (i) a Facility Tenant rent roll with the following information: (A) the NAICS code and Industry description for the listed Facility Tenants and the related size standard; (B) the rents charged to the Facility Tenants for each portion of the tenanted space; (C) the square footage occupied by each Facility Tenant; and (D) the number of full-time and part-time employees employed; (ii) a copy of the most recent Fair Market Value appraisal as defined herein; and (iii) the attached chart listing the tenant occupancy and rent/vacancy roll at the Facility.

Unit #	Tenant Name	Total Square Feet (occupied or vacant)	Lease Expiration Date	Annual Lease Rent	Number of Full-Time (FT) or Part Time (PT) Employees	NAICS Code	NAICS Size Standards in Number of Employees
Total							

Name: _____

Title: _____

Date: _____

FORM OF LW AGREEMENT

LIVING WAGE AGREEMENT

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

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

“Agency” means New York City Industrial Development Agency, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having its principal office at One Liberty Plaza, New York, New York 10006.

“Affiliate” means, with respect to a given Person, any other Person that directly or indirectly through one or more intermediaries Controls, is Controlled by, or is under common Control with such given Person.

“Asserted Cure” has the meaning specified in paragraph 10(a).

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

“City” means The City of New York.

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

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

“Control” or “Controls”, including the related terms “Controlled by” and “under common Control with”, means the power to direct the management and policies of a Person (a) through the ownership, directly or indirectly, of not less than a majority of its voting equity, (b) through the right to designate or elect not less than a majority of the members of its board of directors, board of managers, board of trustees or other governing body, or (c) by contract or otherwise.

“Covered Counterparty” means a Covered Employer whose Specified Contract is directly with Obligor or an Affiliate of Obligor to lease, occupy, operate or perform work at the Obligor Facility.

“Covered Employer” means any of the following Persons: (a) Obligor, (b) a tenant, subtenant, leaseholder or subleaseholder of Obligor that leases any portion of the Obligor Facility (or an Affiliate of any such tenant, subtenant, leaseholder or subleaseholder if such Affiliate has one or more direct Site Employees), (c) a Concessionaire that operates on any portion of the

Obligor Facility, and (d) a Person that contracts or subcontracts with any Covered Employer described in clauses (a), (b) or (c) above to perform work for a period of more than ninety days on any portion of the Obligor Facility, including temporary services or staffing agencies, food service contractors, and other on-site service contractors; provided, however, that the term “Covered Employer” shall not include (i) a Person of the type described in Section 6-134(d)(2), (3), (4) or (5) of the New York City Administrative Code, (ii) a Person that has annual consolidated gross revenues that are less than the Small Business Cap unless the revenues of the Person are included in the consolidated gross revenues of a Person having annual consolidated gross revenues that are more than the Small Business Cap, in each case calculated based on the fiscal year preceding the fiscal year in which the determination is being made, and in each case calculated in accordance with generally accepted accounting principles, (iii) any otherwise covered Person operating on any portion of the Obligor Facility if residential units comprise more than 75% of the total Facility area and all of the residential units are subject to rent regulation, (iv) any otherwise covered Person that the Agency has determined (in its sole and absolute discretion) in writing to be exempt on the basis that it works significantly with a Qualified Workforce Program, (v) a Person whose Site Employees all are paid wages determined pursuant to a collective bargaining or labor agreement, or (vi) a Person exempted by a Deputy Mayor of The City of New York in accordance with the Mayor’s Executive Order No. 7 dated September 30, 2014.

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

“Facility” means the land and real property improvements located at 805 Rockaway Avenue, Brooklyn, New York 11212.

“Lessee” means GMDC Brownsville LLC, a limited liability company organized and existing under the laws of the State of Delaware, having its principal office at 1155 Manhattan Avenue, Brooklyn, New York 11222, or its permitted successors or assigns as Lessee under the Project Agreement.

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

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

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

“LW Law” means the Fair Wages for New Yorkers Act, constituting Section 6-134 of the

New York City Administrative Code, as amended, supplemented or otherwise modified from time to time, and all rules and regulations promulgated thereunder.

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

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

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

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

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

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

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

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

“Owed Monies” means, as the context shall require, either (a) the total deficiency of LW required to be paid by Obligor in accordance with this Agreement to its direct Site Employee(s) after taking into account the wages actually paid (which shall be credited towards the “living wage rate” component of the LW), and the monetary value of health benefits actually provided (which shall be credited towards the “health benefits supplement rate” component of the LW), to such direct Site Employee(s), all as calculated on a per pay period basis; or (b) if Obligor failed to obtain a LW Agreement from a Covered Counterparty as required under paragraph 5 below, the total deficiency of LW that would have been required to be paid under such Covered Counterparty’s LW Agreement to its direct Site Employee(s) after taking into account the wages actually paid (which shall be credited towards the “living wage rate” component of the LW), and the monetary value of health benefits actually provided (which shall be credited towards the “health benefits supplement rate” component of the LW), to such direct Site Employee(s), all as calculated on a per pay period basis, during the period commencing on the LW Agreement Delivery Date applicable to such Covered Counterparty and ending immediately prior to the execution and delivery by such Covered Counterparty of its LW Agreement (if applicable).

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

“Pre-Existing Covered Counterparty” has the meaning specified in paragraph 5.

“Pre-Existing Specified Contract” has the meaning specified in paragraph 5.

“Project Agreement” means that certain Agency Lease Agreement, dated as of March 1, 2022, between the Agency and the Lessee (as amended, restated, supplemented or otherwise modified from time to time), pursuant to which Lessee has or will receive financial assistance from the Agency.

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

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

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

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

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

4. Commencing on the Operational Date and thereafter during the remainder of the LW Term, if and for so long as Obligor is a Covered Employer, Obligor shall not take any adverse employment action against any Site Employee for reporting or asserting a violation of this Agreement.
5. During the LW Term, Obligor shall cause each Covered Counterparty to execute an LW Agreement on or prior to the LW Agreement Delivery Date applicable to such Covered Counterparty; provided that Obligor shall only be required to use commercially reasonable efforts (without any obligation to commence any action or proceedings) to obtain an LW Agreement from a Covered Counterparty whose Specified Contract with Obligor was entered into prior to the date hereof (a "Pre-Existing Covered Counterparty" and a "Pre-Existing Specified Contract"). Prior to the renewal or extension of any Pre-Existing Specified Contract (or prior to entering into a new Specified Contract with a Pre-Existing Covered Counterparty), Obligor shall cause or otherwise require the Pre-Existing Covered Counterparty to execute an LW Agreement, provided that the foregoing shall not preclude Obligor from renewing or extending a Pre-Existing Specified Contract pursuant to any renewal or extension options granted to the Pre-Existing Covered Counterparty in the Pre-Existing Specified Contract as such option exists as of the date hereof. Obligor shall deliver a copy of each Covered Counterparty's LW Agreement to the Agency, the DCA and the Comptroller at the notice address specified in paragraph 12 below and promptly upon written request. Obligor shall retain copies of each Covered Counterparty's LW Agreement until six (6) years after the expiration or earlier termination of such Covered Counterparty's Specified Contract.
6. Commencing on the Operational Date and thereafter during the remainder of the LW Term, in the event that an individual with managerial authority at Obligor receives a written complaint from any Site Employee (or such individual otherwise obtains actual knowledge) that any Site Employee has been paid less than an LW, Obligor shall deliver written notice to the Agency, the DCA and the Comptroller within 30 days thereof.
7. Obligor hereby acknowledges and agrees that the Agency, the City, the DCA and the Comptroller are each intended to be direct beneficiaries of the terms and provisions of this Agreement. Obligor hereby acknowledges and agrees that the DCA, the Comptroller and the Agency shall each have the authority and power to enforce any and all provisions and remedies under this Agreement in accordance with paragraph 10 below. Obligor hereby agrees that the DCA, the Comptroller and the Agency may, as their sole and exclusive remedy for any violation of Obligor's obligations under this Agreement, bring an action for damages (but not in excess of the amounts set forth in paragraph 10 below), injunctive relief or specific performance or any other non-monetary action at law or in equity, in each case subject to the provisions of paragraph 10 below, as may be necessary or desirable to enforce the performance or observance of any obligations, agreements or covenants of Obligor under this Agreement. The agreements and acknowledgements of Obligor set forth in this Agreement may not be amended, modified or rescinded by Obligor without the prior written consent of the Agency or the DCA.
8. No later than 30 days after Obligor's receipt of a written request from the Agency, the DCA and/or the Comptroller, Obligor shall provide to the Agency, the DCA and the Comptroller (a) a written list of all Covered Counterparties, together with the LW Agreements of such Covered Counterparties. From and after the Operational Date, no later than 30 days after Obligor's receipt of a written request from the Agency, the DCA and/or the Comptroller, Obligor shall provide to the Agency, the DCA and the Comptroller (b) a certification stating that all of the direct Site Employees of Obligor are paid no less than an LW and stating that Obligor is in compliance with this Agreement in all material respects, (c) certified payroll records in respect of the direct Site Employees of Obligor, and/or (d) any other documents or information reasonably related to the determination of whether Obligor is in compliance with its obligations under this Agreement.

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

10. Violations and Remedies.

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

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

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

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

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

Cure (subject to the judicial decision) no later than 30 days after the LW Violation Final Determination.

- (b) For the first LW Violation Final Determination imposed on Obligor in respect of any direct Site Employees of Obligor, at the direction of the Agency or the DCA (but not both), (i) Obligor shall pay the Owed Monies and Owed Interest in respect of such direct Site Employees of Obligor to such direct Site Employees; and/or (ii) in the case of a violation that does not result in monetary damages owed by Obligor, Obligor shall cure, or cause the cure of, such non-monetary violation
- (c) For the second and any subsequent LW Violation Final Determinations imposed on Obligor in respect of any direct Site Employees of Obligor, at the direction of the Agency or the DCA (but not both), (i) Obligor shall pay the Owed Monies and Owed Interest in respect of such direct Site Employees of Obligor to such direct Site Employees, and Obligor shall pay fifty percent (50%) of the total amount of such Owed Monies and Owed Interest to the DCA as an administrative fee; and/or (ii) in the case of a violation that does not result in monetary damages owed by Obligor, Obligor shall cure, or cause the cure of, such non-monetary violation.
- (d) For the second and any subsequent LW Violation Final Determinations imposed on Obligor in respect of any direct Site Employees of Obligor, if the aggregate amount of Owed Monies and Owed Interest paid or payable by Obligor in respect of its direct Site Employees is in excess of the LW Violation Threshold for all past and present LW Violation Final Determinations imposed on Obligor, then in lieu of the remedies specified in subparagraph (c) above and at the direction of the Agency or the DCA (but not both), Obligor shall pay (i) two hundred percent (200%) of the Owed Monies and Owed Interest in respect of the present LW Violation Final Determination to the affected direct Site Employees of Obligor, and (ii) fifty percent (50%) of the total amount of such Owed Monies and Owed Interest to the DCA as an administrative fee.
- (e) If Obligor fails to obtain an LW Agreement from its Covered Counterparty in violation of paragraph 5 above, then at the discretion of the Agency or the DCA (but not both), Obligor shall be responsible for payment of the Owed Monies, Owed Interest and other payments described in subparagraphs (b), (c) and (d) above (as applicable) as if the direct Site Employees of such Covered Counterparty were the direct Site Employees of Obligor.
- (f) Obligor shall not renew the Specified Contract of any specific Covered Counterparty or enter into a new Specified Contract with any specific Covered Counterparty if both (i) the aggregate amount of Owed Monies and Owed Interest paid or payable by such Covered Counterparty in respect of its direct Site Employees for all past and present LW Violation Final Determinations (or that would have been payable had such Covered Counterparty entered into an LW Agreement) is in excess of the LW Violation Threshold and (ii) two or more LW Violation Final Determinations against such Covered Counterparty (or in respect of the direct Site Employees of such Covered Counterparty) occurred within the last 6 years of the term of the applicable Specified Contract (or if the term thereof is less than 6 years, then during the term thereof); provided that the foregoing shall not preclude Obligor from extending or renewing a Specified Contract pursuant to any renewal or extension options granted to the Covered Counterparty in the Specified Contract as in effect as of the LW Agreement Delivery Date applicable to such Covered Counterparty.

- (g) It is acknowledged and agreed that (i) the sole monetary damages that Obligor may be subject to for a violation of this Agreement are as set forth in this paragraph 10, and (ii) in no event will the Specified Contract between Obligor and a given Covered Counterparty be permitted to be terminated or rescinded by the Agency, the DCA or the Comptroller by virtue of violations by Obligor or a Covered Counterparty.
11. Obligor acknowledges that the terms and conditions of this Agreement are intended to implement the Mayor's Executive Order No. 7 dated September 30, 2014.
12. All notices under this Agreement shall be in writing and shall be delivered by (a) return receipt requested or registered or certified United States mail, postage prepaid, (b) a nationally recognized overnight delivery service for overnight delivery, charges prepaid, or (c) hand delivery, addressed as follows:
- (a) If to Obligor, to [Obligor's Name], [Street Address], [City], [State], [Zip Code], Attention: [Contact Person].
 - (b) If to the Agency, to New York City Industrial Development Agency, One Liberty Plaza, New York, NY, 10006, Attention: General Counsel, with a copy to New York City Industrial Development Agency, One Liberty Plaza, New York, NY, 10006, Attention: Executive Director.
 - (c) If to the DCA, to Department of Consumer Affairs of The City of New York, 42 Broadway, New York, NY, 10004, Attention: Living Wage Division.
 - (d) If to the Comptroller, to Office of the Comptroller of The City of New York, One Centre Street, New York, NY 10007, Attention: Chief, Bureau of Labor Law.
13. This Agreement shall be governed by, and shall be construed and enforced in accordance with, the laws of the State of New York.
14. Obligor hereby irrevocably and unconditionally (a) agrees that any suit, action or other legal proceeding arising out of this Agreement may be brought in the courts of record of the State of New York in New York County or the United States District Court for the Southern District of New York; (b) consents to the jurisdiction of each such court in any such suit, action or proceeding; (c) waives any objection which it may have to the venue of any such suit, action or proceeding in such courts; and (d) waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of forum non conveniens, (ii) to remove to any federal court other than the United States District Court for the Southern District of New York, and (iii) to move for a change of venue to a New York State Court outside New York County.
15. Notwithstanding any other provision of this Agreement, in no event shall the partners, members, counsel, directors, shareholders or employees of Obligor have any personal obligation or liability for any of the terms, covenants, agreements, undertakings, representations or warranties of Obligor contained in this Agreement.

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

[_____]

By: _____
Name:
Title:

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

LIVING WAGE AGREEMENT

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

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

“Agency” means New York City Industrial Development Agency, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having its principal office at One Liberty Plaza, New York, New York 10006.

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

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

“City” means The City of New York.

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

“Covered Employer” means Obligor; provided, however, that the term “Covered Employer” shall not include (i) a Person of the type described in Section 6-134(d)(2), (3), (4) or (5) of the New York City Administrative Code, (ii) a Person that has annual consolidated gross revenues that are less than the Small Business Cap unless the revenues of the Person are included in the consolidated gross revenues of a Person having annual consolidated gross revenues that are more than the Small Business Cap, in each case calculated based on the fiscal year preceding the fiscal year in which the determination is being made, and in each calculated in accordance with generally accepted accounting principles, (iii) any otherwise covered Person operating on any portion of the Obligor Facility if residential units comprise more than 75% of the total Facility area and all of the residential units are subject to rent regulation, (iv) any otherwise covered Person that the Agency has determined (in its sole and absolute discretion) in writing to be exempt on the basis that it works significantly with a Qualified Workforce Program, (v) a Person whose Site Employees all are paid wages determined pursuant to a collective bargaining or labor agreement, (vi) if Lessee is a “covered developer” under and as defined in the Prevailing Wage Law, a Person that is a “building services contractor” (as defined in the LW Law) so long as such Person is paying its “building service employees” (as defined in the Prevailing Wage Law) no less than the applicable “prevailing wage” (as defined in the Prevailing Wage Law), or (vii) a Person exempted by a Deputy Mayor of The City of New York in accordance with the Mayor’s Executive Order No. 7 dated September 30, 2014.

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

“Facility” means the land and real property improvements located at 805 Rockaway Avenue, Brooklyn, New York 11212.

“Lessee” means GMDC Brownsville LLC, a limited liability company organized and existing under the laws of the State of Delaware, having its principal office at 1155 Manhattan Avenue, Brooklyn, New York 11222, or its permitted successors or assigns as Lessee under the Project Agreement.

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

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

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

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

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

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

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

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

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

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

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

“health benefits supplement rate” component of the LW), to such direct Site Employee(s), all as calculated on a per pay period basis.

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

“Project Agreement” means that certain Agency Lease Agreement, dated as of _____ 1, 2022, between the Agency and the Lessee (as amended, restated, supplemented or otherwise modified from time to time), pursuant to which Lessee has or will receive financial assistance from the Agency.

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

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

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

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

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

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

- (ii) Provide written notice to the Agency, the DCA and the Comptroller indicating that it is electing to contest the Asserted LW Violation and/or the Asserted Cure, which notice shall be delivered no later than 30 days after its receipt of the LW Violation Notice. Obligor shall bear the burdens of proof and persuasion and shall provide evidence to the DCA no later than 45 days after its receipt of the LW Violation Notice. The DCA shall then, on behalf of the City, the Agency and the Comptroller, make a good faith determination of whether the Asserted LW Violation exists based on the evidence provided by Obligor and deliver to Obligor a written statement of such determination in reasonable detail, which shall include a confirmation or modification of the Asserted LW Violation and Asserted Cure (such statement, a "LW Violation Initial Determination"). Upon Obligor's receipt of the LW Violation Initial Determination, Obligor may either:
- (1) Accept the LW Violation Initial Determination and shall perform the Asserted Cure specified in the LW Violation Initial Determination no later than 30 days after its receipt of the LW Violation Initial Determination (after such 30 day period has lapsed, but subject to clause (2) below, the LW Violation Initial Determination shall be deemed to be a "LW Violation Final Determination"), or
 - (2) Contest the LW Violation Initial Determination by filing in a court of competent jurisdiction or for an administrative hearing no later than 30 days after its receipt of the LW Violation Initial Determination, in which case, Obligor's obligation to perform the Asserted Cure shall be stayed pending resolution of the action. If no filing in a court of competent jurisdiction or for an administrative hearing is made to contest the LW Violation Initial Determination within 30 days after Obligor's receipt thereof, then the LW Violation Initial Determination shall be deemed to be a "LW Violation Final Determination". If such a filing is made, then a "LW Violation Final Determination" will be deemed to exist when the matter has been finally adjudicated. Obligor shall perform the Asserted Cure (subject to the judicial decision) no later than 30 days after the LW Violation Final Determination.
- (b) For the first LW Violation Final Determination imposed on Obligor in respect of any direct Site Employees of Obligor, at the direction of the Agency or the DCA (but not both), (i) Obligor shall pay the Owed Monies and Owed Interest in respect of such direct Site Employees of Obligor to such direct Site Employees; and/or (ii) in the case of a violation that does not result in monetary damages owed by Obligor, Obligor shall cure, or cause the cure of, such non-monetary violation.
- (c) For the second and any subsequent LW Violation Final Determinations imposed on Obligor in respect of any direct Site Employees of Obligor, at the direction of the Agency or the DCA (but not both), (i) Obligor shall pay the Owed Monies and Owed Interest in respect of such direct Site Employees of Obligor to such direct Site Employees, and Obligor shall pay fifty percent (50%) of the total amount of such Owed Monies and Owed Interest to the DCA as an administrative fee, and/or (ii) in the case of a violation that does not result in monetary damages owed by Obligor, Obligor shall cure, or cause the cure of, such non-monetary violation.
- (d) For the second and any subsequent LW Violation Final Determinations imposed on Obligor in respect of any direct Site Employees of Obligor, if the aggregate amount of

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

- (e) It is acknowledged and agreed that the sole monetary damages that Obligor may be subject to for a violation of this Agreement are as set forth in this paragraph 9.
10. Obligor acknowledges that the terms and conditions of this Agreement are intended to implement the Mayor's Executive Order No. 7 dated September 30, 2014.
11. All notices under this Agreement shall be in writing and shall be delivered by (a) return receipt requested or registered or certified United States mail, postage prepaid, (b) a nationally recognized overnight delivery service for overnight delivery, charges prepaid, or (c) hand delivery, addressed as follows:
- (a) If to Obligor, to [Obligor's Name], [Street Address], [City], [State], [Zip Code], Attention: [Contact Person].
 - (b) If to the Agency, to New York City Industrial Development Agency, One Liberty Plaza, New York, NY, 10006, Attention: General Counsel, with a copy to New York City Industrial Development Agency, One Liberty Plaza, New York, NY, 10006, Attention: Executive Director.
 - (c) If to the DCA, to Department of Consumer Affairs of The City of New York, 42 Broadway, New York, NY, 10004, Attention: Living Wage Division.
 - (d) If to the Comptroller, to Office of the Comptroller of The City of New York, One Centre Street, New York, NY 10007, Attention: Chief, Bureau of Labor Law.
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:

M/WBE PARTICIPATION PLAN

M/WBE PARTICIPATION GOAL [_____]%
 %

MWBE/DBE Participation Plan 3/16/2022

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

I affirm that the following statements are true and accurate:

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

NYCEDC Approval : Brenda Lau
 Signature of Authorized Representative/Preparer

Paris Martin
 Signature of NYCEDC Opportunity M/W/DBE Representative

Brenda Lau, Assistant Project Manager
 Name & Title

Paris Martin Senior Program Manager
 Name & Title

03/15/22
 Date

03/16/2022
 Date

Cells in orange are filled in automatically

Project Information		Project Calculations	
Contract #		Project Value/Project Award Amount	\$5,188,000.00
Project Name	GMDC Brownsville Industrial Center	Total Amount Subcontracted	\$0.00
Business Name	Mega Contracting Group LLC	Total Amount to Count toward MWBE/DBE Goal	\$1,037,600.00
Email	jacobs@brownsville.gov	Projected MWBE/DBE Goal Attainment (based on Allocated Costs)	0.00%
Phone	718-383-3935	Projected MWBE/DBE Goal Attainment	20.00%

Contractor/Consultant Award Information						
Contractor/Consultant	MWBE/DBE? ("Y" or "N")	Award Amount	Services to be Provided	Contracting Party <small>Please indicate the name of the party subcontracting for the services</small>	Is Contracting Party MWBE/DBE? ("Y" or "N")	Amount to Count
Mega Contracting Group LLC	N	\$1,183,000.00	Please note that the GC has not yet engaged the SC contract buy-out process and will do so post-closing	N/A	N	\$0
SC	Y	\$1,037,600.00		SC	N	\$1,037,600.00
	N				N	\$0

Contractor/ Consultant	MWBE/DBE? ("Y" or "N")	Award Amount	Services to be Provided	Contracting Party <i>Please indicate the name of the party subcontracting for the services</i>	Is Contracting Party MWBE/DBE? ("Y" or "N")	Amount to Count
						\$0
						\$0
						\$0

Contractor/ Consultant	MWBE/DBE? ("Y" or "N")	Award Amount	Services to be Provided	Contracting Party <i>Please indicate the name of the party subcontracting for the services</i>	Is Contracting Party MWBE/DBE? ("Y" or "N")	Amount to Count
						\$0

Opportunity M/WBE Program

1. **Background.** Section 6-129 of the Administrative Code of the City of New York (hereinafter the “Code”) establishes a program for participation in City procurement by Minority-owned Business Enterprises (“MBEs”) and Women-owned Business Enterprises (“WBEs,” and collectively, “M/WBEs”), certified in accordance with Section 1304 of the City Charter by the New York City Department of Small Business Services (“DSBS”). NYCEDC has adopted the M/WBE Program to further participation by MBEs and WBEs in NYCEDC’s related projects, including Agency projects. Participants in the M/WBE Program shall comply with all requirements of the M/WBE Program set forth herein.
2. **Minority and Women-Owned Business Enterprises.** M/WBE firms must be certified by DSBS to credit such firms’ participation toward attainment of the Participation Goal. Such certification must occur prior to the firms’ commencement of work. A list of M/WBE firms may be obtained from the DSBS website at www.nyc.gov/buycertified, by emailing DSBS at buyer@sbs.nyc.gov, by calling (212) 513-6356, or by visiting or writing DSBS at 110 William Street, New York, New York, 10038, 7th Floor. Eligible firms that have not yet been certified may contact DSBS in order to seek certification by visiting www.nyc.gov/getcertified, emailing M/WBE@sbs.nyc.gov, or calling the DSBS certification helpline at (212) 513-6311. No credit shall be given for participation by a graduate M/WBE, as defined in Section 6-129(c)(20) of the Code.
3. **M/WBE Participation Goal.** The Lessee must commit to an M/WBE Participation Goal for a percentage of the Project Improvements Investment. The Participation Goal may be calculated as follows:
 - (f) **Contractors:** The total dollar amount that Lessee has paid or is obligated to pay to contractors certified with DSBS as MBEs or WBEs for the Project Improvements Investment shall be credited toward fulfillment of the M/WBE Participation Goal, provided that the value of such a contractor’s participation shall be determined by subtracting from this total dollar amount any amounts that the contractor has paid or is obligated to pay to direct subcontractors or suppliers upon completion of such subcontractors or suppliers work or services.
 - (g) **Direct Subcontractors:** The total dollar amount that a contractor has paid or is obligated to pay to subcontractors certified with DSBS as MBEs or WBEs for the Project Improvements Investment shall be credited toward fulfillment of the M/WBE Participation Goal, provided that the value of such a direct subcontractor’s participation shall be determined by subtracting from this total dollar value any amounts that the direct subcontractor has paid or is obligated to pay to indirect subcontractors or suppliers upon completion of such indirect subcontractors or suppliers work or services.
 - (h) **Indirect Subcontractors:** The total dollar amount that a subcontractor has paid or is obligated to pay to its subcontractors certified with DSBS as MBEs or WBEs for the Project Improvements Investment shall be credited toward fulfillment of the M/WBE Participation Goal.
 - (i) **Suppliers:** 60% of the dollar amount spent on materials or supplies as a part of the Project Improvements Investment, when such materials or supplies are purchased by the Lessee, contractors or direct subcontractors from suppliers certified with DSBS as MBEs or WBEs, shall be credited toward fulfillment of the M/WBE Participation Goal.
 - (j) **Joint Ventures:** A contractor, direct subcontractor or indirect subcontractor that is a qualified joint venture, as defined in Section 6-129(c)(24) of the Code, shall be permitted to count a percentage of its own participation toward fulfillment of the M/WBE Participation Goal. The value of such a contractor, direct subcontractor or indirect subcontractor’s participation shall be determined by subtracting from this total dollar amount any amounts that the contractor, direct subcontractor or indirect subcontractor pays to subcontractors

or suppliers, and then multiplying the remainder by the percentage to be applied to total profit to determine the amount to which an M/WBE partner is entitled pursuant to the joint venture agreement. If a contractor, direct subcontractor or indirect subcontractor claims credit for participation as a qualified joint venture, then upon NYCEDC's request, Lessee must promptly provide a copy of the joint venture agreement for review and confirmation of the M/WBE partner's profit share as used in calculating credit toward fulfillment of the M/WBE Participation Goal.

Participation Goal Calculation Example (for illustrative purposes only):

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

4. Modification of the Lessee's Participation Plan.

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

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

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

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

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

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

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

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

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

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

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

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

5. M/WBE Compliance Reports.

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

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

6. Compliance Audits. The M/WBE Compliance Report may be audited by NYCEDC to determine the Lessee's compliance with the requirements of the Lessee's M/WBE Participation Proposal and M/WBE Participation Plan.
7. Enforcement. In the event NYCEDC 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 Lessee has failed to use good faith efforts to fulfill its M/WBE Participation Goal, NYCEDC may (i) assess liquidated damages set forth in Section 8, below; and/or (ii) assert any other right or remedy it has under this Agreement.
8. Liquidated Damages. If the Lessee fails to use good faith efforts to fulfill its M/WBE Participation Goal, NYCEDC may assess liquidated damages in the amount of ten percent (10%) of the difference between the dollar amount of Work required to be awarded to M/WBE contractors, subcontractors and suppliers to meet the M/WBE Participation Goal and the dollar amount the Lessee actually awarded and paid to such M/WBEs. In view of the difficulty of accurately ascertaining the loss which NYCEDC will suffer by reason of the Lessee's failure to meet the M/WBE Participation Goals, the foregoing amount is hereby fixed and agreed as the liquidated damages that NYCEDC will suffer by reason of such failure, and not as a penalty.
9. Evaluations. The Lessee'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 M/WBE Participation Goal, NYCEDC may, after consultation with the Director of the Mayor's Office for Contracts, file an evaluation of the Lessee's performance in the City's Procurement and Sourcing Solutions Portal (PASSport) (formerly known as VENDEX).

RIDER TO TENANT LEASE AGREEMENT DATED _____, 20__

LANDLORD:	[insert landlord name]
TENANT:	[insert tenant name]
FLOOR(S)/ UNIT(S):	[insert]
TENANT’S EIN #:	[insert]
PREMISES:	[Address and a description of the Tenant Lease premises]
AGENCY:	New York City Industrial Development Agency
COMPANY LEASE:	Company Lease Agreement, dated as of _____, 20__, between [insert landlord name] and the Agency
AGENCY LEASE:	Agency Lease Agreement, dated as of _____ between the Agency and [insert landlord name]
LEASE AGREEMENT	Lease Agreement, dated _____, 20__, between [insert landlord name], as Landlord, and _____, as Tenant

1. Acknowledgment and Release. Tenant acknowledges that pursuant to the Company Lease, the Agency holds a leasehold estate in the entire Premises, and Tenant releases the Agency from any past, present or future claims that Tenant has or may have against the Agency.

2. Representation Regarding Relocation. Tenant represents that as a result of entering into the Lease Agreement and this Rider, and upon completion of the construction occupying the Premises, it has and will not have relocated or abandoned any plant or facility from outside of New York City (but within the State of New York).

3. Representation regarding Conduct. None of the Tenant, the Principals of the Tenant, or any Person that is an Affiliate of the Tenant:

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

- b. has been convicted of a misdemeanor related to truthfulness and/or business conduct in the past five (5) years;
- c. has been convicted of a felony in the past ten (10) years;
- d. has received formal written notice from a federal, state or local governmental agency or body that such Person is currently under investigation for a felony criminal offense; or
- e. has received written notice of default in the payment to the City of any taxes, sewer rents or water charges, which have not been paid, unless such default is currently being contested with due diligence in proceedings in a court or other appropriate forum.

Capitalized terms used in this section have the meanings set forth below:

Affiliate means, with respect to a given Person, any other Person that directly or indirectly through one or more intermediaries Controls, is Controlled by, or is under common Control with such given Person.

City shall mean The City of New York.

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

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.

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

Person shall mean an individual or any Entity.

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

4. **Subordination.** Tenant acknowledges and agrees that the Lease, as modified by this Rider, is subject and subordinate to the Agency Lease, and that any conflict between the terms of the Agency Lease and the terms of the Lease, as modified by this Rider, shall be resolved in favor of the Agency Lease.

5. Indemnity. Tenant agrees to defend, indemnify and hold harmless the Agency, its officers, directors, employees and agents from and against any and all losses, claims, suits, damages, costs, expenses and liabilities arising from or attributable to any act or omission of Tenant, its employees or agents in the use or occupancy of the Premises.

6. Insurance. Notwithstanding anything to the contrary contained in the Lease, as modified by this Rider, Tenant agrees to obtain and maintain Commercial General Liability insurance (“CGL”) on a per occurrence basis in the following amounts: minimum \$1,000,000 per occurrence and minimum \$2,000,000 in the aggregate per location. Tenant additionally agrees that:

(a) the CGL policy shall contain coverage for contractual liability, premises operations, and products and completed operations; and

(b) the CGL policy shall be written on Form CG-0001; and

(c) the CGL policy shall name the Agency as an additional insured; and

(d) Tenant shall provide to Landlord at least thirty (30) days before expiration of the CGL policy (and to the Agency upon the Agency’s request), an ACORD certificate evidencing that Tenant has obtained CGL coverage as required herein; and that such ACORD certificate shall indicate the Agency as an additional insured as follows:

“New York City Industrial Development Agency is an additional insured on a primary and non-contributory basis for Commercial General Liability which is written on Form CG-0001 without modification to the contractual liability or waiver-of-subrogation provisions therein, and covering the following premises: Unit 1 at 805 Rockaway Avenue, Brooklyn, New York 11212.”

7. Employment Information. Tenant acknowledges that pursuant to the Agency Lease, Landlord is obligated to provide to the Agency employment information pertinent to all occupants of the building in which the Premises are located. Accordingly, Tenant agrees to provide to Landlord and, if requested by the Agency, to the Agency, information regarding Tenant’s employment at the Premises, including, but not limited to, the then-current New York State Department of Labor’s Form NYS-45, and the Agency’s employment and benefits report form for Tenants (or any successor form as may be required by the Agency as a result of a change in law or as required by New York State agencies).

8. Living Wage. Tenant agrees to comply with all of the terms, covenants and provisions of the Living Wage requirements set forth in Appendix A hereto.

9. Non-discrimination. Tenant shall not discriminate nor permit any of its Affiliates (as defined in Section 3 above) to discriminate against any employee or applicant for employment because of race, color, creed, age, sex or national origin. Tenant shall ensure that employees and applicants for employment with Tenant are treated without regard to their race, color, creed, age, sex or national origin. As used herein, the term “treated” shall mean and include the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.

10. Incorporation in Sublease Agreement; Third-Party Beneficiary. Tenant agrees and acknowledges that this Rider is a part of and is incorporated into the Lease; and that the Agency is a third-

party beneficiary of the foregoing provisions of this Rider. Except where modified by this Rider, the terms and conditions of the Lease, as modified by this Rider, remain unmodified and in full force and effect.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Rider as of the day and year first above written.

[Insert Landlord name]
(Landlord)

By: _____
Name:
Title:

[Insert Tenant name]
(Tenant)

By: _____
Name:
Title:

Appendix A to Tenant Lease Rider

[Landlord to insert form of LW Agreement attached to the Agency Lease as Exhibit L]

SCHEDULE I

NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM DEFINITIONS

SCHEDULE 1

NAICS Permitted Uses

U. S. Small Business Administration

Table of Small Business Size Standards

Matched to

North American Industry Classification System Codes

This table lists small business size standards matched to industries described in the North American Industry Classification System (NAICS), as modified by the Office of Management and Budget effective January 1, 2012. The latest NAICS codes are referred to as NAICS 2012. The size standards are for the most part expressed in either millions of dollars (those preceded by "\$") or number of employees (those without the "\$"). A size standard is the largest that a concern can be and still qualify as a small business for Federal Government programs. For the most part, size standards are the average annual number of employees for the most part of the business.

For more information on these size standards, please visit <http://www.sba.gov/size>.

If you have any other questions concerning size standards, contact a Size Specialist at your nearest SBA Government Contracting Area Office (list at the end of the table), or contact the Office of Size Standards by email at sizestandards@sba.gov.

These size standards are effective February 26, 2016

For more information on these size standards, please visit <http://www.sba.gov/size>.

If you have any other questions concerning size standards, contact a Size Specialist at your nearest SBA Government Contracting Area Office (list at the end of the table), or contact the Office of Size Standards by email at sizestandards@sba.gov.

These size standards are effective February 26, 2016

For more information on these size standards, please visit <http://www.sba.gov/size>. If you have any other questions concerning size standards, contact a Size Specialist at your nearest SBA Government Contracting Area Office (list at the end of the table), or contact the Office of Size Standards by email at sizestandards@sba.gov. *These size standards are effective February 26, 2016*

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars	Size standards in number of employees
Sector 11 – Agriculture, Forestry, Fishing and Hunting			
Subsector 111 – Crop Production			
111110	Soybean Farming	\$0.75	
111120	Oilseed (except Soybean) Farming	\$0.75	
111130	Dry Pea and Bean Farming	\$0.75	
111140	Wheat Farming	\$0.75	
111150	Corn Farming	\$0.75	

111160	Rice Farming	\$0.75
111191	Oilseed and Grain Combination Farming	\$0.75
111199	All Other Grain Farming	\$0.75
111211	Potato Farming	\$0.75
111219	Other Vegetable (except Potato) and Melon	\$0.75
111310	Orange Groves	\$0.75
111320	Citrus (except Orange) Groves	\$0.75
111331	Apple Orchards	\$0.75
111332	Grape Vineyards	\$0.75
111333	Strawberry Farming	\$0.75
111334	Berry (except Strawberry) Farming	\$0.75
111335	Tree Nut Farming	\$0.75
111336	Fruit and Tree Nut Combination Farming	\$0.75
111339	Other Noncitrus Fruit Farming	\$0.75
111411	Mushroom Production	\$0.75
111419	Other Food Crops Grown Under Cover	\$0.75
111421	Nursery and Tree Production	\$0.75
111422	Floriculture Production	\$0.75
111910	Tobacco Farming	\$0.75
111920	Cotton Farming	\$0.75
111930	Sugarcane Farming	\$0.75
111940	Hay Farming	\$0.75
111991	Sugar Beet Farming	\$0.75
111992	Peanut Farming	\$0.75
111998	All Other Miscellaneous Crop Farming	\$0.75
Subsector 112 – Animal Production and Aquaculture		
112111	Beef Cattle Ranching and Farming	\$0.75
112112	Cattle Feedlots	\$7.5
112120	Dairy Cattle and Milk Production	\$0.75
112210	Hog and Pig Farming	\$0.75
112310	Chicken Egg Production	\$15.0
112320	Broilers and Other Meat Type Chicken	\$0.75
112330	Turkey Production	\$0.75
112340	Poultry Hatcheries	\$0.75
112390	Other Poultry Production	\$0.75
112410	Sheep Farming	\$0.75

112420	Goat Farming	\$0.75
112511	Finfish Farming and Fish Hatcheries	\$0.75
112512	Shellfish Farming	\$0.75
112519	Other Aquaculture	\$0.75
112910	Apiculture	\$0.75
112920	Horses and Other Equine Production	\$0.75
112930	Fur-Bearing Animal and Rabbit Production	\$0.75
112990	All Other Animal Production	\$0.75
Subsector 113 – Forestry and Logging		
113110	Timber Tract Operations	\$11.0
113210	Forest Nurseries and Gathering of Forest	\$11.0
113310	Logging	500
Subsector 114 – Fishing, Hunting and Trapping		
114111	Finfish Fishing	\$20.5
114112	Shellfish Fishing	\$5.5
114119	Other Marine Fishing	\$7.5
114210	Hunting and Trapping	\$5.5
Subsector 115 – Support Activities for Agriculture and Forestry		
115111	Cotton Ginning	\$11.0
115112	Soil Preparation, Planting, and Cultivating	\$7.5
115113	Crop Harvesting, Primarily by Machine	\$7.5
115114	Postharvest Crop Activities (except Cotton)	\$27.5
115115	Farm Labor Contractors and Crew Leaders	\$15.0
115116	Farm Management Services	\$7.5
115210	Support Activities for Animal Production	\$7.5
115310	Support Activities for Forestry	\$7.5
<i>Except,</i>	Forest Fire Suppression ¹⁷	\$19.017
<i>Except,</i>	Fuels Management Services ¹⁷	\$19.017
Sector 21 – Mining, Quarrying, and Oil and Gas Extraction		
Subsector 211 – Oil and Gas Extraction		
211111	Crude Petroleum and Natural Gas Extraction	1,250
211112	Natural Gas Liquid Extraction	750
Subsector 212 – Mining (except Oil and Gas)		
212111	Bituminous Coal and Lignite Surface Mining	1,250
212112	Bituminous Coal Underground Mining	1,500
212113	Anthracite Mining	250

212210	Iron Ore Mining		750
212221	Gold Ore Mining		1,500
212222	Silver Ore Mining		250
212231	Lead Ore and Zinc Ore Mining		750
212234	Copper Ore and Nickel Ore Mining		1,500
212291	Uranium-Radium-Vanadium Ore Mining		250
212299	All Other Metal Ore Mining		750
212311	Dimension Stone Mining and Quarrying		500
212312	Crushed and Broken Limestone Mining and Quarrying		750
212313	Crushed and Broken Granite Mining and Quarrying		750
212319	Other Crushed and Broken Stone Mining and Quarrying		500
212321	Construction Sand and Gravel Mining		500
212322	Industrial Sand Mining		500
212324	Kaolin and Ball Clay Mining		750
212325	Clay and Ceramic and Refractory Minerals		500
212391	Potash, Soda, and Borate Mineral Mining		750
212392	Phosphate Rock Mining		1,000
212393	Other Chemical and Fertilizer Mineral Mining		500
212399	All Other Nonmetallic Mineral Mining		500
Subsector 213 – Support Activities for Mining			
213111	Drilling Oil and Gas Wells		1,000
213112	Support Activities for Oil and Gas Operations	\$38.5	
213113	Support Activities for Coal Mining	\$20.5	
213114	Support Activities for Metal Mining	\$20.5	
213115	Support Activities for Nonmetallic Minerals (except	\$7.5	
Sector 22 – Utilities			
Subsector 221 – Utilities			
221111	Hydroelectric Power Generation		500
221112	Fossil Fuel Electric Power Generation		750
221113	Nuclear Electric Power Generation		750
221114	Solar Electric Power Generation		250
221115	Wind Electric Power Generation		250
221116	Geothermal Electric Power Generation		250

221117	Biomass Electric Power Generation		250
221118	Other Electric Power Generation		250
221121	Electric Bulk Power Transmission and Control		500
221122	Electric Power Distribution		1,000
221210	Natural Gas Distribution		1,000
221310	Water Supply and Irrigation Systems	\$27.5	
221320	Sewage Treatment Facilities	\$20.5	
221330	Steam and Air-Conditioning Supply	\$15.0	
Sector 23 – Construction			
Subsector 236 – Construction of Buildings			
236115	New Single-family Housing Construction (Except For-	\$36.5	
236116	New Multifamily Housing Construction (except For-	\$36.5	
236117	New Housing For-Sale Builders	\$36.5	
236118	Residential Remodelers	\$36.5	
236210	Industrial Building Construction	\$36.5	
236220	Commercial and Institutional Building	\$36.5	
Subsector 237 – Heavy and Civil Engineering Construction			
237110	Water and Sewer Line and Related Structures Construction	\$36.5	
237120	Oil and Gas Pipeline and Related Structures Construction	\$36.5	
237130	Power and Communication Line and Related Structures Construction	\$36.5	
237210	Land Subdivision	\$27.5	
237310	Highway, Street, and Bridge Construction	\$36.5	
237990	Other Heavy and Civil Engineering	\$36.5	
<i>Except,</i>	Dredging and Surface Cleanup Activities2	\$27.52	
Subsector 238 – Specialty Trade Contractors			
238110	Poured Concrete Foundation and Structure Contractors	\$15.0	
238120	Structural Steel and Precast Concrete	\$15.0	
238130	Framing Contractors	\$15.0	
238140	Masonry Contractors	\$15.0	
238150	Glass and Glazing Contractors	\$15.0	

238160	Roofing Contractors	\$15.0	
238170	Siding Contractors	\$15.0	
238190	Other Foundation, Structure, and Building Exterior	\$15.0	
238210	Electrical Contractors and Other Wiring Installation	\$15.0	
238220	Plumbing, Heating, and Air-Conditioning	\$15.0	
238290	Other Building Equipment Contractors	\$15.0	
238310	Drywall and Insulation Contractors	\$15.0	
238320	Painting and Wall Covering Contractors	\$15.0	
238330	Flooring Contractors	\$15.0	
238340	Tile and Terrazzo Contractors	\$15.0	
238350	Finish Carpentry Contractors	\$15.0	
238390	Other Building Finishing Contractors	\$15.0	
238910	Site Preparation Contractors	\$15.0	
238990	All Other Specialty Trade Contractors ¹³	\$15.013	
Sector 31 – 33 – Manufacturing			
Subsector 311 – Food Manufacturing			
311111	Dog and Cat Food Manufacturing		1,000
311119	Other Animal Food Manufacturing		500
311211	Flour Milling		1,000
311212	Rice Milling		500
311213	Malt Manufacturing		500
311221	Wet Corn Milling		1,250
311224	Soybean and Other Oilseed Processing		1,000
311225	Fats and Oils Refining and Blending		1,000
311230	Breakfast Cereal Manufacturing		1,000
311313	Beet Sugar Manufacturing		750
311314	Cane Sugar Manufacturing		1,000
311340	Nonchocolate Confectionery Manufacturing		1,000
NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars	Size standards in number of employees

311351	Chocolate and Confectionery Manufacturing from	1,250
311352	Confectionery Manufacturing from Purchased Chocolate	1,000
311411	Frozen Fruit, Juice and Vegetable	1,000
311412	Frozen Specialty Food Manufacturing	1,250
311421	Fruit and Vegetable Canning ³	1,0003
311422	Specialty Canning	1,250
311423	Dried and Dehydrated Food Manufacturing	750
311511	Fluid Milk Manufacturing	1,000
311512	Creamery Butter Manufacturing	750
311513	Cheese Manufacturing	1,250
311514	Dry, Condensed, and Evaporated Dairy Product	750
311520	Ice Cream and Frozen Dessert Manufacturing	1,000
311611	Animal (except Poultry) Slaughtering	1,000
311612	Meat Processed from Carcasses	1,000
311613	Rendering and Meat Byproduct Processing	750
311615	Poultry Processing	1,250
311710	Seafood Product Preparation and Packaging	750
311811	Retail Bakeries	500
311812	Commercial Bakeries	1,000
311813	Frozen Cakes, Pies, and Other Pastries	750
311821	Cookie and Cracker Manufacturing	1,250
311824	Dry Pasta, Dough, and Flour Mixes Manufacturing	750
311830	Tortilla Manufacturing	1,250
311911	Roasted Nuts and Peanut Butter	750
311919	Other Snack Food Manufacturing	1,250
311920	Coffee and Tea Manufacturing	750
311930	Flavoring Syrup and Concentrate	1,000
311941	Mayonnaise, Dressing and Other Prepared Sauce	750
311942	Spice and Extract Manufacturing	500
311991	Perishable Prepared Food Manufacturing	500
311999	All Other Miscellaneous Food Manufacturing	500

Subsector 312 – Beverage and Tobacco Product Manufacturing		
312111	Soft Drink Manufacturing	1,250
312112	Bottled Water Manufacturing	1,000
312113	Ice Manufacturing	750
312120	Breweries	1,250
312130	Wineries	1,000
312140	Distilleries	1,000
312230	Tobacco Manufacturing	1,500
Subsector 313 – Textile Mills		
313110	Fiber, Yarn, and Thread Mills	1,250
313210	Broadwoven Fabric Mills	1,000
313220	Narrow Fabric Mills and Schiffli Machine	500
313230	Nonwoven Fabric Mills	750
313240	Knit Fabric Mills	500
313310	Textile and Fabric Finishing Mills	1,000
313320	Fabric Coating Mills	1,000
Subsector 314 – Textile Product Mills		
314110	Carpet and Rug Mills	1,500
314120	Curtain and Linen Mills	750
314910	Textile Bag and Canvas Mills	500
314994	Rope, Cordage, Twine, Tire Cord, and Tire Fabric	1,000
314999	All Other Miscellaneous Textile Product Mills	500
Subsector 315 – Apparel Manufacturing		
315110	Hosiery and Sock Mills	750
315190	Other Apparel Knitting Mills	750
315210	Cut and Sew Apparel Contractors	750
315220	Men's and Boys' Cut and Sew Apparel	750
315240	Women's, Girls', and Infants' Cut and Sew Apparel	750
315280	Other Cut and Sew Apparel Manufacturing	750
315990	Apparel Accessories and Other Apparel Manufacturing	500
Subsector 316 – Leather and Allied Product Manufacturing		
316110	Leather and Hide Tanning and Finishing	500
316210	Footwear Manufacturing	1,000

316992	Women's Handbag and Purse Manufacturing	750
316998	All Other Leather Good and Allied Product Manufacturing	500
Subsector 321 – Wood Product Manufacturing		
321113	Sawmills	500
321114	Wood Preservation	500
321211	Hardwood Veneer and Plywood	500
321212	Softwood Veneer and Plywood Manufacturing	1,250
321213	Engineered Wood Member (except Truss) Manufacturing	750
321214	Truss Manufacturing	500
321219	Reconstituted Wood Product Manufacturing	750
321911	Wood Window and Door Manufacturing	1,000
321912	Cut Stock, Resawing Lumber, and Planing	500
321918	Other Millwork (including Flooring)	500
321920	Wood Container and Pallet Manufacturing	500
321991	Manufactured Home (Mobile Home)	1,250
321992	Prefabricated Wood Building Manufacturing	500
321999	All Other Miscellaneous Wood Product Manufacturing	500
Subsector 322 – Paper Manufacturing		
322110	Pulp Mills	750
322121	Paper (except Newsprint) Mills	1,250
322122	Newsprint Mills	750
322130	Paperboard Mills	1,250
322211	Corrugated and Solid Fiber Box Manufacturing	1,250
322212	Folding Paperboard Box Manufacturing	750
322219	Other Paperboard Container Manufacturing	1,000
322220	Paper Bag and Coated and Treated Paper Manufacturing	750
322230	Stationery Product Manufacturing	750
322291	Sanitary Paper Product Manufacturing	1,500
322299	All Other Converted Paper Product	500
Subsector 323 – Printing and Related Support Activities		
323111	Commercial Printing (except Screen and	500
323113	Commercial Screen Printing	500

323117	Books Printing	1,250
323120	Support Activities for Printing	500
Subsector 324 – Petroleum and Coal Products Manufacturing		
324110	Petroleum Refineries ⁴	1,5004
324121	Asphalt Paving Mixture and Block	500
324122	Asphalt Shingle and Coating Materials	750
324191	Petroleum Lubricating Oil and Grease	750
324199	All Other Petroleum and Coal Products Manufacturing	500
Subsector 325 – Chemical Manufacturing		
325110	Petrochemical Manufacturing	1,000
325120	Industrial Gas Manufacturing	1,000
325130	Synthetic Dye and Pigment Manufacturing	1,000
325180	Other Basic Inorganic Chemical Manufacturing	1,000
325193	Ethyl Alcohol Manufacturing	1,000
325194	Cyclic Crude, Intermediate, and Gum and Wood	1,250
325199	All Other Basic Organic Chemical	1,250
325211	Plastics Material and Resin Manufacturing	1,250
325212	Synthetic Rubber Manufacturing	1,000
325220	Artificial and Synthetic Fibers and Filaments Manufacturing	1,000
325311	Nitrogenous Fertilizer Manufacturing	1,000
325312	Phosphatic Fertilizer Manufacturing	750
325314	Fertilizer (Mixing Only) Manufacturing	500
325320	Pesticide and Other Agricultural Chemical Manufacturing	1,000
325411	Medicinal and Botanical Manufacturing	1,000
325412	Pharmaceutical Preparation Manufacturing	1,250
325413	In-Vitro Diagnostic Substance Manufacturing	1,250
325414	Biological Product (except Diagnostic)	1,250
325510	Paint and Coating Manufacturing	1,000
325520	Adhesive Manufacturing	500
325611	Soap and Other Detergent Manufacturing	1,000
325612	Polish and Other Sanitation Good	750
325613	Surface Active Agent Manufacturing	750

325620	Toilet Preparation Manufacturing	1,250
325910	Printing Ink Manufacturing	500
325920	Explosives Manufacturing	750
325991	Custom Compounding of Purchased Resins	500
325992	Photographic Film, Paper, Plate and Chemical Manufacturing	1,500
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing	500
Subsector 326 – Plastics and Rubber Products Manufacturing		
326111	Plastic Bag and Pouch Manufacturing	750
326112	Plastics Packaging Film and Sheet (including Laminated) Manufacturing	1,000
326113	Unlaminated Plastics Film and Sheet (except Packaging) Manufacturing	750
326121	Unlaminated Plastics Profile Shape	500
326122	Plastics Pipe and Pipe Fitting Manufacturing	750
326130	Laminated Plastics Plate, Sheet (except Packaging),	500
326140	Polystyrene Foam Product Manufacturing	1,000
326150	Urethane and Other Foam Product (except Polystyrene) Manufacturing	750
326160	Plastics Bottle Manufacturing	1,250
326191	Plastics Plumbing Fixture Manufacturing	750
326199	All Other Plastics Product Manufacturing	750
326211	Tire Manufacturing (except Retreading)5	1,5005
326212	Tire Retreading	500
326220	Rubber and Plastics Hoses and Belting	750
326291	Rubber Product Manufacturing for Mechanical	750
326299	All Other Rubber Product Manufacturing	500
Subsector 327 – Nonmetallic Mineral Product Manufacturing		
327110	Pottery, Ceramics, and Plumbing Fixture Manufacturing	1,000
327120	Clay Building Material and Refractories Manufacturing	750
327211	Flat Glass Manufacturing	1,000

327212	Other Pressed and Blown Glass and Glassware Manufacturing	1,250
327213	Glass Container Manufacturing	1,250
327215	Glass Product Manufacturing Made of Purchased	1,000
327310	Cement Manufacturing	1,000
327320	Ready-Mix Concrete Manufacturing	500
327331	Concrete Block and Brick Manufacturing	500
327332	Concrete Pipe Manufacturing	750
327390	Other Concrete Product Manufacturing	500
327410	Lime Manufacturing	750
327420	Gypsum Product Manufacturing	1,500
327910	Abrasive Product Manufacturing	750
327991	Cut Stone and Stone Product Manufacturing	500
327992	Ground or Treated Mineral and Earth	500
327993	Mineral Wool Manufacturing	1,500
327999	All Other Miscellaneous Nonmetallic Mineral Product	500
Subsector 331 – Primary Metal Manufacturing		
331110	Iron and Steel Mills and Ferroalloy	1,500
331210	Iron and Steel Pipe and Tube Manufacturing from	1,000
331221	Rolled Steel Shape Manufacturing	1,000
331222	Steel Wire Drawing	1,000
331313	Alumina Refining and Primary Aluminum	1,000
331314	Secondary Smelting and Alloying of Aluminum	750
331315	Aluminum Sheet, Plate and Foil Manufacturing	1,250
331318	Other Aluminum Rolling, Drawing, and	750
331410	Nonferrous Metal (except Aluminum) Smelting and	1,000
331420	Copper Rolling, Drawing, Extruding, and	1,000
331491	Nonferrous Metal (except Copper and Aluminum)	750
331492	Secondary Smelting, Refining, and Alloying of Nonferrous Metal (except Copper and	750
331511	Iron Foundries	1,000

331512	Steel Investment Foundries		1,000
331513	Steel Foundries (except Investment)		500
331523	Nonferrous Metal Die-Casting Foundries		500
331524	Aluminum Foundries (except Die-Casting)		500
331529	Other Nonferrous Metal Foundries (except Die-Casting)		500
Subsector 332 – Fabricated Metal Product Manufacturing			
332111	Iron and Steel Forging		750
332112	Nonferrous Forging		750
332114	Custom Roll Forming		500
332117	Powder Metallurgy Part Manufacturing		500
332119	Metal Crown, Closure, and Other Metal Stamping		500
332215	Metal Kitchen Cookware, Utensil, Cutlery, and Flatware (except Precious) Manufacturing		750
332216	Saw Blade and Handtool Manufacturing		750
332311	Prefabricated Metal Building and Component Manufacturing		750
332312	Fabricated Structural Metal Manufacturing		500
332313	Plate Work Manufacturing		750
332321	Metal Window and Door Manufacturing		750
332322	Sheet Metal Work Manufacturing		500
332323	Ornamental and Architectural Metal Work Manufacturing		500
332410	Power Boiler and Heat Exchanger		750
332420	Metal Tank (Heavy Gauge) Manufacturing		750
332431	Metal Can Manufacturing		1,500
332439	Other Metal Container Manufacturing		500
332510	Hardware Manufacturing		750
332613	Spring Manufacturing		500
332618	Other Fabricated Wire Product Manufacturing		500
332710	Machine Shops		500
332721	Precision Turned Product Manufacturing		500
332722	Bolt, Nut, Screw, Rivet and Washer		500
332811	Metal Heat Treating		750

332812	Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to	500
332813	Electroplating, Plating, Polishing, Anodizing and	500
332911	Industrial Valve Manufacturing	750
332912	Fluid Power Valve and Hose Fitting	1,000
332913	Plumbing Fixture Fitting and Trim	1,000
332919	Other Metal Valve and Pipe Fitting	750
332991	Ball and Roller Bearing Manufacturing	1,250
332992	Small Arms Ammunition Manufacturing	1,250
332993	Ammunition (except Small Arms)	1,500
332994	Small Arms, Ordnance, and Ordnance Accessories	1,000
332996	Fabricated Pipe and Pipe Fitting	500
332999	All Other Miscellaneous Fabricated Metal Product	750
Subsector 333 – Machinery Manufacturing6		
333111	Farm Machinery and Equipment	1,250
333112	Lawn and Garden Tractor and Home Lawn and Garden Equipment Manufacturing	1,500
333120	Construction Machinery Manufacturing	1,250
333131	Mining Machinery and Equipment	500
333132	Oil and Gas Field Machinery and Equipment Manufacturing	1,250
333241	Food Product Machinery Manufacturing	500
333242	Semiconductor Machinery Manufacturing	1,500
333243	Sawmill, Woodworking, and Paper Machinery Manufacturing	500
333244	Printing Machinery and Equipment	750
333249	Other Industrial Machinery Manufacturing	500
333314	Optical Instrument and Lens Manufacturing	500
333316	Photographic and Photocopying Equipment Manufacturing	1,000
333318	Other Commercial and Service Industry Machinery	1,000

333413	Industrial and Commercial Fan and Blower and Air	500
333414	Heating Equipment (except Warm Air Furnaces)	500
333415	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration	1,250
333511	Industrial Mold Manufacturing	500
333514	Special Die and Tool, Die Set, Jig and Fixture Manufacturing	500
333515	Cutting Tool and Machine Tool Accessory Manufacturing	500
333517	Machine Tool Manufacturing	500
333519	Rolling Mill and Other Metalworking Machinery	500
333611	Turbine and Turbine Generator Set Unit Manufacturing	1,500
333612	Speed Changer, Industrial High-Speed Drive and Gear	750
333613	Mechanical Power Transmission Equipment Manufacturing	750
333618	Other Engine Equipment Manufacturing	1,500
333911	Pump and Pumping Equipment Manufacturing	750
333912	Air and Gas Compressor Manufacturing	1,000
333913	Measuring and Dispensing Pump	750
333921	Elevator and Moving Stairway Manufacturing	1,000
333922	Conveyor and Conveying Equipment	500
333923	Overhead Traveling Crane, Hoist and Monorail System Manufacturing	1,250
333924	Industrial Truck, Tractor, Trailer and Stacker Machinery Manufacturing	750
333991	Power-Driven Hand Tool Manufacturing	500
333992	Welding and Soldering Equipment	1,250
333993	Packaging Machinery Manufacturing	500
333994	Industrial Process Furnace and Oven	500
333995	Fluid Power Cylinder and Actuator	750

333996	Fluid Power Pump and Motor Manufacturing	1,250
333997	Scale and Balance Manufacturing	500
333999	All Other Miscellaneous General Purpose Machinery	500
Subsector 334 – Computer and Electronic Product Manufacturing⁶		
334111	Electronic Computer Manufacturing	1,250
334112	Computer Storage Device Manufacturing	1,250
334118	Computer Terminal and Other Computer Peripheral	1,000
334210	Telephone Apparatus Manufacturing	1,250
334220	Radio and Television Broadcasting and Wireless	1,250
334290	Other Communications Equipment	750
334310	Audio and Video Equipment Manufacturing	750
334412	Bare Printed Circuit Board Manufacturing	750
334413	Semiconductor and Related Device	1,250
334416	Capacitor, Resistor, Coil, Transformer, and Other	500
334417	Electronic Connector Manufacturing	1,000
334418	Printed Circuit Assembly (Electronic Assembly) Manufacturing	750
334419	Other Electronic Component Manufacturing	750
334510	Electromedical and Electrotherapeutic Apparatus	1,250
334511	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument	1,250
334512	Automatic Environmental Control Manufacturing for	500
334513	Instruments and Related Products Manufacturing for Measuring, Displaying, and Controlling	750
334514	Totalizing Fluid Meter and Counting Device Manufacturing	750
334515	Instrument Manufacturing for Measuring and Testing	750

334516	Analytical Laboratory Instrument	1,000
334517	Irradiation Apparatus Manufacturing	1,000
334519	Other Measuring and Controlling Device Manufacturing	500
334613	Blank Magnetic and Optical Recording Media Manufacturing	1,000
334614	Software and Other Prerecorded Compact Disc,	1,250
Subsector 335 – Electrical Equipment, Appliance and Component Manufacturing6		
335110	Electric Lamp Bulb and Part Manufacturing	1,250
335121	Residential Electric Lighting Fixture	750
335122	Commercial, Industrial and Institutional Electric	500
335129	Other Lighting Equipment Manufacturing	500
335210	Small Electrical Appliance Manufacturing	1,500
335221	Household Cooking Appliance Manufacturing	1,500
335222	Household Refrigerator and Home Freezer Manufacturing	1,250
335224	Household Laundry Equipment Manufacturing	1,250
335228	Other Major Household Appliance	1,000
335311	Power, Distribution and Specialty Transformer Manufacturing	750
335312	Motor and Generator Manufacturing	1,250
335313	Switchgear and Switchboard Apparatus Manufacturing	1,250
335314	Relay and Industrial Control Manufacturing	750
335911	Storage Battery Manufacturing	1,250
335912	Primary Battery Manufacturing	1,000
335921	Fiber Optic Cable Manufacturing	1,000
335929	Other Communication and Energy Wire Manufacturing	1,000
335931	Current-Carrying Wiring Device Manufacturing	500
335932	Noncurrent-Carrying Wiring Device	1,000
335991	Carbon and Graphite Product Manufacturing	750
335999	All Other Miscellaneous Electrical Equipment and	500

Subsector 336 -- Transportation Equipment Manufacturing

336111	Automobile Manufacturing	1,500
336112	Light Truck and Utility Vehicle Manufacturing	1,500
336120	Heavy Duty Truck Manufacturing	1,500
336211	Motor Vehicle Body Manufacturing	1,000
336212	Truck Trailer Manufacturing	1,000
336213	Motor Home Manufacturing	1,250
336214	Travel Trailer and Camper Manufacturing	1,000
336310	Motor Vehicle Gasoline Engine and Engine Parts	1,000
336320	Motor Vehicle Electrical and Electronic Equipment	1,000
336330	Motor Vehicle Steering and Suspension Components	1,000
336340	Motor Vehicle Brake System Manufacturing	1,250
336350	Motor Vehicle Transmission and Power Train Parts	1,500
336360	Motor Vehicle Seating and Interior Trim Manufacturing	1,500
336370	Motor Vehicle Metal Stamping	1,000
336390	Other Motor Vehicle Parts Manufacturing	1,000
336411	Aircraft Manufacturing	1,500
336412	Aircraft Engine and Engine Parts	1,500
336413	Other Aircraft Part and Auxiliary Equipment Manufacturing ⁷	1,2507
336414	Guided Missile and Space Vehicle	1,250
336415	Guided Missile and Space Vehicle Propulsion Unit	1,250
336419	Other Guided Missile and Space Vehicle Parts and	1,000
336510	Railroad Rolling Stock Manufacturing	1,500
336611	Ship Building and Repairing	1,250
336612	Boat Building	1,000
336991	Motorcycle, Bicycle and Parts Manufacturing	1,000
336992	Military Armored Vehicle, Tank and Tank Component	1,500

336999	All Other Transportation Equipment	1,000
Subsector 337 – Furniture and Related Product Manufacturing		
337110	Wood Kitchen Cabinet and Counter Top Manufacturing	750
337121	Upholstered Household Furniture	1,000
337122	Nonupholstered Wood Household Furniture Manufacturing	750
337124	Metal Household Furniture Manufacturing	750
337125	Household Furniture (except Wood and Metal) Manufacturing	750
337127	Institutional Furniture Manufacturing	500
337211	Wood Office Furniture Manufacturing	1,000
337212	Custom Architectural Woodwork and Millwork Manufacturing	500
337214	Office Furniture (Except Wood) Manufacturing	1,000
337215	Showcase, Partition, Shelving, and Locker Manufacturing	500
337910	Mattress Manufacturing	1,000
337920	Blind and Shade Manufacturing	1,000
Subsector 339 – Miscellaneous Manufacturing		
339112	Surgical and Medical Instrument	1,000
339113	Surgical Appliance and Supplies Manufacturing	750
339114	Dental Equipment and Supplies Manufacturing	750
339115	Ophthalmic Goods Manufacturing	1,000
339116	Dental Laboratories	500
339910	Jewelry and Silverware Manufacturing	500
339920	Sporting and Athletic Goods Manufacturing	750
339930	Doll, Toy, and Game Manufacturing	500
339940	Office Supplies (except Paper) Manufacturing	750
339950	Sign Manufacturing	500
339991	Gasket, Packing, and Sealing Device	500
339992	Musical Instrument Manufacturing	1,000
339993	Fastener, Button, Needle and Pin	750
339994	Broom, Brush and Mop Manufacturing	500
339995	Burial Casket Manufacturing	1,000
339999	All Other Miscellaneous Manufacturing	500

Sector 42 – Wholesale Trade

(These NAICS codes shall not be used to classify Government acquisitions for supplies.
 They also shall not be used by Federal government contractors when subcontracting for the acquisition for supplies. The applicable manufacturing NAICS code shall be used to classify acquisitions for supplies. A Wholesale Trade or Retail Trade business concern submitting an offer or a quote on a supply acquisition is categorized as a nonmanufacturer and deemed small if it has 500 or fewer employees and meets the requirements of 13 CFR 121.406.)

Subsector 423 – Merchant Wholesalers, Durable Goods		
423110	Automobile and Other Motor Vehicle Merchant	250
423120	Motor Vehicle Supplies and New Parts Merchant	200
423130	Tire and Tube Merchant Wholesalers	200
423140	Motor Vehicle Parts (Used) Merchant	100
423210	Furniture Merchant Wholesalers	100
423220	Home Furnishing Merchant Wholesalers	100
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers	150
423320	Brick, Stone, and Related Construction Material	150
423330	Roofing, Siding, and Insulation Material Merchant	200
423390	Other Construction Material Merchant	100
423410	Photographic Equipment and Supplies Merchant	200
423420	Office Equipment Merchant Wholesalers	200
423430	Computer and Computer Peripheral Equipment and	250
423440	Other Commercial Equipment Merchant	100
423450	Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers	200
423460	Ophthalmic Goods Merchant Wholesalers	150
423490	Other Professional Equipment and Supplies Merchant Wholesalers	150

423510	Metal Service Centers and Other Metal Merchant	200
423520	Coal and Other Mineral and Ore Merchant Wholesalers	100
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	200
423620	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers	200
423690	Other Electronic Parts and Equipment Merchant Wholesalers	250
423710	Hardware Merchant Wholesalers	150
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers	200
423730	Warm Air Heating and Air-Conditioning Equipment Merchant Wholesalers	150
423740	Refrigeration Equipment and Supplies Merchant Wholesalers	100
423810	Construction and Mining (except Oil Well) Machinery Merchant Wholesalers	250
423820	Farm and Garden Machinery and Equipment Merchant Wholesalers	100
423830	Industrial Machinery and Equipment Merchant Wholesalers	100
423840	Industrial Supplies Merchant Wholesalers	100
423850	Service Establishment Equipment and Supplies Merchant Wholesalers	100
423860	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers	150
423910	Sporting and Recreational Goods and Supplies Merchant Wholesalers	100
423920	Toy and Hobby Goods and Supplies Merchant Wholesalers	150
423930	Recyclable Material Merchant Wholesalers	100
423940	Jewelry, Watch, Precious Stone, and Precious Metal Merchant Wholesalers	100

423990	Other Miscellaneous Durable Goods Merchant Wholesalers	100
Subsector 424 – Merchant Wholesalers, Nondurable Goods		
424110	Printing and Writing Paper Merchant	200
424120	Stationery and Office Supplies Merchant	150
424130	Industrial and Personal Service Paper Merchant	150
424210	Drugs and Druggists' Sundries Merchant	250
424310	Piece Goods, Notions, and Other Dry Goods Merchant Wholesalers	100
424320	Men's and Boys' Clothing and Furnishings Merchant	150
424330	Women's, Children's, and Infants' Clothing and	100
424340	Footwear Merchant Wholesalers	200
424410	General Line Grocery Merchant Wholesalers	250
424420	Packaged Frozen Food Merchant Wholesalers	200
424430	Dairy Product (except Dried or Canned) Merchant	200
424440	Poultry and Poultry Product Merchant	150
424450	Confectionery Merchant Wholesalers	200
424460	Fish and Seafood Merchant Wholesalers	100
424470	Meat and Meat Product Merchant	150
424480	Fresh Fruit and Vegetable Merchant	100
424490	Other Grocery and Related Products Merchant Wholesalers	250
424510	Grain and Field Bean Merchant Wholesalers	200
424520	Livestock Merchant Wholesalers	100
424590	Other Farm Product Raw Material Merchant Wholesalers	100
424610	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers	150
424690	Other Chemical and Allied Products Merchant Wholesalers	150
424710	Petroleum Bulk Stations and Terminals	200

424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and	200
424810	Beer and Ale Merchant Wholesalers	200
424820	Wine and Distilled Alcoholic Beverage Merchant	250
424910	Farm Supplies Merchant Wholesalers	200
424920	Book, Periodical, and Newspaper Merchant Wholesalers	200
424930	Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers	100
424940	Tobacco and Tobacco Product Merchant	250
424950	Paint, Varnish, and Supplies Merchant	150
424990	Other Miscellaneous Nondurable Goods Merchant	100
Subsector 425 – Wholesale Electronic Markets and Agents and Brokers		
425110	Business to Business Electronic Markets	100
425120	Wholesale Trade Agents and Brokers	100
Sector 48 - 49 – Transportation and Warehousing		
Subsector 481 – Air Transportation		
481111	Scheduled Passenger Air Transportation	1,500
481112	Scheduled Freight Air Transportation	1,500
481211	Nonscheduled Chartered Passenger Air Transportation	1,500
481212	Nonscheduled Chartered Freight Air	1,500
481219	Other Nonscheduled Air Transportation	\$15.0
Subsector 482 – Rail Transportation		
482111	Line-Haul Railroads	1,500
482112	Short Line Railroads	1,500
Subsector 483 – Water Transportation		
483111	Deep Sea Freight Transportation	500
483112	Deep Sea Passenger Transportation	1,500
483113	Coastal and Great Lakes Freight	750
483114	Coastal and Great Lakes Passenger	500
483211	Inland Water Freight Transportation	750
483212	Inland Water Passenger Transportation	500
Subsector 484 – Truck Transportation		

484110	General Freight Trucking, Local	\$27.5	
484121	General Freight Trucking, Long-Distance,	\$27.5	
484122	General Freight Trucking, Long-Distance, Less Than	\$27.5	
484210	Used Household and Office Goods Moving	\$27.5	
484220	Specialized Freight (except Used Goods) Trucking,	\$27.5	
484230	Specialized Freight (except Used Goods) Trucking,	\$27.5	
Subsector 485 – Transit and Ground Passenger Transportation			
485111	Mixed Mode Transit Systems	\$15.0	
485112	Commuter Rail Systems	\$15.0	
485113	Bus and Other Motor Vehicle Transit Systems	\$15.0	
485119	Other Urban Transit Systems	\$15.0	
485210	Interurban and Rural Bus Transportation	\$15.0	
485310	Taxi Service	\$15.0	
485320	Limousine Service	\$15.0	
485410	School and Employee Bus Transportation	\$15.0	
485510	Charter Bus Industry	\$15.0	
485991	Special Needs Transportation	\$15.0	
485999	All Other Transit and Ground Passenger Transportation	\$15.0	
Subsector 486 – Pipeline Transportation			
486110	Pipeline Transportation of Crude Oil		1,500
486210	Pipeline Transportation of Natural Gas	\$27.5	
486910	Pipeline Transportation of Refined Petroleum Products		1,500
486990	All Other Pipeline Transportation	\$37.5	
Subsector 487 – Scenic and Sightseeing Transportation			
487110	Scenic and Sightseeing Transportation, Land	\$7.5	
487210	Scenic and Sightseeing Transportation, Water	\$7.5	
487990	Scenic and Sightseeing Transportation, Other	\$7.5	
Subsector 488 – Support Activities for Transportation			
488111	Air Traffic Control	\$32.5	
488119	Other Airport Operations	\$32.5	
488190	Other Support Activities for Air Transportation	\$32.5	

488210	Support Activities for Rail Transportation	\$15.0
488310	Port and Harbor Operations	\$38.5
488320	Marine Cargo Handling	\$38.5
488330	Navigational Services to Shipping	\$38.5
488390	Other Support Activities for Water	\$38.5
488410	Motor Vehicle Towing	\$7.5
488490	Other Support Activities for Road	\$7.5
488510	Freight Transportation Arrangement ¹⁰	\$15.010
Except;	Non-Vessel Owning Common Carriers and Household	\$27.5
488991	Packing and Crating	\$27.5
488999	All Other Support Activities for Transportation	\$7.5
Subsector 491 – Postal Service		
491110	Postal Service	\$7.5
Subsector 492 – Couriers and Messengers		
492110	Couriers and Express Delivery Services	1,500
492210	Local Messengers and Local Delivery	\$27.5
Subsector 493 – Warehousing and Storage		
493110	General Warehousing and Storage	\$27.5
493120	Refrigerated Warehousing and Storage	\$27.5
493130	Farm Product Warehousing and Storage	\$27.5
493190	Other Warehousing and Storage	\$27.5
Sector 51 – Information		
Subsector 512 – Motion Picture and Sound Recording Industries		
512110	Motion Picture and Video Production	\$32.5
512120	Motion Picture and Video Distribution	\$32.0
512131	Motion Picture Theaters (except Drive-Ins)	\$38.5
512132	Drive-In Motion Picture Theaters	\$7.5
512191	Teleproduction and Other Postproduction	\$32.0
512199	Other Motion Picture and Video Industries	\$20.5
512210	Record Production	\$7.5
512220	Integrated Record Production/Distribution	1,250
512230	Music Publishers	750
512240	Sound Recording Studios	\$7.5
512290	Other Sound Recording Industries	\$11.0
Subsector 517 – Telecommunications		

517110	Wired Telecommunications Carriers		1,500
517210	Wireless Telecommunications Carriers (except Satellite)		1,500
517410	Satellite Telecommunications	\$32.5	
517911	Telecommunications Resellers		1,500
517919	All Other Telecommunications	\$32.5	
Subsector 562 – Waste Management and Remediation Services			
562111	Solid Waste Collection	\$38.5	
562112	Hazardous Waste Collection	\$38.5	
562119	Other Waste Collection	\$38.5	
562211	Hazardous Waste Treatment and Disposal	\$38.5	
562212	Solid Waste Landfill	\$38.5	
562213	Solid Waste Combustors and Incinerators	\$38.5	
562219	Other Nonhazardous Waste Treatment and Remediation Services	\$38.5	
562910	Remediation Services	\$20.5	
Except,	Environmental Remediation Services ¹⁴		75014
562920	Materials Recovery Facilities	\$20.5	
562991	Septic Tank and Related Services	\$7.5	
562998	All Other Miscellaneous Waste Management	\$7.5	
Sector 81 – Other Services			
Subsector 811 – Repair and Maintenance			
811111	General Automotive Repair	\$7.5	
811112	Automotive Exhaust System Repair	\$7.5	
811113	Automotive Transmission Repair	\$7.5	
811118	Other Automotive Mechanical and Electrical Repair	\$7.5	
811121	Automotive Body, Paint and Interior Repair and	\$7.5	
811122	Automotive Glass Replacement Shops	\$11.0	
811191	Automotive Oil Change and Lubrication Shops	\$7.5	
811192	Car Washes	\$7.5	
811198	All Other Automotive Repair and Maintenance	\$7.5	
811211	Consumer Electronics Repair and	\$7.5	
811212	Computer and Office Machine Repair and Maintenance	\$27.5	
811213	Communication Equipment Repair and	\$11.0	

811219	Other Electronic and Precision Equipment Repair and	\$20.5	
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair	\$7.5	
811411	Home and Garden Equipment Repair and Maintenance	\$7.5	
811412	Appliance Repair and Maintenance	\$15.0	
811420	Reupholstery and Furniture Repair	\$7.5	
811430	Footwear and Leather Goods Repair	\$7.5	
811490	Other Personal and Household Goods Repair	\$7.5	
Subsector 5324	Commercial and Industrial Machinery and		
532120	Truck, Utility Trailer, and RV (Recreational)	\$38.5 million	
561910	Packaging and Labeling Services	\$11 million	
812331	Linen Supply	\$32.5 million	
812332	Industrial Launderers	\$38.5 million	
811490	Other Personal and Household Goods Repair and	\$7.5	

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS AND CONSTRUCTION	3
Section 1.1. Definitions.	3
Section 1.2. Construction.....	20
ARTICLE II REPRESENTATIONS AND WARRANTIES	22
Section 2.1. Representations and Warranties by Agency	22
Section 2.2. Representations and Warranties by the Lessee	22
ARTICLE III LEASEHOLD INTEREST CONVEYED TO THE AGENCY; THE PROJECT; MAINTENANCE; REMOVAL OF PROPERTY AND TITLE REPORT	26
Section 3.1. The Company Lease	26
Section 3.2. Appointment as Agent	26
Section 3.3. Manner of Project Completion.....	26
Section 3.4. Maintenance.....	28
Section 3.5. Alterations and Improvements.....	28
Section 3.6. Removal of Property of the Facility.....	29
Section 3.7. Implementation of Agency’s Interest in New Property.	29
Section 3.8. Title Report, Municipal Department Searches and Survey.....	30
ARTICLE IV LEASE OF FACILITY AND RENTAL PROVISIONS	31
Section 4.1. Lease of the Facility.....	31
Section 4.2. Duration of Term	31
Section 4.3. Rental Provisions.	31
Section 4.4. Rental Payments Payable Absolutely Net.....	31
Section 4.5. Nature of Lessee’s Obligation Unconditional.....	31
Section 4.6. Reserved.....	32
Section 4.7. Advances by Agency	32
Section 4.8. No Warranty of Condition or Suitability	32
ARTICLE V AGENCY FINANCIAL ASSISTANCE (PAYMENTS IN LIEU OF TAXES, AND SALES TAX EXEMPTION); RECAPTURE OF BENEFITS	33
Section 5.1. Payments in Lieu of Real Estate Taxes.....	33
Section 5.2. Sales Tax Exemption.	38
Section 5.3. Reserved.....	42
Section 5.4. Recapture of Benefits.....	42
ARTICLE VI DAMAGE, DESTRUCTION AND CONDEMNATION	45
Section 6.1. Damage, Destruction and Condemnation	45
Section 6.2. Loss Proceeds.	45
Section 6.3. Election to Rebuild or Terminate.....	45
Section 6.4. Effect of Election to Build.	46

TABLE OF CONTENTS
(continued)

	<u>Page</u>
ARTICLE VII COVENANT OF THE AGENCY	48
Section 7.1. Quiet Enjoyment	48
ARTICLE VIII COVENANTS OF THE LESSEE	49
Section 8.1. Insurance.....	49
Section 8.2. Indemnity.....	55
Section 8.3. Compensation and Expenses of the Agency and Agency Administrative and Project Fees.....	56
Section 8.4. Current Facility Personalty Description.....	56
Section 8.5. Signage at Facility Site	57
Section 8.6. Environmental Matters.	57
Section 8.7. Employment Matters.....	57
Section 8.8. Non-Discrimination.	58
Section 8.9. Assignment or Sublease.....	59
Section 8.10. Retention of Title to or of Interest in Facility; Grant of Easements; Release of Portions of Facility.....	60
Section 8.11. Discharge of Liens.....	61
Section 8.12. Recording and Filing	62
Section 8.13. No Further Encumbrances Permitted.....	62
Section 8.14. Automatically Deliverable Documents.....	62
Section 8.15. Requested Documents.....	63
Section 8.16. Periodic Reporting Information for the Agency.	64
Section 8.17. Taxes, Assessments and Charges.....	66
Section 8.18. Compliance with Legal Requirements.....	66
Section 8.19. Operation as Approved Facility and as a “Project”.	67
Section 8.20. Restrictions on Dissolution and Merger.	67
Section 8.21. Reserved.....	69
Section 8.22. Further Assurances	69
Section 8.23. Reserved.....	69
Section 8.24. Living Wage.	69
Section 8.25. M/WBE Program.	76
Section 8.26. Prevailing Wages for Construction.....	76
ARTICLE IX REMEDIES AND EVENTS OF DEFAULT	77
Section 9.1. Events of Default	77
Section 9.2. Remedies on Default.....	78
Section 9.3. Remedies Cumulative	79
Section 9.4. No Additional Waiver Implied by One Waiver	79
Section 9.5. Effect on Discontinuance of Proceedings	79
Section 9.6. Agreement to Pay Fees and Expenses of Attorneys and Other Consultants.....	79
Section 9.7. Certain Continuing Representations	80
Section 9.8. Late Delivery Fees	80

TABLE OF CONTENTS
(continued)

	<u>Page</u>
ARTICLE X TERMINATION	81
Section 10.1. Lessee’s Option to Terminate Company Lease and this Agreement	81
Section 10.2. Termination of Company Lease and this Agreement on Agency Notice.	81
Section 10.3. Actions Upon Termination.	81
Section 10.4. Survival of Lessee Obligations	82
 ARTICLE XI MISCELLANEOUS	 83
Section 11.1. Force Majeure	83
Section 11.2. Priority	83
Section 11.3. Amendments	83
Section 11.4. Service of Process	83
Section 11.5. Notices	84
Section 11.6. Consent to Jurisdiction.....	85
Section 11.7. Prior Agreements Superseded.....	86
Section 11.8. Severability	86
Section 11.9. Effective Date; Counterparts.....	86
Section 11.10. Binding Effect.....	86
Section 11.11. Third Party Beneficiaries	86
Section 11.12. Law Governing	86
Section 11.13. Waiver of Trial by Jury.....	86
Section 11.14. Recourse Under This Agreement.....	86
Section 11.15. Legal Counsel; Mutual Drafting	87

EXHIBITS

Exhibit A - Description of the Land and Project Unit	
Exhibit B - Description of the Facility Personalty	
Exhibit C - Authorized Representative	
Exhibit D - Principals of Lessee	
Exhibit E - Project Cost Budget	
Exhibit F - Form of Required Disclosure Statement	
Exhibit G - Form of Project Completion Certificate	
Exhibit H - Form of Sales Tax Agent Authorization Letter	
Exhibit I - Sales Tax Registry	
Exhibit J – Project Finance Plan	
Exhibit K – Facility Tenant – Annual Certificate	
Exhibit L – Form of LW Agreement	
Exhibit M-1 – M/WBE Participation Plan	
Exhibit M-2 – Opportunity M/WBE Program	
Exhibit N – Rider to Tenant Lease Agreement	
Exhibit 0 – Description and Dollar Value of Public Funds	
 Schedule I –North American Industry Classification System Definitions	