

**AGENCY LEASE AGREEMENT**

Dated as of August 1, 2021

by and between

**NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY**

and

**BORDEN SUM, LLC**, a Delaware limited liability company, **132 MIDDLE STREET, LLC**, a New Hampshire limited liability company, and **134 MIDDLE STREET, LLC**, a New Hampshire limited liability company, as tenants in common (collectively, the “Lessee”), having an office at 11-24 Borden Avenue, Long Island City, New York 11101, as Lessee

(2021 AE-ESS NWS 1, LLC, Project)

Affecting the Land generally known by the street address 11-24 Borden Avenue, Long Island City, New York 11101, Section 4, Block 65 and Lot 15

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

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Record and Return to:  
Nixon Peabody LLP  
Tower 46, 55 West 46<sup>th</sup> St.  
New York, New York 10036-4120  
Attention: Scott Singer, Esq.

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## **AGENCY LEASE AGREEMENT**

This **AGENCY LEASE AGREEMENT**, dated as of August 1, 2021 (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 (together with permitted successors and/or assigns), party of the second part (capitalized terms used herein shall have the respective meanings assigned to such terms throughout this Agreement).

### **WITNESSETH:**

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

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

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

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

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

**WHEREAS**, in furtherance of the Straight-Lease Transaction, the Agency adopted its 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

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

**WHEREAS**, the provision by the Agency of Financial Assistance to the Lessee and the Sublessee through a Straight-Lease Transaction has been determined to be necessary to induce the Sublessee to commence operations in the City; and if the Agency does not provide such Financial Assistance, the Sublessee could not feasibly proceed with the Project; and

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

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

## ARTICLE I

### DEFINITIONS AND CONSTRUCTION

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

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

**Additional Improvements** shall mean any buildings, structures, foundations, related facilities, fixtures, and other improvements constructed, erected, placed and/or installed on, under and/or above the Land, 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, but excluding replacements and/or restorations of the Facility in connection with a Loss Event.

**Additional Improvements PILOT** shall have the meaning set forth in Section 5.1(f).

**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.

**Agency Protection Protocol** shall mean that no Exempt Mortgage or assignment of leases and rents (x) shall claim any exemption from any mortgage recording tax by virtue of the Agency's interest in the Facility without the Agency being an executing party thereto and delivering an affidavit as to such exemption for purposes of recording, (y) shall subject the Agency to any obligations or liability, pecuniary or otherwise, and (z) shall include within its pledge, Lien or security interest any interest of the Agency or the Lessee under this Agreement (including any amounts paid or payable hereunder), or the interest of the Agency in the Guaranty Agreement (including any amounts paid or payable to the Agency thereunder).

**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 Authorizing 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 Sublessee substantially for the Approved Project Operations.

**Approved Project Operations** shall mean operation of the Facility Realty by the Lessee, the Sublessee or an Affiliate of the Lessee or Sublessee approved by the Agency, in its sole discretion, 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 applicable 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, (iii) in the case of the Sublessee, a person named in Exhibit C – “Authorized Representative”, or any other officer or employee of the Sublessee who is authorized to perform specific duties hereunder or under any other Project Document and of whom another Authorized Representative of the Sublessee has given written notice to the Agency, (iv) in the case of any Guarantor which shall constitute an Entity (other than the Lessee or the Sublessee), a person named in Exhibit C – “Authorized Representative”, or any other officer or employee of such Guarantor who is authorized to perform specific duties hereunder or under any other Project Document and of whom another Authorized Representative of such Guarantor has given written notice to the Agency, and (v) in the case of any Individual Guarantor, such Individual Guarantor; provided, however, that in each case for which a certification or other statement of fact or condition is required to be submitted by an Authorized Representative to any Person pursuant to the terms of this Agreement or any other Project Document, such certificate or statement shall be executed only by an Authorized Representative in a position to know or to obtain knowledge of the facts or conditions that are the subject of such certificate or statement.

**Authorizing Resolution** shall mean the resolution of the Agency adopted on July 28, 2020, 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 or Sublessee 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 August 31, 2021, on which date this Agreement was executed and delivered.

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

**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.

**Completion Deadline** shall mean July 1, 2024.

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

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

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

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

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

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

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

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

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

**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.

**Environmental Audit** shall mean that certain Phase I Environmental Site Assessment Report dated January 17, 2020, prepared by the Environmental Auditor.

**Environmental Auditor** shall mean Langan Engineering, Environmental, Surveying Landscape Architecture and Geology, D.P.C.

**Estimated Project Cost** shall mean \$15,130,315.

**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

**Exempt Mortgage** shall mean that Mortgage by the Lessee and the Agency to The Provident Bank securing the principal amount of \$4,220,000, the recording of which is exempt in whole or in part from Mortgage Recording Taxes by reason of the Agency being a mortgagor thereunder. The Exempt Mortgage shall conform to the Agency Protection Protocol.

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

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

**Existing Improvements Abatement Amount** shall mean, with respect to any semi-annual period, an amount equal to (y) the Adjusted PILOT Amount solely applicable to Existing Improvements for such semi-annual period minus (z) the Stabilized PILOT Amount solely applicable to Existing Improvements for such semi-annual period, but not less than zero.

**Existing Improvements PILOT** shall have the meaning set forth in Section 5.1(d).

**Expiration Date** shall mean June 30<sup>th</sup> in the twenty-fifth (25<sup>th</sup>) year following the PILOT Commencement Date.

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

**Facility Address** shall mean 11-24 Borden Avenue, Long Island City, New York 11101, also identified as Tax Block 65, Lot 15 on the current City Tax Map for the Borough of Queens.

**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 and with respect to which the Company will obtain from NYCDOF a separate identifying number (REUC identifier). 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 Land and the Improvements and with respect to which the Company will obtain from NYCDOF a separate identifying number (REUC identifier).

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

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

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

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

**Force Majeure** shall have the meaning set forth in Section 11.1.

**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.

**Full PILOT Amount** shall mean, with respect to any semi-annual period, an amount equal to Real Estate Taxes that would have been levied by the City in the absence of the Agency’s interest in the Facility Realty, without giving effect to any As-of-Right Benefit.

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

**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 (i) 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, and (ii) a limited liability company, the Governing Body shall be the managing member or manager of the limited liability company if one exists, even if the managing member may require the consent of non-managing members for certain decisions or actions to be taken by a limited liability company.

**Guarantors** shall mean, collectively, the Lessee, the Sublessee, the Individual Guarantors 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.

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

**Improvements** shall mean, collectively, the Existing Improvements, if any, the Project Improvements and any Additional Improvements, if any, and all other replacements, restorations and repairs to any of the foregoing.

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

**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).

**Individual Guarantors** shall have the meaning set forth in the Guaranty.

**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 \$1,250.

**Initial Mortgagee** shall mean The Provident Bank.

**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 Queens, Block 65 and Lot 15, generally known by the Facility Address, all as more particularly described in Exhibit A - "Description of the Land", together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto; but excluding, however, any real property or interest therein released pursuant to Section 8.10(c).

**Land Abatement Amount** shall mean, with respect to any semi-annual period, an amount equal to the Adjusted PILOT Amount applicable to the Land for such period because the Land is located in a Zone as of the Commencement Date.

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

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

**Land Square Footage** shall mean approximately 9,700 square feet, which measurement shall be subject to further review and confirmation by the Agency with the cooperation of the Lessee.

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

**Lessee** shall mean collectively, BORDEN SUM, LLC, a Delaware limited liability company, 132 MIDDLE STREET, LLC, a New Hampshire limited liability company, and 134 MIDDLE STREET, LLC, a New Hampshire limited liability company, as tenants in common, and their respective 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 \$1,072,692.

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

**Mortgage Loans** shall mean the Exempt Mortgage and 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 the Initial Mortgagee and 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.

**Mortgage Recording Tax Exemption Amount** shall mean an exemption amount equal to \$275,000 with respect to all or a portion of the Mortgage Recording Taxes that would have otherwise been payable with respect to the Exempt Mortgage in the absence of the Agency's exemption.

**Mortgage Recording Taxes** shall mean those taxes imposed by the City and the State upon the recording of mortgages against real property in the City.

**M\WBE Program** shall have the meaning set forth in Section 8.27.

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

**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 or the Sublessee 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, the Sublessee, any other Guarantor or any other Person (which counsel shall be reasonably acceptable to the Agency) with respect to such matters as required under any Project Document or as the Agency may otherwise reasonably require, and which shall be in form and substance reasonably acceptable to the Agency.

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

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

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

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

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

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

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

**Permitted Encumbrances** shall mean:

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

(ii) liens for Real Estate Taxes, assessments, levies and other governmental charges, the payment of which is not yet due and payable;

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

(iv) utility, access and other easements and rights of way, restrictions and exceptions that an Authorized Representative of the Lessee and/or Sublessee, as the case may be, certifies to the Agency will not materially interfere with or impair the 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 and/or Sublessee, as the case may be, 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 and/or Sublessee, as the case may be, to maintain self-

insurance or to participate in any funds established to cover any insurance risks or in connection with workmen's compensation, unemployment insurance, old age pensions or other social security, or to share in the privileges or benefits required for companies participating in such arrangements;

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

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

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

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

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

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

**Person** shall mean an individual or any Entity.

**PILOT** shall mean payments in lieu of 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 obligation of the Lessee to pay the amount of PILOT required under this Agreement.



**PILOT Commencement Date** shall mean July 1<sup>st</sup> of the first tax year following the date in which NYCDOF recognizes the Agency's exemption of the REUC identifier for the Facility or any component part thereof.

**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 8.16(d).

**PILOT Term** shall mean the period commencing on the PILOT Commencement Date and ending on the earlier of the Termination Date or 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).

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

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

**Project** shall mean the acquisition, demolition, construction, and equipping of an approximately 20,600 kilo-watt hours battery storage system, located on an approximately 9,700 square foot parcel of land at 11-24 Borden Avenue, Long Island City, and the demolition of the existing approximately 7,000 square foot building located thereon, owned by the Lessee and leased to and operated by the Sublessee and will serve as a large-scale battery storage system capable of charging from, and discharging into, the New York power grid, in connection therewith; and the occupancy, use and operation, through and until the Expiration Date, of the Facility Realty as an industrial facility for the Approved Project Operations.

**Project Agreement** shall mean the Uniform Project Agreement, dated the Commencement Date, between the Agency and the Lessee.

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

**Project Completion Date** shall mean the date which an Authorized Representative of the Lessee certifies to the Agency by signing and delivering to the Agency a certification

substantially in the form set forth in Exhibit G – “Form of Project Completion Certificate”, that the Project Work has been finished and the Project Improvements shall have been completed substantially in accordance with the plans and specifications therefor, and the Lessee shall have provided the certificate of an engineer that the Project has been completed and all approvals necessary for commercial operation of the Project Improvements have been obtained, subject to the review, verification and acceptance of such certification and related documentation by the Agency, in its sole discretion.

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

**Project Fee** shall mean \$224,957, representing the \$229,957, Agency project 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 buildings, structures, foundations, related facilities, fixtures, Facility Personalty (which shall include, but not be limited to the battery storage system and related equipment that is included in the REUC identifier) and other improvements and equipment resulting from the Project Work.

**Project Improvements Abatement Amount** shall mean, with respect to any semi-annual period, an amount equal to the Adjusted PILOT Amount for Project Improvements for such period.

**Project Improvements Investment** shall mean the costs and expenses to be incurred by the Lessee or the Sublessee after the Commencement Date and prior to the Project Completion Deadline for the demolition, 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 Payments** shall have the meaning set forth in Section 10.1.

**Project Work** shall mean the work required to complete the demolition, 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 manufacturing, processing, disposing, and/or distribution facility and include: a large-scale battery storage system capable of charging from, and discharging into, the New York power grid, except that any retail use shall be a Non-Qualified Use, including such other activities as may be substantially related to or substantially in support of such use or operations, provided, however, that no Tenant Lease shall be a Qualified Use, and all of the USF leased pursuant to any such Tenant Lease shall be Non-Qualified USF, notwithstanding the Lessee's compliance with the requirements of Section 8.9.

**Qualified USF** shall mean Usable Square Feet of the Improvements that on the date(s) of determination are being used by the Lessee, the Sublessee or an Affiliate of the Lessee or Sublessee approved by the Agency, in its sole discretion, for a Qualified Use.

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

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

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

**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 or the Sublessee at the Facility Realty and/or cessation of all or substantially all of the operations of the Lessee or the Sublessee at the Facility Realty;
- (iii) the transfer of all or substantially all of the employees of the Lessee and the Sublessee to a location outside of the City;
- (iv) the Facility shall have ceased to be the Approved Facility and/or the Lessee or the Sublessee shall have substantially changed the scope and nature of their operations at the Facility Realty;
- (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 in violation of this Agreement;

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

(vii) the Lessee or the Sublessee shall have relocated all or substantially all of its operations at the Facility Realty to another site; provided, however, and notwithstanding the foregoing, such relocation shall not be a Recapture Event if (A) the Lessee and the Sublessee have relocated (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 and the Sublessee maintain, for the remaining balance of the Recapture Period, an employment level equal to at least 90% of the number of employees employed by the Lessee and the Sublessee at the Facility Realty prior to relocation, and (C) the Lessee and/or the Sublessee shall satisfy such other additional conditions as the Agency may from time to time impose provided such additional conditions are reasonable and uniformly imposed, at the time, to other similar transactions under similar circumstances. There shall arise another Recapture Event upon the failure of the Lessee and/or the Sublessee to satisfy continuously the foregoing requirements for the remaining balance of the Recapture Period. Upon the occurrence of such subsequent Recapture Event, the Agency shall have the right to demand payment of all amounts due under Section 5.4(b) or (c), and the calculation of interest pursuant to Section 5.4(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. For purposes of Section 5.4, individuals who are employed by each of the Lessee and the Sublessee shall not be counted twice.

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

**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 (10<sup>th</sup>) 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”.

**REUC** shall mean Real Estate of Utility Company.

**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)(i).

**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.

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

**Sublessee** shall mean AE-ESS NWS 1, 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 Sublessee under Section 8 of the Sublease Agreement.

**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 (other than the Sublessee under the Sublease Agreement) relating to the use and occupancy of all or a portion of the Facility Realty.

**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 9,700 USF upon completion of the Project Improvements based on the Engineer's Certificate and delivered to the Agency on or before the Commencement Date.

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

**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 and by the Sublessee, the Agency is authorized and empowered to enter into the transactions contemplated by this Agreement and any other Project Documents to which the Agency is a party and to carry out its obligations hereunder and thereunder.

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

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

(a) Each 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 respective 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 each Lessee is a party (x) have been duly authorized by all necessary action on the part of each Lessee, (y) have been duly executed and delivered by each Lessee, and (z) constitute the legal, valid and binding obligations of each Lessee as tenants in common, 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 each 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 respective Organizational Documents, or any indenture, agreement or other instrument to which each Lessee is a party or by which it or any of its property is bound or to which it or any of its property is subject, (y) be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument or (z) result in the imposition of any lien, charge or encumbrance of any nature whatsoever other than Permitted Encumbrances.

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

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

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

(g) 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.

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

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

(j) During the Term, the Facility will be occupied and used for Approved Project Operations.

(k) 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.

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

(m) The Lessee and the Sublessee (i) are 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 and (ii) certify, 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.

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

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

(p) 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. The Lessee represents and warrants that the Project Improvements Investment for the Project is \$1,350,000.

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

(r) All of the Land comprises one (1) complete tax lot and no portion of any other tax lot.

(s) 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.

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

(u) The Fiscal Year is true and correct.

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

(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.

(w) 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.

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

### ARTICLE III

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

##### Section 3.1. The Company Lease.

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

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

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

**Section 3.2. 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). The Lessee shall not materially revise the scope of the Project Work without the prior written consent of the Agency. The Lessee will cause the Project Completion Date to occur by the Completion Deadline. At least fourteen days prior to the commencement of any Construction that is part of the Project Work, the Lessee shall deliver to the Agency a declarations page and a schedule of forms and endorsements pertinent to the CGL of the general contractor, which shall comply with the requirements of Section 8.1 of this Agreement and acceptable to the Agency in its sole discretion.

(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, or shall cause the Sublessee to, 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, or will cause the Sublessee to, perform or cause to be performed the Project Work in accordance with all applicable Legal Requirements 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, or will cause the Sublessee to, 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 (i) 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, together with 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 (ii) 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 \$1,350,000 as its Project Improvements Investment.

#### **Section 3.4. Maintenance.**

(a) During the Term, the Lessee will, or will cause the Sublessee to:

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

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

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

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

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

### **Section 3.5. Alterations and Improvements.**

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

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

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

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

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

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

(c) If at any time after the Operations Commencement Date, the Lessee (or Sublessee or any Agent thereof) 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).

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

### **Section 3.6. Removal of Property of the Facility.**

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

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

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

(iii) Lessee shall comply with all Legal Requirements necessary to confirm that the removal or substitution of such Existing Facility Property will not affect the REUC identifier assigned by NYCDOF to the Facility, or if such substitution or removal does affect the REUC identifier, Lessee shall promptly notify the Agency in writing of any such changes and will cooperate with the Agency to make any required modifications or amendments to this Agreement to reflect such changes.

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

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

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

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

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

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

**Section 3.8. Title Report, Municipal Department Searches and Survey.** On or prior to the Commencement Date, the Lessee will obtain and deliver to the Agency (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; provided the Agency and Lessee acknowledge and agree that simultaneously with its execution and delivery of this Agreement, the Lessee will execute and deliver the Sublease Agreement with the Sublessee.

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

**Section 4.3. Rental Provisions.**

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



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

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

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

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

**Section 4.6. Assignment of Sublease Agreement.**

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

(b) Other than corresponding changes for any changes to this Agreement, as permitted hereunder or otherwise approved by the Agency, the Lessee agrees not to terminate, modify or amend the Sublease Agreement or any of the terms thereof, or grant any concessions in connection therewith, either orally or in writing, or to accept a surrender thereof, without the prior

written consent of the Agency and any attempted termination, modification or amendment of the Sublease Agreement without such written consent shall be null and void.

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

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

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

## ARTICLE V

### AGENCY FINANCIAL ASSISTANCE (PAYMENTS IN LIEU OF TAXES,

**SALES TAX EXEMPTION AND MORTGAGE RECORDING TAX EXEMPTION);  
RECAPTURE OF PUBLIC 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. The Lessee further agrees (i) to comply with any Legal Requirements necessary to obtain a REUC identifier and provide the REUC identifier to the Agency, and (ii) to file Real Property Income and Expense Statements (RPIE) with NYCDOF with respect to the Project Improvements throughout the PILOT Term.

(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) Land PILOT.

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, in the 21<sup>st</sup> year following the PILOT Commencement Date, Land PILOT shall equal (1) the Adjusted PILOT Amount with respect to Land minus (2) the Land Abatement Amount.

(ii) For each semi-annual period occurring within the period commencing on July 1, in the 21<sup>st</sup> year following the PILOT Commencement Date to and including June 30, in the 22<sup>nd</sup> year following the PILOT Commencement Date, Land PILOT shall equal (1) the Adjusted PILOT Amount with respect to the Land minus (2) the product of (y) 0.80 and (z) the Land Abatement Amount.

(iii) For each semi-annual period occurring within the period commencing on July 1, in the 22<sup>nd</sup> year following the PILOT Commencement Date to and including June 30, in the 23<sup>rd</sup> year following the PILOT Commencement Date, Land PILOT shall equal (1) the Adjusted PILOT Amount with respect to the Land minus (2) the product of (y) 0.60 and (z) the Land Abatement Amount.

(iv) For each semi-annual period occurring within the period commencing on July 1, in the 23<sup>rd</sup> year following the PILOT Commencement Date to and including June 30, in the 24<sup>th</sup> year following the PILOT Commencement Date, Land PILOT shall equal (1) the Adjusted PILOT Amount with respect to the Land minus (2) the product of (y) 0.40 and (z) the Land Abatement Amount.

(v) For each semi-annual period occurring within the period commencing on July 1, in the 24<sup>th</sup> year following the PILOT Commencement Date to and including June 30, in the 25<sup>th</sup> year following the PILOT Commencement Date, Land PILOT shall equal the Adjusted PILOT Amount with respect to the Land minus the product of (y) 0.20 and (z) the Land Abatement Amount.

(d) Existing Improvements PILOT.

During the PILOT Term, the Lessee shall pay PILOT with respect to the Existing Improvements (the “Existing 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, in the 21<sup>st</sup> year following the PILOT Commencement Date, Existing Improvements PILOT shall equal (1) the Adjusted PILOT Amount with respect to Existing Improvements minus the (2) Existing Improvements Abatement Amount.

(ii) For each semi-annual period occurring within the period commencing on July 1, in the 21<sup>st</sup> year following the PILOT Commencement Date to and including June 30, in the 22<sup>nd</sup> year following the PILOT Commencement Date, Existing

Improvements PILOT shall equal (1) the Adjusted PILOT Amount with respect to Existing Improvements minus (2) the product of (y) 0.80 and (z) the Existing Improvements Abatement Amount.

(iii) For each semi-annual period occurring within the period commencing on July 1, in the 22<sup>nd</sup> year following the PILOT Commencement Date to and including June 30, in the 23<sup>rd</sup> year following the PILOT Commencement Date, Existing Improvements PILOT shall equal (1) the Adjusted PILOT Amount with respect to Existing Improvements minus (2) the product of (y) 0.60 and (z) the Existing Improvements Abatement Amount.

(iv) For each semi-annual period occurring within the period commencing on July 1, in the 23<sup>rd</sup> year following the PILOT Commencement Date to and including June 30, in the 24<sup>th</sup> year following the PILOT Commencement Date, Existing Improvements PILOT shall equal (1) the Adjusted PILOT Amount with respect to Existing Improvements minus (2) the product of (y) 0.40 and (z) the Existing Improvements Abatement Amount.

(v) For each semi-annual period occurring within the period commencing on July 1, in the 24<sup>th</sup> year following the PILOT Commencement Date to and including June 30, in the 25<sup>th</sup> year following the PILOT Commencement Date, Existing Improvements PILOT shall equal (1) the Adjusted PILOT Amount with respect to Existing Improvements minus (2) the product of (y) 0.20 and (z) the Existing Improvements Abatement Amount.

(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 and ending on June 30, in the 21<sup>st</sup> year following the PILOT Commencement Date Project Improvements PILOT shall equal (1) the Adjusted PILOT Amount with respect to Project Improvements minus (2) the Project Improvements Abatement Amount. Upon completion of the Project Improvements (and notwithstanding the foregoing sentence), the Lessee shall promptly request the appropriate officer of the City to reassess the Improvements.

(ii) For each semi-annual period occurring within the period commencing on July 1, in the 21<sup>st</sup> year following the PILOT Commencement Date to and including June 30, in the 22<sup>nd</sup> year following the PILOT Commencement Date, Project Improvements PILOT shall equal (1) the Adjusted PILOT Amount with respect to Project Improvements minus (2) the product of (y) 0.80 and (z) the Project Improvements Abatement Amount.

(iii) For each semi-annual period occurring within the period commencing on July 1, in the 22<sup>nd</sup> year following the PILOT Commencement Date to and including June 30, in the 23<sup>rd</sup> year following the PILOT Commencement Date, Project

Improvements PILOT shall equal (1) the Adjusted PILOT Amount with respect to Project Improvements minus (2) the product of (y) 0.60 and (z) the Project Improvements Abatement Amount.

(iv) For each semi-annual period occurring within the period commencing on July 1, in the 23<sup>rd</sup> year following the PILOT Commencement Date to and including June 30, in the 24<sup>th</sup> year following the PILOT Commencement Date, Project Improvements PILOT shall equal (1) the Adjusted PILOT Amount with respect to Project Improvements minus (2) the product of (y) 0.40 and (z) the Project Improvements Abatement Amount.

(v) For each semi-annual period occurring within the period commencing on July 1, in the 24<sup>th</sup> year following the PILOT Commencement Date to and including June 30, in the 25<sup>th</sup> year following the PILOT Commencement Date, Project Improvements PILOT shall equal (1) the Adjusted PILOT Amount with respect to Project Improvements minus (2) the product of (y) 0.20 and (z) the Project Improvements Abatement 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 or cause to be paid 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 or cause to be paid within 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](mailto:pilot1@finance.nyc.gov) or: **PILOT Unit, NYC Department of Finance, 59 Maiden Lane, 22<sup>nd</sup> 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 or cause to be made 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 Lessee agrees to pay or cause to be paid 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), (d), (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 (as to such portion of the Improvements used for a Non-Qualified 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), (d), (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 (d), (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 30<sup>th</sup> or December 31<sup>st</sup>. 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 and the Sublessee (or any Agent thereof) 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 or the Sublessee (or any Agent thereof)), 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 and the Sublessee (or any Agent thereof) 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 located at the Facility Realty, other than the Lessee and the Sublessee (or any Agent thereof), 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 represents and warrants to the Agency that the use of the Sales Tax Exemption by the Lessee, the Sublessee 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, Sublessee 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 the Sublessee, or 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](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](mailto: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, bills 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 28<sup>th</sup> 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 1<sup>st</sup> 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 30<sup>th</sup> (or such shorter period beginning on the Commencement Date and ending on the preceding June 30<sup>th</sup>), unless the Termination Date occurred prior to such June 30<sup>th</sup>. 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. Mortgage Recording Tax Exemption.**

(a) The Lessee acknowledges that the Agency has authorized an exemption of Mortgage Recording Taxes on the Exempt Mortgage in the amount of the Mortgage Recording Tax Exemption Amount. On or before the Completion Deadline, and provided there is no Event of Default, the Lessee may enter into an Exempt Mortgage which contains the Agency Protection Protocol in form and substance satisfactory to the Agency in its sole discretion.

(b) The Lessee acknowledges and agrees that the Agency is not obligated to exempt in whole or in part the payment of Mortgage Recording Taxes for the recording of any mortgage other than the Exempt Mortgage; nor is the Agency obligated to exempt in whole or in part the payment of Mortgage Recording Taxes on any extension, modification or other amendment to, or any assignment, consolidation or restatement of, the Exempt Mortgage.

(c) The Agency agrees that if, in connection with the refinancing of the Exempt Mortgage, the Lessee (i) causes the mortgagee of the Exempt Mortgage to assign the Exempt Mortgage to a new mortgagee, and/or (ii) causes the Exempt Mortgage to be modified, extended, consolidated or otherwise amended, the Agency will not object to any resulting continuation of the exemption of the Mortgage Recording Taxes originally applicable to the Exempt Mortgage, provided that the Agency shall be fully released from the Exempt Mortgage upon any such assignment.

**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 impossible for use by the Lessee or the Sublessee as contemplated hereby, the Lessee shall exercise its option to terminate this Agreement as provided in Section 10.1.

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

#### **Section 6.4. Effect of Election to Build.**

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

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

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

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

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

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

(b) The date of completion of the rebuilding, replacement, repair or restoration of the Facility shall be evidenced to the Agency by a certificate of an Authorized Representative of the Lessee stating (i) the date of such completion, (ii) that all labor, services, machinery, equipment, materials and supplies used therefor and all costs and expenses in connection therewith have been paid for or arrangement for payment, reasonably satisfactory to the Agency, has been

made (iii) that the Facility has been rebuilt, replaced, repaired or restored to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, (iv) that the Agency has good and merchantable title to all Facility Personalty and a good and valid leasehold interest in all property constituting part of the Facility Realty, and all property of the Facility is subject to the Company Lease (except in the case of the Facility Personalty), this Agreement and the Sublease Agreement, subject to Permitted Encumbrances, and (v) that the restored Facility is ready for occupancy, use and operation for the Approved Project Operations. Notwithstanding the foregoing, such certificate may state (x) that it is given without prejudice to any rights against third parties by the Lessee or the Sublessee that exist at the date of such certificate or that may subsequently come into being, (y) that it is given only for the purposes of this Section and (z) that no Person other than the Agency may benefit therefrom.

(c) The certificate delivered pursuant to Section 6.4(b) shall be accompanied by (i) a certificate of an engineer that the Project has been completed and all approvals necessary for commercial operation of the Project Improvements have been obtained, subject to the review, verification and acceptance of such certification and related documentation by the Agency, in its sole discretion, 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, collectively or individually, the Lessee and the Sublessee.

**Insurer** means any entity writing or issuing a Policy.

**ISO** means the Insurance Services Office or its successor.

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

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

**SIR** means self-insured retention.

**U/E** means Umbrella or Excess Liability insurance.

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

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

(i) CGL with \$1,000,000 minimum per occurrence and \$2,000,000 minimum in the aggregate, per-location aggregate, and on a per occurrence basis. This

Policy shall contain coverage for contractual liability, premises operations, and products and completed operations.

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

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

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

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

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

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

(A) CGL and U/E in accordance with the requirements in Section 8.1(b), subject to the following modifications: (y) coverage shall be in an aggregate minimum amount of \$10,000,000 per project aggregate, and (z) 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). In addition, each Contractor must protect the Agency as an additional insured on a primary and non-contributory basis via ISO endorsements CG 20 26 and CG 20 37 or their equivalents and the endorsements must specifically identify the Agency as additional insured.

(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:  
11-24 Borden Avenue, Long Island City, New York 11101;*

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

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

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

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

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

(iv) Insurance to be obtained by Contractors. In connection with any Construction, the Lessee shall, upon the written request of the Agency, cause any or all

Contractors to provide evidence satisfactory to the Agency, that such Contractors have obtained and maintain the Policies that they are required to obtain and maintain in accordance with the requirements of Section 8.1(c).

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

(h) Miscellaneous.

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

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

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

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

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

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

(vii) Nothing contained in this Agreement shall be deemed to modify the obligations of the Lessee pursuant to any Mortgage with respect to property insurance or



the application of proceeds thereof and said Mortgage. The obligations of the Lessee hereunder shall be independent of any such other obligations relating to insurance.

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

(ix) THE AGENCY DOES NOT REPRESENT THAT THE INSURANCE REQUIRED IN THIS SECTION 8.1, WHETHER AS TO SCOPE OR COVERAGE OR LIMIT, IS ADEQUATE OR SUFFICIENT TO PROTECT THE 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 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,
- (iii) the maintenance, repair, replacement, restoration, rebuilding, construction, renovation, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Facility or any portion thereof,
- (iv) the execution and delivery by an Indemnified Party, the Lessee, the Sublessee or any other Person of, or performance by an Indemnified Party, the Lessee or any other Person, as the case may be, of, any of their respective obligations under, this Agreement or any other Project Document, or other document or instrument delivered in

connection herewith or therewith or the enforcement of any of the terms or provisions hereof or thereof or the transactions contemplated hereby or thereby,

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

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

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

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

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

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

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

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

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

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

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

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

*FINANCIAL ASSISTANCE PROVIDED  
THROUGH THE  
NEW YORK CITY INDUSTRIAL  
DEVELOPMENT AGENCY  
Mayor Bill de Blasio*

In addition, the Sign shall satisfy the following requirements: (x) format and appearance generally shall be as stipulated by the Agency in writing or electronically; (y) the minimum size of the Sign shall be four (4) feet by eight (8) feet; and (z) the Sign shall have no other imprint upon it other

than that of the Agency. The Sign shall remain in place at the Facility until completion of the renovations and/or construction. The Lessee may erect other signs in addition to the Sign.

**Section 8.6. Environmental Matters.**

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

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

(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 or shall cause to be conducted and completed all investigations, studies, sampling, and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials, on, from, or affecting the Facility in accordance with all applicable Legal Requirements.

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

**Section 8.7. Employment Matters.**

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

(b) Upon the Agency's written request, the Lessee shall provide to the Agency any employment information in the possession of the Lessee or the Sublessee which is pertinent

to the Lessee and the Sublessee and the employees of the Lessee and the Sublessee to enable the Agency and/or NYCEDC to comply with its reporting requirements required by City Charter §1301 and any other applicable laws, rules or regulations.

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

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

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

#### **Section 8.8. Non-Discrimination.**

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

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

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

**Section 8.9. Assignment or Sublease.**

(a) The Lessee shall not at any time assign or transfer this Agreement, or enter into a Tenant Lease to sublet to a Tenant all or any part of the Facility (except to the Sublessee pursuant to the Sublease Agreement, or any Affiliate of the Lessee or Sublessee approved by the Agency, in its sole discretion), except as permitted by Section 8.20 and this Agreement, and subject to (1) providing the Agency written notice of such intended assignment, transfer or sublease before it actually occurs and (2) the prior written consent of the Agency (such consent to be requested by the Lessee of the Agency in the form prescribed by the Agency, and such consent of the Agency to take into consideration the Agency's policies as in effect from time to time), and provided that:

(i) the Lessee shall remain primarily liable to the Agency for the payment of all Rental Payments hereunder and for the full performance of all of the terms, covenants and conditions of this Agreement and of any other Project Document to which it shall be a party; provided, however, that if, in connection with the assignment of this Agreement, the Lessee shall have requested the release of the Lessee under the Project Documents, and the Agency shall have consented to such release in its sole and absolute discretion, the Lessee shall not be required to remain so liable except to the extent of any accrued or unpaid payment or performance obligations, and for any indemnified liabilities with respect to events occurring prior to such release;

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

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

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

(v) with respect to any subletting in part of the Facility, no more than an aggregate of twenty percent (20%) of the Total Improvements USF shall be subleased by the Lessee or the Sublessee and all such space shall be deemed for purposes of Section 5.1(i) to be Non-Qualified USF for which additional PILOT shall be paid by the Lessee;

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

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

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

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

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

(c) If the Agency provides its written consent, in its sole discretion, for the Lessee or the Sublessee to enter into a Tenant Lease for a portion of the Facility Realty, such consent will be subject to the following conditions and any additional conditions required by the Agency:

(i) After giving effect to such Tenant Lease, not more than 20% of the Total Improvements USF will be used, in the aggregate, by Tenants for Non-Qualified Uses.

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

(iii) the Tenant Lease shall incorporate the Rider to Tenant Lease Agreement, substantially in the set forth as Exhibit P to this Agreement, executed by both the Lessee, as landlord, and the Tenant;

(iv) the Lessee shall provide the Agency with an updated certification as required by Section 8.16(d) that includes Tenant Lease;

(v) the Tenant Lease shall not violate any provision of this Agreement or any other Project Document;

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

(d) Upon request by the Agency, an Authorized Representative of the Lessee shall provide to the Agency (i) a fully executed copy of each Tenant Lease (including the Rider to Tenant Lease Agreement set forth in Exhibit P hereto), (ii) the ACORD certificate evidencing that the Tenant has satisfied the insurance requirements set forth in the Rider to Tenant Lease Agreement, and (iii) a certificate of an Authorized Representative of the Lessee certifying that the Lessee is in compliance with Section 8.9 hereof as of the date of such certification after the effective date of such Tenant Lease.

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

(f) The Lessee covenants and agrees that it shall not, without the prior written consent of the Agency, amend, modify, terminate or assign, or to suffer any amendment, modification, termination or assignment of, the Sublease Agreement or any Tenant Lease entered into in accordance with this Section in a manner inconsistent with the requirements set forth herein (other than changes to the Sublease Agreement or any Tenant Lease required by a corresponding change to this Agreement).

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

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

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

(a) Neither the Lessee nor the Agency shall sell, assign, encumber (other than Permitted Encumbrances), convey or otherwise dispose of its respective title to or leasehold estate in the Facility, including the Improvements, or any part of the Facility or interest therein during the Term, except as set forth in Sections 3.6, Article VI, 8.9, 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. 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, of this Agreement and of the Sublease Agreement as shall be necessary or convenient in the opinion of the Lessee for the operation or use of the Facility, or required by any utility company for its utility business, provided that, in each case, such rights of way, easements, permits or licenses shall not adversely affect the use or operation of the Facility as the Approved Facility. The Agency agrees, at the sole cost and expense of the Lessee, to execute and deliver any and all instruments necessary or appropriate to confirm and grant any such right of way or easement or any such permit or license and to release the same from the leasehold estate of the Company Lease, of this Agreement and of the Sublease Agreement.

(c) So long as there exists no Event of Default hereunder, the Lessee may from time to time request in writing to the Agency the release of and removal from the leasehold estate of the Company Lease, of this Agreement and of the Sublease Agreement of any unimproved part of the Land (on which none of the Improvements, including the buildings, structures, major appurtenances, fixtures or other property comprising the Facility Realty, is situated) provided that such release and removal will not adversely affect the use or operation of the Facility as the Approved Facility. Upon any such request by the Lessee, the Agency shall, at the sole cost and expense of the Lessee, execute and deliver any and all instruments necessary or appropriate to so release and remove such unimproved Land from the leasehold estates of the Company Lease, of this Agreement and of the Sublease Agreement, subject to the following: (i) any liens, easements, encumbrances and reservations to which title to said property was subject on the Commencement Date, (ii) any liens, easements and encumbrances created at the request of the Lessee or the Sublessee or to the creation or suffering of which the Lessee or the Sublessee consented; (iii) any liens and encumbrances or reservations resulting from the failure of the Lessee or the Sublessee to perform or observe any of the agreements on its respective part contained in this Agreement or any other Project Document; (iv) Permitted Encumbrances (other than the liens of the Company Lease, of this Agreement and of the Sublease Agreement); and (v) any liens for taxes or assessments not then delinquent; provided, however, no such release shall be effected unless there shall be delivered to the Agency a certificate of an Authorized Representative of the Lessee, dated not more than sixty (60) days prior to the date of the release, stating that, in the opinion of the Person signing such certificate, the unimproved Land and the release thereof so proposed to be made is not needed for the operation of the Facility, will not adversely affect the use or operation of the Facility as the Approved Facility and will not destroy the means of ingress thereto and egress therefrom.

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

#### **Section 8.11. Discharge of Liens.**

(a) If any lien, encumbrance or charge is filed or asserted (including any lien for the performance of any labor or services or the furnishing of materials), or any judgment, decree, order, levy or process of any court or governmental body is entered, made or issued or any claim (such liens, encumbrances, charges, judgments, decrees, orders, levies, processes and claims being herein collectively called "Liens"), whether or not valid, is made against the Facility or any part

thereof or the interest therein of the Agency, the Lessee or the Sublessee or against any of the Rental Payments payable under the Company Lease, under this Agreement or under the Sublease Agreement or the interest of the Agency, the Lessee or the Sublessee under the Company Lease, under this Agreement or under the Sublease Agreement, other than Liens for Impositions not yet payable, Permitted Encumbrances, or Liens being contested as permitted by Section 8.11(b), the Lessee forthwith upon receipt of notice of the filing, assertion, entry or issuance of such Lien (regardless of the source of such notice) shall give written notice thereof to the Agency and take all action (including the payment of money and/or the securing of a bond) at its own cost and expense as may be necessary or appropriate to obtain the discharge in full thereof and to remove or nullify the basis therefor. Nothing contained in this Agreement shall be construed as constituting the express or implied consent to or permission of the Agency for the performance of any labor or services or the furnishing of any materials that would give rise to any Lien against the Agency's interest in the Facility.

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

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

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

**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 1<sup>st</sup> 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, the Sublessee 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 (y) file with the Agency a completed Sales Tax Registry which accounts for all Sales Tax Savings realized by the Lessee, the Sublessee and each Agent during the period from the preceding July 1<sup>st</sup> to the Termination Date; and (z) deliver and surrender to the Agency each Sales Tax Agent Authorization Letter and all copies thereof for cancellation.

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

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

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

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

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

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

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

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

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

**Section 8.16. Periodic Reporting Information for the Agency.**

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

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

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

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

(i) The Project is a “covered project” and the Lessee is a “covered developer,” each as defined under Section 22-1101 of the New York City Administrative Code (the “Construction Workforce Disclosure Law”). The Lessee will comply with the Construction Workforce Disclosure Law in all respects, including that the Lessee will provide all workforce disclosure records in a format that the Agency may request, which at a minimum will be sufficient to comply with the requirements of the Construction Workforce Disclosure Law.

**Section 8.17. Taxes, Assessments and Charges.**

(a) The Lessee shall pay when the same shall become due all taxes (other than those taxes for which PILOT is payable) and assessments, general and specific, if any, levied and assessed upon or against the Facility Realty, the Company Lease, this Agreement, the Sublease Agreement, any Tenant Leases, any ownership estate or interest of the Agency or the Lessee or the Sublessee in the Facility, or the Rental Payments or other amounts payable under the Company Lease, hereunder or under the Sublease Agreement or any Tenant Leases 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, in this Agreement or in the Sublease Agreement, of the Agency, the Lessee or the Sublessee or against any of the Rental Payments payable under the Company Lease, under this Agreement or under the Sublease Agreement, (ii) neither the Facility nor any part thereof or interest therein would be in any danger of being sold, forfeited or lost, (iii) neither the Lessee nor the Sublessee nor the Agency would be in any danger of any civil or any criminal liability, other than normal accrual of interest, for failure to comply therewith, and (iv) the Lessee or the Sublessee shall have furnished such security, if any, as may be required in such proceedings or as may be reasonably requested by the Agency.

**Section 8.18. Compliance with Legal Requirements.**

(a) The Lessee shall not occupy, use or operate the Facility, or allow the Facility or any part thereof to be occupied, used or operated, for any unlawful purpose or in violation of

any certificate of occupancy affecting the Facility or for any use which may constitute a nuisance, public or private, or make void or voidable any insurance then in force with respect thereto.

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

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

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

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

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

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

**Section 8.20. Restrictions on Dissolution and Merger.**

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

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



- (ii) continue to be subject to service of process in the State,
- (iii) continue to be organized under the laws of, or qualified to do business in, the State,
- (iv) not, as transferor, liquidate, wind-up, dissolve, transfer or otherwise dispose of to another Entity all or substantially all of its property, business or assets (“**Transfer**”) remaining after the Commencement Date, except as provided in Section 8.20(b) or this Agreement,
- (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) or this Agreement,
- (vi) not consolidate with or merge into another Entity or permit one or more Entities to consolidate with or merge into it (“**Merge**” or “**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 ownership and/or Control of the Lessee or 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 (unless such default is remedied prior to such Merger or Transfer),
  - (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) Prior to the Operations Commencement Date, without the prior written consent of the Agency, the Lessee or the Sublessee shall not sell, transfer or dispose of, directly or indirectly, all or substantially all of the Facility Realty, and no change in Control of the Lessee or the Sublessee shall occur, other than as set forth in Section 8.9 or 8.20 hereof.

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

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

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

**Section 8.23. Reserved. 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, (vi) if Lessee is a “covered developer” under and as defined in the Prevailing Wage Law, a Person that is a “building services contractor” (as defined in the LW Law) so long as such Person is paying its “building service employees” (as defined in the Prevailing Wage Law) no less than the applicable “prevailing wage” (as defined in the Prevailing Wage Law), or (vii) a Person exempted by a Deputy Mayor of The City of New York in accordance with the Mayor’s Executive Order No. 7 dated September 30, 2014.

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

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

**LW Agreement** means, with respect to any Covered Counterparty, an enforceable agreement in the form attached hereto as Exhibit 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 the 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).

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

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

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

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

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

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

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

(d) During the LW Term, if and for so long as Lessee is a Covered Employer (or if and so long as a Site Affiliate is a Covered Employer, as applicable), Lessee shall (or shall cause the applicable Site Affiliate to, as applicable), on or prior to the day on which each direct Site

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

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

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

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

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

(i) No later than 30 days after Lessee's receipt of a written request from the Agency, the DCA and/or the Comptroller, Lessee shall provide to the Agency, the DCA and the

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

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

(k) Violations and Remedies.

(i) If a violation of this Section 8.24 shall have been alleged by the Agency, the DCA and/or the Comptroller, then written notice will be provided to Lessee for such alleged violation (an "LW Violation Notice"), specifying the nature of the alleged violation in such reasonable detail as is known to the Agency, the DCA and the Comptroller (the "Asserted LW Violation") and specifying the remedy required under Section 8.24(k)(ii), (iii), (iv), (v) and/or (vi) (as applicable) to cure the Asserted LW Violation (the "Asserted Cure"). Upon Lessee's receipt of the LW Violation Notice, Lessee may either:

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

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

(A) Accept the LW Violation Initial Determination and shall perform the Asserted Cure specified in the LW Violation Initial Determination no later than 30 days after its receipt of the LW Violation Initial Determination (after such 30 day period has lapsed, but subject to



clause (B) below, the LW Violation Initial Determination shall be deemed to be a "LW Violation Final Determination"), or

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

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

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

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

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

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

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

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

**Section 8.25. Reserved.**

**Section 8.26. M/WBE Program.** 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 Project 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 O-1.

(b) The Lessee agrees that from the Commencement Date until the Project 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 O-1 and the M/WBE Program Requirements set forth in Exhibit O-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.

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

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

(c) The occurrence of a Recapture Event;

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

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

(f) Failure of the Lessee to observe and perform any covenant, condition or agreement on its part to be performed under Sections 5.1 (except as set forth in Section 9.1(a)), 5.2, 5.3, 5.4, 8.2, 8.3, 8.8, 8.9, 8.11, 8.13, 8.17, 8.18, 8.20, 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, the Sublessee or any other Guarantor shall (i) apply for or consent to the appointment of or the taking of possession by a receiver, liquidator, custodian or trustee of itself or of all or a substantial part of its property, (ii) admit in writing its inability, or be generally unable, to pay its debts as such debts generally become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or adjustment of debts, (vi) fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against itself in an involuntary case under the Federal Bankruptcy Code, (vii) take any action for the purpose of effecting any of the foregoing, or (viii) be adjudicated a bankrupt or insolvent by any court;

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

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

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

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

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

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

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

**Section 9.2. Remedies on Default.**

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

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

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

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

(iv) The Agency may 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, 5.3, 5.4, 8.2, 8.24, 9.2, 9.6, 9.7, 9.8, 11.4, 11.5, 11.6, 11.11, 11.13 and 11.14, all of which shall survive any such action.

**Section 9.3. Remedies Cumulative.** The rights and remedies of the Agency under this Agreement shall be cumulative and shall not exclude any other rights and remedies of

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

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

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

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

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

**Section 9.8. Late Delivery Fees.**

- (a) In the event the Lessee shall fail:
  - (i) to pay the Annual Administrative Fee on the date required under Section 8.3,

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

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

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

(b) If the Agency shall deliver written notice (a “**Notification of Failure to Deliver**”) to the Lessee of such failure to deliver on the Due Date the Annual Administrative Fee, a Fixed Date Deliverable and/or a Requested Document Deliverable, and such payment or document shall not be delivered to the Agency within ten (10) Business Days following delivery by the Agency to the Lessee of the Notification of Failure to Deliver, then, commencing from and including the eleventh (11<sup>th</sup>) 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 (11<sup>th</sup>) day after transmittal of the notice directing termination as provided in Section 10.2(a), the Lessee shall, in addition to all other payment obligations due to the Agency hereunder, make rental payments to the Agency in the amount of the Per Diem Holdover Rental Amount until the Lessee shall have terminated the Company Lease and this Agreement in accordance with the provisions thereof and hereof.

**Section 10.3. Actions Upon Termination.**

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

- (i) pay to NYCDOF any amounts due and payable pursuant to Section 5.1(i),
- (ii) pay any and all other Project Payments then due plus one dollar (\$1.00),
- (iii) perform all accrued obligations hereunder,
- (iv) deliver or cause to be delivered to the Agency (y) with respect to any Exempt Mortgage, if not assigned pursuant to Section 5.3(c), an executed satisfaction of such Mortgage in recordable form, executed by the Mortgagee, and (z) with respect to any Mortgage on the Facility to which the Agency shall be a party and intended to continue beyond the termination of this Agreement, a release of the Agency from such Mortgage in recordable form executed by all other parties to such Mortgage.

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

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



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

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

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

**Section 10.4. Survival of Lessee Obligations.** Upon release of the Agency's interest in the Facility pursuant to Section 10.2 or 10.3, this Agreement and all obligations of the Lessee hereunder shall be terminated except the obligations of the Lessee under Sections 5.1 (until such time as the Agency shall cease to have a leasehold estate in the Facility and, by reason thereof, the Lessee shall again pay Real Estate Taxes with respect to the Facility Realty), 5.2, 5.3, 5.4, 8.2, 8.24, 9.2, 9.6, 9.7, 9.8, 11.4, 11.5, 11.6, 11.11, 11.13 and 11.14 shall survive such termination.

## ARTICLE XI

### MISCELLANEOUS

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

be deemed to be satisfied in the event of a strike or other industrial disturbance even though existing or impending strikes or other industrial disturbances could have been settled by the party claiming a *Force Majeure* hereunder by acceding to the demands of the opposing person or persons.

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

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

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

**Section 11.4. Service of Process.** The Lessee represents that it is subject to service of process in the State and covenants that it will remain so subject until all obligations, covenants and agreements of the Lessee under this Agreement shall be satisfied and met. If for any reason the Lessee should cease to be so subject to service of process in the State, the Lessee hereby irrevocably consents to the service of all process, pleadings, notices or other papers in any judicial proceeding or action by designating and appointing Phil Mehall, Esq., Mehall Law, 401 Edgewater Place, Suite 103, Wakefield, Mass 01880, 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

Borden Sum, LLC  
132 Middle Street, LLC  
134 Middle Street, LLC  
c/o AE-ESS NWS 1, LLC  
11-24 Borden Avenue  
Long Island City, New York 11101  
Attention: Manager

with a copy to

Akerman LLP  
1251 Avenue of the Americas, 37th Floor  
New York, New York 10022  
Attention: Steven P. Polivy, 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 (x) to move to dismiss on grounds of forum non conveniens, (y) to remove to any federal court other than the United States District Court for the Southern District of New York, and (z) 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 proferentem* 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: Deputy Executive Director

**BORDEN SUM, LLC**

By: \_\_\_\_\_  
Name: Barrett C. Bilotta  
Title: Manager

**132 MIDDLE STREET, LLC**

By: \_\_\_\_\_  
Name: Barrett C. Bilotta  
Title: Manager

**134 MIDDLE STREET, LLC**

By: \_\_\_\_\_  
Name: Barrett C. Bilotta  
Title: Manager

**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.

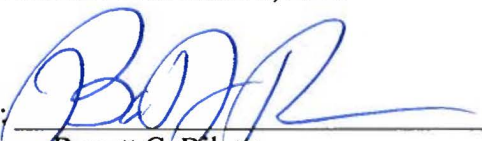
**NEW YORK CITY INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Name: Emily Marcus  
Title: Deputy Executive Director

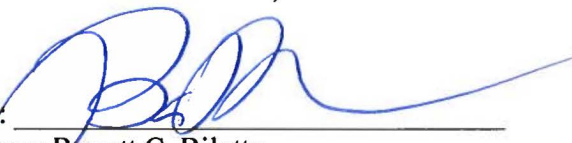
**BORDEN SUM, LLC**

By:  \_\_\_\_\_  
Name: Barrett C. Bilotta  
Title: Manager

**132 MIDDLE STREET, LLC**

By:  \_\_\_\_\_  
Name: Barrett C. Bilotta  
Title: Manager

**134 MIDDLE STREET, LLC**

By:  \_\_\_\_\_  
Name: Barrett C. Bilotta  
Title: Manager



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

On the 19<sup>th</sup> day of August, in the year 2021, 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.

  
\_\_\_\_\_  
Notary Public

CAROL M. HYDE  
Notary Public, State of New York  
No. 4977270  
Qualified in Queens County  
Commission Expires Jan. 28, 2023  
01HY4977270

COMMONWEALTH OF MASSACHUSETTS )  
 :  
 COUNTY OF MIDDLESEX ) SS.:

On the \_\_\_\_\_ day of August, in the year 2021, before me, the undersigned, personally appeared **Barrett C. Bilotta**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

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

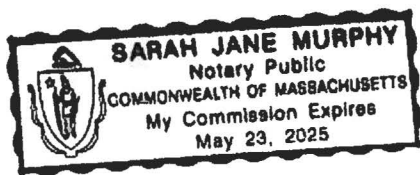
On the \_\_\_\_ day of August, in the year 2021, before me, the undersigned, personally appeared **Emily Marcus**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed 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.

\_\_\_\_\_  
Notary Public

COMMONWEALTH OF MASSACHUSETTS )  
  ): ss.:  
COUNTY OF MIDDLESEX                     )

On the 31 day of August, in the year 2021, before me, the undersigned, personally appeared **Barrett C. Bilotta**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Sarah Murphy  
Notary Public



## **APPENDICES**

**DESCRIPTION OF THE LAND**

**For Tax Map ID(s): Block(s): 65 Lot(s): 15**

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ALL that certain plot, piece or parcel of land, situate, lying and being in the First Ward of the Borough and County of Queens, City and State of New York being bounded and described as follows:

BEGINNING at a point on the Southerly side of Borden Avenue, as the same is shown and laid out 80 feet wide, on the Final City map for the Borough of Queens, known as Alteration Map No. 4057, distant 287.43 feet Easterly from the corner formed by the intersection of said Southerly side of Borden Avenue with the Easterly side of 11th Street, formerly known as East Avenue, as said 11th Street was shown and laid out prior to the adoption of Alteration Map No. 3317;

RUNNING THENCE Easterly along the said Southerly side of Borden Avenue approximately 84 feet;

THENCE Southerly 128.53 feet;



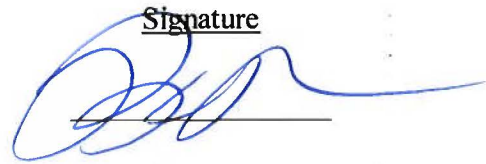
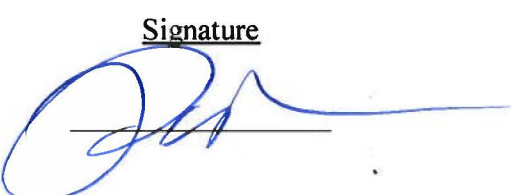



THENCE Northwesterly 87.94 feet;

THENCE Northerly at right angles to said Southerly side of Borden Avenue 102.52 feet to the said Southerly side of Borden Avenue, at the point or place of BEGINNING.

**EXHIBIT B**  
**Description of Facility Personalty**








**EXHIBIT C**

**AUTHORIZED REPRESENTATIVE**

(i)	of Borden Sum, LLC:		
<u>Name</u>		<u>Title</u>	<u>Signature</u>
Barrett Bilotta		Manager	
(ii)	of 132 Middle Street, LLC:		
<u>Name</u>		<u>Title</u>	<u>Signature</u>
Barrett Bilotta		Manager	
(iii)	of 134 Middle Street, LLC:		
<u>Name</u>		<u>Title</u>	<u>Signature</u>
Barrett Bilotta		Manager	
(iv)	of the Sublessee:		
<u>Name</u>		<u>Title</u>	<u>Signature</u>
Barrett Bilotta		Manager	
(v)	of the Guarantor:		
<u>Name</u>		<u>Title</u>	<u>Signature</u>
Eamonn T. Healy		Individual	
Barrett C. Bilotta		Individual	
Kenneth A. Rubin		Individual	

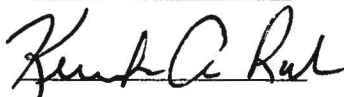
**EXHIBIT C**

**AUTHORIZED REPRESENTATIVE**

(i)	of Borden Sum, LLC:		
<u>Name</u>		<u>Title</u>	<u>Signature</u>
Barrett Bilotta		Manager	
(ii)	of 132 Middle Street, LLC:		
<u>Name</u>		<u>Title</u>	<u>Signature</u>
Barrett Bilotta		Manager	
(iii)	of 134 Middle Street, LLC:		
<u>Name</u>		<u>Title</u>	<u>Signature</u>
Barrett Bilotta		Manager	
(iv)	of the Sublessee:		
<u>Name</u>		<u>Title</u>	<u>Signature</u>
Barrett Bilotta		Manager	
(v)	of the Guarantor:		
<u>Name</u>		<u>Title</u>	<u>Signature</u>
Eamonn T. Healy		Individual	
Barrett C. Bilotta		Individual	
Kenneth A. Rubin		Individual	

**EXHIBIT C**

**AUTHORIZED REPRESENTATIVE**

(i)	of Borden Sum, LLC:		
<u>Name</u>		<u>Title</u>	<u>Signature</u>
Barrett Bilotta		Manager	_____
(ii)	of 132 Middle Street, LLC:		
<u>Name</u>		<u>Title</u>	<u>Signature</u>
Barrett Bilotta		Manager	_____
(iii)	of 134 Middle Street, LLC:		
<u>Name</u>		<u>Title</u>	<u>Signature</u>
Barrett Bilotta		Manager	_____
(iv)	of the Sublessee:		
<u>Name</u>		<u>Title</u>	<u>Signature</u>
Barrett Bilotta		Manager	_____
(v)	of the Guarantor:		
<u>Name</u>		<u>Title</u>	<u>Signature</u>
Eamonn T. Healy		Individual	_____
Barrett C. Bilotta		Individual	_____
Kenneth A. Rubin		Individual	



**EXHIBIT D-1**

**Principals**

**Borden Sum, LLC:**

Name

Barrett Bilotta  
Kenneth Rubin  
Eamonn Healy

Title

Manager  
Manager  
Manager

**132 Middle Street, LLC:**

Name

Barrett Bilotta  
Eamonn Healy

Title

Manager  
Manager

**134 Middle Street, LLC:**

Name

Barrett Bilotta  
Eamonn Healy

Title

Manager  
Manager

**Sublessee:**

Name

Barrett Bilotta  
Kenneth Rubin  
Eamonn Healy

Title

Manager  
Manager  
Manager

**EXHIBIT D-2**

**OWNERS OF THE LESSEE**

<b>INDIVIDUAL OWNERS</b>	
<b>Name</b>	<b>% Ownership or Control of the Lessee</b>
N/A	

<b>ENTITY OWNERS</b>	
<b>Name</b>	<b>% Ownership or Control of the Lessee</b>
132 Middle Street, LLC	33.33%
134 Middle Street, LLC	33.33%
Borden Sum, LLC	33.34%

<b>OWNERS of those ENTITIES that own or control more than 10% of the Lessee ("10% Entities")</b>		
<b>10% ENTITY (name and actual %)</b>	<b>INDIVIDUAL AND ENTITY OWNERS</b>	<b>% Ownership or Control</b>
33.33% 132 Middle Street, LLC	Eamonn Healy	50%
	Barrett Bilotta	50%
33.33% 134 Middle Street, LLC	Eamonn Healy	50%
	Barrett Bilotta	50%
33.34% Borden Sum, LLC	Eamonn Healy	17.17%
	Kenneth Rubin	65.66%
	Barrett Bilotta	17.17%

**EXHIBIT D-3**

**OWNERS OF THE SUBLESSEE**

<b>INDIVIDUAL OWNERS</b>	
<b>Name</b>	<b>% Ownership or Control of the Sublessee</b>
Eamonn Healy	33.33%
Kenneth Rubin	33.34%
Barrett Bilotta	33.33%

<b>ENTITY OWNERS</b>	
<b>Name</b>	<b>% Ownership or Control of the Sublessee</b>
N/A	

<b>OWNERS of those ENTITIES that own or control more than 10% of the Sublessee ("10% Entities")</b>		
<b>10% ENTITY (name and actual %)</b>	<b>INDIVIDUAL AND ENTITY OWNERS</b>	<b>% Ownership or Control</b>
N/A		

**EXHIBIT E**

**PROJECT COST BUDGET**

	<u>Mortgage Loan</u>	<u>Term Loans</u>	Funds of Lessee and/or <u>Sublessee</u>	<u>Total</u>
Land and Building Acquisition	\$0	\$0	\$0	\$0
Project Improvements Investment	\$2,258,105	\$0	\$0	\$2,258,105
Equipment	\$1,961,895	\$6,750,000	\$1,794,105	\$10,506,000
Fees/Other Soft Costs	\$0	\$0	<u>\$2,366,210</u>	<u>\$2,366,210</u>
Total	\$ 4,220,000	\$6,750,000	\$4,160,315	\$15,130,315

**EXHIBIT F**

**[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, 202\_, between the Agency and \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_ (the "Lease Agreement") THAT:

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

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

1. \_\_\_\_\_ is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Agency, 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 \_\_\_\_\_, 202\_.

**[NAME OF CERTIFYING ENTITY]**

By: \_\_\_\_\_

Name:

Title:

**FORM OF 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 \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_ (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 \_\_\_\_\_ 1, 202\_ (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 was finished and the Project Improvements were completed substantially in accordance with the plans and specifications therefor [**Specify Date:** \_\_\_\_\_, 202\_] (the "Project Completion Date" as defined in the Lease Agreement);

(ii) the Project Improvements Investment (as defined in the Lease Agreement) made by the Lessee in connection with the Project is not less than \$ \_\_\_\_\_, consistent with the Lessee's representation in Section 2.2(q) of the Lease Agreement.

(iii) the Usable Square Footage of the Improvements upon completion of the Project Improvements is: \_\_\_\_\_ Usable Square Feet;

(iv) attached hereto is a copy of the certificate of an engineer that the Project has been completed and all approvals necessary for commercial operation of the Project Improvements have been obtained, subject to the review, verification and acceptance of such certification and related documentation by the Agency, in its sole discretion.

(v) 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;

(vi) the Lessee commenced occupancy, use and operation for the Approved Project Operations of the Project Improvements in accordance with all applicable laws, regulations, ordinances and guidelines on [**Specify Date:** \_\_\_\_\_, 202\_ (the "Operations Commencement Date" as defined in the Lease Agreement);

(vii) 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

(viii) 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 \_\_\_\_\_, \_\_\_\_\_.

**[NAME OF LESSEE]**

By: \_\_\_\_\_  
Name:  
Title:



[FORM OF SALES TAX AGENT AUTHORIZATION LETTER]

**SALES TAX AGENT AUTHORIZATION LETTER**

**EXPIRATION DATE:** \_\_\_\_\_ 1, 202\_

**ELIGIBLE LOCATION:**

\_\_\_\_\_ Street, \_\_\_\_\_, New York

\_\_\_\_\_, 202\_

TO WHOM IT MAY CONCERN

Re: New York City Industrial Development Agency  
(2021 AE-ESS NWS 1, 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 August 1, 2021 (the "Agreement"), between the Agency and BORDEN SUM, LLC, a Delaware limited liability company, 132 MIDDLE STREET, LLC, a New Hampshire limited liability company, and 134 MIDDLE STREET, LLC, a New Hampshire limited liability company, as tenants in common, and their respective successors and assigns (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 [**insert name of Agent**] (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 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 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 15<sup>th</sup> and July 15<sup>th</sup> 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 30<sup>th</sup> or December 31<sup>st</sup>,

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.**

(a) 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.

(b) 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.

(c) 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).

(d) 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 is an Affiliate of the Agent:

(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.

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

“Affiliate” shall mean, 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.

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.

[Signature Page Follows]

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:

**[AGENT]**

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

<b>TOTAL SALES TAX SAVINGS REALIZED DURING THE SEMI-ANNUAL REPORTED PERIOD:</b>	
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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, 202\_\_ to JUNE 30, 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
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:** \_\_\_\_\_

**PROJECT FINANCE PLAN**

The plan for financing the cost of the Project Work, which the Lessee estimates to be \$15,310,315, from the following sources:

(i) a loan in the principal amount of \$4,220,000 to be made by The Provident Bank (the "Mortgagee") to the Lessee (the "Mortgage Loan") on the Commencement Date, and to be evidenced by a certain mortgage note (as the same may be amended or supplemented, the "Mortgage Note") dated the Commencement Date and in the principal amount of the Mortgage Loan, and to be secured by a mortgage on the Facility Realty pursuant to a certain mortgage and security agreement dated the Commencement Date (as the same may be amended or supplemented, the "Mortgage") from the Lessee and the Agency to the First Mortgagee;

(ii) other loans not constituting Mortgage Loans in the amount of \$6,750,000 from The Provident Bank; and

(v) equity from the Lessee and/or the Sublessee in the amount of \$4,160,315.

**EXHIBIT K**

Intentionally Omitted

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, (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 11-24 Borden Avenue, Long Island City, New York 11101, also identified as Tax Block 65, Lot 15 on the current City Tax Map for the Borough of Queens.

**“Lessee”** means collectively, BORDEN SUM, LLC, a Delaware limited liability company, 132 MIDDLE STREET, LLC, a New Hampshire limited liability company, and 134 MIDDLE STREET, LLC, a New Hampshire limited liability company, as tenants in common, having its principal address at 11-24 Borden Avenue, Long Island City, New York 11101, or their respective 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 1.03<sup>n</sup>, where “n” is the number of full years that have elapsed since January 1, 2015.

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

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



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

“Owed Monies” means, as the context shall require, either (a) the total deficiency of LW required to be paid by Obligor in accordance with this Agreement to its direct Site Employee(s) after taking into account the wages actually paid (which shall be credited towards the “living wage rate” component of the LW), and the monetary value of health benefits actually provided (which shall be credited towards the “health benefits supplement rate” component of the LW), to such direct Site Employee(s), all as calculated on a per pay period basis; or (b) if Obligor failed to obtain a LW Agreement from a Covered Counterparty as required under paragraph 5 below, the total deficiency of LW that would have been required to be paid under such Covered Counterparty’s LW Agreement to its direct Site Employee(s) after taking into account the wages actually paid (which shall be credited towards the “living wage rate” component of the LW), and the monetary value of health benefits actually provided (which shall be credited towards the “health benefits supplement rate” component of the LW), to such direct Site Employee(s), all as calculated on a per pay period basis, during the period commencing on the LW Agreement Delivery Date applicable to such Covered Counterparty and ending immediately prior to the execution and delivery by such Covered Counterparty of its LW Agreement (if applicable).

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

“Pre-Existing Covered Counterparty” has the meaning specified in paragraph 5.

“Pre-Existing Specified Contract” has the meaning specified in paragraph 5.

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

“Project Agreement” means that certain Agency Lease Agreement, dated as of August 1, 2021, 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, New York 10006, Attention: General Counsel, with a copy to New York City Industrial Development Agency, One Liberty Plaza, New York, New York 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 11-24 Borden Avenue, Long Island City, New York 11101.

“Lessee” means collectively, BORDEN SUM, LLC, a Delaware limited liability company, 132 MIDDLE STREET, LLC, a New Hampshire limited liability company, and 134 MIDDLE STREET, LLC, a New Hampshire limited liability company, as tenants in common, having a principal address of 11-24 Borden Avenue, Long Island City, New York 11101, or their respective successors and 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<sup>n</sup>, where “n” is the number of full years that have elapsed since January 1, 2015.

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

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

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

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

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

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

“Project Agreement” means that certain Agency Lease Agreement, dated as of August 1, 2021, 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, New York 10006, Attention: General Counsel, with a copy to New York City Industrial Development Agency, One Liberty Plaza, New York, New York 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:

**EXHIBIT M**

Intentionally Omitted



**EXHIBIT N**

Intentionally Omitted

M/WBE PARTICIPATION PLAN

**MWBE Participation Plan** Check One:  Initial Plan  Amended Plan 7/3/2014

The purpose of this form is to ensure that appropriate planning and consideration go into the consultant and contract or utilization process, and to serve as documentation of your commitment to attain at least the minimum level of MWBE participation as represented by the goal(s) you committed to in the MWBE Participation Proposal. Please complete the forms and return (1) an Excel copy of the form and (2) an executed PDF to opportunityMWBE@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 Participation Goal.
- 2. This MWBE Participation Plan lists all consultants and contractors that are expected to work on this project as of the date above, whether MWBE or not.
- 3. I will immediately provide an updated MWBE Participation Plan to NYCEDC when consultants and contractors are added to or removed from the project, or if contract values change materially.

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Name & Title

\_\_\_\_\_  
Date

Project Information		Project Calculations	
Site of Activity		Total Hard and Soft Cost Projection	\$0.00
Developer/Purchaser		Costs Allocated to Date	\$0.00
Project Manager		Total Amount to Count toward MWBE Goal	\$0.00
Email		Projected MWBE Goal Attainment (Allocated Costs Only)	0.00%
Phone		Projected MWBE Goal Attainment (Total Hard and Soft Costs)	0%

Design Consultants & Construction Contractors						
Company	MWBE? ("Y" or "N")	Award Amount	Services to be Provided	Hiring Company <small>List only direct sub relationships. Should be the entity that will make payments to the company.</small>	Is Hiring Company MWBE? ("Y" or "N")	Amount to Count
						\$0
						\$0
						\$0
						\$0
						\$0
						\$0
						\$0
						\$0
						\$0
						\$0
						\$0
						\$0
						\$0
						\$0
						\$0
						\$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](http://www.nyc.gov/buycertified), by emailing DSBS at [buyer@sbs.nyc.gov](mailto:buyer@sbs.nyc.gov), by calling (212) 513-6356, or by visiting or writing DSBS at One Liberty Plaza, New York, New York 10006. Eligible firms that have not yet been certified may contact DSBS in order to seek certification by visiting [www.nyc.gov/getcertified](http://www.nyc.gov/getcertified), emailing [M/WBE@sbs.nyc.gov](mailto: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:

(e) 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 fulfilment 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.

(f) 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 fulfilment 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.

(g) 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 fulfilment of the M/WBE Participation Goal.

(h) 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.

(i) **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.

<b>Participation Goal Calculation Example (for illustrative purposes only):</b>			
<b>Project Improvements Investment:</b>	\$100 million		
<b>Participation Goal:</b>	25%	<b>Actual Participation Amount:</b>	27.4%
Dollar Value of Participation Goal:	\$25 million	Dollar Value of Participation Amount:	\$27.4 million
<b>Phase</b>	<b>Payment</b>	<b>Dollar Value of M/WBE Participation</b>	<b>Credit toward Participation Goal:</b>
<b>Design Phase:</b> \$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%
<b>Construction Management/GC Level:</b> \$90 million is paid to Contractor to serve as Construction Manager, CM is NOT an M/WBE Firm.	\$90 million	\$0	0%
<b>Direct Subcontractor Level:</b> 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%
<b>Indirect Subcontractor Level:</b> \$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%
<b>Supplier Inclusion:</b> \$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%
		<b>TOTAL:</b>	<b>27.4%</b>

4. Modification of the Lessee's Participation Plan.

(j) 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.

(k) 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, 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.

(l) 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 Project 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).

Attachment 1 to Exhibit O-2  
M/WBE COMPLIANCE REPORT AND SUBCONTRACTOR VERIFICATION FORM

**MWBE COMPLIANCE REPORT** 7/3/2014

The purpose of this form is to track actual payments to subcontractors and monitor progress towards MWBE goals.

The following information indicates the payment amounts made by the developer to the NYC-certified MWBE subcontractors on this project. The payments as shown are made in compliance with contract documents for the below referenced project.

MWBE Compliance Reports are due, completed and signed, within thirty (30) days of the end of each quarter. For example, payments made between July 1st through September 30th must be reported no later than October 31st. If no payments have been made to certified MWBE subcontractors in a given quarter, enter "NONE" under Business Name in the first row. Please complete the forms and return (1) an Excel copy of the form and (2) an executed PDF to opportunityMWBE@nycedc.com. Failure to submit this form will result in non-compliance and may affect developer's Vendor status.

Select Quarter:

- Q1 July - September, due Oct. 15th
- Q2 October - December, due Jan. 15th
- Q3 January - March, due April 15th
- Q4 April - June, due July 15th

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Name & Title

\_\_\_\_\_  
Date

Project Information		Project Calculations	
---------------------	--	----------------------	--

Site of Activity		Total Hard and Soft Costs Projection	\$0.00
Developer/Purchaser		Hard and Soft Costs to Date	\$0.00
Project Manager		Total Payment Amounts to Count toward MWBE Goal	\$0.00
Email		MWBE Goal Attainment to Date (based on costs incurred to date)	0.00%
Phone		Portion of MWBE Goal Fulfilled to Date (based on total expected cost of the project)	0%

Payment Data						
Company	MWBE? ("Y" or "N")	Payments (cumulative)	Services Provided	Hiring Company <i>(list only direct sub relationships. Should be the entity that will make payments to the company)</i>	Is Hiring Company MWBE? ("Y" or "N")	Amount to Count
						\$0
						\$0
						\$0
						\$0
						\$0
						\$0
						\$0
						\$0
						\$0
						\$0
						\$0
						\$0
						\$0
						\$0
						\$0
						\$0
						\$0



**EXHIBIT P**

Intentionally Omitted

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- Exhibit A - Description of the Land
- Exhibit B - Description of the Facility Personality
- Exhibit C - Authorized Representative
- Exhibit D - Principals of Lessee and Sublessee
- Exhibit E - Project Cost Budget
- Exhibit F - Form of Required Disclosure Statement

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# REAL PROPERTY TRANSFER TAX RETURN

(Pursuant to Title 11, Chapter 21, NYC Administrative Code)

▲ DO NOT WRITE IN THIS SPACE ▲  
 FOR OFFICE USE ONLY

<b>GRANTOR</b>		SOCIAL SECURITY NUMBER	
● Name <b>NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY</b>		[ ][ ] - [ ][ ] - [ ][ ][ ][ ][ ][ ][ ][ ][ ][ ]	
● Grantor is a(n): <input type="checkbox"/> individual <input type="checkbox"/> partnership <input type="checkbox"/> corporation (check one) <input type="checkbox"/> single member LLC <input type="checkbox"/> multiple member LLC (see instructions) <input type="checkbox"/> other <u>PUBLIC BENEFIT CORPORATION</u>		<b>OR</b>	
● Permanent mailing address after transfer (number and street) <b>ONE LIBERTY PLAZA</b>		EMPLOYER IDENTIFICATION NUMBER	
● City and State <b>NEW YORK, NY</b>		[ ][ ][ ][ ] - [ ][ ][ ][ ][ ][ ][ ][ ][ ][ ]	
● Single member's name if grantor is a single member LLC		[ ][ ][ ][ ][ ][ ][ ][ ][ ][ ]	
Telephone Number		SINGLE MEMBER EIN OR SSN	
Zip Code <b>10006</b>		[ ][ ][ ][ ][ ][ ][ ][ ][ ][ ]	

<b>GRANTEE</b>		SOCIAL SECURITY NUMBER	
● Name <b>BORDEN SUM, LLC</b>		[ ][ ] - [ ][ ] - [ ][ ][ ][ ][ ][ ][ ][ ][ ][ ]	
● Grantee is a(n): <input type="checkbox"/> individual <input type="checkbox"/> partnership <input type="checkbox"/> corporation (check one) <input type="checkbox"/> single member LLC <input type="checkbox"/> multiple member LLC (see instructions) <input type="checkbox"/> other		<b>OR</b>	
● Permanent mailing address after transfer (number and street) <b>11-24 BORDEN AVENUE</b>		EMPLOYER IDENTIFICATION NUMBER	
● City and State <b>LONG ISLAND CITY, NY</b>		[ ][ ][ ][ ] - [ ][ ][ ][ ][ ][ ][ ][ ][ ][ ]	
● Single member's name if grantee is a single member LLC		[ ][ ][ ][ ][ ][ ][ ][ ][ ][ ]	
Telephone Number		SINGLE MEMBER EIN OR SSN	
Zip Code <b>11101</b>		[ ][ ][ ][ ][ ][ ][ ][ ][ ][ ]	

PROPERTY LOCATION							
LIST EACH LOT SEPARATELY. ATTACH A RIDER IF ADDITIONAL SPACE IS REQUIRED							
Address (number and street)	Apt. No.	Borough	Block	Lot	# of Floors	Square Feet	Assessed Value of Property
11-24 BORDEN AVENUE		QUEENS	65	15	1	7,500	260,550.00

● DATE OF TRANSFER TO GRANTEE: 8/31/2021      ● PERCENTAGE OF INTEREST TRANSFERRED: 100 %

**CONDITION OF TRANSFER. See Instructions**

- Check (✓) all of the conditions that apply and fill out the appropriate schedules of this return. Additionally, Schedules 1 and 2 must be completed for all transfers.
- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li>a. <input type="checkbox"/> ..... Arms length transfer</li> <li>b. <input type="checkbox"/> ..... Transfer in exercise of option to purchase</li> <li>c. <input type="checkbox"/> ..... Transfer from cooperative sponsor to cooperative corporation</li> <li>d. <input type="checkbox"/> ..... Transfer by referee or receiver (complete Schedule A)</li> <li>e. <input type="checkbox"/> ..... Transfer pursuant to marital settlement agreement or divorce decree (complete Schedule I)</li> <li>f. <input type="checkbox"/> ..... Deed in lieu of foreclosure (complete Schedule C)</li> <li>g. <input type="checkbox"/> ..... Transfer pursuant to liquidation of an entity (complete Schedule D)</li> <li>h. <input type="checkbox"/> ..... Transfer from principal to agent, dummy, strawman or conduit or vice-versa (complete Schedule E)</li> <li>i. <input type="checkbox"/> ..... Transfer pursuant to trust agreement or will (attach a copy of trust agreement or will)</li> <li>j. <input type="checkbox"/> ..... Gift transfer not subject to indebtedness</li> <li>k. <input type="checkbox"/> ..... Gift transfer subject to indebtedness</li> <li>l. <input type="checkbox"/> ..... Transfer to a business entity in exchange for an interest in the business entity (complete Schedule F)</li> <li>m. <input type="checkbox"/> ..... Transfer to a governmental body</li> <li>n. <input type="checkbox"/> ..... Correction deed</li> </ul> | <ul style="list-style-type: none"> <li>o. <input type="checkbox"/> ..... Transfer by or to a tax exempt organization (complete Schedule G)</li> <li>p. <input type="checkbox"/> ..... Transfer of property partly within and partly without NYC</li> <li>q. <input type="checkbox"/> ..... Transfer of successful bid pursuant to foreclosure</li> <li>r. <input type="checkbox"/> ..... Transfer by borrower solely as security for a debt or a transfer by lender solely to return such security</li> <li>s. <input type="checkbox"/> ..... Transfer wholly or partly exempt as a mere change of identity or form of ownership. Complete Schedule M)</li> <li>t. <input type="checkbox"/> ..... Transfer to a REIT or to a corporation or partnership controlled by a REIT. (Complete Schedule R)</li> <li>u. <input checked="" type="checkbox"/> ..... Other transfer in connection with financing (describe): <u>IN CONNECTION WITH NYCIDA FINANCING</u></li> <li>v. <input type="checkbox"/> ..... A grant or assignment of a leasehold interest in a tax-free NY area</li> <li>w. <input type="checkbox"/> ..... Transfer to an HDFC or an entity controlled by an HDFC. (Complete Schedule L)</li> <li>x. .... Reserved</li> <li>y. .... Reserved</li> <li>z. <input type="checkbox"/> ..... Other (describe)</li> </ul> |
|---|---|

<p><b>● TYPE OF PROPERTY (✓)</b></p> <p>a. <input type="checkbox"/> 1-3 family house</p> <p>b. <input type="checkbox"/> Individual residential condominium unit</p> <p>c. <input type="checkbox"/> Individual cooperative apartment</p> <p>d. <input type="checkbox"/> Commercial condominium unit</p> <p>e. <input type="checkbox"/> Commercial cooperative</p> <p>f. <input type="checkbox"/> 4 family dwelling</p> <p>g. <input type="checkbox"/> Apartment building</p> <p>h. <input type="checkbox"/> Office building</p> <p>i. <input type="checkbox"/> Industrial building</p> <p>j. <input type="checkbox"/> Utility</p> <p>k. <input type="checkbox"/> OTHER (describe): <u>COMMERCIAL REAL ESTATE</u></p>	<p><b>● TYPE OF INTEREST (✓)</b></p> <p>Check box at LEFT if you intend to record a document related to this transfer. Check box at RIGHT if you do not intend to record a document related to this transfer.</p> <table style="width:100%; border-collapse: collapse;"> <tr> <th style="width:50%; text-align: left;">REC.</th> <th style="width:50%; text-align: right;">NON REC.</th> </tr> <tr> <td>a. <input type="checkbox"/> Fee.....</td> <td style="text-align: right;"><input type="checkbox"/></td> </tr> <tr> <td>b. <input type="checkbox"/> Leasehold Grant .....</td> <td style="text-align: right;"><input checked="" type="checkbox"/></td> </tr> <tr> <td>c. <input type="checkbox"/> Leasehold Assignment or Surrender .....</td> <td style="text-align: right;"><input type="checkbox"/></td> </tr> <tr> <td>d. <input type="checkbox"/> Easement .....</td> <td style="text-align: right;"><input type="checkbox"/></td> </tr> <tr> <td>e. <input type="checkbox"/> Subterranean Rights .....</td> <td style="text-align: right;"><input type="checkbox"/></td> </tr> <tr> <td>f. <input type="checkbox"/> Development Rights .....</td> <td style="text-align: right;"><input type="checkbox"/></td> </tr> <tr> <td>g. <input type="checkbox"/> Stock .....</td> <td style="text-align: right;"><input type="checkbox"/></td> </tr> <tr> <td>h. <input type="checkbox"/> Partnership Interest .....</td> <td style="text-align: right;"><input type="checkbox"/></td> </tr> <tr> <td>i. <input type="checkbox"/> OTHER. (describe): .....</td> <td style="text-align: right;"><input type="checkbox"/></td> </tr> </table>	REC.	NON REC.	a. <input type="checkbox"/> Fee.....	<input type="checkbox"/>	b. <input type="checkbox"/> Leasehold Grant .....	<input checked="" type="checkbox"/>	c. <input type="checkbox"/> Leasehold Assignment or Surrender .....	<input type="checkbox"/>	d. <input type="checkbox"/> Easement .....	<input type="checkbox"/>	e. <input type="checkbox"/> Subterranean Rights .....	<input type="checkbox"/>	f. <input type="checkbox"/> Development Rights .....	<input type="checkbox"/>	g. <input type="checkbox"/> Stock .....	<input type="checkbox"/>	h. <input type="checkbox"/> Partnership Interest .....	<input type="checkbox"/>	i. <input type="checkbox"/> OTHER. (describe): .....	<input type="checkbox"/>
REC.	NON REC.																				
a. <input type="checkbox"/> Fee.....	<input type="checkbox"/>																				
b. <input type="checkbox"/> Leasehold Grant .....	<input checked="" type="checkbox"/>																				
c. <input type="checkbox"/> Leasehold Assignment or Surrender .....	<input type="checkbox"/>																				
d. <input type="checkbox"/> Easement .....	<input type="checkbox"/>																				
e. <input type="checkbox"/> Subterranean Rights .....	<input type="checkbox"/>																				
f. <input type="checkbox"/> Development Rights .....	<input type="checkbox"/>																				
g. <input type="checkbox"/> Stock .....	<input type="checkbox"/>																				
h. <input type="checkbox"/> Partnership Interest .....	<input type="checkbox"/>																				
i. <input type="checkbox"/> OTHER. (describe): .....	<input type="checkbox"/>																				

**SCHEDULE 1 - DETAILS OF CONSIDERATION**

COMPLETE THIS SCHEDULE FOR ALL TRANSFERS AFTER COMPLETING THE APPROPRIATE SCHEDULES ON PAGES 5 THROUGH 12. ENTER "ZERO" ON LINE 11 IF THE TRANSFER REPORTED WAS WITHOUT CONSIDERATION.

1. Cash.....	● 1.		0 00
2. Purchase money mortgage.....	● 2.		0 00
3. Unpaid principal of pre-existing mortgage(s).....	● 3.		0 00
4. Accrued interest on pre-existing mortgage(s).....	● 4.		0 00
5. Accrued real estate taxes.....	● 5.		0 00
6. Amounts of other liens on property.....	● 6.		0 00
7. Value of shares of stock or of partnership interest received.....	● 7.		0 00
8. Value of real or personal property received in exchange.....	● 8.		0 00
9. Amount of Real Property Transfer Tax and/or other taxes or expenses of the grantor which are paid by the grantee.....	● 9.		0 00
10. Other (describe): .....	● 10.		0 00
11. <b>TOTAL CONSIDERATION</b> (add lines 1 through 10 - must equal amount entered on line 1 of Schedule 2) (see instructions).....	● 11.	\$	0 00

**See instructions for special rules relating to transfers of cooperative units, liquidations, marital settlements and transfers of property to a business entity in return for an interest in the entity.**

**SCHEDULE 2 - COMPUTATION OF TAX**

A. Payment	Pay amount shown on line 15 - See Instructions	Payment Enclosed	
1. Total Consideration (from line 11, above).....	● 1.		0 00
2. Excludable liens (see instructions).....	● 2.		0 00
3. Consideration (line 1 less line 2).....	● 3.		0 00
4. Tax Rate (see instructions).....	● 4.		0 %
5. HDFC Exemption (see Schedule L, line 15) .....	● 5.		0 00
6. Consideration less HDFC Exemption (line 3 less line 5) .....	● 6.		0 00
7. Percentage change in beneficial ownership (see instructions) .....	● 7.		100 %
8. Taxable consideration (multiply line 6 by line 7).....	● 8.		0 00
9. Tax (multiply line 8 by line 4).....	● 9.		0 00
10. Credit (see instructions).....	● 10.		0 00
11. Transfer tax previously paid (see Schedule L, line 18).....	● 11.		0 00
12. Tax due (line 9 less line 10 and 11) (if the result is negative, enter zero).....	● 12.		0 00
13. Interest (see instructions).....	● 13.		0 00
14. Penalty (see instructions).....	● 14.		0 00
15. <b>Total Tax Due</b> (add lines 12, 13 and 14).....	● 15.	\$	0 00

**SCHEDULE 3 - TRANSFERS INVOLVING MULTIPLE GRANTORS AND/OR GRANTEES**

**NOTE** If additional space is needed, attach copies of this schedule or an addendum listing all of the information required below.

**GRANTOR(S)**

● Name		SOCIAL SECURITY NUMBER [ ][ ]-[ ][ ]-[ ][ ][ ][ ] OR EMPLOYER IDENTIFICATION NUMBER [ ][ ]-[ ][ ][ ][ ][ ][ ][ ][ ][ ] SINGLE MEMBER EIN OR SSN [ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ]	
● Grantor is a(n): <input type="checkbox"/> individual <input type="checkbox"/> partnership <input type="checkbox"/> corporation (check one) <input type="checkbox"/> single member LLC <input type="checkbox"/> multiple member LLC <input type="checkbox"/> other _____		Telephone Number	
● Permanent mailing address <u>after</u> transfer (number and street)			
● City and State		Zip Code	
● Single member's name if grantor is a single member LLC			

● Name		SOCIAL SECURITY NUMBER [ ][ ]-[ ][ ]-[ ][ ][ ][ ] OR EMPLOYER IDENTIFICATION NUMBER [ ][ ]-[ ][ ][ ][ ][ ][ ][ ][ ][ ] SINGLE MEMBER EIN OR SSN [ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ]	
● Grantor is a(n): <input type="checkbox"/> individual <input type="checkbox"/> partnership <input type="checkbox"/> corporation (check one) <input type="checkbox"/> single member LLC <input type="checkbox"/> multiple member LLC <input type="checkbox"/> other _____		Telephone Number	
● Permanent mailing address <u>after</u> transfer (number and street)			
● City and State		Zip Code	
● Single member's name if grantor is a single member LLC			

**GRANTEE(S)**

● Name 132 MIDDLE STREET, LLC		SOCIAL SECURITY NUMBER [ ][ ]-[ ][ ]-[ ][ ][ ][ ] OR EMPLOYER IDENTIFICATION NUMBER 8 3 [ ][ ] 0 5 2 0 7 0 0 SINGLE MEMBER EIN OR SSN [ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ]	
● Grantee is a(n): <input type="checkbox"/> individual <input type="checkbox"/> partnership <input type="checkbox"/> corporation (check one) <input type="checkbox"/> single member LLC <input type="checkbox"/> multiple member LLC <input type="checkbox"/> other _____		Telephone Number	
● Permanent mailing address <u>after</u> transfer (number and street) 11-24 BORDEN AVENUE			
● City and State LONG ISLAND CITY, NY		Zip Code 11101	
● Single member's name if grantee is a single member LLC			

● Name 134 MIDDLE STREET, LLC		SOCIAL SECURITY NUMBER [ ][ ]-[ ][ ]-[ ][ ][ ][ ] OR EMPLOYER IDENTIFICATION NUMBER 8 2 [ ][ ] 1 9 3 1 7 8 9 SINGLE MEMBER EIN OR SSN [ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ]	
● Grantee is a(n): <input type="checkbox"/> individual <input type="checkbox"/> partnership <input type="checkbox"/> corporation (check one) <input type="checkbox"/> single member LLC <input type="checkbox"/> multiple member LLC <input type="checkbox"/> other _____		Telephone Number	
● Permanent mailing address <u>after</u> transfer (number and street) 11-24 BORDEN AVENUE			
● City and State LONG ISLAND CITY, NY		Zip Code 11101	
● Single member's name if grantee is a single member LLC			



**GRANTOR'S ATTORNEY** ▼

Name of Attorney <b>JILL BRAVERMAN</b>		Telephone Number <b>( 212 ) 619-5000</b>	
Address (number and street) <b>NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY ONE LIBERTY PLAZA</b>		City and State <b>NEW YORK, NY</b>	Zip Code <b>10006</b>
EMPLOYER IDENTIFICATION NUMBER	-	OR	SOCIAL SECURITY NUMBER

**GRANTEE'S ATTORNEY** ▼

Name of Attorney <b>STEVEN POLIVY, ESQ.</b>		Telephone Number <b>( 212 ) 822-2245</b>	
Address (number and street) <b>1251 AVENUE OF THE AMERICAS 37TH FLOOR</b>		City and State <b>NEW YORK, NY</b>	Zip Code <b>10020</b>
EMPLOYER IDENTIFICATION NUMBER	-	OR	SOCIAL SECURITY NUMBER

**CERTIFICATION** ▼

I swear or affirm that this return, including any accompanying schedules, affidavits and attachments, has been examined by me and is, to the best of my knowledge, a true and complete return made in good faith, pursuant to Title 11, Chapter 21 of the Administrative Code and the regulations issued thereunder.

**GRANTOR**

Sworn to and subscribed to

before me on this 31<sup>st</sup> day  
of August, 2021

13-2906040  
EMPLOYER IDENTIFICATION NUMBER OR  
SOCIAL SECURITY NUMBER

**NEW YORK CITY  
INDUSTRIAL  
DEVELOPMENT AGENCY**  
Name of Grantor

*[Signature]*  
Signature of Notary

*[Signature]*  
Signature of Grantor

**GRANTEE**

Sworn to and subscribed to

before me on this \_\_\_\_\_ day

of \_\_\_\_\_, \_\_\_\_\_

85-0803151  
EMPLOYER IDENTIFICATION NUMBER OR  
SOCIAL SECURITY NUMBER

**BORDEN SUM, LLC**  
Name of Grantee

\_\_\_\_\_  
Signature of Notary

\_\_\_\_\_  
Signature of Grantee



**Jaan Kangur**  
Notary Public State of New York  
No. 01KA6310065 Qualified in Queens County  
Certificate Filed in New York County  
Commission Expires 8/18/2022



**GRANTOR'S ATTORNEY** ▼

Name of Attorney <b>JILL BRAVERMAN</b>		Telephone Number <b>( 212 ) 619-5000</b>	
Address (number and street) <b>NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY ONE LIBERTY PLAZA</b>		City and State <b>NEW YORK, NY</b>	Zip Code <b>10006</b>
EMPLOYER IDENTIFICATION NUMBER	<input type="text"/> - <input type="text"/>	<b>OR</b>	SOCIAL SECURITY NUMBER
			<input type="text"/> - <input type="text"/> - <input type="text"/>

**GRANTEE'S ATTORNEY** ▼

Name of Attorney <b>STEVEN POLIVY, ESQ.</b>		Telephone Number <b>( 212 ) 822-2245</b>	
Address (number and street) <b>1251 AVENUE OF THE AMERICAS 37TH FLOOR</b>		City and State <b>NEW YORK, NY</b>	Zip Code <b>10020</b>
EMPLOYER IDENTIFICATION NUMBER	<input type="text"/> - <input type="text"/>	<b>OR</b>	SOCIAL SECURITY NUMBER
			<input type="text"/> - <input type="text"/> - <input type="text"/>

**CERTIFICATION** ▼

I swear or affirm that this return, including any accompanying schedules, affidavits and attachments, has been examined by me and is, to the best of my knowledge, a true and complete return made in good faith, pursuant to Title 11, Chapter 21 of the Administrative Code and the regulations issued thereunder.

**GRANTOR**

**GRANTEE**

Sworn to and subscribed to

Sworn to and subscribed to

before me on this \_\_\_\_\_ day

before me on this 2 day

of \_\_\_\_\_, \_\_\_\_\_

of September, 2021

13-2906040  
EMPLOYER IDENTIFICATION NUMBER OR SOCIAL SECURITY NUMBER

**NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY**  
Name of Grantor

85-0803151  
EMPLOYER IDENTIFICATION NUMBER OR SOCIAL SECURITY NUMBER

**BORDEN SUM, LLC**

Name of Grantee

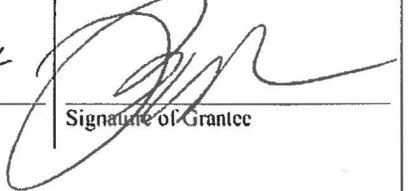
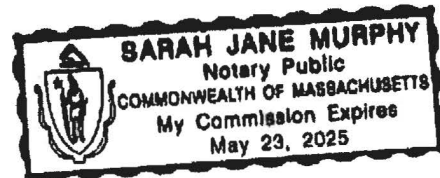
Signature of Notary

Signature of Grantor

Signature of Notary

Signature of Grantee

*Sarah Murphy*


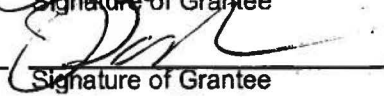
### CERTIFICATION

I swear or affirm that this return, including any accompanying schedules, affidavits and attachments, has been examined by me and is, to the best of my knowledge, a true and complete return made in good faith, pursuant to Title 11, Chapter 21 of the Administrative Code and the regulations issued thereunder.

### GRANTORS

EIN/SSN	Name of Grantor	Signature of Grantor
EIN/SSN	Name of Grantor	Signature of Grantor
EIN/SSN	Name of Grantor	Signature of Grantor
EIN/SSN	Name of Grantor	Signature of Grantor
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EIN/SSN	Name of Grantor	Signature of Grantor
EIN/SSN	Name of Grantor	Signature of Grantor

### GRANTEES

83-0520700	132 MIDDLE STREET, LLC	
EIN/SSN	Name of Grantee	
82-1931789	134 MIDDLE STREET, LLC	
EIN/SSN	Name of Grantee	Signature of Grantee
EIN/SSN	Name of Grantee	Signature of Grantee
EIN/SSN	Name of Grantee	Signature of Grantee
EIN/SSN	Name of Grantee	Signature of Grantee
EIN/SSN	Name of Grantee	Signature of Grantee
EIN/SSN	Name of Grantee	Signature of Grantee
EIN/SSN	Name of Grantee	Signature of Grantee

**Borden Sum, LLC members:**

1. Kenneth Rubin
2. Eamonn Healey
3. Barrett Bilotta

ownership: 65.66% (SSN 026-36-1201)  
ownership: 17.17% (SSN: 110-62-5347)  
ownership: 17.17% (SSN: 018-74-7202)

**132 Middle Street, LLC:**

1. Eamonn Healey
2. Barrett Bilotta

ownership: 50% (SSN: 110-62-5347)  
ownership: 50% (SSN: 018-74-7202)

**134 Middle Street, LLC:**

1. Eamonn Healey
2. Barrett Bilotta

ownership: 50% (SSN: 110-62-5347)  
ownership: 50% (SSN: 018-74-7202)



Combined Real Estate Transfer Tax Return, Credit Line Mortgage Certificate, and Certification of Exemption from the Payment of Estimated Personal Income Tax for the Conveyance of Real Property Located in New York City

See Form TP-584-NYC-1, Instructions for Form TP-584-NYC, before completing this form. Print or type.

Schedule A - Information relating to conveyance

Form with sections for Grantor/Transferor and Grantee/Transferee, including fields for Name, Mailing address, City, State, ZIP code, Social Security number, and Employer identification number.

Location and description of property conveyed

Table with 5 columns: Tax map designation, SWIS code, Street address, City, town, or village, and County. Row 1: 4 - 65 - 15, 650000, 11-24 BORDEN AVENUE, NEW YORK, QUEENS.

Type of property conveyed (mark an X in applicable box)

- 1 One- to three-family house
2 Residential cooperative
3 Residential condominium
4 Vacant land
5 Commercial/Industrial
6 Apartment building
7 Office building
8 Four-family dwelling
9 Other

Date of conveyance

8 | 31 | 2021
month | day | year

Contract executed on or before April 1, 2019 (see instructions)

Percentage of real property conveyed which is residential real property 0% (see instructions)

Condition of conveyance (mark all that apply)

- a. Conveyance of fee interest
b. Acquisition of a controlling interest
c. Transfer of a controlling interest
d. Conveyance to cooperative housing corporation
e. Conveyance pursuant to or in lieu of foreclosure
f. Conveyance which consists of a mere change of identity
g. Conveyance for which credit for tax previously paid will be claimed
h. Conveyance of cooperative apartment(s)
i. Syndication
j. Conveyance of air rights or development rights
k. Contract assignment
l. Option assignment or surrender
m. Leasehold assignment or surrender
n. Leasehold grant
o. Conveyance of an easement
p. Conveyance for which exemption from transfer tax claimed
q. Conveyance of property partly within and partly outside the state
r. Conveyance pursuant to divorce or separation
s. Other (describe)

Table for recording officer's use with columns: Amount received (Schedule B, Part 1, 2, 3), Date received, and Transaction number.

**Schedule B – Real estate transfer tax return (Tax Law, Article 31)**

**Part 1 – Computation of tax due (in addition to the tax on line 4, you must compute the tax on lines 5a and 5b, if applicable)**

<b>1</b> Enter amount of consideration for the conveyance (if you are claiming a total exemption from tax, mark the exemption claimed box, enter consideration and proceed to Part 4) <input checked="" type="checkbox"/> <b>Exemption claimed</b> .....	<b>1.</b>	0	00
<b>2</b> Continuing lien deduction (see instructions if property is taken subject to mortgage or lien) .....	<b>2.</b>	0	00
<b>3</b> Taxable consideration (subtract line 2 from line 1) .....	<b>3.</b>	0	00
<b>4</b> Tax: \$2 for each \$500, or fractional part thereof, of consideration on line 3 .....	<b>4.</b>	0	00
<b>5a</b> Tax: \$1.25 for each \$500, or fractional part thereof, of consideration for the conveyance of residential real property located in New York City if the amount on line 3 is \$3 million or more (see instructions) .....	<b>5a.</b>	0	00
<b>5b</b> Tax: \$1.25 for each \$500, or fractional part thereof, of consideration for the conveyance of property located in New York City other than residential real property, if the amount on line 1 is \$2 million or more (see instructions) .....	<b>5b.</b>	0	00
<b>6</b> Total before credit(s) claimed (add lines 4, 5a, and 5b) .....	<b>6.</b>	0	00
<b>7</b> Amount of credit claimed for tax previously paid (see instructions and attach Form TP-584.1, Schedule G) .....	<b>7.</b>	0	00
<b>8</b> Total tax due* (subtract line 7 from line 6) .....	<b>8.</b>	0	00

**Part 2 – Computation of additional tax due on the conveyance of residential real property for \$1 million or more (see instructions)**

<b>1</b> Enter amount of consideration for conveyance (from Part 1, line 1) .....	<b>1.</b>	0	00
<b>2</b> Taxable consideration (multiply line 1 by the percentage of the premises which is residential real property, as shown in Schedule A) ...	<b>2.</b>	0	00
<b>3</b> Total additional transfer tax due* (multiply line 2 by 1% (.01)) .....	<b>3.</b>	0	00

**Part 3 – Computation of supplemental tax due on the conveyance of residential real property, or interest therein, located in New York City, for \$2 million or more (see instructions)**

<b>1</b> Enter amount of consideration for conveyance (from Part 1, line 1) .....	<b>1.</b>		
<b>2</b> Taxable consideration (multiply line 1 by the percentage of the premises which is residential real property, as shown in Schedule A) ...	<b>2.</b>		
<b>3</b> Total supplemental transfer tax due* (multiply line 2 by tax rate, see instruction for rates) .....	<b>3.</b>		00

\* The total tax (from Part 1, line 8; Part 2, line 3; and Part 3, line 3 above) is due within 15 days from the date of conveyance.

**Part 4 – Explanation of exemption claimed on Part 1, line 1 (mark any boxes that apply)**

The conveyance of real property is exempt from the real estate transfer tax for the following reason:

- a. Conveyance is to the United Nations, the United States of America, New York State, or any of their instrumentalities, agencies, or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or Canada)..... a
- b. Conveyance is to secure a debt or other obligation..... b
- c. Conveyance is without additional consideration to confirm, correct, modify, or supplement a prior conveyance..... c
- d. Conveyance of real property is without consideration and not in connection with a sale, including conveyances conveying realty as bona fide gifts..... d
- e. Conveyance is given in connection with a tax sale..... e
- f. Conveyance is a mere change of identity or form of ownership or organization where there is no change in beneficial ownership. (This exemption cannot be claimed for a conveyance to a cooperative housing corporation of real property comprising the cooperative dwelling or dwellings.) Attach Form TP-584.1, Schedule F ..... f
- g. Conveyance consists of deed of partition ..... g
- h. Conveyance is given pursuant to the federal Bankruptcy Act..... h
- i. Conveyance consists of the execution of a contract to sell real property, without the use or occupancy of such property, or the granting of an option to purchase real property, without the use or occupancy of such property..... i
- j. Conveyance of an option or contract to purchase real property with the use or occupancy of such property where the consideration is less than \$200,000 and such property was used solely by the grantor as the grantor's personal residence and consists of a one-, two-, or three-family house, an individual residential condominium unit, or the sale of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold covering an individual residential cooperative apartment..... j
- k. Conveyance is not a conveyance within the meaning of Tax Law, Article 31, § 1401(e) (attach documents supporting such claim) ..... k

**Schedule C – Credit Line Mortgage Certificate (Tax Law, Article 11)**

Complete the following only if the interest being transferred is a fee simple interest.

I (we) certify that: (mark an X in the appropriate box)

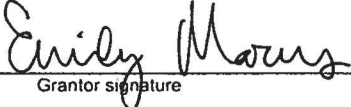
1.  The real property being sold or transferred is not subject to an outstanding credit line mortgage.
2.  The real property being sold or transferred is subject to an outstanding credit line mortgage. However, an exemption from the tax is claimed for the following reason:
  - a  The transfer of real property is a transfer of a fee simple interest to a person or persons who held a fee simple interest in the real property (whether as a joint tenant, a tenant in common or otherwise) immediately before the transfer.
  - b  The transfer of real property is (A) to a person or persons related by blood, marriage or adoption to the original obligor or to one or more of the original obligors or (B) to a person or entity where 50% or more of the beneficial interest in such real property after the transfer is held by the transferor or such related person or persons (as in the case of a transfer to a trustee for the benefit of a minor or the transfer to a trust for the benefit of the transferor).
  - c  The transfer of real property is a transfer to a trustee in bankruptcy, a receiver, assignee, or other officer of a court.
  - d  The maximum principal amount secured by the credit line mortgage is \$3,000,000 or more, and the real property being sold or transferred is not principally improved nor will it be improved by a one- to six-family owner-occupied residence or dwelling.

**Note:** for purposes of determining whether the maximum principal amount secured is \$3,000,000 or more as described above, the amounts secured by two or more credit line mortgages may be aggregated under certain circumstances. See TSB-M-96(6)-R for more information regarding these aggregation requirements.

- e  Other (attach detailed explanation).
3.  The real property being transferred is presently subject to an outstanding credit line mortgage. However, no tax is due for the following reason:
  - a  A certificate of discharge of the credit line mortgage is being offered at the time of recording the deed.
  - b  A check has been drawn payable for transmission to the credit line mortgagee or his agent for the balance due, and a satisfaction of such mortgage will be recorded as soon as it is available.
4.  The real property being transferred is subject to an outstanding credit line mortgage recorded in \_\_\_\_\_ (insert liber and page or reel or other identification of the mortgage). The maximum principal amount of debt or obligation secured by the mortgage is \_\_\_\_\_. No exemption from tax is claimed and the tax of \_\_\_\_\_ is being paid herewith. (Make check payable to county clerk where deed will be recorded or, if the recording is to take place in New York City but not in Richmond County, make check payable to the NYC Department of Finance.)

**Signature (both the grantor(s) and grantee(s) must sign)**

The undersigned certify that the above information contained in schedules A, B, and C, including any return, certification, schedule, or attachment, is to the best of his/her knowledge, true and complete, and authorize the person(s) submitting such form on their behalf to receive a copy for purposes of recording the deed or other instrument effecting the conveyance.

 _____ Grantor signature	Deputy Executive Director _____ Title	_____ Grantee signature	_____ Title
_____ Grantor signature	_____ Title	_____ Grantee signature	_____ Title

**Reminder:** Did you complete all of the required information in Schedules A, B, and C? Are you required to complete Schedule D? If you marked e, f, or g in Schedule A, did you complete Form TP-584.1? If the contract was executed prior to April 1, 2019, did you attach the necessary verification? Have you attached your check(s) made payable to the county clerk where recording will take place or, if the recording is in the New York City boroughs of Manhattan, Bronx, Brooklyn, or Queens, to the **NYC Department of Finance**? If no recording is required, send this return and your check(s), made payable to the **NYS Department of Taxation and Finance**, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-0045. If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.

**Schedule C – Credit Line Mortgage Certificate (Tax Law, Article 11)**

Complete the following only if the interest being transferred is a fee simple interest.

I (we) certify that: (mark an X in the appropriate box)

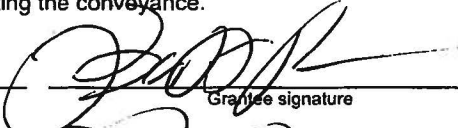



1.  The real property being sold or transferred is not subject to an outstanding credit line mortgage.
2.  The real property being sold or transferred is subject to an outstanding credit line mortgage. However, an exemption from the tax is claimed for the following reason:
  - a  The transfer of real property is a transfer of a fee simple interest to a person or persons who held a fee simple interest in the real property (whether as a joint tenant, a tenant in common or otherwise) immediately before the transfer.
  - b  The transfer of real property is (A) to a person or persons related by blood, marriage or adoption to the original obligor or to one or more of the original obligors or (B) to a person or entity where 50% or more of the beneficial interest in such real property after the transfer is held by the transferor or such related person or persons (as in the case of a transfer to a trustee for the benefit of a minor or the transfer to a trust for the benefit of the transferor).
  - c  The transfer of real property is a transfer to a trustee in bankruptcy, a receiver, assignee, or other officer of a court.
  - d  The maximum principal amount secured by the credit line mortgage is \$3,000,000 or more, and the real property being sold or transferred is **not** principally improved nor will it be improved by a one- to six-family owner-occupied residence or dwelling.

**Note:** for purposes of determining whether the maximum principal amount secured is \$3,000,000 or more as described above, the amounts secured by two or more credit line mortgages may be aggregated under certain circumstances. See TSB-M-96(6)-R for more information regarding these aggregation requirements.

- e  Other (attach detailed explanation).
3.  The real property being transferred is presently subject to an outstanding credit line mortgage. However, no tax is due for the following reason:
  - a  A certificate of discharge of the credit line mortgage is being offered at the time of recording the deed.
  - b  A check has been drawn payable for transmission to the credit line mortgagee or his agent for the balance due, and a satisfaction of such mortgage will be recorded as soon as it is available.
4.  The real property being transferred is subject to an outstanding credit line mortgage recorded in \_\_\_\_\_ (insert liber and page or reel or other identification of the mortgage). The maximum principal amount of debt or obligation secured by the mortgage is \_\_\_\_\_. No exemption from tax is claimed and the tax of \_\_\_\_\_ is being paid herewith. (Make check payable to county clerk where deed will be recorded or, if the recording is to take place in New York City but not in Richmond County, make check payable to the NYC Department of Finance.)

**Signature (both the grantor(s) and grantee(s) must sign)**

The undersigned certify that the above information contained in schedules A, B, and C, including any return, certification, schedule, or attachment, is to the best of his/her knowledge, true and complete, and authorize the person(s) submitting such form on their behalf to receive a copy for purposes of recording the deed or other instrument effecting the conveyance.

Grantor signature	Title	 Grantee signature	 Manager Title
Grantor signature	Title	 Grantee signature	 Manager Title

**Reminder:** Did you complete all of the required information in Schedules A, B, and C? Are you required to complete Schedule D? If you marked e, f, or g in Schedule A, did you complete Form TP-584.1? If the contract was executed prior to April 1, 2019, did you attach the necessary verification? Have you attached your check(s) made payable to the county clerk where recording will take place or, if the recording is in the New York City boroughs of Manhattan, Bronx, Brooklyn, or Queens, to the **NYC Department of Finance**? If no recording is required, send this return and your check(s), made payable to the **NYS Department of Taxation and Finance**, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-0045. If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.



**Signature (both the grantor(s) and grantee(s) must sign)**

The undersigned certify that the above information contained in schedules A, B, and C, including any return, certification, schedule, or attachment, is to the best of his/her knowledge, true and complete, and authorize the person(s) submitting such form on their behalf to receive a copy for purposes of recording the deed or other instrument effecting the conveyance.

*Emily Marcus*

deputy  
Executive  
Director

Grantor signature

Title

Grantee signature

Title

Grantor signature



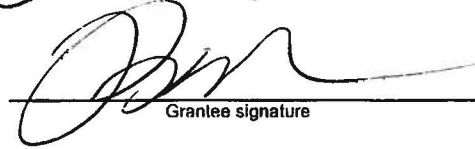
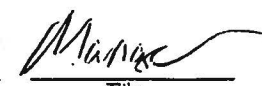
Title

Grantee signature

Title

**Signature (both the grantor(s) and grantee(s) must sign)**

The undersigned certify that the above information contained in schedules A, B, and C, including any return, certification, schedule, or attachment, is to the best of his/her knowledge, true and complete, and authorize the person(s) submitting such form on their behalf to receive a copy for purposes of recording the deed or other instrument effecting the conveyance.

_____	_____		
Grantor signature	Title	Grantee signature	Title
_____	_____		
Grantor signature	Title	Grantee signature	Title

**Signature (both the grantor(s) and grantee(s) must sign**

The undersigned certify that the above information contained in schedules A, B, and C, including any return, certification, schedule, or attachment, is to the best of his/her knowledge, true and complete, and authorize the person(s) submitting such form on their behalf to receive a copy for purposes of recording the deed or other instrument effecting the conveyance.

\_\_\_\_\_  
Grantor Signature Title

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**Schedule D – Certification of exemption from the payment of estimated personal income tax (Tax Law, Article 22, § 663)**

Complete the following only if a fee simple interest or a cooperative unit is being transferred by an individual or estate or trust.

If the property is being conveyed by a referee pursuant to a foreclosure proceeding, proceed to Part 2, mark the second box under Exemptions for nonresident transferor(s)/seller(s), and sign at bottom.

**Part 1 – New York State residents**

If you are a New York State resident transferor(s)/seller(s) listed in Form TP-584-NYC, Schedule A (or an attachment to Form TP-584-NYC), you must sign the certification below. If one or more transferors/sellers of the real property or cooperative unit is a resident of New York State, each resident transferor/seller must sign in the space provided. If more space is needed, photocopy this Schedule D and submit as many schedules as necessary to accommodate all resident transferors/sellers.

**Certification of resident transferor(s)/seller(s)**

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor(s)/seller(s) as signed below was a resident of New York State, and therefore is not required to pay estimated personal income tax under Tax Law, § 663(a) upon the sale or transfer of this real property or cooperative unit.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date

**Note:** A resident of New York State may still be required to pay estimated tax under Tax Law, § 685(c), but not as a condition of recording a deed.

**Part 2 – Nonresidents of New York State**

If you are a nonresident of New York State listed as a transferor/seller in Form TP-584-NYC, Schedule A (or an attachment to Form TP-584-NYC) but are not required to pay estimated personal income tax because one of the exemptions below applies under Tax Law, § 663(c), mark the box of the appropriate exemption below. If any one of the exemptions below applies to the transferor(s)/seller(s), that transferor(s)/seller(s) is not required to pay estimated personal income tax to New York State under Tax Law, § 663. Each nonresident transferor/seller who qualifies under one of the exemptions below must sign in the space provided. If more space is needed, photocopy this Schedule D and submit as many schedules as necessary to accommodate all nonresident transferors/sellers.

If none of these exemption statements apply, you must complete Form IT-2663, *Nonresident Real Property Estimated Income Tax Payment Form*, or Form IT-2664, *Nonresident Cooperative Unit Estimated Income Tax Payment Form*. For more information, see *Payment of estimated personal income tax*, on Form TP-584-NYC-I, page 1.

**Exemption for nonresident transferor(s)/seller(s)**

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor(s)/seller(s) (grantor) of this real property or cooperative unit was a nonresident of New York State, but is not required to pay estimated personal income tax under Tax Law, § 663 due to one of the following exemptions:

- The real property or cooperative unit being sold or transferred qualifies in total as the transferor's/seller's principal residence (within the meaning of Internal Revenue Code, section 121) from \_\_\_\_\_ to \_\_\_\_\_ (see instructions).  
Date Date
- The transferor/seller is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure, or in lieu of foreclosure with no additional consideration.
- The transferor or transferee is an agency or authority of the United States of America, an agency or authority of the state of New York, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date

**Certification of resident transferor(s)/seller(s)**

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor(s)/seller(s) as signed below was a resident of New York State, and therefore is not required to pay estimated personal income tax under Tax Law, section 663(a) upon the sale or transfer of this real property or cooperative unit.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date

**Exemption for nonresident transferor(s)/seller(s)**

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor(s)/seller(s) (grantor) of this real property or cooperative unit was a nonresident of New York State, but is not required to pay estimated personal income tax under Tax Law, section 663 due to one of the following exemptions:

- The real property or cooperative unit being sold or transferred qualifies in total as the transferor's/seller's principal residence (within the meaning of Internal Revenue Code, section 121) from \_\_\_\_\_ Date to \_\_\_\_\_ Date (see instructions).
- The transferor/seller is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure, or in lieu of foreclosure with no additional consideration.
- The transferor or transferee is an agency or authority of the United States of America, an agency or authority of the state of New York, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date

TRANSFERS INVOLVING MULTIPLE GRANTORS AND/OR GRANTEES

**NOTE** If additional space is needed, attach copies of this schedule or an addendum listing all of the information required below.

<b>Grantee/Transferee</b> <input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Estate/Trust <input type="checkbox"/> Single member LLC <input checked="" type="checkbox"/> Multi-member LLC <input type="checkbox"/> Other	Name (if individual, last, first, middle initial) 132 MIDDLE STREET, LLC	Social security number
	Mailing address 11-24 BORDEN AVENUE	Social security number
	City State ZIP code LONG ISLAND CITY NY 11101	Federal EIN 83   0520700
	Country	
	Single member's name if grantor/grantee is a single member LLC	Single member EIN or SSN
<b>Grantee/Transferee</b> <input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Estate/Trust <input type="checkbox"/> Single member LLC <input checked="" type="checkbox"/> Multi-member LLC <input type="checkbox"/> Other	Name (if individual, last, first, middle initial) 134 MIDDLE STREET, LLC	Social security number
	Mailing address 11-24 BORDEN AVENUE	Social security number
	City State ZIP code LONG ISLAND CITY NY 11101	Federal EIN 82   1931789
	Country	
	Single member's name if grantor/grantee is a single member LLC	Single member EIN or SSN
<input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Estate/Trust <input type="checkbox"/> Single member LLC <input type="checkbox"/> Multi-member LLC <input type="checkbox"/> Other	Name (if individual, last, first, middle initial)	Social security number
	Mailing address	Social security number
	City State ZIP code	Federal EIN
	Country	
	Single member's name if grantor/grantee is a single member LLC	Single member EIN or SSN
<input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Estate/Trust <input type="checkbox"/> Single member LLC <input type="checkbox"/> Multi-member LLC <input type="checkbox"/> Other	Name (if individual, last, first, middle initial)	Social security number
	Mailing address	Social security number
	City State ZIP code	Federal EIN
	Country	
	Single member's name if grantor/grantee is a single member LLC	Single member EIN or SSN
<input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Estate/Trust <input type="checkbox"/> Single member LLC <input type="checkbox"/> Multi-member LLC <input type="checkbox"/> Other	Name (if individual, last, first, middle initial)	Social security number
	Mailing address	Social security number
	City State ZIP code	Federal EIN
	Country	
	Single member's name if grantor/grantee is a single member LLC	Single member EIN or SSN

**Borden Sum, LLC members:**

- |                    |                                      |
|--------------------|--------------------------------------|
| 1. Kenneth Rubin   | ownership: 65.66% (SSN 026-36-1201)  |
| 2. Eamonn Healey   | ownership: 17.17% (SSN: 110-62-5347) |
| 3. Barrett Bilotta | ownership: 17.17% (SSN: 018-74-7202) |

**132 Middle Street, LLC:**

- |                    |                                   |
|--------------------|-----------------------------------|
| 1. Eamonn Healey   | ownership: 50% (SSN: 110-62-5347) |
| 2. Barrett Bilotta | ownership: 50% (SSN: 018-74-7202) |

**134 Middle Street, LLC:**

- |                    |                                   |
|--------------------|-----------------------------------|
| 1. Eamonn Healey   | ownership: 50% (SSN: 110-62-5347) |
| 2. Barrett Bilotta | ownership: 50% (SSN: 018-74-7202) |