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**FIRST AMENDMENT TO  
AGENCY LEASE AGREEMENT**

Dated as of August 1, 2013

by and between

**NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY**

and

**BOGOPA-MANHATTAN, INC.,**

a corporation organized and existing under the laws  
of the State of New York, having its principal office  
in New York City at  
21 Manhattan Avenue, Brooklyn, New York 11206,  
as Lessee

2011 Bogopa Service Corp. Project

Affecting the Land generally known by the street address  
21 Manhattan Avenue, Brooklyn, New York 11206  
Block 3104 and Lot 1

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

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Record and Return to:

**GONZALEZ SAGGIO & HARLAN LLP**  
292 Madison Avenue, Fl. 19  
New York, New York 10017  
Attention: Stephen Adnopo, Esq.

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## **FIRST AMENDMENT TO AGENCY LEASE AGREEMENT**

This **FIRST AMENDMENT TO AGENCY LEASE AGREEMENT**, made and entered into as of August 1, 2013 (this "Amendment"), 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 110 William Street, New York, New York 10038 (the "Agency"), party of the first part, and the Lessee, party of the second part, amendatory of and supplemental to the Agency Lease Agreement, dated as of October 1, 2011, by and between the Agency and the Lessee (the "Original Agreement", and together with this Amendment, the "Agreement") (capitalized terms used but not defined in this Amendment shall have the respective meanings as in the Original 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, civic 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 entered into negotiations with the Lessee and BSC 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**, to facilitate the Project, (i) the Lessee has leased the Facility Realty to the Agency pursuant to the Company Lease, and (ii) the Agency has subleased the Facility Realty, and leased the Facility Personalty, to the Lessee pursuant to the Original Agreement; and

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

**WHEREAS**, the Project has not been completed and the Lessee has requested that the Agency extend the Completion Date for the Project to June 30, 2018;

**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.** Except as otherwise defined herein, capitalized terms used in this Amendment shall have the respective meanings set forth or referenced in the Original Agreement and the Project Agreement. The certain terms defined in Section 1.1 of the Original Agreement that appear below in this Section 1.1 of the Amendment are hereby amended and restated in whole to read as follows; terms that appear below but that are not defined in the Original Agreement are hereby added to Section 1.1 of the Agreement and all such terms shall have the respective meanings in the Agreement:

**Completion Date** shall mean June 30, 2018.

**Project Agreement** shall mean the Project Agreement, dated as of October 1, 2011, by and among the Project Companies and the Agency, as the same may be amended and supplemented from time to time in accordance with its terms, including without limitation by the First Amendment to Project Agreement, dated as of August 1, 2013, by and among the Project Companies and the Agency.

**Sales Tax Agent Authorization Letter** shall mean the Sales Tax Agent Authorization Letter, substantially in the form set forth in Exhibit B – “Form of Sales Tax Agent Authorization Letter” to the Project Agreement and to be delivered in accordance with Section 3.2(d) of the Project Agreement.

**Sales Tax Letter** shall mean the Letter of Authorization for Sales Tax Exemption, substantially in the form set forth in Exhibit A – “Form of Sales Tax Letter” to the Project Agreement and to be delivered pursuant to Section 3.2(c) of the Project Agreement on the Amendment Date.

**Sales Tax Registry** shall mean the Sales Tax Registry in the form set forth in Exhibit D to the Project Agreement.

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

(a) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this Amendment, refer to the Agreement, as amended by this Amendment.

(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 Amendment, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Amendment or the Agreement, nor shall they affect its meaning, construction or effect.

(e) Unless the content 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 the 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).

(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 representations and warranties of the Agency in Section 2.1 of the Original Agreement are true and correct on and as of the Amendment Date as if made on the Amendment Date.

**Section 2.2. Representations and Warranties by the Lessee.** The representations and warranties of the Lessee in Section 2.2 of the Original Agreement are true and correct on and as of the Amendment Date as if made on the Amendment Date.

The Lessee represents and warrants that none of the Lessee, the Principals of the Lessee, or any Person that directly or indirectly Controls, is Controlled by, or is under common Control with the Lessee:

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

## ARTICLE III

### AMENDING PROVISIONS

**Section 3.1. Section Amendments.** The following sections of the Original Agreement are hereby amended and restated in whole to read as follows:

**“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 3.2 of the Project Agreement), 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 Date, in a first class workmanlike manner, free of defects in materials and workmanship (including latent defects); provided, however, the Lessee may revise the scope of the Project Work, subject to the prior written consent of the Agency (which consent shall not be unreasonably withheld, delayed or conditioned).

(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. The Lessee shall pay or cause to be paid that portion of such costs of the Project Work as may be necessary to complete the Project Work and shall not be entitled to any

reimbursement therefor from the Agency, nor shall the Lessee be entitled to any diminution of the Rental Payments to be made under this Agreement.

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

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

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

(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.

### **Section 8.1. Insurance.**

(a) Definitions. For purposes of this Section 8.1, the following terms shall have the 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.

**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.

**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.

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

**Insured(s)** means the Lessee.

**Insurer** means any entity writing 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 of this Agreement, 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 an Authorized Representative for the Lessee delivers a certificate to the Agency certifying that it neither owns, hires, rents or uses a vehicle of any sort, the Agency shall deem such certification 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: (x) coverage shall be in an aggregate minimum amount of \$10,000,000 per project aggregate, and (y) completed operations coverage shall extend (or be extended) for an additional five (5) years after completion of the Construction as such completion is evidenced by delivery, pursuant to Sections 3.3(f) and 8.14(g), of a Project Completion Certificate; *provided, however*, that for purposes of delivery under this paragraph "A", the Lessee is not required to attach a certificate of occupancy, a temporary certificate of occupancy certificate of occupancy or a letter of no objection;

(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 as such completion is evidenced by delivery, pursuant to Sections 3.3(f) and 8.14(g), of a Project Completion Certificate; *provided, however*, that for purposes of this paragraph "A" only, the delivered Project Completion Certificate need not have attached to it a certificate of occupancy or a temporary certificate of occupancy or an amended certificate of occupancy or a letter of no objection;

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

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

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

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

(ii) No Policy shall have a deductible.

(iii) CGL shall not be subject to SIR.

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

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

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

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

(C) 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 Insurance Department 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 of this Agreement, 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 or waiver-of-subrogation provisions therein, covering the following premises: 21 Manhattan Avenue, Brooklyn, New York 11206;*

(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 following properties: 17-59 Ridgewood Place, Brooklyn, NY 11237; 34-20 Junction Blvd., Jackson Heights, NY 11372; 97-27 57th Ave., Corona, NY 11368; 57-01 Broadway, West New York, NJ 07093; 1102 Myrtle Ave., Brooklyn, NY 11206; 35-60 Junction Blvd., Corona, NY 11368; 238 East 161st Street, Bronx, NY 10451; 650 Fountain Ave., Brooklyn, NY 11208; 21 Manhattan Ave., Brooklyn, NY 11206; 1590 Gates Ave., Ridgewood, NY 11385; 417 Junius Street, Brooklyn, NY 11212; 1630 Bruckner Blvd., Bronx, NY 10473; 535 East 170th Street, Bronx, NY 10456; 635 S. Clinton Ave., Trenton, NJ 08611; 500 Sylvan Ave., Bridgeport, CT 06606; 58-01 Junction Blvd., Corona, NY 11368; 1682 Saint Johns Pl., Brooklyn, NY 11233; 57-08 99th St., Corona, NY 11368; 264A NYC Terminal Market, Bronx, NY 10451.

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

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

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

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

**Section 8.14. 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.

(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 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, and the original of the Sales Tax letter and all copies thereof.

(h) Prior to the appointment of an Agent in connection with the use of the Sales Tax Agent Authorization Letter as provided in Section 3.2(d) of the Project Agreement, 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 and each Agent during the prior annual ending on the preceding June 30th.

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

**Section 3.2. Exhibit Amendment.** Exhibit F to the Original Agreement is hereby deleted and replaced in its entirety with Exhibit B hereto.



## ARTICLE IV

### MISCELLANEOUS

**Section 4.1. Original Agreement in Effect.** Except as modified hereby, all terms and conditions of the Original Agreement remain in full force and effect.

**Section 4.2. Prior Agreements Superseded.** The Original Agreement, as amended by this Amendment, shall completely and fully supersede all other prior understandings or agreements, both written and oral, between the Agency and the Lessee relating to the Facilities, other than the Company Lease or any other Project Document.

**Section 4.3. Severability.** If any one or more of the provisions of the Original Agreement, as amended by 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 the Agreement shall be construed and enforced as of such illegal or invalid provision had not been contained therein.

**Section 4.4. Effective Date; Counterparts.** The date of this Amendment shall be for reference purposes only and shall not be construed to imply that this Amendment was executed on the date first above written. This Amendment was delivered and became effective on the Amendment 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.

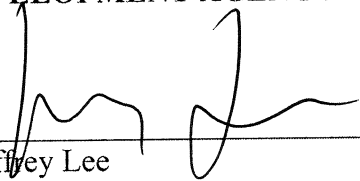
**Section 4.5. Binding Effect.** The Original Agreement, as amended by this Amendment, shall inure to the benefit of the Agency, the Lessee and the Indemnified Parties, and shall be binding upon the Agency and the Lessee and their respective successors and assigns.

**Section 4.6. 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 4.7. Recourse Under This Agreement.** All covenants, stipulations, promises, agreements and obligations of the Agency contained in the Original Agreement, as amended by this Amendment, 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 Amendment 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 Amendment 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.

IN WITNESS WHEREOF, the Agency has caused its corporate name to be subscribed unto this Amendment by its duly authorized Chairman, Vice Chairman, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs 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:   
Jeffrey Lee  
Executive Director

**BOGOPA-MANHATTAN, INC.**

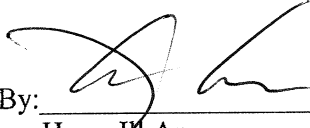
By: \_\_\_\_\_  
Hwee Ill An  
President

**IN WITNESS WHEREOF**, the Agency has caused its corporate name to be subscribed unto this Amendment by its duly authorized Chairman, Vice Chairman, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs 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: \_\_\_\_\_  
Jeffrey Lee  
Executive Director

**BOGOPA-MANHATTAN, INC.**

By:  \_\_\_\_\_  
Hwee M An  
President

STATE OF NEW YORK     )  
                                  :  
COUNTY OF NEW YORK    )

                                  ss.:

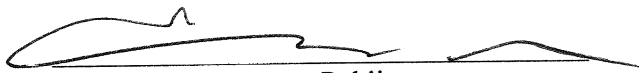
On the 30 day of July, in the year 2013, before me, the undersigned, personally appeared Jeffrey Lee, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in 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.

**FRANCES TUFANO**  
Notary Public, State of New York  
No. 01TU5080131  
Qualified in Queens County  
Commission Expires June 16, 2015

  
\_\_\_\_\_  
Notary Public/Commissioner of Deeds

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

On the 8 day of AUGUST, in the year two thousand thirteen, before me, the undersigned, personally appeared Hwee Ill An, personally known to me or proved to me on the basis of satisfactory evidence to me the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

EDWARD K. SUH  
Notary Public, State of New York  
No. 02SU617009  
Qualified in Queens County  
Commission Expires July 23, 2015

**EXHIBITS**

**EXHIBIT A**

**DESCRIPTION OF THE LAND**

EXHIBIT A

238 East 161st Street, Bronx, New York

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

BEGINNING at a point on the westerly side of Concourse Village East (formerly Morris Avenue) (81 feet wide), distant 165.50 feet southerly, from the corner formed by the intersection of the Westerly side of Concourse Village East with the southerly side of East 161st Street, (100 feet wide), said point being where the division line between the premises herein described and premises commonly known as 260 East 161st Street (Block 2443 Lot 100) (hereinafter the "Melrose Building") interest the westerly side of Concourse Village East;

RUNNING THENCE Southerly, along the westerly side of Concourse Village East, 375.63 feet to the northerly line of land of now or formerly of Concourse Village, Inc. (Block 2443 Lot 170);

THENCE Westerly at right angles to the westerly side of Concourse Village East, along land now or formerly of Concourse Village, Inc. and the northerly line of Concourse Plaza Associates (Block 2443 Lot 80), 818.24 feet to the easterly side of Concourse Village West (formerly Sheridan Avenue) (60 feet wide);

THENCE the following two (2) courses and distances along the easterly side of Concourse Village West:

1. Northerly, along the easterly side of Concourse Village West, 5.03 feet to an angle point; and
2. Northerly, still along said easterly side of Concourse Village West, 309.66 feet to land now or formerly The City of New York (Block 2443 Lot 94);

THENCE the following two (2) courses and distances along said land of the City of New York

1. Easterly on a line forming an exterior angle with said easterly side of Concourse Village West of 81 degrees 24 minutes 01 seconds, 176.25 feet; and
2. Northerly on a line forming an exterior angle with the last preceding course of 90 degrees 00 minutes 00 seconds, 229.92 feet to the southerly side of East 161st Street;

THENCE Easterly, along said southerly side of East 161st Street, 340.00 feet to the westerly line the Melrose Building;



THENCE the following four (4) courses and distance along the Melrose Building:

1. Southerly at right angles to the southerly side of East 161st Street, 65.58 feet;
2. Easterly at right angles to the last preceding course, 190.00 feet;
3. Southerly at right angles to the last preceding course, 99.92 feet; and
4. Easterly at right angles to the last preceding course, 65.50 feet to the westerly side of Concourse Village East, the point or place of BEGINNING.

Premises known as 200 East 161st Street, Bronx, New York, and known as,

Section 9, Block 2443, Lot 90 on the Tax Map of the Bronx, City of New York.

TOGETHER WITH the benefits, but subject to the burdens of that certain Grant of Easement dated as of March 22, 1988 recorded in Reel 838 Page 2444, which granted an appurtenant easement, for the use of those portions of premises adjoining the premises above described known as Block 2443 Lot 80 ("Lot 80"), consisting of a ten (10) foot strip along the northerly border of said Lot 80 adjoining the above described premises, the full length of said Lot 80 (the "Easement Area") for the access, use and maintenance of a portion of the structure as built on the above described premises.

TOGETHER WITH the benefits of, subject to the burdens of those certain non-exclusive reciprocal easements over the described premises and the premises adjoining northerly now known as Block 2443 Lot 94 set forth in the Reciprocal Easement Declaration made by Brycon Development #2, Inc. dated February 28, 1995 recorded in Reel 1309 Page 1261 and the Reciprocal Easement Declaration made by South Bronx Development Corp. dated July 24, 1996 recorded in Reel 1407 Page 744.

**EXHIBIT B**

**Exhibit F to the Original Agreement is hereby amended and restated in whole to read as follows:**

**[FORM OF REQUIRED DISCLOSURE STATEMENT]**

The undersigned, an authorized representative of Bogopa-Manhattan, Inc., a corporation organized and existing under the laws of the State of New York, 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 October 1, 2011, between the Agency and Bogopa-Manhattan, Inc., a corporation organized and existing under the laws of the State of New York (the "Lessee"), as amended and supplemented by a First Amendment to Agency Lease Agreement, made and entered into as of August 1, 2013, by and between the Agency and the Lessee (together, 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 or the City, unless such default or breach has been waived in writing by the Agency 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.

“Person” shall mean an individual or any Entity.

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

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**BOGOPA-MANHATTAN, INC.**

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