

Annual Investment Projects Report

Pursuant to Local Law 62 – FY 2012

Volume III

January 31, 2013

NEW YORK CITY. MAKE IT HERE.



Land Sales List

No.	Project Name	ClosingDate	Address	City	State	Postal Code	TotalPurchasePrice
1	Mount Hope Community Center, Inc.	2/8/2005	55 East 175th Street	Bronx	NY	10453	\$436,500.00
2	West-Chambers Street Associates, LLC	2/9/2005	177 West Street	New York	NY	10007	\$40,448,220.00
3	Erma Realty, LLC #1 (2005)	3/1/2005	2074 Atlantic Avenue	Brooklyn	NY	11233	\$210,000.00
4	Kingswood Partners LLC	4/29/2005	1630 East 15th Street	Brooklyn	NY	11229	\$2,022,979.00
5	Modi Realty Inc #1 (2005)	3/31/2005	149 Powell Street	Brooklyn	NY	11212	\$275,000.00
6	121-125 Development Realty, LLC	7/7/2005	121 East 110th Street	New York	NY	10029	\$1,300,000.00
7	Charleston Enterprises, LLC	2/15/2005	West Shore Expressway	Staten Island	NY	10309	\$15,000,000.00
8	20 Rewe Street, LTD.	7/12/2005	Cherry Street	Brooklyn	NY	11211	\$407,664.00
9	Museum of Arts and Design	10/19/2005	990 8th Avenue	New York	NY	10019	\$17,050,000.00
10	NY Brush, LLC	3/14/2006	650 Brush Avenue	Bronx	NY	10465	\$4,250,000.00
11	Related Retail Hub, LLC	2/16/2006	2984 3rd Avenue	Bronx	NY	10455	\$1,050,000.00
12	270 Greenwich Street Associates LLC	12/14/2005	270 Greenwich Street	New York	NY	10007	\$110,082,967.00
13	Generation Next Of Zerega, LLC	4/26/2006	635 Seward Avenue	Bronx	NY	10473	\$1,211,250.00
14	Plaza 163 LLC	4/12/2006	446 East 164 Street, Brook Ave, Washi	Bronx	NY	10456	\$722,636.50
15	Clarendon Holding Co., Inc. #5 (2006b)	1/19/2006	691 Zerega Avenue	Bronx	NY	10473	\$1,391,606.00
16	Vista Maro, LLC	6/28/2006	154- 168 Brookville Boulevard	Queens	NY	11422	\$2,254,244.00
17	Logan Property, Inc.	6/30/2006	154-68 Brookville Boulevard	Ozone Park	NY	11422	\$3,834,460.00
18	ADD Holdings LLC	12/19/2006	134 Evergreen Avenue	Brooklyn	NY	11206	\$38,000.00
19	John Catsimatidis	12/28/2006	180 Myrtle Avenue	Brooklyn	NY	11201	\$4,726,440.00
20	Myrtle Owner LLC	3/16/2007	156 Myrtle Avenue	Brooklyn	NY	11201	\$4,531,940.00
21	East Harlem Tutorial Program Inc.	6/7/2007	2040 2 Avenue	Manhattan	NY	10029	\$1,470,000.00
22	QFC Associates LLC	6/26/2007	89-14 Parsons Boulevard	Jamaica	NY	11432	\$8,000,000.00
23	Canarsie Plaza LLC	10/31/2007	8925 Avenue D	Brooklyn	NY	11236	\$8,300,000.00
24	Erma Realty, LLC #2 (2008)	1/10/2008	2120 Atlantic Avenue	Brooklyn	NY	11233	\$275,000.00
25	Hinsdale Commercial Property, LLC	7/9/2008	251 Snediker Ave	Brooklyn	NY	11207	\$750,000.00
26	Allied 345 Retail, LLC	6/27/2008	345 Adams Street	Brooklyn	NY	11201	\$5,770,000.00
27	5225, LLC	6/13/2008	16-16 Whitestone Expressway	Whitestone	NY	11357	\$1,124,000.00
28	Clarendon Holding Co., Inc. #6 (2008)	3/24/2009	178 Sheffield Avenue	Brooklyn	NY	11207	\$180,000.00
29	Seaview Senior Living Corporation	11/11/2009	Brielle Avenue	Staten Island	NY	10314	\$1.00
30	Taystee Create LLC	6/13/2012	461 West 125th Street	New York	NY	10027	\$3,425,000.00
31	Homeport I LLC	11/1/2011	455 Front Street	Staten Island	NY	10304	\$7,410,000.00
32	Broadway Plaza	6/8/2012	5534 Broadway	Bronx	NY	10463	\$7,500,000.00
33	210 Joralemon	4/30/2012	210 Joralemon Street	Brooklyn	NY	11201	\$10,000,000.00

Land Sales Details

No.	<u>Usage Restriction Begin Date</u>	<u>Usage Restriction End Date</u>	<u>Usage Restriction</u>	<u>Conveyance Restriction Begin Date</u>	<u>Conveyance Restriction End Date</u>	<u>Conveyance Restriction</u>
1	2/8/2005	2/8/2038	(Deed Mod 12/28/2006): For 30 years from substantial completion, the premises, except of the Transfer Property, shall be used by non-profit groups for community recreation and education facilities that may contain meeting rooms and administrative office space and for such public use, including affordable housing, for the benefit of the residents of the City as the City shall approve, through the Director of the City's Office of Management and Budget and (ii) the transfer Property shall be used for affordable housing for the benefit of the residents of the City.	2/8/2005	2/8/2038	(Deed Mod 12/28/2006): For 30 years from substantial completion, the premises, except for the Transfer Property shall not be transferred to any Person whose ownership of the premises or use thereof would jeopardize the tax exemption of bonds issued to provide Funding.
2	2/9/2005	2/9/2015	For 10 years, the premises and any improvements thereon (except for the Community Facility and the DOE/NFP Space and any improvements thereon) shall be used for such residential or retail purposes, all to the extent permitted under the ULURP approval and under applicable zoning law, and for no other purposes, except with the prior written approval of Grantor, provided that if at least 75% of the Premises is used for residential purposes, office use shall be a permitted use.	2/9/2005	2/9/2015	For 10 years, Grantee shall not convey the premises (or any improvements thereon) or any interest in either, except with the prior written approval of grantor, such approval to be given, conditioned or denied in the reasonable discretion of Grantor.
3	3/1/2005	3/1/2010	For 5 years, the premises and any improvements thereon and the Adjacent Property and any improvements there on shall be used in connection with the non-residential business operations and corporate purposes of AM&G Waterproofing LLC and Park Ave Building & Roofing Supplies, LLC, primarily in connection with User's operational, retail, storage and warehouse purposes as building exterior and restoration and waterproofing companies and for no other purposes, except with prior written approval of Grantor.	3/1/2005	3/1/2010	For 5 years, Grantee shall not convey the premises or any interest in either, except (i) as part of a bona fide sale of User's entire business or (ii) with prior written approval of Grantor or (iii) to IDA in connection with financial assistance provided by IDA to Grantee in connection with Grantee's purchase of the premises and/or construction of the building space required hereby to be constructed on the premises and the Adjacent Property; provided, however, that Grantee, its successors and assigns may not convey the premises or any interest in either, or the Adjacent Property or any interest in either, at any time, except to IDA as indicated above until the Construction required on the premises and/or the Adjacent Property has been completed, except with the prior written approval of the Grantor.
4	4/29/2008	4/29/2013	For 5 years from when Phase II Construction is substantially complete, (i) the premises and any improvements thereon shall be used in connection with the non-residential business operations and corporate purpose of retail and commercial tenants including parking, and for no other purposes, except with the prior written consent of Grantor; and (ii) for 10 years from date of deed, that portion of the premises containing the Stand Alone Garage shall be used for an attended parking facility, unless another purpose is previously approved in writing by Grantor.	4/29/2008	4/29/2013	For 5 years from when Phase II Construction is substantially complete, Grantee shall not convey the premises (or any improvements thereon) or any interest in either, except with the prior written approval of Grantor; provided, however, that Grantee, its successors and assigns may not convey the premises (or any improvements thereon) or any interest in either at any time until the Phase I Construction and the Phase II Construction required by the deed have been completed, except with prior written approval of Grantor.
5	3/31/2005	3/31/2010	For 5 years, the premises shall be used primarily in connection with User's manufacture and refinishing of metal, brass, and stainless steel products.	3/31/2005	3/31/2010	For 5 years, Grantee shall not convey the premises (or any improvements thereon) or an interest in either, except (i) as part of a bona fide sale of User's entire business or (ii) with the prior written approval of Grantor; provided, however, that Grantee, its successors and assigns may not convey the premises (or any improvements thereon) or any interest in either at any time until the Construction required on the premises by the deed has been completed, except with the prior written approval of Grantor.
6	6/30/2009	6/30/2014	(Deed mod 12/21/2006): For 5 years from the date of the Certificate of Occupancy, the premises and any improvements thereon shall be used in connection with the business operations and corporate purposes of User as a meat market business, and for no other purposes, except with prior written approval of Grantor which approval shall not be unreasonably withheld or delayed; provided, however, that Grantee may use the upper floors of a building constructed on the premises as residential housing so long as User notifies Community Board 11 of the residential plans, and Grantee may also use the premises for other food-related uses that are related to User's meat market business, including as food-related retail space as a restaurant, and for related office space, as long as User, a controlled affiliate of User or a successor to User occupies not less than 50% of the commercial, non-housing floor space of the building on the premises.	6/30/2009	6/30/2014	(Deed mod 12/21/2006): For 5 years from the date of the Certificate of Occupancy, Grantee shall not convey the premises (or any improvements thereon) or any interest in either, except (i) as part of a bona fide sale of User's entire business, (ii) sales of the upper floors of a building constructed on the premises or portions thereof as residential condominium units, or (iii) with the prior written approval of Grantor; provided, however, that Grantee, its successors and assigns may not convey the premises (or any improvements thereon) or any interest in either at any time until the construction required on the premises by the deed has been completed, except with prior written approval of Grantor,
7	2/15/2005	2/15/2010	For 5 years, the Grantee covenants that the premises and any improvements thereon shall be used for Retail Space and for no other purposes, except with the prior written approval of Grantor (the "Use Restriction").	2/15/2005	2/15/2010	For 5 years, the Grantee shall not convey a Phase (or any improvements thereon) or any interest in either, except as permitted by this deed or with the prior written approval of Grantor (the "Transfer Restriction"); it being understood that the leasing or subleasing of a Phase shall not be prohibited by the Transfer Restriction; provided, however, that Grantee, its successors and assigns may not convey a Phase (or any improvements thereon) or any interest in either at any time until the GF A of Retail Space to be constructed on a Phase pursuant to this deed has been completed, except with the prior written approval of Grantor or as permitted by the LDA.

<u>No.</u>	<u>Usage Restriction Begin Date</u>	<u>Usage Restriction End Date</u>	<u>Usage Restriction</u>	<u>Conveyance Restriction Begin Date</u>	<u>Conveyance Restriction End Date</u>	<u>Conveyance Restriction</u>
8	7/12/2005	7/12/2010	For a period of five (5) years from the date hereof, the Premises and any improvements thereon and the Adjacent Property and any improvements thereon shall be used in connection with the non-residential business operations and corporate purposes of Grantee and its Tenant, primarily in connection with Tenant's wholesale building materials supply and distribution business, unless Grantor gives its prior written approval.	7/12/2005	7/12/2010	For a period of five (5) years from the date hereof, Grantee shall not convey the Premises (or any improvements thereon) or any interest in either, or the Adjacent Property (or any improvements thereon) or any interest in either, except (i) as part of a bona fide sale of Grantee's entire business, (ii) a conveyance of either owner's stock to the other owner or (iii) with the prior written approval of Grantor; provided, however, that Grantee, its successors and assigns may not convey the Premises (or any improvements thereon) or any interest in either, or the Adjacent Property (or any improvements thereon) or any interest in either, at any time until the Site Work required on the Premises by this deed has been completed, except with the prior written approval of Grantor.
9	10/19/2005	10/19/2020	For 15 years, the premises and any improvements thereon shall be used in connection with the non-residential business operations and corporate purposes of Grantee, primarily in connection with a public museum and for no other purpose, except with the prior written approval of Grantor.	10/19/2005	10/19/2020	For 15 years, Grantee shall not convey the premises (or any improvements thereon) or any interest in either without the prior written approval of Grantor; provided, however, that Grantee, its successors and assigns may not convey the premises (or any improvements thereon) or any interest in either at any time until the renovation and the site work required on the premises by the deed has been completed pursuant to paragraph I of the deed, except with the prior written approval of Grantor.
10	3/14/2006	3/14/2011	For 5 years, the premises and any improvements thereon shall be used in connection with the non-residential business operations and corporate purposes of Pepsi-Cola Bottling Company of New York, Inc. ("User"), primarily in connection with User's beverage distribution and other food and beverage-related business and for no other purposes, except with the prior written approval of Grantor.	3/14/2006	3/14/2011	For 5 years, Grantee shall not convey the premises (or any improvements thereon) or any interest in either, except (i) without the prior written approval of Grantor, or (ii) a leasehold interest to User, or (iii) to convey a leasehold interest to IDA in connection with tax benefits provided by IDA to Grantee in connection with Grantee's purchase of the premises and/or construction of the building space required hereby to be constructed on the premises; provided, however, that Grantee, its successors and assigns may not convey the premises (or any improvements thereon) or any interest in either at any time (except pursuant to (ii) or (iii) of the aforementioned paragraph) until the construction required on the premises by the deed has been completed, except with the prior written approval of Grantor.
11	2/16/2006	2/16/2011	For 5 years, the premises and any improvements thereon shall be used for non-residential business operations and purposes, primarily for office space, retail uses allowed by the Urban Renewal Plan and not otherwise prohibited by zoning, parking and access, and for no other purposes except with the prior written approval of Grantor.	2/16/2006	2/16/2011	Grantee shall not convey the premises (or any improvements thereon) or any interest in either until the construction on Lot 24 of the premises and the rehabilitation of Lot 16 of the premises pursuant to the deed have been completed (i.e. issuance of a temporary or permanent certificate of occupancy), except (A) leasehold title to IDA in connection with certain tax benefits provided by IDA to Grantee in connection with Grantee's purchase of the premises and/or construction/rehabilitation of the building space required by the deed to be constructed/rehabilitated on the premises, or (B) with the prior written approval of Grantor, such approval not to be unreasonable withheld.
12	12/14/2005	12/14/2015	For 10 years, the Retail Space may be leased to and occupied only by retail tenants, (ii) the residential units in the Residential Condominium Space may be purchased and occupied only for residential use and/or leased and occupied only for residential use, and (iii) the residential units in the Residential Rental Space may be leased and occupied only by residential tenants in accordance with the Regulatory Agreement, and (iv) the Parking Facility Space shall be operated as a public parking garage, and for no other purposes, except with the prior written approval of Grantor.	12/14/2008	12/14/2018	For 10 years, Grantee, its successors and assigns, shall not convey the premises (or any improvements thereon) or any interest in either except with the prior written approval of Grantor, which approval shall not be unreasonably withheld or delayed; provided, however, that notwithstanding the provisions provided by the deed.
13	4/26/2006	4/26/2011	For 5 years, the premises and any improvements thereon shall be used in connection with the assembly and wholesale distribution of denim products business of Federal Jeans Inc. ("User"), and for no other purposes, except with prior written approval of Grantor, not to be unreasonably withheld or delayed.	4/26/2006	4/26/2011	For 5 years, Grantee shall not convey the premises (or any improvements thereon) or any interest in either, except (i) as part of a bona fide sale of Grantee/User's entire business, (ii) with the prior written approval of Grantor, (iii) as part of inheritance or estate planning purposes, or (iv) to other members of Grantee, provided such members were members as of the date hereof; provided further, however, that Grantee, its successors and assigns may not convey the premises (or any improvements thereon) or any interest in either at any time until the Construction required on the premises by this deed has been completed without first obtaining the prior written approval of Grantor, except for purposes of (ii), (iii), or (iv) above.
14	12/31/2011	12/31/2016	For 5 years following Grantee's receipt of the temporary or permanent certificate of occupancy allowing for the use of the premises as a retail center, the premises shall be used solely in connection with Grantee's non-residential commercial retail uses, and for no other purposes, except with the prior written approval of Grantor.	12/31/2011	12/31/2016	For 5 years following Grantee's receipt of the temporary or permanent certificate of occupancy allowing for the use of the premises as a retail center, it shall not convey the premises (or any improvements thereon) or any interest in either, except (i) as part of a bona fide sale of Grantee's entire business (excluding corporate dissolutions, liquidations, bankruptcy, or sales where the stock and/or assets of the business are sold separately) to a purchase who shall agree to all covenants contained in the deed, or (ii) with the prior written approval of Grantor; provided, however, that Grantee, its successors and assigns may not convey the premises (or any improvements thereon) or any interest in either at any time until the construction has been completed, except with the prior written approval of Grantor.

No.	Usage Restriction Begin Date	Usage Restriction End Date	Usage Restriction	Conveyance Restriction Begin Date	Conveyance Restriction End Date	Conveyance Restriction
15	1/19/2006	1/19/2011	For 5 years, the premises and any improvements thereon shall be used in connection with the private school bus transportation operations of Grantee and/or Grantee's affiliated entities, and for no other purposes, except with the prior written approval of Grantor.	1/19/2006	1/19/2011	For 5 years, Grantee shall not convey the premises (or any improvements thereon) or any interest in either, except (1) as part of a bona fide sale of Grantee's entire business or (ii) with the prior written approval of Grantor; provided, however, that Grantee, its successors and assigns may not convey the premises (or any improvements thereon) or any interest in either at any time until the construction required on the premises by the deed has been completed, except with prior written approval of Grantor.
16	6/28/2006	6/28/2016	For 10 years, the premises and any improvements thereon shall be used in connection with the non-residential business operations and corporate purposes of Quick International Courier, Inc., an air cargo and delivery company ("Quick") or any Successor User, primarily in connection with Quick's (or a Successor User's) air cargo and delivery service business and for no other purposes, except with the prior written approval of Grantor.	6/28/2006	6/28/2011	For 5 years from the later of (i) the date of deed or (ii) the completion of the building to be constructed on the premises pursuant to the deed, Grantee shall not convey the premises (or any improvements thereon) or any interest in either, except with the prior written approval of Grantor.
17	7/2/2012	7/2/2017	For 5 years from the date of receipt of the earlier of a temporary or permanent certificate of occupancy for the premises, the premises and any improvements thereon shall be used for the non-residential business operations and corporate purposes of Users), primarily in connection with Users' transportation business and operations and for no other purposes, except with the prior written approval of Grantor, which approval shall not be unreasonably withheld.	7/2/2012	7/2/2017	For 5 years from the date of receipt of the earlier of a temporary or permanent certificate of occupancy for the premises, Grantee shall not convey the premises (or any improvements thereon) or any interest in either, except (i) in connection with a bona fide sale of the entire business operations of all of the Users, or (ii) with the prior written approval of Grantor; provided, however, that Grantee, its successors and assigns may not convey the premises (or any improvements thereon) or any interest in either, at any time until the construction required on the premises by the deed has been completed, except with the prior written approval of Grantor.
18	12/19/2006	12/19/2011	(B) Grantee, on behalf of itself, its successors and assigns, covenants that, for a period of five (5) years from the date hereof, the premises and any improvements thereon shall be used in connection with the non-residential business operations and corporate purposes of ADD Plumbing Inc., primarily in connection with User's plumbing contracting and pipe fabrication business and for no other purposes, except with the prior written approval of Grantor.	12/19/2006	12/19/2011	Grantee, on behalf of itself, its successors and assigns, further covenants that, for a period of 5 years after the initial 5 year period mentioned above, the premises shall either be (i) used for the above-described purposes or (ii) used by Grantee, or if Grantee has conveyed the premises to another entity, by such other entity, for industrial uses permitted in a M1-1 zone under the City's Zoning resolution and for no other purposes, except with the prior written approval of Grantor. (C) Grantee, on behalf of itself, its successors and assigns, covenants that, for a period of five (5) years from the date hereof, it shall not convey the premises (or any improvements thereon) or any interest in either, except (i) as part of a bona fide sale of Grantee's/User's entire business or (ii) with the prior written approval of Grantor; provided, however, that Grantee, its successors and assigns may not convey the premises (or any improvements thereon) or any interest in either at any time until the Construction required on the premises by this deed has been completed, except with the prior written approval of Grantor. The above restrictions and covenants in this paragraph shall run with the land.
19	12/28/2006	12/28/2013	Purchaser covenants that for a period until the later of (i) five (5) years from the commencement of the Project construction and (ii) three (3) years following the issuance of a temporary Certificate of Occupancy for the Project ("Restriction Termination Date") the premises and any improvements thereon and the Adjacent Property and any improvements thereon shall be used for the development of the Project and sale or rental of the residential and commercial units contained therein and for no other purposes, except with prior written approval of the Agency. The above restrictions do not apply in the (x) event of a foreclosure sale and (y) not preclude the customary use of the Project as constructed in the event that Sewer termination and Utility Relocation have not occurred by the second anniversary of the closing date. Further the Purchaser covenants to develop the Premises and Adjacent Property in strict accordance with the Urban renewal Plan, as amended.	12/28/2006	12/28/2013	Purchaser covenants that for a period until the Restriction Termination Date (or three (3) years following the issuance of a temporary Certificate of Occupancy for the Project) shall not convey the premises (or any improvements thereon) or any interest in either, or the Adjacent Property (or any improvements thereon) except with the prior written approval of the Agency.

No.	Usage Restriction Begin Date	Usage Restriction End Date	Usage Restriction	Conveyance Restriction Begin Date	Conveyance Restriction End Date	Conveyance Restriction
20	3/16/2007	3/16/2012	Purchaser covenants that , for a period until the later of (1) five (5) years from the date hereof and (2) three (3) years following the initial issuance of a temporary Certificate of Occupancy for a residential unit in the project, the premises and any improvements thereon and the Adjacent Property and any improvements thereon shall be used for the development of the project and sale or rental of the residential and commercial units contained therein and for no other purposes, except with the prior written approval of the Agency.	3/16/2007	3/16/2012	Purchaser, on behalf of itself and its successors and assigns, covenants that, for a period until the Restriction Termination Date, it shall not convey the Premises (or any improvements thereon) or any interest in either, or the Adjacent Property (or any improvements thereon) or any interest in either, except with the prior written approval of the Agency, which approval shall not be unreasonably withheld or delayed; provided, however, that notwithstanding the foregoing, Purchaser may , without the prior consent of the Agency. (A) enter into retail and/or residential leases for the retail and/or residential space in the Project, (B) sell or enter into an agreement for the lease or operation and use of the parking facility space in the project; provided that purchaser/lessee/operator has a presently valid license issued by the appropriate licensing authority of the City for the operation of such parking facility, (C) sell residential or commercial condominium units in the Project to any persons; provided that any proposed bulk sale of residential condominium units to a single buyer, provided further that the total floor area of commercial space that may be sold pursuant to this clause (C) shall not be greater than 25 percent of the floor area originally contemplated for residential units, (D) act as a declarant under any condominium declaration that may hereafter be established for the premises and the Adjacent Property thereby converting its interest therein and improvem
21	6/7/2007	6/30/2037	For 30 years, the premises and any improvements thereon shall be used by Grantee and/or other not-for-profit entities (provided that such not-for-profit entities and their principals shall be subject to Grantor's and Grantor's Inspector General's qualification and background review; and further provided that only Grantee, and not other not-for-profit entities, shall have the right to use the premises for the first 5 years from the date of deed as a not-for-profit community recreation and education facility and for such other public uses that will benefit the residents of the City of New York as Grantor shall approve, and for no other purposes, except with the prior written approval of Grantor.	3/15/2017	3/15/2022	(Deed Mod 6/6/2011) For 5 years from date of receipt of temporary/permanent certificate of occupancy, whichever is earlier, Grantee shall not convey the premises (or any improvements thereon) or any interest in either, except (i) in connection with a bona fide sale of Grantee's entire business or (ii) with the prior written approval of Grantor, provided, however, that Grantee, its successors and assigns may not convey the premises (or any improvements thereon) or any interest in either at any time until the construction required on the premises by the deed has been completed, except with the prior written approval of Grantor.
22	6/26/2007	6/26/2015	Purchaser covenants that for a period of five (5) years from the date of Substantial Completion (or from the date of receipt of a temporary certificate of occupancy), the Property shall be used in connection with the maintenance and operation of the New development and for no other purposes, except with the prior written approval of the Agency. Notwithstanding the foregoing, the use of the Community Space for community facility purposes, as described in Paragraph I(A)(2) above, shall continue for not less than twenty (20) years from the date of Substantial Completion.	6/26/2007	6/26/2012	Purchaser covenants that for a period of five (5) years from the date of closing (or until June 26, 2012), purchaser shall not convey the Property (or any improvements thereon) or any interest either, except with the prior written approval of Grantor; provided, however, that Grantee, its successors and assigns may not convey the property (or any improvements thereon) or any interest in either at any time until Substantial Completion, except with prior written approval of Grantor, provided that (A)(x) the parties and entities holding interests in Dermot QFC LLC on the date of the Contract continue to hold their respective interests therein or (y) upon the removal of the managing member of Grantee (pursuant to the organizational documents of, and other agreements among, Grantee and the parties and entities holding interests therein on the date of the Contract, including, without limitation, any "buy-sell" rights inuring to the benefit of the members of Grantee)
23	10/31/2007	10/31/2012	Grantee, on behalf of itself, its successors and assigns, covenants that, for a period of five (5) years from the date hereof, the premises and any improvements thereon shall be used in connection with the non-residential business operations and corporate purposes of Grantee and its commercial and retail tenants, and for no other purposes, except with the prior written approval of Grantor. The above restrictions and covenants in this paragraph shall not apply to the premises after a foreclosure sale or a transfer in lieu of foreclosure under a mortgage held by an institutional lender securing financing with regard to the purchase of the premises by Grantee or construction financing with regard to construction on the premises or a permanent "take-out" loan with regard to such construction financing.	10/31/2007	10/31/2012	Grantee, on behalf of itself, its successors and assigns, covenants that, for a period of five (5) years from the date hereof, it shall not convey the premises (or any improvements thereon) or any ownership interest in either, except with the prior written approval of Grantor.
24	1/10/2008	1/10/2013	For 5 years, the premises and any improvements thereon and the Adjacent Property and any improvements thereon shall be used in connection with the non-residential business operations and corporate purposes of AM&G Waterproofing LLC ("User"), primarily as a vehicle maintenance facility in connection with User's operational, storage, and warehouse purposes as a building exterior and restoration and waterproofing company, and for no other purposes, except with the prior written approval of Grantor.	1/10/2008	1/10/2013	For 5 years, Grantee shall not convey the premises (or any improvements thereon) or any ownership interest in either, or the Adjacent Property (or any improvements thereon) or any ownership interest in either, except (i) as part of a bona fide sale of User's entire business or (ii) with the prior written approval of Grantor.

No.	Usage Restriction Begin Date	Usage Restriction End Date	Usage Restriction	Conveyance Restriction Begin Date	Conveyance Restriction End Date	Conveyance Restriction
25	7/9/2008	7/9/2013	For 5 years, the premises and any improvements thereon shall be used in connection with the non-residential business operations and corporate purposes of Air Tech Lab Inc. ("User"), primarily in connection with User's asbestos abatement business and other light industrial and retail uses by tenants and for no other purposes, except with the prior written approval of Grantor.	7/9/2008	7/9/2013	For 5 years, Grantee shall not convey the premises (or any improvements thereon) or any ownership interest in either, except (i) as part of a bona fide sale of User's entire business or (ii) with the prior written approval of Grantor; provided, however, that Grantee, its successors and assigns may not convey the premises (or any improvements thereon) or any interest in either at any time until construction required on the premises by the deed has been completed, except with the prior written approval of Grantor.
26	6/22/2011	6/22/2016	Grantee, on behalf of itself, its successors and assigns, covenants that, for a period of five (5) years from the date hereof (June 22, 2011, date of Deed Modification), the Unit shall be used in connection with the non-residential business operations and corporate purposes of Grantee, exclusively for retail uses, either by Grantee or tenant of Grantee, and for no other purposes, except in each case with the prior written approval of Grantor.	6/22/2011	6/22/2016	For 5 years, Grantee shall not convey the Unit (or any improvements thereon) or any ownership interest in either, except (i) as part of a bona fide sale of Grantee's entire business or (ii) a lease(s) to retail tenant(s) or (iii) with the prior written approval of Grantor or (iv) to a special purposes entity in connection with financing provided for Grantee's acquisition of the Unit and/or rehabilitation of the Unit; provided, however, that Grantee, its successors and assigns may not convey the Unit (or any improvements thereon) or any interest in the Unit at any time (except pursuant to clause (ii) or (iv) above) until the Rehabilitation required of the Unit by the deed has been completed, except with the prior written approval of Grantor.
27	6/13/2008	6/13/2013	For 5 years, the premises and any improvements thereon (subject to the covenants and restrictions contained in the deed) and the Adjacent Property and any improvements thereon shall be used in connection with the non-residential business operations and corporate purposes of Grantee, primarily in connection with Grantee's construction business and for no other purposes, except with the prior written approval of Grantor.	6/13/2008	6/13/2013	For 5 years, Grantee shall not convey the premises (or any improvements thereon) or any ownership interest in either, except (i) as part of a bona fide sale of Grantee's entire business or (ii) with the prior written approval of Grantor; provided, however, that Grantee, its successors and assigns may not convey the premises (or any improvements thereon) or any interest in either, or the Adjacent Property (or any improvements thereon) or any interest in either, at any time until the construction required on the Adjacent Property by the deed has been completed, except with the prior written approval of Grantor.
28	3/24/2009	3/24/2014	For 5 years, the Premises and any improvements thereon shall be used in connection with the non-residential business operations and corporate purposes of Consolidated Bus Transit, Inc. ("User"), primarily in connection with User's provision of school bus transportation services and for no other purposes, except with the prior written approval of Grantor.	3/24/2009	3/24/2014	For 5 years, Grantee shall not convey the premises (or any improvements thereon) or any ownership interest in either, except (i) as part of a bona fide sale of User's entire business or (ii) with the prior written approval of Grantor.
29	11/11/2015	11/11/2020	Grantee, on behalf of itself, its successors and assigns, covenants that, for a period commencing on the date hereof and concluding thirty (30) years from the date of Substantial Completion of the construction of the Phase I and Phase II, as applicable; (A) the Phase I Premises shall be used as a senior citizen housing complex comprised of: (x) an assisted living facility containing a minimum of 120 ALUs for seniors age 62 years or older, (y) the Staff Residence to be used for purposes ancillary and incidental to the assisted living facility, which may include but shall not be limited to overnight accommodations for staff and visitors thereto and offices for staff and management thereof, and (z) the Commons Building to be used as a community facility serving the senior housing complex as well as the general public; (B) the Phase II Premises shall be used as a senior citizen housing complex comprised of three buildings containing 213 ILUs for seniors age 55 years and older, one building (approximately 71 ILUs) of which shall remain within a range affordable to households within the 75% to 195% area median income range; (C) for purposes ancillary and incidental to the foregoing uses provided that such ancillary and incidental uses promote, and not derogate from, use of the premises for the purposes authorized above, as the case may be; and (D) for such other use for the benefit of the people of the City of New York as the City shall approve through the Mayor of the City of New York or the Mayor's designee.	11/11/2015	11/11/2020	For 5 years from the date of Substantial Completion of the Construction of the Project, Grantee shall not convey the premises (or any improvements thereon) and/or rights to use the Emergency Access Easement, or any part of either, except in a Permitted Transfer, without the prior written approval of both the Grantor and the City, acting through the Director of OMB; provided, however, that Grantee, its successors and assigns may not convey the premises (or any improvements thereon) or any part in either, except in a Permitted Transfer, at any time until all buildings and other improvements to be constructed on the premises in Phase I and Phase II pursuant to the deed have been completed.
30	7/31/2016	7/31/2021	Grantee, on behalf of itself, its successors and assigns, covenants that, for a period of 5 years commencing on the date that a certificate of occupancy is issued for the Property (or any portion thereof) for the Permitted Uses, Grantee, or a successor entity approved by the Grantor, shall use the Property for Permitted Uses and for no other purposes, except with the prior written approval of Grantor.	6/13/2012	6/13/2014	Grantee, on behalf of itself, its successors and assigns, covenants that, for a period of five (5) years from the date hereof, it shall not convey the premises (or any improvements thereon) or any ownership interest in either, except with the prior written approval of Grantor.
31	11/1/2011	11/1/2016	Grantee, on behalf of itself and its successors and assigns, covenants that, for a period until the later of (i) five years from the date hereof and (ii) for each Phase, three (3) years following Substantial Completion of such Phase, the Property shall be used for the development of the Project and rental and/or sale of the residential and commercial units, including any condominium and cooperative units, contained therein and for no other purposes, except with the prior written approval of Grantor.			Grantee, on behalf of itself, its successors and assigns, covenants that prior to the earlier of (a) twelve (12) months following the date that such Phase shall be Substantially Complete and (b) the date on which such Phase shall be Stabilized (the "Release Date") it shall Complete and (b) the date on which such Phase shall be Stabilized (the "Release Date") it shall not convey any Phase of the Project except with the prior written approval of Grantor.

<u>No.</u>	<u>Usage Restriction Begin Date</u>	<u>Usage Restriction End Date</u>	<u>Usage Restriction</u>	<u>Conveyance Restriction Begin Date</u>	<u>Conveyance Restriction End Date</u>	<u>Conveyance Restriction</u>
32	12/28/2014	12/28/2019	Grantee, on behalf of itself and its successors and assigns, covenants that, for a period of five (5) years from the date of final completion of construction of the Project (as evidenced by the issuance of a certificate of occupancy for the Project from the applicable governmental authority, the "Final Completion"), the Property shall be used in connection with the business operations of Grantee's commercial and/or retail tenants and for no other purposes, except with the prior written approval of Grantor.	12/28/2014	12/28/2019	Grantee, on behalf of itself and its successors and assigns, covenants that, for a period of five (5) years from the date of Final Completion, it shall not convey the Property (or any improvements thereon) or any interest in either, except for leases in the ordinary course of business or otherwise, without the prior written approval of Grantor.
33	4/30/2014	4/30/2029	Grantee, on behalf of itself, its successors and assigns, covenants that, for a period of ten (10) years from the Restriction Commencement Date (as defined), all tenants under leases affecting the Retail Unit shall be required to be open for business no less than nine hours each day. Grantee further covenants and agrees that, (1) during the five-year period commencing on the Restriction Commencement Date, the Retail Unit shall not be occupied by in excess of (7) tenants (one of whom shall be at least 10,000 square feet); and (2) for a period of fifteen (15) years from the Restriction Commencement Date, one occupant of the Retail Unit shall be a sit-down full service restaurant.	4/30/2014	4/30/2024	Grantee covenants that, until the Restriction Commencement Date, Albert Laboz shall remain a managing member of Grantee unless he is unable to do so by reason of death or disability, in which case, either Jason Laboz or Jody Laboz shall be managing member of Grantee. Furthermore, for a period often (10) years from the Restriction Commencement Date, Grantee shall be controlled and managed by Albert Laboz, Jason Laboz and/or Joseph Jody Laboz (collectively, the "Laboz Brothers"). In addition to the foregoing, Grantee, on behalf of itself, its successors and assigns, covenants that, for a period often (10) years from the Restriction Commencement Date, it shall not convey the Retail Unit or any interest therein, except (i) as a lease(s) to a retail tenant(s) in accordance with the terms of sections (b) above and (d) below, or (ii) With the prior written approval of Grantor.

Leases List

Lease No.	BUILDING NAME	LEASED	Revenue 7/11-6/12	Address
1	Moore Street Retail Market	110 Moore Street Market Corporation, LLC	\$ 1.00	110 Moore Street, Brooklyn, NY 11206
2	Battery Maritime Building	10 SSA Landlord, LLC	\$ -	10 South Street, Battery Maritime Building, New York, NY 10004
3	Industry City	1-10 Industry City Associates LLC	\$ 585,550.22	South Brooklyn Marine Terminal, Brooklyn, NY 11232
4	200-240 Food Center Drive	Dairyland HP LLC	\$ 74,424.52	200-240 Food Center Drive, Bronx, NY 10474
5	One Dekalb Avenue	Albee Development, LLC	\$ 33,868.88	One Dekalb Avenue, Brooklyn, NY
6	Mill Basin Waterfront	All Seasons Marine Corp.	\$ 38,377.70	Mill Basin Waterfront, Avenue U, Brooklyn NY
7	Astoria Studios Bldgs 1-4, 13	American Museum of Moving Image	\$ 1.00	36-01 35th Avenue, Astoria, NY 11106
8	550 Food Center Drive	Anheuser-Busch distributors of NY, Inc.	\$ 173,469.36	550 Food Center Drive, Bronx NY 10474
9	Atlantic Center Mall	Atlantic Center Fort Greene	\$ 1,770,543.32	Atlantic Center Mall, South Elliott Place & Fort, Brooklyn, NY
10	SBMT - 33-39th Street Piers	Axis Group, Inc.	\$ 2,235,970.41	SBMT - 33-39th Street Piers, Brooklyn, NY
11	155 Food Center Drive	Baldor Specialty Foods, Inc.	\$ 2,615,760.69	155 Food Center Drive, Bronx, NY 10474
12	Fulton Fireboat/Shed	Bargemusic, Ltd.	\$ 18,886.65	Fulton Ferry Landing, Brooklyn NY 11201
13	Pier 36 East River	Basketball City USA, LLC	\$ 150,398.88	Pier 36 and East River, New York, NY 10038
15	Bridgemarket	Bridgemarket Associates, L.P	\$ 451,083.62	Bridgemarket, 2nd Avenue & Queensboro Bridge, NY
16	Renaissance Plaza	Brooklyn Renaissance Plaza, LLC	\$ 164,899.20	350 Jay Street, Brooklyn, NY
17	Renaissance Plaza	Brooklyn Renaissance Plaza, LLC	\$ 101,958.36	350 Jay Street, Brooklyn, NY
18	Renaissance Plaza	Brooklyn Renaissance Piz-Garage	\$ 448,022.12	350 Jay Street, Brooklyn, NY
19	Renaissance Plaza	Brooklyn Renaissance Piz-Hotel	\$ 140,525.76	350 Jay Street, Brooklyn, NY
20	Renaissance Plaza	Brooklyn Renaissance Piz-Retail	\$ 29,647.56	350 Jay Street, Brooklyn, NY
21	Gateway Plaza	BTM Development Partners, LLC	\$ 505,923.02	Gateway Plaza, Bronx Terminal Market, Bronx, NY
22	600 Food Center Drive	Citarella Operating LLC	\$ 660,099.82	600 Food Center Drive, Bronx, NY 10474
23	Skyports	Community Environmental Center	\$ 1.00	23rd and the East River, New York, 10010
24	Essex Bldg A/150 Essex Street	Community Healthcare Network	\$ 267,500.04	150 Essex Street, New York, NY 10002
25	Flatbush Parking Deck	Flatbush Center Parking LLC	\$ 1.00	1007 Flatbush Avenue, Brooklyn, NY 11226
26	Flatbush Parking Deck	Flatbush Delaware Holding LLC	\$ 150,000.00	1007 Flatbush Avenue, Brooklyn, NY 11226
27	Nine Metrotech (Flatbush)	Forest City - Flatbush Assoc.	\$ 112,640.04	Nine Metrotech (Flatbush), Brooklyn, NY 11201
28	Two Metrotech (Bridge St)	Forest City Bridge St. Assoc.	\$ 508,060.09	Two Metrotech Center, Brooklyn NY 11201
29	One Metrotech (Jay Street)	Forest City Jay Street Assoc.	\$ 5,685,600.60	One Metrotech Center, Brooklyn NY 11201
30	Nine South Metrotech (Myrtle)	Forest City Myrtle Assoc., LL	\$ 1,190,172.96	Nine South Metrotech (Myrtle), Brooklyn, NY 11201
31	Pierrepoint Plaza	Forest City Pierrepoint Assoc.	\$ 1,448,940.48	159 Pierrepoint Street, Brooklyn NY 11201
32	Eleven Metrotech (Tech Place)	Forest City Tech Place	\$ (1,000,009.14)	Eleven Metrotech (Tech Place), Brooklyn, NY 11201
33	13th Avenue Market, Bklyn	Friedman's Market, LLC	\$ 250,490.28	3910 13th Avenue, Brooklyn, NY 10274
34	Fulton Fireboat/Shed	Fulton Ferry Holidngs, LLC	\$ 93,713.11	Fulton Ferry Landing, Brooklyn NY 11201
35	Gansevoort Meat Market	Gansevoort Market, Inc.	\$ 1,309,672.26	569 West Street, New York, NY 10014
36	Jamaica Farmer's Market	Greater Jamaica Devt. Corp.	\$ 33,083.16	90-04 161st Street, Jamaica, NY 11412
37	355 Food Center Drive	Hunts Point Co-op Market, Inc.	\$ 1,270,331.60	355 Food Center Drive, Bronx, NY 10474
38	NYC Terminal Market	Hunts Point Terminal Produce Coop	\$ 2,483,380.02	37 Terminal Market Center, Bronx, NY 10474
39	Kaufman Astoria Studios	KAS Production Center LLC & New Stage LLC	\$ 63,058.92	34-12 36th Street, Astoria, NY 11106
40	Astoria Studios Bldgs 1-4, 13	Kaufman Astoria Studios	\$ 323,307.96	34-12 36th Street, Astoria, NY 11106
41	400 Food Center Drive	KFI Food Center Dist., Inc.	\$ 690,607.92	400 Food Center Drive, Bronx, NY 10474
42	25th Street Pier	La Farge Building Materials, Inc.	\$ 1,606,306.78	25th Street Pier, Brooklyn, NY 11232
43	2015 Industrial Park Rd, Bklyn	Lamor Associates	\$ 79,200.00	2015 Industrial Park Road, Brooklyn, NY
44	Logan Bus Parking Lots	Linn-Ann Enterprises, Inc.	\$ 158,400.28	97-14 Atlantic Ave, New York, NY 11416
45	M. Parisi & Son	M.Parisi & Son Construction Co	\$ 120,000.00	54-65 48th Street, Jamca, NY 11434
46	Maramont Building	Maramont Corporation	\$ 337,909.49	Maramont Corporation, Bronx, NY 10474
47	Jamaica Center 1	Mattone Group Jamaica Co.,LLC	\$ 439,460.07	One Jamaica Center, Jamaica, NY
48	The Water Club	MDO Development Corp	\$ 517,000.06	East 30th St. East 32nd St, New York, NY
50	New York Times	New York Times	\$ 552,000.00	College Point Ind. Park, College Point, NY
51	Mill Basin Waterfront	Nick's Lobster House	\$ 173,728.00	Mill Basin Waterfront, Avenue U, Brooklyn NY
52	Arthur Avenue Market	North Bronx Market, Inc.	\$ 131,889.84	2344 Arthur Avenue, Bronx, NY 10410
53	Livingston Plaza	NYC Transit Authority	\$ 1,329,890.64	130 Livingston Plaza, Brooklyn, NY 11201
54	Astoria Studios Bldg 6 School	Our World Neighborhood Charter School	\$ 218,838.85	36-12 35th Street, Astoria, NY 11106
55	Pier A	Battery Park City Authority	\$ 4.00	Pier A between Battery Park and Battery Park City, New York, NY
56	Teleport	Port Authority NY & NJ- Teleport	\$ 276,051.67	1 Teleport Drive, Suite 301, Staten Island, NY 10311
57	Red Hook Terminal	Port Authority of NY & NJ- Red Hook	\$ 400.00	Red Hook Marine Terminal, NY
58	Howland Hook Terminal	Port Authority of NY/NJ - Howland Hook	\$ 3,377,052.82	3551 Richmond Terrace, Staten Island, NY
59	Bathgate Development Blocks	Port Authority of NY-NJ - Bathgate Deve. Blocks	\$ 467,695.50	1701 Bathgate Avenue, Bronx, NY 10457
60	Pier 79 - Ferry Landing	Port Imperial Ferry Corp., d/b/a NY Waterway	\$ 319,864.17	Pier 79 - Ferry Landing, New York, NY
61	200-240 Food Center Drive	R. Best Produce, Inc.	\$ 250,933.16	200-240 Food Center Drive, Bronx NY 10474
62	SBMT - 29th Street Building	Royal Wine Corp.	\$ 317,719.98	SBMT - 29th Street Building, Brooklyn, NY
63	Mill Basin Waterfront	Sea Travl'r's Realty Inc.	\$ 83,966.25	Mill Basin Waterfront, Avenue U, Brooklyn NY
64	Seaport Associates (97 block)	Seaport Associates	\$ 298,079.51	19 Fulton Street, New York, NY 10038
65	Seaport Marketplace - GGP	Seaport Marketplace, Inc.	\$ 1,570,289.66	19 Fulton Street, New York, NY 10038
66	Seaport- Museum	South Street Seaport Museum	\$ 1,786,383.37	207 Front Street, New York, NY 10038
67	Staten Is Minor League Stadium	Staten Island Yankees	\$ 277,410.74	St. George Station, Staten Island, NY
68	600 Food Center Drive	Sultana Dist. Services, Inc.	\$ 967,233.44	600 Food Center Drive, Bronx, NY 10474
69	800 Food Center Drive	The New Fulton Fish Mkt Coop HP, Inc	\$ 1,840,801.41	800 Food Center Drive, Bronx, NY 10474
70	Audubon	Trustees of Columbia University	\$ 422,097.31	650 West 168th Street #BB07, New York, 10032
71	United Nations Developmt Corp.	United Nations Development Crp	\$ 1,269,084.08	Two United Nations, New York, NY 10017
72	LaMarqueta Lots 6&7	Urban Garden Center, LLC	\$ 49,724.80	115th Street and Park Avenue, NY 10029
73	Winking Group, LLC	Winking Group, LLC	\$ 198,450.00	75/85 East Broadway, New York, NY
74	Site 1	Times Square Tower Associates LLC	\$ 4,810,918.71	7 Times Square, New York, NY 10036
75	Site 3	3 Times Square Associates	\$ 2,227,860.42	3 Times Square, New York, NY 10036
76	Site 4	AVR Crossroads, LLP	\$ 3,976,655.47	5 Times Square, New York, NY 10036
77	Site 5	The New 42nd Street	\$ 10.00	330 W. 42nd St., New York, NY 10036
78	Site 6	New Amsterdam Theater	\$ 1,671,589.86	214 W. 42nd St., New York, NY 10036
79	Site 7 E/R	Dream Team Associates, LLC	\$ 1,483,106.71	233 West 42 Street, New York, NY 10036
80	Site 7 HOTEL	Dream Team Hotel Associates, LLC	\$ 2,331,879.55	233 West 42 Street, New York, NY 10036
81	Site 8E E/R	FC-42nd Street Associates, LP	\$ 2,607,901.86	241 W. 41st St., New York, NY 10036
82	Site 8E HOTEL	Sunstone Hotel Partnership, LLC	\$ 1,695,964.17	241 W. 41st St., New York, NY 10036
83	Site 8N	SJP, TS, LLC	\$ 1,207,029.00	11 Times Square, New York, NY 10036
84	Site 8S-FC OFFICE	FC Eighth Ave, LLC	\$ 1,318,024.07	620-632 8th Ave, New York, NY 10036
85	Site 8S-FC RETAIL	FC Eighth Ave, LLC	\$ 67,445.51	620-632 8th Ave, New York, NY 10036
86	Site 8S - NYT	620 Eighth NYT - (NY) Limited Partnership	\$ 1,103,993.16	620-632 8th Ave, New York, NY 10036
87	Site 8S - NYT-2	NYT Building Leasing Company, LLC	\$ 354,918.72	620-632 8th Ave, New York, NY 10036
88	Site 12	Four Times Square Associates, LLP	\$ 5,053,046.37	4 Times Square, New York, NY 10036

The data collected is in compliance with Local Law 62. This list of leases of City Owned Land consisting of Ground Leases and Net Leases of buildings including revenue for the previous FY2012. This list also includes the leased street addresses.

LEASES DETAIL

In the event Landlord sells or otherwise transfers the Premises to a party other than Tenant prior to the Expiration Date, whether after the Initial Term or after the exercise of the Extension Option, Landlord shall pay to Tenant, within 30 days after such sale or transfer, an amount equal to the product of the aggregate amount of Capital (defined below) and the percentage change in the Northeastern United States All Urban Consumer Price Index (1982-1984=100) (the "CPI"). For purposes of this Section, any funds received from the Landlord or the Administrator, including, but not limited to the Funding, shall not be included in the calculation of "Capital." "Capital" shall mean the Tenant's aggregate expenditures for capital improvements to the Premises from the date of this Lease through the later of the date of the transfer of the Premises by Landlord to a party other than Tenant or the date on which Tenant delivers to Landlord notice of Tenant's election to exercise the ROFO.

ARTICLE 2
RENT

Section 2.01. The Annual Rental for the Premises during the term of this Lease shall be one dollar (\$1.00).

Section 2.02. Additional Rent.

"Additional Rent" shall mean all sums of money, which shall be due and payable to Landlord from Tenant in accordance with Articles 4, 6 and 10 of this Lease (if applicable), in addition to the Annual Rent. All amounts of Additional Rent due and payable to Landlord pursuant to this Lease shall be billed to Tenant as specified in this Lease. In the event that the Tenant defaults in the payment or discharge of any amount, liability, or obligation of Additional Rent, such default remaining uncured after notice beyond the applicable grace or cure period, if any, then the Landlord shall have all the rights, powers, and remedies provided for in this Lease, at law, and in equity.

Section 2.03. Payment of Rental. Tenant shall pay to Landlord, by good checks, or by certified checks, made payable to Apple or such other entity as Landlord or Administrator shall direct by notice to Tenant, subject to collection which is drawn on a bank which is a member of the New York Clearing House Association without any off-set or deduction whatsoever, the annual rental, provided for in this Section 2.01 (hereinafter, the "Annual Rental") and/or Additional Rent (defined below).

ARTICLE 3
USE OF PREMISES

Section 3.01. Tenant shall use and occupy the Premises for (a) the operation of a retail public market including those uses permitted under Section 72-p of the New York State General Municipal Law and Section 259 et seq. of the New York State Agriculture and Markets Law and for other uses incidental thereto, (b) purposes ancillary and incidental to the foregoing uses (including rental of the school facilities on an incidental basis) provided that such ancillary and incidental purposes promote, and do not derogate from, use of the Premises primarily for the purposes authorized by Section 3.01(a), and for no other purpose except with the prior written consent of Landlord. No lottery, lotto or other games of chance shall be sold and no franchise operations that are not locally owned shall be permitted on the Premises without the prior

express written approval of the Commissioner. Tenant agrees that it will not use or permit any person to use the Premises or any part thereof for any use or purpose in violation of this Lease, or of any applicable present or future Requirements. Tenant shall not permit, license, sublease or otherwise assign more than twenty-five percent (25%) of the premises to a single entity without prior written approval from the Landlord.

ARTICLE 4
IMPOSITIONS & UTILITIES

Section 4.01.

(a) Tenant shall pay, in the manner provided in Section 4.01(c) hereof, all Impositions (as defined in Section 4.01(b) hereof) that at any time are assessed, levied, confirmed, imposed upon, or would grow out of, become due and payable out of, or with respect to (i) the Premises, the Building or any part thereof, or (ii) the sidewalks or streets in front of or adjoining the Premises, the Building, or any part thereof, or (iii) any vault, passageway or space in, over or under such sidewalk or street, or (iv) any other appurtenances to the Premises, the Building or any part thereof, or (v) any personal property or other facility used by Tenant in the operation thereof, or (vi) the Annual Rental (or any portion thereof) payable by Tenant hereunder, or (vii) any document to which Tenant is a party creating or transferring an interest or estate in the Premises, the Building or any part thereof, or (viii) this transaction.

(b) Definitions. "Imposition" or "Impositions" means:

- (1) real property general and special assessments (including, without limitation, any special assessments for business improvements or imposed by any special assessment district),
- (2) personal property taxes,
- (3) occupancy and rent taxes,
- (4) water, water meter and sewer rents, rates and charges,
- (5) license and permit fees,
- (6) service charges with respect to police protection, fire protection, street and highway construction, maintenance and lighting, sanitation and water supply,
- (7) any fines, penalties and other similar governmental charges applicable to the foregoing, together with any interest or costs with respect to the foregoing, excluding therefrom any such fines, penalties or charges which may be imposed solely as a result of Landlord's acts or omissions, and
- (8) (except for real property taxes) any charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind whatsoever (including, but not limited to, taxes on parking revenue).

(c) Each Imposition or installment thereof shall be paid not later than the due date thereof. However, if by law, at Tenant's option any Imposition may be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the Imposition in such installments with interest. If Tenant fails to make any payment of an Imposition (or installment thereof) on or before the due date thereof, including any applicable grace period or extension, Tenant shall, at Landlord's or Administrator's request, pay all Impositions or installments thereof payable by Tenant during the next twelve (12) months not later than ten (10) days before the due date thereof and Landlord

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of the Landlord's obligations under this Lease by the Person who acquires the Premises of such deposits and notice thereof to Tenant, Landlord shall be deemed to be released to the extent of the deposits so transferred from all liability with respect thereto and Tenant shall look solely to the Depository and the new Landlord with respect thereto. Landlord shall promptly deliver to Tenant a copy of the instrument of transfer to the new Landlord. The provisions of this Section shall apply to each successive transfer of such deposits.

Section 5.03. Effect of Termination. If this Lease shall terminate, or the Term shall terminate or expire and a new lease shall not be entered into with a Recognized Mortgagee, all deposits then held by the Depository, together with the interest, if any, earned thereon shall be applied by Landlord on account of any and all sums due under this Lease and the balance, if any, remaining thereafter with the interest, if any, earned thereon and remaining after application by Landlord as aforesaid, shall be returned to Tenant or, if there shall be a deficiency, Tenant shall pay such deficiency to Landlord on demand.

ARTICLE 6

UTILITIES

Section 6.01. Utility Service to Premises.

(a) Tenant shall perform the Construction Work necessary to establish separate metering for water, gas, heat and electricity for each of the Premises, the TGI Ferry Premises and the DOT Premises as part of the Tenant Work.

(b) Tenant must obtain and pay all costs of utilities (including installation thereof, if applicable), including all sewer charges and charges for all water, gas, heat and electricity, consumed and used in, or with respect to, the Premises, and Tenant, at its sole cost and expense, shall maintain and repair all meters and procure all permits, approvals and licenses necessary to secure delivery of such utility services. Tenant shall pay any utility charges directly to the companies supplying such utility services all charges therefor, as the same shall become due.

Section 6.02. No Obligation on the Part of Landlord. Landlord shall have no obligation to provide any utility services to the Premises, or any part thereof, and neither the City, nor Landlord nor Apple shall have any responsibility or liability to Tenant or any third party in the event any such utility services are not provided to the Premises, or any part thereof.

ARTICLE 7

USE OF PREMISES

Section 7.01. Permitted Use.

(a) Tenant shall use and occupy the Premises for the construction and the continuous, active and diligent operation of the Project. Tenant shall not use the Premises or permit the Premises to be used for any other purpose except with the prior written approval of Landlord to be given at Landlord's sole and absolute discretion. The Project shall consist of the

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following components and shall, except as otherwise expressly provided in Article 16, be constructed in accordance with the Approved Plans and Specifications:

(i) a hotel consisting of up to 70 rooms, amenity space on the second floor mezzanine of the Building and a lobby area on the first floor (collectively, the “**Hotel**”);

(ii) a restaurant located on the fifth floor and roof deck of the Building (the “**Restaurant**”);

(iii) a hall on the second floor of the Building, the loggia along South Street, and an at grade entrance area providing access to the hall and loggia (as more specifically delineated in Exhibit K hereof, the “**Great Hall**”), which will be available to the general public and will comprise a mix of cultural uses, food vendors, restaurants and public seating areas, all in accordance with Section 7.02 hereof;

(iv) a shared waiting area within the ground floor of the Building and access from said waiting area to the DOT Premises, as further depicted in Exhibit J hereto and further described in the Operating Agreement (the “**DOT Waiting Area**”), for use by the public in connection with ferries docking at the DOT Premises and Tenant’s invitees; and

(v) a sidewalk area adjacent to the entire South Street façade of the Building that conforms to the East River Esplanade design as set forth in the drawings and specifications included in the contract documents prepared for the construction of the East River Esplanade, including, but not limited to, Section 02780 of the specifications, dated June 7, 2010, forming part of said contract documents, a copy of which section is annexed hereto as Exhibit P, as said contract documents may be modified from time to time and, in any event, to the East River Esplanade sidewalk that is actually installed in the other areas of the East River Esplanade.

(b) As part of the Project, Tenant shall not take any action that would impair the visual corridor in the area surrounding the Building and shall maintain such visual corridor to the extent existing on the Commencement Date in accordance with the Zoning Resolution and in substantial conformity with the drawing number Z-200, labeled “Site Plan” dated August 22, 2008 and last revised October 10, 2008. Tenant agrees that said visual corridor to the extent existing on the Commencement Date shall remain open and unobstructed at all times except for permitted obstructions as provided in Section 62-513 of the Zoning Resolution.

Section 7.02. Operation of the Great Hall.

(a) Great Hall Requirements. The Great Hall shall be available to the general public and will comprise a mix of cultural uses, food vendors, restaurants and public seating areas. Tenant shall operate the Great Hall in accordance with the requirements of Exhibit N hereto (the “**Great Hall Requirements**”).

(b) Great Hall Liquidated Damages. Tenant acknowledges that Tenant’s failure to comply with the Great Hall Requirements will cause loss and damage to Landlord, the precise extent of which is difficult to ascertain in monetary terms. For this reason, Landlord and Tenant desire to provide fair and reasonable compensation to Landlord for such losses, which compensation shall not be construed as a penalty. It is therefore agreed that if Tenant fails to

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comply with the Great Hall Requirements, then there shall accrue to Landlord, subject to the provisions of Section 29.02(e) (Remedies for Events of Default) liquidated damages as follows (the "**Great Hall Liquidated Damages**"):

(i) If at any time during the Term Tenant shall fail to comply with any provisions of the Great Hall Requirements, other than those with regard to hiring a full-time "cultural coordinator" (as described in the Great Hall Requirements), Landlord shall notify Tenant in writing of such Default (each such notice shall be referred to herein as a "**Great Hall Default Notice**"). Upon receiving the fourth (4th) Great Hall Default Notice, Tenant shall pay Landlord the amount of Ten Thousand Dollars (\$10,000). Upon receiving fifth (5th) Great Hall Default Notice, Tenant shall pay Landlord an additional amount of Twenty Thousand Dollars (\$20,000). Upon receiving the sixth (6th) Great Hall Default Notice, Tenant shall pay Landlord an additional amount of Forty Thousand Dollars (\$40,000). Upon receiving the seventh (7th) Great Hall Default Notices, Tenant shall pay Landlord an additional amount of Eighty Thousand Dollars (\$80,000). Upon receiving the eighth (8th) Great Hall Default Notice, Tenant shall pay Landlord an additional amount of One Hundred Thousand Dollars (\$100,000). Tenant shall pay an additional amount of One Hundred Thousand Dollars (\$100,000) upon receiving any subsequent Great Hall Default Notice. If Tenant complies with all the provisions of the Great Hall Requirements for a period of nine (9) calendar months after the date of any Great Hall Default Notice (the "**Performance Period**"), then any Great Hall Default Notice sent by Landlord after the completion of the Performance Period shall be deemed to be the first Great Hall Default Notice, provided that Tenant has paid all Great Hall Liquidated Damages previously incurred.

(ii) If at any time during the Term the position of full-time "cultural coordinator," as described in the Great Hall Requirements, remains unfilled for a period of six (6) months or more, then Landlord shall notify Tenant of such Default (each such notice shall be referred to herein as a "**Cultural Coordinator Default Notice**"). If such Default is not cured within one (1) month after the date of the Cultural Coordinator Default Notice, Tenant shall pay to Landlord the amount of Ten Thousand Dollars (\$10,000). If such Default is not cured within two (2) months after receipt of said Cultural Coordinator Default Notice, Tenant shall pay Landlord an additional amount of Twenty Thousand Dollars (\$20,000). If such Default is not cured within three (3) months after receipt of said Cultural Coordinator Default Notice, Tenant shall pay Landlord an additional amount of Forty Thousand Dollars (\$40,000). If such Default is not cured within four (4) months after receipt of said Cultural Coordinator Default Notice, Tenant shall pay Landlord an additional amount of Eighty Thousand Dollars (\$80,000). If such Default is not cured within five (5) months or more after receipt of said Cultural Coordinator Default Notice, Tenant shall pay Landlord an additional amount of One Hundred Thousand Dollars (\$100,000) for each month that said Default continues. If at any time after receiving a Cultural Coordinator Default Notice, a full-time "cultural coordinator" is hired, but the employment of said "cultural coordinator" is subsequently terminated for a reason that is arbitrary and not in good-faith, then Tenant shall be determined to be in violation of the Great Hall Requirements from the date of the last Cultural Coordinator Default Notice received.

(iii) Commencing in the eleventh Lease Year, Great Hall Liquidated Damages amounts shall be increased annually to an amount equal to the product obtained by multiplying the amount of Great Hall Liquidated Damages in the immediately preceding Lease

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Year by the sum of one and the CPI Increase. All Great Hall Liquidated Damages payable shall constitute Rental hereunder.

Section 7.03. Signage. Tenant shall not install or use, or permit the installation or use of, any advertising devices or signs on the Property or any part thereof without the prior written consent of Landlord in its sole discretion; provided, however, that if Tenant's signage is approved by the LPC, Landlord's consent shall not be unreasonably withheld.

Section 7.04. Requirements for Conduct of Business. This Lease does not grant any permission, license or authority for the performance or conduct of any business, operation or use which may require any permit or approval from any public or private party. Tenant shall, at its sole cost and expense, obtain and maintain in full force and effect during the Term any governmental license or permit imposed or mandated by any Governmental Authority in connection with Tenant's trade or business and Tenant's use of the Premises, and shall comply with any other Requirement for the proper and lawful operation of the Premises by Tenant for the purposes authorized by this Lease.

Section 7.05. Unlawful Use. Tenant shall not use or occupy the Premises, and shall use commercially reasonable efforts not to permit or suffer the Premises or any part thereof to be used or occupied, for any unlawful, illegal, or hazardous business, use or purpose or in any way in violation of any Requirement or this Lease, or in such manner as may make void or voidable any insurance then in force with respect to the Premises. Immediately, upon the discovery of any such unlawful, illegal or hazardous business, use or purpose, Tenant shall take all necessary steps, legal and equitable, to compel the discontinuance thereof, including if necessary, the removal from the Premises of any subtenant using any portion of the Premises for any such business, use or purpose. Tenant shall not keep, or permit to be kept, on the Premises any article, object, item, substance or thing that may cause damage to the Premises or any part thereof, or that may constitute a public or private nuisance, or any other article, object, item, substance or thing that would violate requirements of the Fire Department, Board of Fire Underwriters, Fire Insurance Rating Organization and other authority having jurisdiction over the Premises.

Section 7.06. No Representations or Warranty by Landlord.

(a) Neither Landlord, the City nor Apple has made or makes any representation or warranty as to the condition of the Premises or its suitability for any particular use or as to any other matter affecting this Lease or the Premises.

(b) Neither Landlord, the City nor Apple has made or makes any representation as to the legality of the use of the Premises for Tenant's intended purposes. If any use or proposed use is determined to be illegal by a court of competent jurisdiction, Tenant agrees that (i) neither Landlord, the City nor Apple, nor any of their respective directors, officers, employees or agents shall be liable for any damages incurred by Tenant or any third party as a result of, or in connection with such determination, or illegal use or proposed use, and (ii) Landlord agrees that Tenant shall have the right and option to terminate this Lease.

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Section 7.07. Reconfiguration of Hotel. Notwithstanding anything to the contrary contained in this Lease, subject to Requirements, Tenant shall be permitted at any time following Final Completion of the Project to reconfigure or otherwise change the layout of the space within the Hotel, provided that the use of the DOT Waiting Area and access thereto is not materially adversely affected thereby.

ARTICLE 8

EASEMENTS

Section 8.01. Municipal Easement. Landlord hereby reserves for itself and the City, and their respective officers, employees, agents, servants, representatives and invitees, an easement for ingress and egress to, from and over the Premises for the following purposes: (i) to inspect, maintain, replace and repair existing municipal facilities located within the Premises, if any; (ii) to maintain its fire communications facilities, sewers, water mains and street sub-surface below the Premises, if any; and (iii) to access the bulkhead area and the Pier that are part of the Premises or adjacent to the Premises. Access to the aforesaid easement areas shall be at reasonable times and upon reasonable prior notice (except in the case of any emergency).

Section 8.02. Construction Easements. The City, Landlord and Lease Administrator and their respective designees shall have the right at all reasonable times upon reasonable prior notice (except in the case of an emergency) to enter upon the Premises with workers, materials and equipment to construct, reconstruct, lay, relay, maintain, operate and inspect the City's, Landlord's and/or Lease Administrator's facilities in or adjacent to the Premises. Landlord and Lease Administrator shall use reasonable efforts to perform said activities during reasonable times and upon reasonable prior notice (except in the case of an emergency). The easement reserved hereby is in addition to any other easement, right-of-way or other right that constitutes a Title Matter as described in Exhibit I hereto.

Section 8.03. Interference. Neither Landlord's nor Lease Administrator's entry onto or permitted use of the Premises shall materially interfere with Tenant's or a Subtenant's use of the Premises pursuant to this Lease and Landlord shall use commercially reasonable efforts to minimize interference with Tenant's use of and operations at the Premises in connection with its exercise of the rights conferred under Sections 8.01 and 8.02.

Section 8.04. TGI Ferry and DOT Premises Easements. The leasehold estate created by this Lease is subject to an easement, in common with others, hereby reserved for the benefit of the City, its licensees, tenants and subtenants at the Property, and their respective employees, agents, contractors, guests, customers, licensees and invitees, for access, ingress and egress to and from the TGI Ferry Premises and the DOT Premises by means of, among other facilities, doorways, entrances, exits, lobbies, stairways, corridors and elevators within or appurtenant to the Premises.

Section 8.05. DOT Waiting Area Easement. The leasehold estate created by this Lease is subject to an easement, hereby reserved for the benefit of the City, its tenants, subtenants and licensees at the Property, and their respective employees, agents, contractors, guests, customers, licensees and invitees, for the use of the DOT Waiting Area and for access,

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such Security Deposit, except such portion thereof as shall be equal to one per cent (1%) per annum (or such higher percentage as Landlord may from time to time be lawfully entitled to retain), which percentage shall belong to and be the sole property of Landlord and which Landlord or Lease Administrator may withdraw from time to time and retain. The obligation to pay any taxes related to or affecting any interest earned on such Security Deposit (except as to that portion thereof which belongs to Landlord) shall be the sole responsibility of Tenant and Tenant hereby agrees to pay same and to forever indemnify and save harmless Landlord and Lease Administrator in respect thereof. Tenant shall, within fifteen (15) days after demand, furnish Lease Administrator or its agent with a tax identification number for use in respect of such deposit.

Section 6.03. Without limiting their respective rights and remedies hereunder or at law or in equity, and after expiration of any applicable notice and cure periods provided for herein for a Default or Event of Default, Landlord or Lease Administrator may use, apply or retain the whole or any part of the Security Deposit to the extent required for the payment of any Rental or any other sum payable by Tenant hereunder when due and payable or the failure of Tenant to perform when due any other term, covenant or condition of this Lease, or to satisfy any liability incurred by Tenant to Landlord and Lease Administrator under this Lease, provided that the application of any Security Deposit proceeds to the cure of any such Default or Event of Default hereunder shall not be deemed to have cured such Default or Event of Default unless the entire outstanding amount due or damages suffered by Landlord and Lease Administrator is paid in full. Tenant agrees that when the Security Deposit or any portion thereof is used or applied by Landlord or Lease Administrator as aforesaid, Tenant shall, within thirty (30) days after notice and/or demand by Landlord, deposit with Landlord such additional amounts (by regular check subject to collection) sufficient to restore the Security Deposit to its amount prior to such use or application.

Section 6.04. If Tenant shall comply with all of the terms of this Lease, the Security Deposit shall be returned to Tenant within sixty (60) days after the Expiration Date of this Lease, together with interest accrued thereon as adjusted in accordance with this Article. If, on the Expiration Date, an Event of Default shall then exist, Landlord shall be entitled to retain all or any portion of such security to the extent of any damages suffered by Landlord by reason of such Event of Default, and to which Landlord is entitled pursuant to the terms of this Lease. Nothing in this paragraph shall be construed to limit Tenant's liability hereunder to the amount of the Security Deposit.

ARTICLE 7

USE

Section 7.01. Tenant shall use and occupy the Premises to operate a **surface-level, no-fee parking lot** ("**Parking Lot**") solely for the use of and by its tenants, employees, guests and invitees ("**Project**"), and for no other use or purpose without the Landlord's prior written consent to be given or withheld in Landlord's sole discretion. Tenant will not otherwise hold the Parking Lot open for use by the general public nor collect any rate or charge for the parking of a motor vehicle on the Premises. Failure to be in conformity with the provisions of this Article shall constitute an Event of Default under this Lease.

Section 7.02. Tenant's use of the Premises shall be in complete conformity with all applicable Requirements. This Lease does not grant any permission, license or authority for the conduct of any business, operation or use which may require any permit or approval from any public or private party. Tenant shall obtain and maintain in full force and effect during the Term, at its sole cost and expense, all licenses and permits required by any Governmental Authority for the proper and lawful operation of a Parking Lot at the Premises.

Section 7.03. Tenant covenants that no foundation work will be performed at the Premises, and Tenant shall not use or occupy the Premises or suffer or permit the Premises or any part thereof to be used or occupied for any unlawful or illegal business, use or purpose or in any way in violation of this Lease, or in any way that may constitute a public or private nuisance, or in such manner as may make void or voidable any insurance then required to be carried under Article 9 hereof. Immediately upon its discovery of any such unlawful or illegal business, use or purpose, Tenant shall take all necessary steps, legal and equitable, to compel the discontinuance thereof, including, if necessary, the removal from the Premises of any invitees using any portion of the Premises for such unlawful or illegal business, use or purpose. Tenant shall comply with any lawful direction by any Governmental Authority with respect to the use of the Premises or to the abatement of nuisance or with respect to conditions which have been created by or at the instance of Tenant or required by reason of a breach of any of Tenant's covenants or agreements hereunder.

Section 7.04. Neither Landlord nor Lease Administrator or any of their respective employees, representatives or designees has made any representations with respect to the Premises or the Project, except as expressly provided in this Lease. Tenant is fully familiar with the physical condition of the Premises in connection with its use under the Parking Permit, and Tenant agrees that the Premises are in satisfactory condition, subject to Section 2.01(c) hereof. Tenant shall be solely responsible for providing security at the Premises, including any lighting for the Parking Lot, and the same shall be at no cost or expense to Landlord or Lease Administrator.

ARTICLE 8

EASEMENTS

Section 8.01. Landlord, hereby reserves for itself and Lease Administrator, and their respective officers, employees, agents, servants, representatives and invitees, an easement for ingress and egress to, from and over the Premises for the following purposes: (i) to inspect, maintain, replace and repair existing municipal facilities located within the Premises, if any; (ii) to maintain its fire communications facilities, sewers, water mains and street sub-surface below the Premises, if any; and (iii) as necessary, to access the bulkhead area and the Pier, if any, that are part of the Premises or adjacent to the Premises. Access to the aforesaid easement areas shall be at reasonable times and upon reasonable prior written notice to Tenant (except in the case of emergencies in which instance no notice is necessary) from Landlord.

Section 8.02. Landlord and Lease Administrator and their respective designees shall have the right at all times to enter upon the Premises with workers, materials and equipment to construct, reconstruct, lay, relay, maintain, operate and inspect Landlord's and/or Lease Administrator's facilities in or adjacent to the Premises. Landlord and Lease Administrator shall use

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which case Tenant shall not be entitled to an apportionment except for the purpose of applying such amount as a credit pursuant to Section 22.03(b) hereof).

Section 5.05. Taxes.

Provided the City shall be Landlord, Landlord shall pay, cancel, or otherwise satisfy and discharge of record any and all Taxes on or before the due date thereof (which may be by bookkeeping entry, interdepartmental direction or other manner or procedure selected by Landlord). If the City shall cease to be Landlord, prior to any conveyance of the Premises, the Landlord shall have obtained a separate tax lot for the Premises so that the Premises are taxed and assessed separately from any other premises and any new Landlord shall pay any and all Taxes on or before the due date thereof, it being understood that under no circumstances shall Tenant be responsible for the payment of Taxes. If Landlord shall have failed to pay or discharge the Taxes as required hereunder and Tenant shall not have timely commenced a proceeding to contest the same as provided in Section 33.01 hereof, or if Tenant shall have timely commenced such a proceeding to contest the Taxes but failure to pay the Taxes during the pendency of such proceeding will or is reasonably likely to result in the imminent loss or forfeiture of the Premises and the termination of Tenant's interest under this Lease or Tenant would or is reasonably likely by reason thereof be subject to any civil or criminal penalty or liability, then Tenant may pay such unpaid Taxes together with any interest or penalties thereon and deduct such payment from the next Rental due, with interest until repaid or credited in full at the rate (the "City's Payment Rate") which is the lesser of the New York City Department of Finance Penalty Rate (18%) or the interest rate specified in Section 3-a(1) of the General Municipal Law of the State of New York, as it may be amended from time to time.

Section 5.06. Landlord's Cooperation in Securing Tax Abatement.

Landlord and Lease Administrator shall cooperate with Tenant in obtaining for Tenant the benefit of all City and State of New York incentive or abatement programs available to Tenant, including any with respect to real estate or leasehold occupancy taxes, empire and empowerment zones, sales and use taxes on materials, machinery and equipment incorporated at the Premises, employee hiring and payroll and the like.

Section 5.07. Intentionally Omitted.

Section 5.08. Survival.

The provisions of this Article 5 shall survive any termination of this Lease.

ARTICLE 6

USE AND DEVELOPMENT OF PREMISES

Section 6.01. Permitted Uses. Tenant shall use and occupy the Premises for the purpose of receiving, processing, packaging, preparation, storage, sale and distribution of fresh, frozen, processed and/or prepared produce and food products and related inventory and equipment in connection with Tenant's and its Affiliates' business, and related administrative functions, including ancillary office use and related truck parking and maintenance (each a

“Permitted Use” and, collectively, the “Permitted Uses”). Tenant and Tenant’s servants, employees, agents, visitors, and licensees shall observe faithfully, and comply strictly with, any reasonable restrictions on use as Landlord may from time to time adopt, provided same do not materially interfere with Tenant’s Permitted Uses. Notice of any additional restrictions shall be given at least thirty (30) days in advance of the date such restriction is proposed to become effective. Notwithstanding anything contained in this Section to the contrary, Landlord shall not be liable to Tenant for violation of the same by any other tenant, its servants, employees, agents, visitors or licensees. In addition to the foregoing, Tenant shall be entitled to exclusive signage rights on the Land, including free-standing, billboard or pylon signage and signage on the exterior façade and/or roof of the Building and/or Rail Shed. Tenant shall be permitted to install the maximum signage permitted under applicable Laws, provided same comply with applicable Requirements, including, but not limited to, those of the Public Design Commission of the City of New York, and provided that such signage contain no noxious content and/or content that is political in nature, and Landlord shall not take or permit any action to diminish Tenant’s signage rights hereunder as to size, height, location or the like.

Section 6.02. Requirements for Conduct of Business Tenant acknowledges that the Building and the Premises are part of a “public market” under § 260 *et seq.* of the New York Agriculture and Markets Law and of a “public wholesale market” under § 22-251(h) of the New York Administrative Code. Tenant further acknowledges and agrees that it shall comply with the requirements as required pursuant to the general provisions of Article 14 hereof.

Section 6.03. Unlawful Use; No Representation of Landlord.

(a) During the Term, Tenant shall not use or occupy the Premises or any part thereof (or permit anyone claiming by, through, or under Tenant to use or occupy the Premises, or any part thereof) to be used or occupied, for any unlawful, illegal, or hazardous business, use or purpose or in any way in violation of any of the Requirements, any certificate of completion or occupancy affecting the Premises or this Lease or in such manner as may make void or voidable any insurance then in force with respect to the Premises, the Building or the Premises. Immediately upon the discovery of any such unlawful, illegal or hazardous business, use or purpose, Tenant shall take all necessary steps, legal and equitable, to compel the discontinuance thereof. Tenant shall not keep anything in the Premises which may cause or be apt to cause structural injury to the Premises or any part thereof, or as will constitute a public or private nuisance, or anything except as now or hereafter permitted by the Fire Department, Board of Fire Underwriters, Fire Insurance Rating Organization and other authority having jurisdiction, and then only in such manner and such quantity so as not to make it difficult or impossible to obtain fire insurance for the Premises or increase the rate for fire insurance applicable to the Building, nor, prior to the Full Vacate Date, use the Premises in a manner which will increase the insurance rate for the Building or any property located therein over that otherwise in effect. If by reason of Tenant’s failure to comply with the foregoing the fire insurance rate shall, at any time prior to the Full Vacate Date, be higher than it otherwise would be, then Tenant shall be obligated to pay such additional cost which shall have been charged because of such failure by Tenant.

(b) Any installation on any floor of the Premises shall be placed and maintained by Tenant, at Tenant’s expense, in settings sufficient, in Landlord’s reasonable

judgment, to absorb and prevent vibration, noise and annoyance.

(c) Tenant shall use its best efforts, at Tenant's expense, to contain any noxious odors that may arise from Tenant's use of the Premises in accordance with this Section.

(d) Any installation on or activity conducted at the Premises shall incorporate advances in the art of noise control and odor control, as applicable, developed for the kind and level of noise or odor, as applicable, emitted or produced by such installations or activity, all in accordance with or required by any applicable regulations issued by the New York City Department of Environmental Protection of the City, or its successor, or any other relevant agency or authority.

(e) Landlord represents that the Building and the Premises are part of a "public market" under § 260 *et seq.* of the New York Agriculture and Markets Law and of a "public wholesale market" under § 22-251(h) of the New York Administrative Code and that the Permitted Use is a valid public market use under applicable law. Landlord makes no representation as to the legality of the actual or intended particular manner of the use of the Premises by Tenant. If any use or proposed use is determined to be illegal by a court of competent jurisdiction or an administrative law judge, Tenant agrees that neither Landlord nor Administrator nor any of their respective agents, officers and employees, or any person whatsoever, shall be liable for any damages arising out of or related to such illegal use or proposed use.

ARTICLE 7

INSURANCE

Section 7.01. Insurance Requirements. At all times during the Term, Tenant, at its sole cost and expense, shall carry and maintain in full force and effect, or cause to be carried and maintained in full force and effect, insurance coverage of the following types or insuring the described risks and in the minimum limits set forth below. For clarification, notwithstanding any reference to the "Premises" hereinbelow, prior to the Full Vacate Date, nothing herein shall make Tenant responsible to carry insurance covering any damage to any portion of the Land, Building (or components thereof) or Exterior Areas not yet demised to Tenant hereunder or which are otherwise reserved to Landlord to maintain, repair or restore.

(a) Liability Insurance. Commercial General Liability insurance protecting against all liability with respect to the Premises and the operations related thereto, whether conducted on or off the Premises, for bodily injury, death, personal injury and property damage, in an amount not less than Five Million Dollars (\$5,000,000) per occurrence and in the aggregate, and designating Tenant as "named insured," and Guarantor, Landlord, Lease Administrator and Apple as "additional insureds." If during any year, it appears that the amount of liability resulting from insured occurrences may exceed any annual aggregate applicable to the insurance required by this subsection, Tenant shall procure and maintain for the remainder of such year insurance against future-arising claims that satisfy the requirements of this subsection in all respects, including required amounts. The Commercial General Liability Insurance

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ARTICLE 21

NO ABATEMENT OF RENTAL

Except as otherwise expressly provided herein, there shall be no abatement, diminution or reduction of Rental or other sums, costs, expenses, charges, payments or deposits payable by Tenant hereunder or of the other obligations of Tenant hereunder under any circumstances.

ARTICLE 22

PERMITTED USE; NO UNLAWFUL OCCUPANCY; PEDESTRIAN STREET

Section 22.01. Subject to the provisions of law and this Lease, Tenant shall use the Premises (a) during the five (5) year period commencing upon the Completion of the Buildings as and for a shopping center and a parking facility (b) thereafter, for any lawful purpose, and for no other purpose.

Section 22.02.

(a) Tenant shall not use or occupy Block 149, Lot 1 comprising a part of the Premises for the parking of vehicles (except vehicles used in the demolition or construction of improvements on the Premises) until the completion of the Buildings required to be constructed pursuant to Article 10 hereof.

(b) Tenant shall not use or occupy, nor permit or suffer the Premises or any part thereof to be used or occupied for any unlawful or illegal business, use or purpose, or for any business, use or purpose deemed disreputable or extra hazardous, or in such manner as to constitute a nuisance of any kind, public or private, or for any purpose or in any way in violation of the certificate of occupancy, the Brooklyn Center Urban Renewal Plan or of any present or future governmental laws, ordinances, requirements, orders, directions, rules or regulations or which may make void or voidable any insurance then in force on the Premises. Tenant shall immediately upon the discovery of any such unlawful, illegal, disreputable or extra hazardous use take all necessary steps, legal and equitable, to compel the discontinuance of such use and to oust and remove any subtenants, licensees, concessionaires or other occupants guilty of such unlawful, illegal, disreputable or extra hazardous use.

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days, a substitute index or the appropriate adjustment of successor or substitute index, as the case may be, shall be determined by arbitration. Fair market value shall be determined by a fair market appraisal to be performed and completed by Landlord at Tenant's expense no sooner than one (1) year prior to the Initial Term Expiration Date, and no later than the Initial Term Expiration Date.

Use

Article 4. Tenant shall use and occupy the Premises solely for the purpose of the use and operation of a commercial boat repair, sales and storage operation and for no other purpose.

Maintenance,
Repairs and
Alterations

Article 5. Tenant shall, at its sole cost and expense, take good care of the Premises and fixtures thereto, and shall quit and surrender the Premises at the end of the Term in good condition, subject to reasonable wear and tear. Tenant shall not make any additions, alterations or improvements in said Premises, or permit any additional lock or fastening on any door, without the prior written consent of Landlord. All such fixtures and permanent alterations, partitions, additions, or improvements which may be made upon the Premises shall be the property of Landlord, and shall, at Landlord's option, remain upon and be surrendered with the Premises as a part thereof upon the Expiration Date, without disturbance, molestation or injury. Tenant shall maintain and keep clean and in good order and repair the Premises (and adjoining areas thereto) to Landlord's reasonable satisfaction, which includes (but is not limited to) keeping the Premises (and adjoining areas thereto) free and clear of debris, litter, snow, ice and slush. Under no circumstances shall Landlord, Apple or the current or any former Administrator be obligated to maintain or repair the Premises at any time. No later than the Expiration Date, Tenant shall restore the Premises to a good condition, subject to reasonable wear and tear, and subject to any alterations that have been approved by Landlord, at Tenant's sole cost and expense, to the satisfaction of Landlord. In the event Tenant fails or neglects to do so, Landlord and Administrator shall have the right to remove any structures and improvements and affect restoration of the Premises, or any part thereof, at the sole cost and expense of Tenant.

Requirements
of Law

Article 6. Tenant shall, at its sole cost and expense, comply with and observe the provisions of this Lease and any and all laws, rules, regulations, requirements, ordinances, resolutions and orders of Landlord (including, without limitation, the Zoning Resolution) and of any and all administrations, departments, bureaus and boards of federal, state and local authorities applicable to this Lease, the Premises, including the slips and water adjacent to the Premises, and/or the use, occupancy and maintenance thereof.

In the event any use or proposed use is declared illegal by a court of competent jurisdiction, Tenant covenants and agrees that neither Landlord, Apple nor Administrator, nor their respective agents, officers, and employees, shall be liable for any damages arising out of or related to such illegal use and that Tenant shall defend, indemnify and hold harmless Landlord, Apple and Administrator against any liability or expense therefor in accordance with Article 13 hereof.

If at any time during the Term any use or proposed use of the Premises permitted by this Lease is declared illegal by a court of competent jurisdiction, then (i) Tenant may terminate the Lease upon at least thirty (30) days advance written notice; and if such notice shall be given, the Term shall expire as if such date were the Expiration Date, provided, however, if Landlord shall contest the validity or applicability of any such law, ordinance, rule or regulation, and during the contest Tenant is not prevented from so using the Premises, then Tenant shall not have the right to terminate the Lease as provided herein, pending the determination of the contest, and (ii) Tenant covenants and agrees that neither



Astoria

the proceeds of an Urban Development Action Grant from the United States Department of Housing and Urban Development.

"Unavoidable Delays" shall mean delays due to acts of God, strikes or other labor stoppages, inability to obtain labor or materials due to governmental restrictions, enemy action, civil commotion, fire, unavoidable casualty or other similar causes but only to the extent that they are beyond the control of Tenant (not including Tenant's insolvency or financial condition) and only those such delays which Tenant shall have notified Landlord of in writing not later than ten (10) days after the same shall occur. Such written notification must specify in detail the event or condition causing the delay, the cause of such event or condition and the work being delayed.

ARTICLE 2
PREMISES AND TERM OF LEASE

Landlord does hereby demise and lease to Tenant, and Tenant does hereby hire and take from Landlord (a) all those certain plots, pieces and parcels of land located in the Borough of Queens, County of Queens, City and State of New York, more particularly described in Exhibit "A" annexed hereto and made a part hereof, and denominated "Description of Land" thereon, together with all easements and other rights pertaining thereto, and (b) except as limited by Section 11.07(b) hereof, all Buildings thereon, subject to those matters affecting title set forth in Exhibit "B" ("Title Matters") annexed hereto and made a part hereof, including but not limited to the Prime Lease and the conditions and limitations contained in the Deed.

TO HAVE AND TO HOLD unto Tenant, its successors and assigns, for a term of years (the "Term") which shall commence as of the date of this Lease ("Commencement Date") and shall expire on the fiftieth anniversary of the Commencement Date or on such earlier date upon which this Lease may be terminated as hereinafter provided ("Expiration Date").

ARTICLE 3
RENT

Section 3.01. Tenant shall pay to Landlord, or to such other person as Landlord may direct in writing, in currency which at the time of payment is legal tender for public and private debts in the United States of America, without notice or demand,

(a) "Base Rent" as follows:

(1) during the first two Lease Years, \$75,000 per annum (\$6,250 monthly);

10/1/24 - 9/30/24

(b) At the commencement of each renewal option which Tenant elects to exercise, if any, Tenant shall deposit with Landlord additional amounts to increase the Security Deposit as follows: (i) at the commencement of the first Extension Term, Tenant shall deposit with Landlord an additional amount of Seven Hundred Fifty Thousand Dollars (\$750,000) or an amount based on a CPI adjustment (such CPI adjustment shall be an amount equal to the Security Deposit multiplied by a fraction, the numerator of which shall be the CPI published for the third month prior to the first Extension Term and the denominator of which shall be the CPI published for the third month prior to the Commencement Date), whichever is higher and (ii) at the commencement of each additional Extension Term, an amount based on a CPI adjustment (such CPI adjustment shall be an amount equal to the Security Deposit multiplied by a fraction, the numerator of which shall be the CPI published for the third month prior to the Extension Term and the denominator of which shall be the CPI published for the third month prior to the commencement date of the previous Extension Term).

Section 7.05. Return of Security Deposit. If Tenant shall comply with all of the terms of this Lease, the Security Deposit shall be returned to Tenant within thirty (30) days after the Expiration Date of this Lease, together with interest, if any, accrued thereon, less an amount, to be retained by Landlord, equal to one percent (1%) per annum of the amount of the Security Deposit.

ARTICLE 8

INTENTIONALLY OMITTED

ARTICLE 9

USE OF PREMISES

Section 9.01. Permitted Use. Tenant shall use and occupy or cause to be used or occupied the Premises for the purpose of receiving, preparing, handling, distributing, refrigerating and warehousing, food products (beverages being inclusive thereof) and for ancillary parking and offices uses and for other purposes incidental thereto and no other purpose provided, however, that Tenant shall not use the Premises for wholesale purchase, sale or distribution of seafood. Tenant shall not use the Premises or permit the Premises to be used for any other purpose except with the prior written approval of Landlord, to be given at Landlord's sole discretion.

Section 9.02. Requirements for Conduct of Business. Tenant acknowledges that the Premises are part of a "public market" under § 260 *et seq.* of the New York Agriculture and Markets Law. Tenant, at its sole cost and expense, shall promptly comply with all Requirements foreseen and unforeseen, ordinary as well as extraordinary, which may be applicable to the Premises or any part thereof, for the proper and lawful operation of the Premises by Tenant for the purposes authorized by this Lease. Tenant shall obtain and maintain in full force and effect during the Term at its sole cost and expense any governmental license or permit imposed or

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Atlantic Ctr Fort Greene

ARTICLE 23

PERMITTED USE; NO UNLAWFUL OCCUPANCY

Section 23.1. Type of Use. Effective upon the Substantial Completion Date, Tenant shall use and operate the Premises as first-class Brooklyn retail and parking facilities and all uses incidental thereto, in accordance with the certificate(s) of occupancy therefor and the Requirements, and for no use or purpose inconsistent with the operation of first-class Brooklyn retail and parking facilities and all uses incidental thereto.

Section 23.2. Prohibited Uses. Tenant shall not use or occupy the Premises, and neither permit nor suffer the Premises or any part thereof to be used or occupied for any unlawful or illegal business, use or purpose or for any purpose, or in any way in violation of the provisions of Section 23.1 or Article 16 hereof or the certificate(s) of occupancy for the Premises, or in such manner as may make void or voidable any insurance then in force with respect to the Premises. Immediately upon its discovery of any such unlawful or illegal business, use or purpose, or use or occupation in violation of Section 23.1 or Article 16 hereof, Tenant shall take all necessary steps, legal and equitable, to compel the discontinuance of such business or use, including, if necessary, the removal from the Premises of any Subtenants using a portion of the Premises for an unlawful or illegal business, use or purpose or in violation of Section 23.1 or Article 16 hereof. The provisions of this Section shall not restrict Tenant's rights under Article 34 hereof to contest any Requirements.

Section 23.3. Fort Greene Place. Tenant shall maintain the right-of-way over Fort Greene Place reserved to Landlord hereunder unobstructed by any installation or improvements, provided that Fort Greene Place may be improved as per the Plans and Specifications.

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Axis group, Inc.

ARTICLE 9

USE OF PREMISES

Section 9.01. Permitted Use. Tenant shall use and occupy the Premises for the development of a maritime automobile processing facility at SBMT. Specifically, Tenant shall use the Premises as a port of entry for finished vehicles; and for the operation of a processing facility for off-lease vehicles and rental program vehicles for wholesale disposition in the United States or in foreign countries. Tenant's use of the Premises shall be in accordance with the Development Plan. Tenant shall, in its operations, use a rail barge float system to transport vehicles between SBMT and facilities in New Jersey. Other uses permitted by Tenant at the Premises are as follows:

- Throughout the term of the Lease, if capacity is available, Tenant may use such capacity for other maritime uses and Tenant shall make best efforts to solicit such other maritime uses for the Premises;
- Tenant may use the Premises as an interim storage facility for vehicles;
- Tenant may enter into a sublease for part of the Premises for vehicle parking, subject to the approval of Landlord in accordance with the provisions of Article 14 hereof;
- Tenant may use the Premises as an export facility for domestically manufactured vehicles.

Tenant shall not use the Premises or permit the Premises to be used for any other purpose except with the prior written approval of Landlord, to be given at Landlord's sole discretion, which approval shall not be unreasonably delayed.

Section 9.02. Requirements for Conduct of Business. This Lease does not grant or excuse Tenant from obtaining any permission, license or authority for the performance or conduct of any business, operation or use which may require any permit or approval from any public or private party. Tenant shall obtain and maintain in full force and effect during the Term at its sole cost and expense any governmental license or permit imposed or mandated by any Governmental Authority in connection with Tenant's trade or business and the use of the Premises, and shall comply with any other Requirement for the proper and lawful operation of the Premises by Tenant for the purposes authorized by this Lease.

Section 9.03. Unlawful Use. Tenant shall not use or occupy the Premises, or permit or suffer the Premises or any part thereof to be used or occupied, for any unlawful, illegal, or hazardous business, use or purpose or in any way in violation of any Requirement or this Lease, or in such manner as may make void or voidable any insurance then in force with respect to the Premises. Immediately, upon the discovery of any such unlawful, illegal or hazardous business, use or purpose, Tenant shall take all necessary steps, legal and equitable, to compel the discontinuance thereof, including if necessary, the removal from the Premises of any subtenant using any portion of the Premises for any such business, use or purpose. Tenant shall not keep,

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Baldor Specialty Foods

such Default or Event of Default unless the entire outstanding amount due or damages suffered by Landlord, as the case may be, shall have been paid in full.

Section 7.04. Additional Deposits.

(a) If Landlord uses or applies the Security Deposit or any part thereof for any of the foregoing purposes, Tenant shall immediately deposit with Landlord an amount sufficient to restore the Security Deposit to its amount prior to such use or application.

(b) On the tenth (10th) anniversary of the Commencement Date, and every tenth anniversary of the Commencement Date thereafter, Tenant shall deposit with Landlord an amount sufficient for the Security Deposit to equal One Hundred Fifty per cent (150%) of the then-payable monthly installments of Annual Base Rent.

(c) If Tenant elects to extend the Term pursuant to Section 2.02(b) hereof, prior to the commencement of each Extended Term, Tenant shall deposit with Landlord an additional amount to increase the Security Deposit to an amount equal to 150% of the monthly installment of Annual Base Rent payable during such respective Extended Term.

Section 7.05. Return of Security Deposit. If Tenant shall comply with all of the terms of this Lease, the Security Deposit shall be returned to Tenant within thirty (30) days after the Expiration Date of this Lease, together with interest, if any, accrued thereon, less an amount, to be retained by Landlord, equal to one percent (1%) per annum of the amount of the Security Deposit.

ARTICLE 8

INTENTIONALLY OMITTED

ARTICLE 9

USE OF PREMISES

Section 9.01. Permitted Use. Tenant and its Affiliates shall use and occupy and shall cause the Premises to be used and occupied, and premises for the purposes of storing, preparing, handling, distributing, refrigerating and warehousing of food products and paper goods related to and in conjunction with the food products being received, prepared, handled, distributed, refrigerated and warehoused, and for ancillary parking, truck operation facilities, and offices uses, and for other purposes incidental thereto, and for no other use or purpose; provided, however, that Tenant shall not use the Premises for wholesale purchase, sale or distribution of fresh seafood except for pre-packaged seafood items such as canned or pre-packaged smoked fish, caviar, Caesar salad containing anchovies and the like. In addition to, and without in any way limiting the foregoing, Tenant acknowledges and understands that Landlord has agreed to the restrictive covenant set forth in Exhibit I attached hereto pursuant to a lease between Landlord and Fulton Fish Market Cooperative at Hunts Point (the "Fish Covenant"), and Tenant

shall not use the Premises nor permit the Premises to be used in a manner such that Landlord would be in violation of the Fish Covenant.

Section 9.02. Requirements for Conduct of Business. Tenant acknowledges that the Premises are part of a "public market" under § 260 *et seq.* of the New York Agriculture and Markets Law. Tenant, at its sole cost and expense, shall promptly comply with all Requirements foreseen and unforeseen, ordinary as well as extraordinary, which may be applicable to the Premises or any part thereof, for the proper and lawful operation of the Premises by Tenant for the purposes authorized by this Lease. This Lease does not grant any permission, license or authority for the performance or conduct of any business, operation or use which may require any permit or approval from any public or private party. Tenant shall obtain and maintain in full force and effect during the Term at its sole cost and expense any governmental license or permit imposed or mandated by any Governmental Authority in connection with Tenant's trade or business and the use of the Premises.

Section 9.03. Unlawful Use. Tenant shall not use or occupy the Premises, or permit or suffer the Premises or any part thereof to be used or occupied, for any unlawful, illegal, or hazardous business, use or purpose or in any way in violation of any of the Requirements, any certificate of completion or occupancy affecting the Premises or this Lease or in such manner as may make void or voidable any insurance then in force with respect to the Premises. Immediately upon the discovery of any such unlawful, illegal or hazardous business, use or purpose, Tenant shall take all necessary steps, legal and equitable, to compel the discontinuance thereof. Tenant shall not keep anything in the Premises which may cause or be apt to cause structural injury to the Premises or any part thereof, or as will constitute a public or private nuisance, or anything except as now or hereafter permitted by the Fire Department, Board of Fire Underwriters, Fire Insurance Rating Organization and other authority having jurisdiction, and then only in such manner and such quantity so as not to make it difficult or impossible to obtain fire insurance for the Premises or increase the rate for fire insurance applicable to the Premises, **nor use the Premises in a manner which will increase the insurance rate for the Premises over that otherwise in effect.** If by reason of Tenant's failure to comply with the foregoing the fire insurance rate shall, at any time, be higher than it otherwise would be, then Tenant shall be obligated to pay such additional cost which shall have been charged because of such failure by Tenant.

Section 9.04. No Representations or Warranty by Landlord.

(a) Neither Landlord, Lease Administrator nor Apple has made or makes any representation or warranty as to the condition of the Premises or its suitability for any particular use or as to any other matter affecting this Lease or the Premises.

(b) Neither Landlord, Lease Administrator nor Apple has made or makes any representation as to the legality of the use of the Premises for Tenant's intended purposes. If any use or proposed use is determined to be illegal by a court of competent jurisdiction, subject to the terms hereof Tenant agrees that (i) neither Landlord, Lease Administrator nor Apple, nor any of their respective directors, officials, officers, employees or agents shall be liable for any damages incurred by Tenant or any third party as a result of, or in connection with such determination, or illegal use or proposed use, and (ii) Tenant shall defend, indemnify and hold harmless each of

Landlord, Lease Administrator and Apple, and their respective directors, officials, officers, employees and agents against any cost, liability or expense incurred by any of them in connection with such determination, or illegal use in accordance with Article 23 hereof.

ARTICLE 10

INTENTIONALLY OMITTED

ARTICLE 11

INSURANCE

Section 11.01. Insurance Requirements. At all times during the Term, Tenant, at its sole cost and expense, shall carry and maintain in full force and effect, or cause to be carried and maintained in full force and effect, insurance coverage of the following types of insuring the described risks and in the minimum limits set forth below:

(a) Liability Insurance. Commercial General Liability insurance protecting against all liability with respect to the Premises and the operations related thereto, whether conducted on or off the Premises, for bodily injury, death, personal injury and property damage, in an amount not less than Five Million Dollars (\$5,000,000) per occurrence and in the aggregate, and designating Tenant as "named insured," and Landlord, Lease Administrator and Apple as "additional insureds." If during any year, it appears that the amount of liability resulting from insured occurrences may exceed any annual aggregate applicable to the insurance required by this subsection, Tenant shall procure and maintain for the remainder of such year insurance against future-arising claims that satisfy the requirements of this subsection in all respects, including required amounts. The Commercial General Liability Insurance required hereby shall:

(i) include a broad form property damage liability and liability with fire legal liability limit of not less than One Hundred Thousand Dollars (\$100,000) subject to adjustment for inflation;

(ii) contain blanket contractual liability insurance covering written contractual liability, and specifically covering Tenant's indemnification obligations under Article 23 hereof;

(iii) contain independent contractor coverage;

(iv) contain a thirty (30) day advance written notice of cancellation or non-renewal clause, specifically requiring notice of cancellation or non-renewal for non-payment of premium, and for any material reduction in coverage;

(v) contain an unintentional errors and omissions clause;

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ARTICLE 7

INTENTIONALLY DELETED

ARTICLE 8

NO DREDGING; SUNKEN CRAFT

Section 8.01. No Dredging. Any dredging necessary to enable Tenant to occupy and operate its business at the Premises shall be the responsibility of the Tenant and at Tenant's sole cost. Notwithstanding the same, Tenant shall not perform or cause to be performed any dredging in or on the Premises or in the water adjacent to, or included in, the Premises without Landlord's prior written approval.

Section 8.02. Sunken Craft. If during the Term, the half basins, slips, or water adjacent to the Premises shall become obstructed in whole or in part by the sinking of the Barge or any waterborne craft or other obstruction used in connection with Tenant's operations of the Premises, or any other waterborne craft other than a waterborne craft owned or operated by the City, Lease Administrator or Apple, Tenant, at its sole cost and expense, after receiving notice, shall promptly eliminate such obstruction, or cause the same to be eliminated. If, after said notice, Tenant fails to eliminate such obstructions, Landlord may, in its discretion, undertake same, and, in such event, Tenant shall reimburse Landlord for the reasonable expenses so incurred. If during the Term, said waters adjacent to the Premises shall become obstructed in whole or in part by the sinking of any waterborne craft owned or operated by the City, Lease Administrator or Apple through no fault or negligence of Tenant, then Landlord shall promptly remove such obstruction, or cause the same to be removed, without cost or expense to Tenant. If, after notice from Tenant, Landlord fails to remove such obstructions, Tenant may, in its discretion, undertake the removal thereof, and, in such event, Landlord shall reimburse Tenant for the reasonable expense so incurred.

ARTICLE 9

USE OF PREMISES

Section 9.01. Permitted Use.

Restrictions on Use.

- (a) Tenant agrees that the Premises shall be used and occupied solely for the mooring of the Barge to be operated by Tenant for the presentation of chamber music performances, and the holding of Fundraisers or Special Events thereon subject to Section 9.04 below. In the event that Tenant or a third party hires a catering establishment in connection with a Fundraiser or Special Event to be held on the Premises, or at any other time, Tenant shall require or cause such third party to require the caterer to have appropriate licenses and carry liability insurance as set

forth in Article 11 hereof.

- (b) Tenant shall not use or permit the use of the floating gangplank for any purpose other than emergency egress from the Barge.
- (c) Tenant covenants and agrees that it shall not, without the prior approval of the Administrator, (i) post any exterior signs or advertisements on the doors or windows of the Barge (other than the signs and advertisements posted as of the date hereof) or anywhere on the Premises or Pier, unless, with respect to the Barge only, the full contents thereof is required by law, or (ii) place any flags, banners, or any other exterior display on the Pier, or (iii) make changes to the exterior lighting on the Pier or (iv) store any equipment, freight or other property whatsoever on the Pier.
- (d) Tenant shall not use the Premises or permit the Premises to be used for any other purpose except with the prior written approval of Landlord, to be given at Landlord's sole discretion, which approval shall not be unreasonably delayed. Landlord represents that Tenant's intended use does not violate zoning or other restrictions imposed by existing law, rules and regulations or any such laws, rules or regulations presently under consideration by the City.

Section 9.02. Requirements for Conduct of Business. This Lease does not grant any permission, license or authority for the performance or conduct of any business, operation or use which may require any permit or approval from any public or private party. Tenant shall obtain and maintain in full force and effect during the Term at its sole cost and expense any governmental license or permit imposed or mandated by any Governmental Authority in connection with Tenant's trade or business and the use of the Premises, including but not limited to the operation of a waterborne craft such as the Barge, and shall comply with any other Requirement for the proper and lawful operation of the Premises by Tenant for the purposes authorized by this Lease.

Section 9.03. Unlawful Use. Tenant shall not use or occupy the Premises, or permit or suffer the Premises or any part thereof to be used or occupied, for any unlawful, illegal, or hazardous business, use or purpose or in any way in violation of any Requirement or this Lease, or in such manner as may make void or voidable any insurance then in force with respect to the Premises. Immediately, upon the discovery of any such unlawful, illegal or hazardous business, use or purpose, Tenant shall take all necessary steps, legal and equitable, to compel the discontinuance thereof. Tenant shall not keep, or permit to be kept, on the Premises any article, object, item, substance or thing that may cause, damage to the Premises or any part thereof, or that may constitute a public or private nuisance, or any other article, object, item, substance or thing, except as now or hereafter permitted by the Fire Department, Board of Fire Underwriters, Fire Insurance Rating Organization and other authority having jurisdiction over the Premises.

Section 9.04. Use of the Pier.

- (a) Tenant acknowledges that the Pier shall remain open to the general public throughout the Term for passive recreational use. Tenant further acknowledges that the City may (i) hold, or permit to be held, special events on the Pier, including, without limitation, press conferences, receptions, ceremonies and publicity announcements, (ii) permit other of its tenants in the Fulton Ferry Landing area a nonexclusive license to use the Pier in connection with any such tenant's operations and (iii) permit the use of the Pier by third parties.
- (b) In light of the foregoing subparagraph (a), Tenant shall use best efforts to schedule and coordinate Special Events to minimize pedestrian traffic on the Pier. Administrator shall use reasonable efforts to coordinate and schedule the uses set forth in (a)(i)(ii)(iii) of this Section 9.04 to minimize the possibility of disruption of Bargemusic, Ltd. 's chamber music performances.

Section 9.05. Silting; Relocation. Landlord and Tenant acknowledge that the Premises could accumulate silt over the Term causing the Barge to become grounded. Notwithstanding any provision herein to the contrary, Tenant hereby agrees: (i) Tenant shall be responsible for monitoring the draft or depth of the water to ensure that a sufficient level of water exists for the Barge to continue to float and move without difficulty; and (ii) if at any time the accumulation of silt at the Premises is such that Tenant determines that the Barge could in the near future become grounded, then Tenant shall give Administrator six (6) month's notice of Tenant's need to relocate the Barge. If the Administrator agrees with Tenant's determination, then Administrator shall permit Tenant to either relocate the Barge to a different position on the Premises or a new location suitable for the continuation of the Tenant's operations as contemplated by this Lease as Administrator deems appropriate. If such a relocation is agreed to, Landlord and Tenant shall execute an amendment to this Lease, if necessary, providing for the new demised premises.

Section 9.06. No Representations or Warranty by Landlord.

- (a) Except as provided in Section 9.01 above, neither Landlord, Lease Administrator nor Apple has made or makes any representation or warranty as to the condition of the Premises or its suitability for any particular use or as to any other matter affecting this Lease or the Premises.
- (b) Neither Landlord, Lease Administrator nor Apple has made or makes any representation as to the legality of the use of the Premises for Tenant's intended purposes; it being understood, however, that neither Landlord, Lease Administrator nor Apple have any knowledge or information that the intended or permitted use of the Premises hereunder is contrary to law. If any use or proposed use is determined to be illegal by a court of competent jurisdiction, subject to the terms hereof Tenant agrees that (i) neither Landlord, Lease Administrator nor Apple, nor any of their respective directors, officers, employees or agents shall be liable for any damages incurred by Tenant or any third party as a result of, or in connection with such determination, or illegal use or proposed use, and (ii) Tenant shall defend, indemnify and hold harmless each of Landlord, Lease Administrator and Apple, and their respective directors, officers, employees and agents against

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ARTICLE 6

UTILITIES

Section 6.01. Utility Service to Premises. Tenant must obtain and pay all costs of utilities (including, without limitation, installation thereof, if applicable), including all sewer charges and charges for all water, gas, heat and electricity, consumed and used in, or with respect to, the Premises, and Tenant, at its sole cost and expense, shall maintain and repair all meters and procure all permits, approvals and licenses necessary to secure delivery of such utility services. Tenant shall pay any utility charges directly to the companies supplying such utility services all charges therefor, as the same shall become due.

Section 6.02. No Obligation on the Part of Landlord. Landlord shall have no obligation to provide any utility services to the Premises, or any part thereof, and neither Landlord, Lease Administrator nor Apple shall have any responsibility or liability to Tenant or any third party in the event any such utility services are not provided to the Premises, or any part thereof, provided, however, that Landlord shall use best efforts to provide Tenant with access such that it may obtain utilities.

ARTICLE 7

(INTENTIONALLY OMITTED)

ARTICLE 8

INTENTIONALLY OMITTED

ARTICLE 9

USE OF PREMISES

Section 9.01. Permitted Use. Tenant and its Affiliates shall use and occupy, and shall cause the Premises to be used and occupied, the Premises for the purpose of construction, operation, and maintenance of an indoor multi-sport (including, but not limited to basketball) recreation facility available to leagues and individuals, and for special events, with workout rooms, locker rooms, public access space, snack bar, and ancillary rooms and construction and maintenance of outdoor pier apron amenities, outdoor courts, and parking, and for no other use or purpose. Public access to pier apron is required between 9am and dusk. Without limitation of the foregoing restrictions, no part of the Premises, including without limitation the pier and bulkhead, shall be used for any maritime activity or in furtherance of navigation, including without limitation vessel berthing and dry docking, or movement of goods or chattel to or from the waters adjacent to the Premises and points inland. Subject to the terms and conditions of this

Lease, Tenant may commence using the Premises for the uses permitted hereunder upon Substantial Completion of Tenant's Work for the interior of the Building.

Section 9.02. Requirements for Conduct of Business. Except for maintenance and repairs for which Landlord is responsible pursuant to the provisions of this Lease, Tenant, at its sole cost and expense, shall promptly comply with all Requirements foreseen and unforeseen, ordinary as well as extraordinary, which may be applicable to the Premises or any part thereof, for the proper and lawful operation of the Premises by Tenant for the purposes authorized by this Lease. This Lease does not grant any permission, license or authority for the performance or conduct of any business, operation or use in lieu of any permit or approval from any public or private party which may be required. Tenant shall obtain and maintain in full force and effect during the Term at its sole cost and expense any governmental license or permit imposed or mandated by any Governmental Authority in connection with Tenant's trade or business and the use of the Premises.

Section 9.03. Limited Free Public Access. Tenant shall make court time available (e.g., basketball, volley ball, badminton, soccer), or equivalent (in terms of time and facilities) placements in its programs (such as camps, clinics, classes, etc), to local schools and not-for-profit community organizations, at no charge, as follows.

- (i) 9 court hours per day of off-peak weekday court time (9am to 3pm - Monday - Friday);
- (ii) 5 court hours per day of peak weekday court time (3pm to 11pm - Monday - Friday);
- (iii) 3.5 court hours per day of peak weekend court time (9am to 3pm); and
- (iv) 4.5 court hours per day of off-peak weekend court time (3pm to 6pm).

Section 9.04. Unlawful Use. Tenant shall not use or occupy the Premises, or permit or suffer the Premises or any part thereof to be used or occupied, for any unlawful, illegal, or hazardous business, use or purpose or in any way in violation of any of the Requirements, any certificate of completion or occupancy affecting the Premises or this Lease or in such manner as may make void or voidable any insurance then in force with respect to the Premises. Immediately upon the discovery of any such unlawful, illegal or hazardous business, use or purpose, Tenant shall take all necessary steps, legal and equitable, to compel the discontinuance thereof. Tenant shall not keep anything in the Premises which may cause or be apt to cause structural injury to the Premises or any part thereof, or as will constitute a public or private nuisance, or anything except as now or hereafter permitted by the Fire Department, Board of Fire Underwriters, Fire Insurance Rating Organization and other authority having jurisdiction, and then only in such manner and such quantity so as not to make it difficult or impossible to obtain fire insurance for the Premises or increase the rate for fire insurance applicable to the Premises. If by reason of Tenant's failure to comply with the foregoing the fire insurance rate shall, at any time, be higher than it otherwise would be, then Tenant shall be obligated to pay such additional cost which shall have been charged because of such failure by Tenant.

Section 9.05. Representations or Warranty by Landlord.

(a) Neither Landlord, Lease Administrator nor Apple has made or makes any representation or warranty as to the physical condition of the Premises or its suitability for any particular use or as to any other matter affecting this Lease or the Premises.

(b) Neither Landlord, Lease Administrator nor Apple has made or makes any representation as to the legality of the use of the Premises for Tenant's intended purposes. If any use or proposed use is determined to be illegal by a court of competent jurisdiction, subject to the terms hereof Tenant agrees that (i) neither Landlord, Lease Administrator nor Apple, nor any of their respective directors, officials, officers, employees or agents shall be liable for any damages incurred by Tenant or any third party as a result of, or in connection with such determination, or illegal use or proposed use, and (ii) Tenant shall defend, indemnify and hold harmless each of Landlord, Lease Administrator and Apple, and their respective directors, officials, officers, employees and agents against any cost, liability or expense incurred by any of them in connection with such determination, or illegal use in accordance with Article 23 hereof.

(c) Landlord represents and warrants to Tenants that it has all requisite power and authority to execute, deliver and perform this Lease. Upon execution and delivery of this Lease by the parties hereto, this Lease shall constitute a legal, valid, binding and enforceable obligation of Landlord.

(d) To Landlord's knowledge, beyond normal wear and tear, there have been no significant changes in the condition of the Landlord Structural Elements as and to the extent set forth in HPA Engineers, P.C., titled "Piers 35 & 36 Manhattan, New York, Routine Inspection", dated March 2006. In addition, Landlord represents that the demising wall separating the Demised Premises from the remainder of the Pier Shed is structurally sound and in good condition and repair.

ARTICLE 10

CONSTRUCTION, MANAGEMENT AND MAINTENANCE OF PUBLIC ACCESS AREA

Section 10.01. Construction of the Public Access Area. Tenant covenants as follows:

(a) it shall construct the Public Access Area in substantial conformity with the Public Access Area drawings, attached hereto as Exhibit G ("**Substantial Completion of the PAA**");

(b) it shall not apply for or accept a temporary certificate of occupancy or completion for any portion of the Premises until it has achieved Substantial Completion of the PAA and Landlord has provided a copy of the certification evidencing Substantial Completion of the PAA to the Buildings Department, provided, however, that this restriction shall not apply when delay in completing the PAA is due to Landlord's acts or omissions, provided, however, that of Tenant is ready to apply for a temporary certificate of occupancy or completion at a time at such time as it is out-of-season for the installation of plants on the PAA, Tenant may nevertheless apply for same, and if Tenant is ready to accept a temporary certificate of occupancy or completion at a time at such time as it is out-of-season for the installation of

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provisions of this Article shall be applied against amounts thereafter becoming due and payable by Tenant pursuant to the foregoing provisions. Any deposits or interest remaining after application of deposits and interest as aforesaid shall be paid to Tenant.

ARTICLE 7
LATE CHARGES

If any amount payable to Landlord hereunder shall not be paid within 10 days after the date on which it is due and payable as provided in this Lease, a late charge per month equal to one-twelfth (1/12th) of the Default Interest Rate (computed on a 30-day month) on the sums so overdue shall become immediately due and payable to Landlord as liquidated damages for the administrative costs and expenses incurred by Landlord by reason of Tenants failure to make timely payment, and said late charges shall be payable by Tenant on demand as additional rent. No failure by Landlord to insist upon the strict performance by Tenant of Tenant's obligations to pay late charges shall constitute a waiver by Landlord of its right to enforce the provisions of this Article in any instance thereafter occurring. The provisions of this Article 7 shall not be construed in any way to extend the grace periods or notice periods provided for in Article 25 of this Lease.

ARTICLE 8
DEVELOPMENT, USE AND OPERATION OF PROJECT

Section 8.01 ~~Tenant~~, at its sole cost and expense, shall construct on and within the Premises (including below-grade areas) all those improvements necessary to develop and operate the Premises as a first class food-oriented and specialty retail marketplace containing not less than 62,500 nor more than 130,000 square feet as further described in Section 8.09 Hereof, including, without limitation, (i) certain below grade, grade level and upper level space within that portion of the Premises consisting of space (the "Arch Space") beneath the Guastovino Arches (the "Arches") within the Bridge approach structure; (ii) on the parcel of land to the south of the Arch Space (the "Plaza"), a sitting area accessible to the public and a structure containing not more than 4,800 square feet of space; and (iii) certain improvements to City streets abutting the Premises as shown on the Plans (hereinafter defined). The above shall include all finishing work in the Common Areas (as defined in I(ii) of the "Gross Receipts" definition in Article 1 hereof) and all repairs and alterations necessary to make the Premises, and the systems therein, suitable for the intended purpose, including without limitation repair or installation of drainage, heating, ventilating, air conditioning, electrical and plumbing systems and shall include all other necessary work, installations and equipment. All of the above (which may be

performed by Tenant or by Subtenants), together with any alterations or additional improvements from time to time made to the Premises by Tenant or a Person whose rights in the Premises derive from Tenant, is hereinafter referred to as the "Improvements," and the Premises, as improved with the Improvements, is hereinafter referred to as the "Project." The Improvements shall be constructed in substantial accordance with preliminary plans (the "Plans") which are attached hereto as Exhibit D and which have been approved by Landlord, it being understood that such Plans provide for Improvements consisting of approximately 97,888 square feet.

Section 8.02

(a) Within nine months after the Commencement Date (such period being subject to extension on account of Unavoidable Delays, including any deriving from Tenant's inability to obtain vacant and unencumbered possession of the Premises) Tenant shall submit (i) to Landlord, for review and approval, those final architectural working drawings and specifications for the project (the "Final Architectural Drawings") which, in the reasonable determination of Landlord, bear on matters treated in the plans and (ii) to DOT for review and approval, the Final Architectural Drawings, plus those final working drawings and specifications which, in the determination of DOT, bear on structural, drainage or other engineering aspects of the Premises and/or the Bridge or abutting streets (such engineering related drawings to be submitted to DOT are hereinafter referred to as the "Final Engineering Drawings").

(b) Except as otherwise provided below, no construction, including demolition or excavation, shall commence within or upon the premises until Landlord has approved the Final Architectural Drawings and DOT has approved the Final Engineering Drawings and the Final Architectural Drawings. Landlord shall review and approve or disapprove the Final Architectural Drawings within 30 days after submission. If Landlord shall not have approved or disapproved the Final Architectural Drawings within the time above specified, then the same shall be deemed approved by Landlord. Landlord shall use its best efforts to ensure that DOT acts expeditiously and reasonably in reviewing the Final Engineering Drawings and the Final Architectural Drawings. It is understood that the project may be designed and constructed in phases on a fast track basis. Accordingly, Tenant may submit to Landlord and DOT, as appropriate, Final Architectural Drawings and Final Engineering Drawings with respect to separate phases, including demolition or excavation, of construction and, upon approval of the same as provided above, Tenant may proceed with construction of the work (including demolition or excavation) encompassed by such drawings. Nonetheless, Final Architectural Drawing and Final Engineering Drawings with respect to the entire Project shall be submitted to Landlord and DOT within the nine month period (as the same may be extended on account of Unavoidable Delays) provided above.

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bonding proceedings. Landlord may also compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowances.

Section 22.2 Reimbursement For Amounts Paid by Landlord Pursuant to this Article. Any amounts paid by Landlord pursuant to Section 22.1 hereof, including all costs and expenses incurred by Landlord in connection therewith, shall be reimbursed to Landlord on Landlord's demand, together with a late charge on the amounts so paid by Landlord, calculated at the Late Charge Rate from the date of any such payment by Landlord to the date on which payment of such amounts is received by Landlord.

Section 22.3 Waiver, Release and Assumption of Obligations. Landlord's payment or performance pursuant to the provisions of this Article shall not be, nor be deemed to be (a) a waiver or release of the Default or Event of Default with respect thereto (or any past or future Default or Event of Default) or of Landlord's right to terminate this Lease and/or to take such other action as may be permissible hereunder, or (b) Landlord's assumption of Tenant's obligations to pay or perform any of Tenant's past, present or future obligations hereunder.

Section 22.4 Proof of Damages. Landlord shall not be limited in the proof of any damages that it may claim against Tenant arising out of, or by reason of, Tenant's failure to provide and keep insurance in force in accordance with the provisions of this Lease to the amount of the insurance premium or premiums not paid. However, Landlord shall be entitled to recover, as damages for such Default or Event of Default, the uninsured amount of any loss and damage sustained or incurred by it and the costs and expenses of any suit in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements.

ARTICLE 23

PERMITTED USE; NO UNLAWFUL OCCUPANCY

Section 23.1 Type of Use. Effective upon the Substantial Completion Date, Tenant may use and operate the Leased Unit throughout the Term as first-class office premises, with ancillary retail, recreational and parking facilities located in other Units in accordance with the certificates of occupancy therefor and the Requirements, and for no other use or purpose inconsistent with the operation of a first-class office building located in New York City; provided, however, that should this Lease be acquired by a Recognized Mortgagee or its designee, or a purchaser at a foreclosure sale or other enforcement of the Recognized Mortgage, or should a new lease be granted to a Recognized Mortgagee or its designee, in each case as contemplated by Article 11, the new tenant may use the Leased Unit for any lawful purpose subject to the obligation to comply with the Requirements, including, without limitation, the City's Zoning Resolution and any environmental requirements for the Project, as the same may be amended from time to time.

Section 23.2 Prohibited Uses. Tenant shall not use or occupy the Leased Unit, shall neither permit nor suffer the Leased Unit or any part thereof to be used or occupied, and

shall cause the Board of Managers not to suffer or permit the Common Elements to be used or occupied, for any unlawful or illegal business, use or purpose, or in any way in violation of the provisions of Section 23.1 or Article 16 hereof or the certificate(s) of occupancy for the Leased Unit, or in such manner as may make void or voidable any insurance then in force with respect to the Leased Unit or the Premises. Immediately upon its discovery of any such unlawful or illegal business, use or purpose, or use or occupation in violation of Section 23.1 or Article 16 hereof, Tenant shall take all necessary steps, legal and equitable, to compel the discontinuance of such business or use, including, if necessary, the removal from the Leased Unit of any Subtenants using a portion of the Leased Unit for an unlawful or illegal business, use or purpose or in violation of Section 23.1 or Article 16 hereof.

ARTICLE 24

EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES, ETC.

Section 24.1 Definition. Each of the following events shall be an "Event of Default" hereunder:

(a) if Tenant shall fail to make any payment (or any part thereof) of Rental required to be paid by Tenant hereunder and such failure shall continue for a period of ten (10) days after notice thereof; provided, however, in no event shall (i) a failure by MWR to pay Prior Deferred Rent or Prior Deferred PILOT in accordance with Sections 3.2(f) and 3.4(g) (but not a failure by Tenant to cause any distributions otherwise payable to MWR to be paid to Landlord pursuant to said Sections) or (ii) during the term of the Bonds, a failure by Tenant to make payments required pursuant to Section 3.3, constitute or be deemed an Event of Default under this Lease, subject, however to Section 3.3(f);

(b) if Tenant shall fail to observe or perform one or more of the other terms, conditions, covenants or agreements of this Lease and such failure shall continue for a period of thirty (30) days after Landlord's notice thereof to Tenant specifying such failure (unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed within such thirty (30) day period, in which case no Event of Default shall be deemed to exist as long as Tenant shall have commenced curing the same within the thirty (30) day period and shall diligently and continuously prosecute the same to completion);

(c) to the extent permitted by law, if Tenant shall make an assignment for the benefit of the then creditors;

(d) to the extent permitted by law, if Tenant shall file a voluntary petition under Title 11 of the United States Code or if such petition shall be filed against Tenant and an order for relief shall be entered, or if Tenant shall file a petition or an answer seeking, consenting to or then acquiescing in, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, State or other bankruptcy or insolvency statute or law, or shall seek, or consent to, in writing, the appointment of any

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Landlord's demand, together with a late charge on the amounts so paid by Landlord, calculated at the Late Charge Rate from the date of any such payment by Landlord to the date on which payment of such amounts is received by Landlord.

Section 22.3 Waiver, Release and Assumption of Obligations. Landlord's payment or performance pursuant to the provisions of this Article shall not be, nor be deemed to be (a) a waiver or release of the Default or Event of Default with respect thereto (or any past or future Default or Event of Default) or of Landlord's right to terminate this Lease and/or to take such other action as may be permissible hereunder, or (b) Landlord's assumption of Tenant's obligations to pay or perform any of Tenant's past, present or future obligations hereunder.

Section 22.4 Proof of Damages. Landlord shall not be limited in the proof of any damages that it may claim against Tenant arising out of, or by reason of, Tenant's failure to provide and keep insurance in force in accordance with the provisions of this Lease to the amount of the insurance premium or premiums not paid. However, Landlord shall be entitled to recover, as damages for such Default or Event of Default, the uninsured amount of any loss and damage sustained or incurred by it and the costs and expenses of any suit in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements.

ARTICLE 23

PERMITTED USE; NO UNLAWFUL OCCUPANCY

Section 23.1 Type of Use. Effective upon the Substantial Completion Date, Tenant shall use and operate the Leased Unit throughout the Term as first-class office premises, with ancillary retail, recreational and parking facilities located in other Units in accordance with the certificates of occupancy therefor and the Requirements, and for no other use or purpose inconsistent with the operation of a first-class office building located in New York City; provided, however, that should this Lease be acquired by a Recognized Mortgagee or its designee, or a purchaser at a foreclosure sale or other enforcement of the Recognized Mortgage, or should a new lease be granted to a Recognized Mortgagee or its designee, in each case as contemplated by Article 11, the new tenant may use the Leased Unit for any lawful purpose subject to the obligation to comply with the Requirements, including, without limitation, the City's Zoning Resolution and any environmental requirements for the Project, as the same may be amended from time to time.

Section 23.2 Prohibited Uses. Tenant shall not use or occupy the Leased Unit, shall neither permit nor suffer the Leased Unit or any part thereof to be used or occupied, and shall cause the Board of Managers not to suffer or permit the Common Elements to be used or occupied, for any unlawful or illegal business, use or purpose, or in any way in violation of the provisions of Section 23.1 or Article 16 hereof or the certificate(s) of occupancy for the Leased Unit, or in such manner as may make void or voidable any insurance then in force with respect to the Leased Unit or the Premises. Immediately upon its discovery of any such unlawful or illegal business, use or purpose, or use or occupation in violation of Section 23.1 or Article 16 hereof, Tenant shall take all necessary steps, legal and equitable, to compel the discontinuance of such business or use, including, if necessary, the removal from the Leased Unit of any Subtenants

using a portion of the Leased Unit for an unlawful or illegal business, use or purpose or in violation of Section 23.1 or Article 16 hereof.

ARTICLE 24

EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES, ETC.

Section 24.1 Definition. Each of the following events shall be an "Event of Default" hereunder:

(a) if Tenant shall fail to make any payment (or any part thereof) of Rental required to be paid by Tenant hereunder and such failure shall continue for a period of ten (10) days after notice thereof, provided, however, in no event shall (i) a failure by MWR to pay Prior Deferred Rent or Prior Deferred PILOT in accordance with Sections 3.2(f) and 3.4(g) (but not a failure by Tenant to cause any distributions otherwise payable to MWR to be paid to Landlord pursuant to said Sections) or (ii) during the term of the Bonds, a failure by Tenant to make payments required pursuant to Section 3.3, constitute or be deemed an Event of Default under this Lease, subject, however to Section 3.3(f);

(b) if Tenant shall fail to observe or perform one or more of the other terms, conditions, covenants or agreements of this Lease and such failure shall continue for a period of thirty (30) days after Landlord's notice thereof to Tenant specifying such failure (unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed within such thirty (30) day period, in which case no Event of Default shall be deemed to exist as long as Tenant shall have commenced curing the same within the thirty (30) day period and shall diligently and continuously prosecute the same to completion);

(c) to the extent permitted by law, if Tenant shall make an assignment for the benefit of the then creditors;

(d) to the extent permitted by law, if Tenant shall file a voluntary petition under Title 11 of the United States Code or if such petition shall be filed against Tenant and an order for relief shall be entered, or if Tenant shall file a petition or an answer seeking, consenting to or then acquiescing in, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, State or other bankruptcy or insolvency statute or law, or shall seek, or consent to, in writing, the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant, or of all or any substantial part of its properties, or of the Leased Unit or any interest of Tenant therein;

(e) to the extent permitted by law, if within sixty (60) days after the commencement of a proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, State or other bankruptcy or insolvency statute or law, such proceeding shall not be dismissed, or if, within one

ARTICLE 23

PERMITTED USE; NO UNLAWFUL OCCUPANCY

Section 23.1 Type of Use. Effective upon the Substantial Completion Date, Tenant may use and operate the Leased Unit throughout the Term as transient and long-term vehicle parking facilities, with ancillary office use (except for any areas of the Leased Unit designated in the plans attached to the Declaration as proposed retail space, which areas may also be used for retail purposes in accordance with the Declaration if all required governmental approvals shall have been obtained), in accordance with the certificate of occupancy therefor and the Requirements, and for no other use or purpose; provided, however, that should this Lease be acquired by a Recognized Mortgagee or its designee, or a purchaser at a foreclosure sale or other enforcement of the Recognized Mortgage, or should a new lease be granted to a Recognized Mortgagee or its designee, in each case as contemplated by Article 11, the new tenant may use the Leased Unit for any lawful purpose subject to the obligation to comply with the Requirements, including, without limitation, the City's Zoning Resolution and any environmental requirements for the Project, as the same may be amended from time to time.

Section 23.2 Prohibited Uses. Tenant shall not use or occupy the Leased Unit, shall neither permit nor suffer the Leased Unit or any part thereof to be used or occupied, and shall cause the Board of Managers not to suffer or permit the Common Elements to be used or occupied, for any unlawful or illegal business, use or purpose, or in any way in violation of the provisions of Section 23.1 or Article 16 hereof or the certificate(s) of occupancy for the Leased Unit, or in such manner as may make void or voidable any insurance then in force with respect to the Leased Unit or the Premises. Immediately upon its discovery of any such unlawful or illegal business, use or purpose, or use or occupation in violation of Section 23.1 or Article 16 hereof, Tenant shall take all necessary steps, legal and equitable, to compel the discontinuance of such business or use, including, if necessary, the removal from the Leased Unit of any Subtenants using a portion of the Leased Unit for an unlawful or illegal business, use or purpose or in violation of Section 23.1 or Article 16 hereof.

ARTICLE 24

EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES, ETC.

Section 24.1 Definition. Each of the following events shall be an "Event of Default" hereunder:

- (a) if Tenant shall fail to make any payment (or any part thereof) of Rental required to be paid by Tenant hereunder and such failure shall continue for a period of ten (10) days after notice thereof; provided, however, in no event shall a failure by MWR to pay Prior Deferred Rent or Prior Deferred PILOT in accordance with Section 3.2(f) and 3.4(g) (but not a failure by Tenant to cause any distributions otherwise payable to MWR to be paid to Landlord pursuant to said Sections) constitute or be deemed a Default under this Lease;

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ARTICLE 23

PERMITTED USE: NO UNLAWFUL OCCUPANCY

Section 23.1 Type of Use. Effective upon the Substantial Completion Date, Tenant may use and operate the Leased Unit throughout the Term for first-class transient hotel occupancy available to the general public on a nightly basis, together with, if applicable, conference facilities, banquet facilities, function rooms, food and beverage service, and/or other services and functions generally provided or available in first-class hotels in New York City, with ancillary retail, recreational and parking facilities located in the Leased Unit and in other Units in accordance with the certificates of occupancy therefor and the Requirements, and for no other use or purpose inconsistent with the operation of a first-class transient hotel located in New York City; provided, however, that should this Lease be acquired by a Recognized Mortgagee or its designee, or a purchaser at a foreclosure sale or other enforcement of the Recognized Mortgage, or should a new lease be granted to a Recognized Mortgagee or its designee, in each case as contemplated by Article 11, the new tenant may use the Leased Unit for any lawful purpose subject to the obligation to comply with the Requirements, including, without limitation, the City's Zoning Resolution and any environmental requirements for the Project, as the same may be amended from time to time.

Section 23.2 Prohibited Uses. Tenant shall not use or occupy the Leased Unit, shall neither permit nor suffer the Leased Unit or any part thereof to be used or occupied, and shall cause the Board of Managers not to suffer or permit the Common Elements to be used or occupied, for any unlawful or illegal business, use or purpose, or in any way in violation of the provisions of Section 23.1 or Article 16 hereof or the certificate(s) of occupancy for the Leased Unit, or in such manner as may make void or voidable any insurance then in force with respect to the Leased Unit or the Premises. Immediately upon its discovery of any such unlawful or illegal business, use or purpose, or use or occupation in violation of Section 23.1 or Article 16 hereof, Tenant shall take all necessary steps, legal and equitable, to compel the discontinuance of such business or use, including, if necessary, the removal from the Leased Unit of any Subtenants using a portion of the Leased Unit for an unlawful or illegal business, use or purpose or in violation of Section 23.1 or Article 16 hereof.

ARTICLE 24

EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES, ETC.

Section 24.1 Definition. Each of the following events shall be an "Event of Default" hereunder:

- (a) if Tenant shall fail to make any payment (or any part thereof) of Rental required to be paid by Tenant hereunder and such failure shall continue for a period of ten (10) days after notice thereof; provided, however, in no event shall a failure by MWR to pay Prior Deferred Rent or Prior Deferred PILOT in accordance with Section 3.2(f) and 3.4(g) (but not a failure by Tenant to cause any distributions otherwise payable to MWR to be paid to Landlord pursuant to said Sections) constitute or be deemed a Default under this Lease;

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

Section 22.4 Proof of Damages. Landlord shall not be limited in the proof of any damages that it may claim against Tenant arising out of, or by reason of, Tenant's failure to provide and keep insurance in force in accordance with the provisions of this Lease to the amount of the insurance premium or premiums not paid. However, Landlord shall be entitled to recover, as damages for such Default or Event of Default, the uninsured amount of any loss and damage sustained or incurred by it and the costs and expenses of any suit in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements.

ARTICLE 23

PERMITTED USE; NO UNLAWFUL OCCUPANCY

Section 23.1 Type of Use. Effective upon the Substantial Completion Date, Tenant may use and operate the Leased Unit throughout the Term as first-class office premises, for the retail sale of goods and services, for the operation of day care facilities and/or for the maintenance and operation of the Central Plant (as defined in the Declaration), with ancillary recreational and health club facilities, all as more particularly set forth in the Declaration, and all in accordance with the certificate of occupancy therefor and the Requirements, and for no other use or purpose inconsistent with the operation of a first class office building located in New York City; provided, however, that should this Lease be acquired by a Recognized Mortgagee or its designee, or a purchaser at a foreclosure sale or other enforcement of the Recognized Mortgage, or should a new lease be granted to a Recognized Mortgagee or its designee, in each case as contemplated by Article 11, the new tenant may use the Leased Unit for any lawful purpose subject to the obligation to comply with the Requirements, including, without limitation, the City's Zoning Resolution and any environmental requirements for the Project, as the same may be amended from time to time.

Section 23.2 Prohibited Uses. Tenant shall not use or occupy the Leased Unit, shall neither permit nor suffer the Leased Unit or any part thereof to be used or occupied, and shall cause the Board of Managers not to suffer or permit the Common Elements to be used or occupied, for any unlawful or illegal business, use or purpose, or in any way in violation of the provisions of Section 23.1 or Article 16 hereof or the certificate(s) of occupancy for the Leased Unit, or in such manner as may make void or voidable any insurance then in force with respect to the Leased Unit or the Premises. Immediately upon its discovery of any such unlawful or illegal business, use or purpose, or use or occupation in violation of Section 23.1 or Article 16 hereof, Tenant shall take all necessary steps, legal and equitable, to compel the discontinuance of such business or use, including, if necessary, the removal from the Leased Unit of any Subtenants using a portion of the Leased Unit for an unlawful or illegal business, use or purpose or in violation of Section 23.1 or Article 16 hereof.

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BTM Development Partners

for an additional sixty (60) days after notice by Landlord to Tenant (unless security has been provided as contemplated by Article 17), then, subject to any rights granted to a Recognized Mortgagee under this Lease, Landlord may, but shall not be obligated to, discharge such lien of record either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings. Landlord may also compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowances.

Section 22.2. Reimbursement for Amounts Paid by Landlord Pursuant to this Article. Any out-of-pocket amounts reasonably paid by Landlord pursuant to Section 22.1 hereof shall be paid to Landlord within ten (10) Business Days after Landlord's demand, together with a late charge on the amounts so paid by Landlord, calculated at the Late Charge Rate from the date of any such payment by Landlord to the date on which payment of such amounts is received by Landlord.

Section 22.3. Waiver, Release and Assumption of Obligations. Landlord's payment or performance pursuant to the provisions of this Article shall not be, nor be deemed to be (a) a waiver or release of the Default or Event of Default with respect thereto (or any past or future Default or Event of Default) or of Landlord's rights and remedies under this Lease and/or to take such action as may be permissible hereunder, or (b) Landlord's assumption of Tenant's obligations to pay or perform any of Tenant's past, present or future obligations hereunder. Notwithstanding the foregoing, if Landlord pays the amount due and Tenant timely reimburses Landlord for sums billed pursuant to Section 22.2, no Default or Event of Default shall exist with respect to such amount as has been paid.

Section 22.4. Proof of Damages. Landlord shall not be limited in the proof of any damages that it may claim against Tenant arising out of, or by reason of, Tenant's failure to provide and keep insurance in force in accordance with the provisions of this Lease to the amount of the insurance premium or premiums not paid. However, subject to the provisions of Section 41.8 hereof, Landlord shall be entitled to seek, and if successful, to recover, as damages for such Default or Event of Default, the uninsured amount of any loss and damage sustained or incurred by it which would have been paid had Tenant maintained insurance required to be maintained pursuant to Article 7, and the reasonable out-of-pocket costs and expenses of any suit in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements.

ARTICLE 23

PERMITTED USE: NO UNLAWFUL OCCUPANCY

Section 23.1. Type of Use. Tenant shall use and operate the Premises for any lawful purpose (without limitation of Tenant's obligations under Section 13.1(a)), which may include a retail shopping center (which may include a hotel) and parking facilities (and all uses incidental thereto), in accordance with the certificate(s) of occupancy therefore as the same may be amended or modified from time to time and the Requirements.

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Section 23.2. Prohibited Uses. Tenant shall not use or occupy the Premises, and neither permit nor suffer the Premises or any part thereof to be used or occupied for any unlawful or illegal business, use or purpose or for any purpose, or in any way in violation of the provisions of Section 23.1 or Article 16 hereof or the certificate(s) of occupancy for the Premises as the same may be amended or modified from time to time, or in such manner as may make void or voidable any insurance then in force with respect to the Premises, nor for any pornography (bone fide book stores targeted to the general public shall not be deemed "pornographic" notwithstanding that they may stock materials of an erotic or sexual interest); "adult", "girlie", or "nudes" sexually oriented business; massage parlor; "figure" art or physical culture establishments of any sort (other than a bona fide health club/gymnasium); junk or salvage yards, including auto wrecking, or paper, junk, metal, or rag storage, sorting or bailing, or similar establishments; incineration or other reduction of garbage (other than trash compactors and dumpsters and other facilities which are ancillary to retail or other commercial occupancy); dumps, transfer stations or other depository for refuse; wholesale produce and meat markets ("markets" shall not include retail/wholesale establishments such as supermarkets and "warehouse clubs" or "wholesale club" such as BJ's, Sams Club and Costco), or stockyards or slaughtering of animals or poultry. Immediately upon its discovery of any such unlawful or illegal business or nonpermitted use or purpose, or use or occupation in violation of Section 23.1 or this Section 23.2 or Article 16 hereof, Tenant shall take all proper and necessary steps, legal and equitable, to compel the discontinuance of such business or use, including, if necessary, the removal from the Premises of any Subtenants using a portion of the Premises for an unlawful or illegal business, use or purpose or in violation of Section 23.1, Section 23.2 or Article 16 hereof. The provisions of this Section shall not restrict Tenant's rights under Article 34 hereof to contest any Requirements.

ARTICLE 24

EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES, ETC.

Section 24.1. Definition. Each of the following events shall be an "Event of Default" hereunder:

(a) if Tenant shall fail to make any payment (or any part thereof) of Rental required to be paid by Tenant hereunder and such failure shall continue for a period of ten (10) days after notice thereof from Landlord to Tenant;

(b) if Tenant shall fail to Commence Construction of the Buildings on or before the Construction Commencement Date (subject to Unavoidable Delays) and such failure shall continue for a period of thirty (30) days (subject to Unavoidable Delays) after notice thereof from Landlord specifying such failure;

(c) if Tenant shall fail to Substantially Complete the Construction of the Buildings on or before the Scheduled Completion Date (subject to Unavoidable Delays) unless Tenant is as of such date diligently prosecuting such construction toward prompt Substantial Completion and continues to do so without interruption except for Unavoidable Delays;

(d) if Tenant shall enter into an Assignment, Transfer or Major Sublease

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Cotarella Operating

Section 5.05. Taxes.

Provided the City shall be Landlord, Landlord shall pay, cancel, or otherwise satisfy and discharge of record any and all Taxes on or before the due date thereof (which may be by bookkeeping entry, interdepartmental direction or other manner or procedure selected by Landlord). If the City shall cease to be Landlord, Landlord shall pay the Taxes on or before the due date thereof, it being understood that under no circumstances shall Tenant pay Taxes. If Landlord shall have failed to pay or discharge the Taxes as required hereunder and Tenant shall not have timely commenced a proceeding to contest the same as provided in Section 33.01 hereof, or if Tenant shall have timely commenced such a proceeding to contest the Taxes but failure to pay the Taxes during the pendency of such proceeding will result in the imminent loss or forfeiture of the Premises and the termination of Tenant's interest under this Lease or Tenant would by reason thereof be subject to any civil or criminal penalty or liability, then Tenant may pay such unpaid Taxes together with any interest or penalties thereon and deduct such payment from the next Rental due, with interest at the rate (the "City's Payment Rate") which is the lesser of the City's Borrowing Rate or the interest rate specified in Section 3-a(1) of the General Municipal Law of the State of New York, as it may be amended from time to time.

Section 5.06. Utility Service to Premises and Payment Therefor.

Tenant shall be responsible for obtaining all utility services necessary for the proper operation and functioning of the Premises, including, without limitation, gas, water, heat, electricity, air conditioning and telephone service. Tenant shall pay directly to the companies supplying such utility services all charges for such utility services, as the same shall become due. Tenant shall, at its sole cost and expense, install meters for all such utility services including but not limited to, water, gas and electricity, and shall thereafter maintain such meters in good working order and repair.

Section 5.07. No Obligation on Landlord to Provide Utility Service.

Landlord shall have no obligation to provide any utility services to the Premises (notwithstanding Landlord's obligation described in Section 12.04 herebelow), and Landlord shall have no responsibility or liability in the event any such utility services are not provided to the Premises.

Section 5.08. Survival Clause for Sections 5.06 and 5.07.

The provisions of Sections 5.06 and 5.07 of this Article 5 shall survive any termination of this Lease.

ARTICLE 6

USE AND DEVELOPMENT OF PREMISES

Section 6.01. Permitted Uses. Tenant shall use and occupy the Premises for the purpose of receiving, preparing, handling (including packaging), distributing, refrigerating and warehousing, of food products and no other purpose provided, however, that Tenant shall not use the Premises for wholesale purchase, sale or distribution of seafood. Tenant and Tenant's

servants, employees, agents, visitors, and licensees shall observe faithfully, and comply strictly with, any reasonable restrictions on use as Landlord may from time to time adopt. Notice of any additional restrictions shall be given in advance of the date such restriction is proposed to become effective. Notwithstanding anything contained in this Section to the contrary, Landlord shall not be liable to Tenant for violation of the same by any other tenant, its servants, employees, agents, visitors or licensees.

Section 6.02. Requirements for Conduct of Business. Tenant acknowledges that the Property and the Premises are part of a "public market" under § 260 *et seq.* of the New York Agriculture and Markets Law. Tenant, at its sole cost and expense, shall promptly comply with all Requirements foreseen and unforeseen, ordinary as well as extraordinary, which may be applicable to the Premises or any part thereof, or to the use or manner of use of the Premises or the owners, tenants or occupants thereof, even though such Requirement shall necessitate structural changes, repairs or improvements, or the use or application of portions of the Premises for compliance therewith, and even though compliance with the provisions of this Section may interfere with the use and enjoyment of the Premises.

Section 6.03. Unlawful Use: No Representation of Landlord.

(a) During the Term, Tenant shall not use or occupy the Premises or Permit Area, or permit or suffer the Premises, the Permit Area or any part thereof to be used or occupied, for any unlawful, illegal, or hazardous business, use or purpose or in any way in violation of any of the Requirements, any certificate of completion or occupancy affecting the Premises or this Lease or in such manner as may make void or voidable any insurance then in force with respect to the Premises, the Permit Area, the Building or the Property. Immediately upon the discovery of any such unlawful, illegal or hazardous business, use or purpose, Tenant shall take all necessary steps, legal and equitable, to compel the discontinuance thereof. Tenant shall not keep anything in the Premises which may cause or be apt to cause structural injury to the Premises or any part thereof, or as will constitute a public or private nuisance, or anything except as now or hereafter permitted by the Fire Department, Board of Fire Underwriters, Fire Insurance Rating Organization and other authority having jurisdiction, and then only in such manner and such quantity so as not to make it difficult or impossible to obtain fire insurance for the Premises or increase the rate for fire insurance applicable to the Building, nor use the Premises in a manner which will increase the insurance rate for the Building or any property located therein over that otherwise in effect. If by reason of Tenant's failure to comply with the foregoing the fire insurance rate shall, at any time, be higher than it otherwise would be, then Tenant shall be obligated to pay such additional cost which shall have been charged because of such failure by Tenant.

(b) Any installation on any floor of the Premises shall be placed and maintained by Tenant, at Tenant's expense, in settings sufficient, in Landlord's reasonable judgment, to absorb and prevent vibration, noise and annoyance.

(c) Tenant shall use its best efforts, at Tenant's expense, to contain any odors that may arise from Tenant's use of the Premises in accordance with this Section.

(d) Any installation on or activity conducted at the Premises shall incorporate

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(30) days after the date when an Imposition is due and payable, official receipts of the appropriate taxing authority or other proof reasonably satisfactory to the City, evidencing the payment thereof.

(e) Any certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition asserting non-payment of such Imposition shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill, at the time or date stated therein.

(f) Any Imposition relating to a fiscal period of the taxing authority, a part of which is included within the Term and a part of which is included in a period of time before the Lease Commencement Date or after the Expiration Date, shall be apportioned pro rata between Landlord and Tenant as of the Lease Commencement Date or the Expiration Date.

(g) The City shall pay, cancel, or otherwise satisfy and discharge of record any and all Taxes on or before the due date thereof (which may be by bookkeeping entry, interdepartmental direction or other manner or procedure selected by the City).

ARTICLE 5

THE ELC PROJECT

Section 5.01. Use of the Premises.

(a) Subject to the provisions of the Lease, Tenant shall use the Premises solely to promote the local community's, schools' and the general public's appreciation and understanding of sustainable environmental living in an urban setting in accordance with the following:

(i) Tenant shall construct a building on the Premises in accordance with the provisions of Section 5.02 of this Lease for use as an Environmental Center.

(ii) Tenant's preliminary program will focus largely on two areas of the City's environment: the ecology, history and future of the East River, and environmental issues affecting home and neighborhood.

(iii) CEC shall operate the Environmental Center continuously and without interruption throughout the Term, and take all reasonable measures in every proper manner to promote and increase the use of the Environmental Center by the general public.

(iv) CEC shall permit access to the Environmental Center by the general public during normal business hours throughout the Term, and the public spaces thereof (which shall include toilet facilities) must be accessible to all visitors free of charge.

(v) CEC may charge reasonable admission fees for certain of its programs and exhibits.

(b) For the purposes of the foregoing Section 5.01(a)(iii), Tenant's obligation

to use the Premises "continuously" means that after Substantial Completion the Environmental Center shall be open to the public for at least six (6) hours per day for no less than two hundred sixty (260) days each calendar year for the Term of this Lease, subject to Tenant's need to temporarily close all or a portion of the Premises for renovation or repairs or such other circumstance as may be mutually agreed upon by Tenant and EDC.

(c) CEC may sublet space in the Premises for use as a café and/or a gift/bookstore, subject to CEC obtaining or causing the café operator to obtain all Required Approvals and complying with all Requirements and this Lease.

(d) CEC may use the outdoor space within the Premises around the perimeter of the Environmental Center building for plantings and associated CEC educational programs, provided that any such plantings are harmonious with the flora of the Public Access Area.

(e) Public access along the East River and along the bikeway must be maintained at all times.

Section 5.02. Development of the Premises.

(a) Tenant shall construct (in accordance with the provisions of Article 8) a building on the Premises for use as the Environmental Center, which building shall (i) neither exceed 32 feet in height nor 8,000 square feet of interior space, and its footprint shall not exceed 6200 square feet, (ii) contain office space comprising not more than 5% of the total square footage of the building, and (iii) embody "green architecture" practices, including the use of non-toxic and recycled materials and the use of energy efficient heating, cooling and lighting systems. In addition, the landscaping, paving and furniture around the Environmental Center should be consistent with the overall design of the Public Access Area, and the Environmental Center shall (x) be designed for low maintenance, and (y) include a small storage room for the Public Access Area's maintenance equipment and materials. The Environmental Center shall be fully operational in accordance with the ELC Project Schedule (as defined herein), provided, however, that in no event shall such date be after the date that is six years from the date hereof.

(b) Tenant acknowledges and agrees that it needs and is required to obtain approximately six million dollars (the "Funds Target") to develop and operate the Environmental Center, and has prepared as part of the ELC Project Schedule a fundraising schedule detailing the proposed timeline with associated fundraising milestones, which shall, at a minimum, require the achievement of one milestone per year. Tenant agrees that, its failure to meet the aforementioned milestones or raise or have written commitments for at least 75% of the Funds Target by the date that is four years from the date hereof (unless EDC shall have extended the aforementioned time limit, which extension, if any, shall be for up to one year) shall be an Event of Cancellation as set forth in Section 22.01(a) hereof.

(c) The parties agree that prior to the Substantial Completion of the Environmental Center Tenant may erect an interim structure ("Interim ELC") in order to maintain a presence on the Premises to establish and implement its educational programs, maintain the Public Access Area, and assist in fund raising until such Substantial Completion. Construction of the Interim ELC shall be in accordance with the provisions of Article 8.

Community Healthcare Network

earned on such Security Deposit (except as to that portion thereof which belongs to Landlord or the Lease Administrator) shall be the sole responsibility of Tenant and Tenant hereby agrees to pay same and to forever indemnify and save harmless Landlord, the Lease Administrator and Apple, in respect thereof. Tenant shall, within fifteen (15) days after demand, furnish Landlord or the Lease Administrator or their agent with a tax identification number for use in respect of such deposit.

Section 7.03. Application of Security Deposit. Without limiting its rights and remedies hereunder, at law or in equity, Landlord or the Lease Administrator may use, retain or apply all or any portion of the Security Deposit to satisfy any cost or expense arising from the occurrence of a Default or Event of Default hereunder, or any other cost or expense incurred by Landlord or the Lease Administrator in connection with the failure of Tenant to pay Rental or any other amount payable by Tenant hereunder, when such Rental or other amount becomes due and payable, or the failure of Tenant to perform when due any other term, covenant or condition of this Lease, or to satisfy any liability incurred by Tenant to Landlord under this Lease, provided that the application of any portion of the Security Deposit to the cure of any such Default or Event of Default shall not be deemed to have cured such Default or Event of Default unless the entire outstanding amount due or damages suffered by Landlord and the Lease Administrator, as the case may be, shall have been paid in full.

Section 7.04. Additional Deposits.

(a) If Landlord uses or applies the Security Deposit or any part thereof for any of the foregoing purposes, Tenant shall immediately deposit with Landlord an amount sufficient to restore the Security Deposit to the greater of (i) the Security Deposit amount prior to such use or application or (ii) an amount equal to 2/12 multiplied by the applicable Annual Base Rent.

Section 7.05. Return of Security Deposit. If Tenant shall comply with all of the terms of this Lease, the Security Deposit shall be returned to Tenant within thirty (30) days after the Expiration Date of this Lease, together with interest, if any, accrued thereon, less an amount, to be retained by Landlord, equal to one percent (1%) per annum of the amount of the Security Deposit.

ARTICLE 8

INTENTIONALLY OMITTED

ARTICLE 9

USE OF PREMISES

Section 9.01. Permitted Use. Tenant shall use and occupy the Premises for the operation of a primary health care facility and for no other purpose. The Tenant's primary health

care facility shall be an ambulatory care center which provides medical and dental services, including primary, reproductive, and mental health care, and health education programs to the local community. Tenant shall not use the Premises or permit the Premises to be used for any other purpose except with the prior written approval of Landlord and/or Lease Administrator, with such consent to be given at their sole discretion

Section 9.02. Tenant's CHN Downtown Service Expansion Project. In accordance with all of the requirements, approvals, consents, terms and conditions for work by Tenant at the Premises, Tenant accepts and agrees that a material term of this Lease is the requirement that the Tenant shall perform or have performed the "CHN Downtown Service Expansion Project" (as set forth in Exhibit D entitled CHN Downtown Service Expansion Project and further described in the Federal HRSA Grant for Expansion). The "Federal HRSA Grant for Expansion" is the Grant No. C80CS17068/H80CS00597 awarded on 29th of October 2009 by the Health Resources and Services Administration (HRSA)'s Bureau of Primary Health Care to the Tenant, Community Healthcare Network. The Federal HRSA Grant for Expansion provides Federal funds for the Community Healthcare Network's CHN Downtown Service Expansion Project to expand patient care by integrating dental, medical and preventive health care services by renovating the Premises' one story building with approximately eight additional exam rooms. In accordance with the Federal HRSA Grant for Expansion, the Landlord shall file a Notice of Federal Interest ("NFI") in the form that is substantially similar to the proposed NFI attached to this Lease as Exhibit F entitled "Proposed Notice of Federal Interest". The Tenant acknowledges and agrees that the completion of the CHN Downtown Service Expansion Project shall be on or before December 30, 2014 ("Final Completion Date") which is a material term of this Lease and if the Tenant has not completed the CHN Downtown Service Expansion Project on or before December 30, 2014, then such event shall be an Event of Default pursuant to Article 29 of this Lease (entitled "Events of Default, Remedies, Etc.").

Section 9.03. Requirements for Conduct of Business. This Lease does not grant any permission, license or authority for the performance or conduct of any business, operation or use which may require any permit or approval from any public or private party. Tenant shall obtain and maintain in full force and effect during the Term at its sole cost and expense any governmental license or permit imposed or mandated by any Governmental Authority in connection with Tenant's trade or business and the use of the Premises, and shall comply with any other Requirement for the proper and lawful operation of the Premises by Tenant for the purposes authorized by this Lease.

Section 9.04. Unlawful Use. Tenant shall not use or occupy the Premises, or permit or suffer the Premises or any part thereof to be used or occupied, for any unlawful, illegal, or hazardous business, use or purpose or in any way in violation of any Requirement or this Lease, or in such manner as may make void or voidable any insurance then in force with respect to the Premises. Immediately, upon the discovery of any such unlawful, illegal or hazardous business, use or purpose, Tenant shall take all necessary steps, legal and equitable, to compel the discontinuance thereof, including if necessary, the removal from the Premises of any subtenant using any portion of the Premises for any such business, use or purpose. Tenant shall not keep, or permit to be kept, on the Premises any article, object, item, substance or thing that may cause,

in Landlord's sole reasonable discretion, damage to the Premises or any part thereof, or that may constitute a public or private nuisance, or any other article, object, item, substance or thing, except as now or hereafter permitted by the Fire Department, Board of Fire Underwriters, Fire Insurance Rating Organization and other authority having jurisdiction over the Premises.

Section 9.05. No Representations or Warranty by Landlord.

(a) Neither Landlord, Lease Administrator nor Apple has made or makes any representation or warranty as to the condition of the Premises or its suitability for any particular use or as to any other matter affecting this Lease or the Premises.

(b) Neither Landlord, Lease Administrator nor Apple has made or makes any representation as to the legality of the use of the Premises for Tenant's intended purposes. If any use or proposed use is determined to be illegal by a court of competent jurisdiction, Tenant agrees that (i) neither Landlord, Lease Administrator nor Apple, nor any of their respective directors, officers, employees or agents shall be liable for any damages incurred by Tenant or any third party as a result of, or in connection with such determination, or illegal use or proposed use, and (ii) Tenant shall defend, indemnify and hold harmless each of Landlord, Lease Administrator and Apple, and their respective directors, officers, employees and agents against any cost, liability or expense incurred by any of them in connection with such determination, or illegal use or proposed use in accordance with, Article 23 hereof.

ARTICLE 10

EASEMENTS

Section 10.01. Municipal Easement. Landlord hereby reserves for itself and Lease Administrator, and their respective officers, employees, agents, servants, representatives and invitees, with respect to the Premises an easement and a right of access: (i) to enter upon the Premises to maintain, replace and repair existing municipal facilities located within the Premises, if any; (ii) to maintain its fire communications facilities, telecommunication facilities, sewers, water mains and street sub-surface below the Premises, if any; and (iii) to access other facilities adjacent to the Premises, with the right in Landlord, at all times to enter upon the Premises with workers, materials and equipment to construct, reconstruct, lay, relay, maintain, operate and inspect Landlord's facilities in or adjacent to the Premises. The easement reserved hereby is in addition to any other easement, right-of-way or other right that constitutes a Title Matter as described in Exhibit E hereto.

ARTICLE 11

INSURANCE

Section 11.01. Insurance Requirements. At all times during the Term, Tenant, at its sole cost and expense, shall carry and maintain in full force and effect, or cause to be carried and maintained in full force and effect, insurance coverage of the following types and in the minimum limits set forth below:

services necessary for the proper operation and functioning of the Premises, including, without limitation, electricity. Tenant shall pay directly to the companies supplying such utility services all charges for such utility services, as the same shall become due.

Section 4.07. No Obligation on Landlord to Provide Utility Service. Landlord shall have no obligation to provide any utility services to the Premises, and Landlord shall have no responsibility or liability in the event any such utility services are not provided to the Premises.

Section 4.08. Survival Clause for Sections 4.05, 4.06 and 4.07. The provisions of Sections 4.05, 4.06 and 4.07 of this Article 4 shall survive any termination of this Lease.

ARTICLE 5

USE AND DEVELOPMENT OF PREMISES

Section 5.01. Use of Premises. Tenant shall use the Premises to improve the same, in accordance with the Funding Agreement, the Plans and Specifications and this Lease, including, without limitation, Article 11, for use as a parking facility with accessways to and from the Flatbush Parking Lot over the Street and, from and after the Substantial Completion Date (as such term is defined in the Funding Agreement), exclusively as a no-fee public parking facility constituting a part of the Flatbush Parking Lot in accordance with the certificate of occupancy therefor and the Requirements. Tenant shall operate the Premises, or cause the same to be operated by the Operator, in accordance with the Operating Agreement or the New Operating Agreement, as applicable.

Notwithstanding the foregoing, Tenant shall not, nor shall Tenant permit the Operator or any contractor of Tenant, to do anything that interferes with the structural integrity of the parking deck contemplated by Section 37.02(b) hereof if the same is constructed.

Section 5.02. Requirements for Conduct of Business.

Subject to Article 35 and Unavoidable Delays, Tenant, at its sole cost and expense, shall promptly comply with, or cause the Operator to comply with, all Requirements foreseen and unforeseen, ordinary as well as extraordinary, which may be applicable to the Premises or any part thereof, or to the use or manner of use of the Premises or the owners, tenants or occupants thereof, even though any such Requirement may necessitate structural changes, repairs or improvements, or the use or application of portions of the Premises for compliance therewith, and even though compliance with any such Requirement may interfere with the use and enjoyment of the Premises. If any governmental license or permit or any other Requirement shall be required for the proper and lawful conduct of Tenant's business, including, without limitation, disposal of hazardous waste materials, Tenant shall be responsible for complying with such Requirement.

Section 5.03. Unlawful Use.

(a) During the Term, Tenant shall not use, occupy, permit or suffer, and shall cause the Operator not to use, occupy, permit or suffer, the Premises or any part thereof to be used or occupied, for any unlawful or illegal business, use or purpose or in any way in violation of any of the Requirements or in such

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Flatbush Delaware Holding

forth herein, the assignment, sublet or transfer of all or any part of Tenant's interest in this Lease shall not affect the remaining provisions of this Lease, shall not relieve Tenant of its payment obligation arising pursuant to Article 3(b) and all the rights and obligations of Landlord and Tenant hereunder shall remain in full force and effect.

ARTICLE 3: RENT

(a) Tenant shall pay base rent to Landlord commencing on the Commencement Date of One Dollar (\$1.00) per annum, payable annually on the anniversary of the Commencement Date. Landlord acknowledges receipt of all such base rent in advance as of the date hereof.

(b) Tenant has heretofore reviewed and approved Landlord's plans and estimated budgets and costs for construction of the Parking Deck by Landlord. Tenant shall pay to Landlord, as additional rent, a lump sum payment of Two Million Dollars (\$2,000,000) (the "Additional Rent") promptly after the date (the "Deck Completion Date") that all of the following have occurred: (i) delivery by Landlord to Tenant of (A) a temporary or permanent certificate of occupancy authorizing the use of the Parking Deck as a public parking facility and (B) certification from the Caldor Building project architect that the construction of the Parking Deck has been completed in accordance with the plans and specifications previously reviewed and approved by EDC on behalf of Tenant (the "Architect Certification"), (ii) inspection of the Parking Deck by EDC to verify such certification, provided that the failure by EDC to conduct such inspection within ten (10) business days after delivery to Tenant by Landlord of the Architect Certification shall be deemed verification of such certification, and (iii) the later of (A) the Commencement Date or (B) August 15, 1995. Based on EDC's review of the plans, budgets, and costs for the Parking Deck, Tenant believes such amount fairly represents the value of the Parking Deck.

(c) Notwithstanding anything to the contrary contained herein, it is the intention of Landlord and Tenant that the Additional Rent payable to Landlord pursuant to subparagraph 3(b) above shall be absolutely net to Landlord without any abatement, diminution, reduction or offset whatsoever, so that upon the Deck Completion Date the entire amount of the Additional Rent scheduled to be paid pursuant to subparagraph 3(b) above shall be paid by Tenant to Landlord.

ARTICLE 4: USE

Each of Landlord and Tenant acknowledges and agrees that throughout the Term of this Lease the Parking Deck shall be used solely as a no-fee public parking facility that complies with the terms and provisions of Article 9 of the Caldor Lease attached hereto as Exhibit B, the actions, if any, certified by the New York City Planning Commission in response to the ULURP and any conditions imposed by final ULURP approval, if any, and the Unified Operation Agreement.

ARTICLE 23

PERMITTED USE; NO UNLAWFUL OCCUPANCY

Section 23.1. Type of Use. Except as otherwise necessitated by the terms of any Sublease between Tenant, as sublandlord, and the City, as subtenant, effective upon the Substantial Completion Date, Tenant shall use and operate the Premises as a first-class Brooklyn office building which may include retail and parking facilities and all uses incidental thereto, in accordance with the certificate(s) of occupancy therefor and the Requirements, and for no use or purpose inconsistent with the operation of a first-class Brooklyn office building with retail and parking facilities and all uses incidental thereto.

Section 23.2. Prohibited Uses. Tenant shall not use or occupy the Premises, and neither permit nor suffer the Premises or any part thereof to be used or occupied for any unlawful or illegal business, use or purpose or for any purpose, or in any way in violation of the provisions of Section 23.1 or Article 16 hereof or the certificate(s) of occupancy for the Premises, or in such manner as may make void or voidable any insurance then in force with respect to the Premises. Immediately upon its discovery of any such unlawful or illegal business, use or purpose, or use or occupation in violation of Section 23.1 or Article 16 hereof, Tenant shall take all necessary steps, legal and equitable, to compel the discontinuance of such business or use, including, if necessary, the removal from the Premises of any Subtenants using a portion of the Premises for an unlawful or illegal business, use or purpose or in violation of Section 23.1 or Article 16 hereof. The provisions of this Section shall not restrict Tenant's rights under Article 34 hereof to contest any Requirements.

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Metrotech - Bridge St.

ARTICLE 23

PERMITTED USE; NO UNLAWFUL OCCUPANCY

Section 23.01. Type of Use. Effective upon the Substantial Completion Date, Tenant shall use and operate the Premises as a first-class Brooklyn office building with retail and parking facilities and all uses incidental thereto, in accordance with the certificate(s) of occupancy therefor and the Requirements, and for no use or purpose inconsistent with the operation of a first-class Brooklyn office building with retail and parking facilities and all uses incidental thereto.

Section 23.02. Prohibited Uses. Tenant shall not use or occupy the Premises, and neither permit nor suffer the Premises or any part thereof to be used or occupied for any unlawful or illegal business, use or purpose or for any purpose, or in any way in violation of the provisions of Section 23.01 or Article 16 hereof or the certificate(s) of occupancy for the Premises, or in such manner as may make void or voidable any insurance then in force with respect to the Premises. Immediately upon its discovery of any such unlawful or illegal business, use or purpose, or use or occupation in violation of Section 23.01 or Article 16 hereof, Tenant shall take all necessary steps, legal and equitable, to compel the discontinuance of such business or use, including, if necessary, the removal from the Premises of any Subtenants using a portion of the Premises for an unlawful or illegal business, use or purpose or in violation of Section 23.01 or Article 16 hereof. The provisions of this Section shall not restrict Tenant's rights under Article 34 hereof to contest any Requirements.

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Forest City, Jay St. Metrotech

ARTICLE 23

PERMITTED USE: NO UNLAWFUL OCCUPANCY

Section 23.01. Type of Use. Effective upon the Substantial Completion Date, Tenant shall use and operate the Premises as a first-class Brooklyn office building with retail and parking facilities and all uses incidental thereto, in accordance with the certificate(s) of occupancy therefor and the Requirements, and for no use or purpose inconsistent with the operation of a first-class Brooklyn office building with retail and parking facilities and all uses incidental thereto.

Section 23.02. Prohibited Uses. Tenant shall not use or occupy the Premises, and neither permit nor suffer the Premises or any part thereof to be used or occupied for any unlawful or illegal business, use or purpose or for any purpose, or in any way in violation of the provisions of Section 23.01 or Article 16 hereof or the certificate(s) of occupancy for the Premises, or in such manner as may make void or voidable any insurance then in force with respect to the Premises. Immediately upon its discovery of any such unlawful or illegal business, use or purpose, or use or occupation in violation of Section 23.01 or Article 16 hereof, Tenant shall take all necessary steps, legal and equitable, to compel the discontinuance of such business or use, including, if necessary, the removal from the Premises of any Subtenants using a portion of the Premises for an unlawful or illegal business, use or purpose or in violation of Section 23.01 or Article 16 hereof. The provisions of this Section shall not restrict Tenant's rights under Article 34 hereof to contest any Requirements.

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ARTICLE 23

PERMITTED USE; NO UNLAWFUL OCCUPANCY

Section 23.1 Type of Use.

Except as otherwise necessitated by the terms of any Sublease between Tenant, as sublandlord, and HRA or the City, as subtenant, effective upon the Substantial Completion Date, Tenant shall use and operate the Premises as a first-class Brooklyn office building which may include retail and parking facilities and all uses incidental thereto, in accordance with the certificate(s) of occupancy therefor and the Requirements, and for no use or purpose inconsistent with the operation of a first-class Brooklyn office building with retail and parking facilities and all uses incidental thereto.

Section 23.2 Prohibited Uses.

Tenant shall not use or occupy the Premises, or permit or suffer the Premises or any part thereof to be used or occupied, for any unlawful or illegal business, use or purpose or for any purpose (or in any way) in violation of the provisions of Section 23.1 or Article 16 hereof or the certificate(s) of occupancy for the Premises, or in such manner as may make void or voidable any insurance then in force with respect to the Premises. Immediately upon its discovery of any such unlawful or illegal business, use or purpose, or use or occupation in violation of Section 23.1 or Article 16 hereof, Tenant shall take all necessary steps, legal and equitable, to compel the discontinuance of such business or use, including, if necessary, the removal from the Premises of any Subtenants using a portion of the Premises for an unlawful or illegal business, use or purpose or in violation of Section 23.1 or Article 16 hereof. The provisions of this Section shall not restrict Tenant's rights under Article 34 hereof to contest any Requirements.

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Forest City Pierrepont

to the date on which actual payment of the sum so overdue is received by Landlord, shall become due and payable to Landlord by Tenant on demand. No failure by Landlord to insist upon the strict performance by Tenant of Tenant's obligations to pay late charges pursuant to this Section shall constitute a waiver by Landlord of its right to enforce the provisions hereof in any instance thereafter occurring. The provisions of this Section shall not be construed in any way to extend the grace or notice periods provided for in Article 26 hereof.

ARTICLE 9

Permitted Use, No Unlawful Occupancy

Section 9.01. Subject only to Unavoidable Delays (provided that, in the case of a casualty or condemnation, Tenant otherwise complies with its obligations under Articles 12 and 13 hereof), Tenant shall use and operate the Premises during the Lease Term solely for the construction and operation of an office building with retail and parking facilities and all uses incidental thereto.

Section 9.02. During the Lease Term Tenant shall not use or occupy the Premises nor permit or suffer the Premises or any part thereof to be used or occupied for any unlawful, illegal or extra-hazardous business, use or purpose or for any purpose or in any way in violation of the provisions set forth in Section 9.01 or Article 17 hereof, or in such manner as may make void or voidable any insurance then in force with respect to the Premises. Tenant, immediately upon the discovery of any such unlawful, illegal or extra-hazardous business, use or purpose or use or occupation in violation of Section 9.01 or

12/21/07

Article 17 hereof, shall take all necessary steps, legal and equitable, to compel the discontinuance thereof, including if necessary, the removal from the Premises of any Subtenant using or occupying any portion of the Premises for any such business, use or purpose. The provisions of this Section shall not restrict Tenant's rights under Section 17.02 hereof to contest the validity of any Requirements.

Section 9.03. Tenant shall not suffer or permit the Premises or any portion thereof to be used by the public without restriction or in such manner as would, with the lapse of time, impair title to the Premises or any portion thereof, or in such manner as would, with the lapse of time, create the basis for a claim or claims of adverse usage or adverse possession by the public, as such, or of implied dedication of the Premises or any portion thereof.

ARTICLE 10

Construction

Section 10.01 Tenant shall perform the Construction of the New Building as follows: Tenant shall (i) have reached the stage of Construction of the New Building at which structural steel is being installed above grade on or before the first anniversary of the Commencement Date, subject to Unavoidable Delays; (ii) thereafter continue to prosecute Construction of the New Building with diligence and continuity in accordance with a development and construction schedule approved in writing by Landlord and Tenant, subject to Unavoidable Delays; and (iii) Substantially Complete the New Building on or before March 1, 1988, subject to Unavoidable Delays (however, if

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Metrotch - Forest City Tech Plaza

ARTICLE 23

PERMITTED USE; NO UNLAWFUL OCCUPANCY

Section 23.1. Type of Use. Except as otherwise necessitated by the terms of any Sublease between Tenant, as sublandlord, and the City, as subtenant, effective upon the Substantial Completion Date, Tenant shall use and operate the Premises as a first-class Brooklyn office building which may include retail and parking facilities and all uses incidental thereto, in accordance with the certificate(s) of occupancy therefor and the Requirements, and for no use or purpose inconsistent with the operation of a first-class Brooklyn office building with retail and parking facilities and all uses incidental thereto.

Section 23.2. Prohibited Uses. Tenant shall not use or occupy the Premises, and neither permit nor suffer the Premises or any part thereof to be used or occupied for any unlawful or illegal business, use or purpose or for any purpose, or in any way in violation of the provisions of Section 23.1 or Article 16 hereof or the certificate(s) of occupancy for the Premises, or in such manner as may make void or voidable any insurance then in force with respect to the Premises. Immediately upon its discovery of any such unlawful or illegal business, use or purpose, or use or occupation in violation of Section 23.1 or Article 16 hereof, Tenant shall take all necessary steps, legal and equitable, to compel the discontinuance of such business or use, including, if necessary, the removal from the Premises of any Subtenants using a portion of the Premises for an unlawful or illegal business, use or purpose or in violation of Section 23.1 or Article 16 hereof. The provisions of this Section shall not restrict Tenant's rights under Article 34 hereof to contest any Requirements.

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Friedman's Market

performance by Tenant of Tenant's obligations to pay late charges shall constitute a waiver by Landlord of its right to enforce the provisions of this Article in any instance occurring thereafter.

ARTICLE 3

USE OF PREMISES

Section 3.01. The Premises are acknowledged to be a "Market" under former Section 259 et. seq. of the New York State Agriculture and Markets Law. Tenant shall use and occupy the Premises for the operation of a retail food market including those uses permitted under former Section 259 et. seq. and current Article 22 of the New York State Agriculture and Markets Law, as well as for those additional uses as may be permitted upon the amendment of such Article 22 at that time, and for other uses incidental thereto, including those listed on Exhibit B hereto, and for no other purpose except with the prior written consent of Landlord. No lottery, lotto or other games of chance shall be sold and no franchise operations shall be permitted on the Premises without the prior express written approval of Landlord. Tenant agrees that it will not use, and will its best efforts not to permit any person to use, the Premises or any part thereof for any use or purpose in violation of this Lease, or of any present or future governmental laws, ordinances, requirements, orders, directions, rules or regulations including, without limitation, Market Rules. "Market Rules" means the rules and regulations relating to the operation of the Premises, as the same may be issued and amended from time to time, promulgated by the Commissioner of DSBS.

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Fulton Ferry Holdings

Section 4.04. Apportionment of Imposition. Any Imposition relating to a fiscal period of the taxing authority, a part of which is included within the Term and a part of which is included in a period of time before the Commencement Date or after the Expiration Date, shall be apportioned pro rata between Landlord and Tenant as of the Commencement Date or the Expiration Date (unless the Expiration Date has occurred as a result of an Event of Default, in which case Tenant shall not be entitled to an apportionment except for the purpose of applying such amount as a credit pursuant to Section 24.03(c) (i) hereof).

Section 4.05. Taxes. Provided the City shall be Landlord, Landlord shall pay, cancel, or otherwise satisfy and discharge of record any and all Taxes on or before the due date thereof (which may be by bookkeeping entry, interdepartmental direction or other manner or procedure selected by Landlord). If the City, or any governmental or quasi-governmental entity whose ownership of the Premises renders the Premises exempt from Taxes, shall cease to be Landlord, Tenant shall pay the Taxes on or before the due date thereof. If Landlord shall have failed to pay or discharge the Taxes as required hereunder and Tenant shall not have timely commenced a proceeding to contest the same as provided in Article 35 hereof, or if Tenant shall have timely commenced such a proceeding to contest the Taxes but failure to pay the Taxes during the pendency of such proceeding will result in the imminent loss or forfeiture of the Premises and the termination of Tenant's interest under this Lease or Tenant would by reason thereof be subject to any civil or criminal penalty or liability, then Tenant may pay such unpaid Taxes together with any interest or penalties thereon and deduct such payment from the next and succeeding installments of Base Rent due until such amount is fully credited, with interest at the rate (the "City's Payment Rate") which is the lesser of the City's Borrowing Rate or the interest rate specified in Section 3-a(1) of the General Municipal Law of the State of New York, as it may be amended from time to time.

ARTICLE 5

USE AND DEVELOPMENT OF PREMISES

Section 5.01. Use of Premises.

Restrictions on Use.

(a) Tenant agrees that the Premises shall be used and occupied for cultural, educational or civic purposes and for Retail Uses during the Term in accordance with the following:

(i) Boat House. The ground floor of the Boat House shall be used and occupied by Fulton Enterprises for Retail Uses or Civic Uses and the second floor shall be used and occupied by Bargemusic, Ltd. for Civic Uses. If Fulton Enterprises operates a food establishment at the Boat House, subject to Fulton Enterprises obtaining all necessary approvals and permits from

Governmental Authorities and complying with all Requirements (x) cooking is allowed, provided no structural alterations are needed to facilitate the same, and (y) consumption of food is permitted in the Boat House;

(ii) Hose Shed. The Hose Shed shall be used by the Subtenants as a storage facility ancillary to their respective operations on the Premises; provided, however that Cell A shall be used exclusively by Fulton Enterprises and Cell B shall be used exclusively by Bargemusic, Ltd. unless otherwise agreed by Fulton Enterprises and Bargemusic, Ltd. from time to time; and

(iii) Pier. The Pier shall remain open to the general public throughout the Term for passive recreational use; provided, however, that Fulton Enterprises may use the Outdoor Seating Area for patrons, guests and visitors in connection with any Retail Use during the period from April 15th of any calendar year through November 1st of such year and, in conjunction with such use, may place portable or temporary furniture (e.g., movable tables and chairs) in the Outdoor Seating Area, provided that (x) Tenant shall cause such furniture to be removed from the Pier from and including November 2nd of any given year through the day before the following April 15th and (y) along the northerly-side of the Pier, no furniture may be placed within eight feet of the permanent benches located on the Pier, so that an eight-foot wide area is maintained for pedestrian traffic.

(b) Tenant covenants and agrees that it shall not, nor shall it permit any Subtenant to, (i) without the prior consent of Landlord, (1) post any exterior signs or advertisements on the doors or windows of the Boat House unless the full contents thereof is required by law, (2) place any flags, banners, or any other exterior display on the Boat House, (3) except for the installation of additional lighting (i.e., ambient lighting or safety lighting) and as otherwise provided in this Lease, make changes to the exterior lighting installed at the Premises prior to Tenant taking possession of the same, (4) store any equipment, freight or other property whatsoever in the public halls or other public portions of the Boat House or Hose Shed, if any, which are used in common by the Subtenants, (5) operate or make use of any audio equipment, or (ii)(1) install any type of wall, barrier, fence, plantings, railing (other than moveable posts and ropes) or curtain between the perimeter of the Outdoor Seating Area and the public area of the Pier, or (2) other than portable and removable folding umbrellas, install any type of tent, awning or other type of covering over any part of the Outdoor Seating Area. Tenant acknowledges, however, that Landlord may from time to time display a flag, banner or any other exterior display on the Premises.

(c) Tenant hereby agrees that, in accordance with the guidelines of the LPC, Tenant shall not alter, extend or perform any structural work on, nor permit any structural work to be performed on, or to be altered or extended, the exterior of the

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Gansevoort Market

(Sept 1, 1974)

This Lease shall be on the following TERMS and CONDITIONS which Lessee for itself, its successors and assigns hereby covenants, promises and agrees to and with Lessor to keep, observe and perform:

ARTICLE FIRST

Term

- A. The term of this Lease shall be for thirty (30) years and shall commence at 12:01 A. M. on the date of this Lease.
- B. The term of this Lease shall expire at 11:59 P. M. on the day immediately preceding the thirtieth (30th) anniversary of the commencement date.
- C. The term of this Lease shall be subject to cancellation and termination as hereinafter provided in this Lease.

ARTICLE SECOND

Use of Property

- A. Lessee shall use and occupy the Demised Premises only for a public market and for purposes incidental thereto. Lessee shall not use and occupy the Demised Premises for any other purpose whatsoever, except with the prior consent of the Commissioner in each instance.
- B. During the term hereof, the Certificate of Incorporation of Lessee shall provide that Lessee's primary corporate purposes are the leasing and promoting of the GANSEVOORT MARKET and Lessee shall not amend its Certificate of Incorporation with respect to its corporate purposes without the prior consent of the Commissioner in each instance.
- C. During the term hereof, Lessee shall not make any distribution out of earnings or profits which have not been expended

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Greeter Jamaica

ARTICLE 9

PERMITTED USE; UNLAWFUL OCCUPANCY

Section 9.01 Subject to the provisions of law and this Lease and, in particular, the applicable provisions of the Development Plan, Tenant shall use the Premises exclusively for lawful uses permitted as of right under the City Zoning Resolution, as amended from time to time. Tenant shall obtain the consent of Landlord or its authorized agent prior to applying for a zoning variance, special permit, zoning text or map amendment, or other discretionary authorization which would have the effect of permitting a development other than a development which is allowable as of right under applicable law.

Section 9.02 Tenant shall not use or occupy, nor permit or suffer the Premises or any part thereof to be used or occupied for any unlawful or illegal business, use, or purpose, or for any business, use, or purpose reasonably deemed by Landlord to be hazardous, or in such manner as to constitute a nuisance of any kind (public or private) or that Landlord reasonably deems offensive by reason of odors, fumes, dust, smoke, noise, or other pollution, or for any purpose or in any way in violation of the applicable Certificate of Occupancy or of any present or future governmental laws, ordinances, requirements, orders, directions, rules, or regulations (including, but not limited to the New York City Noise Control Code and regulations issued thereunder), or which may make void or voidable any insurance then in force on the Premises. Tenant shall take, immediately upon the discovery

of any such unlawful, illegal, or hazardous use, all necessary steps, legal and equitable, to compel the discontinuance of such use and to oust and remove any Subtenants guilty of such unlawful, illegal, or hazardous use.

Section 9.03 Tenant shall not suffer or permit the Premises or any portion thereof to be used by the public without restriction or in such manner as might reasonably tend to impair title to the Premises or any portion thereof, or in such manner as might reasonably make possible a claim or claims of adverse usage or adverse possession by the public, as such, or of implied dedication of the Premises or any portion thereof.

ARTICLE 10

TITLE TO IMPROVEMENTS AND EQUIPMENT

Section 10.01 Title to all Buildings, and all changes, additions, alterations, and renovations thereto, and all renewals and replacements thereof, when made, erected, constructed, installed, or placed upon or within the Premises by or for Tenant, shall be or remain in Landlord, subject to the terms, covenants and conditions of this Lease. Notwithstanding the foregoing language in this Section, however, it is understood by the parties hereto that Tenant, during the entire useful life of the Buildings, shall bear the economic risks and benefits thereof and, therefore, shall be treated as the owner of the depreciable interest therein for income tax purposes.

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(e) "Corporation Counsel" means the Corporation Counsel of The City of New York.

(f) "Demised Premises" means all the property and rights as described aforesaid in this Lease.

(g) "Herein", "hereof", "hereunder", "hereto", and words of similar import refer to this Lease as a whole and not to any particular article, section or other subdivision.

(h) "Lessee" means HUNTS POINT COOPERATIVE MARKET, INC., a New York corporation.

(i) "Lessor" means THE CITY OF NEW YORK.

(j) Reference to an officer, department, agency or other governmental unit of The City of New York includes his or its duly authorized nominees, designees or successors discharging his or its present or future duties.

(k) An article followed by a number refers to an article of this Lease.

ARTICLE 2

Use of Property

Lessee will use the demised premises for a wholesale meat market ("Market") and other related uses incidental thereto. Lessee will not use the demised premises for any other purpose except with the prior written approval of the Commissioner in each instance, which written approval shall not be unreasonably withheld. In addition to subleasing to cooperative members of Lessee for their use which will not be in violation of this paragraph, Lessee may sublease a portion of the demised premises not to exceed four (4%) per cent of the total square footage of the Market for general office use (including without limitation to accountants, lawyers, insurance and food brokers, trucking companies, data processing companies), restaurant, and lunch stand

facilities, a laundry, barber shop, work clothes and butcher supply stores, and similar type stores, primarily to service the tenants of the Market, and for no other purpose except with the prior written approval of the Commissioner in each instance, which written approval shall not be unreasonably withheld, provided, however, that Lessee shall not sublease any portion of that space to a bank except with the prior written approval of the Commissioner.

ARTICLE 3

Assignment or Mortgage

Lessee shall not at any time assign, sublet other than as provided next above, mortgage or pledge this lease or any part thereof, or in any way charge or encumber the rights or property granted herein or any part thereof, or issue or grant any permit or license to use the property or any part thereof to non-cooperative members, without the prior written consent of the Commissioner and approval of the Board of Estimate, except that the approval of the Board shall not be required for subleases. When required, such consent shall provide for the amount of rental to be charged by the Lessee for any subletting of any demised property or any part thereof or the granting of any permit to use the said demised property or any part thereof by persons other than the Lessee. It is further provided, nevertheless, that such consent of Lessor to any subletting of the demised property or any part thereof or the granting of any permission to use the said demised property or any part thereof by persons other than Lessee, except as provided in Article 2 hereof, shall in any event be upon the express condition that any rental, commissions, premiums, or other bonuses charged or received by Lessee in excess of the rental provided in the aforesaid written consent and all other profits or gains in excess of such rental realized by each such

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Hunts Point Terminal Produce Coop

of said delinquent installment shall be charged. Any such additional two percent (2%) late charge shall be payable immediately following the last day that a succeeding rental payment can be paid without incurring a late charge. In order for any late charge to be valid, Tenant must be billed therefor within six (6) months of its accrual. No failure by Landlord to insist upon the strict performance by Tenant of Tenant's obligations to pay late charges shall constitute a waiver by Landlord of its right to enforce the provisions of this Article in any instance occurring thereafter.

Section 2.04. No Abatement Or Set-Offs And Additional Rent.

Tenant shall pay the Annual Rental, as increased pursuant to this Lease, without demand or notice and without abatement, deduction, counterclaim or set-off, and will similarly pay, as additional rent, all other payments which Tenant in any of the provisions of this Lease assumes or agrees to pay, and, in the event of any non-payment thereof, Landlord shall have (in addition to all other rights and remedies) all the rights and remedies provided herein or by law in the case of non-payment of rent. All installments of Annual Rental when paid shall be made at the office of the Landlord indicated above Attn: Bureau of Accounts. Annual Rental hereunder shall be absolutely net to Landlord, and Landlord shall not be obligated to pay any costs, expenses or charges of any kind or nature relating to the Demised Premises, except as shall be hereafter provided with respect to Infrastructure.

ARTICLE 3

USE OF PREMISES

Section 3.01. Tenant shall use and occupy the Demised Premises

solely for the selling, buying, receiving, brokering, handling (including packaging) and distribution of all agricultural products and ancillary uses, including truck storage and parking, restaurants, banking facilities, barber shops, union offices, tenant offices, government offices, the sale of soft goods and hardware to Tenant, its members and their employees, and similar uses designed to serve the reasonable needs of Tenant and its members, which ancillary uses shall occupy no more than fifteen percent (15%) of the aggregate floor area of the buildings on the Demised Premises, and for no other uses. Tenant agrees that it will not use or permit any person to use the Demised Premises or any part thereof for any use or purpose in violation of this Lease, or of any present or future governmental laws, ordinances, requirements, orders, directions, rules or regulations. The Demised Premises are acknowledged to be a "market" under § 259 et seq. of the New York Agriculture and Markets Law. In exercising its regulatory authority over the Demised Premises as a market pursuant to § 704 of the New York City Charter, the Landlord shall apply only the Rules and Regulations attached hereto as Exhibit C and all amendments thereto as the same shall have been promulgated by the Commissioner of Markets in a regulatory capacity under Sections 269 and 270 of the Agriculture and Markets Law.

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can't
be that

ARTICLE 4

IMPOSITIONS AND UTILITIES

Section 4.01. Payment of Impositions. (a) Obligation to Pay Impositions. Tenant shall pay, in the manner provided in Section 4.01(c) hereof, all Impositions that at any time are, or, if the Demised Premises or any part

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damages for such Default or Event of Default, the uninsured but insurable amount of any loss and damage sustained or incurred by it and the costs and expenses of any suit in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements.

ARTICLE 23

USE OF THE PREMISES

Section 23.01. Permitted Uses. Subject to the provisions of law, the Deed, the Master Lease and this Lease, Tenant shall use and operate the Premises through the Term as and for a television, motion picture, radio, audio and visual film and tape production, broadcasting, and cable facility and ancillary office space, and ancillary parking, in accordance with the Certificate of Occupancy therefor, the Master Lease and the Deed, and for no other purpose without Landlord's prior written consent.

Section 23.02. Prohibited Uses.

(a) Tenant shall not use or occupy the Premises, and neither permit nor suffer the Premises or any part thereof to be used or occupied, for any unlawful or illegal business, use or purpose, or for any purpose, or in any way, in violation of the provisions of Section 23.01 above or Article 16 hereof or the Certificate of Occupancy for the Building, or in such manner as may make void or voidable any insurance then in force with respect to the Premises. Promptly after its discovery of any such unlawful or illegal business, use or purpose, or use or occupation in violation of the Certificate of Occupancy for the Building or this Article 23 or Article 16 hereof, or the Master Lease or the Deed, Tenant shall take all necessary steps, legal and equitable, to compel the discontinuance thereof. If any governmental license or permit shall be required for the proper and lawful conduct of Tenant's business, including, without limitation, disposal of Hazardous Substances, Tenant shall be responsible for and shall procure and maintain such license or permit. Tenant shall not cause or permit, as the result of any intentional or unintentional act or omission on the part of Tenant, its agents, employees, tenants, subtenants or other occupants of the Premises to release Hazardous Substances in or from any portion of the Premises in violation of any Environmental Laws. "Hazardous Substance" shall mean "solid waste" or "hazardous waste", "hazardous material", "hazardous substance", and "petroleum product" as defined in the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Material Transportation Act, the Federal Water Pollution Control Act and the Superfund Amendments and Reauthorization Act of 1986, any laws relating to underground storage tanks, and any similar or successor federal law, state law or local statutes and ordinances and any rules, regulations and policies promulgated thereunder, as any of such federal, state and local statutes, ordinances and regulations may be amended from time to time (collectively, "Environmental Laws"). Tenant shall take all necessary steps, legal and equitable, to compel discontinuance of such business or use, including, if necessary, the removal from the Premises of any Subtenants, occupants, invitees, licensees and permittees using a portion of the Premises for any unlawful or illegal business, use or purpose or in violation of the Certificate(s) of Occupancy for the Building or this Article 23 or Article 16 hereof, or the Master Lease or the Deed.

(b) Tenant shall not suffer or permit the Premises or any portion thereof to be

used by the public without restriction or in such manner as might reasonably tend to impair title to the Premises or any portion thereof, or in such manner as might reasonably make possible a claim or claims of adverse usage or adverse possession by the public, as such, or of implied dedication of the Premises or any portion thereof.

ARTICLE 24

EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES, ETC.

Section 24.01. Definition. Each of the following events shall be an "Event of Default" hereunder:

(a) if Tenant shall fail to make any payment (or any part thereof) of Rental as due hereunder and such failure shall continue for a period of ten (10) days after notice thereof from Landlord;

(b) if Tenant shall fail to Commence Construction of the Building on or before the Construction Commencement Date (subject to the period of Unavoidable Delays);

(c) if Tenant shall fail to Substantially Complete the Construction of the Building, on or before the Scheduled Completion Date (subject to the period of Unavoidable Delays);

(d) if Tenant shall enter into (or permit to be entered into) an assignment, Mortgage or Sublease or any other transaction conveying any interest in this Lease or the Premises without compliance with the provisions of this Lease;

(e) if Tenant shall fail to observe or perform one or more of the other terms, conditions, covenants or agreements of this Lease and such failure shall continue for a period of twenty (20) days after Landlord's notice thereof to Tenant specifying such failure (unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed within such twenty (20) day period, in which case no Event of Default shall be deemed to exist as long as Tenant shall have commenced curing the same within the twenty (20) day period and shall diligently and continuously prosecute the same to completion);

(f) to the extent permitted by law, if Tenant shall admit, in writing, that it is unable to pay its debts as such become due;

(g) to the extent permitted by law, if Tenant shall make an assignment for the benefit of creditors;

(h) to the extent permitted by law, if Tenant shall file a voluntary petition under Title 11 of the United States Code or if such petition shall be filed against Tenant and an order for relief shall be entered, or if Tenant shall file a petition or an answer seeking, consenting to or acquiescing in, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, or

or premiums not paid, but Landlord also shall be entitled to recover, as damages for such breach, the uninsured amount of any loss and damages, costs and expenses of suit, including reasonable attorneys' fees, suffered or incurred by reason of damage to or destruction of the Premises.

ARTICLE 22
NO ABATEMENT OF RENTAL

Except as may be otherwise expressly provided herein, there shall be no abatement, diminution or reduction of Rental payable by Tenant hereunder or of the other obligations of Tenant hereunder under any circumstances.

ARTICLE 23
PERMITTED USE; NO UNLAWFUL OCCUPANCY

Section 23.01. Subject to the provisions of law and this Lease, Tenant shall use the Premises as and for (1) a motion picture, television, audio and visual film production facility; (2) public educational and cultural facilities related to motion picture and television film production; and (3) ancillary and associated uses to the uses specified in (1) and (2) above, including, without limitation, office space, in accordance with the certificate of occupancy therefor, and for no other purpose without Landlord's consent which shall not be unreasonably withheld or delayed.

Section 23.02. Tenant shall not use or occupy, nor permit or suffer the Premises or any part thereof to be used or occupied for any unlawful or illegal business, use or purpose, or for any business, use or purpose reasonably deemed by Landlord to be hazardous, or in such manner as to constitute a nuisance of any kind (public or private) or that Landlord reasonably deems offensive by reason of odors, fumes, dust, smoke, noise or other pollution, or for any purpose or in any way in violation of the certificate of occupancy or of any present or future governmental laws, ordinances, requirements, orders, directions, rules or regulations (including, but not limited to the New York City Noise Control Code and regulations issued thereunder), or which may make void or voidable any insurance then in force on the Premises. Tenant shall take immediately upon the discovery of any such unlawful, illegal or hazardous use all necessary steps, legal and equitable, to compel the discontinuance of such use and to oust and remove any Subtenants guilty of such unlawful, illegal or hazardous use.

Section 23.03. Tenant shall not suffer or permit the Premises or any portion thereof to be used by the public without restriction or in such manner as might reasonably tend to impair title to the Premises or any portion thereof, or in such manner

as might reasonably make possible a claim or claims of adverse usage or adverse possession by the public, as such, or of implied dedication of the Premises or any portion thereof.

ARTICLE 24
EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS,
REMEDIES, ETC.

Section 24.01. Each of the following events (except as limited by Sections 10.03, 42.20 and 42.22 hereof) shall be an "Event of Default" hereunder:

(a) if Tenant shall fail to pay any installment of Base Rent, Tax Rent or Additional Rent after same shall be due and payable and within ten (10) days after notice thereof from Landlord to Tenant;

(b) if Tenant shall fail to make any other payment of Rental required to be paid by Tenant hereunder for a period of ten (10) days after notice thereof from Landlord to Tenant;

(c) if Tenant shall fail to observe or perform one or more of the other terms, conditions, covenants or agreements of this Lease and such failure shall continue for a period of twenty (20) days after written notice thereof by Landlord to Tenant specifying such failure (unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot by their nature reasonably be performed, done or removed, as the case may be, within such twenty (20) day period, in which case no Default shall be deemed to exist as long as Tenant shall have commenced curing the same within such twenty-day period and shall diligently and continuously prosecute the same to completion);

(d) if Tenant shall vacate or abandon the Premises or any substantial portion thereof;

(e) if this Lease or the estate of Tenant hereunder shall be assigned, subleased, transferred, mortgaged or encumbered without compliance with the provisions of this Lease applicable thereto;

(f) if a motion picture, television, audio and visual production facility shall not be continuously operating after Completion of the Construction and Tenant shall not be diligently pursuing subtenants to use the facility, except for Unavoidable Delays and periods in which Restoration is being diligently pursued. For the purposes of the previous sentence, "continuously operating" shall mean that the sound stages located on the Premises after Completion of the Construction during any Lease Year shall have been in use thirty-three and

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substantially completed and is suitable for the purpose of this letting; or

(2) on the date when Lessee commences to use these premises or any portion thereof in connection with its business, whichever of the dates set forth in (1) or (2) above is earlier, subject to termination and cancellation as hereinafter provided; provided, however, that Lessee may enter the premises for the purposes of performing the work referred to in Article "Eight" hereof and of installing fixtures and appliances prior to the commencement of the term of this lease.

ALL that certain property, situate in the Borough of the Bronx, County of Bronx, City and State of New York, as described in Exhibit "A", attached hereto and made a part hereof, and as shown outlined in red on the print attached hereto and made a part hereof.

On the following TERMS and CONDITIONS which Lessee for itself, its successors and assigns hereby covenants, promises and agrees to and with Lessor to keep and perform.

Use of Property

FIRST: Lessee will use the demised premises for the manufacture, processing, and distribution, of frozen and other foods, storage incidental thereto, and related uses incidental or accessory thereto. Lessee will not use the demised premises for any other purposes except with the prior written approval of the Administrator in each instance.

Lessor makes no representation as to the legality of the use of the demised premises for Lessee's intended purpose. In the event any use or proposed use is declared illegal by a court of competent jurisdiction, Lessee covenants and agrees that Lessor, its agents, officers,

employees and the Administrator, or any person whatsoever, shall not be liable for any damage arising out of or related to such illegal use or proposed use.

Assignment
or
Mortgage

SECOND: Lessee shall not at any time assign, sublet, mortgage or pledge this lease or any part thereof, or in any way charge or encumber the rights or property granted herein, or any part thereof, or issue or grant any permit or license to use the property or any part thereof, without the prior written consent of the Administrator, and approval of the Board of Estimate, except that the approval of the Board shall not be required for subleases. Any such consent shall provide for the amount of rental to be charged by the Lessee for any subletting of the demised property or any part thereof or the granting of any permit to use the said demised property or any part thereof by persons other than the Lessee. It is further provided, nevertheless, that such consent of Lessor to any subletting of the demised property or any part thereof or the granting of any permission to use the said demised property or any part thereof by persons other than Lessee, shall in any event be upon the express condition that any rental, commissions, premiums, or other bonuses charged or received by Lessee in excess of the rental provided in the aforesaid written consent and all other profits or gains in excess of such rental realized by each such subletting shall be deemed and considered to be received for Lessor and shall be automatically the property of Lessor, and

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Lafarge Building Materials

ARTICLE 9

USE OF PREMISES

Section 9.01. Permitted Use. Tenant shall use and occupy the Premises for the development, storage and use of a maritime-dependent distribution facility for cementitious materials, aggregate, gypsum-related products and other products and materials used in the construction industry. Tenant shall not use the Premises or permit the Premises to be used for any other purpose except with the prior written approval of Landlord, to be given at Landlord's sole discretion, which approval shall not be unreasonably delayed. Landlord represents that Tenant's intended use does not violate zoning or other restrictions imposed by existing law, rules and regulations or any such laws, rules or regulations presently under consideration by the City.

Section 9.02. Requirements for Conduct of Business. This Lease does not grant any permission, license or authority for the performance or conduct of any business, operation or use which may require any permit or approval from any public or private party. Tenant shall obtain and maintain in full force and effect during the Term at its sole cost and expense any governmental license or permit imposed or mandated by any Governmental Authority in connection with Tenant's trade or business and the use of the Premises, and shall comply with any other Requirement for the proper and lawful operation of the Premises by Tenant for the purposes authorized by this Lease.

Section 9.03. Unlawful Use. Tenant shall not use or occupy the Premises, or permit or suffer the Premises or any part thereof to be used or occupied, for any unlawful, illegal, or hazardous business, use or purpose or in any way in violation of any Requirement or this Lease, or in such manner as may make void or voidable any insurance then in force with respect to the Premises. Immediately, upon the discovery of any such unlawful, illegal or hazardous business, use or purpose, Tenant shall take all necessary steps, legal and equitable, to compel the discontinuance thereof, including if necessary, the removal from the Premises of any subtenant using any portion of the Premises for any such business, use or purpose. Tenant shall not keep, or permit to be kept, on the Premises any article, object, item, substance or thing that may cause, damage to the Premises or any part thereof, or that may constitute a public or private nuisance, or any other article, object, item, substance or thing, except as now or hereafter permitted by the Fire Department, Board of Fire Underwriters, Fire Insurance Rating Organization and other authority having jurisdiction over the Premises.

Section 9.04. No Representations or Warranty by Landlord.

(a) Except as provided in Section 9.01 above, neither Landlord, Lease Administrator nor Apple has made or makes any representation or warranty as to the condition of the Premises or its suitability for any particular use or as to any other matter affecting this Lease or the Premises.

(b) Except as provided in Section 9.01 above, neither Landlord, Lease Administrator nor Apple has made or makes any representation as to the legality of the use of the Premises for Tenant's intended purposes; it being understood, however, that neither Landlord, Lease Administrator nor Apple have any knowledge or information that the intended or

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permitted use of the Premises hereunder is contrary to law. If any use or proposed use is determined to be illegal by a court of competent jurisdiction, subject to the terms hereof Tenant agrees that (i) neither Landlord, Lease Administrator nor Apple, nor any of their respective directors, officers, employees or agents shall be liable for any damages incurred by Tenant or any third party as a result of, or in connection with such determination, or illegal use or proposed use, and (ii) Tenant shall defend, indemnify and hold harmless each of Landlord, Lease Administrator and Apple, and their respective directors, officers, employees and agents against any cost, liability or expense incurred by any of them in connection with such determination, or illegal use or proposed use in accordance with Article 23 hereof.

ARTICLE 10

EASEMENTS

Section 10.01. Municipal Easement. Landlord hereby reserves for itself and Lease Administrator, and their respective officers, employees, agents, servants, representatives and invitees, an easement for ingress and egress to, from and over the Premises for the following purposes: (i) to maintain, replace and repair existing municipal facilities located within the Premises, if any; (ii) to maintain its fire communications facilities, sewers, water mains and street sub-surface below the Premises, if any; and (iii) to access the bulkhead area and the pier and other facilities adjacent to the Premises.

Section 10.02. Landlord, and Lease Administrator and their respective designees shall have the right at all times to enter upon the Premises with workers, materials and equipment to construct, reconstruct, lay, relay, maintain, operate and inspect Landlord's and/or Lease Administrator's facilities in or adjacent to the Premises. The easement reserved hereby is in addition to any other easement, right-of-way or other right that constitutes a Title Matter as described in Exhibit B hereto.

Section 10.03. Neither Landlord's nor Lease Administrator's entry onto or permitted use of the Premises shall materially interfere with Tenant's use of the Premises.

ARTICLE 11

INSURANCE

Section 11.01. Insurance Requirements. At all times during the Term, Tenant, at its sole cost and expense, shall carry and maintain in full force and effect, or cause to be carried and maintained in full force and effect, insurance coverage of the following types or insuring the described risks and in the minimum limits set forth below:

(a) Liability Insurance. Commercial General Liability insurance protecting against all liability with respect to the Premises and the operations related thereto, whether conducted on or off the Premises, for bodily injury, death, personal injury and property damage, in an amount not less than Three Million Dollars (\$3,000,000) per occurrence, and designating Tenant as "named insured," and Landlord, Lease Administrator and Apple as "additional

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Camov Associates

Landlord on demand. Any payment or performance by Landlord pursuant to the foregoing provisions of this Article shall not be nor be deemed to be a waiver or release of the breach or default of Tenant with respect thereto or of the right of Landlord to terminate this Prime Lease, institute summary proceedings and/or take such other action as may be permissible hereunder if an Event of Termination by Tenant shall have occurred.

ARTICLE 7

PERMITTED USE; NO UNLAWFUL OCCUPANCY

Section 7.01. Subject to the provisions of law and this Prime Lease, Tenant shall sublease the Premises to the Developer for development in accordance with the Development Lease incorporated herein in its entirety as the principal operating agreement for the Premises. Tenant shall not consent (pursuant to Section 9.01 of the Development Lease) to any use of the Premises not permitted in an M1-1 district without Landlord's consent.

Section 7.02. During the Term Tenant shall not use or occupy the Premises, permit or suffer the Premises or any part thereof to be used or occupied for any unlawful, illegal extra-hazardous business, use or purpose or in any way in violation of any Requirements or in such manner as may make void or voidable any insurance then in force with respect to the Premises. Tenant, immediately upon the discovery of any such unlawful, illegal or extra-hazardous business, use or purpose shall take all necessary steps, legal and equitable, to compel the discontinuance thereof, including if necessary, the removal from the Premises of any

Subtenant using any portion of the Premises for any such business, use or purpose.

Section 7.03. Tenant shall not suffer or permit the Premises or any portion thereof to be used by the public without restriction or in such manner as would, with the lapse of time, impair title to the Premises or any portion thereof, or in such manner as would, with the lapse of time, create the basis for a claim or claims of adverse usage or adverse possession by the public, as such, or of implied dedication of the Premises or any portion thereof.

ARTICLE 8

EVENTS OF TERMINATION

Section 8.01. Each of the following events shall be an "Event of Termination" hereunder:

(a) if Tenant shall fail to pay any installment of Prime Lease Base Rent within fifteen (15) days after same shall be received by Tenant and thus due and payable;

(b) if Tenant shall fail to make any other payment required to be paid by Tenant hereunder for a period of fifteen (15) days after notice thereof from Landlord to Tenant;

(c) if Tenant shall fail to observe or perform one or more of the other terms, conditions, covenants or agreements of this Prime Lease and such failure shall continue for a period of thirty (30) days after written notice thereof by Landlord to Tenant specifying such failure (unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot

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ARTICLE 5

CONDITIONS PRECEDENT

Section 5.01. Conditions Precedent. Notwithstanding anything contained in this Lease to the contrary, Landlord and Tenant hereby agree that the obligation of Landlord to deliver the Combined Premises to Tenant pursuant to this Lease, and the other obligations of Landlord under of this Lease are conditioned upon and subject to:

(a) Mayoral Authorization. The issuance of a Mayoral Authorization pursuant to Section 384(b)(4) of the Charter of the City of New York authorizing the City to lease the Combined Premises to EDC for the purposes contemplated by this Lease.

(b) Governmental Review and Approval. Approval of Tenant in accordance with the applicable governmental review and approval process including, but not limited to, approval of Tenant based upon the information provided in the required VENDEX clearance forms, Business Disclosure Statement, or Business Entity Questionnaire and the Principal Questionnaire, whichever is applicable. The aforementioned documents shall be completed by Tenant and submitted to Landlord prior to or upon execution of this Lease. In the event, subsequent to the execution of this Lease, approval is not granted by the applicable authority, this Lease shall be terminated upon thirty (30) days' notice to Tenant. Tenant represents that the information provided in the required VENDEX clearance forms is true and accurate. In the event there is a material change in the information provided therein, Tenant shall notify Lease Administrator within fifteen (15) days of such change.

(c) Assignment Agreement. Execution and delivery by EDC and Tenant of the Assignment Agreement.

(d) Annual Base Rent. Payment by Tenant to Lease Administrator of Annual Base Rent for the first month of the Term.

(e) Security Deposit. Payment by Tenant of the Security Deposit

(f) Administrative Fee. Payment by Tenant of an Administrative Fee in the amount of Forty Thousand Dollars (\$40,000).

ARTICLE 6

USE

Section 6.01. Permitted Use. Subject to all Requirements, Tenant may enter upon, occupy and use the Combined Premises solely for the purposes of operating and maintaining a Parking Facility for use by a fleet of school buses of approximately three hundred forty five (345) in number and by Tenant's employees and for no other use or purpose.

Section 6.02. Licenses and Permits. This Lease does not grant authority for the performance of any construction work or any other operation or use which may require any permit or approval from any Governmental Authority or private party. Tenant shall obtain and

maintain in full force and effect during the Term any governmental license or permit, and shall comply with any other Requirement imposed or mandated by any Governmental Authority, for the proper and lawful operation of the Combined Premises by Tenant for the purposes authorized by this Lease.

Section 6.03. **Prohibited Uses.** During the Term, Tenant shall not use, occupy, permit or suffer, the Combined Premises or any part thereof to be used or occupied, for any unlawful or illegal business, use or purpose, or in any way in violation of any term, covenant or condition of this Lease, or in such manner as may make void or voidable any insurance policy required to be maintained pursuant to **Section 13.1** hereof. Immediately, upon the discovery of any such unlawful or illegal business, use or purpose, or violation of any of terms, covenants or conditions of this Lease, or such other use as may void or make voidable any insurance required hereby, Tenant shall take all necessary and appropriate action, legal and equitable, to discontinue or compel the discontinuance thereof. Tenant shall not keep, or permit to be kept, on the Combined Premises, or any part thereof any article, object, item, substance or thing that may cause, in Landlord's sole reasonable discretion, damage to the Combined Premises or any part thereof, or that may constitute a public or private nuisance, or any other article, object, item, substance or thing, except as now or hereafter permitted by the Fire Department, Board of Fire Underwriters, Fire Insurance Rating Organization and other authority having jurisdiction over the Combined Premises or any part thereof.

Section 6.04. **No Representations or Warranty by Landlord.**

(a) Neither Landlord, Lease Administrator nor Apple has made or makes any representation or warranty as to the condition of the Combined Premises or its suitability for any particular use or as to any other matter affecting this Lease or the Combined Premises.

(b) Neither Landlord, Lease Administrator nor Apple has made or makes any representation as to the legality of the use of the Combined Premises for Tenant's intended purposes. If any use or proposed use is determined to be illegal by a court of competent jurisdiction, Tenant agrees that (1) neither Landlord, Lease Administrator, nor Apple, nor any of their respective directors, officers, employees, agents, servants, representatives and invitees shall be liable for any damages incurred by Tenant or any third party as a result of, or in connection with such determination, or illegal use or proposed use, and (2) Tenant shall defend, indemnify and hold harmless each of Landlord, Lease Administrator Apple and their respective directors, officers, employees and agents against any cost, liability or expense incurred by any of them in connection with such determination, or illegal use or proposed use in accordance with, **Section 6.3** hereof.

ARTICLE 7

EASEMENTS

Section 7.01. **Municipal Easement.** Landlord hereby reserves for itself, Lease Administrator and Apple, and their respective directors, officers, employees, agents, servants, representatives and invitees, with respect to the Combined Premises an easement and a right of access: (a) to enter upon the Combined Premises to maintain, replace and repair existing

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ARTICLE 4

Impositions

Section 4.01. Lessee shall and will, during the Term Hereof, pay and discharge, as Additional Rent, all Impositions, including but not limited to all such taxes (except occupancy taxes and real estate taxes on the land of the Demised Premises), charges for public utilities, charges for water, sewer rents and charges and all other license and permit fees and all other governmental charges and payments, extraordinary as well as ordinary, whether foreseen or unforeseen, as shall, during the Term Hereof, be laid, levied, assessed or imposed upon, or become due and payable, or liens upon the said Demised Premises, or any part thereof, or any appurtenances thereto, the leasehold estate hereby created, the sidewalks or streets in front of or adjoining the Demised Premises or any vault or vaults thereunder, if any, by virtue of any present or future law, order or ordinance of the United States of America, or of the City, County or local government, or of any department, office or bureau thereof, or any other governmental authority. The provisions of Article 3, Section 3.03 shall be applicable to any Impositions.

Section 4.02. Nothing herein contained shall require Lessee to pay municipal, state or federal income taxes, capital levy, estate, succession, inheritance, corporate franchise or transfer taxes of Lessor.

ARTICLE 5

Use; Construction; Alterations and Additions; Non-Discrimination

Section 5.01. It is understood that the letting of the Premises by the City of New York and the authorization of its use by the Board of Estimate of The City of New York, were for the express purpose of creating a light industrial facility to supply aviation services within the City of New York, in order to promote and increase employment opportunities within The City of New York. It is, therefore, specifically agreed that any sublease of the Demised Premises or any assignment of this Lease, except to a Leasehold Mortgagee as security, shall be solely for the purposes of providing air cargo services, air commissary services, other similar air services and for ancillary aviation industry

purposes, and the parties agree that the ~~Demised~~ Premises shall be subleased or assigned for and occupied for such purposes only.

It is further understood that this Lease to Lessee is made for purposes of development only and that Lessee shall use the Demised Premises ~~for no purposes other than the development thereof~~ in accordance with this Article and the subletting

thereof in accordance with Article 13 of this Lease, to occupants who will use and occupy the same for the purposes set forth in this Section.

Section 5.02.

- (1) (a) Lessee agrees that the execution of this Severance Lease No. 3 is conditioned upon the due and timely financing, construction and completion of the first class industrial structure soon to be constructed pursuant to the aforementioned Plans and Specifications duly approved by Lessor, and as set forth in Schedules ~~XXX~~ "B" and "C" annexed hereto and made a part hereof, on the Demised Premises shown and described on Schedule "A" hereto annexed, and to be known as Building No. 3. For the purposes of this Section "Timely Completion" shall mean the substantial completion of the construction of said building soon to be started, within two (2) years, including external roadways, pavements and ramps.

For the purposes of this Section "Substantial Completion" shall mean substantial construction and completion of said structure in such manner that same can be fully occupied and used by Lessee without interference with its operations, and that a Temporary Certificate of Occupancy shall have been issued permitting Lessee to use and occupy the entire Demised Premises for the purposes intended.

Lessee further agrees, subject to the occurrence of causes not within its control, to complete each and every further item of work necessary to fully complete said structures within two (2) years after the commencement of the Term Hereof as above provided for, and will obtain a permanent Certificate of Occupancy permitting Lessee to use and occupy the entire Demised Premises for the purposes intended, within sixty (60) days thereafter.

- (b) Lessee shall, in accordance with its approved Plan, install on the premises hereby demised in this Severance Lease No. 3, all necessary site improvements, including, without limitation, sub-surface work, fill, grading, piling, streets, sanitary and storm water sewers, sewer manholes, junction chambers, basins and culverts, street lighting, water mains and accessory facilities, police telephone and fire alarm systems and landscaping. Any sublease given by Lessee hereunder, shall provide that no part of the Demised Premises may be used for outside loading, outside parking of trucks or outside storage. Upon the prior written consent of Lessor and the Commissioner

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Maramont Corporation

payable to Landlord as liquidated damages for the administrative costs and expenses incurred by Landlord by reason of Tenant's failure to make prompt payment and said late charges shall be payable by Tenant without notice or demand. No failure by Landlord to insist upon the strict performance by Tenant of Tenant's obligations to pay late charges shall constitute a waiver by Landlord of its right to enforce the provisions of this Article in any instance thereafter occurring.

Section 2.05 Tenant will pay the Annual Rental and the PILOT, as increased pursuant to this Lease, without demand or notice and without abatement, deduction or set-off, and will similarly pay, as additional rent, all other payments which Tenant in any of the provisions of this Lease assumes or agrees to pay, and, in the event of any non-payment thereof, Landlord shall have (in addition to all other rights and remedies) all the rights and remedies provided herein or by law in the case of non-payment of rent.

ARTICLE 3

USE OF PREMISES

Section 3.01 Tenant shall use and occupy the Demised Premises solely for a wholesale food processing and distribution facility and market uses described in the New York State Agriculture and Market Law §259 and for no other use. Tenant may deal in other commodities related to the uses described herein provided that such other commodities shall

not exceed fifteen percent (15%) of the total volume of Tenant's annual sales. Tenant shall not use any part of the Demised Premises as a commercial parking lot or charge any fees for parking on the Demised Premises. Tenant agrees that it will not use or permit any person to use the Demised Premises or any part thereof for any use or purpose in violation of this Lease, the certificate of completion, or of any present or future governmental laws, ordinances, requirements, orders, directions, rules or regulations.

ARTICLE 4

UTILITIES

Section 4.01 Tenant shall be responsible for obtaining all utility services necessary for the proper operation and functioning of the Demised Premises, including, without limitation, gas, water, heat, electricity, air conditioning and telephone service. Tenant shall pay directly to the companies supplying such utility services all charges for such utility services, as the same shall become due. Tenant shall install meters for all such utility services.

Section 4.02 Landlord shall have no obligation to provide any utility services to the Demised Premises and Landlord shall have no responsibility or liability in the event any such utility services are not provided to the Demised Premises.

Section 4.03 Tenant shall deposit upon execution and delivery hereof, with the City Collector, the sum of \$1000

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ARTICLE 23

PERMITTED USE; NO UNLAWFUL OCCUPANCY

Section 23.01. Permitted Uses.

(a) The Premises shall be used and operated by Tenant, effective upon the Substantial Completion Date, as a multilevel entertainment and retail facility, including a multiplex cinema as well as retail stores and other entertainment facilities (which may include restaurants, bars, food and beverage services and the Parking Garage). Tenant may: (i) use the underground portion of the Building for office, retail and/or storage facilities. In any event, the Premises shall be used only in accordance with the TCO(s) for the New Building, and for no other use or purpose inconsistent with the uses set forth above.

(b) Prior to beginning excavation for the foundation of the New Building, Tenant may at its option use the Premises for surface parking. If Tenant so uses the Premises, it shall pay to Landlord on the first day of each calendar month 25% of any net profit from parking activity actually received by Tenant or an Affiliate during the preceding calendar month. Such payments shall be part of Rental. "Net profit" for this purpose shall mean the excess of revenues of Tenant and Affiliate from the parking operation over the following and only the following expenses of Tenant and Affiliates of maintaining the Premises during the pre-excavation period: (i) PILOT, (ii) erection of a project sign on the Premises and (iii) expenses of the parking operation itself such as wages for attendants, insurance particular to the parking operation, etc. The profit sharing provisions of this paragraph (b) shall with respect to profits from pre-construction surface parking supersede the provisions of Section 3.03(b) hereof, so that no annual payment will be due in confection therewith.

(c) Tenant shall develop and operate the Premises in accordance with the requirements of the Urban Renewal Plan, a copy of which is annexed hereto as Exhibit H and made a part hereof. Notwithstanding any provision to the contrary in this Lease or in any other document, the requirements of this Section 23.01(c) shall survive until the date upon which the Plan expires by its own terms.

Section 23.02. Prohibited Uses. Tenant shall not use or occupy the Premises, and neither permit nor suffer the Premises or any part thereof to be used or occupied for, any unlawful or illegal business, use or purpose, or for any purpose, or in such manner as to constitute a nuisance of any kind (public or private), or in any way in violation of the provisions of Section 23.01 above or Article 16 hereof or any TCO for the Premises, or which involves a dangerous or noxious trade or business, or arcades (except as ancillary to a cinema), slot machines games rooms, billiard halls, gun repair, pornography or other similar adult uses or physical culture establishments of any kind (other than bona fide health and fitness clubs), or for discotheques or cabarets or in such manner as may make void or voidable any insurance then in force with respect to the Premises. Promptly after its discovery of any such unlawful or illegal business, use or purpose, or use or occupation in violation of any TCO for the Premises or this Article 23 or Article 16 hereof, Tenant shall take all necessary steps, legal and equitable, to compel discontinuance of such business, use or purpose, including, if necessary, the removal from the Premises of any Subtenants using a portion of the Premises for any unlawful or illegal

business, use or purpose or in violation of any TCO for the Premises or Section 23.01 or Article 16 hereof.

liability incurred by Tenant to Landlord under this Lease, provided that the application of any portion of the Security Deposit to the cure of any such Default or Event of Default shall not be deemed to have cured such Default or Event of Default unless the entire outstanding amount due or damages suffered by Landlord, as the case may be, shall have been paid in full.

Section 7.05. Return of Security Deposit. The Security Deposit or such portion thereof remaining after any application of the Security Deposit in accordance with Section 7.04, shall be returned to Tenant within ninety (90) days after the Expiration Date or sooner termination of this Lease, together with interest, if any, accrued thereon, less an amount, to be retained by Landlord, equal to one percent (1%) per annum of the amount of the Security Deposit.

ARTICLE 8

INTENTIONALLY OMITTED

ARTICLE 9

USE OF PREMISES

Section 9.01. Permitted Use.

(a) Tenant shall use and occupy the Premises for the operation and maintenance of a public access area and restaurant. The restaurant comprises two barges and an upland structure. The two barges may be used for eating; drinking and incidental live or recorded musical entertainment. The barges may be used for special events and catering at which live musical entertainment or recorded music and dancing shall be allowed without restriction provided that at such special events and catering admission to that barge shall not be to the general public, but only to specific groups by reservation. All musical entertainment shall further be conditioned upon compliance with the provisions of Article 42 of this Lease. Any other mode of entertainment shall require the prior approval of Landlord, which approval shall not be unreasonably withheld, delayed or conditioned, provided such entertainment does not constitute a nuisance or disturb any residential or commercial tenants in areas surrounding the Premises. Such approval shall be deemed granted if Landlord fails to respond to any written requests for approval within ten (10) days after such requests is made. Advertising for special events and catering shall not be to the general public but only to specific groups. Neither barge shall be used as a membership club. Tenant shall not use the Premises or permit the Premises to be used for any other purpose except with the prior written approval, which approval Landlord may grant or refuse in its sole discretion. Tenant shall not permit any of its agents, employees, licensees or invitees to deprive any member of the public access to the public areas of the Premises.

(b) Tenant shall be permitted to use the area of the Premises designated as the "Parking Area" on the Sullivan Work Diagram that is attached hereto as Exhibit F (the "Parking Area") for parking of automobiles and other motor vehicles of its customers and suppliers.

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(c) Landlord makes no representation as to the legality of the use of the Premises for Tenant's intended purposes. If any use is determined to be illegal by a court of competent jurisdiction, Tenant agrees that Landlord, Lease Administrator, Apple and their respective agents, officers, employees, or any person whatsoever, shall not be liable for any damages arising out of or related to such illegal use or proposed use.

(d) In the event any use is determined to be illegal by a court of competent jurisdiction, the Tenant may, may either cancel this Lease or cure such illegality within one hundred and eighty (180) days after final determination by such court of competent jurisdiction. Landlord will agree to cooperate with Tenant in such process but at Tenant's sole cost and expense.

(e) In the event of any such determination of illegality by final order of a court of competent jurisdiction, the Tenant may terminate this Lease by giving notice of termination to the Landlord within one hundred eighty (180) days after a final order of a court making such determination and Tenant shall have no further obligations under this Lease after the date specified in such notice of termination, except for the accrued obligations and those obligations which survive the termination or expiration of this Lease.

(f) The parties agree, as a condition of this Lease, that a portion of the Premises designated as a public access area on the diagram attached hereto as Exhibit F, which area shall not be less than 12,000 square feet (the "Public Access Area"), shall, at all times during the Term, be made available for and used exclusively as a public access area for use by the general public (unless and to the extent such access is temporarily prevented or limited and the party responsible for any such prevention or limitation of access has obtained all necessary governmental consents and approvals) provided, however, that the Public Access Area shall not be used for commercial purposes, except in connection with any such temporary prevention or limitation described above. The Public Access Area shall be constructed and maintained during the entire Term by Tenant at its sole cost and expense. It shall be available for use by the general public in such a manner as will conform to that lawful usage made of all public streets, sidewalks, and areas in The City of New York between the hours of 6:00 AM and 12:00 midnight, provided that such usage shall not be detrimental to or unduly interfere with neighboring residents or the operation of the restaurant. Tenant shall have at least one employee on the Premises at all times.

Section 9.02. Requirements for Conduct of Business. This Lease does not grant any permit, license or authority for the performance or conduct of any business, operation or use which may require any permit or approval from any public or private party. Tenant shall obtain and maintain in full force and effect during the Term at its sole cost and expense any governmental license or permit imposed or mandated by any Governmental Authority in connection with Tenant's trade or business and the use of the Premises, and shall comply with any other Requirement for the proper and lawful operation of the Premises by Tenant for the purposes authorized by this Lease.

Section 9.03 Use of Bulkhead for Dockage Purposes. Tenant shall be permitted to use the bulkhead area located north of the Barges for purposes of docking of vessels for its customers upon the terms and conditions set forth below. Tenant specifically agrees that the bulkhead area south of the Barges shall not at any time be used for the docking of any vessels.

(a) Transient Usage. The dockage of vessels along the bulkhead shall be on a transient basis only. "Transient" is defined as (i) the landing of vessels of restaurant customers for a period not to exceed six (6) hours, (ii) the landing of on-board catering vessels for a period not to exceed six (6) hours, (iii) the overnight berthing of vessels for a period not to exceed one week, and (iv) vessels whose length exceeds three hundred (300) feet shall berth for a period not to exceed four (4) days. Landing is herein defined as an opportunity to embark and disembark passengers.

(b) US Coast Guard Certificate of Inspection. If required by applicable Requirements, all vessels that dock along the bulkhead for the purpose of boarding or disembarking passengers for on-board catering from the Premises must show proof of current U.S. Coast Guard Certificate of Inspection as required.

(c) No Ferry-Related Vessels. The use of the bulkhead shall be restricted to non-ferry related vessels. Ferry-related vessels shall be defined as any vessels that provide public transportation between two points for a fee. Ferry related vessels shall not include water shuttle service that is exclusively reserved for patrons of the Premises or the River Café or other establishments owned or leased by Tenant or an Affiliate.

(d) Public Access. At no time shall vessels berthed along the bulkhead or activities relating to said vessels unreasonably limit or block public access to the esplanade, unless, the party responsible for such limitation or blockage has obtained all necessary governmental consents, and approvals.

(e) Emergency Berthings. The above conditions do not apply to vessels using the bulkhead as a result of an emergency, or government sponsored or authorized events, or other similar type waterfront activities.

Section 9.04 Unlawful Use. Tenant shall not use or occupy the Premises, or permit or suffer the Premises or any part thereof to be used or occupied, for any unlawful, illegal, or hazardous use or purpose or in any way in violation of any Requirement or this Lease, or in such manner as may make void or voidable any insurance then in force with respect to the Premises. Immediately, upon the discovery of any such unlawful, illegal business, use or purpose, Tenant shall take all necessary steps, legal and equitable, to compel the discontinuance thereof, including if necessary, the commencement and continuance of eviction proceedings against any subtenant using any portion of the Premises for any such business, use or purpose. Tenant shall not keep, or permit to be kept, on the Premises any article, object, item, substance or thing that may constitute a public or private nuisance, or any other article, object, item, substance or thing, that may now or hereafter be prohibited by the Fire Department, Board of Fire Underwriters, Fire Insurance Rating Organization and other authority having jurisdiction over the Premises.

Section 9.05 No Representations or Warranty by Landlord.

(a) Neither Landlord, nor Lease Administrator nor Apple has made or makes any representation or warranty as to the condition of the Premises or its suitability for any particular use or as to any other matter affecting this Lease or the Premises.

ARTICLE 23

USE OF THE PREMISES

Section 23.01. Permitted Uses.

(a) Subject to the provisions of Article 28 hereof regarding Abandonment of the Premises and the consequences thereof, Tenant shall have the right to use the Premises for any lawful purpose permitted by the Urban Renewal Plan.

Section 23.02. Prohibited Uses. Tenant shall not use or occupy the Premises, or permit or suffer the Premises or any part thereof to be used or occupied in violation of the certificate(s) of occupancy for the Improvements or the Urban Renewal Plan. Promptly after its discovery of any such use or occupation in violation of the certificate(s) of occupancy for the Improvements or the Urban Renewal Plan, Tenant shall take all reasonably necessary steps to discontinue such use or purpose.

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permit the Premises to be used for any other purpose except with the prior written approval of Landlord to be given at Landlord's sole discretion.

Section 10.02. Requirements for Conduct of Business. This Lease does not grant any permission, license or authority for the performance or conduct of any business, operation or use which may require any permit or approval from any public or private party. Tenant shall obtain and maintain in full force and effect during the Term at its sole cost and expense any governmental license or permit imposed or mandated by any Governmental Authority in connection with Tenant's trade or business and the use of the Premises, and shall comply with any other Requirement for the proper and lawful operation of the Premises by Tenant for the purposes authorized by this Lease.

Section 10.03. Unlawful Use. Tenant shall not use or occupy the Premises, or permit or suffer the Premises or any part thereof to be used or occupied, for any unlawful, illegal, or hazardous business, use or purpose or in any way in violation of any Requirement or this Lease, or in such manner as may make void or voidable any insurance then in force with respect to the Premises. Immediately, upon the discovery of any such unlawful, illegal or hazardous business, use or purpose, Tenant shall take all necessary steps, legal and equitable, to compel the discontinuance thereof, including if necessary, the removal from the Premises of any subtenant using any portion of the Premises for any such business, use or purpose. Tenant shall not keep, or permit to be kept, on the Premises any article, object, item, substance or thing that may cause, in Landlord's sole reasonable discretion, damage to the Premises or any part thereof, or that may constitute a public or private nuisance, or any other article, object, item, substance or thing, except as now or hereafter permitted by the Fire Department, Board of Fire Underwriters, Fire Insurance Rating Organization and other authority having jurisdiction over the Premises.

Section 10.04. No Representations or Warranty by Landlord.

(a) Neither Landlord, Lease Administrator nor Apple has made or makes any representation or warranty as to the condition of the Premises or its suitability for any particular use or as to any other matter affecting this Lease or the Premises.

(b) Neither Landlord, Lease Administrator nor Apple has made or makes any representation as to the legality of the use of the Premises for Tenant's intended purposes. If any use or proposed use is determined to be illegal by a court of competent jurisdiction, Tenant agrees that (i) neither Landlord, Lease Administrator nor Apple, nor any of their respective directors, officers, employees or agents shall be liable for any damages incurred by Tenant or any third party as a result of, or in connection with such determination, or illegal use or proposed use, and (ii) Tenant shall defend, indemnify and hold harmless each of Landlord, Lease Administrator and Apple, and their respective directors, officers, employees and agents against any cost, liability or expense incurred by any of them in connection with such determination, or illegal use or proposed use in accordance with, Article 23 hereof.

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North Bronx Market

Term

NOW, THEREFORE, Lessor, for and in consideration of the rents, terms, covenants and conditions of this Lease on the part of the Lessee to be paid, performed, kept and observed, has Leased and demised, and by this Lease does lease and demise to Lessee for an initial term of five (5) years commencing on the first day of the month immediately following the adoption by the Board of Estimate of the aforesaid resolution and terminating on the day immediately preceding the fifth (5) anniversary of such commencement date, subject to cancellation and termination as hereinafter provided.

Premises

ALL that certain property, known as THE NEW YORK CITY ARTHUR AVENUE RETAIL MARKET, known as lot No. 13, block No. 3073 with the building and improvements thereon, situated in the Borough of The Bronx, County of The Bronx, City and State of New York, and as shown on the Lease Print annexed hereto, ^{Marked Exhibit "A"} and made a part hereof, and referred to on the Lease Print as the "ARTHUR AVENUE ENCLOSED MARKET" (hereinafter called the "Demised Premises")

On the following TERMS and CONDITIONS which Lessee for itself, its successors and assigns hereby covenants, promises and agrees to and with Lessor to keep, observe and perform.

Use of Property

FIRST: Lessee shall use and occupy the Demised Premises for the conduct of a business that will operate and deal in the sale of food, dry goods, general merchandise and services and purposes incidental thereto only, and for no other purpose whatsoever except with the prior written consent of the Commissioner in each instance.

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ARTICLE 23

PERMITTED USE; NO UNLAWFUL OCCUPANCY

Section 23.01. Type of Use. (a) Effective upon the Substantial Completion Date, Tenant shall use and operate the Premises continuously and without interruption throughout the Term as an office building and outdoor public plaza. Tenant may: (i) use the underground portion of the Building for a parking garage (and for office, retail and/or storage facilities) and (ii) use the ground floor of the Building for office space or for retail facilities or other uses (including a coffee shop, cafeteria or similar facility) accessory to the use of the Building as an office building (but in no event in violation of Section 23.02).

(b) Prior to beginning excavation for the foundation of the New Building, Tenant may at its option use the Premises for surface parking. If Tenant so uses the Premises, it shall pay to Landlord on the first day of each calendar month 25% of any net profit from parking activity actually received by Tenant or an Affiliate during the preceding calendar month. Such payments shall be part of Rental. "Net profit" for this purpose shall mean the excess of revenues of Tenant and Affiliates from the parking operation over the following and only the following expenses of Tenant and Affiliates of maintaining the Premises during the pre-excavation period: (i) PILOT, (ii) erection of a project sign on the Premises and (iii) expenses of the parking operation itself such as wages for attendants, insurance particular to the parking operation, etc. The profit sharing provisions of this paragraph (b) shall with respect to profits from pre-construction surface parking supercede the provisions of Section 3.04 hereof, so that no Annual Payments will be due in connection therewith.

Section 23.02 Prohibited Uses. Tenant shall not use or occupy the Premises, and neither permit nor suffer the Premises or any part thereof to be used or occupied, for any unlawful or illegal business, use or purpose, or for any purpose, or in any way, in violation of the provisions of Section 23.01 or Article 16 hereof, or in such manner as may make void or voidable any insurance then in force with respect to the Premises. Immediately upon its discovery of any such unlawful or illegal business, use or purpose, or use or occupation in violation of Section 23.01 or Article 16 hereof, Tenant shall take all necessary steps, legal and equitable, to compel discontinuance of such business or use, including, if necessary, the removal from the Premises of any Subtenants using a portion of the Premises for any unlawful or illegal business, use or purpose or in violation of Section 23.01 or Article 16 hereof.

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sum, cost, expense, charge, payment or deposit, to the respective dates on which actual payment thereof is received by Landlord, in New York Clearing House Association Funds, shall constitute Rental hereunder and shall be paid by Tenant to Landlord within five (5) business days of written demand for same by Landlord.

Section 22.03. Reimbursement For Amounts Paid by Landlord Pursuant to this Article. Any amount paid by Landlord in performing Tenant's obligations as provided in this Article, including all costs and expenses incurred by Landlord in connection therewith, shall be reimbursed to Landlord on Landlord's demand, together with a late charge on amounts so paid by Landlord, calculated at the Late Charge Rate as set forth in Section 22.02.

Section 22.04. Waiver Release and Assumption of Obligations. Landlord's payment or performance pursuant to the provisions of this Article shall not be, nor be deemed to be (a) a waiver or release of the Default or Event of Default with respect thereto (or any past or future Default or Event of Default) or of Landlord's right to terminate this Lease, institute summary proceedings, and/or to take such other action as may be permissible hereunder, or (b) Landlord's assumption of Tenant's obligations to pay or perform any of Tenant's past, present or future obligations hereunder, provided that, if Landlord pays or performs any such obligation of Tenant and Tenant reimburses Landlord in accordance with Section 22.03 hereof, such Default or Event of Default shall be deemed to have been remedied and Landlord may not thereafter terminate this Lease by reason of such Default or Event of Default.

Section 22.05. Proof of Damages. Landlord shall not be limited in the proof of any damages that it may claim against Tenant arising out of, or by reason of, Tenant's failure to provide and keep insurance in force in accordance with the provisions of this Lease to the amount of the insurance premium or premiums not paid. Landlord shall be entitled to recover, as damages for such Default or Event of Default, the uninsured but insurable amount of any loss and damage sustained or incurred by it and the costs and expenses of any suit in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements.

Section 22.06. Tenant's Right to Perform Landlord's Work. If Landlord fails to substantially complete Landlord's Work by the Landlord's Work Completion Date, subject to Unavoidable Delays, or fails to complete the punchlist work in the time period set forth in Section 13.13 hereof, or fails to make any repair or replacement for which Landlord is obligated under this Lease, Tenant may notify Landlord of such failure and Tenant's intent to perform such Landlord's Work or punchlist work or repair or replacement, and if Landlord does not commence the remaining Landlord's Work or punchlist work or repair or replacement, and diligently prosecute same to completion, then Tenant has the right to complete such uncompleted Landlord's Work, punchlist work or repair or replacement and off-set the actual and reasonable cost of same against Base Rent.

ARTICLE 23

USE OF THE PREMISES

Section 23.01. Permitted Uses. Subject to the provisions of law, the Deed, the Master Lease and this Lease, Tenant shall use and operate the Premises throughout the Term

principally as and for processing digital film product and producing video content, and other media, new media or internet-related video processing, production and sales, and ancillary office use, and for no other purpose without Landlord's prior written consent.

Section 23.02. Prohibited Uses. Tenant shall not use or occupy the Premises, and neither permit nor suffer the Premises or any part thereof to be used or occupied, for any unlawful or illegal business, use or purpose, or for any purpose, or in any way, in violation of the provisions of Section 23.01 above or Article 16 hereof or the Certificate of Occupancy for the Building, or in such manner as may make void or voidable any insurance then in force with respect to the Premises. Promptly after its discovery of any such unlawful or illegal business, use or purpose, or use or occupation in violation of the Certificate of Occupancy for the Building or this Article 23 or Article 16 hereof, Tenant shall take all necessary steps, legal and equitable, to compel discontinuance of such business or use, including, if necessary, the removal from the Premises of any Subtenants, occupants, invitees, licensees and permittees using a portion of the Premises for any unlawful or illegal business, use or purpose or in violation of the certificate(s) of occupancy for the Improvements or this Article 23 or Article 16 hereof.

ARTICLE 24

EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES, ETC.

Section 24.01. Definition. Each of the following events shall be an "Event of Default" hereunder:

(a) if Tenant shall fail to make any payment (or any part thereof) of Rental as due hereunder and such failure shall continue for a period of five (5) business days after notice thereof from Landlord;

(b) if Tenant shall fail to Commence Renovation of (a portion of) the Building on or before a Scheduled Renovation Commencement Date (subject to the period of Unavoidable Delays) and such failure shall continue for a period of thirty (30) days after notice thereof from Landlord, or if Tenant shall thereafter fail to diligently prosecute the Renovation of (a portion of) the Building (for which failure no further notice shall be required);

(c) if Tenant shall fail to Substantially Complete the Renovation of the Building on or before a Scheduled Completion Date (subject to the period of Unavoidable Delays) after a period of thirty (30) days after notice thereof from Landlord, or, if Tenant cannot reasonably Substantially Complete the Renovation of the Building within said thirty (30) day period, if Tenant shall fail to commence or recommence Renovation of the Building within a period of thirty (30) days after notice thereof from Landlord, or if Tenant shall thereafter fail to diligently prosecute the Substantial Completion of the Renovation of the Building thereafter (for which failure no further notice shall be required);

(d) if Tenant shall enter into (or permit to be entered into) an assignment of the Premises or Sublease or any other transaction conveying any interest in this Lease or the Premises without compliance with the provisions of this Lease and such assignment or Sublease or other transaction shall not be made to comply with the provisions of this Lease or cancelled

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Pier A = property Battery Park City Auth.
(tenant)

Landlord, its agent, employee, contractor, or any other person acting on Landlord's behalf to enter upon the Premises or any portion thereof for any such purpose), and may take all such action as may be necessary therefor. Notwithstanding the foregoing, neither Landlord nor any agent, employee, contractor or any other person acting on Landlord's behalf may enter upon the Premises or any portion thereof for any such purpose.

Section 22.02. Amount Paid by Landlord as Additional Rental.

All reasonable sums so paid by Landlord and all reasonable costs and expenses incurred by Landlord in connection with the performance of any such act, together with interest thereon at the Late Charge Rate from the respective dates of Landlord's making of each such payment or incurring of each such cost and expense, shall constitute, following notice from Landlord to Tenant, additional rental under this Lease and shall be paid by Tenant to Landlord with and in addition to the Base Rent payable on the first day of the month following the giving of such notice.

Section 22.03. Waiver, Release and Assumption of Obligations.

Landlord's payment or performance pursuant to the provisions of this Article shall not be, nor be deemed to be (a) a waiver or release of the Default or Event of Default with respect thereto (or any past or future Default or Event of Default) or of Landlord's right to terminate this Lease in accordance with the provisions hereof and/or to take such other action as may be permissible hereunder, or (b) Landlord's assumption of Tenant's obligations to pay or perform any of Tenant's past, present or future obligations hereunder.

Section 22.04. Proof of Damages.

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

ARTICLE 23

PERMITTED USE; NO UNLAWFUL OCCUPANCY.

Section 23.01. Permitted Uses.

The Pier shall be used for recreational maritime and ancillary uses including retail, event and dining uses, as well as commercial office uses, including the following:

(a) National Park Ferry Service. It is currently contemplated that, provided that the Landlord, the Tenant and the applicable third party or parties can mutually agree to terms and conditions in compliance with the terms hereof, the Pier shall become the primary embarkation/debarkation point for ferry services to the Statue of Liberty National Monument and Ellis Island. Tenant agrees to use all reasonable efforts to negotiate an agreement with the National Park Service for the Liberty Island ferry service on a sole source basis.

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(b) Harbor District Ferry Service. In addition to the foregoing, the City reserves the right to require the Tenant to permit or license on then-commercially reasonable terms any or all of the Pier's then-available docking slips to City-designated recreational ferry services traveling to various other sites in the New York harbor (such sites, together with the Statue of Liberty National Monument and Ellis Island, being referred to collectively as the "Harbor District"), provided that the Pier can safely accommodate such additional ferry services and subject to legally required environmental reviews, if any.

(c) Signage. In connection with any of the above described ferry services, any brand identity developed by the City to unify such Harbor District sites shall be incorporated into signage for the Pier.

(d) Pier A, the Breakwater and the Adjacent Underwater Area. Pier A, the Breakwater, and/or the Adjacent Underwater Area may be used for transient docking and waterborne arrivals and departures ("Transient Docking") ancillary to and in conjunction with commercial operations at the Pier, subject to (i) Tenant's notice to the Administrator for each and every boat which is or is known or anticipated to be docked for a period longer than seven (7) consecutive days, and (ii) any required public easements or rights and all Requirements, including, without limitation, requirements of the Army Corps of Engineers and any appropriate Governmental Authorities; provided, however, that the City may use Pier A and/or the Breakwater for intermittent Transient Docking without notice to Tenant for emergency and other extraordinary uses. Pier A, the Breakwater, and the Adjacent Underwater Area may not be used for any waterborne purposes other than Transient Docking without Landlord's prior written consent, which will be granted or denied in Landlord's sole discretion.

(e) The Public Plaza. The Public Plaza, consisting of approximately 34,000 gross square feet, shall be operated as a public space, open to the general public for passive recreational use during all hours that any portion of the Project or Battery Park is open to the public. Improvements located on the Public Plaza shall be consistent in spirit with the Pier's historic and current maritime use as part of the Harbor District.

(f) No Unlawful Occupancy. Tenant shall not use or occupy the Premises, and neither permit nor suffer the Premises or any part thereof to be used or occupied, for any unlawful or illegal business, use or purpose, or for any purpose, or in any way, in violation of the provisions of Section 23.01 or Article 16 hereof or the Certificate (s) of Occupancy for the Premises, or in such manner as may make void or voidable any insurance then required to be carried under Article 7 hereof. Immediately upon discovery of any such unlawful or illegal business, use or purpose, or use or occupation in violation of Section 23.01 or Article 16 hereof, Tenant shall take all necessary steps, legal and equitable, to compel discontinuance of such business or use, including, if necessary, the removal from the Premises of any Subtenants using any portion of the Premises for any unlawful or illegal business, use or purpose or in violation of Section 23.01 or Article 16 hereof.-

Section 23.02. Excess Development Rights.

Landlord shall not use or permit the use of Excess Development Rights on or over the Premises without the prior written consent of Tenant. Any use or transfer of the Excess Development Rights shall not impair the reasonable access, existing immediately prior to the

time of such use or transfer, between the Premises and major public thoroughfares during the operating hours of the commercial public facilities located on the Premises.

Section 23.03. Adjacent Property; Access.

Tenant shall be advised of any proposed plans made by or in association with the Administrator for the construction of structures or monuments on property adjacent to the Premises, and shall have the opportunity to participate in discussions concerning such proposals in order to coordinate the planning and staging of the Project with such plans for construction on adjacent property. Tenant shall provide reasonable access over the Premises if necessary to obtain access to any adjacent property during any demolition, construction, or reconstruction of any such structure or monuments, or necessary for the intended use, maintenance, or repair thereof, provided such access does not unreasonably interfere with Tenant's use of the Premises.

ARTICLE 24

EVENTS OF DEFAULT. CONDITIONAL LIMITATIONS. REMEDIES. ETC.

Section 24.01. Definition.

Each of the following events shall be an "Event of Default" hereunder:

(a) if Tenant shall fail to make any payment (or any/part thereof) of Rental as and when due hereunder and such failure shall continue for a period of ten (10) days after notice;

(b) if Tenant shall fail to comply with its agreements set forth in Section 14.02 or shall fail to maintain the insurance required by Article 7 and if such failure shall continue for a period of ten (10) days after notice;

(c) if Tenant shall fail to maintain the Premises as provided in Section 14.04 hereof and if such failure shall continue for a period of thirty (30) days after notice (unless such failure requires work to be performed, acts to be done or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed within such thirty (30) day period, in which case no Event of Default shall exist as long as Tenant shall have commenced curing the same within such thirty (30) day period and shall diligently and continuously prosecute the same to completion within a reasonable period);

(d) if Tenant shall fail to commence Construction of the Project within the time period provided for such commencement in Article 13 hereof, and such failure shall continue for a period of ninety (90) days after notice thereof from Landlord (subject to Unavoidable Delays), or if Tenant shall fail to diligently prosecute the Construction of the Project until completion in accordance with the provisions of this Lease and such failure shall continue for thirty (30) days after notice;

(e) if Tenant shall fail to Substantially Complete the Construction of the Project on or before the second anniversary of the date of this Lease in accordance with the provisions of this Lease and such failure shall continue for a period of sixty (60) days after Landlord's notice thereof to Tenant (subject to Unavoidable Delays);

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Teleport - DANYNJ

TPLSM 785

Section 3. Rights of User

3.1 The Lessee shall use Site A solely for the construction and operation of a building consisting of up to four (4) stories and containing approximately 110,000 square feet of floor space to be operated by the Lessee as a first-class office building for occupancy by Space Tenants in accordance with the Section of this Agreement entitled "Space Leases", and for no other purpose or purposes whatsoever. The Lessee shall use Sites B, C, and D, if such are included in the premises hereunder, for the purposes set forth in paragraph 1.4, 1.4.1, and 1.4.2, respectively, of Section 1 of this Agreement and for no other purpose whatsoever.

3.2 As used herein:

(i) "Port Authority Development Limitation Period" shall mean the period from the commencement date of the letting of Site A under this Agreement through the one hundred eighty-fifth (185th) day following the commencement date of the letting of Site A under this Agreement, both dates inclusive.

(ii) "Private Developer Limitation Period" shall mean the period from the one hundred eighty-sixth (186th) day following the commencement date of the letting of Site A under this Agreement through the two hundred seventy-fifth (275th) day following the commencement date of the letting of Site A under this Agreement, both dates inclusive, as the same may be extended pursuant to the provisions of paragraph 3.2.1 of this Section.

(iii) "Non-exclusive occupancy building" shall mean any office building in which, at the time construction thereof is commenced, less than seventy-five percent (75%) of the rentable square feet to be contained therein are leased to a single person, firm or corporation.

(iv) "Multiple occupancy office building" shall mean an office building in which, at the time construction thereof is commenced, all the rentable square feet of space therein is leased to more than three Space Tenants, if one of such Space Tenants is to occupy less than twenty thousand (20,000) rentable square feet of space therein.

The Port Authority agrees that during the Port Authority Development Limitation Period it will not itself construct either a non-exclusive occupancy office building or a multiple occupancy office building nor will it during such period lease any area at the Teleport to others for the construction of such buildings. Subsequent to the expiration of the Port Authority Development Limitation Period the Port Authority may itself construct either

a non-exclusive occupancy building or a multiple occupancy office building but the Port Authority will continue to refrain from leasing areas at the Teleport to others for the construction of such buildings until the expiration of the Private Developer Limitation Period. Nothing contained herein shall or shall be deemed to prevent the Port Authority from constructing any building in which, at the time construction thereof is commenced, at least seventy-five percent (75%) of the rentable square feet to be contained therein are leased to a single person, firm or corporation, or in which, at the time of construction thereof, all of the rentable square feet of space therein is leased to no more than three Space Tenants, or in which at the time of construction thereof all of the rentable square feet of space therein is leased to more than three Space Tenants if each such Space Tenant is to occupy at least twenty thousand (20,000) square feet of space, and nothing contained herein shall or shall be deemed to prevent the Port Authority from leasing areas at the Teleport to others for the purpose of constructing any such building. Furthermore, nothing contained herein shall be or be deemed to prevent the Port Authority either from entering into the Participation Agreement or into the Sublease nor shall anything contained herein be or be deemed to prevent either MLT, WUCS or the Partnership from constructing any building at the Teleport, whether pursuant to the Participation Agreement, the Sublease, or otherwise, or to prevent the Port Authority from constructing any such building for MLT, WUCS or the Partnership, either pursuant to the Participation Agreement, the Sublease, or otherwise.

3.2.1 The Lessee shall have a single right to extend the Private Developer Limitation Period set forth in subdivision (ii) of paragraph 3.2 hereof for a period not to exceed ninety (90) days from the expiration date for such period set forth in subdivision (ii) of paragraph 3.2 provided, however, that the Lessee shall give firm and unconditional written notice to the Port Authority of its election so to do not later than thirty (30) days prior to the said expiration date and provided, further, that, simultaneously with its notice the Lessee shall pay to the Port Authority, in addition to all other payments due under this Agreement, the sum of Ten Thousand Dollars and No Cents (\$10,000.00) for each thirty day period, or portion thereof, in the period from the expiration date of the Private Developer Limitation Period set forth in subdivision (ii) of paragraph 3.2 hereof to the expiration date of the extended Private Developer Limitation Period as set forth in the Lessee's notice, both dates inclusive, and provided, further, that any notice given in accordance with the provisions of this paragraph shall not be effective if the Lessee is under notice of default as to which the applicable period to cure, if any is provided for in this Agreement, has passed, or under notice of termination from the Port Authority, either on the date of giving of its notice to the Port Authority or on the intended effective date thereof.

WHEREAS, the Port Authority proposes to lease certain real property in the Area from the City upon the terms and conditions hereinafter set forth and to undertake its development in accordance with the Plan and Article 15 of the General Municipal Law; and

WHEREAS, after due notice and publication pursuant to Section 507, subdivision 8(d) of the General Municipal Law, and after public hearing duly held, the Board of Estimate, pursuant to law did by resolution at a meeting held on

October 25, 1979

a copy of which resolution is hereto attached, hereby made a part hereof, and marked "Exhibit AAA", find that the leasing of the premises within the Area as proposed in this Agreement is necessary for and in furtherance of the public purposes as defined in Article 15 of the General Municipal Law, and approved the Port Authority as a qualified and eligible Sponsor of the premises within the Area in accordance with the Plan, and accordingly so designated the Port Authority; and did approve this lease covering a portion of the Area to be used for purposes consistent with the Plan; and

WHEREAS, by resolutions duly adopted by its Board of Commissioners on September 14, 1978

copies of which are annexed hereto, hereby made a part hereof, and marked "Exhibit AAAA", the Port Authority has authorized the execution and delivery of this Agreement;

NOW, THEREFORE, the State, the City and the Port Authority hereby mutually undertake, promise and agree, each for itself and for its successors and assigns, as follows:

1. LETTING AND USE

(a) The City hereby demises and leases to the Port Authority and the Port Authority hereby takes and hires from the City, for marine terminal purposes (which shall be the accommodation and servicing of seagoing vessels primarily engaged in container-cargo service, and shall include as may be desirable the accommodation and servicing of seagoing vessels handling cargo other than container cargo), and for purposes consistent therewith or incidental thereto, and for purposes consistent with the Plan, all those certain tracts and parcels of land, including lands under water (if any), together with the buildings, structures and improvements, if any, therein or thereon, now or

hereafter constructed, situate in the Borough of Brooklyn, in the County of Kings, in the City and State of New York, as shown in stipple on a sketch hereto attached, hereby made a part hereof and marked "Exhibit A-2". The Port Authority and the City recognize that the large elements of the area above described as the premises are not in the ownership of the City, and will be the subject of acquisition by the City whether by purchase, negotiation or exercise of the right of eminent domain.

(b) The areas above described shall constitute, from the date of commencement of the letting as hereinafter set forth, the premises, as each parcel is delivered by the City, vacant and graded; provided, however, that the City may elect to deliver parcels (i) prior to demolition of existing buildings and grading or (ii) after demolition of existing buildings but prior to grading. Title to all structures built by the Port Authority on the premises shall be in the City and the same shall be part of the premises throughout the letting.

(c) In addition to the parcels of land as hereinabove described, the City shall with reasonable promptness and in accordance with applicable law upon request of the Port Authority made at any time after the execution of this Agreement and from time to time throughout the term of the letting under this Agreement close, eliminate and discontinue any one or more City streets (or portions of City streets) located within the Marine Project listed on a schedule hereto attached, hereby made a part hereof and marked "Exhibit S". Further, after approval by the City, additional streets or parts thereof may be closed, after due action and on request of the Port Authority. Upon such action, the area so closed of each such street shall become a part of the Marine Project for all purposes, remaining nevertheless subject to sewer easements, if any.

(d) If at any time the Port Authority shall, by resolution of its Board of Commissioners, declare any portion of the premises surplus to the Marine Project, then upon demand by the City the Port Authority shall surrender such portion of the premises to the City without charge and without affecting the rights and obligations of the parties under this Agreement, by an instrument in form satisfactory to counsel for the Port Authority and to counsel for the City.

(e) Also shown and described as part of the Area are parcels of land,* title to which is in the Port Authority; the said parcels are shown in stipple on a sketch hereto attached, hereby made a part hereof, and marked "Exhibit A-1". Such parcels, together with all structures, fixtures and improvements located thereon during the letting under this Agreement, and hereinafter in this Agreement collectively called

* (including lands under water which it is contemplated will be filled as part of the development of the Marine Project as hereinafter defined),

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(Amendments)

Use:

1. Notwithstanding the provisions of Article First of the 1983 Lease, the Port Authority shall use the Terminal for the operation of a marine terminal for use by the Port Authority's lessees thereat, acting as stevedore, terminal operator, or vessel operator, and for no other purpose or purposes whatsoever. As used in this paragraph, the term "marine terminal" shall mean a facility to be used: (i) for the berthing and servicing of sea going vessels primarily carrying or about to carry marine cargo, as hereinafter defined, and which are operated by persons, firms or corporations which shall have the prior and continuing consent of the Port Authority, and of tugboats, barges, lighters and other harbor craft serving such seagoing vessels; (ii) for loading or discharge of marine cargo, as hereinafter defined, and ships' stores, supplies and gear; (iii) for the receipt, handling, and storage incidental to the transportation of marine cargo, as hereinafter defined, (whether or not in cargo containers) and of ships' stores, supplies and gear; (iv) for the storage of cargo-containers, other cargo handling equipment, and small amounts of dunnage used or intended to be used in connection with the transportation or storage of marine cargo, as hereinafter defined; and (v) for purposes incidental to the other permitted operations which may be conducted at the facility. As used in this paragraph "marine cargo" shall mean cargo waterborne to the Terminal or intended to be waterborne from the Terminal. "Waterborne to (or from) the Terminal" shall mean and include all shipments consigned to or from the Terminal which enter or leave the Port of New York by water.

2. (a) Article Third of the Assignment is hereby deleted. Notwithstanding the provisions of Article Third of the 1983 Lease, the Port Authority shall have the right to sublet the Terminal in whole or in part subject to the consent of the City, which consent shall not be withheld unless the City shall determine either (i) that the proposed use of the subleased premises is not in accordance with the provisions of paragraph 1 of this Agreement; or (ii) that the proposed subtenant or its Chief Executive Officer, Chairman of the Board, President, Chief Operating Officer, Chief Financial Officer, or any member of its Office of the President or Presidium, or any director or general partner thereof, or any person, firm, or corporation having an outright or beneficial interest in 10% or more of the monies invested in the proposed subtenant by loans thereto, stock ownership therein, or any other form of financial interest has (a) been convicted of or is under current indictment in any jurisdiction for any crime involving corruption, bribery of a public official or body, misuse of public funds, or any similiar crime indicative of a lack of business integrity; (b) has been suspended, debarred or otherwise disqualified from bidding or submitting a proposal on contracts by any governmental agency; or (c) has had a contract terminated by any governmental agency for any cause directly related to an indictment for or conviction of any crime involving corruption, bribery of a public official or

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ARTICLE 23

PERMITTED USE; NO UNLAWFUL OCCUPANCY

Section 23.1. Type of Use. Effective upon the Substantial Completion Date, Tenant shall use and operate the Premises as a not-for-profit charter elementary, middle and/or high school and all uses incidental thereto (which may include, without limitation, the uses permitted under Section 10.1(e) hereof to the extent permitted thereunder) in accordance with the certificate(s) of occupancy therefor and the Requirements, and for no use or purpose inconsistent with the operation of a charter school and all uses incidental thereto.

Section 23.2. Prohibited Uses. Tenant shall not use or occupy the Premises, and neither permit nor suffer the Premises or any part thereof to be used or occupied for any unlawful or illegal business, use or purpose or for any purpose, or in any way in violation of the provisions of Section 23.1 or Article 16 hereof or the certificate(s) of occupancy for the Premises, or in such manner as may make void or voidable any insurance then in force with respect to the Premises. Immediately upon its discovery of any such unlawful or illegal business, use or purpose, or use or occupation in violation of Section 23.1 or Article 16 hereof, Tenant shall take all necessary steps, legal and equitable, to compel the discontinuance of such business or use, including, if necessary, the removal from the Premises of any Subtenants using a portion of the Premises for an unlawful or illegal business, use or purpose or in violation of Section 23.1 or Article 16 hereof. The provisions of this Section shall not restrict Tenant's rights under Article 34 hereof to contest any Requirements.

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Port Imperial / NY Waterways: Pier 79 Ferry Landing
Manhattan

Terminal, and (iii) a complete set of as-built drawings and a survey of the Terminal. If Lessor has delivered a temporary certificate of occupancy (or its equivalent), then, prior to the expiration of same or any future temporary certificate of occupancy (or its equivalent), Lessor shall deliver a new or extended temporary certificate of occupancy or a permanent certificate of occupancy (or their respective equivalents).

Terminal Lessee and its Terminal occupants shall be responsible for fit-out of space and facilities for Terminal occupants and users. Terminal Lessee shall be permitted access to the Terminal for fit-out of space and facilities of Terminal occupants and users at such times during Terminal construction as it may request and as the Lessor shall in its reasonable discretion determine to be appropriate and will not interfere with the construction of the Terminal by Lessor. Terminal Lessee and its contractors and subcontractors shall cooperate and coordinate at all times with Lessor and its contractors and subcontractors and shall be subject to the direction of Lessor or its representative for the purpose of avoiding interference by Terminal Lessee and its contractors and subcontractors with Lessor's construction of the Terminal. Terminal Lessee shall cause terms and provisions to the effect set forth in the immediately preceding sentence to be included in contracts and subcontracts for work in connection with Terminal Lessee's fit-out.

Section 4.02. Federal Funding. It is the intention of Lessor and EDC to design and construct the Terminal using \$22.2 million in funds to be made available under TEA-21 Section 1101(a)(10) (as well as \$5.3 million City Capital Budget funds and Lessee's Contribution and other funds as may become available). Lessor makes no representation with respect to the timing, level or availability of federal funds, but will use diligent efforts to obtain such funds. Lessor and EDC shall be under no obligation to design or construct the Terminal absent the receipt of the federal funds required for such design and construction.

Section 4.03. Lease of Demised Premises. Lessor hereby leases to Terminal Lessee for the Term set forth above the Demised Premises as described in Exhibit A.

Section 4.04. Use of Terminal. The Terminal shall be used to operate Ferry Service (which is deemed to include, but not require on Terminal Lessee's part, connecting bus transportation service) to and from the Terminal solely for the purpose of transporting passengers, principally commuters, and their personal effects and for no other use or purpose. The foregoing notwithstanding, the Terminal may be used to operate the Ferry Service to transport parcels for delivery (including envelopes and small packages) incidental to passenger transport, provided that prior thereto Terminal Lessee informs the Department in writing and obtains the Department's written permission regarding the volume and hours of operation of such delivery parcels transport. The Department may withhold approval of such operations only if such operations will significantly adversely impact the commuter transportation purposes of the Terminal. No Ferry Service shall be used to transport motor vehicles except with the prior written approval of the Commissioner. Terminal Lessee may add additional services and activities which serve to complement the Ferry Service such as ticket counters (including without limitation those operated by Ferry Service operators), restaurants, amusement game machines, merchandise vending machines, ATMs, pay telephones, concession stands, newsstands and the like, consistent with the design of the Terminal, and only subject to such conditions as may be reasonably promulgated by the Lessor. Terminal Lessee shall commit no act nor permit any act to be committed, nor permit any vessel to be operated from the Terminal which violates the

exclusive rights of Circle Line granted by the City to operate excursion and sightseeing vessels under the Circle Line Lease, a copy of which is attached hereto as Exhibit B. No Ferry Service other than Ferry Lessee's Ferry Service may be operated from the Terminal prior to the issuance by the Department of a franchise or other grant or right for same, and any such Ferry Service shall cease operation upon the expiration or earlier termination of such franchise or other grant or right.

Section 4.05. Access. Terminal Lessee shall, at normal operating periods during the term of this Terminal Lease, permit inspection of all facilities at the Terminal by U.S. Coast Guard personnel and by Lessor's agents or representatives. Lessor shall not and shall cause its agents and representatives to not unreasonably interfere with Terminal Lessee's operations in the course of any inspection by or on behalf of Lessor.

Section 4.06. Spill Prevention and Containment. Terminal Lessee shall prepare and submit to the Department a spill prevention containment plan at least ninety (90) days prior to the Commencement Date. In the event of any spillage caused by a vessel, Terminal Lessee shall immediately, at its sole cost and expense, contain and clean the spill at the Terminal in accordance with the plan. If Terminal Lessee does not proceed immediately and effectively to contain any such spill, Commissioner may take any action deemed necessary in his or her sole and absolute discretion and require the Terminal Lessee to reimburse Lessor. Nothing in this section shall be deemed to limit Terminal Lessee's ability to recover costs and expenses from a third party. Nothing in this section shall be deemed to relieve Terminal Lessee of any requirements it has under law to notify other governmental agencies in the event of an emergency.

Vessel fueling may not be conducted at the Terminal, without the prior written approval of the Department at its sole and absolute discretion. Any permitted fueling of vessels and other equipment, and waste disposal (including liquid and solid waste) for vessels and for landing and Terminal facilities shall be accomplished in a safe and environmentally sound manner and in compliance with all applicable city, state, and federal laws, rules, and regulations.

Section 4.07. Rent.

(a) Terminal Lessee shall pay to EDC, on behalf of Lessor, as Lessor's Lease Administrator, or such other person as Lessor may designate in writing:

Base Rent. Commencing as of the Commencement Date, and subject to the adjustments hereinafter provided for, annual rent for the Demised Premises ("Base Rent") during the Term at the following annual rates:

- (i) For the five-year period commencing on the Commencement Date up to (but not including) the fifth anniversary of the Commencement Date, \$150,000 per annum;
- (ii) For five-year period commencing on fifth anniversary of the Commencement Date up to (but not including) the tenth anniversary of the Commencement Date the sum of \$150,000 plus an amount equal to the greater of (a) \$15,000, or (B) the product

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R. Best Produce

Section 5.05. Taxes.

Provided the City shall be Landlord, Landlord shall pay, cancel, or otherwise satisfy and discharge of record any and all Taxes on or before the due date thereof (which may be by bookkeeping entry, interdepartmental direction or other manner or procedure selected by Landlord). If the City shall cease to be Landlord, Landlord shall pay the Taxes on or before the due date thereof, it being understood that under no circumstances shall Tenant pay Taxes.

Section 5.06. Utility Service to Premises and Payment Therefor.

Tenant shall be responsible for obtaining all utility services necessary for the proper operation and functioning of the Premises, including, without limitation, gas, water, heat, electricity, air conditioning and telephone service. Tenant shall pay directly to the companies supplying such utility services all charges for such utility services, as the same shall become due. Tenant shall, at its sole cost and expense, install meters for all such utility services including but not limited to, water, gas and electricity, and shall thereafter maintain such meters in good working order and repair.

Section 5.07. No Obligation on Landlord to Provide Utility Service.

Landlord shall have no obligation to provide any utility services to the Premises, and Landlord shall have no responsibility or liability in the event any such utility services are not provided to the Premises.

Section 5.08. Survival Clause for Sections 5.06 and 5.07.

The provisions of Sections 5.06 and 5.07 of this Article 5 shall survive any termination of this Lease.

ARTICLE 6

USE AND DEVELOPMENT OF PREMISES

Section 6.01. Use of Premises

(a) Permitted Uses. Tenant shall use and occupy the Premises for the purpose of selling, buying, receiving, brokering, handling (including packaging), distributing, refrigerating and warehousing of fresh and frozen fruit and vegetable produce, flowers, canned goods, dairy products and other food related products and for ancillary office space and no other purpose *provided*, however, that Tenant shall not use the Premises for wholesale purchase, sale or distribution of seafood and *provided further* that Tenant shall not use the Premises, Access Way, Parking Lot or any part of the Land for vehicle maintenance and/or repairs. Tenant and Tenant's servants, employees, agents, visitors, and licensees shall observe faithfully, and comply strictly with, any reasonable restrictions on use as Landlord may from time to time adopt. Notice of any additional restrictions shall be given in advance of the date such restriction is proposed to become effective. Notwithstanding anything contained in this Section to the contrary, Landlord shall not be liable to Tenant for violation of the same by any other tenant, its servants, employees, agents, visitors or licensees.

(b) Tenant's Right to Use the Rail. Landlord grants to Tenant, for the use or benefit of Tenant, a non-exclusive license during the Term to use the Rail; *provided* that Tenant coordinates such use with any other tenant in the Building. Landlord reserves the right (i) to establish, modify and enforce reasonable written restrictions with respect to the use of the Rail; (ii) upon fifteen (15) business days' notice at any time and from time to time to temporarily discontinue use of all or any portion of the Rail to such extent as may, in the reasonable determination of Landlord, be necessary; (iii) upon fifteen (15) business days' notice to permanently discontinue use of the Rail if in the reasonable determination of Landlord such action becomes necessary; and (iv) to do and perform such other acts in and to said Rail as, in the exercise of reasonable judgment, Landlord shall determine to be advisable.

Section 6.02. Requirements for Conduct of Business.

Tenant acknowledges that the Premises are part of a "public market" under 260 *et seq.* of the New York Agriculture and Markets Law. Tenant, at its sole cost and expense, shall promptly comply with all Requirements foreseen and unforeseen, ordinary as well as extraordinary, which may be applicable to the Premises or any part thereof, or to the use or manner of use of the Premises or the owners, tenants or occupants thereof, even though such Requirement shall necessitate structural changes, repairs or improvements, or the use or application of portions of the Premises for compliance therewith, and even though compliance with the provisions of this Section may interfere with the use and enjoyment of the Premises.

Section 6.03. Unlawful Use; No Representation of Landlord.

(a) During the Term, Tenant shall not use or occupy the Premises, or permit or suffer the Premises or any part thereof to be used or occupied, for any unlawful, illegal, or hazardous business, use or purpose or in any way in violation of any of the Requirements, any certificate of completion or occupancy affecting the Premises or this Lease or in such manner as may make void or voidable any insurance then in force with respect to the Premises, the Building or the Property. Immediately upon the discovery of any such unlawful, illegal or hazardous business, use or purpose, Tenant shall take all necessary steps, legal and equitable, to compel the discontinuance thereof. Tenant shall not keep anything in the Premises which may cause or be apt to cause structural injury to the Premises or any part thereof, or as will constitute a public or private nuisance, or anything except as now or hereafter permitted by the Fire Department, Board of Fire Underwriters, Fire Insurance Rating Organization and other authority having jurisdiction, and then only in such manner and such quantity so as not to make it difficult or impossible to obtain fire insurance for the Premises or increase the rate for fire insurance applicable to the Building, nor use the Premises in a manner which will increase the insurance rate for the Building or any property located therein over that otherwise in effect. If by reason of Tenant's failure to comply with the foregoing the fire insurance rate shall, at any time, be higher than it otherwise would be, then Tenant shall be obligated to pay such additional cost which shall have been charged because of such failure by Tenant.

(b) Tenant shall not place a load upon any floor of the Premises exceeding the floor load capacity of 250 lbs. per square foot area. Such installations shall be placed and maintained by Tenant, at Tenant's expense, in settings sufficient, in Landlord's reasonable judgment, to absorb and prevent vibration, noise and annoyance.

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Royal Wine Corp.

(b) In addition, concurrently with any increase in Annual Base Rent, Tenant shall deposit with Landlord, as additional security, an amount equal to the difference between Annual Base Rent, as so increased, and the amount then held by Landlord as security for Tenant's faithful performance and observance of the terms, provisions and conditions of this Lease.

Section 7.05. Return of Security Deposit. If Tenant shall comply with all of the terms of this Lease, the Security Deposit shall be returned to Tenant within thirty (30) days after the Expiration Date of this Lease, together with interest, if any, accrued thereon, less an amount, to be retained by Landlord, equal to one percent (1%) per annum of the amount of the Security Deposit.

ARTICLE 8

INTENTIONALLY OMITTED

ARTICLE 9

USE OF PREMISES

Section 9.01. Permitted Use.

(a) Tenant shall use and occupy the Premises for the storage and distribution of food products (crackers, canned goods, soups) and alcoholic beverages, for activities directly related to the storage and distribution of food products and alcoholic beverages, for related office uses and for no other purpose. Tenant shall not use the Premises or permit the Premises to be used for any other purpose except with the prior written approval of Landlord to be given at Landlord's sole discretion.

(b) Tenant understands and agrees that the parking area ("Parking Area") identified in Exhibit A hereto is not part of the Premises. Landlord agrees that Tenant may make use of the Parking Area in accordance with the parking plan ("Parking Plan") set forth in Exhibit D solely for parking of motor vehicles owned or operated by Tenant, its employees and Persons doing business with Tenant. Tenant further understands and agrees that the Parking Area will be used by other Persons not associated with Tenant and that Tenant's permission to make use of the Parking Area will terminate upon expiration or earlier termination of the Lease, or on such other date as Landlord shall determine in its sole reasonable discretion.

Section 9.02. Requirements for Conduct of Business. This Lease does not grant any permission, license or authority for the performance or conduct of any business, operation or use which may require any permit or approval from any public or private party. Tenant shall obtain and maintain in full force and effect during the Term at its sole cost and expense any governmental license or permit imposed or mandated by any Governmental Authority in

connection with Tenant's trade or business and the use of the Premises, and shall comply with any other Requirement for the proper and lawful operation of the Premises by Tenant for the purposes authorized by this Lease.

Section 9.03. Unlawful Use. Tenant shall not use or occupy the Premises, or permit or suffer the Premises or any part thereof to be used or occupied, for any unlawful, illegal, or hazardous business, use or purpose or in any way in violation of any Requirement or this Lease, or in such manner as may make void or voidable any insurance then in force with respect to the Premises. Immediately, upon the discovery of any such unlawful, illegal or hazardous business, use or purpose, Tenant shall take all necessary steps, legal and equitable, to compel the discontinuance thereof, including if necessary, the removal from the Premises of any subtenant using any portion of the Premises for any such business, use or purpose. Tenant shall not keep, or permit to be kept, on the Premises any article, object, item, substance or thing that may cause, in Landlord's sole reasonable discretion, damage to the Premises or any part thereof, or that may constitute a public or private nuisance, or any other article, object, item, substance or thing, except as now or hereafter permitted by the Fire Department, Board of Fire Underwriters, Fire Insurance Rating Organization and other authority having jurisdiction over the Premises.

Section 9.04. No Representations or Warranty by Landlord.

(a) Neither Landlord, Lease Administrator nor Apple has made or makes any representation or warranty as to the condition of the Premises or its suitability for any particular use or as to any other matter affecting this Lease or the Premises.

(b) Neither Landlord, Lease Administrator nor Apple has made or makes any representation as to the legality of the use of the Premises for Tenant's intended purposes. If any use or proposed use is determined to be illegal by a court of competent jurisdiction, Tenant agrees that (i) neither Landlord, Lease Administrator nor Apple, nor any of their respective directors, officers, employees or agents shall be liable for any damages incurred by Tenant or any third party as a result of, or in connection with such determination, or illegal use or proposed use, and (ii) Tenant shall defend, indemnify and hold harmless each of Landlord, Lease Administrator and Apple, and their respective directors, officers, employees and agents against any cost, liability or expense incurred by any of them in connection with such determination, or illegal use or proposed use in accordance with, Article 23 hereof.

ARTICLE 10

EASEMENTS

Section 10.01. Municipal Easement. Landlord hereby reserves for itself and Lease Administrator, and their respective officers, employees, agents, servants, representatives and invitees, with respect to the Premises an easement and a right of access: (i) to enter upon the Premises to maintain, replace and repair existing municipal facilities located within the

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the office of Administrator above set forth, or at any other location designated by Administrator during the term of this Lease. Tenant shall pay the Annual Rent in equal monthly installments in advance on the first day of each and every month during the Term. Annual Rent and any and all other amounts due or which may come due pursuant to this Lease are collectively referred to as "Rent". Annual Rent shall be set at \$42,000 per year for Years 1-2 of the Term of this Lease. Annual Rent in Years 3-10 of the Term of this Lease shall be as follows:

<u>Year</u>	<u>Annual Rent</u>
3-4	\$44,100 per year
5-6	\$46,355 per year
7-8	\$48,620 per year
9-10	\$51,051 per year

Landlord, shall, within eight (8) months before the expiration of the Initial Term, inform Tenant of the Renewal Term rent schedule to be applied for the Renewal Term of this Lease. The Annual Rent for Year 11 will be equal to the lower of fair market value of the Premises or 150% of the Year 10 Annual Rent. Annual Rent for each Lease Year in the remainder of the Renewal Term will be equal to the Annual Rent for Year 11 subject to escalations every other year for the duration of the Renewal Term, such escalations not to exceed a rate greater than the increase in the Consumer Price Index since the previous adjustment. "Consumer Price Index" means the Consumer Price Index for all Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor, New York, N.Y., Northeastern N.J. Area, All Items (1982-84=100), or any successor index thereto, appropriately adjusted; provided that, if there shall be no successor index and the parties shall fail to agree upon a substitute index within thirty (30) days, or if the parties shall fail to agree upon the appropriate adjustment of such successor or substitute index within thirty (30) days, a substitute index or the appropriate adjustment of successor or substitute index, as the case may be, shall be determined by arbitration. Fair market value shall be determined by a fair market appraisal to be performed and completed by Landlord at Tenant's expense no sooner than one (1) year prior to the Initial Term Expiration Date, and no later than the Initial Term Expiration Date.

Use

Article 4. Tenant shall use and occupy the Premises solely for the purpose of the use and operation of a commercial marina facility including the sale of gasoline and other products ordinarily sold in gasoline stations and for no other purpose.

Maintenance,
Repairs and
Alterations

Article 5. (a) Tenant shall, at its sole cost and expense, take good care of the Premises and fixtures thereto, and shall quit and surrender the Premises at the end of the Term in good condition, subject to reasonable wear and tear. Tenant shall not make any additions, alterations or improvements in said Premises, or permit any additional lock or fastening on any door, without the prior written consent of Landlord. All such fixtures and permanent alterations, partitions, additions, or improvements which may be made upon the Premises shall be the property of Landlord, and shall, at Landlord's option, remain upon and be surrendered with the Premises as a part thereof upon the Expiration Date, without disturbance,

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Seaport Associates

ARTICLE 23

OPERATION; PERMITTED USE; NO UNLAWFUL OCCUPANCY

Section 23.01. During the Term, Tenant shall use and occupy the Premises in accordance with the terms and provisions of this Article 23, and for no other purpose, and shall not permit the same to be used or occupied except in accordance with the terms and provisions of this Article 23.

Section 23.02. In recognition of the historic and cultural importance of the South Street Seaport and in fulfillment of the public purposes to which the development of the Project Premises is dedicated, throughout the Term Tenant shall cause the Premises to be developed, maintained and operated exclusively as first-class business offices in accordance with the provisions of this Article 23 and for no other purpose, except that the portion of the Premises located in 133 Beekman Street may be sublet to subtenants for use as storage space.

Section 23.03. Tenant shall not use or occupy, nor permit or suffer the Premises or any part thereof to be used or occupied for any unlawful or illegal business, use or purpose, or for any business, use or purpose which is immoral or disreputable (including, without limitation, "adult entertainment establishments" and "adult" bookstores) or extra-hazardous, or in such manner as to constitute a nuisance of any kind (public or private) or that would in any way adversely affect the public standing or good reputation of Landlord, Fee Owner, Museum, or Marketplace, or for any purpose or in any way in violation of the certificates of occupancy (or other similar approvals of applicable Governmental Authorities) or of any present or future Governmental or Insurance Requirements, or which may make void or voidable any insurance then in force on the Premises or any other portion of the Project Premises. If any such unlawful, illegal, immoral, disreputable or extra-hazardous use shall occur, Tenant agrees promptly to take all lawful steps which may be necessary to compel the discontinuance of such use and/or to oust and remove any Subtenants causing or responsible for such unlawful, illegal, immoral, disreputable or extra-hazardous use or conduct.

Section 23.04. Tenant shall not suffer or permit the Premises or any portion thereof to be used by any Person or by the public without restriction or in such manner as might reasonably tend to impair Fee Owner's title to the Premises or any portion thereof, or in such manner as might reasonably make possible a claim or claims of prescriptive rights or adverse possession by any Person or by the public, as such, or of implied dedication of the Premises or any portion thereof.

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Seaport Marketplace - SEAPOI

at the Lease Interest Rate from the respective dates of Non-Defaulting Party's making of each such payment or incurring of each such sum, cost, expense, charge, payment or deposit, shall be paid by the Defaulting Party to the Non-Defaulting Party on demand. The rights, if any, of Tenant as the Non-Defaulting Party to set off such amounts against the Base Rent and Additional Rent payable hereunder, shall be subject to the terms, conditions and limitations set forth in Section 3.07 hereof. Any payment or performance by Landlord, as the Non-Defaulting Party, pursuant to the foregoing provisions of this Article 21 shall not be nor be deemed to be a waiver or release of the breach or default of Tenant with respect thereto or (unless Landlord shall have been reimbursed by any Mortgagee for the aforesaid amounts, including interest thereon) of the right of Landlord to terminate this Lease, institute summary proceedings and/or take such other action as may be permissible hereunder or otherwise if an Event of Default by Tenant shall have occurred, nor shall any such payment or performance by Tenant, as the Non-Defaulting Party, be or be deemed to be a waiver or release of the breach or default of Landlord with respect thereto or of any right or remedy Tenant may have under this Lease or otherwise with respect thereto. The Non-Defaulting Party shall not be limited in the proof of any damages which it may claim against the Defaulting Party arising out of or by reason of the Defaulting Party's failure to provide and keep insurance in force as aforesaid to the amount of the insurance premium or premiums not paid, but the Non-Defaulting Party shall also be entitled to recover, as damages for such breach, the uninsured amount of any loss and damage and the costs and expenses of suit, including, without limitation, reasonable attorneys' fees and disbursements, sustained, suffered or incurred by the Non-Defaulting Party by reason of damage to or destruction of the Premises or any part thereof, or any other portion of the Project Premises or any part thereof, as the case may require.

ARTICLE 22

NO ABATEMENT OF RENTAL

Except as may otherwise be expressly provided herein, there shall be no abatement, diminution or reduction of Rental payable by Tenant hereunder or of any of the other obligations of Tenant hereunder under any circumstances whatsoever.

ARTICLE 23

OPERATION; PERMITTED USE; NO UNLAWFUL OCCUPANCY

Section 23.01. During the Term, Landlord and Tenant shall use and occupy their respective portions of the Project Premises and Telco Space in accordance with the terms and provi-

sions of this Article 23, and for no other purpose, and shall not permit or suffer the same to be used or occupied except in accordance with the terms and provisions of this Article 23.

Section 23.02. In recognition of the historic and cultural importance of the South Street Seaport and in fulfillment of the public purposes to which the development of the Project Premises is dedicated, throughout the Term Tenant shall cause the Premises and the Telco Space to be (i) developed, maintained and continuously operated as a first-class, specialty retail marketplace, in accordance with the provisions of this Article, the applicable provisions of the Improvement Agreement, and in a manner at least equal to the current standards of operation of Faneuil Hall Marketplace in Boston and Harborplace in Baltimore; and (ii) devoted to the promotion and sale, by a variety of Subtenants, of a reasonable number of maritime and sea-related activities and products, and containing a reasonable number of quality restaurants; and (iii) used incidentally to the purposes permitted by clauses (i) and (ii) above to provide supporting clerical, administrative and executive offices (but not in excess of 5,000 square feet of Gross Leasable Area) therefor.

In Subleasing the Premises, the Commercial Areas and Telco Space to Subtenants, Tenant agrees that (i) in the aggregate, no more than 100,000 square feet of Gross Leasable Area in the Premises, the Commercial Areas and Telco Space shall be used for "fast-food" type operations (said 100,000 square foot area to be proportionately reduced, but not below 30,000 square feet, if this Lease shall be terminated in respect of any portion of the Premises or if Tenant shall not obtain possession of the Telco Space); (ii) no portion of the Premises located in the Museum Block or the Schermerhorn Block shall be used for the operation of a "fast-food" business, except as an incidental part of a restaurant located therein and except for such uses by Subtenants existing on the date as of which this Lease is made; (iii) no part of the Premises located on the ground floor of the Market Block and adjacent to Fulton, Front or Beekman Streets shall be used for the operation of a "fast-food" business, except as incidental to the operation of another type of food business; and (iv) no portion of the Premises located on the Museum Block shall be used for the operation of a food business other than a restaurant or cafe (including "fast-food" sales incidental thereto).

Tenant shall continuously, uninterruptedly, actively and diligently operate a specialty retail marketplace seven days per week, at least nine hours per day on Mondays through Saturdays and six hours on Sundays, and shall require substantially all Marketplace Subtenants to operate and conduct their respective businesses on all such days and for such hours, except when Tenant and/or any Marketplace Subtenants shall be prevented from doing so by strike, fire, other casualty or other cause beyond

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ARTICLE 22

NO ABATEMENT OF RENTAL

Except as may otherwise be expressly provided herein, there shall be no abatement, diminution or reduction of Rental payable by Tenant hereunder or of any of the other obligations of Tenant hereunder under any circumstances whatsoever.

ARTICLE 23

OPERATION; PERMITTED USE; NO UNLAWFUL OCCUPANCY

Section 23.01. During the Term, Tenant shall use and occupy the Premises, and shall cause (or, to the extent herein-after set forth, require or use reasonable efforts to cause) Subtenants to use and occupy their respective portions of the Premises and the Telco Space, in accordance with the terms and provisions of this Article 23, and for no other purpose.

Section 23.02. In recognition of the historic and cultural importance of the South Street Seaport and in fulfillment of the public purposes to which the development of the Project Premises is dedicated, throughout the Term Tenant shall cause the Marketplace Premises and the Telco Space to be (i) developed, maintained and continuously operated as a first-class, specialty retail marketplace, in accordance with the provisions of this Article, the applicable provisions of the Improvement Agreement, and in a manner at least equal to the current standards of operation of Faneuil Hall Marketplace in Boston and Harborplace in Baltimore; and (ii) devoted to the promotion and sale, by a variety of Subtenants, of a reasonable number of maritime and sea-related activities and products, and containing a reasonable number of quality restaurants; and (iii) used incidentally to the purposes permitted by clauses (i) and (ii) above to provide supporting clerical, administrative and executive offices (but not in excess of 5,000 square feet of Gross Leasable Area) therefor.

Tenant shall require of the tenant under the Marketplace Lease, that in subleasing the Marketplace Premises and Telco Space to Subtenants, (i) in the aggregate, not more than 100,000 square feet of Gross Leasable Area in the Marketplace Premises, the Commercial Areas and Telco Space shall be used for "fast-food" type operations (said 100,000 square foot area to be proportionately reduced, but not below 30,000 square feet, if the Marketplace Lease shall be terminated in respect of any portion of the Marketplace Premises or, if Marketplace shall not obtain possession of the Telco Space), (ii) no portion of the Marketplace Premises located in the Museum Block or the Schermerhorn

Block shall be used for the operation of a "fastfood" business, except as an incidental part of a restaurant located therein and except for such uses by Subtenants existing on the date as of which this Lease is made; (iii) no part of the Premises located on the ground floor of the Market Block and adjacent to Fulton, Front or Beekman Streets shall be used for the operation of a "fast-food" business, except as incidental to the operation of another type of food business; (iv) no portion of the Premises located on the Museum Block shall be used for the operation of a food business other than a restaurant or cafe (including "fast-food" sales incidental thereto).

Tenant shall require the tenant under the Marketplace Lease (hereinafter "said tenant") to continuously, uninterruptedly, actively and diligently operate a specialty retail marketplace seven days per week, at least nine hours per day on Mondays through Saturdays and six hours on Sundays, and shall require that substantially all Marketplace Subtenants operate and conduct their respective businesses on all such days and for such hours, except when said tenant and/or any Marketplace Subtenant shall be prevented from doing so by strike, fire, other casualty or other cause beyond the reasonable control of said tenant and/or such Marketplace Subtenant, and except on the following holidays: New Year's Day; first and second days of Passover; Good Friday; Easter Sunday; Rosh Hashanah; Yom Kippur; Thanksgiving Day; and Christmas Day.

Tenant shall also make available or cause to be made available to the general public, at least during the hours set forth above (but consistent with reasonable maintenance and security requirements of Tenant, said tenant and the Marketplace Subtenants) and free of charge or admission, all public circulation and seating areas of Pier 17, the pavilion to be erected on Pier 17 and throughout other portions of the Project Premises substantially in accordance with the plans and specifications therefor to be approved in accordance with applicable provisions of the Improvement Agreement by the parties thereto. Without limiting the generality of the foregoing, Tenant shall provide or cause to be provided walkways with adequate public seating areas, an unobstructed view of the water (consistent with said tenant's reasonable structural and exiting requirements), and direct public access (i.e., without having to traverse retail space) along the exterior of the pavilion to be built on Pier 17. Such walkways on the surface deck of Pier 17 shall be not less than 30 feet in width along the southerly side of Pier 17, not less than 40 feet in width along the easterly end of Pier 17 and not less than 25 feet in width on the northerly side between the pavilion and the southernmost portion of the working pier which is located on the northernmost portion of Pier 17 and is designated as such on Exhibit A-1 hereto (the "Working Pier"). Said northerly pub-

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Staten Island Yankees

Whenever this Lease refers to Rental in respect of any period of time in which (A) Tenant is prevented from using the Stadium for reasons beyond its control (other than a Taking, in which event Article 16 shall govern) (e.g. during a Casualty Restoration) or (b) the Premises is not being used by Tenant due to any default of this Lease by Tenant; then, notwithstanding that Rental is normally determined according to attendance levels and sharing of certain revenues, the parties agree and acknowledge that annual Rental during any such period shall be deemed to be the average amount of annual Rental that was required to be paid by Tenant during the three (3) full Lease Years (or shorter period if less than three (3) full Lease Years have been completed) (but, in either case, skipping any Lease Year(s) in which five (5) or more Team Home Games are canceled due to fire or other casualty covered by rent insurance) immediately preceding the commencement of such a non-use period.

ARTICLE 4
USE OF PREMISES.

Section 4.01 Tenant's Use of Premises

Tenant may use the Premises for the purposes described in this Article 4, and for no other purposes.

Section 4.02 Required Use by Tenant.

(a) During each Baseball Season in the Term, Tenant shall cause the Team or other Qualifying Team to play all of its Team Home Games at the Premises, and generally to use the Stadium as its home stadium, provided no fire or other casualty has occurred which prevents such use from taking place.

(b) If Tenant is unable to satisfy such requirement due to the fact that the League of which the Team then using the Premises is a member ceases its operations and Tenant does not obtain another Qualifying Team to so play at and use the Premises within one (1) year after such cessation, Tenant shall not be deemed to be in breach of this Lease by reason of such failure, but Landlord and Tenant shall each have the right exercisable by notice to the other to terminate this Lease, in which event neither party shall have any further obligations to the other except for any obligations that arose prior to such termination. If either party so terminates, Landlord shall afford Tenant such time as is necessary for Tenant to vacate the Premises in an orderly manner prior to such termination, but in any event no more than thirty (30) days.

(c) In connection with Tenant's obligation under this Section 4.02, Tenant shall use reasonable efforts to cause the Team then using the Premises hereunder to maintain its status and franchise as a member of a League and to continue to be party to a PDC.

(d) Tenant hereby warrants and represents that all approvals and consents required from the League and the National Association of Professional Baseball Leagues, Inc. or required pursuant to any Professional Baseball Regulations

to allow and authorize the Team to use the Stadium as its home stadium have been obtained or will be obtained prior to the Use Commencement Date.

Section 4.03 Tenant's Right to Use the Premises for Tenant Events.

(a) Tenant shall have the right to use the Premises for all Team Home Games. No Team Home Games shall have a scheduled starting time later than 8:00 P.M. on any day or before 7:00 P.M. on any Business Day, unless an earlier or later scheduled starting time is rendered necessary by events beyond Tenant's control such as games rescheduled by the League because of rainouts.

(b) Tenant shall have the right to use the Premises for (i) Team Events that are not Team Games, and (ii) for all other purposes, including, without limitation, entertainment, sporting, cultural, recreational, community and civic events (such events for all such other purposes described in clause (ii) hereof are hereinafter referred to collectively as "Special Events"), subject to the Requirements and to Landlord's approval rights under Section 4.11.

(c) Tenant shall have the right to charge admission or usage fees for all Tenant Events, and to determine the prices and terms of tickets to Tenant Events. Without limiting the foregoing, Tenant recognizes that one of the purposes of the Stadium Project and this Lease is to make available to the residents of Staten Island and the City reasonably affordable family entertainment, and shall endeavor to take such goal into account when determining admission prices for Team Events.

(d) Tenant shall have the right to use the Premises and all areas therein for television and radio broadcasting and press coverage of Tenant Events.

(e) Tenant shall have the right to use the Premises for all purposes incidental to Tenant Events.

Section 4.04 Landlord's Luxury Suite and Priority Tickets, and Charity Tickets.

(a) Landlord shall be entitled to use, on an exclusive basis, one (1) luxury suite (hereinafter, "Landlord's Suite") during all Tenant Events at no admission or other charge by Tenant or any of its Subtenants. Such luxury suite shall be in a location comparable to the location of the luxury suite used by Tenant's principals, and shall be large enough to accommodate no less than twelve (12) persons. Exhibit 4.04(a) showing Landlord's Suite shall be prepared as soon as practicable.

(b) Landlord shall be entitled to purchase twenty-five (25) tickets to each Tenant Event consisting of the best seats then available as determined by Tenant in its sole and absolute discretion, provided that Landlord must exercise its right to purchase such tickets no later than five (5) days prior to the applicable Tenant Event.

(c) Tenant shall make at least twenty-five (25) complimentary tickets to each Team Home Game available to charity or other appropriate non-profit groups at no admission or other charge by Tenant or any of its Subtenants.

Section 4.05 Sharing of Revenues from Special Events.

(a) Tenant shall pay to Landlord an amount equal to thirty percent (30%) of all Shared Special Event Net Income received by or for the account of Tenant or an Affiliate, directly or indirectly from, in connection with, or arising out of Special Events held during each particular Lease Year.

(b) (i) Tenant shall pay to Landlord its share (if any) of Shared Special Event Net Income in respect of a particular Lease Year within thirty (30) days after the end of such Lease Year.

(ii) Together with each such annual payment (or, if no payment is due, in lieu of such payment), Tenant shall deliver to Landlord a statement, prepared by its managing member or a duly authorized officer, setting forth the total amount of Special Event Net Income for the Lease Year to which the statement pertains, and the details of such calculations.

(c) Definitions.

(i) "Shared Special Event Net Income" shall mean, for each Lease Year, the aggregate amount of Special Event Net Income received by or for the account of Tenant or an Affiliate, directly or indirectly from, in connection with, or arising out of each and every Special Event during such Lease Year, less the amount of One Hundred Forty-Three Thousand Dollars (\$143,000) (which amount shall be subject to a CPI Adjustment at the commencement of the fourth (4th) Lease Year, and at the commencement of every third (3rd) Lease Year thereafter).

(ii) "Special Event Net Income" shall mean the Special Event Revenues from a particular Special Event, less the Special Event Expenses in respect of such Special Event.

(iii) "Special Event Revenues" shall mean the total of all receipts, revenues, fees, proceeds, property (valued according to its fair market value), and other forms of consideration (including, without limitation, rental, sponsorship, concession, advertising and broadcasting revenues, and admission, parking, license and use fees) received by or for the account of Tenant or an Affiliate, directly or indirectly from, in connection with, or arising out of such Special Event, but excluding therefrom sales taxes. Special Event Revenues shall include a pro-rata portion of any consideration, other than amounts derived from Advertising Signage and Naming Rights, that (1) is received by or for the account of Tenant or an Affiliate for or in respect of the right to use the Premises or to

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Any Imposition relating to a fiscal period of the taxing authority, a part of which fiscal period is included within the Term and a part of which is included in a period of time after the Expiration Date, shall be apportioned pro rata between Landlord and Tenant as of the Expiration Date (unless the Expiration Date has occurred as a result of an Event of Default, in which case Tenant shall not be entitled to an apportionment except for the purpose of applying such amount as a credit pursuant to Section 22.03(b) hereof).

Section 5.05. Taxes.

Provided the City shall be Landlord, Landlord shall pay, cancel, or otherwise satisfy and discharge of record any and all Taxes on or before the due date thereof (which may be by bookkeeping entry, interdepartmental direction or other manner or procedure selected by Landlord). If the City shall cease to be Landlord, any new Landlord shall pay the Taxes on or before the due date thereof, it being understood that under no circumstances shall Tenant pay Taxes. If Landlord shall have failed to pay or discharge the Taxes as required hereunder and Tenant shall not have timely commenced a proceeding to contest the same as provided in Section 33.01 hereof, or if Tenant shall have timely commenced such a proceeding to contest the Taxes but failure to pay the Taxes during the pendency of such proceeding will result in the imminent loss or forfeiture of the Premises and the termination of Tenant's interest under this Lease or Tenant would by reason thereof be subject to any civil or criminal penalty or liability, then Tenant may pay such unpaid Taxes together with any interest or penalties thereon and deduct such payment from the next Rental due, with interest at the rate (the "City's Payment Rate") which is the lesser of the New York City Department of Finance Penalty Rate (18%) or the interest rate specified in Section 3-a(1) of the General Municipal Law of the State of New York, as it may be amended from time to time.

Section 5.06. Intentionally Omitted.

Section 5.07. Intentionally Omitted.

Section 5.08. Survival.

The provisions of this Article 5 shall survive any termination of this Lease.

ARTICLE 6

USE AND DEVELOPMENT OF PREMISES

Section 6.01. Permitted Uses. Tenant shall use and occupy the Premises for the purpose of receiving, processing, handling (including packaging), distributing, and warehousing, of food products and beverages and other ancillary products provided, however, that non-food items shall not consist of more than twenty-five percent (25%) of Tenant's inventory of the Premises and no other purpose and provided further, that Tenant shall not use the Premises for wholesale purchase, sale or distribution of fresh seafood. Tenant and Tenant's servants, employees, agents, visitors, and licensees shall observe faithfully, and comply strictly with, any reasonable restrictions on use as Landlord may from time to time adopt, provided same do not materially interfere with Tenant's Permitted Uses. Notice of any additional restrictions shall be given at least thirty (30) days in advance of the date such restriction is proposed to become

effective. Notwithstanding anything contained in this Section to the contrary, Landlord shall not be liable to Tenant for violation of the same by any other tenant, its servants, employees, agents, visitors or licensees.

Section 6.02. Requirements for Conduct of Business Tenant acknowledges that the Property and the Premises are part of a "public market" under § 260 *et seq.* of the New York Agriculture and Markets Law and of a "public wholesale market" under § 22-251(h) of the New York Administrative Code. Tenant further acknowledges and agrees that it shall comply with the requirements as required pursuant to the general provisions of Article 14 hereof.

Section 6.03. Unlawful Use; No Representation of Landlord.

(a) During the Term, Tenant shall not use or occupy the Premises or permit or suffer the Premises, or any part thereof to be used or occupied, for any unlawful, illegal, or hazardous business, use or purpose or in any way in violation of any of the Requirements, any certificate of completion or occupancy affecting the Premises or this Lease or in such manner as may make void or voidable any insurance then in force with respect to the Premises, the Building or the Property. Immediately upon the discovery of any such unlawful, illegal or hazardous business, use or purpose, Tenant shall take all necessary steps, legal and equitable, to compel the discontinuance thereof. Tenant shall not keep anything in the Premises which may cause or be apt to cause structural injury to the Premises or any part thereof, or as will constitute a public or private nuisance, or anything except as now or hereafter permitted by the Fire Department, Board of Fire Underwriters, Fire Insurance Rating Organization and other authority having jurisdiction, and then only in such manner and such quantity so as not to make it difficult or impossible to obtain fire insurance for the Premises or increase the rate for fire insurance applicable to the Building, nor use the Premises in a manner which will increase the insurance rate for the Building or any property located therein over that otherwise in effect. If by reason of Tenant's failure to comply with the foregoing the fire insurance rate shall, at any time, be higher than it otherwise would be, then Tenant shall be obligated to pay such additional cost which shall have been charged because of such failure by Tenant.

(b) Any installation on any floor of the Premises shall be placed and maintained by Tenant, at Tenant's expense, in settings sufficient, in Landlord's reasonable judgment, to absorb and prevent vibration, noise and annoyance.

(c) Tenant shall use its best efforts, at Tenant's expense, to contain any odors that may arise from Tenant's use of the Premises in accordance with this Section.

(d) Any installation on or activity conducted at the Premises shall incorporate advances in the art of noise control and odor control, as applicable, developed for the kind and level of noise or odor, as applicable, emitted or produced by such installations or activity, all in accordance with or required by any applicable regulations issued by the New York City Department of Environmental Protection of the City, or its successor, or any other relevant agency or authority.

(e) Tenant may not, without Landlord's prior written approval in each instance, conduct any excavation on the Premises, Common Facilities or Land including but not

limited to any digging-up or removal of any soil ("Excavation Work"). Furthermore, any request to conduct any Excavation Work shall be accompanied by a detailed description of the Excavation Work and the precise location thereof, submitted to Landlord not less than thirty (30) days prior to the date on which Tenant would like to commence the Excavation Work. Landlord may, together with its written approval of such Excavation Work, require that the Excavation Work be monitored or conducted by Administrator's environmental consultant and the costs attributable to the environmental consultant in connection with Tenant's excavation request shall be paid for on a reimbursement basis by Tenant within twenty (20) days following submission by Administrator of a detailed bill of any such expenses. Tenant shall cooperate in good faith with Administrator and its environmental consultant with respect to and during the performance of Excavation Work. However, in the event Excavation Work is necessary on an emergency basis and accordingly it is necessary for the Excavation Work to be performed in a brief period of time, Tenant must, state on the heading of the notice, in large bold letters:

**"EMERGENCY EXCAVATION REQUEST PURSUANT TO SECTION 6.03 OF THE
SULTANA LEASE AT 600 FOOD CENTER DRIVE, HUNTS POINT",**

in which case the required thirty (30) day advance notice shall not apply and provided further, that if the emergency Excavation Work must be conducted prior to the arrival of Administrator's environmental consultant then Tenant shall separate any excavated soil and secure it at the Premises in a container or on a tarp.

(f) Landlord makes no representation as to the legality of the use of the Premises for Tenant's intended purposes. If any use or proposed use is determined to be illegal by a court of competent jurisdiction or an administrative law judge, Tenant agrees that neither Landlord nor Administrator nor any of their respective agents, officers and employees, or any person whatsoever, shall be liable for any damages arising out of or related to such illegal use or proposed use.

ARTICLE 7

INSURANCE

Section 7.01. Insurance Requirements.

(a) Tenant shall purchase, maintain and keep in full force and effect throughout the Term, at Tenant's sole cost and expense, with respect to the Premises, and the operations related thereto, whether conducted on or off the Premises, insurance coverage of the types and in the minimum limits as follows:

(i) Liability Insurance. Commercial General Liability Insurance, on an occurrence basis, containing no exclusion for sprinkler or water damage, legal liability or any other hazard customarily covered by such insurance, designating Landlord, Administrator and Apple as additional insureds, on a primary and non-contributory basis, providing coverage against assumed or contractual liability under this Lease and claims for personal injury, bodily injury, death and property damage, occurring on, in or about the Premises and the streets and sidewalks adjacent to the Premises, (or in connection with Tenant's use of any rail service should it become available) such insurance to have a limit per occurrence of not less than five

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connection therewith, including, without limitation, reasonable attorneys' fees and disbursements.

ARTICLE 20
PERMITTED USE; NO UNLAWFUL OCCUPANCY

Section 20.01. Permitted Uses.

(a) Except as otherwise provided in subparagraph (b), Tenant shall use and occupy the Premises solely for the selling, buying, receiving, brokering, processing, handling (including packaging) and distribution of fish and seafood products and other food products commonly sold or distributed at wholesale seafood distribution centers ("Seafood Distribution Uses"), and for uses ancillary thereto, including offices, storage, parking, locker rooms, a restaurant and/or commissary, banking facilities, and the sale of materials and supplies. The Premises is acknowledged to be a "market" under former § 259 et seq. of the New York Agriculture and Markets Law. In exercising its rights under this Lease, the Landlord shall apply the Market Rules and Regulations and all amendments thereto as the same shall have been promulgated by the City's Department of Business Services (or successor or replacement thereto) in its regulatory capacity.

(b) (i) During the Lease term, Tenant shall have the right to request from time to time, by written notice to Landlord, that the scope of the Permitted Uses be modified to include the selling, buying, receiving, brokering, processing, handling (including packaging) and distribution of foods products other than seafood on the grounds that (X) that there has been a significant decline in the availability of seafood product for wholesale distribution by the Subtenants, and/or (Y) there has been a material change in wholesale seafood market conditions that materially and adversely affects the long-term viability of the wholesale seafood distribution businesses at the Premises. Tenant shall include with any such request all information reasonable necessary to substantiate the foregoing, and any other information that Landlord shall request.

(ii) Landlord shall have the right to accept or deny Tenant's request to modify the scope of Permitted Uses, in whole or in part, in its reasonable discretion, provided that Landlord shall give prompt and good faith consideration to such request, and, in responding thereto, shall endeavor to take into account the designation of the premises as a wholesale seafood market, the market conditions and any other factors that concern the long-term viability of the wholesale seafood distribution businesses at the Premises.

Section 20.02. Compliance with Laws and Insurance Policies. Tenant agrees that it will not use or permit any person to use the Premises or the Permit Area or any part thereof for any use or purpose in violation of this Lease, or of any present or future Requirements, orders, directions, rules or regulations. Tenant shall not use or occupy the Premises or the Permit Area, or permit the Premises or the Permit Area be used or occupied, nor do or permit anything to be done in or on the Premises or the Permit Area, in whole or in part, for any unlawful or illegal business use or purpose or for any purpose or in any way in violation nor this Article or any other provision of this Lease, or in a manner which would in any way violate any certificate of completion or occupancy affecting the Premises or the Permit Area, or make void or voidable any insurance then in force with respect thereto, or which may make it difficult or impossible to obtain fire or other insurance thereon, or as will cause or be apt to cause structural injury to the Premises or the Permit

Area or any part thereof, or as will constitute a public or private nuisance. During the term of this Lease, Tenant, at its sole cost and expense, shall promptly comply with all Requirements foreseen and unforeseen, ordinary as well as extraordinary, which may be applicable to the Premises or the Permit Area, or any part thereof, or to the use or manner of use of the Premises or the Permit Area, or the owners, tenants or occupants thereof, even though such Requirement shall necessitate structural changes, repairs or improvements, or the use or application of portions of the Premises or the Permit Area, for compliance therewith, and even though compliance with the provisions of this Section 20.02 may interfere with the use and enjoyment of the Premises or the Permit Area.

Section 20.03. No Representation of Landlord. Except for the uses identified in and permitted by Section 20.01 of this Lease, Landlord makes no representation as to the legality of the use of the Premises or the Permit Area for Tenant's intended purposes. If any use or proposed use is determined to be illegal by a court of competent jurisdiction or an administrative law judge, Tenant agrees that neither Landlord nor Administrator nor any of their respective agents, officers and employees, or any person whatsoever, shall be liable for any damages arising out of or related to such illegal use or proposed use.

Section 20.04. Restriction on New Seafood Markets. During the Term, Landlord shall not actively promote or develop in the City of New York any other "public wholesale market" (as defined in Section 22-251(h) of the City's Administrative Code) for the wholesale distribution of seafood, provided that this provision is not intended to and shall not preclude Landlord, acting in its governmental capacity, from designating any area(s) in the City as a public wholesale market or a public seafood market for the primary purpose of regulating the same.

ARTICLE 21 EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES, ETC.

Section 21.01. Definition. Each of the following events shall be an "Event of Default" hereunder:

(a) (i) if Tenant shall fail to make any payment (or any part thereof) of Rental as and when due hereunder and such failure shall continue for a period of ten (10) days after notice;

(ii) if Tenant shall fail to maintain the Premises or the Permit Area as provided in Sections 11.01 and 11.03 hereof and if such failure shall continue for a period of thirty (30) days after notice (unless such failure requires work to be performed, acts to be done or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed within such thirty (30) day period, in which case no Event of Default shall exist as long as Tenant shall have commenced curing the same within the thirty (30) day period and shall diligently and continuously prosecute the same to completion within a reasonable period);

(b) if Tenant shall enter into (or permit to be entered into) a Capital Transaction, or any other transaction, in violation of the provisions of this Lease and such Capital Transaction or other transaction shall not be made to comply with the provisions of this Lease or canceled within fifteen (15) days after Landlord's notice thereof to Tenant;

ARTICLE 23

PERMITTED USE; NO UNLAWFUL OCCUPANCY

Section 23.01. Permitted Use Generally.

(a) ARB Parcel. Effective upon the Substantial Completion Date, Tenant shall use and operate the ARB Premises for a building providing rentable laboratory space for Biotechnical Uses above the ground floor, and accessory facilities (such as a cafeteria) and retail space on the ground floor, subject to the provisions of this Article 23. The laboratory space shall be rented in accordance with Section 23.03 hereof.

(b) Additional Parcel I. Prior to commencing construction of Additional Building I, Tenant shall install surface parking facilities at Additional Parcel I and use said Additional Parcel I for New Building ancillary surface parking and landscaping. Thereafter, Tenant shall use Additional Parcel I for construction and operation of Additional Building I, in accordance with the Development Plan. Additional Building I shall include no more zoning floor area than remains allowable under the zoning law of the City after taking into account the presence of the New Building and the Preservation Project. Until the twenty-fifth (25th) anniversary of the Substantial Completion Date, Additional Building I shall be used solely for Biotechnical Uses and no more than 50% of the Rentable Area in Additional Building I shall be used for Academic Uses. Notwithstanding the preceding, Tenant may use the space in in Additional Building I for uses other than Biotechnical Uses provided that (a) in no event is more than 50% of the Rentable Area in Additional Building I used for Academic Uses, and (b) Tenant pays Landlord prior to commencing any non-Biotechnical Use an amount equal to the excess, if any of (i) the value of Additional Parcel I appraised for the uses proposed by Tenant over (ii) the prorated portion of the Initial Payment attributable to Additional Parcel I plus an amount equal to interest thereon accruing from the Commencement Date compounded on the first anniversary of the Commencement Date and each whole or partial anniversary thereafter on an annual basis (except for any last partial year) at the Market Rate prevailing on each such anniversary.

(c) Additional Parcel II. Prior to commencement of construction of Additional Building II, Tenant shall either keep Additional Parcel II vacant or use it for New Building ancillary surface parking. Thereafter Tenant shall use Additional Parcel II for construction and operation of Additional Building II, in accordance with the Development Plan.

Section 23.02 Prohibited Uses.

OF

(a) ARB Premises and Additional Premises I. Tenant shall not use or occupy the ARB Premises or Additional Premises I for, and shall use reasonable efforts to prevent the ARB Premises and Additional Premises I or any part thereof from being used or occupied for, any illegal business, use or purpose, or for any purpose in violation of the provisions of this Article 23 or the Certificate(s) of Occupancy therefor, or in such manner as may make void or voidable any insurance then in force with respect to the ARB Premises or Additional Premises I. Immediately upon its discovery of any such illegal business, use or purpose, or use or occupation in violation of this Article 23, Tenant shall take all reasonable steps, legal and equitable, to compel discontinuance of such business or use, including, if necessary, the removal of any Subtenants using a portion of the ARB Premises or Additional Premises I for any illegal business, use or purpose or in violation of this Article 23.

(b) Additional Premises II. Tenant shall, promptly after the Commencement Date, construct and thereafter maintain until construction of a building at Additional Premises II, a security fence along the boundaries of Additional Premises II. After a building has been constructed on Additional Premises II, Tenant shall have the same obligations with respect to Additional Premises II as it does with respect to the rest of the Premises under the preceding subsection (a).

Section 23.03. New Building Space Leasing Requirements.

(a) Generally. Tenant shall lease space in the New Building to small, start-up or developing Firm(s) (as hereinafter defined) for Biotechnical Uses (hereinafter referred to as "Incubator Firm(s)") as well as to Firm(s) operating an established business for Biotechnical Uses (hereinafter referred to as "Established Firm(s)") in accordance with this Section 23.03. For purposes of this Lease, a Firm shall mean an individual, business or not-for-profit corporation, partnership, joint venture, estate, trust, unincorporated association, foundation, any Federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing; provided, however, that an Incubator Firm(s) shall not include an estate, trust, or foundation, or any Federal, state, county or municipal government or any agency, department or bureau thereof or any fiduciary acting in such capacity on behalf of any of the foregoing. In no event shall any Firm be an Incubator Firm if it has occupied space in the New Building for more than five years. After five years of such occupancy a Firm shall be deemed to be an Established Firm. Attached hereto as Exhibit F are guidelines, agreed upon by Tenant and the Public Parties, for a tenant selection process including guidelines for screening and defining Incubator Firms and departure from said guidelines with respect to any Sublease, and any change in such guidelines, shall be subject to the prior review and approval of

each of the Public Parties, which approval shall not be unreasonably withheld.

(b) First Period. (i) Incubator Firms/Established Firms. From the Substantial Completion Date through the third anniversary thereof (the "First Period"), Tenant shall use all reasonable efforts to lease (x) a minimum of forty percent (40%) of the non-retail Rentable Area in the New Building to Incubator Firms (space leased to Incubator Firms to be referred to hereinafter as the "Incubator Space") and (y) approximately sixty percent (60%) of the non-retail Rentable Area in the New Building to Established Firms.

(ii) Initial Rent-Up. If despite Tenant's reasonable efforts, after the first anniversary of the Substantial Completion Date the amount of Incubator Space is below the forty percent minimum set forth in the preceding sentence, Tenant may use the Temporary Use Space as provided in Section 23.03(f). If after the second anniversary of the Substantial Completion Date the amount of Incubator Space is still below said forty percent minimum, Tenant may use the Temporary Use Space for Established Firms.

(iii) Subsequent Vacancy. If at any time during the First Period that space previously leased becomes vacant the amount of Incubator Space is, or, as a result of such vacancy, drops, below the forty percent minimum set forth above, the space that has become vacant shall not be leased other than to Incubator Firms for four successive months after such vacancy has occurred. If after such four successive month period Tenant has, despite Tenant's reasonable efforts, been unable to rent such space to Incubator Firms, Tenant may rent such space to Established Firms (subject to the reasonable approval of UDC acting for the Public Parties) or may use it as provided in Section 23.03(f) below.

(c) Second Period. Following the expiration of the First Period, through the earlier to occur of (i) the Public Investment Repayment Date, or (ii) the 15th anniversary of the Substantial Completion Date (the "Second Period"), Tenant shall continue to rent any available non-retail space to Incubator Firms and Established Firms so that at least 40% of the non-retail Rentable Area in the New Building is leased to Incubator Firms except as provided in (1) and (2) below:

(1) (A) During the Second Period, if less than 40% of non-retail Rentable Area in the New Building is at any time being leased to Incubator Firms, any vacant non-retail space shall be held vacant and available for Incubator Firms for four successive months. Thereafter, Tenant may rent such space to Established Firms (subject to the reasonable approval of UDC, acting for the Public Parties, if less than thirty percent (30%) of the non-retail Rentable Area in the

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UNDC

and Bonds and all other obligations of UNDC as provided in the Bond Proceedings, this Lease shall terminate and the rent and other charges payable by UNDC hereunder shall be apportioned and paid by UNDC to the date of such termination.

ARTICLE VII

COVENANTS TO MAKE REPAIRS AND AGAINST WASTE

Section 7.01. UNDC, at its sole cost and expense, shall at all times during the term of this Lease keep and maintain, or cause to be kept and maintained, the Project, both inside and outside, in good state of repair, acts of God excepted, and shall not permit, commit or suffer any waste of the whole or any part of the Project.

ARTICLE VIII

COMPLIANCE WITH ORDERS, ORDINANCES, ETC.

Section 8.01. During the term of this Lease, UNDC, at its sole cost and expense, shall promptly comply or cause compliance with all applicable laws, ordinances, orders, rules, regulations and requirements, present and future, of all federal, state and municipal governments and appropriate departments, commissions, boards and officers thereof, and with applicable orders, rules and regulations of the New York Board of Fire Underwriters, or any other body hereafter constituted exercising similar functions. Nothing contained in this Lease shall require UNDC or any subtenant of UNDC to obtain any permit or approval from any department, commission, board, agency or officer of the City that UNDC or its subtenants would not otherwise be required to obtain, or confer on UNDC or any subtenant of UNDC any

right to obtain any permit or approval except upon compliance with applicable requirements of the departments, commissions, boards, agencies and officers of the City having jurisdiction thereof.

Section 8.02. UNDC shall have the right to contest by appropriate legal proceedings prosecuted with reasonable diligence and dispatch, in its name or the name of the City, the validity or application of any law, ordinance, order, rule, regulation or requirement, and if compliance therewith pending the prosecution of any such proceeding is held in abeyance by the court or agency reviewing the matter, UNDC may postpone compliance until the final determination of any such proceedings provided that UNDC furnishes the City security, reasonably satisfactory to the City, against any loss or injury the City may sustain as owner of the Project by reason of such noncompliance or delay therein. The City shall execute and deliver any papers which may be necessary or proper to permit UNDC to contest the validity or application of any such law, ordinance, order, rule, regulation or requirement.

ARTICLE IX

LIENS

Section 9.01. Except as otherwise provided in this Lease, UNDC, at its sole cost and expense, shall keep the Project and the Sidewalk Portion of Parcel 20 free and clear of all liens and encumbrances of every kind and character whatsoever, including mechanics', laborers' and materialmen's liens and other liens of a similar nature, and within thirty (30) days after notice of

filing of any such lien, shall cause the same to be discharged by payment, deposit, bond or otherwise or shall diligently defend, or institute and diligently prosecute, such proceedings as may be appropriate to discharge the same.

Section 9.02. Nothing in this Lease shall be deemed or construed in any way as constituting the consent or request of the City, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials with respect to the Project, or any part thereof. Notice is hereby given that the City shall not be liable for any work performed or any materials furnished or to be furnished with respect to the Project and that no mechanic's lien for such work or materials shall attach to the fee interest of the City in and to the Project.

ARTICLE X

SURRENDER OF THE PROJECT AREA

Section 10.01. On the Expiration Date or upon any earlier termination of this Lease, UNDC shall surrender and deliver up the Project and the Sidewalk Portion of Parcel 20 unto the possession and use of the City free and clear of all agreements respecting the Project or the management or operation thereof, and all licenses and subtenancies, other than subtenancies which the City agrees to recognize as provided in Section 11.05 hereof, and free and clear of all liens and encumbrances other than those, if any, created by the City, or existing on the Commencement Date, without any payment or allowance whatever

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Urban Garden Center

as shall then be in effect hereunder, except that (x) Base Rent will be adjusted pursuant to Article 4; and (y) Tenant shall have no further right to extend or renew the Term other than as provided herein.

(d) Conditions Precedent; Acceptance "As Is".

(i) Notwithstanding anything contained in this Lease to the contrary, Landlord and Tenant hereby agree that the effectiveness of this Lease and the obligations of the parties hereunder are conditioned upon and subject to the delivery by Landlord to Tenant of the Premises in broom clean condition.

(ii) Tenant agrees that (1) Commencement Date shall constitute acceptance by the Tenant of the Premises "AS IS" (including, without limitation, with respect to the presence of Hazardous Substances) and (2) Tenant will not at any time make any claim that the Premises are not in suitable repair or condition for the uses and purposes contemplated and permitted by this Lease.

ARTICLE 3. Use and Occupancy of the Premises

(a) Tenant shall use and occupy the Premises for (i) the sale of plants, flowers and other related items, including Christmas trees and decorative Halloween pumpkins; (ii) promotion of the mission of Tenant (as represented in Tenant's marketing literature on the Commencement Date) and (iii) for retail, office, parking and administrative purposes ancillary thereto (collectively, the "Permitted Use"), and for no other purpose, including, but not limited to, the sale of produce and other food items.

(b) Tenant will not at any time use or occupy the Premises for other than the Permitted Use. If any governmental license or permit shall be required for the proper and lawful conduct of Tenant's business, including, without limitation, disposal of Hazardous Substances, Tenant shall be responsible for and shall procure and maintain such license or permit and Landlord, in its proprietary and not its governmental capacity, shall reasonably cooperate with Tenant in connection therewith. Tenant shall not cause or permit, as the result of any intentional or unintentional act or omission on the part of Tenant, its agents, employees, tenants, Subtenants or other occupants of the Premises to release Hazardous Substances in or from any portion of the Premises in violation of any Environmental Laws. "Hazardous Substance" shall mean "solid waste" or "hazardous waste", "hazardous material", "hazardous substance", and "petroleum product or by-product" as defined in the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Material Transportation Act, the Federal Water Pollution Control Act and the Superfund Amendments and Reauthorization Act of 1986, the New York State Environmental Conservation Law, the New York State Navigation Law, and the New York City Charter, Administrative Code and Rules and Regulations, and any laws relating to underground storage tanks, and any similar or successor federal law, state law or local statutes and ordinances and any rules, regulations and policies promulgated thereunder, as any of such federal, state and local statutes, ordinances and regulations may be amended from time to time (collectively, "Environmental Laws") and, if not already included above, asbestos and polychlorinated biphenyls.

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(c) Except for use of the Premises by Tenant for the Permitted Uses, Tenant shall not use or occupy the Premises, or permit or suffer the Premises or any part thereof to be used or occupied (i) for any unlawful, illegal or hazardous business, use or purpose or in any way in violation of any Requirement, or (ii) in such manner as may make void or voidable any insurance then in force with respect to the Premises or the Market. Immediately upon the discovery of any such unlawful, illegal or hazardous business, use or purpose, Tenant shall take all necessary steps, legal and equitable, to compel the discontinuance thereof, including, if necessary, the removal from the Premises of any Subtenant using any portion of the Premises for any such business, use or purpose.

(d) Tenant shall not use more than 2000 square feet of the Premises for customer parking and deliveries.

(e) Tenant shall park no more than four (4) vehicles overnight in Lot 2 (as indicated in Exhibit A). The vehicles shall be clearly marked as belonging to Tenant and authorized by Landlord.

ARTICLE 4. Rent

(a) Base Rent. Payment of Rent shall commence as of the earlier of (i) three (3) months after such date that Tenant begins to operate the Premises for the Permitted Use or (ii) six (6) months from the Commencement Date (either, the "Rent Commencement Date"). Commencing on the Rent Commencement Date and thereafter throughout the Term Tenant shall pay to Landlord annual rent ("Base Rent") in the amounts and in the manner provided in this Article 4.

(b) Initial Term. During the Initial Term, Base Rent shall be paid by Tenant in the following amounts:

(i) for the period from the Rent Commencement Date to the conclusion of the 1st Lease Year, \$48,000 for the Premises (based upon the rate of \$2.40 per square foot per year), payable in equal monthly installments of \$4,000;

(ii) upon the conclusion of the 1st Lease Year, Base Rent shall increase by 3% and shall continue to increase by 3% at the conclusion of each Lease Year thereafter until the conclusion of the Initial Term.

(c) Renewal Term. During the Renewal Term, Base Rent shall be paid by Tenant in the following amounts:

(i) for the period from the first day of the 6th Lease Year to the conclusion of the 6th Lease Year, in an amount equal to the greater of fair market rental value of the Premises (as determined pursuant to Article 4(i)) or the Base Rent payable by Tenant in the 5th Lease Year.

(ii) upon the conclusion of the 6th Lease Year, Base Rent shall increase by 3% and shall continue to increase by 3% at the conclusion of each Lease Year thereafter until the conclusion of the Renewal Term.

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Winning Group LLC,

with the provisions hereof or any other right or remedy permissible hereunder, may (but shall not be required to):

(a) pay for and maintain any of the insurance policies required to be furnished by Tenant pursuant to Article 7 hereof, or

(b) make any other payment or perform any other act on Tenant's part to be made or performed as in this Lease provided (except for (x) any maintenance or repair obligation imposed on Tenant pursuant to Article 14 hereof, or (y) any act which would require Landlord, its agent, employee, contractor, or any other person acting on Landlord's behalf to enter upon the Premises or any portion thereof for any such purpose), and may take all such action as may be necessary therefor. Notwithstanding the foregoing, neither Landlord nor any agent, employee, contractor or any other person acting on Landlord's behalf may enter upon the Premises or any portion thereof for any such purpose.

Section 22.02. Amount Paid by Landlord as Additional Rental. All reasonable sums so paid by Landlord and all reasonable costs and expenses incurred by Landlord in connection with the performance of any such act, together with interest thereon at the Late Charge Rate from the respective dates of Landlord's making of each such payment or incurring of each such cost and expense, shall constitute, following notice from Landlord to Tenant, additional Rental under this Lease and shall be paid by Tenant to Landlord on the first day of the month following the giving of such notice.

Section 22.03. Waiver, Release and Assumption of Obligations. Landlord's payment or performance pursuant to the provisions of this Article shall not be, nor be deemed to be (a) a waiver or release of the Default or Event of Default with respect thereto (or any past or future Default or Event of Default) or of Landlord's right to terminate this Lease in accordance with the provisions hereof and/or to take such other action as may be permissible hereunder, or (b) Landlord's assumption of Tenant's obligations to pay or perform any of Tenant's past, present or future obligations hereunder.

Section 22.04. Proof of Damages. Landlord shall not be limited in the proof of any damages that it may claim against Tenant arising out of, or by reason of, Tenant's failure to provide and keep insurance in force in accordance with the provisions of this Lease to the amount of the insurance premium or premiums not paid. However, Landlord shall be entitled to seek, and if successful, to recover, as damages for such Default or Event of Default, the uninsured amount of any loss and damage sustained or incurred by it and the reasonable costs and expenses of any suit in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements.

ARTICLE 23

PERMITTED USE; NO UNLAWFUL OCCUPANCY

Section 23.01. Permitted Uses. Tenant shall redevelop, use, and operate the Premises subject to the terms and conditions set forth in this Lease and solely in a manner consistent with, and for, the following purposes:

(a) The Building. After Substantial Completion the Building shall be subleased to space tenants by the Developer and used predominately for the operation of retail and/or food service uses, provided, however, that Tenant shall cause 3,000 square feet of the basement of the Building to be utilized as a center for training in garment industry operations or for other uses beneficial to the community and approved in writing by Administrator which approval shall be granted or withheld in Administrator's sole discretion, acting in good faith.

(b) All operations at the Premises shall comply with the Requirements set forth in Article 16 including, but not limited to the Fair Labor Standards Act of 1938 and the Occupational Safety and Health Act.

Section 23.02. Prohibited Uses. Tenant shall not use or occupy the Premises, and neither permit nor suffer the Premises or any part thereof to be used or occupied as a factory ("Factory" or "Factory Building") as defined under McKinney's Labor Law § 2(9) and (10), for any unlawful or illegal business, use or purpose, or for any purpose, or in any way, in violation of the provisions of Section 23.01 or Article 16 hereof or the Certificate(s) of Occupancy for the Premises, or in such manner as may make void or voidable any insurance then required to be carried under Article 7 hereof. Immediately upon discovery of any such unlawful or illegal business, use or purpose, or use or occupation in violation of Section 23.01 or Article 16 hereof, Tenant shall take all necessary steps, legal and equitable, to compel discontinuance of such business or use, including, if necessary, the removal from the Premises of any Subtenants using any portion of the Premises as a Factory, for any unlawful or illegal business, use or purpose or in violation of Section 23.01 or Article 16 hereof.

ARTICLE 24

EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES, ETC.

Section 24.01. Definition. Each of the following events shall be an "Event of Default" hereunder:

(a) (i) if Tenant shall fail to make any payment (or any part thereof) of Rental (including, without limitation, Base Rent, Additional Rent or PILOT as and when due hereunder and such failure shall continue for a period of fifteen (15) days after notice;

(ii) if Tenant shall fail to maintain the Premises as provided in Section 14.01 and 14.03 hereof and if such failure shall continue for a period of fifteen (15) days after notice (unless such failure requires work to be performed, acts to be done or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed within such fifteen (15) day period, in which case no Event of Default shall exist as long as Tenant shall have commenced curing the same within the fifteen (15) day period and shall diligently and continuously prosecute the same to completion within a reasonable period;

(b) if Tenant shall fail to Commence Construction and/or Commence Renovation within the time period provided for such Commencement in Article 13 hereof, and such failure shall continue for a period of sixty (60) days after notice thereof from Landlord (subject to Unavoidable Delays not to exceed a period, in the aggregate, of one year), or if

SITE 7 ACQUISITION AGREEMENT

among

THE CITY OF NEW YORK,
NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION,
NEW YORK STATE URBAN DEVELOPMENT CORPORATION

and

42ND ST. DEVELOPMENT PROJECT, INC.

Premises

Block: 1014

Lots: 1, 4, 5, 6, 10, 11, 111, 12, 13 (P/O),
15, 58, 59, 60, 61, 62, 162, 63, 64

dated

as of October 7, 1994.

ARTICLE 7

USE OF THE PROPERTYSection 7.01. Permitted Use.

(a) Use. From and after the Substantial Completion Date, the Entertainment/Retail Project shall be used, occupied, operated and maintained in accordance with the applicable requirements of DUO and for the following uses only and for no other purpose: (i) during the period from the Substantial Completion Date through and including the day immediately preceding the nineteenth (19th) anniversary of the first to occur of (x) the date on which Tenant shall have achieved the Initial Minimum Required Occupancy Level, and (y) the Initial Occupancy Date, (A) for the permitted uses expressly set forth in Exhibits 1 and 2 of Schedule G attached hereto and (B) so as to cause the overall perception created to be that the Entertainment/Retail Project is a major entertainment destination supported by complementary retail and/or restaurant uses, it being understood that this impression will be achieved through a combination of use, design and signage; and (ii) during the period commencing on the nineteenth (19th) anniversary of the first to occur of (x) the date on which Tenant shall have achieved the Initial Minimum Required Occupancy Level, and (y) the Initial Occupancy Date, for the permitted uses expressly set forth in Exhibits 1, 2 and 3 of Schedule G attached hereto (collectively, "Permitted Use"). Tenant agrees not to use, permit or suffer the Property to be used for any purposes not expressly permitted under this Section 7.01(a) without the prior written consent of Landlord. Landlord agrees that for purposes of satisfying the use requirements of DUO and of this Section 7.01(a), the Anchor Theater Sublease (or, in the event of the termination or amendment of such Sublease, any Sublease entered into after such termination or any amended Sublease resulting from such amendment, in either case, covering all of the area of the Improvements previously covered by such Sublease immediately prior to such termination or amendment and occupied for uses permitted under Exhibit 1 of Schedule G hereto), shall be deemed to cover the greater of fifty percent (50%) of the square footage of the Improvements and the actual percentage of the square footage of the Improvements covered by such Sublease.

(b) Access. Subject to Section 7.11, Tenant shall designate and use, or cause to be used, 42nd Street as the main entrance for all stores located on the ground floor of 42nd Street, it being understood that the stores located on the ground floor at 42nd Street will have individual entrances and shall otherwise comply with the requirements in Schedule G attached hereto. Notwithstanding anything to the contrary herein, for so long as (i) Loews Festival Cinemas, Inc. ("Anchor Theater Tenant") or its successors and/or assigns under the Anchor Tenant Sublease, as amended from time to time, or any Subtenant of Anchor Theater Tenant, its successors or assigns under the Anchor Theater Sublease, as amended from time to time, occupy and use at least 70,000 square feet of Usable Area at the

Entertainment/Retail Project for movie theaters or, if permitted by such Sublease, for other uses expressly set forth on Exhibit 1 to Schedule G, (ii) the Anchor Theater Tenant and/or its Affiliates remain liable for the obligations of the Subtenant from time to time under such Sublease, as amended from time to time, and (iii) the main entrance to the lobby of the premises leased pursuant to the Anchor Theater Sublease, as amended from time to time, is on 42nd Street, the Anchor Theater Tenant and its Affiliates (and the successors and assigns of either of them) and their respective Subtenants in such premises shall be permitted to operate (or Sublet for operation by others) up to two (2) stores on the ground floor of the premises covered by the Anchor Theater Sublease, as amended from time to time, which stores do not have entrances on 42nd Street. For avoidance of doubt, Landlord confirms and agrees that any areas of said ground floor premises covered by the Anchor Theater Sublease, as amended from time to time, which are used for the sale of food, merchandise or other retail purposes and which are not separately demised and physically separated from the balance from the said ground floor space shall not be considered "stores" for purposes of this Lease. "Anchor Theater Sublease" means the Sublease dated on or about the date hereof between Anchor Theater Tenant, as tenant, and Tenant, as landlord, and shall include, for purposes of Section 7.01(b) and Section 7.16 only (other than the definition of "Bona Fide Termination", as defined in Section 7.16(a), one or more Subleases from Tenant to one or more Affiliates of Anchor Theater Tenant, provided that (x) all Subleases to Anchor Theater Tenant and its Affiliates are coterminous; (y) the Anchor Theater Tenant and/or its Affiliates remain liable for the obligations of the Subtenants under all such Subleases; and (z) such Subleases in the aggregate (treated as if they were a single Sublease), would comply with the provisions of clauses (i) and (iii) of this subparagraph (b).

(c) Required Leasing Levels. (i) Tenant shall, in accordance with this Article 7 and Articles 11, 12 and 13, enter into Subleases by the Fixed Substantial Completion Date (the "Initial Leasing Date"), TIME BEING OF THE ESSENCE as to the Initial Leasing Date, such date to be extended as, when and to the same extent that the Fixed Substantial Completion Date or the Initial Leasing Date is extended, if at all, for Unavoidable Delays in accordance with Section 6.06 and pursuant to Section 6.01(a), so as to satisfy the following requirements (collectively, the "Initial Minimum Required Leasing Level"):

(A) there shall be Subleases with Subtenants covering not less than sixty-one percent (61%) of the Usable Area of the Entertainment/Retail Project; and

(B) there shall be Subleases with Subtenants covering not less than fifty percent (50%) of the Usable Area of the Entertainment/Retail Project for the uses described on Exhibit 1 of Schedule G attached hereto.

(ii) Tenant shall, in accordance with this Article 7 and Articles 11, 12 and 13, enter into Subleases by the date twelve (12) months after the Fixed Substantial

Completion Date (the "Second Leasing Date"; collectively with the Initial Leasing Date, the "Leasing Dates"), TIME BEING OF THE ESSENCE as to the Second Leasing Date, such date to be extended as, when and to the same extent that the Fixed Substantial Completion Date is extended, if at all, for Unavoidable Delays in accordance with Section 6.06 and pursuant to Section 6.01(a), so as to satisfy the following requirements (the "Second Minimum Required Leasing Level"; collectively with the Initial Minimum Required Leasing Level, the "Minimum Required Leasing Levels"):

(A) there shall be Subleases with Subtenants covering not less than eighty percent (80%) of the Usable Area of the Entertainment/Retail Project; and

(B) there shall be Subleases with Subtenants covering not less than fifty percent (50%) of the Usable Area of the Entertainment/Retail Project for the uses described on Exhibit 1 of Schedule G attached hereto.

(iii) For purposes of this Section 7.01(c), Tenant shall be deemed to have entered into a Sublease covering any space that is expressly deemed to be in Full Operating Condition under Articles 7, 11 and 12, except Section 7.01(h)(ii).

(d) Required Occupancy Levels. (i) Not less than 61% of the Usable Area of the Entertainment/Retail Project shall be in Full Operating Condition (the "Initial Minimum Required Occupancy Level") by the date that is the last day of the 34th month following the calendar month in which falls the Construction Commencement Date (as extended from time to time in accordance with the express terms of this Lease, the "Initial Occupancy Date").

(ii) Not less than 80% of the Usable Area of the Entertainment/Retail Project shall be in Full Operating Condition (the "Second Minimum Required Occupancy Level"; collectively with the Initial Minimum Required Occupancy Level, the "Minimum Required Occupancy Levels") by the date that is the last day of the 46th month following the calendar month in which falls the Construction Commencement Date (as extended from time to time in accordance with the express terms of this Lease, the "Second Occupancy Date"; collectively with the Initial Occupancy Date, the "Occupancy Dates").

(iii) TIME IS OF THE ESSENCE as to the Occupancy Dates, provided, however, that:

(A) each Occupancy Date shall be extended as to all Demised Space in the Entertainment/Retail Project as and when and to the same extent that the Fixed Substantial Completion Date or an Occupancy Date is extended, if at all, for Unavoidable Delays in accordance with Section 6.06 or pursuant to Section 6.01(a):

AMENDED AND RESTATED

AGREEMENT OF LEASE

between

42ND ST. DEVELOPMENT PROJECT, INC.,
Landlord

and

THREE TIMES SQUARE CENTER PARTNERS, L.P.,
Tenant

Premises

Block: 1014
Lots: 28, 33, 134, 35, 36, 136 and 37
Borough of Manhattan
City, County and State of New York

Dated as of October 7, 1994

ARTICLE 23

PERMITTED USE; NO UNLAWFUL OCCUPANCY

Section 23.1. Type of Use. Effective upon the Substantial Completion Date, Tenant shall use and operate the Premises throughout the Term only as a first-class office building, with restaurant, retail (as permitted in the Retail Guidelines), service, classroom, showroom, parking, back office, storage and other uses incidental thereto, in accordance with the certificate(s) of occupancy therefor, and for no use or purpose inconsistent with the operation of a first class office building located in New York City.

Section 23.2. Prohibited Uses. Tenant shall not use or occupy the Premises, and, subsequent to the delivery of Possession of any Parcel in the Premises to Tenant, neither permit nor suffer such Parcel to be used or occupied, for any retail use other than as permitted in Article 5, the Retail Guidelines or for any unlawful or illegal business, use or purpose or for any purpose or in any way in violation of the certificate(s) of occupancy therefor or for any use not permitted by Section 23.1 (any such use herewith referred to as a "Prohibited Use"). Promptly upon its discovery of any such Prohibited Use subsequent to delivery of Possession of the Premises, Tenant shall take or cause to be taken all necessary steps, legal and equitable, to compel the discontinuation of such Prohibited Use, including, if necessary, the removal from the Premises of any Subtenants using any portion of the Premises for a Prohibited Use.

Section 23.3. Restriction of Public Use. At

Landlord's request, Tenant shall immediately cease to suffer or permit the Premises or any portion thereof to be used by the public in a manner that would, with the passage of time, impair title to the Premises or any portion thereof, or in a manner that would, with the passage of time, create the basis for a claim or claims of prescriptive right, adverse usage or adverse possession by the public, as such, or of implied dedication of the Premises or any portion thereof, but only to the extent and for so long as such cessation of use is necessary to prevent such impairment of title, creation of claim or implied dedication, as the case may be.

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AMENDED AND RESTATED

AGREEMENT OF LEASE

between

42ND ST. DEVELOPMENT PROJECT, INC.,
Landlord

and

FOUR TIMES SQUARE CENTER PARTNERS, L.P.,
Tenant

Premises

Block: 1013
Lots: 29, 37, 137, 36, 136, 135, 35 and 34
Borough of Manhattan
City, County and State of New York

Dated as of October 7, 1994

#40062305.2

ARTICLE 23

PERMITTED USE; NO UNLAWFUL OCCUPANCY

Section 23.1. Type of Use. Effective upon the Substantial Completion Date, Tenant shall use and operate the Premises throughout the Term only as a first-class office building, with restaurant, retail (as permitted in the Retail Guidelines), service, classroom, showroom, parking, back office, storage and other uses incidental thereto, in accordance with the certificate(s) of occupancy therefor, and for no use or purpose inconsistent with the operation of a first class office building located in New York City.

Section 23.2. Prohibited Uses. Tenant shall not use or occupy the Premises, and, subsequent to the delivery of Possession of any Parcel in the Premises to Tenant, neither permit nor suffer such Parcel to be used or occupied, for any retail use other than as permitted in Article 5, the Retail Guidelines or for any unlawful or illegal business, use or purpose or for any purpose or in any way in violation of the certificate(s) of occupancy therefor or for any use not permitted by Section 23.1 (any such use herewith referred to as a "Prohibited Use"). Promptly upon its discovery of any such Prohibited Use subsequent to delivery of Possession of the Premises, Tenant shall take or cause to be taken all necessary steps, legal and equitable, to compel the discontinuation of such Prohibited Use, including, if necessary, the removal from the Premises of any Subtenants using any portion of the Premises for a Prohibited Use.

Section 23.3. Restriction of Public Use. At Landlord's request, Tenant shall immediately cease to suffer or permit the Premises or any portion thereof to be used by the public in a manner that would, with the passage of time, impair title to the Premises or any portion thereof, or in a manner that would, with the passage of time, create the basis for a claim or claims of prescriptive right, adverse usage or adverse possession by the public, as such, or of implied dedication of the Premises or any portion thereof, but only to the extent and for so long as such cessation of use is necessary to prevent such impairment of title, creation of claim or implied dedication, as the case may be.

INDEXNEW 42 – SITE 5 THEATERSFunding Agreement

1. Funding Agreement among New York City Economic Development Corporation ("EDC"), 42nd St. Development Project, Inc. ("42DP"), The City of New York (the "City"), and The New 42nd Street, Inc. ("New 42"), dated as of 9/14/93.
2. Amendment to Funding Agreement dated 7/22/03.

Theater Development Agreement

3. Amended and Restated Theater Development Agreement between 42DP and New 42, dated as of 12/13/96.
4. Amendment to Amended and Restated Theater Development Agreement, dated as of 6/30/98.

Theater Project Agreement

5. Theater Project Agreement, between New York State Urban Development Corporation ("ESDC"), the City and New 42, dated as of 5/7/92.
6. Agreement extending Theater Project Agreement to Empire and New Amsterdam Theaters, dated 12/13/96
7. Second Amendment to Theater Project Agreement, dated as of 6/30/98

Master Lease

8. Amended and Restated Agreement of Master Lease, dated as of 12/13/96, between 42DP, as Landlord, and the New 42, as Tenant
9. Side Letter dated 6/4/98
10. Side Letter dated 6/16/98
11. Amendment to Amended and Restated Agreement of Master Lease, dated as of 6/30/98
12. Second Amendment Amended and Restated Agreement of Master Lease, dated as of 11/5/98
13. 12/13/96 Letter - Payment direction re: Harris Allocable Portion
14. Funding Agreement dated July 1, 2009 between EDC, 42DP, the City and New 42

Note: Agreements pertaining to the Harris and Liberty Theaters are included in the documents relating to the Site 8 Entertainment/Retail Project

expenses of any suit in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements.

ARTICLE 20

RIGHT OF INSPECTION

Section 20.01. Landlord's Right of Inspection. Tenant shall permit Landlord, its agents and representatives to enter the Premises at all reasonable times on reasonable notice for the purpose of inspecting the same.

Section 20.02. No Duty on Landlord. Nothing in this Article or elsewhere in this Lease shall imply any duty upon the part of Landlord to do any work which is the obligation of Tenant hereunder.

Section 20.03. Landlord's Entry Right 15 Months Prior to Expiration Date. Landlord shall have the right to enter the Premises at all reasonable times on reasonable notice during usual business hours within fifteen (15) months prior to the Expiration Date, for the purposes of showing the same to prospective tenants or purchasers.

ARTICLE 21

PERMITTED USE; NO UNLAWFUL OCCUPANCY

Section 21.01. Permitted Uses.

(a) Tenant shall use and operate the Premises only for the following purposes, in accordance with the certificate(s) of occupancy therefor, and for no other purpose inconsistent therewith:

(i) live theater (such as: drama, musicals, dance, chamber music, classical, light or contemporary opera, dinner theater, children's theater and other live performance arts); motion picture theater, provided that no more than two motion picture theaters may be located on Site 5; recital halls, concert halls, cabarets, jazz and other contemporary music as well as comedy clubs; state-of-the-art media shows; tourist or educationally oriented multi-media events; art, scientific and educational exhibitions; interactive theme exhibitions; museums; recording studios; rehearsal and performance studios; and repertory schools (such uses, "Primary Uses");

(ii) restaurants and retail activities (as per list of Entertainment-Related Retail activities (annexed hereto as Attachment A to Exhibit H), or as otherwise approved by Landlord, if, in Landlord's reasonable judgment, such proposed use.

when considered with the overall mix of uses, does not materially adversely affect the overall requirement of entertainment-related uses) (such uses, "Secondary Uses"); and

(iii) theater-related craft shops (e.g., wig and costume makers) and theater-related office space (such uses, "Ancillary Uses").

(b) At all times after Substantial Completion of the Initial Construction Work for all the Theaters, not less than five Theaters shall either (i) be principally devoted to Primary Uses, (ii) be part of an Entertainment Complex or (iii) be both principally devoted to Primary Uses and part of an Entertainment Complex. Secondary Uses may predominantly occupy (A) the Empire Theater (described in clause (vii) of the definition of "Theater" in Article 1 hereof), the Liberty Theater (described in clause (ii) of the definition of "Theater" in Article 1 hereof), the Selwyn Infill and up to one (1) additional Theater and (B) spaces above the theater auditoriums and/or in the lobbies (but in the case of lobbies, only to the extent that the Secondary Uses occupying any lobby are related to the Primary and/or Secondary Uses conducted in such Theater) in any of the remaining Theaters. Ancillary Uses may occupy space above the theater auditoriums and may also occupy the Selwyn Infill. Notwithstanding the foregoing, a modification of the allocation of uses permitted under this Section 21.01(b) may be allowed by Landlord if, in Landlord's discretion, the uses as reallocated remain consistent with the Public Goals and are predominantly entertainment-related.

(c) At all times after Substantial Completion of the Initial Construction Work for five (5) Theaters, at least one (1) of the Theaters must be predominantly dedicated to not-for-profit uses; at all times after Substantial Completion of the Initial Construction Work for six (6) Theaters, at least two (2) of the Theaters must be predominantly dedicated to not-for-profit uses. For purposes of this Section 21.01(c), a Theater shall be deemed to be predominantly dedicated to not for profit uses if a significant portion of such Theater is dedicated to not for profit use, and such use constitutes the significant presence in such Theater.

Section 21.02. Prohibited Uses. Tenant shall not use or occupy, nor permit or suffer the Premises, or any part thereof, to be used or occupied for any unlawful or illegal business, use or purpose, or for any business, use or purpose deemed by Landlord to be extra hazardous, or in such manner as to constitute a nuisance of any kind, public or private, or for any purpose or in any way in violation of any certificate of occupancy or of any present or future governmental laws, ordinances, requirements, orders, directions, rules or regulations, or which may make void or voidable any insurance then in force on the Premises. Tenant shall immediately upon the discovery of any such unlawful, illegal or extra hazardous use or nuisance take all necessary steps, legal and equitable, to cause the discontinuance of such use and to oust and remove any subtenants, licensees, concessionaires or other occupants found guilty of such unlawful, illegal or extra hazardous use or nuisance.

Section 21.03. Restriction of Public Use. Tenant shall not suffer or permit the Premises or any portion thereof to be used by the public without restriction or in such

manner as might reasonably tend to impair title to the Premises or any portion thereof, or in such manner as might reasonably make possible a claim or claims of adverse usage or adverse possession by the public, as such, or of implied dedication of the Premises or any portion thereof.

ARTICLE 22

EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES, ETC.

Section 22.01. Definition. Each of the following events shall be an "**Event of Default**" hereunder:

(a) if Tenant shall fail to pay when due any installment of Base Rent or Additional Rent or any part thereof, and such default shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant;

(b) if Tenant shall fail to make any other payment of Rental required to be paid by Tenant hereunder for a period of thirty (30) days after written notice thereof from Landlord to Tenant;

(c) if Tenant shall fail to observe or perform one or more of the other terms, conditions, covenants or agreements of this Lease and such failure shall continue for a period of sixty (60) days after written notice thereof by Landlord to Tenant specifying such failure, unless (i) such failure requires work to be performed, acts to be done, or conditions to be removed which cannot by their nature reasonably be performed, done or removed, as the case may be, within such sixty (60) day period, in which case no default shall be deemed to exist as long as Tenant shall have commenced curing the same within such sixty (60) day period and shall thereafter diligently and continuously prosecute the same to completion or (ii) such failure requires work to be performed, acts to be done, or conditions to be removed which arise as a consequence of any failure by a Subtenant to perform its obligations under its Sublease, then such sixty (60) day period shall be extended if and for so long as Tenant is diligently pursuing its remedies against such Subtenant;

(d) if Tenant shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under present or any future federal bankruptcy act or any other present or future applicable federal, state or other statute of law, or if Tenant shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant or of all or any substantial part of its properties or of the Premises or any interest of Tenant therein or if Tenant shall admit in writing the inability to pay its debts as they become due or makes a general assignment for the benefit of its creditors; provided, however, that, if this Lease shall be assigned with the consent of

PHASE II FUNDING AGREEMENT

BETWEEN

**42ND ST. DEVELOPMENT PROJECT, INC.,
as Trustee of the 1994 42nd Street Port Authority Project Area Trust
and the 1994 42nd Street EDC Trust,**

and

NEW AMSTERDAM DEVELOPMENT CORPORATION

Dated: as of December 29, 1994

Premises:

New Amsterdam Theater
214 West 42nd Street
New York, New York

ARTICLE 6

Renovation, Alteration, Use, Operation and Repair of the Property

Section 6.01. Permitted Use. (a) The Theater and the Roof-Top Theater shall be used and occupied only for first-class Broadway live theater (including performance of drama, musicals, dance, chamber music, classical, light or contemporary opera, dinner theater, children's theater and other live performance arts), motion picture theater, recital halls, concert halls, cabarets, jazz and other contemporary music as well as comedy clubs, state-of-the-art media shows, tourist or educationally oriented multi-media events, art, scientific and educational exhibitions, interactive theme exhibitions, museums, recording studios, rehearsal and performance studios, repertory schools and for any other purpose consistent therewith or any uses incidental or related thereto, and for no other purpose, and the remainder of the Property shall be used for any of the foregoing permitted uses, for uses ancillary thereto, and for any of the uses listed in Exhibit I attached hereto, and for no other purpose (any of the foregoing, a "Permitted Use"). Tenant agrees at a minimum to use and operate the Theater (or cause the Theater to be used and operated) for a Permitted Use at least seven hundred fifty (750) nights during each five (5) year period commencing upon the Substantial Completion Date. Tenant agrees not to use or permit the Property to be used for any purposes other than a Permitted Use without the prior written consent of Landlord.

(b) All business and other operations conducted at the Property shall be conducted in compliance with all Legal Requirements and Insurance Requirements. Tenant shall secure and maintain all licenses and permits required by Legal Requirements for the actual operation of the Property for the particular Permitted Use to which the Property is being put, except for licenses and permits that relate exclusively to Landlord Replacement Items. The Public Entities shall use their best efforts to assist Tenant in obtaining the temporary and permanent certificates of occupancy for the initial actual operation of the Theater as a first-class Broadway live theater following substantial completion of the Renovation Work.

(c) All signage to be incorporated into the design of the Property and all lighting to be installed in connection therewith shall be consistent with the specific requirements set forth in the Design Guidelines and, if and to the extent required by Legal Requirements, will conform with the applicable restrictions established and maintained by the Landmarks Preservation Commission. In the event Tenant does not install signage on the roof of the Annex as contemplated in the Design Guidelines within twelve (12) months after the Substantial Completion Date (the "Signage Completion Date"), Landlord shall be entitled to install such signage, at Landlord's expense, if Tenant does not do so within thirty (30) days after notice by Landlord given at any time after the Signage Completion Date, and

Tenant shall cooperate with, and grant access to, Landlord for purposes of implementing the foregoing.

(d) Tenant shall designate and use the 42nd Street entrance to the Improvements as the main entrance for pedestrian ingress and egress.

Section 6.02. Restrictions on Use. Tenant shall not use, occupy, maintain or operate the Property, nor permit the same to be used, occupied, maintained or operated, nor do or permit anything to be done in, on or to the Property, in whole or in part, in a manner which would in any way (a) violate any construction permit or certificate of occupancy affecting the Property, (b) make it impossible or economically unfeasible to obtain fire or other insurance thereon required to be furnished by Tenant hereunder, (c) cause physical damage (other than de minimis damage resulting from the ordinary use of the Property for the uses set forth herein) to the Property or the Improvements or any part thereof, (d) constitute a public or private nuisance, (e) violate any Legal Requirement or Insurance Requirement then in effect, (f) constitute an Event of Default by Tenant, under any term, covenant or condition of this Lease, or (g) violate the Design Guidelines. Any act or omission of any subtenant which violates any provision of this Lease shall; for the purposes hereof, be deemed to be a violation of such provision of this Lease by Tenant, it being the intention and agreement of the parties that Tenant shall assume and be liable to Landlord for any and all acts and omissions of any and all subtenants with respect to this Lease. Tenant shall promptly upon discovery of any of the conditions in clauses (a) through (g) above, take all necessary steps, legal and equitable, to cause the discontinuance of such condition.

Section 6.03. Tenant's Obligations; Maintenance; Repairs. (a) Tenant shall (i) maintain and take good care of the Property (including all Personal Property, building systems, escalators, elevators, signage and lighting and the like), provided that this clause (i) shall be deemed to impose on Tenant a general maintenance obligation and not a repair, replacement or restoration obligation, which repair, replacement and restoration obligations have otherwise been allocated between Landlord and Tenant in accordance with the provisions of this Lease, (ii) make all nonstructural repairs which are caused by or arise out of ordinary wear and tear, and (iii) make all repairs, restorations and replacements, ordinary or extraordinary, foreseen and unforeseen, structural and non-structural, which:

(1) are caused by or arise out of the negligent act or omission of Tenant or any employee, agent, contractor or invitee of Tenant or any person claiming by, through or under any of the foregoing;

(2) are required by or arise out of changes in Legal Requirements and/or Insurance Requirements and the cost of which does not in the aggregate during any

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SITE 7 ACQUISITION AGREEMENT

among

THE CITY OF NEW YORK,

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION,

NEW YORK STATE URBAN DEVELOPMENT CORPORATION

and

42ND ST. DEVELOPMENT PROJECT, INC.

Premises

Block: 1014

Lots: 1, 4, 5, 6, 10, 11, 111, 12, 13 (P/O),
15, 58, 59, 60, 61, 62, 162, 63, 64

dated

as of October 7, 1994.

ARTICLE 7

USE OF THE PROPERTYSection 7.01. Permitted Use.

(a) Use. From and after the Substantial Completion Date, the Entertainment/Retail Project shall be used, occupied, operated and maintained in accordance with the applicable requirements of DUO and for the following uses only and for no other purpose: (i) during the period from the Substantial Completion Date through and including the day immediately preceding the nineteenth (19th) anniversary of the first to occur of (x) the date on which Tenant shall have achieved the Initial Minimum Required Occupancy Level, and (y) the Initial Occupancy Date, (A) for the permitted uses expressly set forth in Exhibits 1 and 2 of Schedule G attached hereto and (B) so as to cause the overall perception created to be that the Entertainment/Retail Project is a major entertainment destination supported by complementary retail and/or restaurant uses, it being understood that this impression will be achieved through a combination of use, design and signage; and (ii) during the period commencing on the nineteenth (19th) anniversary of the first to occur of (x) the date on which Tenant shall have achieved the Initial Minimum Required Occupancy Level, and (y) the Initial Occupancy Date, for the permitted uses expressly set forth in Exhibits 1, 2 and 3 of Schedule G attached hereto (collectively, "Permitted Use"). Tenant agrees not to use, permit or suffer the Property to be used for any purposes not expressly permitted under this Section 7.01(a) without the prior written consent of Landlord. Landlord agrees that for purposes of satisfying the use requirements of DUO and of this Section 7.01(a), the Anchor Theater Sublease (or, in the event of the termination or amendment of such Sublease, any Sublease entered into after such termination or any amended Sublease resulting from such amendment, in either case, covering all of the area of the Improvements previously covered by such Sublease immediately prior to such termination or amendment and occupied for uses permitted under Exhibit 1 of Schedule G hereto), shall be deemed to cover the greater of fifty percent (50%) of the square footage of the Improvements and the actual percentage of the square footage of the Improvements covered by such Sublease.

(b) Access. Subject to Section 7.11, Tenant shall designate and use, or cause to be used, 42nd Street as the main entrance for all stores located on the ground floor of 42nd Street, it being understood that the stores located on the ground floor at 42nd Street will have individual entrances and shall otherwise comply with the requirements in Schedule G attached hereto. Notwithstanding anything to the contrary herein, for so long as (i) Loews Festival Cinemas, Inc. ("Anchor Theater Tenant") or its successors and/or assigns under the Anchor Tenant Sublease, as amended from time to time, or any Subtenant of Anchor Theater Tenant, its successors or assigns under the Anchor Theater Sublease, as amended from time to time, occupy and use at least 70,000 square feet of Usable Area at the

Entertainment/Retail Project for movie theaters or, if permitted by such Sublease, for other uses expressly set forth on Exhibit 1 to Schedule G, (ii) the Anchor Theater Tenant and/or its Affiliates remain liable for the obligations of the Subtenant from time to time under such Sublease, as amended from time to time, and (iii) the main entrance to the lobby of the premises leased pursuant to the Anchor Theater Sublease, as amended from time to time, is on 42nd Street, the Anchor Theater Tenant and its Affiliates (and the successors and assigns of either of them) and their respective Subtenants in such premises shall be permitted to operate (or Sublet for operation by others) up to two (2) stores on the ground floor of the premises covered by the Anchor Theater Sublease, as amended from time to time, which stores do not have entrances on 42nd Street. For avoidance of doubt, Landlord confirms and agrees that any areas of said ground floor premises covered by the Anchor Theater Sublease, as amended from time to time, which are used for the sale of food, merchandise or other retail purposes and which are not separately demised and physically separated from the balance from the said ground floor space shall not be considered "stores" for purposes of this Lease. "Anchor Theater Sublease" means the Sublease dated on or about the date hereof between Anchor Theater Tenant, as tenant, and Tenant, as landlord, and shall include, for purposes of Section 7.01(b) and Section 7.16 only (other than the definition of "Bona Fide Termination", as defined in Section 7.16(a), one or more Subleases from Tenant to one or more Affiliates of Anchor Theater Tenant, provided that (x) all Subleases to Anchor Theater Tenant and its Affiliates are coterminous; (y) the Anchor Theater Tenant and/or its Affiliates remain liable for the obligations of the Subtenants under all such Subleases; and (z) such Subleases in the aggregate (treated as if they were a single Sublease), would comply with the provisions of clauses (i) and (iii) of this subparagraph (b).

(c) Required Leasing Levels. (i) Tenant shall, in accordance with this Article 7 and Articles 11, 12 and 13, enter into Subleases by the Fixed Substantial Completion Date (the "Initial Leasing Date"), TIME BEING OF THE ESSENCE as to the Initial Leasing Date, such date to be extended as, when and to the same extent that the Fixed Substantial Completion Date or the Initial Leasing Date is extended, if at all, for Unavoidable Delays in accordance with Section 6.06 and pursuant to Section 6.01(a), so as to satisfy the following requirements (collectively, the "Initial Minimum Required Leasing Level"):

(A) there shall be Subleases with Subtenants covering not less than sixty-one percent (61%) of the Usable Area of the Entertainment/Retail Project; and

(B) there shall be Subleases with Subtenants covering not less than fifty percent (50%) of the Usable Area of the Entertainment/Retail Project for the uses described on Exhibit 1 of Schedule G attached hereto.

(ii) Tenant shall, in accordance with this Article 7 and Articles 11, 12 and 13, enter into Subleases by the date twelve (12) months after the Fixed Substantial

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SITE 7 ACQUISITION AGREEMENT

among

THE CITY OF NEW YORK,

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION,

NEW YORK STATE URBAN DEVELOPMENT CORPORATION

and

42ND ST. DEVELOPMENT PROJECT, INC.

Premises

Block: 1014

Lots: 1, 4, 5, 6, 10, 11, 111, 12, 13(P/O),
15, 58, 59, 60, 61, 62, 162, 63, 64

dated

as of October 7, 1994.

ARTICLE 7

USE OF THE PROPERTYSection 7.01. Permitted Use.

(a) Use. From and after the Substantial Completion Date, the Entertainment/Retail Project shall be used, occupied, operated and maintained in accordance with the applicable requirements of DUO and for the following uses only and for no other purpose: (i) during the period from the Substantial Completion Date through and including the day immediately preceding the nineteenth (19th) anniversary of the first to occur of (x) the date on which Tenant shall have achieved the Initial Minimum Required Occupancy Level, and (y) the Initial Occupancy Date, (A) for the permitted uses expressly set forth in Exhibits 1 and 2 of Schedule G attached hereto and (B) so as to cause the overall perception created to be that the Entertainment/Retail Project is a major entertainment destination supported by complementary retail and/or restaurant uses, it being understood that this impression will be achieved through a combination of use, design and signage; and (ii) during the period commencing on the nineteenth (19th) anniversary of the first to occur of (x) the date on which Tenant shall have achieved the Initial Minimum Required Occupancy Level, and (y) the Initial Occupancy Date, for the permitted uses expressly set forth in Exhibits 1, 2 and 3 of Schedule G attached hereto (collectively, "Permitted Use"). Tenant agrees not to use, permit or suffer the Property to be used for any purposes not expressly permitted under this Section 7.01(a) without the prior written consent of Landlord. Landlord agrees that for purposes of satisfying the use requirements of DUO and of this Section 7.01(a), the Anchor Theater Sublease (or, in the event of the termination or amendment of such Sublease, any Sublease entered into after such termination or any amended Sublease resulting from such amendment, in either case, covering all of the area of the Improvements previously covered by such Sublease immediately prior to such termination or amendment and occupied for uses permitted under Exhibit 1 of Schedule G hereto), shall be deemed to cover the greater of fifty percent (50%) of the square footage of the Improvements and the actual percentage of the square footage of the Improvements covered by such Sublease.

(b) Access. Subject to Section 7.11, Tenant shall designate and use, or cause to be used, 42nd Street as the main entrance for all stores located on the ground floor of 42nd Street, it being understood that the stores located on the ground floor at 42nd Street will have individual entrances and shall otherwise comply with the requirements in Schedule G attached hereto. Notwithstanding anything to the contrary herein, for so long as (i) Loews Festival Cinemas, Inc. ("Anchor Theater Tenant") or its successors and/or assigns under the Anchor Tenant Sublease, as amended from time to time, or any Subtenant of Anchor Theater Tenant, its successors or assigns under the Anchor Theater Sublease, as amended from time to time, occupy and use at least 70,000 square feet of Usable Area at the

Entertainment/Retail Project for movie theaters or, if permitted by such Sublease, for other uses expressly set forth on Exhibit 1 to Schedule G, (ii) the Anchor Theater Tenant and/or its Affiliates remain liable for the obligations of the Subtenant from time to time under such Sublease, as amended from time to time, and (iii) the main entrance to the lobby of the premises leased pursuant to the Anchor Theater Sublease, as amended from time to time, is on 42nd Street, the Anchor Theater Tenant and its Affiliates (and the successors and assigns of either of them) and their respective Subtenants in such premises shall be permitted to operate (or Sublet for operation by others) up to two (2) stores on the ground floor of the premises covered by the Anchor Theater Sublease, as amended from time to time, which stores do not have entrances on 42nd Street. For avoidance of doubt, Landlord confirms and agrees that any areas of said ground floor premises covered by the Anchor Theater Sublease, as amended from time to time, which are used for the sale of food, merchandise or other retail purposes and which are not separately demised and physically separated from the balance from the said ground floor space shall not be considered "stores" for purposes of this Lease. "Anchor Theater Sublease" means the Sublease dated on or about the date hereof between Anchor Theater Tenant, as tenant, and Tenant, as landlord, and shall include, for purposes of Section 7.01(b) and Section 7.16 only (other than the definition of "Bona Fide Termination", as defined in Section 7.16(a), one or more Subleases from Tenant to one or more Affiliates of Anchor Theater Tenant, provided that (x) all Subleases to Anchor Theater Tenant and its Affiliates are coterminous; (y) the Anchor Theater Tenant and/or its Affiliates remain liable for the obligations of the Subtenants under all such Subleases; and (z) such Subleases in the aggregate (treated as if they were a single Sublease), would comply with the provisions of clauses (i) and (iii) of this subparagraph (b).

(c) Required Leasing Levels. (i) Tenant shall, in accordance with this Article 7 and Articles 11, 12 and 13, enter into Subleases by the Fixed Substantial Completion Date (the "Initial Leasing Date"), TIME BEING OF THE ESSENCE as to the Initial Leasing Date, such date to be extended as, when and to the same extent that the Fixed Substantial Completion Date or the Initial Leasing Date is extended, if at all, for Unavoidable Delays in accordance with Section 6.06 and pursuant to Section 6.01(a), so as to satisfy the following requirements (collectively, the "Initial Minimum Required Leasing Level"):

(A) there shall be Subleases with Subtenants covering not less than sixty-one percent (61%) of the Usable Area of the Entertainment/Retail Project; and

(B) there shall be Subleases with Subtenants covering not less than fifty percent (50%) of the Usable Area of the Entertainment/Retail Project for the uses described on Exhibit 1 of Schedule G attached hereto.

(ii) Tenant shall, in accordance with this Article 7 and Articles 11, 12 and 13, enter into Subleases by the date twelve (12) months after the Fixed Substantial

1. Definitions

Gross Leasable Area: All space not including mechanical spaces and shafts, fire egress stairs and corridors, loading and service areas and exterior walls.

Incidental Use: Each use which is clearly ancillary to and either related to or customarily found in connection with a Permitted Entertainment Use or a Permitted Non-Entertainment Use, as the case may be.

Permitted Entertainment Use: Each use set forth on Exhibit 1.

Permitted Non-Entertainment Use: Each use set forth on Exhibit 2.

2. Uses

For the first ten (10) years after Full Operating Condition is achieved, at least sixty (60) percent of the Gross Leasable Area of the Project shall be occupied for uses consistent with one or more of the Permitted Entertainment Uses. From the tenth (10th) anniversary of the achievement of Full Operating Condition up to the twentieth (20th) anniversary of the achievement of Full Operating Condition, at least fifty (50) percent of the Gross Leasable Area of the Project shall be occupied for uses consistent with one or more of the Permitted Entertainment Uses. The balance of the Gross Leasable Area of the Project may be occupied for uses consistent with one or more of the Permitted Non-Entertainment Uses. Incidental Uses, as well as square footage devoted to "back of the house" or other support activities integral to the operation of the use to which it relates, shall be considered part of such use for purposes of the foregoing calculation.

After the twentieth (20th) anniversary of the achievement of Full Operating Condition, all uses permitted in this area by the New York City Zoning Resolution shall be permitted in the Project.

3. Hours of Operation

At least fifty (50) percent of the Gross Leasable Area of the Project shall remain open for business until 1:00 a.m. on Thursdays, Fridays and Saturdays and until 11:00 p.m. on other days throughout the term of the lease.

4. **Anchor Subtenants**

For the first twenty (20) years after the Project achieves Full Operating Condition, no less than two (2) subtenants shall at all times be Anchor Subtenants.

5. **Minimum Number of Demised Spaces**

There shall be a minimum number of five (5) separately demised spaces within the Project for the first twenty years after achievement of Full Operating Condition.

6. **Alternative Proposal**

Tenant may submit alternative proposals for the Use and Operating requirements and the Landlord in its sole discretion may alter the requirements if the alternative proposal provides an equivalent mix and level of activity as the requirements herein.

EXHIBIT 1

Live theater (such as drama, musicals, dance, chamber music, classical, light or contemporary opera, dinner theater, children's theater and other live performance arts)

bowling alleys¹

concert halls

cabarets

jazz and other contemporary music clubs

comedy clubs

state-of-the-art media shows

interactive amusement centers

eating or drinking establishments where entertainment is the predominant activity

tourist or educationally oriented multi-medial events

art, scientific and educational exhibitions

interactive theme exhibitions

museums

motion picture production shows

movie theaters

recording studios

rehearsal studios

performance studios

¹Permitted only if design and theme are tourist or entertainment related.

EXHIBIT 2

All Uses in Exhibit 1
Art Galleries
Art, Needlework¹
Artist Supply Stores¹
Athletic Good Stores
Bakeries
Book Stores or Card Stores
Candy Stores¹
Catering Establishments¹
Cigar Stores¹
Clothing Stores
Coin Stores¹
Costume Rental Establishment¹
Dance Halls, Public
Delicatessens
Dressmaking Shops, Custom¹
Drug Stores¹
Eating and Drinking Establishments
Florists¹
Gift Shops (including tourist/entertainment super stores)
Ice Cream Stores¹
Jewelry Shops¹
Leather Goods or Luggage Stores¹
Music Stores
Photographic Studios¹
Pool or Billiard Halls
Record Stores
Shoe Stores¹
Skating Rinks, indoor¹
Stamp Stores¹
Stationery Stores¹
Ticket Sales¹
Tobacco Stores¹
Tour Operator¹
Travel Bureau¹
Variety Stores

¹No more than twenty-five (25) feet of frontage per Store on 42nd Street is permitted with a total maximum of up to one hundred (100) feet of frontage. If such use has an entertainment theme in its design, the frontage restriction shall not apply.

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Draft dated December 30, 1994

SITE 8 EAST ACQUISITION AGREEMENT

among

THE CITY OF NEW YORK,
NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION,
NEW YORK STATE URBAN DEVELOPMENT CORPORATION

and

42ND ST. DEVELOPMENT PROJECT, INC.

Premises

Block: 1013
Lots: 12, 53, 55 and 57

dated

as of _____, 199__

ARTICLE 7

USE OF THE PROPERTYSection 7.01. Permitted Use.

(a) Use. The Project and each Component or portion thereof shall only be used, occupied and operated in accordance with the requirements of DUO and for the uses, and the required mix of such uses, expressly set forth in Schedule G attached hereto (the "Permitted Use") and for no other purpose. Tenant agrees not to use, permit or suffer the Project to be used for any purposes not expressly permitted under this Section 7.01(a) without the prior written consent of Landlord.

(b) Display and Signage. All signage to be incorporated into the design of the Project, and all lighting to be installed in connection therewith, shall comply with the specific requirements of DUO set forth in Schedule F attached hereto. Tenant shall install and operate, or cause to be installed and operated, lights and signs by the date(s) prescribed in the Display and Signage Requirements of DUO (Schedule F attached hereto) applicable to each category of lighting and signage set forth in such Schedule F.

(c) Access. Tenant shall designate 42nd Street as the main entrance to the Project for pedestrian ingress and egress for the Project and shall cause each Subtenant to use 42nd Street as the main entrance to its Demised Space for pedestrian ingress and egress.

(d) [Intentionally Omitted].

(e) Full Operating Condition.

(i) Achieving Full Operating Condition. Tenant shall achieve Full Operating Condition as soon as possible, but in any event by the following dates:

(A) Retail/Entertainment Component. Subject to the provisions of this Section 7.01(e)(i)(A), the Retail/Entertainment Component shall achieve Full Retail/Entertainment Operating Condition by the date that is not more than three (3) months after the date that Tenant's Construction Work shall have been Substantially Completed, as the same may be extended by reason of Unavoidable Delay in the performance of Initial Installation Work (the "Required Retail/Entertainment Operation Date"). TIME IS OF THE ESSENCE as to the Required Retail/Entertainment Operation Date; provided, however, upon notice to Landlord by Tenant accompanied by an Architect's Extension Certificate, the Required Retail/Entertainment Operation Date shall be extended for each Subtenant of the Retail/Entertainment Component whose Demised Public Space is not open for business to the general public in compliance with DUO solely on account of the failure to complete the tenant improvement work required to so

SCHEDULE G

Use And Operating Requirements

**Sites 6W, 8E and 10: Schedule G
Use and Operating Requirements**

1. Definitions

Gross Leasable Area: All space not including mechanical spaces and shafts, fire egress stairs and corridors, loading and service areas and exterior walls.

Incidental Use: Each use which is clearly ancillary to and either related to or customarily found in connection with a Permitted Entertainment Use or a Permitted Non-Entertainment Use, as the case may be.

Permitted Entertainment Use: Each use set forth on Exhibit 1.

Permitted Non-Entertainment Use: Each use set forth on Exhibit 2.

2. Uses

For the first ten (10) years after Full Operating Condition is achieved, at least sixty (60) percent of the Gross Leasable Area of the Project shall be occupied for uses consistent with one or more of the Permitted Entertainment Uses. From the tenth (10th) anniversary of the achievement of Full Operating Condition up to the twentieth (20th) anniversary of the achievement of Full Operating Condition, at least fifty (50) percent of the Gross Leasable Area of the Project shall be occupied for uses consistent with one or more of the Permitted Entertainment Uses. The balance of the Gross Leasable Area of the Project may be occupied for uses consistent with one or more of the Permitted Non-Entertainment Uses. Incidental Uses, as well as square footage devoted to "back of the house" or other support activities integral to the operation of the use to which it relates, shall be considered part of such use for purposes of the foregoing calculation.

After the twentieth (20th) anniversary of the achievement of Full Operating Condition, all uses permitted in this area by the New York City Zoning Resolution shall be permitted in the Project.

3. Hours of Operation

At least fifty (50) percent of the Gross Leasable Area of the Project shall remain open for business until 1:00 a.m. on Thursdays, Fridays and Saturdays and until 11:00 p.m. on other days throughout the term of the lease.

4. **Anchor Subtenants**

For the first twenty (20) years after the Project achieves Full Operating Condition, no less than two (2) subtenants shall at all times be Anchor Subtenants.

5. **Minimum Number of Demised Spaces**

There shall be a minimum number of five (5) separately demised spaces within the Project for the first twenty years after achievement of Full Operating Condition.

6. **Alternative Proposal**

Tenant may submit alternative proposals for the Use and Operating requirements and the Landlord in its sole discretion may alter the requirements if the alternative proposal provides an equivalent mix and level of activity as the requirements herein.

awards paid to Landlord in connection with the condemnation proceedings prior to the Purchase Option Closing Date, if any, and/or, to the extent not all proceeds were received by Landlord prior to the Purchase Option Closing Date, deliver an assignment on the Purchase Option Closing Date of the award in such proceeding, in form and substance reasonably satisfactory to Tenant. Subject to the rights of any Recognized Mortgagee, the condemnation award shall be paid to Tenant if Tenant shall have elected to proceed under clause (a) of this **Section 5.3** and otherwise in accordance with this Lease.

5.4 Default by Landlord. At any time after Substantial Completion shall have occurred, if Landlord shall be in material default of any of its material obligations under this Lease (it being understood that failure to provide a requested consent or approval shall not constitute a default for purposes of this **Section 5.4**), Tenant may deliver to Landlord a notice (a "**Landlord Default Notice**") stating the nature of such default. In the event that Landlord shall have failed to cure such default within thirty (30) days after receipt of a Landlord Default Notice (provided that, if such default cannot reasonably be cured within such thirty (30) day period, then only in the event that Landlord shall have failed to commence to cure such default within such period and diligently prosecute such cure thereafter to completion), then Tenant shall have the right to exercise the Purchase Option in accordance with **Section 5.1**, notwithstanding that the Purchase Option Date shall not have occurred.

5.5 Further Assurances. Landlord and Tenant agree that they shall, at the request and expense of the other, make, execute, deliver or obtain and deliver all such instruments, certificates and documents which either party may reasonably require in order to more fully perfect the consummation of the transactions contemplated in this **Article V**. The obligations under this **Section 5.5** shall survive the expiration or earlier termination of this Lease and the exercise (or deemed exercise) of the Purchase Option.

ARTICLE VI CONSTRUCTION OF THE PROJECT

Tenant shall construct the New Building and undertake all Construction Work in accordance with the provisions of Article III of the Declaration, which provisions are incorporated herein by reference. Tenant's failure to comply with such provisions shall be a default hereunder.

ARTICLE VII USE AND MAINTENANCE OF THE PROPERTY

Tenant shall use and maintain the Property in accordance with the provisions of Article IV of the Declaration, which provisions are incorporated herein by reference. Tenant's failure to comply with such provisions shall be a Default hereunder.

ARTICLE VIII REPAIRS

Tenant shall make all repairs, restorations and replacements to the Property in accordance with the provisions of **Section 4.03(d)** of the Declaration, which is

(d) This Declaration shall be governed by, and construed in accordance with, the law of the State of New York applicable to agreements to be performed wholly within such State.

(e) Whenever a party hereto “shall” perform (or cause to be performed) any obligations hereunder, such performance shall be at such party’s sole cost and expense unless otherwise expressly provided.

Section 1.03 Captions/Table of Contents. The captions under the article and section numbers and the table of contents of this Declaration are for convenience and reference only and in no way define, limit or describe the scope or intent of this Declaration nor in any way affect this Declaration.

ARTICLE II

DESIGN, USE AND OPERATION OF THE PROPERTY

Section 2.01 Declaration. Pursuant to Section 6266(3) of the UDC Act, ESDC and 42DP, as declarants, hereby declare as follows:

(a) UDC Project. (i) Except as otherwise expressly set forth to the contrary in **Section 2.04** hereof or elsewhere in the Project Documents, the Property shall be and remain a UDC Project, and (ii) subject to **Sections 2.01(b)** and **2.01(c)** hereof, the Improvements may be constructed, maintained, operated and restored without reference to the provisions of the Zoning Resolution, notwithstanding the occurrence of one or more of the following with respect to clauses (i) and (ii) above: (A) a Reversionary Event or the reversion of the Estate on Limitation to the City; (B) a Taking of less than Substantially All Of the Project; (C) a sale or other transfer of the fee interest in the Property to any Persons (including pursuant to the Purchase Option); (D) the exercise of the Purchase Option and the merger of the fee and leasehold estates in the Property; (E) damage or destruction by fire or other casualty to the Improvements or any portion thereof and the restoration thereof (provided that nothing in the foregoing is intended to amend or modify the provisions of this Declaration applicable to a casualty or condemnation restoration); (F) reversion of fee title to the Property to Developer (provided that nothing in the foregoing is intended to amend or modify the provisions of this Declaration applicable to a Default or Event of Default); (G) an assignment of the leasehold estate in the Property created by the Ground Lease or any other lease or sublease of all or part of the Property, including the entry into a new lease with a Recognized Mortgagee or its designee pursuant to Section 30.6 of the Ground Lease, in each case, as permitted by the Ground Lease; or (H) a Default or Event of Default by Developer under the Lease (except as may be otherwise provided to the contrary in this Declaration or in the other Project Documents (including the Ground Lease).

(b) DUO Opt Out. Provided Substantial Completion of the New Building has occurred, at any time after the thirtieth (30th) anniversary of this Declaration, Developer may, acting in its sole discretion, elect (such election, the “**DUO Opt Out Election**”) irrevocably to be governed by the applicable requirements of the Zoning Resolution as

applicable to any alterations to, or rebuilding of, Improvements on the Property after the exercise by Developer of the DUO Opt Out Election, in lieu of the provisions of DUO and the provisions hereof governing Construction Work relating to Improvements governed by any element of DUO (such provisions, the “**DUO Obligations**”). Exercise of the DUO Opt Out Election shall be effective as of a date no less than fifteen (15) Business Days after identification of such date in a written notice of the exercise of the DUO Opt Out Election by Developer to the Applicable Public Party (and, if the Applicable Public Party is not then the City, to the City) in recordable form. Upon the effectiveness of the DUO Opt Out Election: (i) the rights of the Applicable Public Party or any other Person that succeeds to the right to enforce DUO shall cease as to the DUO Obligations; (ii) any alterations to, or rebuilding of, Improvements on the Property after the exercise by Developer of DUO Opt Out Election, shall be subject to the requirements of the Zoning Resolution in lieu of the DUO Obligations; and (iii) this Declaration shall terminate and the Property shall thereafter be subject to all applicable Legal Requirements, including the Zoning Resolution. Following any election made under this **Section 2.01(b)**, the Applicable Public Party (and, if the Applicable Public Party is not then the City, then the City) shall, as soon as practicable and, in any event, within ten (10) Business Days after written request for the same, provide Developer, the New York City Department of Buildings and any other Governmental Authority which Developer shall reasonably set forth in its request, with confirmation in writing that Developer’s obligations to comply with the DUO Obligations have ceased to have effect in accordance with this **Section 2.01(b)**.

(c) Compliance with DUO. Subject to **Sections 2.01(b), 2.01(e) and 2.02** hereof: (i) Developer shall cause all portions of the Property to strictly comply with the DUO Obligations, and the DUO Obligations shall be administered and enforced by the Applicable Public Party; (ii) references in DUO to “Landlord” and “Tenant” shall be deemed to be references to the Applicable Public Party and Developer, respectively, it being understood that for purposes of enforcement of the DUO Obligations, Developer is not the successor of the Applicable Public Party; and (iii) (A) Developer shall not have review, approval or consent rights whatsoever with respect to (1) matters required solely by DUO, and (2) rights to enforce the DUO Obligations that reside with the Applicable Public Party solely on account of the Applicable Public Party being a public entity (the rights deemed not to be exercisable by Developer in this clause (A), the “**Applicable Public Party Approval Rights**”), (B) all Applicable Public Party Approval Rights shall belong solely to the Applicable Public Party, and all decisions relating to the Applicable Public Party’s Approval Rights shall be made solely by the Applicable Public Party, subject to **Section 2.01(f)** hereof, and (C) Developer shall be bound by all the determinations of the Applicable Public Party pursuant to the exercise of its Applicable Public Party Approval Rights.

(d) Grant of Rights. It is the intention of Landlord to grant to the City the review, approval, consent, administrative and enforcement rights set forth in this **Article II** only to the extent permitted by, but to the fullest extent permitted by, Legal Requirements and the Project Agreement.

(e) Conflicts between Legal Requirements and DUO Obligations. In the event of any conflict between Legal Requirements and an applicable provision of the DUO Obligations, Legal Requirements shall prevail and Developer shall not be obligated to comply with any specific provision of the DUO Obligation if such compliance would constitute a violation of a Legal Requirement, unless: (i) Developer is exempt from compliance with such Legal Requirement as a result of a Public Party's ownership of the Property; or (ii) the DUO Obligation in question overrides any Legal Requirements (e.g., zoning restrictions) by operation of law.

(f) Amendments to General Project Plan. The Public Parties shall not modify or amend the General Project Plan as it applies to the Property in a manner which would materially limit or be in material derogation of any express rights of Developer or in a manner which would materially increase the costs or obligations of Developer.

Section 2.02 Parties Entitled to Enforce. This **Article II** shall be binding on and inure to the benefit of the Property and Developer, and Developer shall confirm in writing to the Applicable Public Party such binding effect promptly after acquiring title to any portion of the Property. Any restrictions, conditions or obligations imposed pursuant to this **Article II** on Developer may be enforced only by the Applicable Public Party. No rights of the City hereunder may be assigned to anyone other than NYCEDC or its successors or any other agency or instrumentality of the City. No rights of Landlord or ESDC hereunder may be assigned to anyone other than the State of New York or the City or any other agency or instrumentality of the State of New York or of the City. The Applicable Public Party's right to enforce this **Article II** shall survive transfer of its interest in the Property. Developer shall have the right to enforce any obligations imposed by this **Article II** or elsewhere in this Declaration on the Applicable Public Party or other Public Parties. Neither this Declaration nor the DUO Obligations may be modified without the agreement of Developer.

Section 2.03 Remedies. Subject to **Sections 2.04, 7.01(b) and (c), and 7.02** hereof, the sole remedy for any breach or violation of this **Article II** after the Purchase Option Date shall be specific performance or injunctive or declaratory relief, together with a claim for reimbursement of costs associated with enforcement of this Agreement, inclusive of legal fees. Subject to **Sections 7.01(b) and (c)** hereof, under no circumstances whatsoever shall any Person who breaches or violates any provision of this **Article II** be liable for damages in any form whatsoever, including direct, indirect, consequential, actual, nominal, punitive, and any other form of damages. The foregoing shall not in any way limit or modify any remedy(ies) that any Public Party may have under any other instrument or agreement relating to the Property.

Section 2.04 Revocation of UDC Project Status. Developer acknowledges that the prompt construction and completion of the Project are of particular importance to the Public Parties. Accordingly, notwithstanding any provision of this Declaration to the contrary, in the event that Developer's failure to construct or complete the Project by certain dates required therefor herein results in the Applicable Public Party's causing the termination of the Ground Lease and/or the exercise of the Purchase Option pursuant to **Section 7.04(I)(ii) and Section 7.04(I)(iii)** hereof (an "**Project Revocation Event**"), then the Applicable Public Party may elect either (i) within sixty (60) days after the Purchase Option Closing Date or (ii) at any time after the thirtieth (30th) anniversary of this Declaration, on not less than fifteen (15) days' notice to

Developer, that: (a) the Property shall immediately thereupon cease to be a UDC Project; (b) all Improvements then-after constructed shall be constructed, maintained, operated and restored in compliance with the applicable provisions of the Zoning Resolution as if the Project Documents had never been executed; (c) Developer shall be obligated to obtain all relevant governmental approvals for the construction of any new Improvements without being entitled to claim that any new Improvements are “grandfathered” or otherwise subject to exemption from the Zoning Resolution or from any approval requirements because of the Project Documents or by reason of any construction that shall have theretofore occurred; and (d) this Declaration shall terminate and the parties shall cooperate as reasonably requested to execute, deliver and record an instrument or instruments confirming such termination and notifying the New York City Department of Buildings and/or other applicable Governmental Authorities of the same, and that Developer is subject to the Zoning Resolution and other Legal Requirements. Notwithstanding anything to the contrary contained herein, if a Project Revocation Event occurs, Developer shall not be obligated hereunder to complete the Project; provided, however, that the foregoing shall not be construed to diminish or affect the Applicable Public Party’s right to exercise its election pursuant to this **Section 2.04** within the time periods set forth herein. The provisions of this **Section 2.04** shall survive the termination of the Ground Lease.

Section 2.05 Relationship Between this Declaration and the Ground Lease.

Notwithstanding anything to the contrary herein, so long as the Ground Lease is in full force and effect and the Purchase Option has not been exercised, the parties’ remedies for actions or omissions that form the basis of a default under both the Ground Lease and this Declaration shall include all remedies set forth in both the Ground Lease and this Declaration, but the parties shall not be entitled to duplicate enforcement proceedings or remedies by virtue of the inclusion of any obligation in both documents. In the event of any conflict between the terms of the Ground Lease and the terms of this Declaration, the provisions of the Declaration shall control.

ARTICLE III

CONSTRUCTION OF THE PROJECT; ALTERATIONS

Section 3.01 Construction of the Project.

(a) Demolition. Developer shall undertake, at its cost, the demolition of the Existing Improvements, if any (the “**Demolition Work**”), pursuant to the applicable terms of this **Article III**.

(b) Commencement and Substantial Completion of Developer’s Construction Work.

(i) Generally. Developer shall construct the Project in accordance with this Declaration. In furtherance of the covenant in the immediately preceding sentence, Developer shall (A) cause to be commenced Developer’s Construction Work as soon as is reasonably practicable, but in any event not later than the Fixed Construction Commencement Date TIME BEING OF THE ESSENCE as to such date, (B) following such commencement of construction, perform or cause to be performed Developer’s Construction

**ARTICLE VII
USE AND MAINTENANCE OF THE PROPERTY**

Section 7.1 Permitted Use.

(a) Use. The Project and each Project Component or portion thereof shall be used, maintained, occupied and operated (i) in accordance with the requirements of the DUO, (ii) at a standard of at least that of a Class “A” office building (as understood on the date hereof) in midtown Manhattan, and (iii) subject to the DUO and except as set forth in **Sections 7.1(c) and 7.2** hereof, for any use permitted by Legal Requirements, including, without limitation, newsrooms, retail, service, auditoriums, dining facilities, communications facilities, production facilities, ancillary medical facilities, parking for not more than ten (10) cars, back office, storage and other uses as are incidental or ancillary thereto, in accordance with the certificate(s) of occupancy therefor, and for no use or purpose inconsistent with the DUO or the operation of a Class “A” office building (as understood on the date hereof) in midtown Manhattan (the uses described in clauses (i), (ii) and (iii) above, the “**Permitted Use**”), and for no other use. Tenant agrees not to use, permit or suffer the Project to be used for any purposes not expressly permitted under this **Section 7.1(a)** without the prior written consent of Landlord.

(b) Display and Signage. All signage to be incorporated into the design of the Project, and all lighting to be installed in connection therewith, shall comply with the specific requirements of the DUO. Tenant shall install and operate, or cause to be installed and operated, lights and signs as required by the DUO by the date(s) prescribed in the DUO applicable to each category of lighting and signage set forth in the DUO.

(c) Common Elements. Subject to the immediately following sentence, the Common Elements (as defined in the Severance Subleases) shall not be used for any commercial purposes. The Common Element Leaseable Space may be used for commercial purposes but only in accordance with, and as contemplated by, **Section 34.1** hereof.

(d) Compliance with the DUO. From and after the Substantial Completion Date, Tenant shall maintain and operate the Project in compliance with the DUO.

Section 7.2 Restrictions on Use. Tenant shall not use, occupy, maintain or operate the Project, nor permit the same to be used, occupied, maintained or operated, nor do or permit anything to be done in, on or to the Project, in whole or in part, in a manner which would in any way:

- (a) violate any construction permit or certificate of occupancy affecting the Property;
- (b) constitute a public nuisance;
- (c) violate any Legal Requirements or Insurance Requirements; or
- (d) violate any requirements of the DUO.

Section 7.3 Interim and Long-Term Maintenance Obligations.

(a) Interim Maintenance Obligations. (i) Taking into account the anticipated performance of Tenant's Construction Work and that Tenant has no obligations hereunder to improve the condition of the Existing Improvements (except in the event any such Existing Improvements are required by a Governmental Authority to be modified), at all times from the Delivery Date to the date Tenant commences the Demolition Work, Tenant shall:

(A) not cause any waste, damage, disfigurement or injury to or upon the Property or any part thereof, except damage, disfigurement or injury that is incidental to pre-construction activities permitted hereunder (and subject to repair of any such damage, disfigurement or injury required hereunder);

(B) maintain and keep the sidewalks adjacent to the Property in reasonable and safe order, repair and condition;

(C) not obstruct the sidewalks in any manner and maintain and keep the Property, and sidewalks and curbs adjacent thereto, free and clear of rubbish, dirt, ice and snow and shall not impede the free use of or obstruct the same or allow the same to be obstructed in any manner;

(D) keep each building on the Property locked and secure;

(E) ensure that the exterior of the Property is well lit from dusk until dawn every day;

(F) ensure that alcoves, entrances, or other breaks in the streetwall are well lit;

(G) not cinder-block, cover, remove, block or seal in any manner any window on any façade of the Existing Improvements that is visible from the street; and

(H) keep the Property free of graffiti and posters.

(ii) If Tenant fails to maintain the cleanliness of the sidewalks adjacent to the Property at least to the level of cleanliness maintained for the overall area of the Times Square BID, as determined by the Mayor's Office of Operations Sanitation Scorecard for as long as the same exists, or fails to promptly remove from the Improvements evidence of graffiti and such failure continues for five (5) Business Days after notice to Tenant specifying in reasonable detail such failure and setting forth Landlord's right to remove same on Tenant's behalf, Landlord shall, at the end of such five (5) Business Day period, be entitled to clean such sidewalks or remove such graffiti or cause the same to be cleaned or removed, as the case may be, at the expense of Tenant. Any and all costs incurred by Landlord in connection therewith shall be paid to Landlord's contractors or reimbursed to Landlord, as Landlord shall request, and shall accrue interest at the Interest Rate, in accordance with **Section 15.1** hereof.

(b) Maintenance During Demolition Work and Tenant's Construction Work. (i) Taking into account the anticipated performance of Tenant's Construction Work and that Tenant has no obligations hereunder to improve the condition of the Existing Improvements (except in the event any such improvement is required to be made by the express directive of a Governmental Authority

acting in its governmental capacity), at all times from the date Tenant commences the Demolition Work through the Substantial Completion Date, Tenant shall:

(A) maintain and keep the sidewalks adjacent to the Property in reasonable and safe order, repair and condition;

(B) except to the extent permitted under applicable Legal Requirements and all permits and authorizations required thereunder, not obstruct the sidewalks in any manner and maintain and keep the Property, and sidewalks and curbs adjacent thereto, free and clear of rubbish, dirt, ice and snow and shall not impede the free use of or obstruct the same or allow the same to be obstructed in any manner;

(C) to the extent any Existing Improvement has not been demolished, keep such Existing Improvement locked and secure;

(D) to the extent any Existing Improvement has not been demolished, ensure that the exterior of such Existing Improvement is well lit from dusk until dawn every day;

(E) keep the Property free of graffiti and posters; and

(F) comply with the DUO.

(ii) If Tenant fails to maintain the cleanliness of the sidewalks adjacent to the Property at least to the level of cleanliness maintained for the overall area of the Times Square BID, as determined by the Mayor's Office of Operations Sanitation Scorecard for as long as the same exists, or fails to promptly remove from the Improvements evidence of graffiti and such failure continues for five (5) Business Days after notice to Tenant specifying in reasonable detail such failure and setting forth Landlord's right to remove same on Tenant's behalf, Landlord shall, at the end of such five (5) Business Day period, be entitled to clean such sidewalks or remove such graffiti or cause the same to be cleaned or removed, as the case may be, at the expense of Tenant. Any and all costs incurred by Landlord in connection therewith shall be paid to Landlord's contractors or reimbursed to Landlord, as Landlord shall request, and shall accrue interest at the Interest Rate, in accordance with **Section 15.1** hereof.

(c) Long-Term Maintenance Obligations. (i) At all times during the term of this Lease from and after the Substantial Completion Date, Tenant shall (and/or shall cause each Subtenant (by incorporating the following provisions in every Sublease and using all reasonable efforts to enforce the same) to):

(A) not cause any waste to or upon the Property or any part thereof, nor permit or suffer any waste to or upon the Property;

(B) not cause physical damage (other than as part of any Construction Work permitted hereunder or as caused by a Casualty or Taking) to the Property or any part thereof, including the Core and Shell and Tenant's Subway Improvements (except in accordance with the Site 8 South Subway Agreement);

(C) take good care of the Property, make all repairs, restorations and replacements thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen, necessary to (1) comply with all Legal Requirements, Insurance Requirements and the DUO and (2) maintain and operate the Property to a standard at least of that of a Class "A" office building (as understood on the date hereof) in midtown Manhattan;

(D) maintain, repair, keep, use and occupy the Property in compliance with the DUO;

(E) maintain and keep the Property, and sidewalks and curbs adjacent thereto, free and clear from rubbish, dirt, ice and snow and shall not impede the use of or obstruct the same or allow the same to be so impeded or obstructed in any manner;

(F) maintain and keep the sidewalks and vaults adjacent to the Property in good order, repair and condition (including the prompt repair of cracks therein and the maintenance of an even level thereof) and at all times keep the same in compliance with the DUO and Legal Requirements;

(G) operate the Retail Space for the conduct of business during the hours of operation set forth in the DUO;

(H) operate and maintain the Public Amenity as set forth in the DUO and in **Section 30.4** hereof;

(I) prohibit sales through window openings on the streetwall, except in the case of (1) a Subtenant whose business is primarily the operation of a newsstand or ticket sales or (2) the sale of tickets for movies and other attractions, i.e., display windows shall be used for display only and not as a point of sale; and

(J) keep the Property free of graffiti and posters.

(ii) If Tenant fails to maintain the cleanliness of the sidewalks adjacent to the Property at least to the level of cleanliness maintained for the overall area of the Times Square BID, as determined by the Mayor's Office of Operations Sanitation Scorecard for as long as the same exists, or fails to promptly remove from the Improvements evidence of graffiti and such failure continues for five (5) Business Days after notice to Tenant specifying in reasonable detail such failure and setting forth Landlord's right to remove same on Tenant's behalf, Landlord shall, at the end of such five (5) Business Day period, be entitled to clean such sidewalks or remove such graffiti or cause the same to be cleaned or removed, as the case may be, at the expense of Tenant. Any and all costs incurred by Landlord in connection therewith shall be paid to Landlord's contractors or reimbursed to Landlord, as Landlord shall request, and shall accrue interest at the Interest Rate, in accordance with **Section 15.1** hereof.

Section 7.4 Compliance with Legal Requirements. Tenant shall promptly comply with all Legal Requirements and Insurance Requirements, foreseen or unforeseen, ordinary as well as extraordinary, structural or non-structural. Tenant shall have the right to contest the validity of any Legal Requirement or the application thereof in accordance with this **Section 7.4**. During such contest, compliance with any such contested Legal Requirement may be deferred by Tenant upon condition that before instituting any such proceedings, Tenant shall furnish to Landlord

security reasonably satisfactory to Landlord (it being agreed that an acceptable guaranty of an Acceptable Guarantor shall be security reasonably satisfactory to Landlord under this **Section 7.4**), securing compliance with the contested Legal Requirement and payment of all interest, penalties, fines, fees and expenses in connection therewith. Any such proceeding instituted by Tenant shall be commenced as soon as is reasonably possible after the issuance of any notification by the applicable governmental authority with respect to required compliance with such Legal Requirement and shall be prosecuted to final adjudication with reasonable diligence. Tenant hereby agrees to indemnify Landlord from and against any and all Claims arising out of such proceeding. Notwithstanding the foregoing, Tenant promptly shall comply with any such Legal Requirement and compliance shall not be deferred if at any time there is a condition imminently hazardous to human life or health, the Property, or any part thereof, shall be in danger of being forfeited or lost, or if Landlord shall be in danger of being subject to criminal and/or civil liability or penalty (other than a fine which Tenant agrees to pay or in regard to which Tenant provides to Landlord an indemnity of Landlord by an Acceptable Guarantor) by reason of noncompliance therewith. The Obligations of Tenant to indemnify Landlord under this **Section 7.4** shall survive the expiration or earlier termination of this Lease.

Section 7.5 No Waste. Except in connection with the Demolition Work, Tenant will not do, permit or suffer any waste to or upon the Property or any part thereof. Tenant shall have the right at any time and from time to time to sell or dispose of any Equipment, subject to this Lease, which may have become obsolete or unfit for use or which is no longer useful, necessary or economical in the operation of the Property; provided, however, that Tenant shall have substituted or shall promptly substitute for the property so removed from the Property other Equipment not necessarily of the same character but at least of equal quality in the performance of the particular function in question as that of the property so removed unless, in Tenant's reasonable opinion as set forth in a written notice to Landlord, the property so removed was performing an obsolete function or a function no longer required in connection with the then current use of the Property and replacement thereof is not necessary or appropriate to maintain, without impairment, the operation or character of the Property, its use and occupancy by Subtenants or its overall value.

Section 7.6 Right of Entry. Landlord (and its designee(s)) shall have the right to enter upon the Property, or any part thereof, at any time during the term hereof, for the purpose of ascertaining the condition of the Property or whether Tenant or any Subtenant is observing and performing their respective obligations hereunder, all without hindrance or molestation from Tenant or any Person claiming by, through or under Tenant. The above mentioned rights of entry shall be exercisable (other than in the case of an emergency) at reasonable times, at reasonable hours and on reasonable, prior written notice, and Landlord shall use reasonable efforts to minimize interference with Tenant and any Subtenants, and shall exercise such right under the supervision of Tenant's (and any such Subtenant's) employees, agents or designees provided the same are made reasonably available to Landlord for such purpose upon reasonable advance notice to Tenant and any such Subtenant (as applicable).

Section 7.7 Utilities; Services; No Landlord Responsibility. Tenant shall be responsible for all charges for gas, electricity, light, heat, water, sewerage and power, for protective and security services, for telephone and other communication services, and for all other public or private utility services which shall be used, rendered or supplied upon or in connection with the Property, or any part thereof, at any time during the term of this Lease. Landlord shall not be required to furnish any services, utilities or facilities whatsoever to the Property, nor shall Landlord have any duty or obligation to make any Alteration or repair to the Property. Tenant assumes the full

and sole responsibility for the condition, operation, repair, alteration, improvement, replacement, maintenance and management of the Property.

Section 7.8 Environmental. Tenant shall not undertake, permit or suffer any Environmental Activity at the Property other than (a) in compliance with all applicable Insurance Requirements and Legal Requirements and (b) in such a manner as shall keep the Property free from any lien imposed in respect or as a consequence of such Environmental Activity. Tenant shall take all necessary steps to ensure that any permitted Environmental Activity undertaken or permitted at the Property is undertaken in a manner as to provide prudent safeguards against potential risks to human health or the environment or to the Property. Tenant shall notify Landlord within twenty-four (24) hours after Tenant becomes aware of the release or discharge of any Hazardous Materials from or at the Property and Tenant shall forthwith remediate or remove such Hazardous Materials, subject to the last sentence of this **Section 7.8**. Landlord shall have the right from time to time to conduct an environmental audit of the Property, provided Landlord has reasonable cause to believe (i) Hazardous Materials have been released or discharged or is otherwise present at the Property or (ii) Tenant is otherwise in violation of any Legal Requirement or Insurance Requirement relating to Hazardous Materials, and Landlord provides written notice of its intention to conduct an environmental audit together with a statement setting forth the reasons therefor. Tenant shall cooperate in the conduct of such environmental audit. The cost of such audit shall be payable by Tenant upon Landlord's demand therefor; provided, however, that if Tenant objects to such audit by written notice received by Landlord prior to the initiation of such audit and such audit (and any more-detailed environmental audit of the same circumstances (e.g., a so-called phase II environmental assessment)) fails to identify any Environmental Activity in violation of Legal Requirements, Landlord shall pay the costs of such audit. Such audit shall be performed at reasonable times, at reasonable hours and on at least five (5) Business Days notice (except in the case of an emergency), Landlord shall make reasonable efforts to minimize interference with Tenant and any Subtenants, and shall require its audit contractor to carry commercial liability insurance in a commercially reasonable amount, naming Tenant and Landlord as additional insureds, and to deliver Tenant evidence thereof no less than five (5) Business Days prior to commencing such audit. Notwithstanding anything to the contrary in the foregoing portions of this **Section 7.8**: (A) nothing contained in this **Section 7.8** shall require Tenant to remove or remediate any Hazardous Waste unless required to do so by Legal Requirements; and (B) Tenant shall have the right, in accordance with **Section 7.4**, to contest the validity of any Legal Requirement applicable to the remediation or removal of Hazardous Materials, provided Tenant forthwith takes all necessary steps to prevent any further discharge or release of Hazardous Materials or any other or further deterioration to the Property caused by Hazardous Materials; provided, however, that, in any event, Tenant may not delay such remediation or removal during the pendency of such contest if the presence of such Hazardous Materials poses an imminent threat to the Property or any persons or if such delay could expose Landlord to increased liability arising from such Hazardous Materials.

Section 7.9 Equitable Relief. Tenant hereby acknowledges that Landlord may suffer irreparable harm by reason of a breach or threatened breach of the provisions of this **Article VII**, and, accordingly, in addition to any other remedy that Landlord may have under this Lease or as may be permitted by applicable law, Landlord shall be entitled to seek to enjoin the action, activity or inaction that gives rise to such breach or threatened breach by Tenant.

Section 7.10 Windows. Tenant shall not clean or require, permit, suffer or allow any window in the Improvements to be cleaned from the outside in violation of Section 202 of the Labor Law or any other Legal Requirements or Insurance Requirements.

Section 7.11 Adverse Possession. Tenant shall not suffer or permit the Property or any portion thereof to be used by the public or any Person without restriction or in such manner as would, with the lapse of time, impair title to the Property or any portion thereof, or create the basis for a legitimate claim or claims of adverse usage or adverse possession by the public, as such, or any Person, or of implied dedication of the Property, or any portion thereof.

Section 7.12 Pre-Possession Obligations. Except as expressly set forth hereunder or in a separate agreement between ESDC and Tenant, Tenant shall have no rights, obligations or liability in respect of the Property prior to the delivery of Possession.

**ARTICLE VII
USE AND MAINTENANCE OF THE PROPERTY**

Section 7.1 Permitted Use.

(a) Use. The Project and each Project Component or portion thereof shall be used, maintained, occupied and operated (i) in accordance with the requirements of the DUO, (ii) at a standard of at least that of a Class “A” office building (as understood on the date hereof) in midtown Manhattan, and (iii) subject to the DUO and except as set forth in **Sections 7.1(c) and 7.2** hereof, for any use permitted by Legal Requirements, including, without limitation, newsrooms, retail, service, auditoriums, dining facilities, communications facilities, production facilities, ancillary medical facilities, parking for not more than ten (10) cars, back office, storage and other uses as are incidental or ancillary thereto, in accordance with the certificate(s) of occupancy therefor, and for no use or purpose inconsistent with the DUO or the operation of a Class “A” office building (as understood on the date hereof) in midtown Manhattan (the uses described in clauses (i), (ii) and (iii) above, the “**Permitted Use**”), and for no other use. Tenant agrees not to use, permit or suffer the Project to be used for any purposes not expressly permitted under this **Section 7.1(a)** without the prior written consent of Landlord.

(b) Display and Signage. All signage to be incorporated into the design of the Project, and all lighting to be installed in connection therewith, shall comply with the specific requirements of the DUO. Tenant shall install and operate, or cause to be installed and operated, lights and signs as required by the DUO by the date(s) prescribed in the DUO applicable to each category of lighting and signage set forth in the DUO.

(c) Common Elements. Subject to the immediately following sentence, the Common Elements (as defined in the Severance Subleases) shall not be used for any commercial purposes. The Common Element Leaseable Space may be used for commercial purposes but only in accordance with, and as contemplated by, **Section 34.1** hereof.

(d) Compliance with the DUO. From and after the Substantial Completion Date, Tenant shall maintain and operate the Project in compliance with the DUO.

Section 7.2 Restrictions on Use. Tenant shall not use, occupy, maintain or operate the Project, nor permit the same to be used, occupied, maintained or operated, nor do or permit anything to be done in, on or to the Project, in whole or in part, in a manner which would in any way:

- Property;
- (a) violate any construction permit or certificate of occupancy affecting the
 - (b) constitute a public nuisance;
 - (c) violate any Legal Requirements or Insurance Requirements; or
 - (d) violate any requirements of the DUO.

Section 7.3 Interim and Long-Term Maintenance Obligations.

(a) Interim Maintenance Obligations. (i) Taking into account the anticipated performance of Tenant's Construction Work and that Tenant has no obligations hereunder to improve the condition of the Existing Improvements (except in the event any such Existing Improvements are required by a Governmental Authority to be modified), at all times from the Delivery Date to the date Tenant commences the Demolition Work, Tenant shall:

(A) not cause any waste, damage, disfigurement or injury to or upon the Property or any part thereof, except damage, disfigurement or injury that is incidental to pre-construction activities permitted hereunder (and subject to repair of any such damage, disfigurement or injury required hereunder);

(B) maintain and keep the sidewalks adjacent to the Property in reasonable and safe order, repair and condition;

(C) not obstruct the sidewalks in any manner and maintain and keep the Property, and sidewalks and curbs adjacent thereto, free and clear of rubbish, dirt, ice and snow and shall not impede the free use of or obstruct the same or allow the same to be obstructed in any manner;

(D) keep each building on the Property locked and secure;

(E) ensure that the exterior of the Property is well lit from dusk until dawn every day;

(F) ensure that alcoves, entrances, or other breaks in the streetwall are well lit;

(G) not cinder-block, cover, remove, block or seal in any manner any window on any façade of the Existing Improvements that is visible from the street; and

(H) keep the Property free of graffiti and posters.

(ii) If Tenant fails to maintain the cleanliness of the sidewalks adjacent to the Property at least to the level of cleanliness maintained for the overall area of the Times Square BID, as determined by the Mayor's Office of Operations Sanitation Scorecard for as long as the same exists, or fails to promptly remove from the Improvements evidence of graffiti and such failure continues for five (5) Business Days after notice to Tenant specifying in reasonable detail such failure and setting forth Landlord's right to remove same on Tenant's behalf, Landlord shall, at the end of such five (5) Business Day period, be entitled to clean such sidewalks or remove such graffiti or cause the same to be cleaned or removed, as the case may be, at the expense of Tenant. Any and all costs incurred by Landlord in connection therewith shall be paid to Landlord's contractors or reimbursed to Landlord, as Landlord shall request, and shall accrue interest at the Interest Rate, in accordance with **Section 15.1** hereof.

(b) Maintenance During Demolition Work and Tenant's Construction Work. (i) Taking into account the anticipated performance of Tenant's Construction Work and that Tenant has no obligations hereunder to improve the condition of the Existing Improvements (except in the event any such improvement is required to be made by the express directive of a Governmental Authority

acting in its governmental capacity), at all times from the date Tenant commences the Demolition Work through the Substantial Completion Date, Tenant shall:

(A) maintain and keep the sidewalks adjacent to the Property in reasonable and safe order, repair and condition;

(B) except to the extent permitted under applicable Legal Requirements and all permits and authorizations required thereunder, not obstruct the sidewalks in any manner and maintain and keep the Property, and sidewalks and curbs adjacent thereto, free and clear of rubbish, dirt, ice and snow and shall not impede the free use of or obstruct the same or allow the same to be obstructed in any manner;

(C) to the extent any Existing Improvement has not been demolished, keep such Existing Improvement locked and secure;

(D) to the extent any Existing Improvement has not been demolished, ensure that the exterior of such Existing Improvement is well lit from dusk until dawn every day;

(E) keep the Property free of graffiti and posters; and

(F) comply with the DUO.

(ii) If Tenant fails to maintain the cleanliness of the sidewalks adjacent to the Property at least to the level of cleanliness maintained for the overall area of the Times Square BID, as determined by the Mayor's Office of Operations Sanitation Scorecard for as long as the same exists, or fails to promptly remove from the Improvements evidence of graffiti and such failure continues for five (5) Business Days after notice to Tenant specifying in reasonable detail such failure and setting forth Landlord's right to remove same on Tenant's behalf, Landlord shall, at the end of such five (5) Business Day period, be entitled to clean such sidewalks or remove such graffiti or cause the same to be cleaned or removed, as the case may be, at the expense of Tenant. Any and all costs incurred by Landlord in connection therewith shall be paid to Landlord's contractors or reimbursed to Landlord, as Landlord shall request, and shall accrue interest at the Interest Rate, in accordance with **Section 15.1** hereof.

(c) Long-Term Maintenance Obligations. (i) At all times during the term of this Lease from and after the Substantial Completion Date, Tenant shall (and/or shall cause each Subtenant (by incorporating the following provisions in every Sublease and using all reasonable efforts to enforce the same) to):

(A) not cause any waste to or upon the Property or any part thereof, nor permit or suffer any waste to or upon the Property;

(B) not cause physical damage (other than as part of any Construction Work permitted hereunder or as caused by a Casualty or Taking) to the Property or any part thereof, including the Core and Shell and Tenant's Subway Improvements (except in accordance with the Site 8 South Subway Agreement);

(C) take good care of the Property, make all repairs, restorations and replacements thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen, necessary to (1) comply with all Legal Requirements, Insurance Requirements and the DUO and (2) maintain and operate the Property to a standard at least of that of a Class "A" office building (as understood on the date hereof) in midtown Manhattan;

(D) maintain, repair, keep, use and occupy the Property in compliance with the DUO;

(E) maintain and keep the Property, and sidewalks and curbs adjacent thereto, free and clear from rubbish, dirt, ice and snow and shall not impede the use of or obstruct the same or allow the same to be so impeded or obstructed in any manner;

(F) maintain and keep the sidewalks and vaults adjacent to the Property in good order, repair and condition (including the prompt repair of cracks therein and the maintenance of an even level thereof) and at all times keep the same in compliance with the DUO and Legal Requirements;

(G) operate the Retail Space for the conduct of business during the hours of operation set forth in the DUO;

(H) operate and maintain the Public Amenity as set forth in the DUO and in **Section 30.4** hereof;

(I) prohibit sales through window openings on the streetwall, except in the case of (1) a Subtenant whose business is primarily the operation of a newsstand or ticket sales or (2) the sale of tickets for movies and other attractions, i.e., display windows shall be used for display only and not as a point of sale; and

(J) keep the Property free of graffiti and posters.

(ii) If Tenant fails to maintain the cleanliness of the sidewalks adjacent to the Property at least to the level of cleanliness maintained for the overall area of the Times Square BID, as determined by the Mayor's Office of Operations Sanitation Scorecard for as long as the same exists, or fails to promptly remove from the Improvements evidence of graffiti and such failure continues for five (5) Business Days after notice to Tenant specifying in reasonable detail such failure and setting forth Landlord's right to remove same on Tenant's behalf, Landlord shall, at the end of such five (5) Business Day period, be entitled to clean such sidewalks or remove such graffiti or cause the same to be cleaned or removed, as the case may be, at the expense of Tenant. Any and all costs incurred by Landlord in connection therewith shall be paid to Landlord's contractors or reimbursed to Landlord, as Landlord shall request, and shall accrue interest at the Interest Rate, in accordance with **Section 15.1** hereof.

Section 7.4 Compliance with Legal Requirements. Tenant shall promptly comply with all Legal Requirements and Insurance Requirements, foreseen or unforeseen, ordinary as well as extraordinary, structural or non-structural. Tenant shall have the right to contest the validity of any Legal Requirement or the application thereof in accordance with this **Section 7.4**. During such contest, compliance with any such contested Legal Requirement may be deferred by Tenant upon condition that before instituting any such proceedings, Tenant shall furnish to Landlord

security reasonably satisfactory to Landlord (it being agreed that an acceptable guaranty of an Acceptable Guarantor shall be security reasonably satisfactory to Landlord under this **Section 7.4**), securing compliance with the contested Legal Requirement and payment of all interest, penalties, fines, fees and expenses in connection therewith. Any such proceeding instituted by Tenant shall be commenced as soon as is reasonably possible after the issuance of any notification by the applicable governmental authority with respect to required compliance with such Legal Requirement and shall be prosecuted to final adjudication with reasonable diligence. Tenant hereby agrees to indemnify Landlord from and against any and all Claims arising out of such proceeding. Notwithstanding the foregoing, Tenant promptly shall comply with any such Legal Requirement and compliance shall not be deferred if at any time there is a condition imminently hazardous to human life or health, the Property, or any part thereof, shall be in danger of being forfeited or lost, or if Landlord shall be in danger of being subject to criminal and/or civil liability or penalty (other than a fine which Tenant agrees to pay or in regard to which Tenant provides to Landlord an indemnity of Landlord by an Acceptable Guarantor) by reason of noncompliance therewith. The Obligations of Tenant to indemnify Landlord under this **Section 7.4** shall survive the expiration or earlier termination of this Lease.

Section 7.5 No Waste. Except in connection with the Demolition Work, Tenant will not do, permit or suffer any waste to or upon the Property or any part thereof. Tenant shall have the right at any time and from time to time to sell or dispose of any Equipment, subject to this Lease, which may have become obsolete or unfit for use or which is no longer useful, necessary or economical in the operation of the Property; provided, however, that Tenant shall have substituted or shall promptly substitute for the property so removed from the Property other Equipment not necessarily of the same character but at least of equal quality in the performance of the particular function in question as that of the property so removed unless, in Tenant's reasonable opinion as set forth in a written notice to Landlord, the property so removed was performing an obsolete function or a function no longer required in connection with the then current use of the Property and replacement thereof is not necessary or appropriate to maintain, without impairment, the operation or character of the Property, its use and occupancy by Subtenants or its overall value.

Section 7.6 Right of Entry. Landlord (and its designee(s)) shall have the right to enter upon the Property, or any part thereof, at any time during the term hereof, for the purpose of ascertaining the condition of the Property or whether Tenant or any Subtenant is observing and performing their respective obligations hereunder, all without hindrance or molestation from Tenant or any Person claiming by, through or under Tenant. The above mentioned rights of entry shall be exercisable (other than in the case of an emergency) at reasonable times, at reasonable hours and on reasonable, prior written notice, and Landlord shall use reasonable efforts to minimize interference with Tenant and any Subtenants, and shall exercise such right under the supervision of Tenant's (and any such Subtenant's) employees, agents or designees provided the same are made reasonably available to Landlord for such purpose upon reasonable advance notice to Tenant and any such Subtenant (as applicable).

Section 7.7 Utilities; Services; No Landlord Responsibility. Tenant shall be responsible for all charges for gas, electricity, light, heat, water, sewerage and power, for protective and security services, for telephone and other communication services, and for all other public or private utility services which shall be used, rendered or supplied upon or in connection with the Property, or any part thereof, at any time during the term of this Lease. Landlord shall not be required to furnish any services, utilities or facilities whatsoever to the Property, nor shall Landlord have any duty or obligation to make any Alteration or repair to the Property. Tenant assumes the full

and sole responsibility for the condition, operation, repair, alteration, improvement, replacement, maintenance and management of the Property.

Section 7.8 Environmental. Tenant shall not undertake, permit or suffer any Environmental Activity at the Property other than (a) in compliance with all applicable Insurance Requirements and Legal Requirements and (b) in such a manner as shall keep the Property free from any lien imposed in respect or as a consequence of such Environmental Activity. Tenant shall take all necessary steps to ensure that any permitted Environmental Activity undertaken or permitted at the Property is undertaken in a manner as to provide prudent safeguards against potential risks to human health or the environment or to the Property. Tenant shall notify Landlord within twenty-four (24) hours after Tenant becomes aware of the release or discharge of any Hazardous Materials from or at the Property and Tenant shall forthwith remediate or remove such Hazardous Materials, subject to the last sentence of this **Section 7.8**. Landlord shall have the right from time to time to conduct an environmental audit of the Property, provided Landlord has reasonable cause to believe (i) Hazardous Materials have been released or discharged or is otherwise present at the Property or (ii) Tenant is otherwise in violation of any Legal Requirement or Insurance Requirement relating to Hazardous Materials, and Landlord provides written notice of its intention to conduct an environmental audit together with a statement setting forth the reasons therefor. Tenant shall cooperate in the conduct of such environmental audit. The cost of such audit shall be payable by Tenant upon Landlord's demand therefor; provided, however, that if Tenant objects to such audit by written notice received by Landlord prior to the initiation of such audit and such audit (and any more-detailed environmental audit of the same circumstances (e.g., a so-called phase II environmental assessment)) fails to identify any Environmental Activity in violation of Legal Requirements, Landlord shall pay the costs of such audit. Such audit shall be performed at reasonable times, at reasonable hours and on at least five (5) Business Days notice (except in the case of an emergency), Landlord shall make reasonable efforts to minimize interference with Tenant and any Subtenants, and shall require its audit contractor to carry commercial liability insurance in a commercially reasonable amount, naming Tenant and Landlord as additional insureds, and to deliver Tenant evidence thereof no less than five (5) Business Days prior to commencing such audit. Notwithstanding anything to the contrary in the foregoing portions of this **Section 7.8**: (A) nothing contained in this **Section 7.8** shall require Tenant to remove or remediate any Hazardous Waste unless required to do so by Legal Requirements; and (B) Tenant shall have the right, in accordance with **Section 7.4**, to contest the validity of any Legal Requirement applicable to the remediation or removal of Hazardous Materials, provided Tenant forthwith takes all necessary steps to prevent any further discharge or release of Hazardous Materials or any other or further deterioration to the Property caused by Hazardous Materials; provided, however, that, in any event, Tenant may not delay such remediation or removal during the pendency of such contest if the presence of such Hazardous Materials poses an imminent threat to the Property or any persons or if such delay could expose Landlord to increased liability arising from such Hazardous Materials.

Section 7.9 Equitable Relief. Tenant hereby acknowledges that Landlord may suffer irreparable harm by reason of a breach or threatened breach of the provisions of this **Article VII**, and, accordingly, in addition to any other remedy that Landlord may have under this Lease or as may be permitted by applicable law, Landlord shall be entitled to seek to enjoin the action, activity or inaction that gives rise to such breach or threatened breach by Tenant.

Section 7.10 Windows. Tenant shall not clean or require, permit, suffer or allow any window in the Improvements to be cleaned from the outside in violation of Section 202 of the Labor Law or any other Legal Requirements or Insurance Requirements.

Section 7.11 Adverse Possession. Tenant shall not suffer or permit the Property or any portion thereof to be used by the public or any Person without restriction or in such manner as would, with the lapse of time, impair title to the Property or any portion thereof, or create the basis for a legitimate claim or claims of adverse usage or adverse possession by the public, as such, or any Person, or of implied dedication of the Property, or any portion thereof.

Section 7.12 Pre-Possession Obligations. Except as expressly set forth hereunder or in a separate agreement between ESDC and Tenant, Tenant shall have no rights, obligations or liability in respect of the Property prior to the delivery of Possession.

**ARTICLE VII
USE AND MAINTENANCE OF THE PROPERTY**

Section 7.1 Permitted Use.

(a) Use. The Project and each Project Component or portion thereof shall be used, maintained, occupied and operated (i) in accordance with the requirements of the DUO, (ii) at a standard of at least that of a Class "A" office building (as understood on the date hereof) in midtown Manhattan, and (iii) subject to the DUO and except as set forth in **Sections 7.1(c) and 7.2** hereof, for any use permitted by Legal Requirements, including, without limitation, newsrooms, retail, service, auditoriums, dining facilities, communications facilities, production facilities, ancillary medical facilities, parking for not more than ten (10) cars, back office, storage and other uses as are incidental or ancillary thereto, in accordance with the certificate(s) of occupancy therefor, and for no use or purpose inconsistent with the DUO or the operation of a Class "A" office building (as understood on the date hereof) in midtown Manhattan (the uses described in clauses (i), (ii) and (iii) above, the "**Permitted Use**"), and for no other use. Tenant agrees not to use, permit or suffer the Project to be used for any purposes not expressly permitted under this **Section 7.1(a)** without the prior written consent of Landlord.

(b) Display and Signage. All signage to be incorporated into the design of the Project, and all lighting to be installed in connection therewith, shall comply with the specific requirements of the DUO. Tenant shall install and operate, or cause to be installed and operated, lights and signs as required by the DUO by the date(s) prescribed in the DUO applicable to each category of lighting and signage set forth in the DUO.

(c) Common Elements. Subject to the immediately following sentence, the Common Elements (as defined in the Severance Subleases) shall not be used for any commercial purposes. The Common Element Leaseable Space may be used for commercial purposes but only in accordance with, and as contemplated by, **Section 34.1** hereof.

(d) Compliance with the DUO. From and after the Substantial Completion Date, Tenant shall maintain and operate the Project in compliance with the DUO.

Section 7.2 Restrictions on Use. Tenant shall not use, occupy, maintain or operate the Project, nor permit the same to be used, occupied, maintained or operated, nor do or permit anything to be done in, on or to the Project, in whole or in part, in a manner which would in any way:

- Property;
- (a) violate any construction permit or certificate of occupancy affecting the
 - (b) constitute a public nuisance;
 - (c) violate any Legal Requirements or Insurance Requirements; or
 - (d) violate any requirements of the DUO.

Section 7.3 Interim and Long-Term Maintenance Obligations.

(a) Interim Maintenance Obligations. (i) Taking into account the anticipated performance of Tenant's Construction Work and that Tenant has no obligations hereunder to improve the condition of the Existing Improvements (except in the event any such Existing Improvements are required by a Governmental Authority to be modified), at all times from the Delivery Date to the date Tenant commences the Demolition Work, Tenant shall:

(A) not cause any waste, damage, disfigurement or injury to or upon the Property or any part thereof, except damage, disfigurement or injury that is incidental to pre-construction activities permitted hereunder (and subject to repair of any such damage, disfigurement or injury required hereunder);

(B) maintain and keep the sidewalks adjacent to the Property in reasonable and safe order, repair and condition;

(C) not obstruct the sidewalks in any manner and maintain and keep the Property, and sidewalks and curbs adjacent thereto, free and clear of rubbish, dirt, ice and snow and shall not impede the free use of or obstruct the same or allow the same to be obstructed in any manner;

(D) keep each building on the Property locked and secure;

(E) ensure that the exterior of the Property is well lit from dusk until dawn every day;

(F) ensure that alcoves, entrances, or other breaks in the streetwall are well lit;

(G) not cinder-block, cover, remove, block or seal in any manner any window on any façade of the Existing Improvements that is visible from the street; and

(H) keep the Property free of graffiti and posters.

(ii) If Tenant fails to maintain the cleanliness of the sidewalks adjacent to the Property at least to the level of cleanliness maintained for the overall area of the Times Square BID, as determined by the Mayor's Office of Operations Sanitation Scorecard for as long as the same exists, or fails to promptly remove from the Improvements evidence of graffiti and such failure continues for five (5) Business Days after notice to Tenant specifying in reasonable detail such failure and setting forth Landlord's right to remove same on Tenant's behalf, Landlord shall, at the end of such five (5) Business Day period, be entitled to clean such sidewalks or remove such graffiti or cause the same to be cleaned or removed, as the case may be, at the expense of Tenant. Any and all costs incurred by Landlord in connection therewith shall be paid to Landlord's contractors or reimbursed to Landlord, as Landlord shall request, and shall accrue interest at the Interest Rate, in accordance with **Section 15.1** hereof.

(b) Maintenance During Demolition Work and Tenant's Construction Work. (i) Taking into account the anticipated performance of Tenant's Construction Work and that Tenant has no obligations hereunder to improve the condition of the Existing Improvements (except in the event any such improvement is required to be made by the express directive of a Governmental Authority

acting in its governmental capacity), at all times from the date Tenant commences the Demolition Work through the Substantial Completion Date, Tenant shall:

(A) maintain and keep the sidewalks adjacent to the Property in reasonable and safe order, repair and condition;

(B) except to the extent permitted under applicable Legal Requirements and all permits and authorizations required thereunder, not obstruct the sidewalks in any manner and maintain and keep the Property, and sidewalks and curbs adjacent thereto, free and clear of rubbish, dirt, ice and snow and shall not impede the free use of or obstruct the same or allow the same to be obstructed in any manner;

(C) to the extent any Existing Improvement has not been demolished, keep such Existing Improvement locked and secure;

(D) to the extent any Existing Improvement has not been demolished, ensure that the exterior of such Existing Improvement is well lit from dusk until dawn every day;

(E) keep the Property free of graffiti and posters; and

(F) comply with the DUO.

(ii) If Tenant fails to maintain the cleanliness of the sidewalks adjacent to the Property at least to the level of cleanliness maintained for the overall area of the Times Square BID, as determined by the Mayor's Office of Operations Sanitation Scorecard for as long as the same exists, or fails to promptly remove from the Improvements evidence of graffiti and such failure continues for five (5) Business Days after notice to Tenant specifying in reasonable detail such failure and setting forth Landlord's right to remove same on Tenant's behalf, Landlord shall, at the end of such five (5) Business Day period, be entitled to clean such sidewalks or remove such graffiti or cause the same to be cleaned or removed, as the case may be, at the expense of Tenant. Any and all costs incurred by Landlord in connection therewith shall be paid to Landlord's contractors or reimbursed to Landlord, as Landlord shall request, and shall accrue interest at the Interest Rate, in accordance with **Section 15.1** hereof.

(c) Long-Term Maintenance Obligations. (i) At all times during the term of this Lease from and after the Substantial Completion Date, Tenant shall (and/or shall cause each Subtenant (by incorporating the following provisions in every Sublease and using all reasonable efforts to enforce the same) to):

(A) not cause any waste to or upon the Property or any part thereof, nor permit or suffer any waste to or upon the Property;

(B) not cause physical damage (other than as part of any Construction Work permitted hereunder or as caused by a Casualty or Taking) to the Property or any part thereof, including the Core and Shell and Tenant's Subway Improvements (except in accordance with the Site 8 South Subway Agreement);

(C) take good care of the Property, make all repairs, restorations and replacements thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen, necessary to (1) comply with all Legal Requirements, Insurance Requirements and the DUO and (2) maintain and operate the Property to a standard at least of that of a Class "A" office building (as understood on the date hereof) in midtown Manhattan;

(D) maintain, repair, keep, use and occupy the Property in compliance with the DUO;

(E) maintain and keep the Property, and sidewalks and curbs adjacent thereto, free and clear from rubbish, dirt, ice and snow and shall not impede the use of or obstruct the same or allow the same to be so impeded or obstructed in any manner;

(F) maintain and keep the sidewalks and vaults adjacent to the Property in good order, repair and condition (including the prompt repair of cracks therein and the maintenance of an even level thereof) and at all times keep the same in compliance with the DUO and Legal Requirements;

(G) operate the Retail Space for the conduct of business during the hours of operation set forth in the DUO;

(H) operate and maintain the Public Amenity as set forth in the DUO and in **Section 30.4** hereof;

(I) prohibit sales through window openings on the streetwall, except in the case of (1) a Subtenant whose business is primarily the operation of a newsstand or ticket sales or (2) the sale of tickets for movies and other attractions, i.e., display windows shall be used for display only and not as a point of sale; and

(J) keep the Property free of graffiti and posters.

(ii) If Tenant fails to maintain the cleanliness of the sidewalks adjacent to the Property at least to the level of cleanliness maintained for the overall area of the Times Square BID, as determined by the Mayor's Office of Operations Sanitation Scorecard for as long as the same exists, or fails to promptly remove from the Improvements evidence of graffiti and such failure continues for five (5) Business Days after notice to Tenant specifying in reasonable detail such failure and setting forth Landlord's right to remove same on Tenant's behalf, Landlord shall, at the end of such five (5) Business Day period, be entitled to clean such sidewalks or remove such graffiti or cause the same to be cleaned or removed, as the case may be, at the expense of Tenant. Any and all costs incurred by Landlord in connection therewith shall be paid to Landlord's contractors or reimbursed to Landlord, as Landlord shall request, and shall accrue interest at the Interest Rate, in accordance with **Section 15.1** hereof.

Section 7.4 Compliance with Legal Requirements. Tenant shall promptly comply with all Legal Requirements and Insurance Requirements, foreseen or unforeseen, ordinary as well as extraordinary, structural or non-structural. Tenant shall have the right to contest the validity of any Legal Requirement or the application thereof in accordance with this **Section 7.4**. During such contest, compliance with any such contested Legal Requirement may be deferred by Tenant upon condition that before instituting any such proceedings, Tenant shall furnish to Landlord

security reasonably satisfactory to Landlord (it being agreed that an acceptable guaranty of an Acceptable Guarantor shall be security reasonably satisfactory to Landlord under this **Section 7.4**), securing compliance with the contested Legal Requirement and payment of all interest, penalties, fines, fees and expenses in connection therewith. Any such proceeding instituted by Tenant shall be commenced as soon as is reasonably possible after the issuance of any notification by the applicable governmental authority with respect to required compliance with such Legal Requirement and shall be prosecuted to final adjudication with reasonable diligence. Tenant hereby agrees to indemnify Landlord from and against any and all Claims arising out of such proceeding. Notwithstanding the foregoing, Tenant promptly shall comply with any such Legal Requirement and compliance shall not be deferred if at any time there is a condition imminently hazardous to human life or health, the Property, or any part thereof, shall be in danger of being forfeited or lost, or if Landlord shall be in danger of being subject to criminal and/or civil liability or penalty (other than a fine which Tenant agrees to pay or in regard to which Tenant provides to Landlord an indemnity of Landlord by an Acceptable Guarantor) by reason of noncompliance therewith. The Obligations of Tenant to indemnify Landlord under this **Section 7.4** shall survive the expiration or earlier termination of this Lease.

Section 7.5 No Waste. Except in connection with the Demolition Work, Tenant will not do, permit or suffer any waste to or upon the Property or any part thereof. Tenant shall have the right at any time and from time to time to sell or dispose of any Equipment, subject to this Lease, which may have become obsolete or unfit for use or which is no longer useful, necessary or economical in the operation of the Property; provided, however, that Tenant shall have substituted or shall promptly substitute for the property so removed from the Property other Equipment not necessarily of the same character but at least of equal quality in the performance of the particular function in question as that of the property so removed unless, in Tenant's reasonable opinion as set forth in a written notice to Landlord, the property so removed was performing an obsolete function or a function no longer required in connection with the then current use of the Property and replacement thereof is not necessary or appropriate to maintain, without impairment, the operation or character of the Property, its use and occupancy by Subtenants or its overall value.

Section 7.6 Right of Entry. Landlord (and its designee(s)) shall have the right to enter upon the Property, or any part thereof, at any time during the term hereof, for the purpose of ascertaining the condition of the Property or whether Tenant or any Subtenant is observing and performing their respective obligations hereunder, all without hindrance or molestation from Tenant or any Person claiming by, through or under Tenant. The above mentioned rights of entry shall be exercisable (other than in the case of an emergency) at reasonable times, at reasonable hours and on reasonable, prior written notice, and Landlord shall use reasonable efforts to minimize interference with Tenant and any Subtenants, and shall exercise such right under the supervision of Tenant's (and any such Subtenant's) employees, agents or designees provided the same are made reasonably available to Landlord for such purpose upon reasonable advance notice to Tenant and any such Subtenant (as applicable).

Section 7.7 Utilities; Services; No Landlord Responsibility. Tenant shall be responsible for all charges for gas, electricity, light, heat, water, sewerage and power, for protective and security services, for telephone and other communication services, and for all other public or private utility services which shall be used, rendered or supplied upon or in connection with the Property, or any part thereof, at any time during the term of this Lease. Landlord shall not be required to furnish any services, utilities or facilities whatsoever to the Property, nor shall Landlord have any duty or obligation to make any Alteration or repair to the Property. Tenant assumes the full

and sole responsibility for the condition, operation, repair, alteration, improvement, replacement, maintenance and management of the Property.

Section 7.8 Environmental. Tenant shall not undertake, permit or suffer any Environmental Activity at the Property other than (a) in compliance with all applicable Insurance Requirements and Legal Requirements and (b) in such a manner as shall keep the Property free from any lien imposed in respect or as a consequence of such Environmental Activity. Tenant shall take all necessary steps to ensure that any permitted Environmental Activity undertaken or permitted at the Property is undertaken in a manner as to provide prudent safeguards against potential risks to human health or the environment or to the Property. Tenant shall notify Landlord within twenty-four (24) hours after Tenant becomes aware of the release or discharge of any Hazardous Materials from or at the Property and Tenant shall forthwith remediate or remove such Hazardous Materials, subject to the last sentence of this **Section 7.8**. Landlord shall have the right from time to time to conduct an environmental audit of the Property, provided Landlord has reasonable cause to believe (i) Hazardous Materials have been released or discharged or is otherwise present at the Property or (ii) Tenant is otherwise in violation of any Legal Requirement or Insurance Requirement relating to Hazardous Materials, and Landlord provides written notice of its intention to conduct an environmental audit together with a statement setting forth the reasons therefor. Tenant shall cooperate in the conduct of such environmental audit. The cost of such audit shall be payable by Tenant upon Landlord's demand therefor; provided, however, that if Tenant objects to such audit by written notice received by Landlord prior to the initiation of such audit and such audit (and any more-detailed environmental audit of the same circumstances (e.g., a so-called phase II environmental assessment)) fails to identify any Environmental Activity in violation of Legal Requirements, Landlord shall pay the costs of such audit. Such audit shall be performed at reasonable times, at reasonable hours and on at least five (5) Business Days notice (except in the case of an emergency), Landlord shall make reasonable efforts to minimize interference with Tenant and any Subtenants, and shall require its audit contractor to carry commercial liability insurance in a commercially reasonable amount, naming Tenant and Landlord as additional insureds, and to deliver Tenant evidence thereof no less than five (5) Business Days prior to commencing such audit. Notwithstanding anything to the contrary in the foregoing portions of this **Section 7.8**: (A) nothing contained in this **Section 7.8** shall require Tenant to remove or remediate any Hazardous Waste unless required to do so by Legal Requirements; and (B) Tenant shall have the right, in accordance with **Section 7.4**, to contest the validity of any Legal Requirement applicable to the remediation or removal of Hazardous Materials, provided Tenant forthwith takes all necessary steps to prevent any further discharge or release of Hazardous Materials or any other or further deterioration to the Property caused by Hazardous Materials; provided, however, that, in any event, Tenant may not delay such remediation or removal during the pendency of such contest if the presence of such Hazardous Materials poses an imminent threat to the Property or any persons or if such delay could expose Landlord to increased liability arising from such Hazardous Materials.

Section 7.9 Equitable Relief. Tenant hereby acknowledges that Landlord may suffer irreparable harm by reason of a breach or threatened breach of the provisions of this **Article VII**, and, accordingly, in addition to any other remedy that Landlord may have under this Lease or as may be permitted by applicable law, Landlord shall be entitled to seek to enjoin the action, activity or inaction that gives rise to such breach or threatened breach by Tenant.

Section 7.10 Windows. Tenant shall not clean or require, permit, suffer or allow any window in the Improvements to be cleaned from the outside in violation of Section 202 of the Labor Law or any other Legal Requirements or Insurance Requirements.

Section 7.11 Adverse Possession. Tenant shall not suffer or permit the Property or any portion thereof to be used by the public or any Person without restriction or in such manner as would, with the lapse of time, impair title to the Property or any portion thereof, or create the basis for a legitimate claim or claims of adverse usage or adverse possession by the public, as such, or any Person, or of implied dedication of the Property, or any portion thereof.

Section 7.12 Pre-Possession Obligations. Except as expressly set forth hereunder or in a separate agreement between ESDC and Tenant, Tenant shall have no rights, obligations or liability in respect of the Property prior to the delivery of Possession.

**ARTICLE VII
USE AND MAINTENANCE OF THE PROPERTY**

Section 7.1 Permitted Use.

(a) Use. The Project and each Project Component or portion thereof shall be used, maintained, occupied and operated (i) in accordance with the requirements of the DUO, (ii) at a standard of at least that of a Class “A” office building (as understood on the date hereof) in midtown Manhattan, and (iii) subject to the DUO and except as set forth in **Sections 7.1(c) and 7.2** hereof, for any use permitted by Legal Requirements, including, without limitation, newsrooms, retail, service, auditoriums, dining facilities, communications facilities, production facilities, ancillary medical facilities, parking for not more than ten (10) cars, back office, storage and other uses as are incidental or ancillary thereto, in accordance with the certificate(s) of occupancy therefor, and for no use or purpose inconsistent with the DUO or the operation of a Class “A” office building (as understood on the date hereof) in midtown Manhattan (the uses described in clauses (i), (ii) and (iii) above, the “**Permitted Use**”), and for no other use. Tenant agrees not to use, permit or suffer the Project to be used for any purposes not expressly permitted under this **Section 7.1(a)** without the prior written consent of Landlord.

(b) Display and Signage. All signage to be incorporated into the design of the Project, and all lighting to be installed in connection therewith, shall comply with the specific requirements of the DUO. Tenant shall install and operate, or cause to be installed and operated, lights and signs as required by the DUO by the date(s) prescribed in the DUO applicable to each category of lighting and signage set forth in the DUO.

(c) Common Elements. Subject to the immediately following sentence, the Common Elements (as defined in the Severance Subleases) shall not be used for any commercial purposes. The Common Element Leaseable Space may be used for commercial purposes but only in accordance with, and as contemplated by, **Section 34.1** hereof.

(d) Compliance with the DUO. From and after the Substantial Completion Date, Tenant shall maintain and operate the Project in compliance with the DUO.

Section 7.2 Restrictions on Use. Tenant shall not use, occupy, maintain or operate the Project, nor permit the same to be used, occupied, maintained or operated, nor do or permit anything to be done in, on or to the Project, in whole or in part, in a manner which would in any way:

- (a) violate any construction permit or certificate of occupancy affecting the Property;
- (b) constitute a public nuisance;
- (c) violate any Legal Requirements or Insurance Requirements; or
- (d) violate any requirements of the DUO.

Section 7.3 Interim and Long-Term Maintenance Obligations.

(a) Interim Maintenance Obligations. (i) Taking into account the anticipated performance of Tenant's Construction Work and that Tenant has no obligations hereunder to improve the condition of the Existing Improvements (except in the event any such Existing Improvements are required by a Governmental Authority to be modified), at all times from the Delivery Date to the date Tenant commences the Demolition Work, Tenant shall:

(A) not cause any waste, damage, disfigurement or injury to or upon the Property or any part thereof, except damage, disfigurement or injury that is incidental to pre-construction activities permitted hereunder (and subject to repair of any such damage, disfigurement or injury required hereunder);

(B) maintain and keep the sidewalks adjacent to the Property in reasonable and safe order, repair and condition;

(C) not obstruct the sidewalks in any manner and maintain and keep the Property, and sidewalks and curbs adjacent thereto, free and clear of rubbish, dirt, ice and snow and shall not impede the free use of or obstruct the same or allow the same to be obstructed in any manner;

(D) keep each building on the Property locked and secure;

(E) ensure that the exterior of the Property is well lit from dusk until dawn every day;

(F) ensure that alcoves, entrances, or other breaks in the streetwall are well lit;

(G) not cinder-block, cover, remove, block or seal in any manner any window on any façade of the Existing Improvements that is visible from the street; and

(H) keep the Property free of graffiti and posters.

(ii) If Tenant fails to maintain the cleanliness of the sidewalks adjacent to the Property at least to the level of cleanliness maintained for the overall area of the Times Square BID, as determined by the Mayor's Office of Operations Sanitation Scorecard for as long as the same exists, or fails to promptly remove from the Improvements evidence of graffiti and such failure continues for five (5) Business Days after notice to Tenant specifying in reasonable detail such failure and setting forth Landlord's right to remove same on Tenant's behalf, Landlord shall, at the end of such five (5) Business Day period, be entitled to clean such sidewalks or remove such graffiti or cause the same to be cleaned or removed, as the case may be, at the expense of Tenant. Any and all costs incurred by Landlord in connection therewith shall be paid to Landlord's contractors or reimbursed to Landlord, as Landlord shall request, and shall accrue interest at the Interest Rate, in accordance with **Section 15.1** hereof.

(b) Maintenance During Demolition Work and Tenant's Construction Work. (i) Taking into account the anticipated performance of Tenant's Construction Work and that Tenant has no obligations hereunder to improve the condition of the Existing Improvements (except in the event any such improvement is required to be made by the express directive of a Governmental Authority

acting in its governmental capacity), at all times from the date Tenant commences the Demolition Work through the Substantial Completion Date, Tenant shall:

(A) maintain and keep the sidewalks adjacent to the Property in reasonable and safe order, repair and condition;

(B) except to the extent permitted under applicable Legal Requirements and all permits and authorizations required thereunder, not obstruct the sidewalks in any manner and maintain and keep the Property, and sidewalks and curbs adjacent thereto, free and clear of rubbish, dirt, ice and snow and shall not impede the free use of or obstruct the same or allow the same to be obstructed in any manner;

(C) to the extent any Existing Improvement has not been demolished, keep such Existing Improvement locked and secure;

(D) to the extent any Existing Improvement has not been demolished, ensure that the exterior of such Existing Improvement is well lit from dusk until dawn every day;

(E) keep the Property free of graffiti and posters; and

(F) comply with the DUO.

(ii) If Tenant fails to maintain the cleanliness of the sidewalks adjacent to the Property at least to the level of cleanliness maintained for the overall area of the Times Square BID, as determined by the Mayor's Office of Operations Sanitation Scorecard for as long as the same exists, or fails to promptly remove from the Improvements evidence of graffiti and such failure continues for five (5) Business Days after notice to Tenant specifying in reasonable detail such failure and setting forth Landlord's right to remove same on Tenant's behalf, Landlord shall, at the end of such five (5) Business Day period, be entitled to clean such sidewalks or remove such graffiti or cause the same to be cleaned or removed, as the case may be, at the expense of Tenant. Any and all costs incurred by Landlord in connection therewith shall be paid to Landlord's contractors or reimbursed to Landlord, as Landlord shall request, and shall accrue interest at the Interest Rate, in accordance with **Section 15.1** hereof.

(c) Long-Term Maintenance Obligations. (i) At all times during the term of this Lease from and after the Substantial Completion Date, Tenant shall (and/or shall cause each Subtenant (by incorporating the following provisions in every Sublease and using all reasonable efforts to enforce the same) to):

(A) not cause any waste to or upon the Property or any part thereof, nor permit or suffer any waste to or upon the Property;

(B) not cause physical damage (other than as part of any Construction Work permitted hereunder or as caused by a Casualty or Taking) to the Property or any part thereof, including the Core and Shell and Tenant's Subway Improvements (except in accordance with the Site 8 South Subway Agreement);

(C) take good care of the Property, make all repairs, restorations and replacements thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen, necessary to (1) comply with all Legal Requirements, Insurance Requirements and the DUO and (2) maintain and operate the Property to a standard at least of that of a Class "A" office building (as understood on the date hereof) in midtown Manhattan;

(D) maintain, repair, keep, use and occupy the Property in compliance with the DUO;

(E) maintain and keep the Property, and sidewalks and curbs adjacent thereto, free and clear from rubbish, dirt, ice and snow and shall not impede the use of or obstruct the same or allow the same to be so impeded or obstructed in any manner;

(F) maintain and keep the sidewalks and vaults adjacent to the Property in good order, repair and condition (including the prompt repair of cracks therein and the maintenance of an even level thereof) and at all times keep the same in compliance with the DUO and Legal Requirements;

(G) operate the Retail Space for the conduct of business during the hours of operation set forth in the DUO;

(H) operate and maintain the Public Amenity as set forth in the DUO and in **Section 30.4** hereof;

(I) prohibit sales through window openings on the streetwall, except in the case of (1) a Subtenant whose business is primarily the operation of a newsstand or ticket sales or (2) the sale of tickets for movies and other attractions, i.e., display windows shall be used for display only and not as a point of sale; and

(J) keep the Property free of graffiti and posters.

(ii) If Tenant fails to maintain the cleanliness of the sidewalks adjacent to the Property at least to the level of cleanliness maintained for the overall area of the Times Square BID, as determined by the Mayor's Office of Operations Sanitation Scorecard for as long as the same exists, or fails to promptly remove from the Improvements evidence of graffiti and such failure continues for five (5) Business Days after notice to Tenant specifying in reasonable detail such failure and setting forth Landlord's right to remove same on Tenant's behalf, Landlord shall, at the end of such five (5) Business Day period, be entitled to clean such sidewalks or remove such graffiti or cause the same to be cleaned or removed, as the case may be, at the expense of Tenant. Any and all costs incurred by Landlord in connection therewith shall be paid to Landlord's contractors or reimbursed to Landlord, as Landlord shall request, and shall accrue interest at the Interest Rate, in accordance with **Section 15.1** hereof.

Section 7.4 Compliance with Legal Requirements. Tenant shall promptly comply with all Legal Requirements and Insurance Requirements, foreseen or unforeseen, ordinary as well as extraordinary, structural or non-structural. Tenant shall have the right to contest the validity of any Legal Requirement or the application thereof in accordance with this **Section 7.4**. During such contest, compliance with any such contested Legal Requirement may be deferred by Tenant upon condition that before instituting any such proceedings, Tenant shall furnish to Landlord

security reasonably satisfactory to Landlord (it being agreed that an acceptable guaranty of an Acceptable Guarantor shall be security reasonably satisfactory to Landlord under this **Section 7.4**), securing compliance with the contested Legal Requirement and payment of all interest, penalties, fines, fees and expenses in connection therewith. Any such proceeding instituted by Tenant shall be commenced as soon as is reasonably possible after the issuance of any notification by the applicable governmental authority with respect to required compliance with such Legal Requirement and shall be prosecuted to final adjudication with reasonable diligence. Tenant hereby agrees to indemnify Landlord from and against any and all Claims arising out of such proceeding. Notwithstanding the foregoing, Tenant promptly shall comply with any such Legal Requirement and compliance shall not be deferred if at any time there is a condition imminently hazardous to human life or health, the Property, or any part thereof, shall be in danger of being forfeited or lost, or if Landlord shall be in danger of being subject to criminal and/or civil liability or penalty (other than a fine which Tenant agrees to pay or in regard to which Tenant provides to Landlord an indemnity of Landlord by an Acceptable Guarantor) by reason of noncompliance therewith. The Obligations of Tenant to indemnify Landlord under this **Section 7.4** shall survive the expiration or earlier termination of this Lease.

Section 7.5 No Waste. Except in connection with the Demolition Work, Tenant will not do, permit or suffer any waste to or upon the Property or any part thereof. Tenant shall have the right at any time and from time to time to sell or dispose of any Equipment, subject to this Lease, which may have become obsolete or unfit for use or which is no longer useful, necessary or economical in the operation of the Property; provided, however, that Tenant shall have substituted or shall promptly substitute for the property so removed from the Property other Equipment not necessarily of the same character but at least of equal quality in the performance of the particular function in question as that of the property so removed unless, in Tenant's reasonable opinion as set forth in a written notice to Landlord, the property so removed was performing an obsolete function or a function no longer required in connection with the then current use of the Property and replacement thereof is not necessary or appropriate to maintain, without impairment, the operation or character of the Property, its use and occupancy by Subtenants or its overall value.

Section 7.6 Right of Entry. Landlord (and its designee(s)) shall have the right to enter upon the Property, or any part thereof, at any time during the term hereof, for the purpose of ascertaining the condition of the Property or whether Tenant or any Subtenant is observing and performing their respective obligations hereunder, all without hindrance or molestation from Tenant or any Person claiming by, through or under Tenant. The above mentioned rights of entry shall be exercisable (other than in the case of an emergency) at reasonable times, at reasonable hours and on reasonable, prior written notice, and Landlord shall use reasonable efforts to minimize interference with Tenant and any Subtenants, and shall exercise such right under the supervision of Tenant's (and any such Subtenant's) employees, agents or designees provided the same are made reasonably available to Landlord for such purpose upon reasonable advance notice to Tenant and any such Subtenant (as applicable).

Section 7.7 Utilities; Services; No Landlord Responsibility. Tenant shall be responsible for all charges for gas, electricity, light, heat, water, sewerage and power, for protective and security services, for telephone and other communication services, and for all other public or private utility services which shall be used, rendered or supplied upon or in connection with the Property, or any part thereof, at any time during the term of this Lease. Landlord shall not be required to furnish any services, utilities or facilities whatsoever to the Property, nor shall Landlord have any duty or obligation to make any Alteration or repair to the Property. Tenant assumes the full

and sole responsibility for the condition, operation, repair, alteration, improvement, replacement, maintenance and management of the Property.

Section 7.8 Environmental. Tenant shall not undertake, permit or suffer any Environmental Activity at the Property other than (a) in compliance with all applicable Insurance Requirements and Legal Requirements and (b) in such a manner as shall keep the Property free from any lien imposed in respect or as a consequence of such Environmental Activity. Tenant shall take all necessary steps to ensure that any permitted Environmental Activity undertaken or permitted at the Property is undertaken in a manner as to provide prudent safeguards against potential risks to human health or the environment or to the Property. Tenant shall notify Landlord within twenty-four (24) hours after Tenant becomes aware of the release or discharge of any Hazardous Materials from or at the Property and Tenant shall forthwith remediate or remove such Hazardous Materials, subject to the last sentence of this **Section 7.8**. Landlord shall have the right from time to time to conduct an environmental audit of the Property, provided Landlord has reasonable cause to believe (i) Hazardous Materials have been released or discharged or is otherwise present at the Property or (ii) Tenant is otherwise in violation of any Legal Requirement or Insurance Requirement relating to Hazardous Materials, and Landlord provides written notice of its intention to conduct an environmental audit together with a statement setting forth the reasons therefor. Tenant shall cooperate in the conduct of such environmental audit. The cost of such audit shall be payable by Tenant upon Landlord's demand therefor; provided, however, that if Tenant objects to such audit by written notice received by Landlord prior to the initiation of such audit and such audit (and any more-detailed environmental audit of the same circumstances (e.g., a so-called phase II environmental assessment)) fails to identify any Environmental Activity in violation of Legal Requirements, Landlord shall pay the costs of such audit. Such audit shall be performed at reasonable times, at reasonable hours and on at least five (5) Business Days notice (except in the case of an emergency), Landlord shall make reasonable efforts to minimize interference with Tenant and any Subtenants, and shall require its audit contractor to carry commercial liability insurance in a commercially reasonable amount, naming Tenant and Landlord as additional insureds, and to deliver Tenant evidence thereof no less than five (5) Business Days prior to commencing such audit. Notwithstanding anything to the contrary in the foregoing portions of this **Section 7.8**: (A) nothing contained in this **Section 7.8** shall require Tenant to remove or remediate any Hazardous Waste unless required to do so by Legal Requirements; and (B) Tenant shall have the right, in accordance with **Section 7.4**, to contest the validity of any Legal Requirement applicable to the remediation or removal of Hazardous Materials, provided Tenant forthwith takes all necessary steps to prevent any further discharge or release of Hazardous Materials or any other or further deterioration to the Property caused by Hazardous Materials; provided, however, that, in any event, Tenant may not delay such remediation or removal during the pendency of such contest if the presence of such Hazardous Materials poses an imminent threat to the Property or any persons or if such delay could expose Landlord to increased liability arising from such Hazardous Materials.

Section 7.9 Equitable Relief. Tenant hereby acknowledges that Landlord may suffer irreparable harm by reason of a breach or threatened breach of the provisions of this **Article VII**, and, accordingly, in addition to any other remedy that Landlord may have under this Lease or as may be permitted by applicable law, Landlord shall be entitled to seek to enjoin the action, activity or inaction that gives rise to such breach or threatened breach by Tenant.

Section 7.10 Windows. Tenant shall not clean or require, permit, suffer or allow any window in the Improvements to be cleaned from the outside in violation of Section 202 of the Labor Law or any other Legal Requirements or Insurance Requirements.

Section 7.11 Adverse Possession. Tenant shall not suffer or permit the Property or any portion thereof to be used by the public or any Person without restriction or in such manner as would, with the lapse of time, impair title to the Property or any portion thereof, or create the basis for a legitimate claim or claims of adverse usage or adverse possession by the public, as such, or any Person, or of implied dedication of the Property, or any portion thereof.

Section 7.12 Pre-Possession Obligations. Except as expressly set forth hereunder or in a separate agreement between ESDC and Tenant, Tenant shall have no rights, obligations or liability in respect of the Property prior to the delivery of Possession.

AMENDED AND RESTATED

AGREEMENT OF LEASE

between

42ND ST. DEVELOPMENT PROJECT, INC.,
Landlord

and

FOUR TIMES SQUARE CENTER PARTNERS, L.P.,
Tenant

Premises

Block: 1013
Lots: 29, 37, 137, 36, 136, 135, 35 and 34
Borough of Manhattan
City, County and State of New York

Dated as of October 7, 1994

ARTICLE 23

PERMITTED USE; NO UNLAWFUL OCCUPANCY

Section 23.1. Type of Use. Effective upon the Substantial Completion Date, Tenant shall use and operate the Premises throughout the Term only as a first-class office building, with restaurant, retail (as permitted in the Retail Guidelines), service, classroom, showroom, parking, back office, storage and other uses incidental thereto, in accordance with the certificate(s) of occupancy therefor, and for no use or purpose inconsistent with the operation of a first class office building located in New York City.

Section 23.2. Prohibited Uses. Tenant shall not use or occupy the Premises, and, subsequent to the delivery of Possession of any Parcel in the Premises to Tenant, neither permit nor suffer such Parcel to be used or occupied, for any retail use other than as permitted in Article 5, the Retail Guidelines or for any unlawful or illegal business, use or purpose or for any purpose or in any way in violation of the certificate(s) of occupancy therefor or for any use not permitted by Section 23.1 (any such use herewith referred to as a "Prohibited Use"). Promptly upon its discovery of any such Prohibited Use subsequent to delivery of Possession of the Premises, Tenant shall take or cause to be taken all necessary steps, legal and equitable, to compel the discontinuation of such Prohibited Use, including, if necessary, the removal from the Premises of any Subtenants using any portion of the Premises for a Prohibited Use.

Section 23.3. Restriction of Public Use. At
Landlord's request, Tenant shall immediately cease to suffer or
permit the Premises or any portion thereof to be used by the
public in a manner that would, with the passage of time, impair
title to the Premises or any portion thereof, or in a manner that
would, with the passage of time, create the basis for a claim or
claims of prescriptive right, adverse usage or adverse possession
by the public, as such, or of implied dedication of the Premises
or any portion thereof, but only to the extent and for so long as
such cessation of use is necessary to prevent such impairment of
title, creation of claim or implied dedication, as the case may
be.