
AGENCY LEASE AGREEMENT

Dated as of December 1, 2017

by and between

NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY

and

1635 LEX REALTY CORP.,

as to an undivided 57.512% interest as tenant-in-common,
and

385 BROADWAY REALTY CORP.,

as to an undivided 42.488% interest as tenant-in-common,
each a corporation organized and existing under
the laws of the State of New York, each having its
principal office at

C/O Reynoso, 7000 Boulevard East, Apt. #19D, Guttenberg, New Jersey 07093,
as Lessees

2017 A & J Supermarket Corp. Project

Affecting the Retail Unit generally known by the street address
2211-2217 Third Avenue, New York, New York 10035
Block 1785 and Lot 1202

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

Record and Return to:

Hawkins Delafield & Wood LLP
7 World Trade Center
250 Greenwich Street
New York, New York 10007
Attention: Arthur M. Cohen, Esq.

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AGENCY LEASE AGREEMENT

This **AGENCY LEASE AGREEMENT**, dated as of December 1, 2017 (this “Agreement”), by and between **NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York, having its principal office at 110 William Street, New York, New York 10038, party of the first part, and the Lessees, parties of the second part (capitalized terms used herein shall have the respective meanings assigned to such terms throughout this Agreement);

WITNESSETH:

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

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

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

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

WHEREAS, the Sublessee and the Project meet all requirements of the City’s Food Retail Expansion to Support Health Program (“FRESH”), and HAP Investments LLC, the owner of the Project Building, has subjected the Project Building to a condominium regime and thereby created a separate commercial condominium unit to comprise the Facility; and

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

pursuant to the Sub-Sublease Agreement, for further sublease to the Sublessee under the Commercial Lease; and

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

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

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

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

ARTICLE I

DEFINITIONS AND CONSTRUCTION

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

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

Additional Improvements shall mean any improvements constructed, erected, placed and/or installed on the Retail Unit, when such improvements are not part of the Project Work, including but not be limited to all replacements, improvements, additions, extensions and substitutions to the Existing Improvements and/or the Project Improvements.

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

Adjusted CRET shall have the meaning set forth in Section 5.1(a).

Adjusted ELT shall have the meaning set forth in Section 5.1(a).

Adjusted Initial CRET shall have the meaning set forth in Section 5.1(a).

Adjustment Date(s) shall have the meaning set forth in Section 5.1(a).

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

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

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

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

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

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

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

Approved Project Operations shall mean use of the Retail Unit by the Sublessee for its operations as a full service retail supermarket and FRESH Food Store in accordance with the FRESH Food Store Requirements.

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

Authorizing Resolution shall mean the resolution of the Agency adopted on September 19, 2017 providing for Financial Assistance and authorizing the Project Documents to which the Agency is a party.

Average Equivalent Full Time Employee Number shall have the meaning set forth in Section 5.1(a).

Base Amount shall have the meaning set forth in Section 5.1(e)(iii).

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

Benefits shall have the meaning set forth in Section 5.4(a).

Business Day shall mean any day that shall not be:

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

- (ii) a day on which banking institutions in the City are authorized by law or executive order to close; or
- (iii) a day on which the New York Stock Exchange is closed.

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

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

Cessation Date shall have the meaning set forth in Section 5.1(a).

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

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

City Tax Fiscal Year shall have the meaning set forth in Section 5.1(a).

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

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

Commencement Date shall mean December 28, 2017, on which date this Agreement was executed and delivered.

Commercial Lease shall mean the Amended and Restated Lease of Premises, dated as of December 28, 2017, between the Lessees and the Sublessee.

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

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

Completed Improvements Rentable Square Footage shall mean approximately 12,590 rentable square feet, the rentable square footage of the Improvements upon completion of the Project Work.

Completion Deadline shall mean December 31, 2020.

Condominium shall mean that certain Condominium with respect to the Project Building pursuant to the Condominium Act and the Condominium Documents.

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

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

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

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

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

Control or **Controls**, including the related terms “controlled by” and “under common control with”, shall mean the power to direct the management and policies of a Person (x) through the ownership, directly or indirectly, of not less than 50% of its voting securities, (y) through the right to designate or elect not less than a majority of the members of its board of directors or trustees or other Governing Body, or (z) by contract or otherwise.

CRET or **Current Real Estate Taxes** shall have the meaning set forth in Section 5.1(a).

DLP or **Differential Land Product** shall have the meaning set forth in Section 5.1(a).

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

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

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

(i) purchases of materials, goods, personal property and fixtures and supplies that will be incorporated into and made an integral component part of the Facility Realty;

(ii) purchases or leases of any item of materials, goods, machinery, equipment, furniture, furnishings, trade fixtures and other tangible personal property having a useful life of one year or more;

(iii) with respect to the eligible items identified in (ii) above, purchases of freight, installation, maintenance and repair services required in connection with the shipping, installation, use, maintenance or repair of such items; provided that maintenance shall mean the replacement of parts or the making of repairs;

(iv) purchases of materials, goods and supplies that are to be used and substantially consumed in the course of construction or renovation of the Facility Realty (but excluding fuel, materials or substances that are consumed in the course of operating

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

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

ELT or Equivalent Land Tax shall have the meaning set forth in Section 5.1(a).

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

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

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

Environmental Audit shall mean that certain Phase I Environmental Site Assessment Report dated June 13, 2017, prepared by the Environmental Auditor.

Environmental Auditor shall mean Middleton Environmental Inc.

Equivalent Full Time Employee(s) shall have the meaning set forth in Section 5.1(a).

Equivalent Full Time Employee Number shall have the meaning set forth in Section 5.1.

Estimated Project Cost shall mean \$10,814,113.

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

Exempt Mortgage shall have the meaning specified in Section 5.3(a).

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

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

Expiration Date shall mean June 30, 2043.

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

Facility Personalty shall mean those Eligible Items consisting of personal property, together with all repairs, replacements, improvements, substitutions and renewals

thereof or therefor, and all parts, additions and accessories incorporated therein or affixed thereto. Facility Personalty shall, in accordance with the provisions of Sections 3.6 and 6.4, include all property substituted for or replacing items of Facility Personalty and exclude all items of Facility Personalty so substituted for or replaced, and further exclude all items of Facility Personalty removed as provided in Section 3.6.

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

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

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

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

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

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

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

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

FRESH Food Store Requirements shall mean that the Facility complies with each of the following requirements, all of which, on March 31, 2010, were set forth in the Zoning Resolution of The City of New York, Section 63 01, such that:

- (a) at least 6,000 square feet of the portion of the Facility Realty used for retail operations are used for the sale of a general line of food and nonfood grocery products such as dairy, canned and frozen foods, fresh fruits and vegetables, fresh and prepared meats, fish and poultry, intended for home preparation, consumption and utilization; and

- (b) the retail space described in subdivision (a) preceding, in addition, satisfies the following requirements:
 - (i) at least 3,000 square feet or 50% of the Facility Realty, whichever is greater, are used for the sale of a general line of food products intended for home preparation, consumption and utilization; and
 - (ii) at least 2,000 square feet or 30% of the Facility Realty, whichever is greater, are used for the sale of perishable goods that included dairy, fresh produce, and frozen foods and that may include fresh meats, poultry and fish; and
 - (iii) at least 500 square feet of the Facility Realty are used for the sale of fresh produce.

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

Gap Mortgage shall have the meaning specified in Section 5.3(a).

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

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

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

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

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

Hazardous Materials shall include any petroleum, flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 5101, et seq.), the Resource Conservation

and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental law, ordinance, rule, or regulation.

Implementation Date(s) shall have the meaning set forth in Section 5.1(a).

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

Improvements shall mean the Existing Improvements, if any, and the Project Improvements and any Additional Improvements comprising the Retail Unit and related Common Elements.

Indemnification Commencement Date shall mean April 13, 2017, the date on which the Agency first adopted a resolution with respect to the Project.

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

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

Inducement Resolution shall mean the resolution of the Agency adopted on April 13, 2017 inducing the Project.

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

- (i) vehicles of any sort, including watercraft and rolling stock;
- (ii) personalty having a useful life of one year or less;
- (iii) any cost of utilities, cleaning services or supplies or other ordinary operating costs;
- (iv) fine art and other similar decorative items;
- (v) plants, whether potted or landscaped;
- (vi) ordinary office supplies such as pencils, paper clips and paper;
- (vii) any materials or substances that are consumed in the operation of machinery;
- (viii) equipment or parts containing materials or substances where such parts must be replaced whenever the substance is consumed; and
- (ix) maintenance of the type as shall constitute janitorial services.

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

Initial Annual Administrative Fee shall mean \$1,250.

Initial CRET shall have the meaning set forth in Section 5.1(a).

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

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

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

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

Land shall mean that certain lot, piece or parcel of land in the Borough of Manhattan, Block 1785 and Lot 1202, generally known by the street address 2211-2217 Third Avenue, New York, New York, all as more particularly described in Exhibit A - "Description of the Land and Retail Unit", together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto.

Land Square Footage shall mean approximately 17,661 square feet.

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

Lessees shall mean, collectively or individually, 1635 Lex Realty Corp., as to an undivided 57.512% interest as tenant-in-common and 385 Broadway Realty Corp., as to an undivided 42.488% interest as tenant-in-common, each a corporation organized and existing under the laws of the State of New York, and their respective successors and assigns; provided, however, that nothing contained in this definition shall be deemed to limit or modify the obligations of the Lessees under Section 8.9 or 8.20.

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

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

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

Loss Event shall have the meaning specified in Section 6.1.

Maximum Sales Tax Savings Amount shall mean the aggregate maximum dollar amount of Sales Tax Savings that the Lessees and all Agents acting on behalf of the Lessees are permitted to receive under this Agreement, which shall equal \$48,369.

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

Modified Exempt Mortgage shall have the meaning set forth in Section 5.3(a).

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

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

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

Mortgage Recording Taxes shall have the meaning specified in Section 5.3(a).

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

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

New Money shall have the meaning specified in Section 5.3(a).

Non-Exempt Principal shall have the meaning specified in Section 5.3(a).

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

NPV shall have the meaning specified in Section 5.3(a).

NPV-PILOMRT shall have the meaning specified in Section 5.3(a).

NYCDOF shall have the meaning set forth in Section 5.1(a).

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

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

OLP or **Original Land Product** shall have the meaning set forth in Section 5.1(a).

Operations Commencement Date shall have the meaning set forth in Section 5.4(a).

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

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

Original Equivalent Full Time Employee Number shall have the meaning set forth in Section 5.1.

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

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

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

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

Permitted Encumbrances shall mean:

(i) this Agreement, the Company Lease, the Sublease Agreement, the Sub-Sublease Agreement, the Commercial Lease, the Condominium Documents and any Mortgage;

(ii) liens for real estate taxes, assessments, levies and other governmental charges, the payment of which is not yet due and payable;

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

(iv) utility, access and other easements and rights of way, restrictions and exceptions that an Authorized Representative of the Lessees certify to the Agency will not materially interfere with or impair the Sublessee's use and enjoyment of the Facility as herein provided;

(v) such minor defects, irregularities, encumbrances, easements, rights of way and clouds on title as normally exist with respect to property similar in character to the Facility as do not, as set forth in a certificate of an Authorized Representative of the Lessees delivered to the Agency, either singly or in the aggregate, render title to the Facility unmarketable or materially impair the property affected thereby for the purpose for which it was leased by the Agency under the Company Lease or purport to impose liabilities or obligations on the Agency;

(vi) those exceptions to title to the Facility Realty enumerated in any title insurance policy insuring the lien of any Mortgage Loan on the Facility Realty, so long as such exceptions are reflected in the title report delivered to the Agency pursuant to Section 3.8;

(vii) liens arising by reason of good faith deposits with either or both of the Lessees in connection with the tenders, leases of real estate, bids or contracts (other than contracts for the payment of money), deposits by either or both of the Lessees to secure public or statutory obligations, or to secure, or in lieu of, surety, stay or appeal bonds, and deposits as security for the payment of taxes or assessments or other similar charges;

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

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

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

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

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

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

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

Person shall mean an individual or any Entity.

PILOMRT shall have the meaning specified in Section 5.3(a).

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

PILOT Bill shall have the meaning set forth in Section 5.1(a).

PILOT Commencement Date shall have the meaning set forth in Section 5.1.

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

PILOT Payment Default shall have the meaning set forth in Section 5.1(a).

PILOT Term shall have the meaning set forth in Section 5.1(a).

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

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

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

Project shall mean the acquisition, renovation, furnishing and equipping of an approximately 12,590 square foot commercial facility constituting the Retail Unit located within the Project Building, on an approximately 17,661 square foot parcel of land located at 2211-2217 Third Avenue, New York, New York, all for use by the Sublessee in its operations as a full service retail supermarket and as a FRESH Food Store meeting the FRESH Food Store Requirements.

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

Project Building shall mean that certain mixed use facility located at 2211-2217 Third Avenue, New York, New York, of which the Facility Realty shall constitute a part and which certain building is subjected to a condominium regime.

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

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

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

Project Documents shall mean the Company Lease, this Agreement, the Sublease Agreement, the Sub-Sublease Agreement, the Guaranty Agreement, the Condominium Documents, each Mortgage and each Mortgage Note.

Project Fee shall mean \$105,495, representing the \$110,495 Agency financing fee, less the application fee of \$5,000.

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

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

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

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

Real Estate Taxes shall have the meaning set forth in Section 5.1(a).

Recapture Event shall have the meaning set forth in Section 5.4(a).

Recapture Period shall have the meaning set forth in Section 5.4(a).

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

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

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

Retail Unit shall mean Unit RET1 located at 2211-2217 Third Avenue, New York, New York at Block 1785 and Lot 1202 under the Condominium Documents and any directly related Common Elements to the Retail Unit all as more particularly described in Exhibit A - “Description of the Land and Retail Unit”.

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

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

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

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

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

Sign shall have the meaning set forth in Section 8.5.

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

SLP or Subsequent Land Product shall have the meaning set forth in Section 5.1(a).

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

State shall mean the State of New York.

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

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

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

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

Sub-Sublease Agreement shall mean the Sub-Sublease Agreement, dated as of December 1, 2017, between the Sublessee and the Lessees.

Sublessee shall mean A & J Supermarket Corp., a corporation organized and existing under the laws of the State of New York, and its successors and assigns; provided, however, that nothing contained in this definition shall be deemed to limit or modify the obligations of the Sublessee under Section 8 of the Sublease Agreement.

Subsequent Equivalent Full Time Employee Number shall have the meaning set forth in Section 5.1(a).

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

Term shall have the meaning set forth in Section 4.2.

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

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

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

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

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

Zone shall have the meaning set forth in Section 5.1(a).

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

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

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

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

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

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

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

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

(h) Any definition of or reference to any agreement, instrument or other document herein shall be construed to refer to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth therein or herein).

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

ARTICLE II

REPRESENTATIONS AND WARRANTIES

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

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

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

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

Section 2.2. Representations and Warranties by each Lessee. Each of the Lessees makes the following representations and warranties:

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

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

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

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

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

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

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

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

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

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

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

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

(m) The Lessees and the Sublessee (i) are in compliance, and will continue to comply, with all applicable Legal Requirements relating to the Project, the Project Work and the operation of the Facility including those terms and conditions set forth in the Condominium Documents and (ii) certify, under penalty of perjury, that each is in substantial compliance with all local, state and federal tax, worker protection and environmental laws, rules and regulations.

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

(o) None of the Lessees have used Hazardous Materials on, from, or affecting the Facility in any manner that violates any applicable Legal Requirements (or any applicable requirements of the Condominium Documents) governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and except as set forth in the Environmental Audit, to the best of each Lessee's knowledge, no prior owner or occupant of the Facility has used Hazardous Materials on, from, or affecting the Facility in any manner that violates any applicable Legal Requirements.

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

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

(r) The Retail Unit comprises one (1) complete tax lot and no portion of any other tax lot.

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

(t) The Completed Improvements Rentable Square Footage and the Land Square Footage are true and correct.

(u) The Fiscal Year is true and correct.

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

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

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

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

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

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

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

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

(y) The Lessees intend to operate the Facility in accordance with the FRESH Food Store Requirements.

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

ARTICLE III

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

Section 3.1. The Company Lease.

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

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

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

Section 3.2. Appointment as Agent.

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

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

Section 3.3. Manner of Project Completion.

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

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

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

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

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

(f) Upon completion of the Project Work, the Lessees shall (x) deliver to the Agency the Final Project Cost Budget, which budget will include a comparison with the Project Cost Budget, and indicate the source of funds (i.e., borrowed funds, equity, etc.) for each cost item, (y) evidence the completion of the Project and the occurrence of the Project Completion Date by delivering to the Agency a certificate of an Authorized Representative of the Lessees in substantially the form set forth in Exhibit G – "Form of Project Completion Certificate", together

with all attachments required thereunder, and (z) deliver and surrender to the Agency all original Sales Tax Agent Authorization Letters issued by the Agency in connection with the Project.

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

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

Section 3.4. Maintenance.

(a) During the Term, the Lessees will:

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

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

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

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

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

Section 3.5. Alterations and Improvements.

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

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

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

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

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

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

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

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

Section 3.6. Removal of Property of the Facility.

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

(i) such Existing Facility Property is substituted or replaced by property (y) having equal or greater fair market value, operating efficiency and utility and

(z) free of all mortgages, liens, charges, encumbrances, claims and security interests other than Permitted Encumbrances, and

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

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

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

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

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

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

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

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

ARTICLE IV

LEASE OF FACILITY AND RENTAL PROVISIONS

Section 4.1. Lease of the Facility. The Agency hereby leases the Facility Personalty and subleases the Facility Realty to the Lessees, and the Lessees hereby lease the Facility Personalty and sublease the Facility Realty from the Agency, for and during the term herein and subject to the terms and conditions herein set forth. The Agency hereby delivers to the Lessees, and the Lessees hereby accept sole and exclusive possession of the Facility. Simultaneously with their execution and delivery of this Agreement, the Lessees will execute and deliver the Sublease Agreement with the Sublessee.

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

Section 4.3. Rental Provisions.

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

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

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

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

Section 4.5. Nature of Lessees’ Obligation Unconditional. The Lessees’ obligations under this Agreement to pay Rental Payments shall be absolute, unconditional and general obligations, irrespective of any defense or any rights of set-off, recoupment or counterclaim or deduction and without any rights of suspension, deferment, diminution or reduction it might otherwise have against the Agency or any other Person. Such obligations of the Lessees shall arise whether or not the Project has been completed as provided in this

Agreement and whether or not any Mortgagee shall be honoring its obligations under the related financing documents. The Lessees will not suspend or discontinue payment of any Rental Payment due and payable hereunder or terminate this Agreement (other than such termination as is provided for hereunder) or suspend the performance or observance of any covenant or agreement required on the part of either or both Lessees hereunder for any cause whatsoever, and the Lessees waive all rights now or hereafter conferred by statute or otherwise to quit, terminate, cancel or surrender this Agreement or any obligation of either or both of Lessees under this Agreement except as provided in this Agreement or to any abatement, suspension, deferment, diminution or reduction in the Rental Payments hereunder.

Section 4.6. Assignment of Sublease Agreement.

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

(b) The Lessees agree not to terminate, modify or amend the Sublease Agreement or any of the terms thereof, or grant any concessions in connection therewith, either orally or in writing, or to accept a surrender thereof, without the prior written consent of the Agency and any attempted termination, modification or amendment of the Sublease Agreement without such written consent shall be null and void.

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

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

Section 4.8. No Warranty of Condition or Suitability. THE AGENCY HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER

EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE FACILITY, OR THE SUITABILITY OF THE FACILITY FOR THE PURPOSES OR NEEDS OF THE LESSEES OR THE SUBLESSEE OR THE EXTENT TO WHICH FUNDS AVAILABLE TO THE LESSEES WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE PROJECT. THE LESSEES ACKNOWLEDGE THAT THE AGENCY IS NOT THE MANUFACTURER OF THE FACILITY PERSONALTY NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN THE LESSEES, ON BEHALF OF THEMSELVES AND THE SUBLESSEE, IS SATISFIED THAT THE FACILITY IS SUITABLE AND FIT FOR PURPOSES OF THE LESSEES AND THE SUBLESSEE. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE LESSEES OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF THE FACILITY OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

ARTICLE V

AGENCY FINANCIAL ASSISTANCE (PAYMENTS IN LIEU OF TAXES, SALES TAX EXEMPTION AND MORTGAGE RECORDING TAX DEFERRAL); RECAPTURE OF PUBLIC BENEFITS

Section 5.1. Payments in Lieu of Real Estate Taxes.

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

Additional Improvements shall have the meaning provided in Article I.

Adjusted CRET shall mean, with respect to any semi-annual period, CRET for such semi-annual period as reduced by any applicable as-of-right benefit for such semi-annual period (if permitted by law and as such benefit may decrease over its prescribed term), other than any as-of-right benefit whose application arises from the eligibility and acceptance of the Project Improvements under the as-of-right program in question.

Adjusted ELT shall mean, with respect to any semi-annual period, ELT for such semi-annual period as reduced by any applicable as-of-right benefit for such semi-annual period (if permitted by law and as such benefit may decrease over its prescribed term), other than any as-of-right benefit whose application arises from the eligibility and acceptance of the Project Improvements under the as-of-right program in question.

Adjusted Initial CRET shall mean Initial CRET as reduced by any applicable as-of-right benefit (if permitted by law and as such benefit may decrease over its prescribed term), other than an as-of-right benefit whose application arises from the eligibility and acceptance of the Project Improvements under the as-of-right program in question.

Adjustment Date(s) shall mean the July 1 occurring on the fifth-year anniversary of the PILOT Commencement Date, and thereafter, every fifth-year anniversary of such July 1 that occurs within the PILOT Term. For the avoidance of doubt, there are four Adjustment Dates that occur within the PILOT Term.

Average Equivalent Full Time Employee Number shall mean the average of the five Equivalent Full Time Employee Numbers corresponding respectively to the five years of any five-year period ending on the June 30 prior to an Adjustment Date, except for purposes of the period ending on the first Adjustment Date, because the Project is for a start-up operation, Average Equivalent Full Time Employee Number shall instead mean the average of the Equivalent Full Time Employee Numbers corresponding respectively to each annual period commencing after the Operations Commencement Date and ending on or before such first Adjustment Date.

Base Amount shall have the meaning specified in Section 5.1(e)(iii).

Cessation Date shall mean the date on which the Facility Realty is no longer exempt from Real Estate Taxes by operation of law, including, but not limited to, by means of

the expiration (on the Expiration Date) or sooner termination of the Company Lease and the demise conveyed thereunder; and/or the expiration (on the Expiration Date) or sooner termination of this Agreement and the demise conveyed hereunder.

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

CRET or Current Real Estate Taxes shall mean, with respect to any semi-annual period, an amount equal to Real Estate Taxes for such semi-annual period applicable to Existing Improvements, Project Improvements and/or Additional Improvements, as applicable, without reduction for any applicable as-of-right or discretionary benefit.

DLP or Differential Land Product shall mean, when the OLP is greater than the SLP, the amount of such difference.

ELT or Equivalent Land Tax shall mean, with respect to any semi-annual period, an amount equal to Real Estate Taxes for such semi-annual period applicable to the Land without reduction for any applicable as-of-right or discretionary benefit.

Equivalent Full Time Employee(s) shall mean one full-time employee working a minimum of thirty-five (35) hours per week, or two part-time employees, each working a minimum of twenty hours per week, and employed by either the Lessees or the Sublessee at the Facility Realty.

Equivalent Full Time Employee Number shall mean the number of Equivalent Full Time Employees working at the Facility Realty as such number is included in any annual report required pursuant to law.

Implementation Date(s) shall mean the January 1 following each Adjustment Date. For the avoidance of doubt, there are four Implementation Dates that occur within the PILOT Term.

Initial CRET shall mean CRET applicable to the Existing Improvements for the semi-annual period that includes the Commencement Date.

NYCDOF shall mean the New York City Department of Finance.

OLP or Original Land Product shall equal, with respect to any semi-annual period, \$ 9,375 (i.e., the product of \$500 times one-half (i.e., ½) times the Original Equivalent Full Time Employee Number).

Original Equivalent Full Time Employee Number shall equal 37.5 Equivalent Full Time Employees – i.e., the number of Equivalent Full Time Employees that Lessee and/or Sublessee intends to employ at the Facility Realty at the Operations Commencement Date.

PILOT Bill shall mean the semi-annual statement of account sent by NYCDOF for the payment of PILOT for the immediately succeeding semi-annual period in respect of the

Facility Realty. For purposes of clarification, PILOT is due seven (7) Business Days prior to the commencement of the semi-annual period to which a PILOT Bill relates. NYCDOF will send PILOT Bills to the Lessees prior to the due dates therefor, but failure to receive a PILOT Bill shall not relieve, or otherwise affect, the Lessees of their obligation to pay the amount of PILOT required under this Agreement.

PILOT Commencement Date shall mean July 1, 2018.

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

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

Project Improvements shall have the meaning provided in Article I.

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

SLP or Subsequent Land Product shall mean, with respect to any semi-annual period, the product of (a) \$500 times (b) one-half (i.e., ½) times (c) the Subsequent Equivalent Full Time Employee Number in effect for such semi-annual period (it being understood that a Subsequent Equivalent Full Time Employee Number reported on an Adjustment Date shall not be “in effect” until the Implementation Date immediately following such Adjustment Date).

Subsequent Equivalent Full Time Employee Number shall mean, with respect to any Adjustment Date, the Average Equivalent Full Time Employee Number determined as of such Adjustment Date.

Zone shall mean any area within the City which has been defined by statute, or created pursuant to statute, for economic development purposes or for community renewal and improvement or for neighborhood and landmark preservation.

(b) Description and Address of Project; Representation

The Project consists of the acquisition, renovation, furnishing and equipping of an approximately 12,590 square foot commercial facility. The Facility Realty is the condominium unit constituting the “Retail Unit” located in the Borough of Manhattan, Block 1785 and Lot 1202, generally known by the street address 2211-2217 Third Avenue, New York, New York. **The Lessees represent that the Facility Realty is located in a Zone.**

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

(d) PILOT Generally.

(i) It is recognized that under the provisions of the Act the Agency is required to pay no Real Estate Taxes upon any of the property acquired by it or under its jurisdiction or control or supervision or upon its activities. The Agency and the Lessees agree, however, that the Lessees shall be required to pay PILOT with respect to the Facility Realty in accordance with the provisions of this Section 5.1, as follows: (i) with respect to the Land, PILOT shall be payable in the amounts determined pursuant to Sections 5.1(e), (g), (h) and (i); and (ii) with respect to the Improvements, PILOT shall be payable in the amounts determined pursuant to Sections 5.1(f), (g), (h) and (i).

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

(iii) The Lessees acknowledge that the PILOT Commencement Date will not be deferred notwithstanding any loss of Financial Assistance contemplated hereunder in the event that the City does not recognize the Agency's exemption from Real Estate Taxes on the PILOT Commencement Date.

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

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

(e) PILOT with Respect to the Land.

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

(i) For each semi-annual period occurring within the period commencing on the PILOT Commencement Date and ending on the day immediately preceding the first Implementation Date, PILOT payable with respect to the Land for such semi-annual period shall be determined and payable as follows:

(1) If the Facility Realty is located in a Zone, then PILOT payable with respect to the Land shall equal zero.

(2) If the Facility Realty is not located in a Zone, then PILOT payable with respect to the Land shall equal (A) Adjusted ELT for such semi-annual period less (B) OLP; provided, however, that such PILOT payable with respect to the Land shall never be less than zero.

(ii) For each semi-annual period occurring within each of the five-year periods commencing on the first Implementation Date, the second Implementation Date

and the third Implementation Date, PILOT payable with respect to the Land for such semi-annual period shall be determined and payable as follows:

(1) If the Facility Realty is located in a Zone:

(A) If SLP for such semi-annual period is greater than or equal to the OLP, then PILOT payable with respect to the Land shall equal zero.

(B) If the SLP for such semi-annual period is less than the OLP, then PILOT payable with respect to the Land shall equal the DLP.

(2) If the Facility Realty is not located in a Zone:

(A) If SLP for such semi-annual period is greater than or equal to Adjusted ELT for such semi-annual period, and

(I) If SLP for such semi-annual period is greater than or equal to the OLP, then PILOT payable with respect to the Land shall equal zero; or

(II) If SLP for such semi-annual period is less than the OLP, then PILOT payable with respect to the Land shall equal DLP.

(B) If SLP for such semi-annual period is less than Adjusted ELT for such semi-annual period, then PILOT payable with respect to the Land shall equal (A) Adjusted ELT for such semi-annual period less (B) SLP for such semi-annual period; provided, however, that such PILOT payable with respect to the Land shall never be less than zero.

(iii) For each semi-annual period occurring within the last four and one-half years of the PILOT Term, PILOT payable with respect to the Land for such semi-annual period shall equal the amounts provided in the table below. For purposes of the following, the “**Base Amount**” shall mean the PILOT payable with respect to the Land for the semi-annual period commencing on the fourth Implementation Date and ending on the June 30 immediately following such fourth Implementation Date, as calculated in accordance with Section 5.1(e)(ii) above (taking into account the updated SLP as of the fourth Implementation Date).

For each semi-annual period occurring within:	PILOT payable with respect to the Land for such semi-annual period:
01/01/2039 -	[Base Amount]

06/30/2039	
07/01/2039 - 06/30/2040	[Base Amount] + [(Adjusted ELT for such semi-annual period – Base Amount) x (0.2)]
07/01/2040 - 06/30/2041	[Base Amount] + [(Adjusted ELT for such semi-annual period – Base Amount) x (0.4)]
07/01/2041 - 06/30/2042	[Base Amount] + [(Adjusted ELT for such semi-annual period – Base Amount) x (0.6)]
07/01/2042 - 06/30/2043	[Base Amount] + [(Adjusted ELT for such semi-annual period – Base Amount) x (0.8)]

(iv) The attached grid provides numerical examples to illustrate the calculation and adjustment of PILOT payable in respect of the Land: (see next page)

Assumptions for purposes of illustration:

PILOT Commencement Date is 07/01/12

Expiration Date is 06/30/37

Original Equivalent Full Time Employee Number equals 10

All SLP amounts are less than the respective Adjusted ELT amounts

DATES		AVERAGE EQUIVALENT FULL TIME EMPLOYEE NUMBER	LAND PILOT for Project NOT in a Zone (for each semi-annual period)	LAND PILOT for Project IN a Zone (for each semi-annual period)
07/01/12	PILOT Commencement Date	Applicable: 10	7/01/12 through 12/31/17: Land PILOT = Adjusted ELT – OLP OLP = 10 x \$500 x ½ = \$2,500	7/01/12 through 12/31/17: Land PILOT = \$0
07/01/17	1 st Adjustment Date	Reported: 12		
01/01/18	1 st Implementation Date	Implemented: 12	1/01/18 through 12/31/22: Land PILOT = Adjusted ELT – SLP SLP = 12 x \$500 x ½ = \$3,000 ¹	1/01/18 through 12/31/22: SLP (\$3,000) > OLP (\$2,500), therefore Land PILOT = \$0 ⁵
07/01/22	2nd Adjustment Date	Reported: 8		
01/01/23	2 nd Implementation Date	Implemented: 8	1/01/2023 through 12/31/27: Land PILOT = Adjusted ELT – SLP SLP = 8 x \$500 x ½ = \$2,000 ²	1/01/2023 through 12/31/27: SLP (\$2,000) < OLP (\$2,500), therefore DLP = \$500, therefore Land PILOT = \$500 ⁶
07/01/27	3 rd Adjustment Date	Reported: 6		
01/01/28	3 rd Implementation Date	Implemented: 6	1/01/28 through 12/31/32: Land PILOT = Adjusted ELT – SLP SLP = 6 x \$500 x ½ = \$1,500 ³	1/01/28 through 12/31/32: SLP (\$1,500) < OLP (\$2,500), therefore DLP = \$1,000, therefore Land PILOT = \$1,000
07/01/32	4 th Adjustment Date	Reported: 9		
01/01/33	4 th Implementation Date	Implemented: 9	1/01/33 through 06/30/33: Land PILOT = Adjusted ELT – SLP = Base Amount SLP = 9 x \$500 x ½ = \$2,250 ⁴	1/01/33 through 06/30/33: SLP (\$2,250) < OLP (\$2,500), therefore DLP = \$250, therefore Land PILOT = \$250, therefore Base Amount = \$250
For each semi-annual period occurring within 07/01/33 through 06/30/34: Land PILOT = Base Amount + [(Adjusted ELT – Base Amount) x (0.2)]				
For each semi-annual period occurring within 07/01/34 through 06/30/35: Land PILOT = Base Amount + [(Adjusted ELT – Base Amount) x (0.4)]				
For each semi-annual period occurring within 07/01/35 through 06/30/36: Land PILOT = Base Amount + [(Adjusted ELT – Base Amount) x (0.6)]				
For each semi-annual period occurring within 07/01/36 through 06/30/37: Land PILOT = Base Amount + [(Adjusted ELT – Base Amount) x (0.8)]				

Footnotes in respect of the foregoing example (Project NOT in a Zone):

¹ On the first Adjustment Date of 7/01/17, the Average Equivalent Full Time Employee Number increased to 12 from the original number of 10. This increased employment figure is “implemented” on the corresponding first Implementation Date of 1/01/18. Since employment has increased (as compared to the original employment figures), the Land tax abatement amount (i.e., the “SLP”) has increased to \$3,000 for each semi-annual period occurring between the first Implementation Date and the second Implementation Date, and the corresponding PILOT payable with respect to the Land has decreased.

² On the second Adjustment Date of 7/01/22, the Average Equivalent Full Time Employee Number decreased to 8. This decreased employment figure is “implemented” on the corresponding second Implementation Date of 1/01/23. Since employment has decreased (as compared to the original employment figures), the Land tax abatement amount (i.e., the “SLP”) has decreased to \$2,000 for each semi-annual period occurring between the second Implementation Date and the third Implementation Date, and the corresponding PILOT payable with respect to the Land has increased.

³ On the third Adjustment Date of 7/01/27, the Average Equivalent Full Time Employee Number decreased further to 6. This decreased employment figure is “implemented” on the corresponding third Implementation Date of 1/01/28. Since employment has decreased (as compared to the original employment figures), the Land tax abatement amount (i.e., the “SLP”) has decreased to \$1,500 for each semi-annual period occurring between the third Implementation Date and the fourth Implementation Date, and the corresponding PILOT payable with respect to the Land has increased.

⁴ On the fourth Adjustment Date of 7/01/32, the Average Equivalent Full Time Employee Number increased to 9, but is still less than the original number of 10. This new number of 9 is “implemented” on the corresponding fourth Implementation Date of 1/01/33. Since employment has decreased (as compared to the original employment figures), the Land tax abatement amount (i.e., the “SLP”) has decreased to \$2,250. For the semi-annual period commencing on 1/1/33 and ending on 6/30/33, the PILOT payable with respect to the Land is equal to Adjusted ELT for such semi-annual period minus the SLP of \$2,250. This also serves as the “Base Amount” for purposes of calculating the PILOT payable with respect to the Land for the semi-annual periods occurring during years 22 through 25 (i.e., the “burn-off” periods).

Footnotes in respect of the foregoing example (Project IN a Zone):

⁵ On the first Adjustment Date of 7/01/17, the Average Equivalent Full Time Employee Number increased to 12 from the original number of 10. This increased employment figure is “implemented” on the corresponding first Implementation Date of 1/01/18. Since employment has increased or has stayed the same (as compared to the original employment figures), the PILOT payable with respect to the Land remains at zero.

⁶ On the second Adjustment Date of 7/01/22, the Average Equivalent Full Time Employee Number decreased to 8. This decreased employment figure is “implemented” on the corresponding second Implementation Date of 1/01/23. Since employment has decreased (as compared to the original employment figures), PILOT in respect of the Land is payable in the amount of the “DLP” for each semi-annual period occurring between the second Implementation Date and the third Implementation Date (this is so even if SLP is greater than Adjusted ELT).

(f) PILOT with Respect to the Improvements.

(i) During the PILOT Term, but subject to Sections 5.1(d) and (i), PILOT with respect to the Improvements shall be payable in accordance with Section 5.1(g) in the amounts described below.

(1) Existing Improvements.

(A) For each semi-annual period occurring within the period commencing on the PILOT Commencement Date and ending on June 30, 2039, PILOT payable with respect to the Existing Improvements for such semi-annual period shall equal Adjusted Initial CRET.

(B) For each semi-annual period occurring within the period commencing on July 1, 2039 and ending on June 30, 2043, PILOT payable with respect to the Existing Improvements for such semi-annual period shall equal the amounts respectively indicated for the periods set forth below.

For each semi-annual period occurring within:	PILOT payable with respect to the Existing Improvements for such semi-annual period:
07/01/2039 - 06/30/2040	Adjusted Initial CRET plus the product of (x) Adjusted CRET of the Existing Improvements <u>minus</u> Adjusted Initial CRET and (y) 0.2
07/01/2040 - 06/30/2041	Adjusted Initial CRET plus the product of (x) Adjusted CRET of the Existing Improvements <u>minus</u> Adjusted Initial CRET and (y) 0.4
07/01/2041 - 06/30/2042	Adjusted Initial CRET plus the product of (x) Adjusted CRET of the Existing Improvements <u>minus</u> Adjusted Initial CRET and (y) 0.6
07/01/2042 - 06/30/2043	Adjusted Initial CRET plus the product of (x) Adjusted CRET of the Existing Improvements <u>minus</u> Adjusted Initial CRET and (y) 0.8

(2) Project Improvements.

(A) For each semi-annual period occurring within the period commencing on the PILOT Commencement Date and ending on June 30, 2039, PILOT payable with respect to the Project Improvements shall equal zero. Upon completion of the Project Improvements (and notwithstanding the foregoing sentence), the Lessees shall promptly request the appropriate officer of the City to reassess the Improvements.

(B) For each semi-annual period occurring within the period commencing on July 1, 2039 and ending on June 30, 2043, PILOT payable with respect to the Project Improvements for such semi-annual period shall equal the amounts respectively indicated for the periods set forth below.

For each semi-annual period occurring within:	PILOT payable with respect to the Project Improvements for such semi-annual period:
07/01/2039-06/30/2040	The product of (x) Adjusted CRET of the Project Improvements and (y) 0.2
07/01/2040 - 06/30/2041	The product of (x) Adjusted CRET of the Project Improvements and (y) 0.4
07/01/2041 - 06/30/2042	The product of (x) Adjusted CRET of the Project Improvements and (y) 0.6
07/01/2042 - 06/30/2043	The product of (x) Adjusted CRET of the Project Improvements and (y) 0.8

(3) Additional Improvements. For each semi-annual period occurring within the period commencing on the PILOT Commencement Date and ending on the Expiration Date, PILOT payable with respect to the Additional Improvements for such semi-annual period, if any, shall equal the Adjusted CRET applicable to such Additional Improvements for such semi-annual period. Upon completion of Additional Improvements, if any, the Lessees shall promptly comply with the requirements of Section 3.5 and request the appropriate officers of the City to reassess the Improvements.

(ii) Notwithstanding anything that may be to the contrary in this Section 5.1, PILOT with respect to the Improvements for a given semi-annual period shall never exceed Adjusted CRET for the Improvements for such semi-annual period.

(g) Payment Provisions.

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

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

over thirty (30) days past due must be made by either wire transfer or electronic funds transfer.

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

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

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

or

(2) to apply for as-of-right benefits that would reduce Real Estate Taxes with respect to the Facility Realty (as if the Facility Realty were not exempt from Real Estate Taxes); *provided, however*, that the foregoing shall not be construed to reduce PILOT payable under this Section 5.1 when the reduction arises from the eligibility and acceptance of the Project Improvements under the as-of-right program in question.

(h) Apportionment of Payments after Transfer.

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

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

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

(i) *Sublettings.* If any portion of the Facility Realty is occupied by any Person other than the Lessees or the Sublessee (even if such Person is approved by the Agency pursuant to Section 8.9(a) hereof), for so long as such use and/or occupancy

continues, the Lessees shall pay or cause to be paid additional PILOT in an amount which, as prorated to such used and/or occupied space, shall equal Adjusted CRET.

(ii) *Events of Default.* Upon the occurrence of an Event of Default, including but not limited to a PILOT Payment Default, the Agency may increase PILOT (without notice other than the prior notice required for certain Events of Default) to an amount equal to Adjusted ELT as to the Land and Adjusted CRET as to the Improvements.

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

Section 5.2. Sales Tax Exemption.

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

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

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

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

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

(iv) The Sales Tax Exemption shall only be utilized for Eligible Items which shall be purchased, incorporated, completed or installed for use only by the Lessees and the Sublessee at the Facility Realty (and not with any intention to sell,

transfer or otherwise dispose of any such Eligible Item to a Person as shall not constitute the Lessees or the Sublessee), it being the intention of the Agency and the Lessees that the sales and use tax exemption shall not be made available with respect to any Eligible Item unless such item is used solely by the Lessees and the Sublessee at the Facility Realty.

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

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

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

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

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

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

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

(ii) The appointment of each such Agent as an agent for the Agency shall be effective only upon execution by the Agency and the Agent of a Sales Tax Agent

Authorization Letter in the form attached hereto as Exhibit H, following receipt of the completed Form ST-60 by the Agency. The determination whether or not to approve the appointment of an Agent shall be made by the Agency, in its sole discretion. If executed, a completed copy of the Sales Tax Agent Authorization Letter shall be sent to the Lessees within five (5) Business Days following such execution. The Lessees shall provide a copy of such executed Sales Tax Agent Authorization Letter together with a copy of this Agreement to the Agent within five (5) Business Days after receipt thereof by the Lessees.

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

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

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

(f) Form ST-340 Filing Requirement. The Lessees shall annually (currently, by each February 28th with respect to the prior calendar year) file a Form ST-340 with NYSDTF,

in a manner and consistent with such regulations as is or may be prescribed by the Commissioner of NYSDTF, of the value of all Sales Tax Savings claimed by the Lessees and each Agent in connection with the Project. Should the Lessees fail to comply with the foregoing requirement, the Lessee and each Agent shall immediately cease to be agents of the Agency in connection with the Project without any further action of the Agency and the Lessees shall immediately and without demand notify each Agent appointed by the Agency in connection with the Project of such termination.

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

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

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

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

(iii) The Lessees are hereby notified (provided that such notification is not a covenant or obligation and does not create a duty on the part of the Agency to the

Lessees or any other party) that the Agency is subject to certain requirements under the General Municipal Law, including the following:

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

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

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

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

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

Section 5.3. Mortgage Recording Tax Deferral.

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

Exempt Mortgage shall mean a Mortgage the recording of which is exempt in whole or part from Mortgage Recording Taxes by reason of the Agency being a mortgagor thereunder.

Gap Mortgage shall mean, upon any refinancing of the outstanding principal balance of the indebtedness secured by an existing Exempt Mortgage, the separate mortgage that will initially secure the New Money.

Modified Exempt Mortgage shall mean an Exempt Mortgage as assigned, modified, extended, consolidated and/or otherwise amended.

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

New Money shall mean, upon any refinancing of the outstanding principal balance of the indebtedness secured by an existing Exempt Mortgage, any additional loan proceeds that may be advanced as part of such mortgage refinancing.

Non-Exempt Principal shall mean that portion of the indebtedness secured by an existing Exempt Mortgage that may be outstanding on the Expiration Date (as may be reasonably calculated by the Agency at a given point in time) or on any earlier termination of this Agreement, as the context requires.

NPV shall mean a net-present-value calculation of an amount due at a future date using such discount rate as may be required by the Agency from time to time.

NPV-PILOMRT shall mean the net-present-value calculation of a PILOMRT due at the Expiration Date using such discount rate as may be required by the Agency from time to time.

PILOMRT shall mean payment(s) in lieu of mortgage recording taxes as such payments are calculated using the mortgage recording tax rate in effect at time of payment.

(b) The Lessees acknowledge that the Agency has deferred the payment of Mortgage Recording Taxes on each Exempt Mortgage for a term, such term to commence on the date of recording of such Exempt Mortgage and to end on the earliest to occur of (i) the Expiration Date, (ii) the Termination Date, (iii) the maturity or sooner termination of such Exempt Mortgage, or (iv) an Event of Default.

(c) The Lessees acknowledge and agree that the Agency is not obligated to defer the payment of Mortgage Recording Taxes for the recording of any mortgage other than an Exempt Mortgage; nor is the Agency obligated to defer the payment of Mortgage Recording Taxes on any extension, modification or other amendment to, or any assignment, consolidation or restatement of, an Exempt Mortgage.

(d) The Agency agrees that if, in connection with the refinancing of an Exempt Mortgage, the Lessees (i) cause the mortgagee of the Exempt Mortgage to assign the Exempt Mortgage to a new mortgagee, and/or (ii) cause the Exempt Mortgage to be modified, extended, consolidated or otherwise amended, the Agency will not object to any resulting continuation of the deferral of the Mortgage Recording Taxes originally applicable to the Exempt Mortgage; *provided, however*, that the following conditions are satisfied: (aa) the Agency is made a party to the Modified Exempt Mortgage; and (bb) the Modified Exempt Mortgage has provisions reasonably acceptable to the Agency; and (cc) a Gap Mortgage is concurrently delivered to secure New Money, if any; and (dd) if applicable, at the time the refinancing is closed and the Modified Exempt Mortgage is executed and delivered, the Lessees shall make the following payments to NYCDOF:

(x) Mortgage Recording Taxes with respect to any Gap Mortgage; and

(y) NPV-PILOMRT with respect to any Non-Exempt Principal less the amount of any principal for which Mortgage Recording Taxes and/or PILOMRT and/or NPV-PILOMRT have already been paid or are being concurrently paid.

(e) If this Agreement terminates prior to the Expiration Date and, as a result there is Non-Exempt Principal for which Mortgage Recording Taxes, PILOMRT, NPV-PILOMRT and/or a payment under Section 5.4 has not been paid, the Lessees shall either pay PILOMRT with respect to such Non-Exempt Principal or deliver in lieu thereof a satisfaction of the Exempt Mortgage to the Agency.

(f) The Lessees agree that, notwithstanding delivery by the Lessees of a satisfaction of an Exempt Mortgage on the Expiration Date or on any earlier date when this

Agreement may be terminated, or evidence of any reduction in the anticipated amount of Non-Exempt Principal outstanding as of the Expiration Date, the Agency shall not be obligated to refund to the Lessees any amounts of PILOMRT or NPV-PILOMRT previously paid.

Section 5.4. Recapture of Public Benefits. It is understood and agreed by the parties to this Agreement that the Agency is entering into this Agreement in order to provide financial assistance to the Lessees for the Project and to accomplish the public purposes of the Act. In consideration therefor, the Lessees hereby agree as follows:

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

Benefits shall mean, collectively:

(i) all real estate tax benefits that have accrued to the benefit of the Lessees during such time as the Agency had a leasehold or controlling interest in the Facility Realty, such tax benefits to be computed by subtracting PILOT paid from those payments that the Lessees would have paid during the Term (i.e., Adjusted ELT and, as to the Improvements, Adjusted CRET) had the Agency not had a leasehold or controlling interest in the Facility Realty during such term; and

(ii) all miscellaneous benefits derived from the Agency's participation in the Straight-Lease Transaction contemplated by this Agreement, including any deferral from any applicable mortgage recording taxes, Sales and Use Taxes, and filing and recording fees.

Operations Commencement Date shall mean the date by which the Agency shall have received a signed certificate of an Authorized Representative of the Lessees certifying that the Project Completion Date has occurred and that the Facility is in fact being occupied, used and operated for the Approved Project Operations.

Recapture Event shall mean any one of the following events:

(i) The Lessees shall have failed to cause the Project Completion Date to occur by the Completion Deadline.

(ii) Except as permitted by written consent of the Agency pursuant to and in accordance with Section 8.20, either or both Lessees or the Sublessee shall have liquidated all or substantially all of its operating assets or shall have ceased all or substantially all of its operations.

(iii) Either or both Lessees or the Sublessee shall have transferred all or substantially all of their respective employees to a location outside of the City.

(iv) The Facility has ceased to be the Approved Facility and/or the Lessees or the Sublessee shall have substantially changed the scope and nature of their operations at the Facility Realty.

(v) Except as permitted by written consent of the Agency pursuant to and in accordance with Section 8.20, either or both Lessees and/or the Sublessee shall have sold, leased or otherwise disposed of all or substantially all of the Facility Realty.

(vi) Either or both Lessees or the Sublessee shall have subleased all or part of the Facility Realty in violation of Section 8.9.

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

Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event:

(A) shall have arisen as a direct, immediate result of (x) force majeure as defined in Section 11.1, (y) a taking or condemnation by governmental authority of all or substantially all of the Facility Realty, or (z) the inability at law of the Lessees to rebuild, repair, restore or replace the Facility Realty after the occurrence of a Loss Event to substantially its condition prior to such Loss Event, which inability shall have arisen in good faith through no fault on the part of the Lessees, the Sublessee, or any Affiliate, or

(B) is deemed, in the sole discretion of the Agency, to be (y) minor in nature, or (z) a cause of undue hardship to the Lessees and/or the Sublessee were the Agency to recapture any Benefits.

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

(b) If there shall occur a Recapture Event during the Recapture Period, but such Recapture Event is prior to the Operations Commencement Date, the Lessees shall pay to the Agency as a return of Financial Assistance conferred by the Agency, the following amounts upon demand by the Agency: (i) all Benefits; and (ii) interest described in Section 5.4(c)(iii).

(c) If there shall occur a Recapture Event during the Recapture Period, but such Recapture Event occurs on or after the Operations Commencement Date, the Lessees shall pay to the Agency as a return of Financial Assistance conferred by the Agency, the following amounts (as applicable) upon demand by the Agency:

(i) If the Recapture Event occurs within the first six (6) years after the Operations Commencement Date, one hundred percent (100%) of the Benefits.

(ii) If the Recapture Event occurs within any month during any one of the seventh, eighth, ninth or tenth years after the Operations Commencement Date, X percent of the Benefits (where "X" is a percent equal to 100% less Y, and where "Y" equals the product of 1.666% and the number of months elapsed commencing with the first month of the seventh year through and including the month in which the Recapture Event occurs).

(iii) The principal of the Benefits to be recaptured, whether pursuant to clause (i) or (ii) above, shall bear interest at a rate equal to the lesser of (x) the maximum amount of interest permitted by law, and (y) the statutory judgment rate, compounded daily, commencing from the date that any amount of Benefit principal has accrued to the Lessees, through and including the date such principal is repaid in full; such that (x) Benefit principal comprising mortgage recording taxes, or filing and recording fees, shall be deemed to have accrued to the Lessees on the Commencement Date, and (y) Benefit principal comprising real estate tax benefits shall be deemed to have accrued to the Lessees on each date upon which the Lessees shall make a payment of PILOT, and (z) Benefit principal comprising Sales Tax Savings shall be deemed to have accrued to the Lessees on each date upon which such Sales Tax Saving shall have been received by reason of the use by the Lessees of the Sales Tax Exemption, provided, however, that if the Lessees cannot establish to the Agency's satisfaction the applicable date of receipt, the Agency shall deem the date of receipt (and therefore the date on which the Benefit principal accrued) to be the later of (1) the first day of the calendar year for which exemption was reported by the Lessees to the State Department of Taxation and Finance on Form ST-340 or (2) the Commencement Date, or, if the Lessees shall have failed to file Form ST-340, the Commencement Date. The "statutory judgment rate" shall be the statutory judgment rate in effect on the date of the Agency's demand.

(iv) Notwithstanding the foregoing, with respect to State Sales Tax Savings, the computation of the amount of State Sales Tax Savings to be recaptured shall equal the

greater of the amount determined pursuant to this Section 5.4 and the amount due to the State pursuant to the Special Provisions.

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

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

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

ARTICLE VI

DAMAGE, DESTRUCTION AND CONDEMNATION

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

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

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

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

Section 6.2. Loss Proceeds.

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

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

Section 6.3. Election to Rebuild or Terminate.

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

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

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

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

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

Section 6.4. Effect of Election to Build.

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

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

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

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

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

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

(b) The date of completion of the rebuilding, replacement, repair or restoration of the Facility shall be evidenced to the Agency by a certificate of an Authorized Representative of the Lessees stating (i) the date of such completion, (ii) that all labor, services, machinery, equipment, materials and supplies used therefor and all costs and expenses in connection therewith have been paid for or arrangement for payment, reasonably satisfactory to the Agency, has been made (iii) that the Facility has been rebuilt, replaced, repaired or restored to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, (iv) that the Agency has good and merchantable title to all Facility Personalty and a good and a valid leasehold interest in all

property constituting part of the Facility Realty, and all property of the Facility is subject to the Company Lease (except in the case of the Facility Personalty), this Agreement and the Sublease Agreement, subject to Permitted Encumbrances, and (v) that the restored Facility is ready for occupancy, use and operation for the Approved Project Operations. Notwithstanding the foregoing, such certificate may state (x) that it is given without prejudice to any rights against third parties by the Lessees or the Sublessee that exist at the date of such certificate or that may subsequently come into being, (y) that it is given only for the purposes of this Section and (z) that no Person other than the Agency may benefit therefrom.

(c) The certificate delivered pursuant to Section 6.4(b) shall be accompanied by (i) a certificate of occupancy (either temporary or permanent, provided that if it is a temporary certificate of occupancy, the Lessees will proceed with due diligence to obtain a permanent certificate of occupancy and obtain renewals of such temporary certificate of occupancy as needed), if required, and any and all permissions, licenses or consents required of governmental authorities for the occupancy, operation and use of the Facility for the purposes contemplated by this Agreement; (ii) a certificate of an Authorized Representative of the Lessees that all costs of rebuilding, repair, restoration and reconstruction of the Facility have been paid in full, together with releases of mechanics' liens by all contractors and materialmen who supplied work, labor, services, materials or supplies in connection with the rebuilding, repair, restoration and reconstruction of the Facility (or, to the extent that any such costs shall be the subject of a bona fide dispute, evidence to the Agency that such costs have been appropriately bonded or that the Lessees shall have posted a surety or security at least equal to the amount of such costs); and (iii) a search prepared by a title company, or other evidence satisfactory to the Agency, indicating that there has not been filed with respect to the Facility any mechanic's, materialmen's or any other lien in connection with the rebuilding, replacement, repair and restoration of the Facility and that there exist no encumbrances or those encumbrances consented to by the Agency.

ARTICLE VII

COVENANT OF THE AGENCY

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

ARTICLE VIII

COVENANTS OF THE LESSEE

Section 8.1. Insurance.

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

Certificate means an ACORD certificate evidencing insurance.

CGL means commercial general liability insurance.

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

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

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

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

Insured(s) means, collectively or individually, each Lessee and the Sublessee.

Insurer means any entity writing or issuing a Policy.

ISO means the Insurance Services Office or its successor.

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

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

SIR means self-insured retention.

U/E means Umbrella or Excess Liability insurance.

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

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

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

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

(iii) Auto liability insurance with \$1,000,000 combined single limit and \$1,000,000 for uninsured or under-insured vehicles. If neither of the Insureds owns any vehicles, each shall obtain auto liability insurance in the foregoing amounts for hired and non-owned vehicles. Notwithstanding, in the event that the Authorized Representatives for the Lessees and the Sublessee deliver certificates to the Agency certifying that none owns, hires, rents or uses a vehicle of any sort, the Agency shall deem such certifications to satisfy the requirements of this subsection "iii."

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

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

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

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

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

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

and satisfactory evidence to the Agency that the Construction was completed as of a specified earlier date);

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

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

(iii) Notwithstanding preceding subsections "i" and "ii", during Construction aggregate minimum coverage in the amount of \$15,000,000 (combined CGL and U/E as required by Sections 8.1(b) and 8.1(c)) may be achieved by any combination of coverage amounts among the Insureds and the GC or CM.

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

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

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

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

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

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

(ii) No Policy shall have a deductible.

(iii) CGL shall not be subject to SIR.

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

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

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

(B) employer's liability coverage;

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

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

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

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

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

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

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

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

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

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

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

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

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

New York City Industrial Development Agency is an additional insured on a primary and non-contributory basis for both CGL and Umbrella/Excess. The referenced CGL is written on ISO Form CG-0001 without modification to the contractual liability, employer’s liability or waiver-of-subrogation provisions thereof, and contains no endorsement limiting or excluding coverage for claims arising under New York Labor Law, covering the following premises: Unit RET1 of 2211-2217 Third Avenue, New York, New York 10035 (Block 1785 and Lot 1202); and all Common Elements relating to Unit RET1,

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

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

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

(C) Prior to the commencement of any Construction, the Insured shall deliver to the Agency a declarations page and a schedule of forms

and endorsements pertinent to the CGL under which the Insured is to be the primary insured during the period of such Construction.

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

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

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

(h) Miscellaneous.

(i) The Lessees represent that the Policies pertain to and cover the Facility Realty exclusively.

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

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

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

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

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

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

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

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

Section 8.2. Indemnity.

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

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

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

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

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

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

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

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

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

(c) An Indemnified Party shall promptly notify the Lessees in writing of any claim or action brought against such Indemnified Party in which indemnity may be sought against either Lessee pursuant to this Section 8.2; such notice shall be given in sufficient time to

allow each Lessee to defend or participate in such claim or action, but the failure to give such notice in sufficient time shall not constitute a defense hereunder nor in any way impair the obligations of the Lessees under this Section 8.2.

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

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

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

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

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

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

Section 8.5. Signage at Facility Site. Upon commencement of the Project renovations and/or construction of the Project Improvements at the Facility (including the

commencement of any demolition and/or excavation), the Lessees shall erect on the Facility site, at their own cost and expense, within easy view of passing pedestrians and motorists, a large and readable sign with the following information upon it (hereinafter, the “Sign”):

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

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

Section 8.6. Environmental Matters.

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

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

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

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

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

Section 8.7. Employment Matters.

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

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

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

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

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

Section 8.8. Non-Discrimination.

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

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

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

Section 8.9. Assignment or Sublease.

(a) The Lessees shall not at any time (y) except as permitted by Section 8.20, assign or transfer this Agreement, or (z) sublet the whole or any part of the Facility, except to the Sublessee pursuant to the Sublease Agreement or the Commercial Lease, without (1) providing the Agency written notice of such intended use and/or occupancy before such use and/or occupancy actually occurs and (2) the prior written consent of the Agency (such consent to be requested by the Lessees of the Agency in the form prescribed by the Agency, and such consent of the Agency to take into consideration the Agency’s policies as in effect from time to time), and provided that:

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

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

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

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

(v) with respect to any subletting in part of the Facility, no more than an aggregate of twenty percent (20%) of the Completed Improvements Rentable Square Footage shall be subleased by either or both Lessees or the Sublessee;

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

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

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

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

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

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

(d) Each of the Lessees covenants and agrees that it shall not, without the prior written consent of the Agency (which consent shall not be unreasonably withheld, conditioned or delayed), amend, modify, terminate or assign, or to suffer any amendment, modification, termination or assignment of, the Sublease Agreement or any sublease entered into in accordance with this Section.

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

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

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

(a) None of the Lessees nor the Agency shall sell, assign, encumber (other than Permitted Encumbrances), convey or otherwise dispose of its respective title to or leasehold estate in the Facility, including the Improvements, or any part of the Facility or interest therein during the Term, except as set forth in Sections 3.6, Article VI, 8.9 and 9.2 or in this Section, without the prior written consent of the other, and any purported disposition without such consent shall be void.

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

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

Section 8.11. Discharge of Liens.

(a) If any lien, encumbrance or charge is filed or asserted (including any lien for the performance of any labor or services or the furnishing of materials), or any judgment, decree, order, levy or process of any court or governmental body is entered, made or issued or any claim (such liens, encumbrances, charges, judgments, decrees, orders, levies, processes and claims being herein collectively called “**Liens**”), whether or not valid, is made against the Facility, the Project Building, the Condominium Documents or any part thereof or the interest therein of the Agency, the Lessees or the Sublessee or against any of the Rental Payments payable under the Company Lease, under this Agreement or under the Sublease Agreement or

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

(b) The Lessees may at their sole cost and expense contest (after prior written notice to the Agency), by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Lien, if (i) such proceeding shall suspend the execution or enforcement of such Lien against the Facility or any part thereof or interest therein, or in the Company Lease, in this Agreement or in the Sublease Agreement, of the Agency, the Lessees or the Sublessee or against any of the Rental Payments payable under the Company Lease, under this Agreement or under the Sublease Agreement, (ii) neither the Facility nor any part thereof or interest therein would be in any danger of being sold, forfeited or lost, (iii) None of the Lessees nor the Sublessee nor the Agency would be in any danger of any civil or any criminal liability, other than normal accrual of interest, for failure to comply therewith, and (iv) the Lessees or the Sublessee shall have furnished such security, if any, as may be required in such proceedings or as may be reasonably requested by the Agency.

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

Section 8.13. No Further Encumbrances Permitted. None of Lessees shall create, permit or suffer to exist any mortgage, encumbrance, lien, security interest, claim or charge against the Facility or any part thereof, or the interest of the Agency, the Lessees or the Sublessee in the Facility, in any of the Condominium Documents, the Company Lease, this Agreement or the Sublease Agreement, except for Permitted Encumbrances. Notwithstanding the foregoing, in no event shall the lien of any Mortgage include the rights of the Lessees under this Agreement or the Sublease Agreement or any rentals or other amounts paid or payable hereunder or thereunder, except for rentals directly related to the payment of amounts due under any Mortgage Notes.

Section 8.14. Automatically Deliverable Documents.

(a) The Lessees shall immediately notify the Agency of the occurrence of any Event of Default, or any event that with notice and/or lapse of time would constitute an Event of Default under any Project Document or the Commercial Lease. Any notice required to be given pursuant to this subsection shall be signed by an Authorized Representative of the Lessees and

set forth a description of the default and the steps, if any, being taken to cure said default. If no steps have been taken, the Lessees shall state this fact on the notice.

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

(c) Within five (5) Business Days after receipt from the Agency of any subtenant survey and questionnaire pertaining to the Facility, the Lessees shall complete and execute such survey and questionnaire and return the same to the Agency.

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

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

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

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

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

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

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

(k) Within 10 days after the Termination Date, the Lessees shall (x) file with the Agency a completed Sales Tax Registry which accounts for all Sales Tax Savings realized by the Lessees, the Sublessee and each Agent during the period from the preceding July 1st to the

Termination Date; and (y) deliver and surrender to the Agency each Sales Tax Agent Authorization Letter and all copies thereof for cancellation.

(l) The Lessees shall deliver to the Agency on July 1 of each year, commencing on the July 1 immediately following the Commencement Date, a completed Certificate Certifying Facility as a Fresh Food Store in the form of Exhibit L hereto.

Section 8.15. Requested Documents. Upon request of the Agency, the Lessees shall deliver or cause to be delivered to the Agency within five (5) Business Days of the date so requested:

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

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

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

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

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

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

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

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

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

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

Section 8.16. Periodic Reporting Information for the Agency.

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

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

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

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

(d) If there shall have been a subtenant, other than the Lessees or the Sublessee, with respect to all or part of the Facility, at any time during the immediately preceding calendar year, the Lessees shall file with the Agency by the next following February 1, a certificate of an Authorized Representative of the Lessees with respect to all subtenancies in effect at the Facility, in the form prescribed by the Agency.

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

(f) If there shall have been a subtenant, other than the Lessees or the Sublessee, with respect to all or part of the Facility, at any time during the twelve-month period terminating on the immediately preceding June 30, the Lessees shall deliver to the Agency by the next following August 1, a completed Subtenant's Employment and Benefits Report with respect to such twelve-month period, in the form prescribed by the Agency.

(g) If either or both Lessees or the Sublessee shall have had the benefit of a Business Incentive Rate at any time during the twelve-month period terminating on the immediately preceding June 30, the Lessees shall deliver to the Agency by the next following August 1, a completed report required by the Agency in connection with the Business Incentive Rate program with respect to such twelve-month period, in the form prescribed by the Agency.

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

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

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

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

Section 8.18. Compliance with Legal Requirements.

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

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

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

Section 8.19. Operation as Approved Facility, as a FRESH Food Store and as a “Project”.

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

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

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

(d) The Lessees shall operate and maintain the Facility in accordance with the FRESH Food Store Requirements.

Section 8.20. Restrictions on Dissolution and Merger.

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

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

- (ii) continue to be subject to service of process in the State,
- (iii) continue to be organized under the laws of, or qualified to do business in, the State,
- (iv) not, as transferor, liquidate, wind-up, dissolve, transfer or otherwise dispose of to another Entity all or substantially all of its property, business or assets (“**Transfer**”) remaining after the Commencement Date, except as provided in Section 8.20(b),
- (v) not, as transferee, take title to all or substantially all of the property, business or assets (also “**Transfer**”) of and from another Entity, except as provided in Section 8.20(b),
- (vi) not consolidate with or merge into another Entity or permit one or more Entities to consolidate with or merge into it (“**Merge**”), except as provided in Section 8.20(b), and
- (vii) not change or permit the change of any Principal of any Lessee and/or the Sublessee, or a change in the relative ownership and/or Control of any Lessee and/or the Sublessee of any of the existing Principals, except in each case as provided in Section 8.20(d).

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

- (i) when a Lessee is the surviving, resulting or transferee Entity,
 - (1) the Lessee shall have a net worth (as determined by an Independent Accountant in accordance with GAAP) at least equal to that of the Lessee immediately prior to such Merger or Transfer, and
 - (2) the Lessee shall deliver to the Agency a Required Disclosure Statement with respect to itself as surviving Entity in form and substance satisfactory to the Agency; or
- (ii) when the Lessee is not the surviving, resulting or transferee Entity (the “**Successor Lessee**”),
 - (1) the predecessor Lessee (the “**Predecessor Lessee**”) shall not have been in default under this Agreement or under any other Project Document,
 - (2) the Successor Lessee shall be solvent and subject to service of process in the State and organized under the laws of the State, or under the laws of any other state of the United States and duly qualified to do business in the State,

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

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

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

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

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

(c) The Control of any Lessee and/or the Sublessee shall not change prior to the Operations Commencement Date.

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

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

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

Section 8.23. HireNYC Program. The Lessees shall use their good faith efforts to achieve the hiring and workforce development goals of the HireNYC Program and shall perform the requirements of the HireNYC Program, all as set forth in Exhibit K. The Lessees

agree to be bound by each of the provisions of the HireNYC Program set forth in Exhibit K, including without limitation, the payment of any liquidated damages and other enforcement provisions set forth therein.

Section 8.24. Obligations of the Lessees. The obligations of each Lessee under this Agreement are joint and several except where expressly stated herein to the contrary.

ARTICLE IX

REMEDIES AND EVENTS OF DEFAULT

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

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

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

(c) The occurrence of a Recapture Event;

(d) Failure of either or both Lessees to observe and perform any covenant or agreement on their part to be performed under Section 8.9;

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

(f) Failure of either or both Lessees to observe and perform any covenant, condition or agreement on their part to be performed under Sections 5.1 (except as set forth in Section 9.1(a)), 5.2, 5.3, 5.4, 8.2, 8.3, 8.8, 8.9, 8.11, 8.13, 8.17, 8.18, 8.19, 8.20, 9.8, 11.2 or 11.3 or Article VI, and continuance of such failure for a period of thirty (30) days after receipt by the Lessees of written notice specifying the nature of such default from the Agency;

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

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

(i) Either Lessee, the Sublessee or any other Guarantor shall (i) apply for or consent to the appointment of or the taking of possession by a receiver, liquidator, custodian or

trustee of itself or of all or a substantial part of its property, (ii) admit in writing its inability, or be generally unable, to pay its debts as such debts generally become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or adjustment of debts, (vi) fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against itself in an involuntary case under the Federal Bankruptcy Code, (vii) take any action for the purpose of effecting any of the foregoing, or (viii) be adjudicated a bankrupt or insolvent by any court;

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

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

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

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

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

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

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

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

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

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

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

(v) The Agency may require the Lessees to pay, as if the date of demand by the Agency were the Expiration Date, any NPV-PILOMRT that may be due under and in accordance with Section 5.3(d)(y).

(b) No action taken pursuant to this Section 9.2 (including termination of this Agreement pursuant to this Section 9.2 or by operation of law or otherwise) shall, except as expressly provided herein, relieve the Lessees from the Lessees' obligations hereunder, including the obligations of the Lessees under Sections 5.1 (until such time as a Cessation Date occurs and, by reason thereof, the Lessees shall again pay Real Estate Taxes with respect to the Facility Realty), 5.2, 5.3, 5.4, 8.2, 9.2, 9.6, 9.7, 9.8, 11.4, 11.5, 11.6, 11.11, 11.13 and 11.14, all of which shall survive any such action.

Section 9.3. Remedies Cumulative. The rights and remedies of the Agency under this Agreement shall be cumulative and shall not exclude any other rights and remedies of the Agency allowed by law with respect to any default under this Agreement. Failure by the

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

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

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

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

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

Section 9.8. Late Delivery Fees.

- (a) In the event the Lessees shall fail:

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

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

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

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

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

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

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

ARTICLE X

TERMINATION

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

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

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

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

Section 10.3. Actions Upon Termination.

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

(i) pay to NYCDOF any amounts due and payable pursuant to Section 5.1(i),

(ii) pay any and all other Project Payments then due plus one dollar (\$1.00),

(iii) perform all accrued obligations hereunder,

(iv) deliver or cause to be delivered to the Agency (x) with respect to any Exempt Mortgage or Modified Exempt Mortgage (as the case may be), an executed satisfaction of such Mortgage in recordable form, executed by the Mortgagee, and (y)

with respect to any Mortgage on the Facility to which the Agency shall be a party and intended to continue beyond the termination of this Agreement but with respect to which Mortgage the Agency shall not have granted any deferral of Mortgage Recording Taxes, a release of the Agency from such Mortgage in recordable form executed by all other parties to such Mortgage.

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

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

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

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

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

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

ARTICLE XI

MISCELLANEOUS

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

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

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

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

Section 11.4. Service of Process. Each Lessee represents that it is subject to service of process in the State and covenants that it will remain so subject until all obligations, covenants and agreements of each Lessee under this Agreement shall be satisfied and met. If for any reason either Lessee should cease to be so subject to service of process in the State, each Lessee hereby irrevocably consents to the service of all process, pleadings, notices or other papers in any judicial proceeding or action by designating and appointing the President of the Sublessee at C/O Reynoso, 7000 Boulevard East, Apt. #19D, Guttenberg, New Jersey 07093, as its agent upon whom may be served all process, pleadings, notices or other papers which may be served upon each Lessee as a result of any of its obligations under this Agreement. If such appointed agent shall cease to act or otherwise cease to be subject to service of process in the State, each Lessee hereby irrevocably designates and appoints the Secretary of State of the State of New York as its agent upon whom may be served all process, pleadings, notices or other papers which may be served upon each Lessee as a result of any of its obligations under this Agreement; provided, however, that the service of such process, pleadings, notices or other papers shall not constitute a condition to the Lessees' obligations hereunder.

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

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

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

(1) if to the Agency, to

New York City Industrial Development Agency
110 William Street
New York, New York 10038
Attention: General Counsel (with a copy to the
Executive Director of the Agency at the
same address)

and

(2) if to the Lessees, to

1635 Lex Realty Corp. and
385 Broadway Realty Corp.
c/o A & J Supermarket Corp.
C/O Reynoso, 7000 Boulevard East, Apt. #19D
Guttenberg, New Jersey 07093
Attention: President

with a copy to

The Law Offices of Mitchell Mund
100 15 Queens Boulevard
Forest Hills, New York 11375
Attention: Christopher D. McDonald, Esq.

(3) if to the Comptroller, to

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

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

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

Section 11.6. Consent to Jurisdiction. Each Lessee irrevocably and unconditionally (i) agrees that any suit, action or other legal proceeding arising out of this Agreement or any other Project Document, the Facility, the Project, the relationship between the Agency and the Lessees, the Lessees' ownership, use or occupancy of the Facility and/or any claim for injury or damages may be brought in the courts of record of the State in New York County or the United States District Court for the Southern District of New York; (ii) consents to

the jurisdiction of each such court in any such suit, action or proceeding; (iii) waives any objection which it may have to the venue of any such suit, action or proceeding in such courts; and (iv) waives and relinquishes any rights it might otherwise have (w) to move to dismiss on grounds of forum non conveniens, (x) to remove to any federal court other than the United States District Court for the Southern District of New York, and (y) to move for a change of venue to a New York State Court outside New York County.

If either Lessee commences any action against the Agency in a court located other than the courts of record of the State in New York County or the United States District Court for the Southern District of New York, either Lessee shall, upon request from the Agency, either consent to a transfer of the action or proceeding to a court of record of the State in New York County or the United States District Court for the Southern District of New York, or, if the court where the action or proceeding is initially brought will not or cannot transfer the action, the Lessee shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of record of the State in New York County or the United States District Court for the Southern District of New York.

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

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

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

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

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

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

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

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


Section 11.14. Recourse Under This Agreement. All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency, and not of any member, director, officer, employee or agent of the Agency or any natural person executing this Agreement on behalf of the Agency in such person's individual capacity, and no recourse shall be had for any reason whatsoever hereunder against any member, director, officer, employee or agent of the Agency or any natural person executing this Agreement on behalf of the Agency. In addition, in the performance of the agreements of the Agency herein contained, any obligation the Agency may incur for the payment of money shall not subject the Agency to any pecuniary or other liability or create a debt of the State or the City, and neither the State nor the City shall be liable on any obligation so incurred and any such obligation shall be payable solely out of amounts payable to the Agency by the Lessees hereunder.

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

[Signature Page Follows]


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

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**

By: 


Anne Shutkin
Executive Director

1635 LEX REALTY CORP., as to an undivided
57.512% interest as tenant-in-common

By: 

Euripides Reynoso
President

385 BROADWAY REALTY CORP., as to an
undivided 42.488% interest as tenant-in-common

By: 

Euripides Reynoso
President

[Signature Page to Agency Lease Agreement]

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

On the 11 day of December, in the year two thousand seventeen, before me, the undersigned, personally appeared Anne Shutkin, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

FRANCES TUFANO
Notary Public, State of New York
No. 01TU5080131
Qualified in Queens County
Commission Expires June 16, 2019


Notary Public/Commissioner of Deeds

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

On the 28th day of December, in the year two thousand seventeen, before me, the undersigned, personally appeared Euripides Reynoso, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

DIANA MACLAU
Notary Public, State of New York
No. 01MA6230953
Qualified in Kings County
Commission Expires Nov. 15, 2018

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

On the 28th day of December, in the year two thousand seventeen, before me, the undersigned, personally appeared Euripides Reynoso, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

DIANA MACLAU
Notary Public, State of New York
No. 01MA6230953
Qualified in Kings County
Commission Expires Nov. 15, 2018

APPENDICES

DESCRIPTION OF THE LAND AND RETAIL UNIT

The Condominium Unit ("Unit") known as Unit No. Ret1 in the building ("Building") known as HAP 10 Condominium ("Condominium") and by the street number 2211 Third Avenue , New York, New York, 10035 , Borough of Manhattan, County of New York, City and State of New York, said Unit being designated and described by the above Unit No. Retail 1 in a certain declaration dated 098/28/2017 , made by Grantor pursuant to Article 9-B of the Real Property Law of the State of New York (the "Condominium Act") establishing a plan for condominium ownership of the Building and the land ("Land") upon which the Building is situate (which Land is more particularly described below and by this reference made a part hereof), which declaration is dated September 28, 2017 and recorded on November 28, 2017 in CRFN#2017000436358 in the New York County Office of the Register of The City of New York ("Declaration") as such Declaration may be amended from time to time. The Unit is also designated as Tax Lot 1202 `in Block 1785 of Section 3 of the Borough of Manhattan on the Tax Map of the Real Property Assessment Department of The City of New York and on the Floor Plans of the Building, certified by Karl Fischer on November 13, 2017 , and filed with the Real Property Assessment Department of The City of New York on as Condominium Plan No. 2783 and also filed on November 28, 2017 in the in the New York County Office of the Register of The City of New York under CRFN#2017000436359;

TOGETHER with an undivided 10.0410 % interest in the Common Elements (as such term is defined in the Declaration recorded on November 28, 2017 in CRFN#2017000436358.

Description of the Land

All That certain plot, piece of parcel of land, situate and being in the Borough of Manhattan, County, City and State of New York, Bounded and described as follows:

BEGINNING at the corner formed by the intersection of the southerly side of east 121st Street and the easterly side of Third Avenue;

RUNNING THENCE easterly, along the southerly side of east 121st Street, 175 feet;

THENCE southerly, parallel with the easterly side of Third Avenue, 110 Feet 11 Inches to the center line of the block between Easts 121st and East 120th Streets;

THENCE westerly, along said center line of the block, 175 Feet to the easterly side of Third Avenue;

THENCE northerly, along the easterly side of Third Avenue, 100 feet 11 inches to the point or place of BEGINNING


EXHIBIT B**FACILITY PERSONALTY**

Item	Quantity	Total Cost
Point of Sale System	8	\$38,726.25
Lighting Package	1	\$25,284.48
GT Automatic Sliding Doors	3	\$8,193.75
Island Gondolas 32' x 96	1	\$15,783.75
End Display 3' x 96	1	\$3,505.20
End Display 6½' x 96	3	\$1,090.63
Outrigger for 8 32'	1	\$10,401.75
Outrigger for 16 3'	1	\$2,339.10
Outrigger for 3 6'	1	\$518.79
Outrigger for 1 2'	1	\$143.60
SP-007 Stand	4	\$5,861.55
LCS No Belt	2	\$989.28
EFT Pin Pad	5	\$129.37
Touchscreen / Keyboard	5	\$334.21
LCD Monitor	5	\$237.18
EFT Pin Pad	2	\$51.75
Touchscreen / Keyboard	2	\$133.68
LCD Monitor Post	2	\$64.68
11 Door RHZC30T	1	\$8,437.40
14 Door RHZC30T	1	\$10,513.01
12 Door RVMC24	1	\$8,087.66
4 Door RVMC24	1	\$2,953.20
16 Door RVMC24	1	\$10,876.12
10 Door RVMC24	1	\$7,168.66
3 Door RVMC24	1	\$2,522.37
2 Door RVMC24	1	\$1,856.10
8ft Boston 3HC	1	\$10,347.84
36ft Lisona 105/200	1	\$8,606.88
48ft Lisona 105/200	1	\$11,367.75
12ft Altona 95/150	1	\$10,120.14
18ft Chicago	1	\$12,919.38
20ft Newport (no coil)	1	\$9,652.66
24ft Altona 95/150	1	\$4,890.37
8ft Damour 3	1	\$8,014.35
16 Door RVMC24	1	\$11,481.16
HVAC condenser units for heating and cooling	1	\$48,843.75
TOTAL:		\$302,447.80


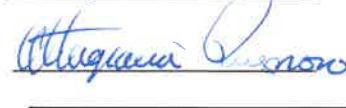
EXHIBIT C

AUTHORIZED REPRESENTATIVE



(i) of 1635 Lex Realty Corp.:

<u>Name</u>	<u>Title</u>	<u>Signature</u>
Euripides Reynoso	Shareholder, Director and President	

(i) of 385 Broadway Realty Corp.:

<u>Name</u>	<u>Title</u>	<u>Signature</u>
Euripides Reynoso	Shareholder, Director and President	
Altagracia Reynoso	Shareholder, Director and Secretary	

(ii) of the Sublessee:

<u>Name</u>	<u>Title</u>	<u>Signature</u>
Altagracia Reynoso	Shareholder, President and Treasurer	
Andres Almonte	Shareholder and Secretary	

Principals

1635 Lex Realty Corp.:

<u>Name</u>	<u>Title</u>
Euripides Reynoso	President, Shareholder and Director

385 Broadway Realty Corp.:

<u>Name</u>	<u>Title</u>
Euripides Reynoso	President, Shareholder and Director
Altagracia Reynoso	Shareholder, Director and Secretary

Sublessee:

<u>Name</u>	<u>Title</u>
Altagracia Reynoso	Shareholder, President and Treasurer
Andres Almonte	Shareholder and Secretary

EXHIBIT D-2

OWNERS OF 1635 LEX REALTY CORP.

INDIVIDUAL OWNERS	
Name	% Ownership or Control of 1635 Lex Realty Corp.
Euripides Reynoso	100%

ENTITY OWNERS	
Name	% Ownership or Control of 1635 Lex Realty Corp.
N/A	

OWNERS of those ENTITIES that own or control more than 10% of 1635 Lex Realty Corp. ("10% Entities")		
10% ENTITY (name and actual %)	INDIVIDUAL AND ENTITY OWNERS	% Ownership or Control
N/A		

OWNERS OF 385 BROADWAY REALTY CORP.

INDIVIDUAL OWNERS	
Name	% Ownership or Control of 385 Broadway Realty Corp.
Euripides Reynoso	50%
Altagracia Reynoso	50%

ENTITY OWNERS	
Name	% Ownership or Control of 385 Broadway Realty Corp.
N/A	

OWNERS of those ENTITIES that own or control more than 10% of 385 Broadway Realty Corp. ("10% Entities")		
10% ENTITY (name and actual %)	INDIVIDUAL AND ENTITY OWNERS	% Ownership or Control
N/A		

EXHIBIT D-3

OWNERS OF THE SUBLESSEE

INDIVIDUAL OWNERS	
Name	% Ownership or Control of the Sublessee
Altagracia Reynoso	54.167%
Andres Almonte	45.833%

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

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

EXHIBIT E

PROJECT COST BUDGET

	<u>Mortgage Loans</u>	<u>Funds of Lessees and/or Sublessee</u>	<u>Total</u>
Land and Building Acquisition	\$7,500,000	\$2,500,000	\$10,000,000
Renovation/Building Improvements		350,000	350,000
Equipment		300,000	300,000
Fees/Other Soft Costs		<u>164,113</u>	<u>164,113</u>
Total	<u>\$7,500,000</u>	<u>\$3,314,113</u>	<u>\$10,814,113</u>

EXHIBIT F

[FORM OF REQUIRED DISCLOSURE STATEMENT]

The undersigned, an authorized representative of _____, a _____ organized and existing under the laws of the State of _____, DOES HEREBY CERTIFY, REPRESENT AND WARRANT to the New York City Industrial Development Agency (the “Agency”) pursuant to [Section 8.20] [Section 8.9] of that certain Agency Lease Agreement, dated as of December 1, 2017, between the Agency and 1635 Lex Realty Corp., as to an undivided 42.488% interest as tenant-in-common and 385 Broadway Realty Corp., as to an undivided 57.512% interest as tenant-in-common, each a corporation organized and existing under the laws of the State of New York (the “Lease Agreement”) THAT:

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

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

1. is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Agency, NYCEDC or the City, unless such default or breach has been waived in writing by the Agency, NYCEDC or the City, as the case may be;
2. has been convicted of a misdemeanor related to truthfulness and/or business conduct in the past five (5) years;
3. has been convicted of a felony in the past ten (10) years;
4. has received formal written notice from a federal, state or local governmental agency or body that such Person is currently under investigation for a felony criminal offense; or
5. has received written notice of default in the payment to the City of any taxes, sewer rents or water charges, which have not been paid, unless such default is currently being contested with due diligence in proceedings in a court or other appropriate forum.

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

“City” shall mean The City of New York.

“Control” or “Controls” shall mean the power to direct the management and policies of a Person (x) through the ownership, directly or indirectly, of not less than a majority

of its voting securities, (y) through the right to designate or elect not less than a majority of the members of its board of directors or trustees or other Governing Body, or (z) by contract or otherwise.

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

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

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

“Person” shall mean an individual or any Entity.

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

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

[NAME OF CERTIFYING ENTITY]

By: _____

Name:

Title:

**PROJECT COMPLETION CERTIFICATE OF LESSEE AS
REQUIRED BY SECTIONS 3.3(f) AND 8.14(g) OF THE LEASE AGREEMENT**

The undersigned, each an Authorized Representative (as defined in the Lease Agreement referred to below) of each of 1635 Lex Realty Corp. and 385 Broadway Realty Corp., each, a corporation organized and existing under the laws of the State of New York (together, the “Lessees”), HEREBY CERTIFY that this Certificate is being delivered in accordance with the provisions of Section 3.3(f) and 8.14(g) of that certain Agency Lease Agreement, dated as of December 1, 2017 (the “Lease Agreement”), between the New York City Industrial Development Agency (the “Agency”) and the Lessees, and FURTHER CERTIFIES THAT (capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in the Lease Agreement):

(i) the Project Work is finished and the Project Improvements have been completed substantially in accordance with the plans and specifications therefor;

(ii) attached hereto is a copy of the temporary certificate of occupancy;

(iii) there is no certificate, license, permit, written approval or consent or other document required to permit the occupancy, operation and use of the Facility as the Approved Facility that has not already been obtained or received, except for such certificates, licenses, permits, authorizations, written approvals and consents that will be obtained in the ordinary course of business and the issuance of which are ministerial in nature;

(iv) the Facility is ready for occupancy, use and operation for the Approved Project Operations in accordance with all applicable laws, regulations, ordinances and guidelines;

(v) check as applicable:

all costs for Project Work have been paid, or

all costs for Project Work have been paid except for

amounts not yet due and payable (attach itemized list) and/or

amounts the payments for which are being contested in good faith (attach itemized list with explanations); and

(vi) releases of mechanics’ liens have been obtained from the general contractor and from all contractors and materialmen who supplied work, labor, services, machinery, equipment, materials or supplies in connection with the Project Work, except for releases-of-liens pertinent to (y) amounts not yet due and payable, or (z) any amount the payment of which is being contested in good faith; copies of all such releases of mechanics’ liens are attached hereto.

[ATTACH to this Certificate copies of all such releases of liens.]

Notwithstanding anything herein or elsewhere that may be inferred to the contrary, the undersigned hereby understands and agrees on behalf of the Lessees as follows: (a) the Agency does not waive its right to require delivery of releases-of-liens in connection with the costs of Project Work; (b) the Agency does not waive its right under the Lease Agreement to demand the discharge of mechanics' and materialmens' liens encumbering the Facility Realty, whether by bond or otherwise; and (c) the Certificate shall be deemed incomplete if, in the Agency's sole discretion, the Lessees have unreasonably failed to bond or otherwise discharge any liens in respect of the costs of Project Work when payment for the same is due.

This Certificate is given without prejudice to any rights of the Lessees against third parties existing on the date hereof or which may subsequently come into being and no Person other than the Agency may benefit from this Certificate.

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

1635 LEX REALTY CORP.

By: _____
Name:
Title:

385 BROADWAY REALTY CORP.

By: _____
Name:
Title:

[FORM OF SALES TAX AGENT AUTHORIZATION LETTER]

SALES TAX AGENT AUTHORIZATION LETTER

EXPIRATION DATE: DECEMBER 31, 2020

ELIGIBLE LOCATION:

**Retail Unit 1, Block 1785 and Lot 1202
2211-2217 Third Avenue, New York, New York**

December 28, 2017

TO WHOM IT MAY CONCERN

Re: New York City Industrial Development Agency
(2017 A & J Supermarket Corp. Project)

Ladies and Gentlemen:

The New York City Industrial Development Agency (the "Agency"), by this notice, hereby advises you as follows:

1. Pursuant to a certain Agency and Lease Agreement, dated as of December 1, 2017 (the "Agreement"), between the Agency and 1635 Lex Realty Corp. and 385 Broadway Realty Corp., each a corporation organized and existing under the laws of the State of New York (together, the "Lessees"), the Agency has authorized the Lessees to act as its agent for the in connection with the Project described therein including the Facility Realty located at the Eligible Location described above. Certain capitalized terms used herein and not defined shall have the respective meanings given to such terms in the Agreement.

2. Upon the Lessees' request, the Agency has appointed [insert name of Agent] (the "Agent"), pursuant to this Sales Tax Agent Authorization Letter (the "Sales Tax Agent Authorization Letter") to act as the Agency's agent for the purpose of effecting purchases exempt from sales or use tax in accordance with the terms, provisions of this Sales Tax Agent Authorization Letter and the Agreement. **The Agent should review the definitions of Eligible Items and Ineligible Items in Exhibit A hereto with respect to the scope of Sales Tax Exemption provided under the Agreement and hereunder.**

3. The effectiveness of the appointment of the Agent as an agent of the Agency is expressly conditioned upon the execution by the Agency of New York State Department of Taxation and Finance Form ST-60 "IDA Appointment of Project or Agent" ("Form ST-60") to evidence that the Agency has appointed the Agent as its agent (the form of which to be completed by Agent and the Lessees). Pursuant to the exemptions from sales and use taxes available to the Agent under this Sales Tax Agent Authorization Letter, the Agent shall avail itself of such exemptions when purchasing eligible materials and services in connection with the

Project and shall not include such taxes in its contract price, bid or reimbursable costs, as the case may be.

4. The Agent acknowledges that the executed Form ST-60 shall not serve as a sales or use tax exemption certificate or document. No agent or project operator may tender a copy of the executed Form ST-60 to any person required to collect sales tax as a basis to make such purchases exempt from tax. No such person required to collect sales or use taxes may accept the executed Form ST-60 in lieu of collecting any tax required to be collected. THE CIVIL AND CRIMINAL PENALTIES FOR MISUSE OF A COPY OF FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT OR FOR FAILURE TO PAY OR COLLECT TAX SHALL BE AS PROVIDED IN THE TAX LAW. IN ADDITION, THE USE BY AN AGENT, PROJECT OPERATOR, OR OTHER PERSON OR ENTITY OF SUCH FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT SHALL BE DEEMED TO BE, UNDER ARTICLES TWENTY EIGHT AND THIRTY SEVEN OF THE TAX LAW, THE ISSUANCE OF A FALSE OR FRAUDULENT EXEMPTION CERTIFICATE OR DOCUMENT WITH THE INTENT TO EVADE TAX.

5. As agent for the Agency, the Agent agrees that it will present to each seller or vendor a completed and signed **NYSDTF Form ST-123 "IDA Agent or Project Operator Exempt Purchase Certificate"** or such additional or substitute form as is adopted by NYSDTF for use in completing purchases that are exempt from Sales and Use Taxes ("Form ST-123") for each contract, agreement, invoice, bill or purchase order entered into by the Agent, as agent for the Agency, for the renovation, repair and equipping of the Project. Form ST-123 requires that each seller or vendor accepting Form ST-123 identify the Project on each bill and invoice and invoice for purchases and indicate on the bill or invoice that the Agency or Agent or Lessees, as Project operator of the Agency, was the purchaser. The Agent shall complete Form ST-123 as follows: (i) the "Project Information" section of Form ST-123 should be completed using the name and address of the Project as indicated on the Form ST-60 used to appoint the Agent; (ii) the date that the Agent was appointed as an agent should be completed using the date of the Agent's Sales Tax Agent Authorization Letter; and (iii) the "Exempt purchases" section of Form ST-123 should be completed by marking "X" in box "A" only.

6. The Agent agrees to comply with the terms and conditions of the Agreement. The Agent must retain for at least six (6) years from the date of expiration of its Contract copies of (a) its contract with the Lessees to provide services in connection with the Project, (b) all contracts, agreements, invoices, bills or purchases entered into or made by such Agent using the Letter of Authorization for Sales Tax Exemption, and (c) the executed Form ST-60 appointing the Agent as an agent of the Agency, and shall make such records available to the Agency upon reasonable notice. This provision shall survive the expiration or termination of this Sales Tax Agent Authorization Letter.

7. In order to assist the Lessees in complying with their obligation to file New York State Department of Taxation and Finance Form ST-340 "Annual Report of Sales and Use Tax Exemptions Claimed by Project Operator of Industrial Development Agency/Authority" ("Form ST-340"), the Agent covenants and agrees that it shall file semi-annually with the Lessees (no later than January 15th and July 15th of each calendar year in which it has claimed sales and use tax exemptions in connection with the Project) a written statement of all sales and use tax exemptions claimed by such Agent for the preceding six-month period (ending on June 30th or

December 31st, as applicable) in connection with the Project and the Facility by completing and submitting to the Lessees the **Sales Tax Registry** attached hereto as **Exhibit B**. If the Agent fails to comply with the foregoing requirement, the Agent shall immediately cease to be the agent for the Agency in connection with the Project (such agency relationship being deemed to be immediately revoked) without any further action of the parties, the Agent shall be deemed to have automatically lost its authority to make purchases as agent for the Agency, and shall desist immediately from all such activity.

8. The Agent agrees that if it fails to comply with the requirements for sales and use tax exemptions, as described in this Sales Tax Agent Authorization Letter, it shall pay any and all applicable Sales Tax Savings and any interest and penalties thereon. This provision shall survive the expiration or termination of this Sales Tax Agent Authorization Letter.

9. Special Provisions Relating to State Sales Tax Savings.

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

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

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

(i) In accordance with General Municipal Law Section 875(3)(c), if the Agency recovers, recaptures, receives, or otherwise obtains, any amount of State Sales Tax Savings from the Agent, the Agency shall, within thirty days of coming into possession of such amount, remit it to the Commissioner, together with such information

and report that the Commissioner deems necessary to administer payment over of such amount. The Agency shall join the Commissioner as a party in any action or proceeding that the Agency commences to recover, recapture, obtain, or otherwise seek the return of, State Sales Tax Savings from the Agent, the Lessees or other person or entity.

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

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

10. Subject to the provisions of Section 9 hereof, in the event that the Agent shall utilize the Sales Tax Exemption in violation of the provisions of the Agreement or this Sales Tax Agent Authorization Letter, the Agent shall promptly deliver notice of same to the Lessees and the Agency, and the Agent shall, upon demand by the Agency, pay to or at the direction of the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the rate of twelve percent (12%) per annum compounded daily from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was availed of by the Agent.

11. Upon request by the Agency with reasonable notice to the Agent, the Agent shall make available at reasonable times to the Agency all such books, records, contracts, agreements, invoices, bills or purchase orders of the Agent, and require all appropriate officers and employees of the Agent to respond to reasonable inquiries by the Agency as shall be necessary

(y) to indicate in reasonable detail those costs for which the Agent shall have utilized the Sales Tax Exemption and the dates and amounts so utilized, and (z) to permit the Agency to determine any amounts owed by the Agent under Section 10.

12. The Agent represents and warrants that, except as otherwise disclosed to the Agency, none of the Agent, the Principals of the Agent, or any Person that directly or indirectly Controls, is Controlled by, or is under common Control with the Agent:

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

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

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

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

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

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

“City” shall mean The City of New York.

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

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

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

“Person” shall mean an individual or any Entity.

13. By execution of this Sales Tax Agent Authorization Letter, the Agent agrees to accept the terms hereof and represent and warrant to the Agency that the use of this Sales Tax Agent Authorization Letter by the Agent is strictly for the purposes stated herein.

14. The Agent acknowledges that this Sales Tax Agent Authorization Letter will terminate on the date (the "Termination Date") that is the earlier of (i) the Expiration Date referred to above, and (ii) the expiration or termination of the Agreement. Upon the Termination Date, the agency relationship between the Agency and the Agent shall terminate.

The signature of a representative of the Agent where indicated below will indicate that the Agent accepted the terms hereof.

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Name:
Title:

ACCEPTED AND AGREED TO BY:

_____ **[AGENT]** _____

By: _____
Name:
Title:

Exhibit A

To

SALES TAX AGENT AUTHORIZATION LETTER

Set forth below is a description of items that are eligible for the Sales Tax Exemption

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

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

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

- (i) vehicles of any sort, including watercraft and rolling stock;
- (ii) personalty having a useful life of one year or less;
- (iii) any cost of utilities, cleaning services or supplies or other ordinary operating costs;
- (iv) fine art and other similar decorative items;
- (v) plants, whether potted or landscaped;

- (vi) ordinary office supplies such as pencils, paper clips and paper;
- (vii) any materials or substances that are consumed in the operation of machinery;
- (viii) equipment or parts containing materials or substances where such parts must be replaced whenever the substance is consumed; and
- (ix) maintenance of the type as shall constitute janitorial services.

Exhibit B

To

SALES TAX AGENT AUTHORIZATION LETTER

SALES TAX REGISTRY

Please Complete: **REPORTED PERIOD:** SEMI-ANNUAL PERIOD FROM [JANUARY 1][JULY 1], 201__ to [JUNE 30][DECEMBER 31], 201__

Description of Item (incl. Serial #,if applicable)	Location of Item	Dollar Amount	Vendor Description	Date of Payment	Purchase order or invoice number	Sales Tax Savings

TOTAL SALES TAX SAVINGS REALIZED DURING THE SEMI-ANNUAL REPORTED PERIOD:

Certification: I, the undersigned, an authorized officer or principal owner of the company identified below, hereby certify to the best of my knowledge and belief that all information contained in this report is true and complete. The information reported in this form includes all Sales Tax Savings realized by the company identified below and its principals, affiliates, tenants, subtenants, contractors and subcontractors. This form and information provided pursuant hereto may be disclosed to the New York City Industrial Development Agency ("NYCIDA") and New York City Economic Development Corporation ("NYCEDC"), and may be disclosed by NYCIDA and/or NYCEDC in connection with the administration of the programs by NYCIDA and/or NYCEDC; and, without limiting the foregoing, such information may be included in reports or disclosure required by law.

Name of Agent: _____

Signature By: _____

Name (print): _____

Title: _____

Date: _____

Sales Tax Registry

Please Complete: **REPORTED PERIOD:** ANNUAL PERIOD FROM JULY 1, 201__ to JUNE 30, 201__

Description of Item (incl. Serial #,if applicable)	Location of Item	Dollar Amount	Vendor Description	Date of Payment	Purchase order or invoice number	Sales Tax Savings
SEMI-ANNUAL PERIOD FROM JULY 1, [] to DECEMBER 31, []						
TOTAL SALES TAX SAVINGS REALIZED DURING THE SEMI-ANNUAL PERIOD FROM JULY 1, [] to DECEMBER 31, []:						
SEMI-ANNUAL PERIOD FROM JANUARY 1, [] to JUNE 30, []						
TOTAL SALES TAX SAVINGS REALIZED DURING THE SEMI-ANNUAL PERIOD FROM JANUARY 1, [] to JUNE 30, []:						

TOTAL SALES TAX SAVINGS REALIZED DURING THE ANNUAL REPORTED PERIOD:

Certification: I, the undersigned, an authorized officer or principal owner of the Lessees, hereby certify to the best of my knowledge and belief that all information contained in this report is true and complete. The information reported in this form includes all Sales Tax Savings realized by the Lessees below and its principals, affiliates, tenants, subtenants, contractors, subcontractors and any other person or entity pursuant to the LETTER OF AUTHORIZATION FOR SALES TAX EXEMPTION issued to the Lessees, and any SALES TAX AGENT AUTHORIZATION LETTER issued to any other person or entity at the direction of the Lessee,s by New York City Industrial Development Agency. This form and information provided pursuant hereto may be disclosed to the New York City Economic Development Corporation ("NYCEDC"), and may be disclosed by NYCEDC in connection with the administration of the programs by NYCEDC; and, without limiting the foregoing, such information may be included in reports or disclosure required by law.

Lessee Names: _____

Signature By: _____

Name (print): _____

Title: _____

Date: _____

PROJECT FINANCE PLAN

The plan for financing and refinancing the cost of the Project Work, which the Lessees estimate to be \$10,814,113, from the following sources:

(i) two loans in the respective principal amounts of \$5,000,000 and \$2,500,000 to made by Bank of Hope (the “Mortgagee”) to the Lessees (the “Mortgage Loan”) on the Commencement Date, and evidenced by a certain mortgage note (as the same may be amended or supplemented, the “Mortgage Note”) dated the Commencement Date and in the principal amount of the Mortgage Loan, and secured by a first mortgage in the principal amount of \$7,500,000 on the Facility Realty pursuant to a certain (a) mortgage and security agreement dated the Commencement Date (as the same may be amended or supplemented, the “Mortgage”) among the Lessees, the Agency and the Mortgagee; and

(ii) equity from the Lessees and/or the Sublessee in the amount of \$3,314,113.

HireNYC

The Lessees must collaborate with the New York City Department of Small Business Services or such other a New York City agency as may be designated by NYCEDC in a notice to the Lessees (“**Designated City Agency**”). The Designated City Agency will assist the Lessees in implementing the HireNYC Program including the screening of candidates from the target population (“**Target Population**”), defined as persons who have an income that is below two hundred percent (200%) of the poverty level as determined by the New York City Center for Economic Opportunity (a description of the income level meeting this threshold for each household size is available at http://www.nyc.gov/html/ceo/downloads/pdf/ceo_poverty_measure_2005_2013.pdf). The HireNYC Program will be in effect for a period of eight (8) years from the Operations Commencement Date (“**HireNYC Program Term**”).

The HireNYC Program will apply to the Lessees, their successors and assigns, and to all other subtenants and sublessees at the Facility during the HireNYC Program Term.

I. Goals. The HireNYC Program includes, at a minimum, the following hiring and workforce development goals (collectively, the “**Goals**”):

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

II. Program Requirements. HireNYC Program includes all of the following requirements:

1. Designation of a workforce development liaison by the Lessees to interact with NYCEDC and the Designated City Agency during the course of the HireNYC Program.

2. Commitment by the Lessees to do the following:

- a. use good faith efforts to achieve the Goals;
- b. notify NYCEDC six (6) weeks prior to commencing business operations;
- c. with respect to initial hiring for any new permanent jobs associated with the commencement of business at the Facility (but only if initial hiring is for five (5) or more permanent jobs):
 - (i) provide NYCEDC and the Designated City Agency with the approximate number and type of jobs that will become available, and for each job type a description of the basic job qualifications, at least three (3) months before commencing hiring; and
 - (ii) consider only applicants referred by the Designated City Agency for the first ten (10) business days, until the Hiring Goal is achieved or until all open positions are filled, whichever occurs first;
- d. with respect to ongoing hiring on occasions when hiring for five (5) or more permanent jobs:
 - (i) provide NYCEDC and the Designated City Agency with the approximate number and type of jobs that will become available, and for each job type a description of the basic job qualifications, at least one (1) month before commencing hiring or as soon as information is available, but in all cases not later than one (1) week before commencing hiring; and
 - (ii) consider only applicants referred by the Designated City Agency for the first five business days, until the Hiring Goal is achieved or until all open positions are filled, whichever occurs first;
- e. notify NYCEDC thirty (30) days prior to execution of any subtenant or sublessee lease at the Facility;
- f. provide NYCEDC with one (1) electronic copy of all subtenant and sublessee leases at the project location within fifteen (15) days of execution;
- g. submit to NYCEDC an annual HireNYC Employment Report in the form provided by NYCEDC (or quarterly reports at the discretion of NYCEDC);
- h. cooperate with annual site visits and, if requested by NYCEDC, employee satisfaction surveys relating to employee experience with the Lessees' HireNYC Program;
- i. provide information related to the HireNYC Program and the hiring process to NYCEDC upon request; and
- j. allow information collected by NYCEDC and the Designated City Agency to be included in public communications, including press releases and other media events.

III. General Requirements. The following are general requirements of the HireNYC Program

1. The Lessees are required to incorporate the terms of its HireNYC Program into all subtenant and sublessee leases obligating subtenants and sublessees to comply with the Goals and other requirements in the Lessees' HireNYC Program to the same extent as the Lessees are required to comply with such Goals and other requirements.

2. Enforcement. In the event NYCEDC determines that the Lessees or any of their subtenants or sublessees have violated any of the HireNYC Program requirements, including, without limitation, a determination that the Lessees or any of their subtenants and sublessees, has failed to use good faith efforts to fulfill the Goals, NYCEDC shall notify the Agency of the violation and the Agency may (1) assess liquidated damages set forth immediately below; and/or (2) assert any other right or remedy it has under the Agreement.
3. Liquidated Damages. If the Lessees or any of their subtenants or sublessees, does any of the following:
 - (i) fails to comply with its obligations set forth in Section II(2) clauses (a)(with respect to the Hiring Goal), (c), and/or (d), and as a result the Designated City Agency was unable to refer applicants or participate in the hiring process as required by the Program; or
 - (ii) fail to comply with their obligations set forth in Section II(2) clauses, (f), (g), (h), (i), and/or (j) and such failure shall continue for a period of thirty (30) days after receipt of notice from NYCEDC,

then, in the case of clause (i), the Agency may assess liquidated damages in the amount of \$2,500 for each position for which the Designated City Agency was unable to refer applicants or otherwise participate in hiring as required by the Program; and in the case of clause (ii), the Agency may assess damages for breach of each requirement in the amount of \$1,000. In view of the difficulty of accurately ascertaining the loss which the Agency will suffer by reason of the Lessees' failure to comply with Program requirements, the foregoing amounts are hereby fixed and agreed as the liquidated damages that the Agency will suffer by reason of such failure, and not as a penalty. The Lessees shall be liable for and shall pay to the Agency all damages assessed against the Lessees or any of its subtenants and sublessees at the project upon receipt of demand from the Agency.

EXHIBIT L

CERTIFICATE CERTIFYING THE FACILITY AS A FRESH FOOD STORE

With respect to that certain facility located at _____, New York (the "Facility"), the UNDERSIGNED HEREBY CERTIFIES, as follows:

1. I am the _____ of _____ (the "Company").
2. As of _____, the Facility complied with each of the following requirements, all of which, on March 31, 2010, were set forth in the Zoning Resolution of The City of New York, Section 63-01 (collectively, the "FRESH Food Store Requirements"):
 - a. At least 6,000 square feet of the portion of the Facility Realty used for retail operations were used for the sale of a general line of food and nonfood grocery products such as dairy, canned and frozen foods, fresh fruits and vegetables, fresh and prepared meats, fish and poultry, intended for home preparation, consumption and utilization.
 - b. The retail space described in "a" preceding, in addition, satisfied the following requirements:
 - i. At least 3,000 square feet or 50% of the Facility Realty, whichever is greater, were used for the sale of a general line of food products intended for home preparation, consumption and utilization; and
 - ii. At least 2,000 square feet or 30% of the Facility Realty, whichever is greater, were used for the sale of perishable goods that included dairy, fresh produce, and frozen foods and that may have included fresh meats, poultry and fish; and
 - iii. At least 500 square feet of the Facility Realty were used for the sale of fresh produce.

Name:
Title

WITNESSED:

Notary Public