

**AGENCY LEASE AGREEMENT**

Dated as of September 1, 2011

by and between

**NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY**

and

**SALMAR PROPERTIES, LLC,**

a limited liability company organized and existing under  
the laws of the State of New York, 36<sup>th</sup> Fl.  
having its principal office at 120 Broadway  
New York, New York 10271

Affecting the Land generally known by the street address  
850 Third Avenue, Brooklyn, New York 11232  
Section 3, Block 671 and Lot 1  
in the County of Kings,  
City and State of New York,  
as more particularly described in  
Exhibit A to this Agency Lease Agreement  
on the Official Tax Map of Kings County

**WINSTON & STRAWN LLP**  
200 Park Avenue  
New York, New York 10166  
Attention: Patricia A. Mollica, Esq.  
File No.: 90570.295

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**EXHIBITS**

- Exhibit A - Description of the Land
- Exhibit B - Description of the Facility Personalty
- Exhibit C - Authorized Representative
- Exhibit D - Principals of Lessee
- Exhibit E - Project Cost Budget
- Exhibit F - Form of Required Disclosure Statement
- Exhibit G-1 - Form of Substantial Completion Certificate
- Exhibit G-2 - Form of Project Completion Certificate
- Exhibit H - Form of Sales Tax Letter
- Exhibit I - Project Finance Plan
- Exhibit J - Deed
- Exhibit K - NYCEDC Contract
- Exhibit L - NYCDOT Memorandum
- Exhibit M -1- Subtenant Survey
- Exhibit M -2- Certificate Required by Section 5.1(d)
- Exhibit N - Annual Employment and Benefits Report
- Exhibit O - Rider to Sublease Agreement
- Exhibit P - Certificate Required by Section 8.9(b)(ii)
- Exhibit Q - Certificate Required by Section 8.16(f)
- Exhibit R - Location and Information Contact Form

## AGENCY LEASE AGREEMENT

This **AGENCY LEASE AGREEMENT**, made and entered into as of September 1, 2011 (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 Lessee, party of the second part (capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in Section 1.1 of this Agreement);

### WITNESSETH:

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

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

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

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

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

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

**WHEREAS**, the provision by the Agency of Financial Assistance to the Lessee through a ~~Straight Lease~~ Transaction has been determined to be necessary to induce the Lessee to acquire, construct, renovate, furnish and equip the Facility and provide competitive rents to enable tenancy by commercial, industrial and manufacturing tenants upon its completion; and if the Agency does not provide such Financial Assistance, the Lessee could not feasibly proceed with the Project; and

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

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

## ARTICLE I

### DEFINITIONS AND CONSTRUCTION

**Section 1.1 Definitions.** In addition to the definitions set forth in Sections 5.1(a), 5.3(a), 5.4 and 8.1(a), the following terms shall have the respective meanings in this Agreement:

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

**Additional Improvements** shall mean any buildings, structures, foundations, related facilities, fixtures, and other improvements constructed, erected, placed and/or installed on, under and/or above the Land, when such improvements are not part of the Project Work, 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 mean CRET as reduced by the Industrial and Commercial Abatement Program ("ICAP"), or any other applicable as-of-right benefit for which the Project may be eligible 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.

**Adjusted ELT** shall mean ELT as reduced by ICAP or any other any applicable as-of-right benefit for which the Project may be eligible other than an as 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 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)** means the July 1 after the fourth-year anniversary of the Completion Date and thereafter every fifth-year year anniversary of such July 1 within the PILOT Term excepting the last one.

An **Affiliate** of a Person shall mean a Person that directly or indirectly through one or more intermediaries Controls, or is under common Control with, or is Controlled by, such 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.

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

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

**Approved Facility** shall mean the Facility as occupied, used and operated by the Permitted Sublessees 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, collectively, Industrial Use, Retail Use and Other Use of the Facility as and to the extent required by Section 8.19(d).

**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 Lessee, a person named in Exhibit C — "Authorized Representative", or any other officer or employee of the Lessee who is authorized to perform specific duties hereunder or under any other Project Document and of whom another Authorized Representative of the Lessee has given written notice to the Agency, (iii) in the case of any Guarantor which shall constitute an Entity (other than the Lessee), a person named in Exhibit C — "Authorized Representative", or any other officer or employee of such Guarantor who is authorized to perform specific duties hereunder or under any other Project Document and of whom another Authorized Representative of such Guarantor has given written notice to the Agency, and (iv) 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 June 14, 2011 providing for Financial Assistance and authorizing the Project Documents to which the Agency is a party.

**Average Equivalent Full Time Employee Number** shall mean the following:

(i) With respect to the first Adjustment Date, the higher of (A) the average of the Equivalent Full Time Employee Numbers for the twelve months preceding the first Adjustment Date, or (B) the annual average of the Equivalent Full Time Employee Numbers for the four years preceding the first Adjustment Date; or

(ii) With respect to Adjustment Dates subsequent to the first Adjustment Date, the higher of (A) the average of the Equivalent Full Time Employee Number for twelve months preceding the Adjustment Date, or (B) the annual average of the Equivalent Full Time Employee Numbers for the five years preceding the Adjustment Date.

**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.

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

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

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

**Commencement Date** shall mean September 22, 2011, on which date this Agreement was executed and delivered.

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

**Completed Improvements Rentable Square Footage** shall mean approximately 1,100,000 rentable square feet, the rentable square footage of the Improvements upon completion of the Project Work.

**Completion Date** shall mean September 30, 2016.

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

**CRET or Current Real Estate Taxes** shall mean an amount equal to Real Estate Taxes applicable to Improvements at a point in time without reduction for any applicable as-of-right or discretionary benefit.

**Deed** shall mean the deed dated August 15, 2011 from NYCEDC to the Lessee, a copy of which is set forth in Exhibit J hereto.



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

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

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

**ELT** or Equivalent Land Tax shall mean an amount equal to Real Estate Taxes applicable to the Land at a point in time without reduction for any applicable as-of-right or discretionary benefit.

**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 Site Assessment Report dated March 14, 2011, prepared by the Environmental Auditor and that certain Focused Subsurface Site Investigation, dated March 29, 2011 prepared by the Environmental Auditor.

**Environmental Auditor** shall mean Merritt Environmental Consulting Corp.

**Environmental Remediation** shall mean the environmental remediation required pursuant to Section 3.9.

**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 Lessee or any Permitted Sublessee.

**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.

**Estimated Project Cost** shall mean \$44,429,433.

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

**Exempt Fixtures** shall mean those fixtures (and their components) to be acquired by or on behalf of the Agency pursuant to the Sales Tax Letter as part of the Project Work and which are to be part of the Improvements and incorporated in the Facility Realty.

**Exempt Materials** shall mean those construction materials (exclusive of fixtures or their components) to be acquired by or on behalf of the Agency pursuant to the Sales Tax Letter as part of the Project Work and which are to be incorporated in the Improvements.

**Exempt Mortgage** shall mean a Mortgage the recording of which is exempt from Mortgage Recording Taxes by reason of the Agency being a mortgagor thereunder provided that such Mortgage(s) shall not exceed an aggregate principal amount of \$44,500,000.

**Exempt Personalty** shall mean those items of machinery, equipment and other items of personalty (exclusive of Exempt Materials and Exempt Fixtures) to be acquired by or on behalf of the Agency pursuant to the Sales Tax Letter as part of the Project Work for installation and use at the Facility Realty; provided, however, that "Exempt Personalty" shall not include "Ineligible Personalty".

**Exempt Property** shall mean, collectively, the Exempt Fixtures, the Exempt Materials and the Exempt Personalty.

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

**Expiration Date** shall mean June 30, 2037.

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

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

**Facility Personalty** shall mean the Exempt Personalty, described in Exhibit B—"Description of the Facility Personalty", together with all repairs, replacements, improvements, substitutions and renewals thereof or therefor, and all parts, additions and accessories incorporated therein or affixed thereto. Facility Personalty shall, in accordance with the provisions of Sections 3.6 and 6.4, include all property substituted for or replacing items of Facility Personalty and exclude all items of Facility Personalty so substituted for or replaced, and further exclude all items of Facility Personalty removed as provided in Section 3.6.

**Facility Realty** shall mean, collectively, the Land and the Improvements.

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

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

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

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

**GAAP** shall mean those generally accepted accounting principles and practices that are recognized as such by the American Institute of Certified Public Accountants or by the Financial Accounting Standards Board or through other appropriate boards or committees thereof, and that are consistently applied for all periods, after the Commencement Date, so as to properly reflect the financial position of the Lessee, 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 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.

**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 Lessee and Schein Family Partners, LLC 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 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 mean the January 1 following the first Adjustment Date and thereafter every fifth-year anniversary of such January 1 within the PILOT Term excepting the last one.

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

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

**Indemnification Commencement Date** shall mean June 14, 2011, the date on which the Agency first adopted a resolution with respect to the Project.

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

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

**Inducement Resolution** shall mean the resolution of the Agency adopted on June 14, 2011 inducing the Project.

**Industrial Employee** shall mean a Equivalent Full Time Employee of a Tenant occupying space for an Industrial Use.

**Industrial Use** shall mean any industrial or manufacturing use permitted under the Zoning Resolution, including ancillary, administrative, wholesale and storage uses incidental to such industrial or manufacturing use but excluding any retail uses included within use groups (or use sub-groups) that are denominated as "industrial" or "semi-industrial" or "manufacturing" under the Zoning Resolution. For avoidance of doubt, only that portion of any space subleased to a Tenant that is used by such Tenant for predominately retail uses shall be excluded from Industrial Use under the proviso in the preceding sentence for the purpose of making the calculation described in Section 8.19(d).

**Ineligible Personalty** shall mean (i) vehicles of any sort, including watercraft and rolling stock, (ii) personalty having a useful life of one year or less, (iii) fine art, (iv) objects d'art and other similar decorative items, (v) plants, whether potted or landscaped, (vi) ordinary office supplies such as pencils, paper clips and paper, and (vii) any cost of utilities, cleaning services or supplies or other costs of operation.

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

**Initial Annual Administrative Fee** shall mean \$850.

**Initial CRET** shall mean CRET applicable to the Existing Improvements on the Commencement Date.

**Initial Project Work** shall mean, collectively, (i) the replacement or restoration of the roof and façade, (ii) the replacement or restoration of all utilities, mechanical and life safety systems, (iii) the installation of at least one bank of operational elevators, (iv) the completion of the Environmental Remediation and (v) the completion of SHPO Requirements set forth in Section 3.10(a).

**Land** shall mean that certain lot, piece or parcel of land in Section 3, Block 671 and Lot 1, generally known by the street address 850 Third Avenue, Brooklyn, New York 11232, all as more particularly described in Exhibit A — "Description of the Land", together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto; but excluding, however, any real property or interest therein released pursuant to Section 8.10(c).

**Land Square Footage** shall mean approximately 140,000 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 wages, and employment practices) of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, including those of the City, foreseen or unforeseen, ordinary or extraordinary, that are applicable now or may be applicable at any time hereafter to (i) the Lessee, (ii) the Facility or any part thereof, or (iii) any use or condition of the Facility or any part thereof.

**Lessee** shall mean Salmar Properties, LLC, a limited liability company, a 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 Lessee under Section 8.9 or 8.20.

**Lessee's Property** shall have the meaning set forth in Section 3.5(d).

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

**Liens** shall have the meaning set forth in Section 8.11(a).

**Loss Event** shall have the meaning set forth in Section 6.1.

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

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

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

**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 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.

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

**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.

**NYCDOF** shall mean the New York City Department of Finance.

**NYCDOT Requirements** shall mean the NYCDOT Requirements set forth in Section 3.11.

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

**NYCEDC Contract** shall mean the Contract of Sale dated May 3, 2011, between NYCEDC and the Lessee, a copy of which is set forth in Exhibit K hereto and made a part hereof.

**OLP** or Original Land Product shall mean \$766,000, i.e., the product of the Original Equivalent Full Time Employee Number and \$500.

**Operations Commencement Date** shall have the meaning set forth in Section 5.4 hereof.

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

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

**Original Equivalent Full Time Employee Number** shall equal 1,532 Equivalent Full Time Employees – i.e., the number of Employees expected to be employed by the Permitted Sublessees and/or Lessee by the Operations Commencement Date.

**Other Employee** shall mean a Full Time Equivalent Employee of a Tenant occupying space for an Other Use.

**Other Use** shall mean any use other than a Retail Use or an Industrial Use except (i) uses not permitted under the Zoning Resolution, and (ii) use by passive warehousing and/or storage businesses, and (iii) use by an adult establishment as defined in Section 12-10 of the Zoning Resolution, and (iv) residential use.

**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 \$10.00 per day or such other 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 \$10.00 per day or such other 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 \$10.00 per day or such other 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 Mortgages, any Permitted Sublease and any other form of occupancy agreements hereinafter entered into as permitted herein;

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

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

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

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

(vi) those exceptions to title to the Facility Realty enumerated in the title insurance policy delivered pursuant to Section 3.8 insuring the leasehold interest of the Agency in the Facility Realty, a copy of which is on file at the offices of the Agency;

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

(viii) any lien arising by reason of deposits with, or the giving of any form of security to, any governmental agency or any body created or approved by law or governmental regulation for any purpose at any time as required by law or governmental regulation as a condition to the transaction of any business or the exercise of any privilege or license, or to

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

(ix) any judgment lien against the Lessee, so long as the finality of such judgment is being contested in good faith and execution thereon is stayed, or that is less than \$10,000;

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

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

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

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

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

**Permitted Sublease** shall mean a Tenant Lease entered into and in compliance with Sections 8.9 and 8.19.

**Permitted Sublessee** shall mean a Tenant occupying space at the Facility pursuant to a Permitted Sublease.

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

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

**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.

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

**PILOT Bill** shall mean the semi-annual statement of account sent by NYCDOF for the payment of PILOT in respect of the Facility Realty.

**PILOT Commencement Date** shall mean July 1, 2012.

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

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



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

**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 having discretionary authority to act with respect to 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, construction, re-construction, renovation and furnishing of an approximately 1,100,000 square foot building on an approximately 140,000 square foot parcel of land located at 850 Third Avenue, Brooklyn, New York 11232, to be subleased by the Lessee to Permitted Sublessees.

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

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

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

**Project Documents** shall mean the Company Lease, this Agreement, the Sales Tax Letter, the Guaranty Agreement, each Mortgage and each Mortgage Note.

**Project Fee** shall mean \$365,200, representing the \$370,200 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 I — "Project Finance Plan".

**Project Improvements** shall mean all buildings, structures, foundations, related facilities, fixtures and other improvements resulting from the Project Work, including but not limited to Exempt Fixtures and Exempt Materials.

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

**Project Work** shall mean, collectively, the Initial Project Work, the completion of the NYCDOT Requirements, the completion of SHPO Requirements set forth in Section 3.10(b) and any subsequent or additional 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 mean the real property taxes levied by the City on real property within the City.

**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 Employee** shall mean a Full Time Equivalent Employee of a Tenant occupying space for a Retail Use.

**Retail Use** shall mean any retail use permitted under the Zoning Resolution exclusive of an adult establishment as defined in Section 12-10 of the Zoning Resolution.

**Sales Taxes** shall mean City and State sales and/or compensating use taxes imposed pursuant to Sections 1105, 1107, 1109, and 1110 of the New York State Tax Law, as each of the same may be amended from time to time (including any successor provisions to such statutory sections).

**Sales Tax Letter** shall mean the Letter of Authorization for Sales Tax Exemption, substantially in the form set forth in Exhibit H — “Form of Sales Tax Letter” and to be delivered pursuant to Section 5.2(c) on the Commencement Date.

**Sales Tax Letter Expiration Date** shall mean one (1) year after the Substantial Completion Date.

**Sales Tax Savings** shall mean all exemptions from Sales Taxes realized by or for the benefit of the Lessee pursuant to this Agreement and/or the Sales Tax Letter by reason of the Agency’s interest in the Project or any part thereof.

**SHPO** shall mean the New York State Office of Parks, Recreation & Historic Preservation.

**SHPO Requirements** shall mean the SHPO Requirements set forth in Section 3.10.

**Sign** shall have the meaning set forth in Section 8.5.

**SLP or Subsequent Land Product** shall mean the product of a Average Equivalent Full Time Employee Number on a particular Adjustment Date and \$500.

**State** shall mean the State of New York.

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

**Subsequent Equivalent Full Time Employee Number** shall mean the Average Equivalent Full Time Employee Number for any five-year period ending on an Adjustment Date.

**Substantial Completion Date** shall mean September 30, 2013.

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

**Tenant** shall mean any subtenant, sub-subtenant or permittee occupying space at the Facility.

**Tenant Lease** shall mean any agreement relating to the leasing or subleasing of space at the Facility.

**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).

**Unavoidable Delay** shall mean any cause beyond the reasonable control and without the fault or negligence of Lessee, including but not limited to: orders of any court of competent jurisdiction, industry-wide labor disputes including strikes and slow downs, acts of God, enemy action, terrorist activity, civil commotion, inability to obtain materials as a result of a national disaster and fire or other casualty, inability to obtain governmental permits provided the Lessee complied with its requirements and standard timeframe for processing applies.

**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.

**Zoning Resolution** shall mean the Zoning Resolution of The City of New York.

**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 content indicates otherwise, references to designated "Exhibits", "Appendices", "Schedules", "Articles", "Sections", "Subsections", "clauses" and other subdivisions are to the designated Exhibits, Appendices, Schedules, Articles, Sections, Subsections, clauses and other subdivisions of or to 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).

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

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

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

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

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

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

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

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

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

(c) The execution, delivery and performance of this Agreement and each other Project Document to which the Lessee is or shall be a party and the consummation of the transactions herein and therein contemplated will not (x) violate any provision of law, any order of any court or agency of government, or any of the Lessee's Organizational Documents, or any indenture, agreement or other instrument to which the Lessee is a party or by which it or any of its property is bound or to which it or any of its property is subject, (y) be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument or (z) result

in the imposition of any lien, charge or encumbrance of any nature whatsoever other than Permitted Encumbrances.

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

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

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

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

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

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

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

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

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

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

(n) The Lessee is in compliance, and will continue to comply, with all applicable Legal Requirements relating to the Project, the Project Work and the operation of the Facility.

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

(p) The Lessee has not used Hazardous Materials on, from, or affecting the Facility in any manner that violates any applicable Legal Requirements governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials.

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

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

(s) All of the Land comprises one complete tax lot and no portion of any single tax lot.

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

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

(v) The Fiscal Year is true and correct.

(w) None of the Lessee, the Principals of the Lessee, or any Person that directly or indirectly Controls, is Controlled by, or is under common Control with the Lessee:

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

(ii) has been convicted of a felony and/or any crime involving moral turpitude in the ten (10) preceding years;

(iii) has received written notice of default in the payment to the City of any taxes, sewer rents or water charges in excess of \$5,000 that has not been cured or satisfied, unless such default is then being contested with due diligence in proceedings in a court or other appropriate forum;

(iv) has, at any time in the three (3) preceding years, owned any property which, while in the ownership of such Person, was acquired by the City by in rem tax foreclosure, other than a property in which the City has released or is in the process of releasing its interest to such Person pursuant to the Administrative Code of the City.

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

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

(z) The approximate square footage of the Existing Improvements is 1,100,000 square feet.

### ARTICLE III

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

##### Section 3.1 The Company Lease.

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

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

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

##### Section 3.2 Appointment as Agent.

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

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

the Agency under the terms of any contract, order, receipt or writing in connection with the Project Work and to enforce the provisions of any contract, agreement, obligation, bond or other performance security entered into or obtained in connection with the Project Work.

**Section 3.3      The Project Work, Timing and Manner of Project Completion.**

(a) Subject to Unavoidable Delays, the Lessee shall: (i) commence the Initial Project Work within six (6) months of the Commencement Date and shall upon the expiration of such six (6) months, certify to the Agency in writing whether it has commenced the Initial Project Work, (ii) complete the Initial Project Work, or cause the Initial Project Work to be completed, by the Substantial Completion Date, and (iii) complete all Project Work or cause the Project Work to be completed by the Completion Date. The Lessee shall complete all Project Work in a first class workmanlike manner, free of defects in materials and workmanship (including latent defects); provided, however, the Lessee may revise the scope of the Project Work, subject to the prior written consent of the Agency (which consent shall not be unreasonably withheld, delayed or conditioned). Notwithstanding anything to the contrary provided herein, in no event shall Unavoidable Delays for purposes of this paragraph together aggregate more than twenty-four (24) months.

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

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

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

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

(f) Upon completion of the Initial Project Work, the Lessee shall deliver to the Agency (i) a Preliminary 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, and (ii) evidence of completion of the Initial Project Work by delivering to the Agency a certificate of an



Authorized Representative of the Lessee in substantially the form set forth in Exhibit G-1 — “Form of Substantial Completion Certificate”, together with all attachments required thereunder.

(g) Upon completion of the Project Work, the Lessee shall deliver to the Agency (i) 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, (ii) a temporary certificate of occupancy for the entire Facility, and (iii) evidence completion of the Project by delivering to the Agency a certificate of an Authorized Representative of the Lessee in substantially the form set forth in Exhibit G-2 — “Form of Project Completion Certificate”, together with all attachments required thereunder.

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

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

(j) On or prior to the Substantial Completion Date, the Lessee shall use all diligent efforts to obtain LEED Core & Shell Silver Certification.

(k) The Lessee shall notify the Agency and NYCEDC in writing whenever it claims an Unavoidable Delay has occurred or is continuing and shall specify the nature of the delay, any deadline which may be effected by such delay, and, to the extent practicable, the anticipated duration of the delay.

**Section 3.4 Maintenance.**

(a) During the term of this Agreement and except to the extent impacted by the Project Work provided that the Project Work is performed in accordance with this Agreement, the Lessee will:

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

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

(iii) make or cause to be made all replacements, renewals and repairs thereto (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen) necessary to ensure that the operations of the Lessee and the Permitted Sublessees 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 Project Work and be made and installed in compliance with all applicable Legal Requirements.

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

**Section 3.5 Alterations and Improvements.**

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

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

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

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

(iv) the Additional Improvements do not change the nature of the Facility so that it would not constitute an Approved Facility.

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

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

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

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

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

(b) 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

(c) no such removal shall be effected if (w) such removal would change the nature of the Facility as the Approved Facility, (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.

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

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

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

(a) In the event of any Additional Improvements or substitution or replacement of property pursuant to Section 3.5 or 3.6, such Additional Improvements or substitute or replacement property shall be deemed subject to the Company Lease and this Agreement and the Agency shall have a leasehold interest in such property in accordance with the terms thereof.

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

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

**Section 3.8 Leasehold Title Insurance.** On or prior to the Commencement Date, the Lessee will obtain and deliver to the Agency (y) a leasehold title insurance policy (in form and substance acceptable to the Agency) in the amount of \$500,000 insuring the Agency's leasehold interest under the Company Lease in each of the Land and the Existing Improvements against loss as a result of defects in title, subject only to Permitted Encumbrances, and (z) a current or updated survey of each of the Land and the Existing Improvements certified to the Lessee, the title company issuing such title insurance policy and the Agency. The title insurance policies shall be subject only to Permitted Encumbrances and shall provide for, among other things, the following: (1) full coverage against mechanics' liens; (2) no exceptions other than those approved by the Agency; (3) an undertaking by the title insurer to provide the notice of title continuation or endorsement; and (4) such other matters as the Agency shall request. Any proceeds of such leasehold title insurance shall be paid to the Lessee and applied by the Lessee to remedy the applicable defect in title in respect of which such proceeds shall be derived. If not so capable of being applied or if a balance remains after such application, the proceeds or the remaining balance of proceeds, as the case may be, derived from any such title insurance policy insuring the Agency's leasehold interest shall be applied to the payment of any Rental Payments then due hereunder; and any balance thereafter may be used by the Lessee for its authorized purposes.

### Section 3.9 Environmental Remediation

(a) On or before the Substantial Completion Date, the Lessee shall at its sole cost and expense remove and/or encapsulate all asbestos containing materials ("ACM") from the Facility and undertake any remediation related to the removal and/or encapsulation of such ACM, so as to comply with all Legal Requirements, including but not limited to New York State Department of Environmental Conservation ("NYSDEC"), New York City Department of Environmental Protection ("NYCDEP") rules and regulations, the Occupational Safety and Health Act and its implementing regulations (collectively, "OSHA"). The Lessee's obligations under this Section 3.9 (a) shall include but not be limited to the following: (i) performing an asbestos survey of the facility; (ii) making appropriate filings with, and obtaining necessary permits from, NYCDEP, all in connection with the abatement of ACM in the Facility; (iv) maintaining records of all ACM remedial actions; (v) taking air samples and fulfilling all other requirements for the protection of workers; (vi) lawfully disposing of ACM to the extent it is not encapsulated. On or before the Substantial Completion Date, the Lessee shall provide a written report to the Agency, in form and substance acceptable to the Agency, detailing all remedial actions taken and evidencing that all required remedial actions were taken in compliance with the Legal Requirements and such report shall include copies of any applicable ACM disposal documents.

(b) The Lessee shall conduct an XRF survey of the Facility to identify areas of peeling LBP or deteriorated subsurfaces (as defined in 28 RCNY § 11-04) upon which there is LBP, or may assume all peeling paint and deteriorated subsurfaces have LBP, and shall remediate any such areas through wet scraping and repainting, removal, encapsulation, enclosure and/or replacement. The Lessee shall notify the Agency in writing to indicate whether it plans to conduct a survey or assume all paint is LBP. If a survey is conducted, the Lessee shall provide the Agency with a copy of the results within ten (10) days of receipt by the Lessee. On or before the Substantial Completion Date, the Lessee shall (i) at its sole cost and expense remove all LBP from the Facility and undertake any remediation related to the removal and/or encapsulation of such LBP so as to comply with all Legal Requirements, including but not limited to NYSDEC and NYCDEP rules and regulations, OSHA, and all other applicable federal, state and local laws, ordinances, rules and regulations appertaining thereto and (ii) provide a written report to the Agency, in form and substance acceptable to the Agency, detailing all remedial actions taken and evidencing that all required remedial actions were taken compliance with the Legal Requirements and such report shall include copies of any applicable LBP disposal documents.

### Section 3.10 SHPO Requirements.

(a) The Initial Project Work and Project Work must conform to *Standards for Preservation and Guidelines for Preserving Historic Buildings* as promulgated by the Secretary for the U.S. Department of the Interior. Until the Substantial Completion Date, the Lessee shall on January 1, April 1, July 1 and October 1 of each year certify to the Agency in writing that it is performing the Initial Project Work in accordance with these standards. On the Substantial Completion Date, the Lessee shall deliver to the Agency a certificate of an architect certifying that the Initial Project Work conforms to such standards.

(b) Within one (1) year of the Substantial Completion Date, the Lessee shall (i) issue a report and, in consultation with SHPO, prepare a photographic record which shall qualify as a *Historic American Buildings Survey* (collectively, the "HAB Survey"), (ii) provide a copy of HAB Survey to Agency, and (iii) deposit copies of the HAB Survey in SHPO-required repositories.

### Section 3.11 NYCDOT Requirements.

(a) The Lessee shall take all actions required by the memorandum dated June 2, 2011 (the "NYCDOT Memorandum") from the New York City Department of Transportation ("NYCDOT") to NYCEDC, a copy of which is set forth in Exhibit L — "the NYCDOT Memorandum" and incorporated by reference herein. The Lessee shall take such actions in consultation with NYCDOT and in accordance with the NYCDOT Memorandum.

(b) Within sixty (60) days following the first Adjustment Date, the Lessee shall perform three (3) traffic-trip assessments — i.e., an AM assessment, a midday assessment, and PM assessment; and each of these assessments shall pertain to all of the four (4) traffic intersections bracketing the Facility Realty. Within fifteen (15) days of the completion of such assessments, the Lessee shall provide to the Agency in writing the results of such assessments. If the traffic-trip statistics generated by such assessments are respectively less than (i) 535 AM trips or (ii) 183 midday trips, or (iii) 601 PM trips, the Lessee need take no further action; if however the statistics are equal to or greater than any one of the foregoing base-line statistics, the Lessee shall proceed to analyze traffic at the four (4) intersections in order to determine whether the increase in traffic trips adversely impacts traffic at the four (4) intersections.

(c) In the event analysis as to adverse impact is required pursuant to paragraph (b) immediately preceding, then, the Lessee shall do or complete the following within the time periods indicated: (i) the Lessee shall complete the analysis and within six (6) months following the first Adjustment Date shall in writing notify the Agency whether or not the analysis demonstrates an adverse impact on traffic; and (ii) if the analysis reveals an adverse impact on traffic, the Lessee shall in writing notify the Agency within eight (8) months of the first Adjustment Date that the Lessee, in consultation with NYCDOT, has completed a transportation system management plan to mitigate the adverse impact (the "Traffic Plan"); and (iii) within twelve (12) months following the first Adjustment Date, the Lessee shall have completed implementation of the Traffic Plan; and (iv) within thirteen (13) months following the first Adjustment Date, the Lessee shall notify the Agency in writing that it has fully implemented the Traffic Plan to the satisfaction NYCDOT.

(d) If the analysis demonstrates no adverse impact, Lessee shall so notify the Agency. If the analysis demonstrates an adverse impact, the Lessee shall so notify the Agency and proceed to create and implement a transportation system management plan to mitigate the adverse impact. The Lessee shall complete implementation of the plan, and notify the Agency of such completion, within one (1) year of the first Adjustment Date.

## ARTICLE IV

### LEASE OF FACILITY AND RENTAL PROVISIONS

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

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

**Section 4.3      Rental Provisions.**

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

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

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

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

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

**Section 4.6      Reserved.**

**Section 4.7      Advances by Agency.** In the event the Lessee fails to make any payment or to perform or to observe any obligation required of it under this Agreement, the Agency, after first notifying the Lessee in writing of any such failure on its part (except that no prior notification of the Lessee shall be required in the event of an emergency condition that, in the reasonable judgment of the Agency, necessitates immediate action), may (but shall not be obligated to), and without waiver of any of the rights of the Agency under this Agreement or any other Project Document to which the Agency is a party, make such payment or otherwise cure any failure by the Lessee to perform and to observe its other obligations hereunder. All amounts so advanced therefor by the Agency shall become an additional obligation of the Lessee to the Agency, which amounts, together with interest thereon at the rate of twelve

percent (12%) per annum, compounded daily, from the date advanced, the Lessee will pay upon demand therefor by the Agency. Any remedy herein vested in the Agency for the collection of Rental Payments or other amounts due hereunder shall also be available to the Agency for the collection of all such amounts so advanced.

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

## 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)      Reserved.
- (b)      Description and Address of Project; Representation. The Project consists of the acquisition, construction, re-construction, renovation and furnishing of an approximately 1,100,000 square foot building on an approximately 140,000 square foot parcel of land to be subleased by the Lessee to Permitted Sublessees. The Facility Realty is located at 850 Third Avenue, Brooklyn, New York 11232, being Section 3, Block 671 and Lot 1. The Lessee and the Agency acknowledge 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 Lessee shall pay to the City all Real Estate Taxes with respect to the Facility Realty 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 Lessee agree, however, that the Lessee shall be required to pay PILOT with respect to the Facility Realty in accordance with the provisions of this Section 5.1, as follows: (i) with respect to the Land, PILOT shall be in the amounts determined pursuant to Sections 5.1(e), (h) and (j); and (ii) with respect to the Improvements, PILOT shall be in the amounts determined pursuant to Sections 5.1(f), (g), (h) and (j).

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

(iii) The Lessee acknowledges that 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.

(vi) Nothing herein contained shall be construed to prevent Lessee at any time from applying for any additional real estate tax abatements or reductions for the Facility.

(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) From the PILOT Commencement Date up until the first Implementation Date, PILOT payable with respect to the Land shall equal zero.

(ii) PILOT payable with respect to the Land for each of the successive five-year periods between the first Implementation Date and the last three and one-half years of the PILOT Term, shall equal Adjusted ELT less the SLP for the five-year period in question (as determined on the appropriate Adjustment Date); *provided, however*, that the following shall apply:

(1) PILOT shall never be less than zero;

(2) PILOT shall equal zero if the SLP is greater than or equal to the

~~SLP, and~~

(3) PILOT shall equal the DLP if the SLP is less than the OLP.



(iii) Within ninety (90) days following each Adjustment Date, the Lessee shall deliver to the Agency a certificate (in the form of Exhibit M-2 annexed hereto) certifying the Average Equivalent Full Time Employee Number for that Adjustment Date.

(iv) For the last three and one-half years of the PILOT Term, PILOT payable with respect to the Land shall equal the amounts provided below for the respective periods indicated. (For purposes of the following: "Fourth Land PILOT" shall mean the PILOT payable with respect to the Land as of the third Adjustment Date; and, in the event the third Implementation Date is delayed (i.e., the Completion Date is delayed because of Unavoidable Delays), the period indicated immediately below (i.e., 01/01/34 – 06/30/37) may be shortened and the scheduled PILOT amounts may be adjusted, all in the discretion of the Agency.)

01/01/34 - 06/30/34	[Fourth Land PILOT] + [(Adjusted ELT – Fourth Land PILOT) x (.02)]
07/01/34 - 06/30/35	[Fourth Land PILOT] + [(Adjusted ELT – Fourth Land PILOT) x (.04)]
07/01/35 - 06/30/36	[Fourth Land PILOT] + [(Adjusted ELT – Fourth Land PILOT) x (.06)]
07/01/36 - 06/30/37	[Fourth Land PILOT] + [(Adjusted ELT – Fourth Land PILOT) x (.08)]

(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. From the PILOT Commencement Date through June 30, 2033, PILOT payable with respect to the Existing Improvements shall equal Adjusted Initial CRET.

(2) Project Improvements. From the PILOT Commencement Date through June 30, 2033, PILOT payable with respect to the Project Improvements shall equal zero. Upon completion of the Project Improvements (and notwithstanding the foregoing sentence), the Lessee shall promptly request the appropriate officer of the City to reassess the Improvements.

(3) Additional Improvements. From the PILOT Commencement Date through and including June 30, 2033, PILOT payable with respect to the Additional Improvements, if any, shall equal the Adjusted CRET applicable to such Additional Improvements. Upon completion of Additional Improvements, if any, the Lessee shall promptly comply with the requirements of Section 3.5 and request the appropriate officers of the City to reassess the Improvements.

(4) From January 1, 2034, through June 30, 2037, PILOT payable with respect to the Improvements shall equal the amounts respectively indicated for the periods set forth below. (For purposes of the following: "Adjusted Initial CRET" applies only to the Existing Improvements; and, in the event the Completion Date is delayed because of Unavoidable Delays, the period indicated immediately below (i.e., 01/01/34 – 06/30/37) may be shortened and the scheduled PILOT amounts may be adjusted, all in the discretion of the Agency.)

01/01/34 - 06/30/34	[Adjusted Initial CRET] + [(Adjusted CRET – Adjusted Initial CRET) x (.02)]
07/01/34 - 06/30/35	[Adjusted Initial CRET] + [(Adjusted CRET – Adjusted Initial CRET) x (.04)]
07/01/35 - 06/30/36	[Adjusted Initial CRET] + [(Adjusted CRET – Adjusted Initial CRET) x (.06)]
07/01/36 - 06/30/37	[Adjusted Initial CRET] + [(Adjusted CRET – Adjusted Initial CRET) x (.08)]

(g) Payment Provisions.

(i) The Lessee agrees to pay all PILOT required to be paid under this Section 5.1, seven (7) Business Days prior to 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 Lessee with PILOT Bills. The Lessee understands and agrees that the failure of NYCDOF to send the Lessee a PILOT Bill shall not relieve the Lessee of its obligation hereunder to pay the amount of PILOT required in accordance with this Section 5.1. The Lessee may send all inquiries concerning PILOT Bills to [pilot@finance.nyc.gov](mailto:pilot@finance.nyc.gov) or: **PILOT Unit, NYC Department of Finance, 59 Maiden Lane, 22<sup>nd</sup> floor, New York, New York 10038.**

(ii) Until such time the Agency may in writing require otherwise, the Lessee shall pay PILOT to the PILOT Depository and the Lessee shall make such payments by certified check or by bank draft payable at a bank in New York, New York. Notwithstanding the foregoing, if at any time the annual PILOT payments due by the Lessee are equal to or greater than \$300,000, the Lessee shall make such payments by wire transfer and shall obtain the necessary wire transfer information from the NYCDOF.

(iii) Upon the occurrence of a PILOT Payment Default, the amount of PILOT so in default shall continue as an obligation of the Lessee and the Lessee agrees to pay 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 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 Lessee's right, to the extent permitted by law, to do the following:

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

(2) to apply for as-of-right benefits that would reduce Real Estate Taxes with respect to the Facility Realty (as if the Facility Realty were not exempt from Real Estate Taxes); *provided, however*, that the foregoing shall not be construed to reduce PILOT payable under the this Section 5.1.

(h) Apportionment of Payments after Cessation Date.

(i) The Agency shall cause the appropriate officer or officers of the City to return the Facility Realty to the tax rolls as of the Cessation Date. During the City Tax Fiscal

Year in which the Cessation Date occurs, the Lessee and/or other subsequent owner of the Facility Realty shall be responsible for paying the Real Estate Taxes due for the portion of such City Tax Fiscal Year that remains from and after the Cessation Date.

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

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

(i) *Sublettings.* If any portion of the Facility Realty is occupied by any Person other than the Lessee or Permitted Sublessees, for so long as such use and/or occupancy continues, Lessee 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) *Special Events of Default.* The PILOT shall automatically increase (without notice other than the prior notice required for certain Events of Default) in an amount equal to Adjusted ELT as to the Land and Adjusted CRET as to the Improvements if:

(1) on the first Adjustment Date, the number of Industrial Employees fails to equal at least 1,300 as calculated according to at least one of the following two methods: (A) the average for the twelve months preceding the first Adjustment Date, or (B) the annual average for the four years preceding the first Adjustment Date; or

(2) on Adjustment Dates subsequent to the first Adjustment Date, the number of Industrial Employees fails to equal at least 1,300 as calculated according to at least one of the following two methods: (A) the average of the twelve months preceding the Adjustment Date, or (B) the annual average for the five years preceding such Adjustment Date; or

(3) upon the occurrence of a default by the Lessee under Section 8.19(d) hereof.

(iii) *Events of Default.* Upon the occurrence of an Event of Default (other than the circumstances set forth in Section 5.1(i)(ii) above) and 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) in an amount equal to Adjusted ELT as to the Land and Adjusted CRET as to the Improvements.

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

**Section 5.2      Sales Tax Exemption.**

(a) Any exemption from Sales Taxes resulting from or occasioned by the Agency's involvement with the Project shall be limited to purchases of Exempt Property effected by the Lessee as agent for the Agency pursuant to the Sales Tax Letter, it being the intent of the parties hereto that no operating expenses of the Lessee and no purchases of other personal property (other than Exempt Property) shall be subject to an exemption from Sales Taxes because of the Agency's title to or leasehold interest in the Facility or involvement with the Project Work.

(b) The Lessee shall include language which is substantially in the form of paragraph 5 of the Sales Tax Letter (through an attached rider or otherwise) in and as part of each contract, agreement, invoice, bill or purchase order entered into by the Lessee as agent for the Agency in connection with the Project. If the Lessee shall fail to include, incorporate by reference or otherwise cause the contract, agreement, invoice, bill or purchase order to be, together with the vendor or contractor, subject to the above referenced language in substantially the form thereof, such contract, agreement, invoice, bill or purchase order, shall not be an undertaking on behalf of the Agency and shall not be entitled to any of the Benefits that the Agency can confer, and the Lessee shall not claim any sales or use tax benefits or exemptions with respect to any such contract, agreement, invoice, bill or purchase order, and the Lessee shall return to the Agency or pay at its direction any such benefits or exemptions so taken, together with interest on such amount at the annual rate of twelve percent (12%) per annum, compounded daily from the date of such taking.

(c) On the Commencement Date, the Agency shall make the Sales Tax Letter available to the Lessee in substantially the form of Exhibit H — "Form of Sales Tax Letter". The Agency, at the sole cost and expense of the Lessee, shall also execute such other authorizations, letters and documents (and such amendments to the Sales Tax Letter) as may be reasonably necessary to permit the Lessee to obtain the intended benefits hereunder. Subject to the terms of this Agreement, it is intended that the aggregate scope of the sales and use tax benefits received by the Lessee pursuant to this Agreement and the Sales Tax Letter shall be limited in both duration and amount as follows:

(i) The initial Sales Tax Letter shall be dated the Commencement Date and shall be effective for a term commencing on its date and expiring upon the earliest of (A) September 1, 2014, (B) the termination of this Agreement, or (C) the termination of the Sales Tax Letter pursuant to Section 9.2. If the initial Sales Tax Letter expires on September 1, 2014, neither of the circumstances set forth in the preceding clauses "(B)" and "(C)" have occurred, and the Substantial Completion Date has been extended due to Unavoidable Delays, the Agency shall promptly deliver to the Lessee a replacement Sales Tax Letter which shall expire on the earliest of (A) the Sales Tax Letter Expiration Date, (B) the termination of this Agreement, or (C) the termination of the Sales Tax Letter pursuant to Section 9.2.

(ii) The authorizations set forth in the Sales Tax Letter shall automatically be suspended twenty (20) days after notice to the Lessee that the Lessee shall be in default under this Agreement until the Lessee shall pay any amounts due, and perform all of its obligations, with respect to any such default.

(iii) The sales and use tax exemption to be provided pursuant to the Sales Tax Letter:

(A) shall not be available for any items of personalty or payment of any costs other than the costs of the Exempt Property,

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

(C) shall not be available for any date after the Sales Tax Letter shall have been suspended as provided in Section 5.2(c)(ii), provided, however, that in the event the Lessee shall thereafter cure any defaults under this Agreement, or the Agency shall thereafter waive such suspension, as applicable, the sales and use tax exemption shall again be available from the date of such cure or such waiver,

(D) shall not be available for any item the acquisition or leasing of which would otherwise be exempt from Sales Tax absent the involvement by the Agency,

(E) shall not be available for any cost of utilities, cleaning service or supplies or other costs of operation, and

(F) shall not be available subsequent to the expiration of the Sales Tax Letter.

(iv) In the event that the Lessee shall utilize the sales or use tax exemption authorization provided pursuant to the Sales Tax Letter in violation of the provisions of Section 5.2 (c)(iii), the Lessee shall promptly deliver notice of same to the Agency, and the Lessee shall, upon demand by the Agency, pay to or at the direction of the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the rate of twelve percent (12%) per annum compounded daily from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was availed of by the Lessee.

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

(vi) Section 874(9) of the Enabling Act and New York State Department of Taxation and Finance Form ST-60 "IDA Appointment of Project or Agent" ("~~Form ST-60~~") require that within thirty (30) days of the date that the Agency or its agent directly or indirectly appoint 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. Promptly following any such appointment by

or on behalf of the Lessee, the Lessee shall electronically submit to the Agency a Form ST-60 completed with the information required therein as provided in Annex B to the Sales Tax Letter.

(d) The Lessee shall observe and comply with the terms and conditions of the Sales Tax Letter including without limitation Annex B to the Sales Tax Letter relative to compliance with certain required procedures, and upon the termination, expiration or cancellation of the Sales Tax Letter, the Lessee shall promptly surrender the same to the Agency.

(e) Reference is made to Section 8.16(c) pursuant to which the Lessee has agreed to file (y) Form ST-340 (or any successor or additional mandated form) with regard to use of the Sales Tax Letter, and (z) a completed Sales Tax Exemption Report.

**Section 5.3      Mortgage Recording Tax Deferral.**

(a) Reserved.

(b) The Lessee acknowledges 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 that remains uncured beyond any applicable cure period as provided in Section 9.1 hereof.

[If there is no deferral of Mortgage Recording Taxes at closing, this paragraph will be replaced by the following: "On or before the Completion Date, the Lessee may require the Agency to defer 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 that remains uncured beyond any applicable cure period as provided in Section 9.1 hereof."]

(c) The Lessee acknowledges and agrees 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 except as otherwise provided in paragraph (d) of this Section 5.3.

(d) The Agency agrees that if, in connection with the refinancing of an Exempt Mortgage, the Lessee (i) causes the mortgagee of the Exempt Mortgage to assign the Exempt Mortgage to a new mortgagee, and/or (ii) causes the Exempt Mortgage to be modified, extended, consolidated or otherwise amended, the Agency will not object to any resulting continuation of the 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 (cc) if applicable, at the time the refinancing is closed and the Modified Exempt Mortgage is executed and delivered, the Lessee shall make the following payments to NYCDOF:

(i) Mortgage Recording Taxes with respect to any Gap Mortgage unless such Gap Mortgage is exempt from Mortgage Recording Tax by reason other than the Agency's exemption; and

(ii) 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 Lessee 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 Lessee agrees that, notwithstanding delivery by the Lessee 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 Lessee 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 Lessee for the Project and to accomplish the public purposes of the Act. In consideration therefor, the Lessee hereby agrees as follows:

(a) For purposes of this Section 5.4, the following terms shall have the meanings specified below:

**Benefits** shall mean, collectively:

(i) all real estate tax benefits that have accrued to the benefit of the Lessee 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 Lessee would have paid during the term of this Agreement (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 Taxes, and filing and recording fees.

**Operations Commencement Date** shall mean the July 1 occurring after the fourth anniversary of the Completion Date.

**Recapture Event** shall mean any one of the following events:

(i) The Lessee shall have failed to complete, or caused to be completed, the Initial Project Work by the Substantial Completion Date.

(ii) The Lessee shall have failed to complete, or caused to be completed, the Project Improvements by the Completion Date.

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

(iv) The Lessee shall have substantially changed the scope and nature of their operations at the Facility or some or all of the Tenants at the Facility to such extent that the Facility has ceased to be an Approved Facility.

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

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

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) an Unavoidable Delays, (y) a taking or condemnation by governmental authority of all or substantially all of the Facility Realty, or (z) the inability at law of the Lessee to rebuild, repair, restore or replace the Facility Realty after the occurrence of a Loss Event to substantially its condition prior to such Loss Event, which inability shall have arisen in good faith through no fault on the part of the Lessee, or any Affiliate, 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 Lessee if the Agency were 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 Lessee 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 after the Operations Commencement Date, the Lessee 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 Lessee, 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 Lessee on the Commencement Date, and (y) Benefit principal comprising real estate tax benefits shall be deemed to have accrued to the Lessee on each date upon which the Lessee shall make a payment of PILOT, and (z) Benefit principal comprising Sales Tax Savings shall be deemed to have accrued to the Lessee on each date upon which such Sales Tax Saving shall have been received by reason of the use by the Lessee of the Sales Tax Letter, provided, however, that if the Lessee 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 first day of the calendar year for which exemption was reported by the Lessee to the State Department of Taxation and Finance on Form ST-340, or, if the Lessee 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.

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

(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 of this Agreement the whole or part of the Facility shall be damaged or destroyed, or taken or condemned by a competent authority for any public use or purpose, or by agreement to which the Lessee and those authorized to exercise such right are parties, or if the temporary use of the Facility shall be so taken by condemnation or agreement (a "Loss Event"):

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

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

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

**Section 6.2** Loss Proceeds.

(a) The Agency and the Lessee shall cooperate and consult with each other in all matters pertaining to the settlement, compromise, arbitration or adjustment of any claim or demand on

account of any Loss Event, and the settlement, compromise, arbitration or adjustment of any such claim or demand shall, as between the Agency and the Lessee, be subject to the written approval of the Lessee.

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

**Section 6.3 Election to Rebuild or Terminate.**

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

(i) at its own cost and expense (except to the extent paid from the Net Proceeds), within two (2) years of the Loss Event, promptly and diligently rebuild, replace, repair or restore the Facility to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, regardless of whether or not the Net Proceeds derived from the Loss Event shall be sufficient to pay the cost thereof, and the Lessee shall not by reason of payment of any such excess costs be entitled to any reimbursement from the Agency, or

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

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE VII

### COVENANT OF THE AGENCY

**Section 7.1 Quiet Enjoyment.** The Agency covenants and agrees that, subject to the terms and provisions of the Permitted Encumbrances (and any other impairments of title whether or not appearing on the title insurance policy referred to in Section 3.8), so long as the Lessee shall pay the Rental Payments payable by it under this Agreement and shall duly observe all the covenants, stipulations and agreements herein contained obligatory upon it and an Event of Default shall not exist hereunder, the Agency shall not disturb the peaceful, quiet and undisputed possession of the Facility by the Lessee under this Agreement, and the Agency (at the sole cost and expense of the Lessee) shall from time to time take all necessary action to that end.

**ARTICLE VIII**  
**COVENANTS OF THE LESSEE**

**Section 8.1     Insurance.**

(a) **Definitions.** For purposes of this Section 8.1, the following terms shall have the meanings specified below:

**Certificate** means an ACORD certificate evidencing insurance.

**CGL** means commercial general liability insurance.

**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.

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

**Construction** means any construction, reconstruction, restoration, renovation, alteration and/or repair on, in, at or about the Facility Realty, including the Project Work or any other construction, reconstruction, restoration, alteration and/or repair required under this Agreement in connection with the Facility, provided, that, one or both of the following conditions applies to the foregoing: (i) the cost thereof, labor and materials combined, is \$500,000 or greater, or (ii) the work being performed, whether in whole or in part, is roof work or work that is performed at a height of more than eight (8) feet above the ground.

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

**Insured** means the Lessee.

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

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

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

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

**SIR** means self-insured retention.

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

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

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

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

(ii) U/E with \$24,000,000 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 \$25,000,000 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 \$2,000,000 combined single limit and \$2,000,000 for uninsured or under-insured vehicles. If neither of the Insureds owns any vehicles, each shall obtain auto liability insurance in the foregoing amounts for hired and non-owned vehicles. Notwithstanding, in the event that the Authorized Representative for the Lessee deliver a certificate to the Agency certifying that it does not own, hire, rent or uses a vehicle of any sort, the Agency shall deem such certifications to satisfy the requirements of this sub-section "iii."

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

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

(i) Each Insured shall obtain and maintain for itself Policies in accordance with all requirements set forth in Section 8.1(b), except that CGL and U/E shall be in an aggregate minimum amount of \$40,000,000 per project aggregate.

(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;

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

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

(iii) 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;

(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).

Notwithstanding the foregoing, the coverage amounts (for CGL and U/E) required in this subsection (c) may be modified provided that at no time during any period of Construction shall the combined aggregate of CGL and U/E be less than \$50,000,000.

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

(i) The Lessee shall cause each Policy (other than Worker's Compensation insurance) 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 in excess of \$25,000.

(iii) CGL shall not be subject to SIR.

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

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

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

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

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

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

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

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

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

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

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

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

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

*New York City Industrial Development Agency is an additional insured on a primary and non-contributory basis for both CGL and Umbrella/Excess. The referenced CGL is written on ISO Form CG-0001 without modification to the contractual liability or waiver-of-subrogation provisions therein, covering the following premises: 850 Third Avenue, Brooklyn, New York 11232;*

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

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

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

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

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

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

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

(h) Miscellaneous.

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

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

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

(iv) Throughout the term of this Agreement, delivery by an Insured of a Certificate evidencing auto liability insurance for hired and non-owned vehicles shall, unless



otherwise stated by the Lessee to the contrary, constitute a representation and warranty from the Insured to the Agency that the Insured does not own vehicles.

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

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

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

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

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

## Section 8.2 Indemnity.

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

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

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

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

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

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

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

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

(viii) any liability incurred by the Agency in connection with the excess profits disgorgement provisions under 40 U.S.C. Sec. 545(b)(8).

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

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

(d) Anything to the contrary in this Agreement notwithstanding, the covenants of the Lessee contained in this Section 8.2 shall be in addition to any and all other obligations and liabilities that the Lessee may have to any Indemnified Party in any other agreement or at common law, and shall remain in full force and effect after the termination of this Agreement until the later of (i) the expiration

of the period stated in the applicable statute of limitations during which a claim or cause of action may be brought and (ii) payment in full or the satisfaction of such claim or cause of action and of all expenses and charges incurred by the Indemnified Party relating to the enforcement of the provisions herein specified.

(e) The Lessee covenants and agrees that any failure by the United States of America, acting by and through its General Services Administration, to remediate all or a portion of the Facility shall not be a defense to any obligations of the Lessee under this Section 8.2 nor shall the Lessee assert such defense with respect to its obligations under this Section 8.2.

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

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

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

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

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

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

*FINANCIAL ASSISTANCE PROVIDED  
THROUGH THE  
NEW YORK CITY INDUSTRIAL  
DEVELOPMENT AGENCY  
Mayor Michael R. Bloomberg*

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

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

**Section 8.6      Environmental Matters.**

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

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

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

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

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

**Section 8.7      Employment Matters.**

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

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

(c) The Lessee hereby authorizes any private or governmental entity, including The New York State Department of Labor ("DOL"), to release to the Agency and/or NYCEDC, and/or to the successors and assigns of either (collectively, the "Information Recipients"), any and all employment information under its control and pertinent to the Lessee or the Tenants and the employees of the Lessee or of the Tenants to enable the Agency and/or NYCEDC to comply with its reporting requirements required by City Charter §1301 and any other applicable laws, rules or regulations. Information released or provided to Information Recipients by DOL, or by any other governmental entity, or by any private entity, or by the Lessee or by the Tenants, 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 of this Agreement.

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

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

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

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

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

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

#### **Section 8.9 Assignment, Transfer or Sublease.**

(a) The Lessee shall not at any time, except as permitted by Section 8.20; assign or transfer this Agreement 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 Lessee of the Agency in the form prescribed by the Agency, and such consent of the Agency to take into consideration the Agency's policies as in effect from time to time), and provided that:

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

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

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

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

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

(vi) any such assignee or transferee shall deliver to the Agency a 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 Lessee shall be in default under this Agreement; and

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

(b) The Lessee shall not at any time sublet any part of the Facility unless:

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

(ii) the Lessee delivers to the Agency a certificate of an Authorized Representative of the Lessee in the form attached hereto as Exhibit P certifying that the Lessee is in compliance with Section 8.19(d) hereof and will be continue to be in compliance with said section after entering into the Tenant Lease;

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

~~(iv) the Tenant shall not be a Non-Compliant Person;~~

(v) the Tenant Lease shall contain a description of the Tenant's operations and intended use of the leased premises, and, as executed by both the Lessee and the Tenant, the Rider to Sublease Agreement set forth as Exhibit O hereto;

(vi) the Tenant shall utilize the Facility in accordance with the Rider to Sublease Agreement set forth as Exhibit O hereto; and

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

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

(c) The Agency may at any time during the term of a Tenant Lease request the Lessee to cause the Tenant under a Tenant Lease to submit a completed Disclosure Statement in the form of Exhibit F hereto. If at any time during the term of a Tenant Lease, the Agency obtains information indicating that the Tenant under such Tenant Lease is a Non-Compliant Person (as such term is defined in the Rider to Sublease Agreement as set forth in Exhibit O hereto), the Lessee, on request by the Agency, shall cause such Tenant to provide to the Agency a completed background investigative questionnaire using the Agency's then-current form for such questionnaire.

(d) Within twenty (20) days after the date of execution of the Tenant Lease, the Lessee shall provide to the Agency (i) a fully executed copy of the Tenant Lease (including the Rider to Sublease Agreement set forth in Exhibit O hereto), (ii) the ACORD certificate evidencing that the Tenant has satisfied the insurance requirements set forth in the Rider to Sublease Agreement and (iii) the certificate required by Section 8.9 (b)(ii).

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

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

(g) The Lessee 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), (i) amend, modify, terminate or assign, or to suffer any material amendment or modification of any Tenant Lease entered into in accordance with this Section if such amendment, modification or assignment would cause the Lessee to be in default under any provision of this Agreement; or (ii) amend, modify or terminate the Rider to Sublease Agreement made a part of such Tenant Lease.

(h) For purposes of this Section 8.9, any license or other right of possession or occupancy granted by the Lessee with respect to the Facility (but excluding a right of use of and access to the Facility which does not include possession or occupancy such as, but not limited to, a cell tower and satellite dish) shall be deemed a Tenant Lease subject to the provisions of this Section 8.9.

(i) The Agency agrees to amend paragraph (b) of the definition of Non-Compliant Person (as defined in Exhibit O hereto) to reflect any lesser time period that may be adopted by the City in its sole discretion.

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

(a) Neither the Lessee nor the Agency shall sell, assign, encumber (other than Permitted Encumbrances), convey or otherwise dispose of its respective title to or leasehold estate in the Facility, including the Improvements, or any part of the Facility or interest therein during the term of this Agreement, 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. In addition, the Lessee shall not convey or otherwise dispose of its title to the Facility within ten (10) years from the date of the Deed without the prior written consent of the Agency and NYCEDC.

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

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

(d) No conveyance or release effected under the provisions of this Section 8.10 shall entitle the Lessee to any abatement or diminution of the Rental Payments payable under Section 4.3 or



any other payments required to be made by the Lessee under this Agreement or any other Project Document to which it shall be a party.

**Section 8.11     Discharge of Liens.**

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

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

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

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

**Section 8.14     Automatically Deliverable Documents.**

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

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

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

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

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

(e) Within 120 days after the close of each Fiscal Year during which action was taken by the Lessee pursuant to Section 3.5, the Lessee shall deliver written notice of the Additional Improvement(s) in excess of \$50,000 to the Agency.

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

(g) Promptly following completion of the Project, but no later than five (5) Business Days following the receipt of a temporary or permanent certificate of occupancy with respect to the Facility Realty, the Lessee shall deliver to the Agency the certificate as to Project completion in substantially the form set forth in Exhibit G-2 — "Form of Project Completion Certificate", together with all attachments required thereunder, and the original of the Sales Tax letter and all copies thereof.

(h) Within five (5) Business Days following any appointment of an agent in connection with the use of the Sales Tax Letter as provided in Section 5.2(c)(vi), the Lessee shall submit Form ST-60 electronically to the Agency as provided therein.

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

**Section 8.15 Requested Documents.** Upon request of the Agency, the Lessee shall deliver or cause to be delivered to the Agency within thirty (30) Business Days of the date so requested:

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

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

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

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

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

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

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

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

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

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

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

(b) Annually, by August 1 of each year, commencing in 2012, until the termination of this Agreement, the Lessee shall submit or cause to be submitted to the Agency the Annual Employment and Benefits Report relating to the period commencing July 1 of the previous year and ending June 30 of the year of the obligation of the filing of such report, in substantially the form set forth in Exhibit N hereto (or such replacement and/or successor form as may be required by the Agency as a result of a change in law or as required by New York States agencies ), certified as to accuracy by an officer of the Lessee. Upon termination of this Agreement, the Lessee shall submit or cause to be submitted 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 Lessee.

(c) If and for so long as the same shall be required by law, the Lessee shall annually (currently, by each February 28 with respect to the prior calendar year) file a statement with the New York State Department of Taxation and Finance, on a form and in a manner and consistent with such regulations as is or may be prescribed by the Commissioner of the New York State Department of Taxation and Finance (Form ST-340 or any successor or additional mandated form), of the value of all Sales Tax Savings claimed by the Lessee or agents of the Lessee 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), including consultants or subcontractors of such agents, under the authority granted pursuant to this Agreement. The Lessee shall furnish a copy of such annual statement to the Agency at the time of filing with the Department of Taxation and Finance. Should the Lessee fail to comply with the foregoing requirement, the Lessee shall immediately cease to be the agent for the Agency in connection with the Project (such agency relationship being deemed to be immediately revoked) without any further action of the parties, the Lessee shall be deemed to have automatically lost its authority as agent of the Agency to purchase and/or lease Exempt Property in the Agency's behalf, and shall desist immediately from all such activity, and shall immediately and without demand return to the Agency the Sales Tax Letter issued to the Lessee by the Agency that is in the Lessee's possession or in the possession of any agent of the Lessee. 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 Taxes under the laws of the State. To the extent that the Lessee shall have received Sales Tax Savings, the Lessee agrees to include information with respect thereto in its Sales Tax Exemption Report required to be filed pursuant to Section 8.16(e).

(d) The Lessee shall file with the Agency by February 1 of each year commencing February 1, 2012, a certificate of an Authorized Representative of the Lessee with respect to all tenancies in effect at the Facility, if any, in the form of the Subtenant Survey attached hereto as Exhibit M — "Subtenant Survey".

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

(f) The Lessee shall file with Agency by February 1 of each year commencing February 1, 2012, a certificate of an Authorized Representative of the Lessee certifying that (i) it is in compliance with Section 8.19(d) hereof, (ii) no portion of the Facility is being used or occupied for any purpose that does not qualify as a Retail Use, an Industrial Use, or an Other Use, and (iii) after the first Adjustment Date, that at least 1,300 Equivalent Full Time Employees are Industrial Employees.

(g) If the Lessee shall have had the benefit of a Business Incentive Rate at any time during the twelve-month period terminating on the immediately preceding June 30, the Lessee shall

deliver to the Agency by the next following August 1, a completed Business Incentive Rate Report with respect to such twelve-month period, in the form prescribed by the Agency.

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

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

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

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

**Section 8.18 Compliance with Legal Requirements.**

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

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

Agency (which consent shall not be unreasonably withheld or delayed), initiate, join in or consent to any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses that may be made of the Facility or any part thereof.

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

**Section 8.19 Operation as Approved Facility and as a "Project"; Use and Restrictions on Use of the Facility.**

(a) The Lessee will not take any action, or suffer or permit any action, if such action would cause the Facility not to be the Approved Facility.

(b) The Lessee will not fail to take any action, or suffer or permit the failure to take any action, if such failure would cause the Facility not to be the Approved Facility.

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

(d) The Lessee covenants and agrees that at all times during the term of this Agreement no more than fifteen percent (15%) of the rentable square footage of the Facility may be used, in the aggregate, for Retail Uses and Other Uses. Notwithstanding the foregoing, such fifteen percent (15%) may be expanded to the extent that NYCEDC has consented to "Additional Uses" pursuant to Section 7(d) of the NYCEDC Contract, provided the Lessee has notified the Agency thereof by providing to the Agency a copy of NYCEDC's written consent. The Lessee agrees that any portion of the Facility that is not vacant, or that is not used (to the restricted extent permitted in this subsection "d") for Retail Uses or Other Uses or Additional Uses, shall be occupied and used for Industrial Uses.

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

(a) The Lessee covenants and agrees that at all times during the term of this Agreement (except resulting from a permitted transfer pursuant to Section 8.9, or as provided below in this Section 8.20), 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 the Lessee or a change in the relative ownership and/or Control of the Lessee or any of the existing Principals, except in each case as provided in Section 8.20(c) and (d).

(b) With the prior written consent of the Agency and subject to Section 8.20(d), the Lessee may Merge or participate in a Transfer if the following conditions are satisfied on or prior to the Merger or Transfer, as applicable:

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

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

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

(ii) when the Lessee is not the surviving, resulting or transferee Entity (the "Successor Lessee"),

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

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

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

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

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

(6) the Successor Lessee shall have delivered to the Agency, in form

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

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

(d) In addition to the foregoing, until the later of (x) completion of the Minimum Build for the Project, and (y) the fifth (5<sup>th</sup>) anniversary of completion of the Federal Building Minimum Build (as such terms are defined in Section 4(g)(1) the NYCEDC Contract, a copy of which is set forth in Exhibit K hereto), the prior written approval of the Agency and NYCEDC in their sole discretion shall be required for (i) any sale, transfer or assignment of membership interests of the Lessee, (ii) any issuance of any additional membership interest in the Lessee, and (iii) any change in the interest of any member of the Lessee in the Lessee. Notwithstanding the foregoing, if the actions set forth in clauses (i), (ii) and (iii) above, effect a transfer to existing beneficial owners of such interest, or to members of their respective families or to trusts for the benefit of any such persons, the same shall not require prior approval of the Agency and NYCEDC provided that Selim Rusi or Marvin Schein, or, after the death or incapacity of either or both of Selim Rusi or Marvin Schein, adult members of their respective families retain control or continue to be responsible for the day to day management and operations of the Lessee. With respect to any transfer which requires the approval by the Agency and/or NYCEDC, the Lessee agrees to provide the Agency and NYCEDC with such information as the Agency and NYCEDC shall require in deciding whether to give any approval required hereby. Any request for approval by the Agency and NYCEDC of any of the above matters, and any notice to the Agency and NYCEDC, and any notice of approval or disapproval by the Agency and NYCEDC, shall be in writing and delivered to the Agency as set forth in Section 11.5 hereof and to NYCEDC as set forth in Section 13 of the NYCEDC Contract.

**Section 8.21 Further Assurances.** The Lessee will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such further acts, instruments, conveyances, transfers and assurances, at the sole cost and expense of the Lessee, as the Agency deems reasonably necessary or advisable for the implementation, effectuation, correction, confirmation or perfection of this Agreement and any rights of the Agency hereunder and under any other Project Document.

## ARTICLE IX

### REMEDIES AND EVENTS OF DEFAULT

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



(a) Failure of the Lessee to pay PILOT in accordance with Section 5.1 on or before the due date provided in a PILOT Bill and in the amount required in a PILOT Bill;

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

(c) The occurrence of a Recapture Event;

(d) Failure of the Lessee to observe and perform any covenant or agreement on its part to be performed under Section 8.9 or 8.19;

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

(f) Failure of the Lessee to observe and perform any covenant, condition or agreement on its part to be performed under Sections 3.9, 3.10, 3.11, 5.1 (except as set forth in Section 9.1(a)), 5.2, 5.3, 5.4, 8.2, 8.3, 8.8, 8.9, 8.11, 8.13, 8.17, 8.18, 8.20, 9.8, 11.2 or 11.3 or Article VI, and continuance of such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nature of such default from the Agency;

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

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

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

(j) A proceeding or case shall be commenced, without the application or consent of the Lessee or any other Guarantor in any court of competent jurisdiction, seeking, (i) liquidation, reorganization, dissolution, winding up or composition or adjustment of debts, (ii) the appointment of a trustee, receiver, liquidator, custodian or the like of the Lessee or any other Guarantor or of all or any substantial part of its respective assets, or (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts, and such proceeding or

case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of ninety (90) days; or any order for relief against the Lessee or any other Guarantor shall be entered in an involuntary case under the Federal Bankruptcy Code; the terms "dissolution" or "liquidation" of the Lessee or any other Guarantor as used above shall not be construed to prohibit any action otherwise permitted by Section 8.20, or Section 3.6 of the Guaranty Agreement;

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

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

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

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

(o) An "Event of Default" under the Guaranty Agreement, the NYCEDC Contract or any other Permitted Encumbrance, including any Mortgage, shall occur and be continuing beyond the expiration of any applicable notice or cure period;

(p) A reversion of the fee estate of the Lessee to NYCEDC pursuant to the Deed.

**Section 9.2 Remedies on Default.** (a) Whenever any Event of Default referred to in Section 9.1 shall have occurred and be continuing after the expiration of any applicable notice or cure period, 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 of this Agreement shall be deemed to have expired on such date of termination as if such date were the original Expiration Date of this Agreement) in which case this Agreement and all of the estate, right, title and interest herein granted or vested in the Lessee shall cease and terminate, and convey all of the Agency's right, title and interest in the Facility to the Lessee, which the Agency may accomplish by executing and recording, at the sole cost and expense of the Lessee, lease termination agreements to terminate the Company Lease and this Agreement of record as required by law and a bill of sale for the conveyance of the Facility Personalty to the Lessee (to the extent of any interest, if any, of the Agency in the Facility Personalty). The Lessee hereby waives delivery and acceptance of such termination agreements as a condition to their validity, and appoints the Agency its true and lawful agent and attorney-in-fact (which appointment shall be deemed to be an agency coupled with an interest) with full power of substitution to file on its behalf all affidavits, questionnaires and other documentation necessary to accomplish the recording of such termination agreements;

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

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

(iv) The Agency may suspend or terminate the Sales Tax Letter or require the Lessee to surrender the Sales Tax Letter to the Agency for cancellation.

(v) The Agency may require the Lessee 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 Lessee from the Lessee's obligations hereunder, including the obligations of the Lessee under Sections 5.1 (until such time as a Cessation Date occurs and, by reason thereof, the Lessee shall again pay Real Estate Taxes with respect to the Facility Realty), 5.2, 5.3, 5.4, 8.2, 9.2, 9.6, 9.7, 9.8, 11.4, 11.5, 11.6, 11.11, 11.13 and 11.14, all of which shall survive any such action.

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

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

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

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

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

**Section 9.8**      **Late Delivery Fees.**

(a) In the event the Lessee shall fail:

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

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

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

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

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

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

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

## ARTICLE X

### TERMINATION

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

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

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

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

**Section 10.3 Actions Upon Termination.**

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

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

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

(iii) perform all accrued obligations hereunder,

(iv) surrender the Sales Tax Letter to the Agency for cancellation, if applicable, and

(v) 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 Lessee's performance of its obligations pursuant to Section 10.3(a), deliver or cause to be delivered to the Lessee:

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

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

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

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

**Section 10.4 Survival of Lessee Obligations.** Upon release of the Agency's interest in the Facility pursuant to Section 10.2 or 10.3, this Agreement and all obligations of the Lessee hereunder shall be terminated except the obligations of the Lessee under Sections 5.1 (until such time as the Agency shall cease to have a leasehold estate in the Facility and, by reason thereof, the Lessee shall again pay Full Land Taxes and CRET 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 Unavoidable Delay.** In case by reason of Unavoidable Delay 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 Unavoidable Delay in writing to the other party within a reasonable time after occurrence of the event or cause (other than (i) the obligations of the Lessee to make any payments required under the terms hereof, or (ii) the obligations of the Lessee to comply with Sections 8.1 or 8.2), so far as they are affected by such Unavoidable Delay, 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 Lessee shall promptly notify the Agency upon the occurrence of each Unavoidable Delay, describing such Unavoidable Delay and its effects in reasonable detail. The Lessee shall also promptly notify the Agency upon the termination of each such Unavoidable Delay. 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 Unavoidable Delay and any of the contentions contained in any such notice received from the Lessee.

**Section 11.2** Priority. The Company Lease and this Agreement shall be subject and subordinate to any Mortgage and to the mortgage liens and security interests so created thereby and the Agency, within ten (10) days of a request by the Lessee and at the sole cost and expense of the Lessee, agrees to confirm the same in writing to the holder of any such Mortgage; provided, however, that nothing in any Mortgage shall impair the Agency's ability to enforce its rights against the Lessee or any other Guarantor.

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

**Section 11.4** Service of Process. The Lessee represents that it is subject to service of process in the State and covenants that it will remain so subject until all obligations, covenants and agreements of the Lessee under this Agreement shall be satisfied and met. If for any reason the Lessee should cease to be so subject to service of process in the State, the Lessee hereby irrevocably consents to the service of all process, pleadings, notices or other papers in any judicial proceeding or action by designating and appointing Marvin Schein and Selim Rusi, c/o Salmar Properties, LLC, 120 Broadway, 36<sup>th</sup> Floor, New York New York 10271, as its agent upon whom may be served all process, pleadings, notices or other papers which may be served upon the Lessee as a result of any of its obligations under this Agreement. If such appointed agent shall cease to act or otherwise cease to be subject to service of process in the State, the Lessee hereby irrevocably designates and appoints the Secretary of State of the State of New York as its agent upon whom may be served all process, pleadings, notices or other papers which may be served upon the Lessee as a result of any of its obligations under this Agreement; provided, however, that the service of such process, pleadings, notices or other papers shall not constitute a condition to the Lessee's obligations hereunder.

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

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

**Section 11.5** Notices. All notices, certificates or other communications hereunder shall be sufficient if sent (i) by registered or certified United States mail, return receipt requested and postage prepaid, (ii) by a nationally recognized overnight delivery service for overnight delivery, charges prepaid or (iii) by hand delivery, with a copy, in each case, by electronic mail, 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 copies to the  
Executive Director of the Agency and the  
Director of Compliance at the  
same address)

and

(2) if to the Lessee, to

Salmar Properties, LLC  
120 Broadway, 36<sup>th</sup> Floor  
New York, New York 10271  
Attention: Marvin Schein and Selim Rusi  
[marvos@aol.com](mailto:marvos@aol.com); [srusi@benmaintenance.com](mailto:srusi@benmaintenance.com)

with a copy to

Ackerman, Levine, Cullen, Brickman & Limmer, LLP  
1010 Northern Boulevard  
Great Neck, New York 11021  
Attention: Leslie J. Levine, Esq.  
[llevine@alcllp.com](mailto:llevine@alcllp.com)

and

Jacobi, Sieghardt, Bousanti, Piazza & Fitzpatrick, P.C.  
235 Forest Avenue  
Staten Island, New York 10301  
Attention: Mordecai Jacobi, Esq.  
[jsbbplst@aol.com](mailto:jsbbplst@aol.com)

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

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



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

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

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

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

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

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

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

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

**Section 11.13 Waiver of Trial by Jury.** The Lessee does hereby expressly waive all rights to a trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions


of this Agreement or any matters whatsoever arising out of or in any way connected with this Agreement, the Lessee's obligations hereunder, the Facility, the Project, the relationship between the Agency and the Lessee, the Lessee's ownership, use or occupancy of the Facility and/or any claim for injury or damages.

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

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

**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, General Counsel or Vice President for Legal Affairs and the Lessee has caused its name to be hereunto subscribed by its duly Authorized Representative, all being done as of the year and day first above written.

**NEW YORK CITY INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
Richard E. Marshall  
Vice President for Legal Affairs

**SALMAR PROPERTIES, LLC**

By: Salmar Realty, LLC, its  
Managing Member

By: \_\_\_\_\_  
Marvin H. Schein, Member

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, General Counsel or Vice President for Legal Affairs and the Lessee has caused its name to be hereunto subscribed by its duly Authorized Representative, all being done as of the year and day first above written.

**NEW YORK CITY INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Richard E. Marshall  
Vice President for Legal Affairs

**SALMAR PROPERTIES, LLC**

By: Salmar Realty, LLC, its  
Managing Member

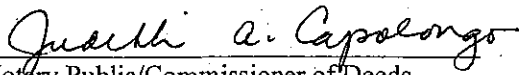
By:  \_\_\_\_\_  
Marvin H. Schein, Member

STATE OF NEW YORK )

: ss.:

COUNTY OF NEW YORK )

On the 20<sup>th</sup> day of September, in the year 2011, before me, the undersigned, personally appeared Richard E. Marshall, 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/Commissioner of Deeds

JUDITH A. CAPOLONGO  
Commissioner of Deeds, City of New York  
No. 5-1425  
Cert. Filed in New York County  
Commission Expires October 23, 2011

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

On the 29 day of September, in the 2011, before me, the undersigned, personally appeared Marvin H. Schein, personally known to me or proved to me on the basis of satisfactory evidence to me the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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

ALBERT L RISI  
Notary Public, State of New York  
No. 01R16192988  
Qualified in Richmond County  
Commission Expires 09/08/2012

**APPENDICES**

Appendices-1

NY:1348523.11

**EXHIBIT A**  
**DESCRIPTION OF THE LAND**



## ***First American Title Insurance Company***

Title No. CHAR 11-12630  
Block 671 Lot 1 - Kings County

### **SCHEDULE A**

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

BEGINNING at a point where the easterly line of Second Avenue intersects the prolongation of the northerly line of Thirty- First Street

RUNNING THENCE North 38 degrees 23 minutes 03 seconds East, along the easterly line of Second Avenue, 200.35 feet to its intersection with the prolongation of the southerly line of said Thirtieth Street;

RUNNING THENCE South 51 degrees 36 minutes 57 seconds East along the prolongation of the southerly line of said Thirtieth Street and the southerly line of said Thirtieth Street for a distance of 700.00 feet to its intersection with westerly line of said Third Avenue;

RUNNING THENCE South 38 degrees 23 minutes 03 seconds West, along the westerly line of said Third Avenue, 200.35 feet to its intersection with the northerly line of said Thirty-First Street ;

RUNNING THENCE North 51 degrees 36 minutes 57 seconds West, along the northerly line of said Thirty-First Street and continuing along the northerly prolongation of said Thirty-First Street for a distance of 700.00 feet to the point of BEGINNING (being 3.220 acres of land more or less)

Grantor further assigns to the Grantee and its successors and assigns, certain access rights in the land owned by the United States of America under custody and control of the Federal Bureau of Prisons, that lies along the northeasterly boundary of the Property, commonly known as 30th Street, between 2nd and 3rd Avenue. Said access rights are assigned subject to specific conditions and restrictions set forth herein.

1. A perpetual and non-exclusive right of access to the eastern end of 30th Street, running from its intersection with Third Avenue to the existing fence, approximately 61 feet, for access to the existing street entrance at the rear of Federal Building #2. All deliveries accessing the area shall be subject to inspection by United States of America Federal Bureau of Prisons Metropolitan Detention Center (MDC), Brooklyn staff. Access may be temporarily suspended at the discretion of the Warden, MDC Brooklyn, should it be determined by the Warden, MDC Brooklyn, that access would likely create disruptions to safe and orderly operation of the MDC.

2. A perpetual and non-exclusive right of access to pass and repass over and across a portion of 30th Street, between 2nd and 3rd Avenues that measures 20 feet from the rear of Federal Building #2 for the following purpose: trucks and construction equipment for rehabilitation and repair work to Federal Building #2. Access will be in accord with and subject to the provisions of Paragraph 4 below.

3. A perpetual and non-exclusive right of access to pass and repass over and across a portion of 30th Street, between 2nd and 3rd Avenues, that measures 30' 1" from the rear of Federal Building #2 for the following purposes: Emergency vehicles and emergency egress from Federal Building #2; and, the installation, maintenance and repair of utilities in and under 30th Street and the transformers adjacent to Federal Building #2. Access will be in accord with and subject to the provisions of Paragraph 4 below. The MDC will not place anything in this area that will permanently encroach upon the area subject to this right of access, and this restriction shall be binding on any assigns of the MDC.

**EXHIBIT B**

**DESCRIPTION OF THE FACILITY PERSONALTY**

Exhibit B-1

NY:1348523.11

EXHIBIT C

AUTHORIZED REPRESENTATIVE

LESSEE:

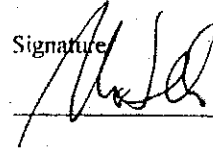
Name

Title

Signature

Marvin H. Schein

Manager of Managing Member



Selim Rusi

Manager of Managing Member

GUARANTOR:

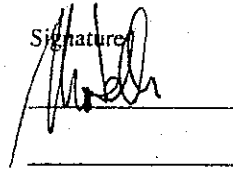
Name

Title

Signature

Marvin H. Schein

Manager



Name

Title

Signature

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Name

Title

Signature

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

[TO BE COMPLETED BY LESSEE]

**EXHIBIT D-1**

**PRINCIPALS**

**LESSEE:**

Name

Title

Marvin H. Schein

Manager of Managing Member

Selim Rusi

Manager of Managing Member

**EXHIBIT D-2**

**OWNERS OF THE LESSEE**

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

<b>ENTITY OWNERS</b>	
<b>Name</b>	<b>% Ownership or Control of the Lessee</b>
Schein Family Partners LLC	49.5%
S. Susi Family LLC	49.5%
Salmar Realty, LLC	1%, Managing Member

<b>OWNERS OF THOSE ENTITIES THAT OWN OR CONTROL MORE THAN 10% OF THE LESSEE ("10% ENTITIES")</b>		
<b>10% Entity (Name And Actual %)</b>	<b>Individual And Entity Owners</b>	<b>% Ownership or Control</b>
S. Rusi Family LLC	See attached Schedule A	
Schein Family Partners LLC	See attached Schedule B	

"SCHEDULE A"

**S. RUSI FAMILY LLC 27-1841877**

**List of Member Percentage, I.D. Number and Address**

<u>Member Name and Address</u>	<u>% Interest</u>	<u>EIN/SSN</u>
Selim Rusi, Sr. 177 Benedict Road Staten Island, NY 10304	100	090-48-3048

" SCHEDULE B "

**Ownership Analysis**

Partner Number	Partner Name	12/31/2010 Percent Ownership
<i>Schein Family Partners LLC</i>		
1	Trust U/ART 5TH U/W/O Henry Schein F/B/O Marvin Schein	1.9864%
2	Trust U/ART 3RD Henry Schein F/B/O Peter Schein	1.0108%
3	Trust U/ART 3RD Henry Schein F/B/O Kate Schein	1.0419%
4	Charles Schein	0.1438%
5	Michael Schein	0.1680%
6	Marvin Schein 1993 Trust (Final in 1998 - continued in a Grantor	1.6433%
7	Trust U/Art 2nd F/B/O Charles Schein U/W/O Esther Schein	0.0487%
8	Trust U/Art 2nd F/B/O Michael Schein U/W/O Esther Schein	0.0487%
9	Marvin Schein	0.0000%
10	Michael Schein 2004 Trust U/D 10/8/98	2.0566%
11	Peter A Schein 2004 Trust U/D 10/8/98	2.0566%
12	Kate-Ann Schein 2004 Trust U/D 10/8/98	2.0566%
13	Charles M Schein 2004 Trust U/D 10/8/98	2.0566%
14	Michael Schein 2004 Trust U/D 4/6/2000	6.8714%
15	Peter A Schein 2004 Trust U/D 4/6/2000	4.7971%
16	Kate-Ann Schein 2004 Trust U/D 4/6/2000	5.8764%
17	Charles M Schein 2004 Trust U/D 4/6/2000	6.7423%
22	Marvin H. Schein 2008 GRAT	8.8323%
23	Marvin H. Schein 2009 GRAT	1.2765%
24	Marvin H. Schein 2002 Family Trust	15.1023%
25	Marvin Schein 2010 GRAT	29.1838%
26	Clause Second Marvin H Schein 2002 Family trust fbo Peter Schei	1.5000%
27	Clause Second Marvin H Schein 2002 Family trust fbo Charles Sch	1.5000%
28	Clause Second Marvin H Schein 2002 Family trust fbo Michael Sc	1.5000%
29	Schein 2010 Grandchildren's Trust	1.5000%
		100.0000%

\* Ownership percentages change each year due to requisite annuity distributions by the listed trusts to Marvin Schein and the transfer by Mr. Schein of the interests so distributed into new trusts for estate planning purposes. The above percentages represent the most recent percentages that can be calculated at this time.

**EXHIBIT E**

**PROJECT COST BUDGET**

	Mortgage Loan*	Funds of Lessee	Total
Land and Building Acquisition	\$ - 0 -	\$10,000,000	\$10,000,000
Renovation/Building Improvements	26,853,143		
Equipment	4,970,000		
Fees/Other Soft Costs	<u>2,606,289</u>		
Total	<u>\$34,429,432</u>	<u>\$10,000,000</u>	<u>\$44,429,432</u>

\* On the Commencement Date, the Lessee, as debtor, and the Agency, as mortgager entered into a Mortgage, Assignment of Rents, Security Agreement and Fixture Filing (Fee and Leasehold), dated September 22, 2011, in the principal amount of \$30,000,000.



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 September 1, 2011, between the Agency and Salmar Properties, LLC, a limited liability company 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 or the City, unless such default or breach has been waived in writing by the Agency or the City, as the case may be;

(2) has been convicted of a felony and/or any crime involving moral turpitude in the preceding ten (10) years;

(3) has received written notice of default in the payment to the City of any taxes, sewer rents or water charges in excess of \$5,000 that has not been cured or satisfied, unless such default is then being contested with due diligence in proceedings in a court or other appropriate forum; or

(4) has, at any time in the three (3) preceding years, owned any property which, while in the ownership of such Person, was acquired by the City by in rem tax foreclosure, other than a property in which the City has released or is in the process of releasing its interest to such Person pursuant to the Administrative Code of the City.

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

"City" shall mean The City of New York.

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

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

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

"Person" shall mean an individual or any Entity.

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

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

[NAME OF CERTIFYING ENTITY]

By:

\_\_\_\_\_  
Name:

Title:

EXHIBIT G-1

**SUBSTANTIAL COMPLETION CERTIFICATE OF LESSEE AS REQUIRED BY SECTION 3.3(F) OF THE LEASE AGREEMENT**

The undersigned, an Authorized Representative (as defined in the Lease Agreement referred to below) of Salmar Properties, LLC, a limited liability company organized and existing under the laws of the State of New York (the "Lessee"), HEREBY CERTIFIES that this Certificate is being delivered in accordance with the provisions of Section 3.3(f) of that certain Agency Lease Agreement, dated as of September 1, 2011 (the "Lease Agreement"), between the New York City Industrial Development Agency (the "Agency") and the Lessee, and FURTHER CERTIFIES THAT (capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in the Lease Agreement):

(i) the Initial Project Work is complete; and

(ii) the Agency has good and valid merchantable title to the Facility Personalty and has a good and valid leasehold estate in the Facility Realty, and all property constituting the Facility is subject to the Company Lease (other than the Facility Personalty), the Lease Agreement, subject only to Permitted Encumbrances; and

(iii) to the extent available, attached hereto is one of the following (check only one and attach the indicated document):

- certificate of occupancy, or
- partial temporary certificate of occupancy, or
- temporary certificate of occupancy, or
- amended certificate of occupancy, or
- letter of no objection; or
- none of the foregoing is available.

(iv) in accordance with all applicable laws, regulations, ordinances and guidelines, the portion(s) of Facility covered by the temporary certificate of occupancy, if any, are ready for occupancy, use and operation for its intended purpose under the Lease Agreement and such occupancy, use and operation has in fact commenced; and

(v) check as applicable:

- all costs for Initial Project Work have been paid, or
- all costs for Initial 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;

[ATTACH to this Certificate copies of all such releases of liens.]

(vii) attached to this Certificate is evidence that all real property taxes and assessments, and payments in lieu of taxes, if any, due and payable under Sections 5.1 and 8.17 of the Lease Agreement in respect of the Facility have been paid in full;

(viii) attached hereto is evidence that the Facility has received LEED Core & Shell Silver Certification;

(ix) attached hereto is evidence of the Environmental Remediation required by Section 3.9 of the Lease Agreement; and

(xi) the Initial Project Work was completed in accordance with Section 3.10 of the Lease Agreement and attached hereto is a certificate of the Lessee's architect certifying that the Initial Project Work conforms to *Standards for Preservation Guidelines for Historic Building*.

*Notwithstanding anything herein or elsewhere that may be inferred to the contrary, the undersigned hereby understands and agrees on behalf of the Lessee as follows:* (i) the Agency does not waive its right to require delivery of releases-of-liens in connection with the Cost of Work; and (ii) 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 (iii) this Certificate shall be deemed incomplete if costs of the Initial Project Work are due, unpaid, and not being contested in good faith; and (iv) this Certificate shall be deemed incomplete if, in the Agency's sole discretion, the Lessee is not contesting in good faith the payment of the Cost of Work when such payment is otherwise due; and (v) the Certificate shall be deemed incomplete if, in the Agency's sole discretion, the Lessee has unreasonably failed to bond or otherwise discharge the Cost of Work when payment for same is due.

This Certificate is given without prejudice to any rights of the Lessee against third parties existing on the date hereof or which may subsequently come into being and no Person other than the Agency may benefit from this Certificate.

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

**SALMAR PROPERTIES, LLC**

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

Name:

Title:

Exhibit G-1-2

EXHIBIT G-2

PROJECT COMPLETION CERTIFICATE OF LESSEE AS REQUIRED BY SECTIONS 3.3(G)  
AND 8.14(G) OF THE LEASE AGREEMENT

The undersigned, an Authorized Representative (as defined in the Lease Agreement referred to below) of Salmar Properties, LLC, a limited liability company organized and existing under the laws of the State of New York (the "Lessee"), HEREBY CERTIFIES that this Certificate is being delivered in accordance with the provisions of Section 3.3(g) and 8.14(g) of that certain Agency Lease Agreement, dated as of September 1, 2011 (the "Lease Agreement"), between the New York City Industrial Development Agency (the "Agency") and the Lessee, and FURTHER CERTIFIES THAT (capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in the Lease Agreement):

(i) the Project Work is finished and the Project Improvements have been completed substantially in accordance with the plans and specifications therefor and the date of completion of the Project Improvements was \_\_\_\_\_; and

(ii) the Agency has good and valid merchantable title to the Facility Personalty and has a good and valid leasehold estate in the Facility Realty, and all property constituting the Facility is subject to the Company Lease (other than the Facility Personalty), the Lease Agreement, subject only to Permitted Encumbrances; and

(iii) attached hereto is one of the following (check only one and attach the indicated document):

- certificate of occupancy, or
- temporary certificate of occupancy.

(iv) other than as provided pursuant to "iii" preceding, 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 contemplated under the Lease Agreement; and

(v) in accordance with all applicable laws, regulations, ordinances and guidelines, the Facility is ready for occupancy, use and operation for its intended purpose under the Lease Agreement and such occupancy, use and operation has in fact commenced; and

(vi) 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

(vii) 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;

**[ATTACH to this Certificate are copies of all such releases of liens.]**

(viii) attached to this Certificate is evidence that all real property taxes and assessments, and payments in lieu of taxes, if any, due and payable under Sections 5.1 and 8.17 of the Lease Agreement in respect of the Facility have been paid in full;

(ix) the NYCDOT Requirements have been completed in accordance with Section 3.11 of the Lease Agreement;

*Notwithstanding anything herein or elsewhere that may be inferred to the contrary, the undersigned hereby understands and agrees on behalf of the Lessee as follows:* (i) the Agency does not waive its right to require delivery of releases-of-liens in connection with the Cost of Work; and (ii) 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 (iii) this Certificate shall be deemed incomplete if costs of the Project Work are due, unpaid, and not being contested in good faith; and (iv) this Certificate shall be deemed incomplete if, in the Agency's sole discretion, the Lessee is not contesting in good faith the payment of the Cost of Work when such payment is otherwise due; and (v) the Certificate shall be deemed incomplete if, in the Agency's sole discretion, the Lessee has unreasonably failed to bond or otherwise discharge the Cost of Work when payment for same is due.

This Certificate is given without prejudice to any rights of the Lessee against third parties existing on the date hereof or which may subsequently come into being and no Person other than the Agency may benefit from this Certificate.

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

**SALMAR PROPERTIES, LLC**

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

EXHIBIT H

[FORM OF SALES TAX LETTER]

LETTER OF AUTHORIZATION FOR SALES TAX EXEMPTION  
EXPIRATION DATE: [SEPTEMBER 1, 2014]  
ELIGIBLE LOCATION FOR CAPITAL IMPROVEMENTS  
AND FACILITY PERSONALTY:  
850 Third Avenue, Brooklyn, New York 11232

September \_\_, 2011

TO WHOM IT MAY CONCERN

Re: New York City Industrial Development Agency  
(2011 Salmar Properties, LLC Project)

Ladies and Gentlemen:

The New York City Industrial Development Agency (the "Agency"), by this notice, hereby advises you as follows:

1. 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 any New York State or New York City sales and use tax. As an exempt governmental entity, no exempt organization identification number has been issued to the Agency nor is one required.

2. Pursuant to a resolution adopted by the Agency on June 14, 2011, and a certain Agency Lease Agreement, dated as of September 1, 2011 (the "Lease Agreement"), between the Agency and Salmar Properties, LLC, a limited liability company organized and existing under the laws of the State of New York (the "Company"), the Agency has authorized the Company to act as its agent in connection with the acquisition, construction, re-construction, renovation and furnishing of an approximately 1,100,000 square foot building on an approximately 140,000 square foot parcel of land located at 850 Third Avenue, Brooklyn, New York 11232 (the "Facility"), to be leased by the Company to various industrial, manufacturing and commercial tenants, Capitalized words and terms used herein, and not defined herein, shall have the meanings ascribed to them in the Lease Agreement.

3. In connection with such resolution, the Lease Agreement and this Letter of Authorization for Sales Tax Exemption and pursuant to the authority therein and herein granted, the Agency authorizes the Company to act as its agent in connection with the acquisition, construction, re-construction, renovation and furnishing of the Facility and authorizes the Company to use this Letter of Authorization for Sales Tax Exemption as its agent only for purpose of (a) purchasing or leasing materials, equipment, machinery, goods and supplies and (b) purchasing certain services, solely in connection with the Project, and subject to the scope and limitations described in Annex A attached hereto. Subject to the provisions of this letter, this agency appointment includes the power of the Company to delegate from time to time such agency appointment, directly or indirectly, in whole or in part, to agents, subagents, contractors, subcontractors, materialmen, suppliers and vendors of the Company and for such parties in turn to delegate, in whole or in part and from time to time, to such other parties as the Company chooses provided that any such delegation is limited to the acquisition, construction, re-construction, renovation

and furnishing of the Facility and any such activities are effected in compliance with the Letter of Authorization for Sales Tax Exemption (each party so designated, hereinafter an "Agent").

4. If the Company, or an Agent appointed directly or indirectly by the Company, intends to appoint an Agent to act as the Agency's agent for the purpose of effecting purchases exempt from sales or use tax pursuant to authority of this Letter of Authorization for Sales Tax Exemption, the Company shall, and shall require and cause each such Agent, to comply with the required procedures set forth on Annex B hereto with respect to the filing by the Agency of New York State Department of Taxation and Finance Form ST-60 "IDA Appointment of Project or Agent" ("Form ST-60"), a form of which is attached as Addendum A to Annex B.

5. As agent for the Agency, the Company agrees that each contract, agreement, invoice, bill or purchase order entered into by the Company or by an Agent, as agent for the Agency for the acquisition, construction, re-construction, renovation and furnishing of the Facility, shall include language in substantially the following form:

"This [contract, agreement, invoice, bill or purchase order] is being entered into by \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_ [or \_\_\_\_\_] (the "Agent"), as agent for and on behalf of the New York City Industrial Development Agency (the "Agency") in connection with a certain project of the Agency for the Agent and for Salmar Properties, LLC, a limited liability company organized and existing under the laws of the State of New York (the "Company") being the acquisition, construction, renovation and equipping of a commercial facility (the "Facility"), consisting of the acquisition, construction, re-construction, renovation and furnishing of an approximately 1,100,000 square foot building on an approximately 140,000 square foot parcel of land located at 850 Third Avenue, Brooklyn, New York 11232 (the "Project"). The [purchase, lease, rental, use] of the [materials, machinery, equipment, goods, services and supplies] which are the subject of this [contract, agreement, invoice, bill or purchase order], which has been entered into with or presented to [insert name and address of vendor (the "Vendor")] shall be exempt from the sales and use tax levied by the State of New York and The City of New York subject to and in accordance with the terms and conditions set forth in the attached Letter of Authorization for Sales Tax Exemption of the Agency, and the Agent hereby represents that this [contract, agreement, invoice, bill or purchase order] is in compliance with the terms of the Letter of Authorization for Sales Tax Exemption.

The [Company or Agent] has provided the Vendor with a copy of an executed New York State Department of Finance Form ST-60 "IDA Appointment of Project or Agent" to evidence that the Agency has appointed the Agent as its agent. The Vendor must retain in its records a copy of the Letter of Authorization for Sales Tax Exemption, the completed Form ST-60 and the [contract, agreement, invoice, bill or purchase order] as evidence that the Vendor is not required to collect sales or use tax in connection with this [contract, agreement, invoice, bill or purchase order].



This [contract, agreement, invoice, bill or purchase order] is nonrecourse to the Agency, and the Agency shall not be directly or indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever, and the Agent shall be the sole party liable hereunder. By execution or acceptance of this [contract, agreement, invoice, bill or purchase order], the Vendor hereby acknowledges and agrees to the terms and conditions set forth in this paragraph.”

6. The Agency shall have no liability or performance obligations under any contract, agreement, invoice, bill or purchase order entered into by the Company or any Agent as agent for the Agency hereunder. The Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever, and the Company or, as applicable, any Agent, shall be the sole party liable thereunder.

7. By execution by the Company of its acceptance of the terms of this Letter of Authorization for Sales Tax Exemption, the Company agrees to accept the terms hereof and represents and warrants to the Agency that the use of this Letter of Authorization for Sales Tax Exemption by the Company or by any Agent is strictly for the purposes above stated.

8. Accordingly, until the earlier of (i) the Expiration Date referred to above, (ii) the termination of the Lease Agreement, or (iii) the receipt by the Company of notice from the Agency of the termination of this Letter of Authorization for Sales Tax Exemption (in each case as so terminated, the “Termination Date”), all Vendors are hereby authorized to rely on this Letter of Authorization for Sales Tax Exemption (or on a photocopy or fax of this Letter of Authorization for Sales Tax Exemption) as evidence that purchases of the Project property, to the extent effected by the Company or by an Agent as agent for the Agency, are exempt from all New York State and New York City sales and use taxes. Upon the Termination Date, the agency appointed by the Agency of the Company and each Agent shall terminate, and (i) the Company shall immediately notify each Agent in writing of such termination; (ii) the Company shall surrender, and cause each Agent to surrender, this Letter of Authorization for Sales Tax Exemption (including any copy or facsimile hereof) to the Agency for cancellation; and (iii) the Company shall cause each Agent to perform all of its obligations as set forth in Annex B and in the Agency Agreement referred to therein.

9. Notwithstanding any contrary provisions in the Lease Agreement, ten (10) days prior to the Expiration Date of this Letter of Authorization for Sales Tax Exemption, the Company shall surrender, and cause each Agent to surrender, this letter to the Agency for renewal. The Company and any Agent may continue to use a facsimile copy of this Letter of Authorization for Sales Tax Exemption until its stated Expiration Date. Within ten (10) days of receipt of this Letter of Authorization for Sales Tax Exemption, the Agency shall provide such annual renewal of the letter to the Company if and to the extent required under the Lease Agreement.

The signature of a representative of the Company where indicated below will indicate that the Company has accepted the terms hereof.

**NEW YORK CITY INDUSTRIAL  
DEVELOPMENT AGENCY**

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

**ACCEPTED AND AGREED TO BY:**

**SALMAR PROPERTIES, LLC**

By: Salmar Realty, LLC, its  
Managing Member

By: \_\_\_\_\_  
Marvin H. Schein, Member

ANNEX A

The Company and each Agent appointed directly or indirectly by the Agency in connection with the Project shall be entitled to claim an exemption from sales or use tax levied by the State of New York and The City of New York in connection with the following transactions:

(i) **Capital Improvements.** With respect to capital improvements to the Facility Realty (as defined in the Lease Agreement):

(a) purchases of materials, goods, machinery, equipment and supplies that are incorporated into and made an integral component part of the Facility Realty;

(b) purchases of materials, goods, machinery, equipment 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

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

(ii) **Personal Property.**

*[List the Personal Property: TO BE PROVIDED BY THE LESSEE]*

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*[If including personal property, state the following: Purchases or leases of any item of materials, goods, machinery, equipment, furniture, furnishings, trade fixtures and other tangible personal property must have a useful life of one year or more, may include mainframe computers (and peripherals), personal computers, telecommunications equipment, business machines and software, but shall exclude vehicles of any sort (including watercraft and rolling stock), fine art, plants (whether potted or landscaped), objects d'art and other similar decorative items, ordinary office supplies such as pencils, paper clips and paper, and any cost of utilities, cleaning service or supplies or other costs of operation].*

(iii) **Services.** With respect to the eligible items identified in (i)(a) 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, with respect to any of the above categories of property having a useful life of one year or more, the replacement of parts (but excluding materials or substances that are consumed in the operation of machinery and equipment or parts containing materials or substances where such parts must be replaced whenever the substance is consumed) or the making of repairs, but shall not include maintenance of the type as shall constitute janitorial services.

## ANNEX B

### FORM ST-60--REQUIRED PROCEDURES

**Introduction.** Section 874(9) of Article 18-A of the General Municipal Law and New York State Department of Taxation and Finance Form ST-60 "IDA Appointment of Project or Agent" ("Form ST-60") require that within thirty (30) days of the date that the Agency or its agent directly or indirectly appoint 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. Certain capitalized terms used in this exhibit shall have the meanings ascribed thereto in the Letter of Authorization for Sales Tax Exemption.

**Required Procedures.** In order to comply with the foregoing law and other Agency requirements, the Company must, and must ensure that its Agents, comply with the following procedures. Failure to follow such procedures may result in the loss of sales and use tax exemptions derived from the use of the Letter of Authorization for Sales Tax Exemption in connection with the Project.

1. **Agency Agreement.** Prior to submitting to the Agency a completed Form ST-60 with respect to a proposed Agent, the Company, or its Agents, as applicable, must enter into an Agency Agreement with such Agent that describes the work to be performed and/or the materials to be provided by such Agent pursuant to a contract (the "Agent's Contract") entered into in connection with the Project. The Agency Agreement (which may be incorporated in the Agent's Contract) shall include the following provisions substantially in the form below (instructions are in *italics*):

- "a) The Agent is hereby appointed as an agent of the Agency in connection with the ~~materials to be provided by such Agent pursuant to a contract between Agent and~~ *[identify Company or Company Agent]* \_\_\_\_\_ dated \_\_\_\_\_, 200\_ (the "Agent's Contract") for the purposes described in, and subject to the conditions and limitations set forth in, the Letter of Authorization for Sales Tax Exemption attached as Exhibit A *[attach Letter of Authorization for Sales Tax Exemption from the Agency to the Company]*.
- b) Pursuant to the exemptions from sales and use taxes available to the Agent under the Letter of Authorization for Sales Tax Exemption, the Agent shall avail itself, on behalf of the Company, of such exemptions when purchasing eligible materials in connection with the Contract and shall not include such taxes in its Contract price, bid or reimbursable costs, as the case may be.
- c) 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 Company and is attached to the Letter of Authorization for Sales Tax Exemption as Addendum A to Annex B).
- d) Agent shall provide a copy of the executed Form ST-60 to each vendor to whom it presents the Letter of Authorization for Sales Tax Exemption in order to effect a sales tax exempt purchase. All such purchases shall be made in compliance with the terms, provisions and conditions of the Letter of Authorization for Sales Tax Exemption.

- e) The Agent must retain for at least six (6) years from the date of expiration of its Contract copies of (a) the Agency Agreement, (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 to make such records available to the Agency upon reasonable notice. This provision shall survive the expiration or termination of the Agency Agreement.
- f) In order to assist the Company in complying with its obligation to file New York State Department of Taxation and Finance Form ST-340 "Annual Report of Sales and Use Tax Exemptions Claimed by Project Operator of Industrial Development Agency/Authority" ("Form ST-340"), the Agent covenants and agrees that it shall file annually with the Company (no later than January 15th following 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 calendar year in connection with the Project and the Facility. 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, and shall immediately and without demand return to the Company or the Agency its copy of the Letter of Authorization for Sales Tax Exemption issued to the Company by the Agency that is in the Agent's possession or in the possession of any agent of such Agent.
- g) The Agent agrees that if it fails to comply with the requirements for sales and use tax exemptions, as described in the Letter of Authorization for Sales Tax Exemption, it shall pay any and all applicable New York State sales and use taxes, and no portion thereof shall be charged or billed to the Agency or to the Company directly or indirectly, the intent of the Agency Agreement being that neither the Agency nor the Company shall be liable for any of the sales or use taxes described above. This provision shall survive the expiration or termination of the Agency Agreement.
- h) 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:
- i. is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Agency or The City of New York (the "City"), unless such default or breach has been waived in writing by the Agency or the City, as the case may be;
  - ii. has been convicted of a felony and/or any crime involving moral turpitude in the preceding ten (10) years;
  - iii. has received written notice of default in the payment to the City of any taxes, sewer rents or water charges in excess of \$5,000 that has not been cured or satisfied, unless such default is then being contested with due diligence in proceedings in a court or other appropriate forum; or
  - iv. has, at any time in the three (3) preceding years, owned any property which, while in the ownership of such Person, was acquired by the City by in rem tax

foreclosure, other than a property in which the City has released or is in the process of releasing its interest to such Person pursuant to the Administrative Code of the City.

“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.

- i) The appointment of the Agent as agent of the Agency shall expire at the earlier of (i) the expiration of the Agent’s Contract, or (ii) the Expiration Date of the Letter of Authorization for Sales Tax Exemption, unless renewed; provided, however, that the expiration or termination of the Company’s status as agent of the Agency shall result in the immediate termination of the Agent’s status as an agent of the Agency.
- j) The Agency shall be a third party beneficiary of the Agency Agreement.”

2. Complete and Submit Form ST-60 to the Agency. Following the execution and delivery of an Agency Agreement, the Company must submit to the Agency a Form ST-60 completed with the information required in each of the shaded areas shown on the example form attached hereto as Addendum A.

The Agency requires the Company to submit Form ST-60 electronically. Please download Form ST-60 via the internet by typing [www.tax.state.ny.us/pdf/2002/fillin/st/st60\\_702\\_fill\\_in.pdf](http://www.tax.state.ny.us/pdf/2002/fillin/st/st60_702_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.

Upon completion of the form by the Agent, the Company must submit the form to the Agency by emailing it to [Compliance@nycedc.com](mailto:Compliance@nycedc.com).

The appointment of such Agent as an agent for the Agency shall be effective upon execution of the completed Form ST-60 by the Agency. The Agency will insert the date on which the Agent is appointed on the date when the Form ST-60 is executed by the Agency. The determination whether or not to approve the appointment of an Agent by executing the Form ST-60 shall be made by the Agency, in its sole discretion. If executed, a completed copy of Form ST-60 shall be sent to the Company within five (5) business days following such execution. The Company shall provide a copy of such executed Form ST-60 to the Agent within five (5) business days after receipt thereof by the Company.

**ADDENDUM A**

**FORM ST-60**

Addendum A-1

NY:1348523.11

## EXHIBIT I

### PROJECT FINANCE PLAN

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

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

(ii) a loan in the principal amount of \$ \_\_\_\_\_ to be made by \_\_\_\_\_ (the "Second Mortgagee") to the Lessee (the "Second Mortgage Loan") on a date subsequent to the Commencement Date, and to be evidenced by a certain mortgage note (as the same may be amended or supplemented, the "Second Mortgage Note") and in the principal amount of the Second Mortgage Loan, and to be secured by a second mortgage on the Facility Realty pursuant to a certain mortgage and security agreement to be granted after the Commencement Date (as the same may be amended or supplemented, the "Second Mortgage") from the Lessee and the Agency to the Second Mortgagee;

(iii) a bridge loan in the principal amount of \$ \_\_\_\_\_ to be made by the First Mortgagee to the Lessee (the "Bridge Mortgage Loan") on the Commencement Date in anticipation of and to be paid from the future Second Mortgage Loan, and to be evidenced by a certain mortgage note (as the same may be amended or supplemented, the "Bridge Mortgage Note") dated the Commencement Date and in the principal amount of the Bridge Mortgage Loan, and to be secured by a second mortgage on the Facility Realty pursuant to a certain mortgage and security agreement dated the Commencement Date (as the same may be amended or supplemented, the "Bridge Mortgage") from the Lessee and the Agency to the First Mortgagee;

(iv) other loans not constituting Mortgage Loans in the amount of \$ \_\_\_\_\_ from \_\_\_\_\_; and

(v) equity from the Lessee in the amount of \$ \_\_\_\_\_.



**EXHIBIT J**

**DEED**

Exhibit J-1

NY:1348523.11

Deed

NYCEDC to Salmar Properties, LLC

Brooklyn, Block 671, Lot 1

(Parcel A)

Closed: 8/15/2011

PARCEL A DEED

THIS INDENTURE, dated as of August 15, 2011, between NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION ("Grantor"), a local development corporation incorporated under Section 1411 of the New York State Not-for-Profit Corporation Law, having an office at 110 William Street, New York, New York 10038, and SALMAR PROPERTIES, LLC ("Grantee"), a New York State limited liability company, having an office at 120 Broadway, New York, New York 10271.

WITNESSETH

WHEREAS, the Property (hereinafter defined) is the same Property as was conveyed on August 15, 2011 by the United States of America, acting by and through its General Services Administration ("GSA"), hereafter called the "Government," to Grantor (the "GSA Deed") and intended to be recorded prior hereto; and

WHEREAS, the Property will be developed in accordance with this deed primarily for light industrial uses, which shall, at a minimum, include (i) with respect to Federal Building #2: complete roof replacement or restoration and façade restoration; utilities, mechanical and life safety systems distributed throughout the entire building; and at least one bank of elevators installed and operational throughout the building ("Federal Building Minimum Build"); and (ii) with respect to the adjacent parcel (the "Adjacent Parcel") being conveyed simultaneously herewith by Grantor to Grantee's affiliate for the Project (Block 675, Lot 10 on the Tax Map of Brooklyn (the "City Tax Map")), the development requirements set forth in the deed ("Parcel B Deed") for such conveyance (the "Parcel B Minimum Build" and collectively with the Federal Building Minimum Build, the "Minimum Build"), the Adjacent Parcel and the Property being herein referred to as the "Project."

NOW, THEREFORE, Grantor, in consideration of the sum of NINE MILLION ONE HUNDRED TWENTY-SEVEN THOUSAND TWO HUNDRED AND 00/100 DOLLARS (\$9,127,200.00), paid by Grantee, and other valuable consideration, does hereby grant and release unto Grantee, its successors and assigns forever, all those certain plots, pieces or parcels of land, designated Block 671, Lot 1 on the City Tax Map with the approximately 1.1 million square foot, eight story industrial building and improvements thereon referred to herein as "Federal Building #2", being fully described on Exhibit A attached hereto and made a part hereof for all purposes, with all improvements thereon (the "Property").

SAID Property being also generally known as 850 Third Avenue.

TO HAVE AND TO HOLD said Property herein granted unto Grantee, the successors and assigns of Grantee forever.

(A) Grantee, on behalf of itself, its successors and assigns, covenants, within six (6) months from the date hereof, subject to Unavoidable Delays (as hereinafter defined), to commence construction with respect to the Federal Building Minimum Build and thereafter to diligently and continuously prosecute such construction to completion within two (2) years from the date hereof subject to Unavoidable Delays. For purposes of this deed, "Unavoidable Delay" shall mean any cause beyond the reasonable control and without the fault or negligence of

Grantee, including but not limited to: orders of any court of competent jurisdiction, industry-wide labor disputes including strikes and slow downs, acts of God, enemy action, terrorist activity, civil commotion, inability to obtain materials as a result of a national disaster and fire or other casualty, inability to obtain governmental permits provided Grantee complied with its requirements and standard timeframe for processing applies, but not including Grantee's financial condition or inability to obtain financing, provided Grantee shall have notified Grantor no later than thirty (30) days after the occurrence of such event. In no event shall Unavoidable Delays together aggregate more than twenty-four (24) months.

(B) If Grantee transfers a leasehold interest in all or any part of the Property to New York City Industrial Development Agency ("IDA") and IDA leases back the Property or part thereof to Grantee, all in connection with obtaining financial assistance, then, Grantee, on behalf of itself and Grantee's successors, covenants that, so long as it or its successor leases back the Property or part thereof from IDA or a successor agency, (x) Grantee or Grantee's successor will be bound by and will complete the Minimum Build required by Paragraph (A) above as if Grantee or Grantee's successor had never conveyed a leasehold interest in the Property to IDA and (y) IDA is not responsible for any obligation on the part of Grantee hereunder including the provisions of Paragraph G hereunder. Grantor will not require that IDA or a successor agency (i) do such Minimum Build or (ii) comply with any obligations hereunder or (iii) have recourse against IDA or a successor agency in connection therewith.

(C) Grantee, on behalf of itself, its successors and assigns, covenants that under no circumstances shall the Property or any portion thereof be used (i) for any adult establishment, as defined in Section 12-10 of the Zoning Resolution or (ii) exclusively for any passive warehouse and/or storage businesses.

(D) Grantee, on behalf of itself, its successors and assigns, further covenants that, for a period of thirty (30) years from the date of completion of the Federal Building Minimum Build, the Property shall be occupied and used only by industrial businesses for their business operations, including ancillary administrative and storage use incidental to such industrial businesses and up to 15% of rentable floor area of the improvements of the Project may be used for retail uses currently allowed under the M3-1 zoning regulations for the Property existing at the time hereof, and for no other purposes, except with the prior written approval of Grantor (the "Permitted Uses"). This restriction and covenant shall run with the land. Notwithstanding anything to the contrary contained herein but subject however to the provisions of Paragraph B above, if, at any time prior to the end of such thirty (30) year period but not before the later of four (4) years after the date hereof or two (2) years after the entire building is available and usable for leasing, Grantee is unable to rent the Property for Permitted Uses, despite having used commercially reasonable efforts to do so, such that the Property, over a period of not less than one (1) year, produces revenue sufficient to enable Grantee to pay all expenses of operating the Property, including interest and principal on indebtedness with an Institutional Lender of up to the "initial development cost" as defined below, Grantee may request Grantor's consent to an expansion of the Permitted Uses under this Paragraph D to include any use permitted under the

M3-1 zoning regulations for the Property at the time hereof ("Additional Uses"). In connection with any such request, Grantee shall provide Grantor with written documentation signed by Grantee's chief executive officer reasonably detailing (i) the commercially reasonable efforts taken to lease or cause to be occupied the available rentable space, (ii) market information that supports the view that leasing will significantly increase the amount of leased or occupied rentable space within the Property, and (iii) rental income derived from rental of the Property, including rental income at a market rental rate for space occupied by Grantee-affiliated entities, and expenses of operating the Property. The rental income and expenses information must be certified by Grantee's Chief Financial officer and supported by Grantee's financial statements and/or tax returns. Grantee shall respond to all reasonable requests of Grantor to enable Grantor to evaluate Grantee's request. Provided Grantee's request for Grantor's consent meets the requirements set forth herein, Grantor will in good faith reasonably consider and respond to such request; however, Grantor's consent to expand the Permitted Uses to include Additional Uses shall be at Grantor's sole discretion. For purposes hereof, the "initial development cost" shall only include the cost of purchasing the Property plus the cost actually spent on the initial renovation and leasing of the entire Property, including any carrying costs. For purposes of this Paragraph D, building operating expenses, other than mortgage interest and amortization, shall be consistent with that incurred by a third-party owner/manager for a similar property. For purposes of clarity, Additional Uses shall not include any use permitted as a result of a change in zoning regulations applicable to the Property or a variance resulting, in either case, from an application therefor made directly or indirectly by Grantee, and Grantee further covenants that it shall not directly or indirectly make or cause to be made such application. In addition to the foregoing, any request for Grantor's consent to an expansion of Permitted Uses to uses not permitted under M3-1 zoning regulations for the Property on the date hereof shall be exercisable by Grantor at its sole and absolute discretion, and Grantee further covenants that it shall not directly or indirectly make or cause to be made such application. The above restrictions in this Paragraph D shall not apply to the Property after a foreclosure sale or a transfer in lieu of foreclosure under a mortgage held by an Institutional Lender securing financing with regard to the purchase of the Property by Grantee or construction financing with regard to construction on the Property or a permanent "take-out" loan with regard to such construction financing. For the purposes hereof, "Institutional Lender" shall mean a savings bank, a savings and loan association, a commercial bank or trust company (whether acting individually or in a fiduciary capacity), an insurance company organized and existing under the laws of the United States of America or any state thereof, an investment bank or its affiliate, a religious, or educational institution, a federal, state or municipal employee's welfare, benefit, pension or retirement fund, any governmental agency or entity insured by a governmental agency, or any combination of the preceding; provided, that each of the above entities shall qualify as an Institutional Lender only if it shall (a) be subject to the jurisdiction of the courts of the State of New York in any actions pertaining to or arising in connection with the Contract, and (b) have net assets of not less than \$500,000,000, or such lower amounts as are deemed acceptable in Grantor's sole discretion.

(E) Grantee, on behalf of itself, its successors and assigns, covenants that, for a period of ten (10) years from the date hereof, it shall not convey the Property (or any improvements thereon) or any interest in either, except (i) a conveyance of a leasehold interest in the Property to IDA in connection with financial assistance provided by IDA to Grantee in connection with Grantee's purchase of the Property and/or construction required hereby to be constructed on the Property, which is deemed a "Permitted Transfer" (as hereinafter defined), (ii) or with the prior written approval of Grantor. The above restrictions and covenants in this Paragraph shall run with the land. The above restrictions and covenants in this Paragraph shall not prohibit, or apply to, a foreclosure sale or a transfer in lieu of foreclosure under a mortgage held by an Institutional Lender securing financing with regard to the purchase of the Property by Grantee or construction financing with regard to construction on the Property or a permanent "take-out" loan with regard to such construction financing, nor to any sale or other transfer subsequent to such a foreclosure sale or transfer in lieu of foreclosure.

(F) In addition to the foregoing, until the later of (x) completion of the Minimum Build for the Project, and (y) the fifth (5<sup>th</sup>) anniversary of completion of the Federal Building Minimum Build, Grantor's prior written approval at its sole discretion shall be required for (i) any sale, transfer or assignment of membership interests of Grantee, (ii) any issuance of any additional membership interest in Grantee, and (iii) any change in the interest of any member of Grantee in Grantee. Notwithstanding the foregoing, if the actions set forth in clauses (i), (ii) and (iii) above, effect a transfer to existing beneficial owners of such interests, or to members of their respective families or to trusts for the benefit of any such persons, the same shall not require Grantor's prior approval provided that Selim Rusi or Marvin Schein retain control or continue to be responsible for the day to day management and operations of Grantee (hereinafter referred to as "Permitted Transfers"). With respect to any transfer which requires Grantor's approval, Grantee agrees to provide Grantor with such information as Grantor needs in deciding whether to give any approval required hereby. Any request for approval by Grantor of any of the above matters, and any notice to Grantor, and any notice of approval or disapproval by Grantor, shall be in writing and given by mailing the same by certified or registered mail addressed as follows, or to such other address as either party designates to the other in writing in the manner set forth below:

If to Grantor:  
New York City Economic Development Corporation  
110 William Street  
New York, New York 10038  
Attn: General Counsel

With a copy to:  
New York City Economic Development Corporation  
110 William Street  
New York, New York 10038  
Attn: Executive Vice President for Development

If to Grantee:

Salmar Properties, LLC  
c/o Platinum Maintenance Corp.  
120 Broadway, 36<sup>th</sup> Floor  
New York, New York 10271  
Attn: Selim Rusi and Marvin Schein

With copies to:

Ackerman, Levine, Cullen, Brickman & Limmer, LLP  
1010 Northern Boulevard, Suite 400  
Great Neck, NY 11021

and

Jacobi, Sieghardt, Bousanti, Piazza & Fitzpatrick, PC  
235 Forest Avenue  
Staten Island, NY 10301

(G) Grantee further agrees and covenants by acceptance of this deed to the Property that, in its use and occupancy of the Property it will comply with all applicable Environmental Laws (as hereinafter defined) with respect to the Property. Nothing in this Paragraph G is intended to deprive Grantee of any rights it is entitled to under the GSA Deed respecting the obligations of the Government under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq. ("CERCLA") for environmental conditions at the Property, which rights are assigned by Grantor to Grantee, run with the Property conveyed hereunder, and for which Grantee shall be a beneficiary thereof.

(1) For purposes of this deed, "Hazardous Substances" shall mean any (1) "hazardous substance" as defined under CERCLA, or (2) "hazardous waste" as defined under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., or (3) "hazardous materials" as defined under the Hazardous Materials Transportation Authorization Act, 49 U.S.C. Section 5101 et seq., or (4) "hazardous waste" as defined under New York Environmental Conservation Law, Section 27-0901 et seq., or (5) "petroleum" as defined under New York Navigation Law, Section 172.15 et. Seq., or (6) "hazardous substance" as defined under the Clean Water Act, 33 U.S.C. Section 1321 et seq., and the regulations adopted and publications promulgated pursuant to the above, and all other applicable laws, rules or regulations of all Federal, State and local authorities having jurisdiction over the Property.

(2) For purposes of this deed, "Environmental Laws" shall mean, collectively, CERCLA, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., the Hazardous Materials Transportation Authorization Act, 49 U.S.C. Section 5101 et seq., the New York Environmental Conservation Law, Section 27-0901 et seq., New York Navigation Law, Article 12 et. Seq., the Clean Water Act, 33 U.S.C. Section 1321 et seq., and any Federal, State, or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to,

or imposing liability or standards of conduct concerning, any hazardous, toxic, radioactive, biohazardous or dangerous waste, substance or materials, including any regulations adopted and publications promulgated with respect thereto.

(3) Grantee, for itself and its successors and assigns, hereby absolutely waives, and agrees that neither it nor its successors and assigns, if any, shall make any claim for damages, contribution, indemnification or otherwise against Grantor or the Government, as applicable, which Grantee or its successors or assigns may now or hereafter have or discover in connection with Hazardous Substances on, in, at, under, beneath, emanating from or affecting the Property, or in connection with any voluntary or required removal or remediation thereof (including, without limitation, claims relating to the release, threatened release, disturbance, emission or discharge of Hazardous Substances). Grantor and the Government shall have no liability to Grantee, or its successors or assigns, with regard to Hazardous Substances, on, at, in, under, beneath, emanating from or affecting the Property. Such waiver of liability shall cover, without limitation, any and all liability to Grantee, both known and unknown, present and future, for any and all environmental liabilities, including without limitation any and all strict and other liability, costs, claims, fines, penalties, damages under any and all Environmental Laws with respect to investigating, remediating, mitigating, removing, treating, encapsulating, containing, monitoring, abating, or disposing of any Hazardous Substance, and any costs incurred to come into compliance with Environmental Laws. Grantee shall include in any and all future deeds for the Property a provision providing that this release is a covenant running with the land.

(H) Grantee, on behalf of itself, its successors and assigns, further covenants that, for a period of three (3) years from the date hereof, if at any time within the three-year period from the date hereof, Grantee or its successors or assigns, shall sell or enter into agreements to sell the Property, either in a single transaction or in a series of transactions, all proceeds received or to be received in excess of Grantee's or a subsequent seller's actual allowable costs will be promptly remitted to the GSA. Grantee further agrees that in the event of a sale of less than the entire Property, actual allowable costs will be apportioned to the portion sold based on a fair and reasonable determination by the GSA.

(i) For purposes of this covenant, Grantee's or a subsequent seller's allowable costs shall include the purchase price of acquiring the Property and the direct costs actually incurred and paid for physical improvements on the Property for the following: improvements on the Property which serve only such Property, including road construction, storm and sanitary sewer construction, other public facilities or utility construction, building rehabilitation and demolition, landscaping, grading, and other site or public improvements; the direct costs actually incurred and paid for design and engineering services with respect to the improvements described above, provided, however, that none of these costs or the costs described above will be allowable if defrayed by Federal grants or if used as matching funds to secure Federal grants; the



finance charges actually incurred and paid in conjunction with loans obtained to meet any of the allowable costs enumerated above.

(ii) In order to verify compliance with the terms and conditions of this covenant, Grantee, or its successors or assigns, shall submit to GSA an annual report for each of the subsequent three years on the anniversary date of this deed, which annual report shall include a certification by an officer of Grantee as to the accuracy and completeness of the information being transmitted to the GSA. Each report will identify the Property, indicate the sale price of any property resold, the purchaser and the proposed land use, and enumerate any allowable costs incurred for physical improvements on the Property that would offset any profit realized. If no resale has been made, the report shall so state. Failure to file timely reports will extend the operation of the covenant for an additional one-year period for each late or omitted report. Grantee acknowledges that GSA has reserved the right to monitor the Property and inspect records related thereto to ensure compliance with the terms and conditions of this covenant and may take any actions which it deems reasonable and prudent to recover any excess profits realized through the resale of the Property. Grantee further agrees to indemnify, defend, reimburse, and hold harmless Grantor and IDA and their respective officials, officers, directors, employees, agents, successors, and assigns, and each of them from and against any and all liabilities respecting the remittance of excess profits to the GSA.

(I) If Paragraphs A through F above are not complied with (or if Grantor is exercising its reverter rights under the Parcel B Deed), then Grantor, at its option, and after giving Grantee or any subsequent owner of the Property notice and sixty (60) days opportunity to cure such default or such longer period as required to effect the cure thereof so long as Grantee promptly commences and diligently pursues the cure to completion, shall, without paying Grantee (or any subsequent owner of the Property (or any improvements thereon) or any interest in either) any consideration, shall have the right to re-enter and take possession of the Property (together with any improvements thereon), and the estate conveyed hereby to Grantee shall thereupon terminate, and fee simple title to the Property, and any improvements thereon, shall revert in Grantor forever in the same manner and to the same extent as if the conveyance made by this deed had not been made, except, however, that Grantor's reacquisition of the Property (together with any improvements thereon) shall be subject to the lien of mortgages held by Institutional Lenders securing financing with regard to the purchase of the Property by Grantee or construction financing with regard to construction on the Property or a permanent "take-out" loan with regard to such construction financing. Upon Grantor's exercise of such option to re-enter and reacquire, Grantee (and/or any subsequent owner of the Property (or any improvements thereon) or any interest in either), on demand by Grantor, shall execute and deliver to Grantor a deed(s) for the Property (and any improvements thereon) in form and substance satisfactory to Grantor, conveying the Property, together with any improvements thereon, to Grantor. The execution and delivery of the foregoing deed(s) shall not, however, be construed as a condition precedent to Grantor's acquisition, as aforesaid, of the Property (and any improvements thereon). Notices

pursuant to this Paragraph shall be in writing and sent by certified or registered mail, and shall be addressed as follows, or to such other address as Grantor or Grantee designates to the other in writing in the manner indicated below:

If to Grantor:  
New York City Economic Development Corporation  
110 William Street  
New York, New York 10038  
Attn: General Counsel

With a copy to:

New York City Economic Development Corporation  
110 William Street  
New York, New York 10038  
Attn: Executive Vice President for Development

If to Grantee:

Salmar Properties, LLC  
c/o Platinum Maintenance Corp.  
120 Broadway, 36<sup>th</sup> Floor  
New York, New York 10271  
Attn: Selim Rusi and Marvin Schein

With copies to:

Ackerman, Levine, Cullen, Brickman & Limmer, LLP  
1010 Northern Boulevard, Suite 400  
Great Neck, NY 11021

and

Jacobi, Sieghardt, Bousanti, Piazza & Fitzpatrick, PC  
235 Forest Avenue  
Staten Island, NY 10301

Any attorney costs or fees incurred by Grantor in exercising the above right to re-enter and reacquire the Property (together with any improvements thereon) or any interest in either shall be paid by Grantee. Grantor's right to re-enter and reacquire the Property (together with any improvements thereon) shall not be in effect during the period that IDA is leasing the Property from Grantee and leasing back the Property to Grantee. Whenever Grantor or Grantee is referred to in this Paragraph, it shall mean Grantor and its successors and assigns or Grantee and its successors and assigns, respectively.

(J) The transfer of the Property is further subject to the terms of the GSA Deed.

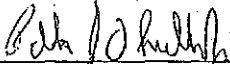
(K) The transfer of the Property is subject to the trust fund provisions of Section 13 of the New York State Lien Law.

(L) The restrictions and covenants of Grantee hereunder shall run with the land and bind Grantee's successors and assigns. With respect to any violation of this deed, Grantor shall retain each and every other defense, right, and remedy which Grantor has, will have, or may have pursuant to this deed, or any other agreement between Grantor and Grantee or under law, equity,


or otherwise.

IN WITNESS WHEREOF, Grantor has caused its corporate seal to be hereunto affixed and has executed this deed by having it signed by its duly authorized officer, and Grantee has duly executed this deed, the day and year first above written.

NEW YORK CITY ECONOMIC  
DEVELOPMENT CORPORATION

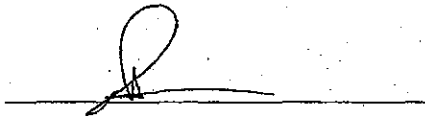
By:   
Name: Patrick O'Sullivan, Jr.  
Title: EVP

SALMAR PROPERTIES, LLC  
By: Salmar Realty, LLC, its manager

By:   
Name: Selim Kusi  
Title: Manager

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

On the 15 day of August, in the year 2011, before me, the undersigned, personally appeared Patrick J. O'Sullivan Jr., 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 on behalf of which the individual acted, executed the instrument.

  
ALBERT L RISI  
Notary Public, State of New York  
No. 01R16192988  
Qualified in Richmond County  
Commission Expires 09/08/2012

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

On the 15 day of AUGUST, in the year 2011, before me, the undersigned, personally appeared Selim Rusi, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

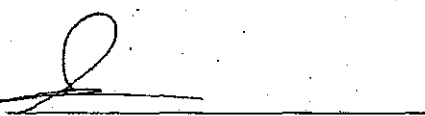
  
ALBERT L RISI  
Notary Public, State of New York  
No. 01R16192988  
Qualified in Richmond County  
Commission Expires 09/08/2012

Exhibit A

Legal Description of the Property

All that tract, piece or parcel of land, situate in the Borough of Brooklyn, Kings County, New York, bounded and described as follows:

Beginning at a point where the easterly line of Second Avenue intersects the prolongation of the northerly line of Thirty-First Street; running thence North  $38^{\circ}23'03''$  East, 200.35 feet to its intersection with the prolongation of the southerly line of said Thirtieth Street; said point also being the northerly face of the so-called Federal Building number 2 at street level; running thence South  $51^{\circ}36'57''$  East, along the prolongation of the southerly line of said Thirtieth Street and the southerly line of said Thirtieth Street for a distance of 700.00 feet to its intersection with westerly line of said Third Avenue; running thence South  $38^{\circ}23'03''$  West, along the westerly line of said Third Avenue 200.35 feet to its intersection with the northerly line of said Thirty-First Street; running thence North  $51^{\circ}36'57''$  West, along the northerly line of said Thirty-First Street and continuing along the northerly prolongation of said Thirty-First Street for a distance of 700.00 feet to the point of beginning, being 3.220 acres of land more or less.

Grantor further assigns to the Grantee and its successors and assigns, certain access rights in the land owned by the United States of America under custody and control of the Federal Bureau of Prisons, that lies along the northeasterly boundary of the Property, commonly known as 30th Street, between 2nd and 3rd Avenue. Said access rights are assigned subject to specific conditions and restrictions set forth herein.

1. A perpetual and non-exclusive right of access to the eastern end of 30th Street, running from its intersection with Third Avenue to the existing fence, approximately 61 feet, for access to the existing street entrance at the rear of Federal Building #2. All deliveries accessing the area shall be subject to inspection by United States of America Federal Bureau of Prisons Metropolitan Detention Center (MDC), Brooklyn staff. Access may be temporarily suspended at the discretion of the Warden, MDC Brooklyn, should it be determined by the Warden, MDC Brooklyn, that access would likely create disruptions to safe and orderly operation of the MDC.

2. A perpetual and non-exclusive right of access to pass and repass over and across a portion of 30th Street, between 2nd and 3rd Avenues that measures 20 feet from the rear of Federal Building #2 for the following purpose: trucks and construction equipment for rehabilitation and repair work to Federal Building #2. Access will be in accord with and subject to the provisions of Paragraph 4 below.

3. A perpetual and non-exclusive right of access to pass and repass over and across a portion of 30th Street, between 2nd and 3rd Avenues, that measures 30' 1" from the rear of Federal Building #2 for the following purposes: Emergency vehicles and emergency egress from Federal Building #2; and, the installation, maintenance and repair of utilities in and under 30th Street and the transformers adjacent to Federal Building #2. Access will be in accord with and subject to the provisions of Paragraph 4 below. The MDC will not place anything in this area that will permanently encroach upon the area subject to this right of access, and this restriction shall be binding on any assigns of the MDC.

4. The following conditions are imposed regarding the rights of access set forth in Paragraphs 2 and 3, as amended, herein:

a. Use of the rights of access by Grantee shall be done with as little inconvenience to the MDC as is consistent with reasonable progress, and any damage to the land subject to the rights of access, including fences, roads, or other facilities, shall be properly corrected to the satisfaction of the Warden, MDC Brooklyn

b. Grantee shall perform all activities in a manner which complies with all pertinent Federal and State environmental laws and in a manner so as to prevent and avoid any threatened or actual release or disposal of any hazardous substance as identified in accordance with any pertinent Federal or State environmental laws. In the event any liability does arise under Federal and/or State environmental laws, as a result of activities of Grantee associated with the rights of access, Grantee shall indemnify the United States of America to the extent permitted by law for any remediation costs, response costs, natural resource damages, penalties, or any other costs for which the United States of America is found liable, including the cost of any studies and investigations necessary to determine an appropriate response to the contamination, and of any clean up or other response costs which the United States of America is required or obliged to undertake.

c. Grantee shall at all times keep the Warden, MDC Brooklyn, informed of any activity incident to access, including information on the beginning and completion of access, including 72 hour notification prior to ingress to the affected land. Access may be delayed or temporarily suspended at the discretion of the Warden, MDC Brooklyn, should it be determined that access would likely create disruptions to safe and orderly operation of the MDC. The notice requirements set forth herein do not apply to access for emergency vehicles and emergency egress from Federal Building #2.

d. Grantee shall maintain, modify, construct, and reconstruct such drainage facilities as necessary to provide elimination of surface water resulting from Grantee's activities without causing destructive erosion to the property of the United States of America, and also assume all responsibility for damage by flooding resulting from its activities.

e. Grantee shall relocate any and all existing gas lines, sewer lines, water lines, poles and all other utility lines and pipes which are to be disturbed because of its activities.

f. Grantee shall protect any existing boundary markers removed by construction and reset them in their original location.

g. Grantee shall observe any and all regulations of the MDC regarding the storage of tools, machinery, and equipment including the supervision of motor vehicles on, or in the proximity of the property under the custody and control of the MDC.

5. These terms may be amended by joint agreement of the Grantee, its successors or assigns, and the United States of America General Services Administration or its assigns.

NEW YORK CITY ECONOMIC  
DEVELOPMENT CORPORATION

to

SALMAR PROPERTIES, LLC.

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DEED

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The land affected by the  
within instrument lies in

Block 671, Lot 1

on the Tax Map for the  
Borough of Brooklyn

Record & Return:

Ackerman, Levine, Cullen, Brickman & Limmer, LLP  
1010 Northern Boulevard, Suite 400  
Great Neck, NY 11021

**EXHIBIT K**  
**NYCEDC CONTRACT**

Exhibit K-1

NY:1348523.11



**CONTRACT OF SALE**

between

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION**

and

**SALMAR PROPERTIES, LLC**

Dated as of MAY 3, 2011

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THIS CONTRACT OF SALE (this "Contract"), dated as of MAY 3, 2011, between NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION ("Seller"), a local development corporation organized pursuant to Section 1411 of the New York State Not-for-Profit Corporation Law, having its principal office at 110 William Street, New York, New York 10038, and SALMAR PROPERTIES, LLC or a controlled affiliate thereof satisfactory to Seller ("Purchaser"), a New York State limited liability company, having its principal place of business at 120 Broadway, New York, New York 10271.

WITNESSETH

WHEREAS, one of the purposes for which Seller was organized is to provide assistance in relieving and reducing unemployment, promoting and providing for additional and maximum employment, and bettering and maintaining job opportunities for residents of The City of New York (the "City") by encouraging industry to locate and remain in the City; and

WHEREAS, a key component of the Industrial Policy released by the City in January 2005 is the establishment of Industrial Business Zones, one of which is in the Sunset Park area of the Borough of Brooklyn, including initiatives to facilitate the creation of light industrial space; and

WHEREAS, the Seller desires that certain real property known as the former Federal Building 2 Lot 1, located at 850-870 Third Avenue, in Sunset Park, owned by the United States of America, acting by and through its General Services Administration ("GSA"), be redeveloped for such light industrial use by utilizing 40 U.S.C. 545(b)(8) which provides, as set forth therein, for negotiated sales of federally-owned real property (the "GSA Transaction"), and Seller intends to acquire the Property (as hereinafter defined) to facilitate the Project (as hereinafter defined); and

WHEREAS, Purchaser desires to acquire certain parcels of land, intended to be acquired by the Seller as aforesaid, containing approximately (A) [140,240] square feet of land with an approximately 1.1 million square foot, eight story vacant industrial building thereon referred to herein as "Federal Building #2" and identified as Block 671, Lot 1 on the Tax Map of Brooklyn ("City Tax Map") ("Parcel A"), and (B) a portion of Block 675, Lot 1 on the City Tax Map containing approximately 100,000 square feet of land with a former power plant thereon ("Parcel B"; Parcel A and Parcel B, collectively, and the unmapped portion of the street referred to as "31<sup>st</sup> Street" between Parcel A and Parcel B (which street is not a final mapped street between 2<sup>nd</sup> and 3<sup>rd</sup> Avenues on the official City Map), all as more specifically described in Exhibit A, with all improvements thereon (the "Property"), to be developed primarily for light-industrial uses in connection with the business operations of Purchaser and its tenants (all as described in Section 7(c) hereof, the "Project"); and

WHEREAS, the conveyance of the Property to Purchaser shall include the grant to Purchaser, for the benefit of Purchaser and its successors and assigns, certain rights of access over property extending approximately 30 feet 1 inch from the northern boundary of the Property into the adjacent private street identified as "30<sup>th</sup> Street, the fee to which is being retained by the United States of America (the "Adjacent Street"), such rights as more specifically described in the form deed for the conveyance of the Property from GSA to Seller attached hereto as Exhibit F ("Adjacent Street Rights").

WHEREAS, Seller believes that the sale of the Property for the uses contemplated by Purchaser as set forth above would be in furtherance of Seller's organizational goals; and

WHEREAS, simultaneously herewith Seller intends to enter into a contract with GSA to purchase the Property and it is contemplated that Seller will acquire title to the Property by deed from GSA prior to the closing of title hereunder.

NOW, THEREFORE, Seller and Purchaser covenant and agree as follows:

Section 1. Sale and Purchase.

(a) Seller will sell to Purchaser, and Purchaser will purchase from Seller, at the price and upon the terms and conditions set forth in this Contract, the Property, together with the appurtenances thereto and all right, title and interest of Seller in and to the Property; and

(b) Seller will convey the Property to Purchaser by deed (the "Deed"), such Deed to include the provisions set forth in Section 7 hereof, and to be subject to the provisions set forth in Section 3 hereof.

Section 2. Purchase Price. The purchase price (the "Purchase Price") for the Property shall be \$10,000,000 to be paid by Purchaser as follows:

(1) \$1,000,000 (the "Down Payment") upon the signing of this Contract, by certified check or wire transfer of immediately available funds in accordance with wiring instructions to be provided by Seller, the receipt of which is hereby acknowledged; and

(2) \$9,000,000, minus the Administrative Fee to be credited against the Purchase Price pursuant to Section 11(a)(4), by good certified or cashier's check or wire transfer of immediately available funds in accordance with wiring instructions to be provided by Seller, on delivery of the Deed as herein provided.

Section 3. Title.

(a) The Property shall be transferred subject to:

(1) Building restrictions and zoning regulations affecting the Property and covenants, restrictions and encumbrances of record as indicated in the Title Report dated February 16, 2011, and as provided for in this Contract;

(2) The rights of record, if any, of any utility company to maintain and operate lines, wires, cables, poles, or distribution boxes, in, over, or upon the Property;

(3) Variations, if any, between the Property as shown on the City Tax Map and an accurate survey of the Property, provided the same does not render title unmarketable, except as may be insurable;

(4) Any state of facts an accurate survey of the Property would show, provided the same does not render title unmarketable, except as may be insurable;

(5) Any violations on the Property; and

(6) Covenants and restrictions with respect to the GSA Transaction under 40 U.S.C. 545(b)(8) contained in the deed of the Property from GSA to the Seller, substantially in the form attached hereto as Exhibit F.

(b) Purchaser will accept such title to the Property as First American Title Insurance Company (the "Title Company") is willing to approve and insure, subject to the exceptions set forth above in this Section 3.

(c) Purchaser acknowledges and agrees that this Section 3 shall not give rise to any right of action or claim against Seller prior to or after the Closing, it being intended only to establish the state of title to the Property that Purchaser shall be required to accept at the Closing.

Section 4. Preliminary Obligations of Purchaser and Seller.

(a) Purchaser has furnished a copy of the title report ("Title Report") with respect to the Property issued by the Title Company, together with a survey of the Property indicating the

Tax Blocks and Lots of the Property as they currently exist on the City Tax Map that includes the Property, which survey and metes and bounds description is attached hereto as Exhibit D, and which metes and bounds description excluding any portion of area identified as 30<sup>th</sup> Street is the baseline legal description attached hereto as Exhibit A of the Property being conveyed. The parties hereto acknowledge that said legal description is being updated as promptly as practicable hereafter upon completion of an accurate survey that indicates the current tax lot lines in relation to the existing improvements on the Property ("Updated Survey") being delivered to Seller by GSA along with a current survey the boundaries of the Property as it shall exist after the subdivision of Parcel B, and notes the tentative tax lots which shall constitute the Property and the adjoining land; but Purchaser shall not be required to accept the state of facts or lot line variations shown on such Updated Survey that affect existing improvements on the Property if the same renders title unmarketable, except as the same may be insurable. Each aforementioned survey shall also identify the portion of the Adjacent Street with regard to the Adjacent Street Rights. Purchaser shall promptly review the Updated Survey and shall inform Seller in writing within 7 days of receipt of the Updated Survey whether same is acceptable to Purchaser as aforesaid, and if so deliver such the Updated Survey and metes and bounds description guaranteed and certified to Seller within the seven-day period. The Updated Survey and metes and bounds description shall be thereafter promptly updated upon designation of the New Lot (as

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defined below) and certified and guaranteed to Seller for the Closing, and unless the Seller shall object to such description or shall find such guarantee or certification insufficient, such description shall be used as the description in the Deed. To the extent that the subdivision prior to Closing does not occur, the parties agree that the Updated Survey and metes and bounds

description which would have been previously delivered and guaranteed and certified to Seller shall be used as the description in the Deed.

(b) Purchaser and Seller shall each promptly, diligently and in good faith take all steps necessary to fulfill the conditions for Closing as set forth in Section 6 hereof ("Conditions for Closing"), for which each has responsibilities or over which each has control. The Property will be conveyed at Closing as two separate tax lots, it being acknowledged by the parties hereto that Parcel A is a separate zoning and tax lot and is being conveyed as is. Purchaser, with the cooperation of Seller, shall promptly undertake such actions within its control for the tax and zoning lot subdivision and any other apportionment actions respecting 31<sup>st</sup> Street and Block 675, Lot 1 on the City Tax Map such that Parcel B (i) will be a separate zoning and tax lot from certain adjoining land not included in the Property, (ii) will include the portion of the Property between Parcel A and Parcel B identified as 31<sup>st</sup> Street, and (iii) as so subdivided and with 31<sup>st</sup> Street included as aforesaid, will have been designated a permanent tax lot number on the City Tax Map (the "New Lot"), including providing the necessary information regarding the Project, and any required zoning analysis, tax lot information and street status report from the Borough of Brooklyn Topographic Bureau respecting the Property and paying all filing and other fees necessary for the subdivision and designation of the New Lot. Seller and Purchaser each acknowledges that the Property is currently owned by GSA, and provided that Purchaser diligently and in good faith undertakes the afore-mentioned actions to facilitate the designation of the New Lot, Seller will cooperate in good faith with Purchaser's efforts and has obtained the agreement of GSA to pursue obtaining the subdivision and to execute such documents or instruments in its capacity as owner of the Property as shall be reasonably necessary or desirable for the designation of the New Lot. Notwithstanding the foregoing, Purchaser understands and



acknowledges that Seller has no authority or ability to direct the GSA or the City to take any specific actions concerning the New Lot or any other matters under the GSA's or City's control and, while Seller will support and cooperate with Purchaser in good faith, nothing herein shall require or obligate Seller to incur or cause the GSA to incur any expense or to bring any action or proceeding in order to create the New Lot.

(c) Purchaser has filled out and returned to Seller and caused its Principals to fill out and return to Seller qualification and background investigation forms required by Seller to be submitted to Seller in connection with the sale of real property by Seller ("**Qualification and Investigation Forms**"), and Seller hereby acknowledges receipt of such Qualification and Investigation Forms dated April 8, 2011. If any additional person or entity becomes a Principal (as defined in the Qualification and Investigation Forms) at any time prior to the Closing, Purchaser shall, within ten (10) days after such person or entity becomes a Principal, cause such Principal to also fill out and return the Qualification and Investigation Forms. Subsequent to the initial submission of the qualification and background investigation forms described above, Seller may require Purchaser and its Principals to fill out updated qualification and investigation forms prior to Closing.

(d) Seller acknowledges receipt of Purchaser's completed the initial employment report (the "**Initial Report**") dated March 31, 2011, a form of which is attached hereto as Exhibit B. If the information filled in on the Initial Report changes between the date of its submittal to Seller and the Closing, Purchaser shall promptly submit an amended Initial Report to Seller. If Purchaser or its Affiliate (as defined in the Initial Report) enters into a lease agreement (a "**Lease Agreement**") that permits the use or occupancy of all or a portion of the Property, by a Tenant (as defined in the Initial Report), then, if such Lease Agreement is entered into on or before the

Closing Date, such Tenant, on entering into the Lease Agreement must complete the Initial Report with regard to itself and its subtenants and submit it to Purchaser. If the information filled in by such Tenant on the Initial Report changes between the date of its submittal to Purchaser and the Closing, Purchaser shall require Tenant to promptly submit an amended Initial Report to Purchaser. Purchaser must include such Tenant's employment information in the Initial Report submitted by Purchaser to Seller. Each Lease Agreement entered into prior to the end of each July 1 - June 30 period during which any part of the seven (7) years from the date of the Closing falls (the "Reporting Period"), shall also include the provisions required by, and shall otherwise comply with Section 11(b)(1)(iii) of this Contract.

(e) Purchaser has furnished Seller with signed copies of financing commitments from institutions and/or governmental entities, and/or (y) demonstrated to Seller's reasonable satisfaction that equity of Purchaser is in place, which (i) is in an aggregate amount which is, to Seller's reasonable satisfaction, sufficient to finance the purchase of the Property and any construction and rehabilitation on the Property required by this Contract and the Deed and (ii) is on terms that Seller reasonably determines will permit such construction and rehabilitation to be completed. The provisions of this Section 4(e) are inserted for the benefit of Seller only and may be waived only by Seller and in its sole discretion.

(f) Purchaser acknowledges that Seller has never been in possession of the Property or conducted any investigation of the Property, and all environmental matters respecting the Property are based solely on information provided by the GSA. Seller has not made any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of such information and shall not be liable or bound in any manner by such information regarding the environmental condition of the Property furnished by the GSA.

and specifically disclaims any representation, warranties, agreements of any kind or character whatsoever concerning such environmental condition or compliance with any applicable Environmental Laws with respect to the Property. The GSA, under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601, et seq. ("CERCLA"), and pursuant to Section 120(h)(3)(A)(i) has provided Seller the notice attached as Exhibit B to the GSA form deed. Purchaser acknowledges receipt of such CERCLA notice and further acknowledges and agrees that it has been notified that the Property contains asbestos-containing materials and lead based paint, but Purchaser further agrees that it will rely solely on its own investigation of the Property and not on any information provided or to be provided by Seller from the GSA or any other source. Pursuant to a permit agreement between GSA and Purchaser ("Testing Permit"), Purchaser has been granted access to the Property to inspect the environmental conditions and conduct Hazardous Substances (as defined in Section 16(a)) tests, including a Phase II environmental investigation, to determine the existence of Hazardous Substances on, at, in, or under the Property. Purchaser has further engaged a reputable environmental consultant or engineer ("**Environmental Consultant**") to fully inspect the environmental conditions at the Property, conduct such tests, perform such studies and make such calculations as may be necessary to determine the existence of Hazardous Substances on, at, in, or under the Property; it being acknowledged and agreed by the parties hereto that such inspections, tests, studies and calculations by Purchaser and/or its Environmental Consultant and all costs and expenses in connection with or relating to the existence of Hazardous Substances on, at, in, or under the Property shall be at Purchaser's sole cost and expense (and not subject to reimbursement by Seller in any event).

(g) (1) Seller acknowledges receipt of Purchaser's proposed renderings and plans for the Project as completed, and Purchaser acknowledges that the Project shall, at a minimum, include (i) with respect to Federal Building #2: complete roof replacement or restoration and façade restoration; utilities, mechanical and life safety systems distributed throughout the entire building; and at least one bank of elevators installed and operational throughout the building ("Federal Building Minimum Build"), and (ii) with respect to Parcel B, paving and striping of not less than 50% of the surface of Parcel B (the "Parcel B Minimum Build" and together with the Federal Building Minimum Build, the "Minimum Build").

(2) Notwithstanding that the parties hereto acknowledge that the Project may be developed in phases, not later than fourteen (14) days prior to the date, if any, Purchaser and Seller have agreed on for the Closing, Purchaser shall deliver to Seller its preliminary descriptions and depictions for additional interior renovation and fit-out of Federal Building #2 to accommodate market absorption, which shall be reasonably acceptable to Seller. The foregoing provision regarding Purchaser's delivery of preliminary plans for additional interior renovation and fit-out of Federal Building #2 is inserted for the benefit of Seller only and may be waived only by Seller and in its sole discretion. Seller shall have obtained the right for Seller, and Purchaser to be granted access to the Property between the date hereof and Closing, from time to time upon reasonable notice to the United States of America and at reasonable times for planning and evaluation purposes for the Project, which pre-closing access rights shall be in the form of a license, in form and substance reasonably acceptable to Purchaser and shall contain the customary insurance and indemnification provisions for the benefit of Seller.

(3) By signing this Contract, Purchaser agrees to (i) participate in at least two trade fairs and workshops, and seek assistance from area-wide minority and women-owned

business associations, local elected officials, and community boards to develop a comprehensive strategy to identify local businesses and residents that are seeking employment in the construction phases of the Project and to monitor continued participation during the construction, and (ii) attract tenants with high-density employment requirements to the Project (the “**Outreach and Marketing Plan**”), and Purchaser shall submit its preliminary Outreach and Marketing Plan for Seller’s approval prior to closing, and an updated and revised Outreach and Marketing Plan shall be submitted to Seller for approval prior to commencement of construction.

(h) Purchaser shall use good faith efforts in the development of the Project to achieve a LEED (Leadership in Energy and Environmental Design) Silver rating from the United States Green Building Council (the “USGBC”), for the core and shell of Federal Building #2, and not less than a minimum of LEED Silver for any building constructed on Parcel B. In furtherance of the foregoing, Purchaser shall provide Seller with a copy of the design credit application (“**Green Building Application**”) to be submitted by Purchaser for the core and shell of Federal Building #2. Notwithstanding the foregoing, the parties agree to discuss possible ways of achieving a LEED Silver rating from the USGBC, including, without limitation, by reviewing Purchaser’s existing documents in connection with LEED (including, but not limited to, the checklist dated February 19, 2010, attached hereto as Exhibit E);

(i) Seller acknowledges receipt of a copy of the articles of organization and operating agreement of Salmir Properties, LLC, and the same shall be true and complete copies on the date hereof, and on the date hereof and at Closing, Selim Rusi and/or Marvin Schein are and will be the only persons directly or indirectly in control of the manager of Purchaser, and other than with respect to Permitted Transfers (hereinafter defined), the members of Purchaser at Closing shall

be the same as at the time of execution of this Contract, except as otherwise permitted in writing by Seller.

(j) If Purchaser shall not comply with its obligations under Section 4(b), and 4(g)(2), then Seller, after giving Purchaser notice and ten (10) business days to cure, may upon notice to Purchaser, if such non-compliance is not cured within such period, terminate this Contract on account of Purchaser's default, and shall have the remedies set forth in Section 15 hereof.

Section 5: The Closing.

(a) The closing of title pursuant to this Contract (the "Closing"), will take place at 1:00 p.m. on a date agreed to by Purchaser and Seller that shall not be later than August 1, 2011, subject to the provisions of this Contract (the "Closing Date") and provided that all Preliminary Conditions for Closing have been met, at the offices of Seller as set forth above or at such other place within the City as Seller may designate by notice to Purchaser. The "Preliminary Conditions for Closing" are those set forth in Sections 6(a)(1), and 6(a)(2). Prior to August 1, 2011, at any time after all Conditions for Closing, other than the condition described in Section 6(a)(3), have been satisfied, either party may, on no less than 10 days notice to the other Party, accelerate the Closing to a date no earlier than 10 business days after the giving of such notice.

(b) If the Closing does not take place on or before August 1, 2011, and the Preliminary Conditions for Closing have been satisfied, at Purchaser's request, the date scheduled for Closing shall be extended until August 15, 2011, with time of the essence as against Purchaser. If the Closing does not take place by August 15, 2011, this Contract shall be deemed terminated on such date, all rights and responsibilities under this Contract shall terminate other than those that by the express terms hereof survive the termination of this Contract, and if Purchaser is in default under this Contract at such time, Seller shall have the remedies set forth in

Section 15(b) of this Contract. Failure of the Closing to take place on or before the Closing Date due to the fault, default or delay of Purchaser shall be a default by Purchaser entitling Seller to the rights and remedies set forth in Section 15. The date fixed for Closing under this paragraph shall be deemed the "Closing Date."

(c) Notwithstanding anything to the contrary in this Contract, Purchaser acknowledges that notwithstanding satisfaction of the Preliminary Condition set forth in Section 6(a)(1), the GSA may fail to transfer the Property to Seller at any time prior to the Closing Date, if it reasonably determines that such action is justified ("GSA Rescission"). In the event of any such GSA Rescission, which right shall expire on the Closing Date, Seller shall have no liability of any kind to Purchaser other than to return the Down Payment and Administrative Fee; and this Contract shall be deemed terminated on such date, all rights and responsibilities under this Contract shall terminate other than those that by the express terms hereof survive the termination of this Contract.

Section 6. Conditions for Closing.

(a) The following are Conditions for Closing:

(1) GSA shall have obtained the necessary approvals under 40 U.S.C. Sec. 545(b)(8);

(2) The Board of Directors of Seller shall have approved the sale of the Property to Purchaser substantially as set forth in this Contract;

(3) Seller shall have acquired the Property from GSA by deed duly executed, acknowledged and delivered for a price equal to the Purchase Price;

(4) Seller's qualification and background review of Purchaser and its principals shall have revealed no information which, under Seller's policies, would preclude the sale of the Property to Purchaser pursuant to this Contract;

(5) Purchaser shall have provided Seller with proof satisfactory to Seller that the members of Purchaser at the time of Closing shall be the same as at the time of execution of this Contract subject to a Permitted Transfer as defined herein, and except as otherwise permitted in writing by Seller;

(6) Purchaser shall have furnished and requested any information regarding the Project and Property and completed any forms and paid all fees necessary for Seller to cooperate in good faith with Purchaser's efforts, and for Seller to facilitate GSA's obtaining the designation of the New Lot by the City in such manner as to not delay the Closing;

(7) Purchaser shall have provided Seller with the preliminary description and depictions for additional interior renovation and fit-out of Federal Building #2 required by Section 4(g)(2) of this Contract. Failure to do so shall be a default by Purchaser. The provisions of this Section 6(a)(7) are inserted for the benefit of Seller and may be waived only by Seller and in its sole discretion.

(b) If, on the Closing Date fixed in accordance with Section 5(b) hereof, any of the Conditions for Closing is not fulfilled (other than Conditions for Closing the fulfillment of which is the responsibility of Purchaser and provided that the Closing Condition set forth in Section 6(a)(3) is not fulfilled), then Seller shall have no obligation to transfer and convey the Property to Purchaser and Purchaser shall have no obligation or right to purchase the Property, and except where any such Condition for Closing has not been fulfilled on account of Purchaser's failure to perform its obligations hereunder (in which case Seller shall have the rights and remedies set



forth in Section 15 hereof), neither party shall have any rights against or liabilities to the other by reason of this Contract, except that Seller shall promptly return to Purchaser the Down Payment, without interest, upon its receipt from the GSA and the Administrative Fee, without interest, to Purchaser.

(c) Anything in this Section 6 notwithstanding, if by August 15, 2011 either the Preliminary Conditions have not been met or the Closing does not occur and the GSA terminates its agreement to sell the Property to Seller and returns the Down Payment to Purchaser, then this Contract shall be deemed terminated, and Seller shall return the Down Payment, without interest, upon its return from the GSA, and the Administrative Fee, without interest, to Purchaser. Thereafter neither party shall have any rights against or liabilities to the other by reason of this Contract.

Section 7. Deed Provisions. The Deed shall contain provisions substantially as follows:

(a) Subject to Unavoidable Delays (as hereinafter defined) Purchaser, on behalf of itself, its successors and assigns, covenants, within six (6) months from the date of the Deed, to commence construction with respect to the Federal Building Minimum Build and thereafter to diligently and continuously prosecute such construction, and the construction respecting the Parcel B Minimum Build, so as to complete the Minimum Build for the Project within two (2) years from the date of the Deed. For purposes of this Paragraph, "Unavoidable Delay" shall mean any cause beyond the reasonable control and without the fault or negligence of Purchaser, including but not limited to: orders of any court of competent jurisdiction, industry-wide labor disputes including strikes and slow downs, acts of God, enemy action, terrorist activity, civil commotion, inability to obtain materials as a result of a national disaster and fire or other

casualty, inability to obtain governmental permits provided Purchaser complied with its requirements and standard timeframe for processing applies, but not including Purchaser's financial condition or inability to obtain financing, provided Purchaser shall have notified Seller no later than thirty (30) days after the occurrence of such event. In no event shall Unavoidable Delays together aggregate more than twenty-four (24) months.

(b) If Purchaser transfers a leasehold interest in all or any part of the Property to New York City Industrial Development Agency ("IDA") and IDA leases back the Property or part thereof to Purchaser, all in connection with obtaining financial assistance, then, Purchaser, on behalf of itself and Purchaser's successors, covenants that, so long as it or its successor leases back the Property or part thereof from IDA or a successor agency, IDA is not responsible for any obligation on the part of Purchaser hereunder including the provisions of Section 7(g) hereof. Seller will not require that IDA or a successor agency comply with any obligations hereunder or have recourse against IDA or a successor agency in connection therewith.

(c) Purchaser, on behalf of itself, its successors and assigns, covenants that under no circumstances shall the Property or any portion thereof be used (i) for any adult establishment, as defined in Section 12-10 of the Zoning Resolution or (ii) exclusively for any passive warehouse and/or storage businesses.

(d) Purchaser, on behalf of itself, its successors and assigns, further covenants that, for a period of thirty (30) years from the date of completion of the Minimum Build for the Project, the Property shall be occupied and used only by industrial businesses for their business operations, including ancillary administrative and storage use incidental to such industrial businesses and up to 15% of rentable floor area of improvements on the Property may be used for retail uses currently allowed under the M3-1 zoning regulations for the Property existing at

the time of the Deed, and for no other purposes, except with the prior written approval of Seller (the "Permitted Uses"). This restriction and covenant shall run with the land. Notwithstanding anything to the contrary contained herein but subject however to the provisions of Section 7(b), if, at any time prior to the end of such thirty (30) year period but not before the later of four (4) years after the date of the Deed or two (2) years after the entire building is available and useable for leasing, Purchaser is unable to rent the Property for Permitted Uses, despite having used commercially reasonable efforts to do so, such that the Property, over a period of not less than one (1) year, produces revenue sufficient to enable Purchaser to pay all expenses of operating the Property, including interest and principal on indebtedness with an Institutional Lender of up to the "initial development cost" as defined below, Purchaser may request Seller's consent to an expansion of the Permitted Uses under this Section 7 to include any use permitted under the M3-1 zoning regulations for the Property at the time of the Deed ("Additional Uses"). In connection with any such request, Purchaser shall provide Seller with written documentation signed by Purchaser's chief executive officer reasonably detailing (i) the commercially reasonable efforts taken to lease or cause to be occupied the available rentable space, (ii) market information that supports the view that leasing will significantly increase the amount of leased or occupied rentable space within the Property, and (iii) rental income derived from rental of the Property, including rental income at a market rental rate for space occupied by Purchaser-affiliated entities, and expenses of operating the Property. The rental income and expenses information must be certified by Purchaser's chief financial officer and supported by Purchaser's financial statements and/or tax returns. Purchaser shall respond to all reasonable requests of Seller to enable Seller to evaluate the Purchaser's request. Provided Purchaser's request for Seller's consent meets the requirements set forth herein, Seller will in good faith reasonably consider and respond to such

request; however, Seller's consent to expand the Permitted Uses to include Additional Uses shall be at Seller's sole discretion. For purposes hereof, the "initial development cost" shall only include the cost of purchasing the Property plus the cost actually spent on the initial renovation and leasing of the entire Property, including any carrying costs. For purposes of this paragraph, building operating expenses, other than mortgage interest and amortization, shall be consistent with that incurred by a third-party owner/manager for a similar property. For purposes of clarity, Additional Uses shall not include any use permitted as a result of a change in zoning regulations applicable to the Property or a variance resulting, in either case, from an application therefor made directly or indirectly by Purchaser, and Purchaser further covenants that it shall not directly or indirectly make or cause to be made such application. In addition to the foregoing, any request for Seller's consent to an expansion of Permitted Uses to uses not permitted under M3-1 zoning regulations for the Property on the date of the Deed shall be exercisable by Seller at its sole and absolute discretion, and Purchaser further covenants that it shall not directly or indirectly make or cause to be made such application. The above restrictions in this Paragraph shall not apply to the Property after a foreclosure sale or a transfer in lieu of foreclosure under a mortgage held by an Institutional Lender securing financing with regard to the purchase of the Property by Purchaser or construction financing with regard to construction on the Property or a permanent "take-out" loan with regard to such construction financing. For the purposes hereof, "Institutional Lender" shall mean a savings bank, a savings and loan association, a commercial bank or trust company (whether acting individually or in a fiduciary capacity), an insurance company organized and existing under the laws of the United States or any state thereof, an investment bank or its affiliate, a religious, or educational institution, a federal, state or municipal employee's welfare, benefit, pension or retirement fund, any governmental agency or

entity insured by a governmental agency, or any combination of the preceding; provided, that each of the above entities shall qualify as an Institutional Lender only if it shall (a) be subject to the jurisdiction of the courts of the State of New York in any actions pertaining to or arising in connection with this Contract, and (b) have net assets of not less than \$500,000,000, or such lower amounts as are deemed acceptable in Seller's sole discretion.

(e) Purchaser, on behalf of itself, its successors and assigns, covenants that, for a period of ten (10) years from the date of the Deed, it shall not convey fee title to the Property (or any improvements thereon) or any interest in either, except (i) a conveyance of a leasehold interest in the Property to IDA in connection with financial assistance provided by IDA to Purchaser in connection with Purchaser's purchase of the Property and/or construction required hereby to be constructed on the Property, which is deemed a "Permitted Transfer" (as hereinafter defined), or (ii) with the prior written approval of Seller. The above restrictions and covenants in this Paragraph shall not prohibit, or apply to, a foreclosure sale or a transfer in lieu of foreclosure under a mortgage held by an Institutional Lender securing financing with regard to the purchase of the Property by Purchaser or construction financing with regard to construction on the Property or a permanent "take-out" loan with regard to such construction financing, nor to any sale or other transfer subsequent to such a foreclosure sale or transfer in lieu of foreclosure.

(f) In addition to the foregoing, until the later of (x) completion of the Minimum Build for the Project, and (y) the fifth (5<sup>th</sup>) anniversary of completion of the Federal Building Minimum Build, Seller's prior written approval at its sole discretion shall be required for (i) any sale, transfer or assignment of membership interests of Purchaser, (ii) any issuance of any additional membership interest in Purchaser, and (iii) any change in the interest of any member of Purchaser in Purchaser. Notwithstanding the foregoing, if the actions set forth in clauses (i),

(ii) and (iii) above, effect a transfer to existing beneficial owners of such interests, or to members of their respective families or to trusts for the benefit of any such persons, the same shall not require Seller's prior approval provided that Selim Rusi or Marvin Schein retain control or continue to be responsible for the day to day management and operations of Purchaser (hereinafter referred to as "Permitted Transfers"). With respect to any transfer which requires Seller's approval, Purchaser agrees to provide Seller with such information as Seller needs in deciding whether to give any approval required hereby. Any request for approval by Seller of any of the above matters, and any notice to Seller, and any notice of approval or disapproval by Seller, shall be in writing and delivered to the other party as set forth in Section 13 hereof.

(g) In addition to the foregoing, Purchaser acknowledges and agrees that this transaction is subject to the excess profits disgorgement provisions under 40 U.S.C. Sec. 545(b)(8) and accordingly, Purchaser, on behalf of itself, its successors and assigns, further covenants that, for a period of three (3) years from the date of the Deed, if at any time within the three-year period from the date of the Deed, Purchaser or its successors or assigns, shall sell or enter into agreements to sell the Property, either in a single transaction or in a series of transactions, all proceeds received or to be received in excess of Purchaser's or a subsequent seller's actual allowable costs will be promptly remitted to the GSA. Purchaser further agrees that in the event of a sale of less than the entire Property, actual allowable costs will be apportioned to the portion sold based on a fair and reasonable determination by the GSA.

(i) For purposes of this covenant, Purchaser's or a subsequent seller's allowable costs shall include the purchase price of acquiring the Property and the direct costs actually incurred and paid for physical improvements on the Property for the following: improvements on the Property which serve only such Property,

including road construction, storm and sanitary sewer construction, other public facilities or utility construction, building rehabilitation and demolition, landscaping, grading, and other site or public improvements; the direct costs actually incurred and paid for design and engineering services with respect to the improvements described above, provided, however, that none of these costs or the costs described above will be allowable if defrayed by Federal grants or if used as matching funds to secure Federal grants; the finance charges actually incurred and paid in conjunction with loans obtained to meet any of the allowable costs enumerated above.

(ii) In order to verify compliance with the terms and conditions of this covenant, Purchaser, or its successors or assigns, shall submit to GSA an annual report for each of the subsequent three years on the anniversary date of the Deed, which annual report shall include a certification by an officer of Purchaser as to the accuracy and completeness of the information being transmitted to the GSA. Each report will identify the Property, indicate the sale price of any property resold, the purchaser and the proposed land use, and enumerate any allowable costs incurred for physical improvements on the Property that would offset any profit realized. If no resale has been made, the report shall so state. Failure to file timely reports will extend the operation of the covenant for an additional one-year period for each late or omitted report. Purchaser acknowledges that GSA has reserved the right to monitor the Property and inspect records related thereto to ensure compliance with the terms and conditions of this covenant and may take any actions which it deems reasonable and prudent to recover any excess profits

realized through the resale of the Property. Purchaser further agrees to indemnify, defend, reimburse, and hold harmless the Seller and IDA and their respective officials, officers, directors, employees, agents, successors, and assigns, and each of them from and against any and all liabilities respecting the remittance of excess profits to the GSA.

(h) Purchaser further agrees and covenants by acceptance of the Deed to the Property that, in its use and occupancy of the Property it will comply with all applicable Environmental Laws with respect to the Property. Nothing in this Section 7(h) is intended to deprive Purchaser of any rights it is entitled to under the USA Cercla Covenant (as defined in Section 16(c)) as a successor of Purchaser with respect to the obligations of GSA regarding environmental conditions at the Property.

(i) The transfer of the Property is subject to the trust fund provisions of Section 13 of the New York State Lien Law.

(j) The Deed shall also contain a provision to the effect that if Section 7(a) through Section 7(f) above is not complied with, then Seller, at its option, and after giving Purchaser or any subsequent owner of the Property notice and 60 days opportunity to cure such default or such longer period as required to effect the cure thereof so long as Purchaser promptly commences and diligently pursues the cure to completion, shall, without paying Purchaser or any subsequent owner of the Property or any improvements thereon any consideration, have the right to re-enter and reacquire the Property, together with any improvements thereon, except, however, that Seller's reacquisition of the Property, together with any improvements thereon, shall be subject to the lien of mortgages held by Institutional Lenders securing financing with regard to the purchase of the Property by Purchaser or construction financing with regard to construction



on the Property or a permanent "take-out" loan with regard to such construction financing. Upon Seller's exercise of such option to re-enter and reacquire, Purchaser, or any subsequent owner of the Property and any improvements thereon, upon demand by Seller, shall deliver to Seller a deed(s), in form and substance satisfactory to Seller, conveying the Property, together with any improvements thereon, to Seller. Any attorney costs or fees incurred by Seller in exercising the above right to re-enter and reacquire the Property, together with any improvements thereon, shall be paid by Purchaser.

(k) The Deed shall grant to Purchaser the Adjacent Street Rights conveyed to Seller under the GSA deed.

The restrictions and covenants set forth in this Section 7 shall run with the land. With respect to any violation of the Deed, Seller shall retain each and every other defense, right, and remedy which Seller has, will have, or may have pursuant to the Deed, or any other agreement between Seller and Purchaser or under law, equity, or otherwise.

Section 8. To Be Delivered By Seller at Closing. At the Closing, Seller will deliver the following to Purchaser:

(a) Certificate of the Secretary or an Assistant Secretary of Seller, dated on or prior to the Closing Date, certifying to the adoption of resolutions by the Board of Directors of Seller authorizing the sale of the Property by Seller; and

(b) Deed referred to in Section 1 hereof executed by Seller and in proper form for recordation together with required transfer tax and related forms.

(c) An agreement regarding the Adjacent Street Rights, which agreement may be satisfied by inclusion in the Deed.

Section 9. To Be Delivered by Purchaser at the Closing. At the Closing, Purchaser

will deliver the following to Seller:

(a) Check(s) or wire transfer of immediately available funds in the amount of the remainder of the Purchase Price, as required under Section 2(2) hereof;

(b) Such organizational and authorization documents of Purchaser as reasonably required by Seller or the title company authorizing Purchaser's acquisition of the Property pursuant to this Contract.

Section 10. Transfer Taxes, Recording.

(a) Purchaser shall pay, and at the Closing shall deliver to its title insurer's representative Purchaser's checks for the Real Property Transfer Tax imposed by the City and the Real Estate Transfer Tax imposed by the State of New York, with respect to the Deed. At the Closing, Seller and Purchaser, or their respective attorneys, shall execute and acknowledge the Real Property Transfer Tax Return ("RPT Return") required under the regulations issued pursuant to Chapter 21 of Title 11 of the Administrative Code of the City and the New York State Department of Taxation and Finance Combined Real Estate Transfer Tax Return, Credit Line Mortgage Certificate, and Certification of Exemption from the Payment of Estimated Personal Income Tax (form TP-584) ("Combined Form"). Promptly after the Closing, Purchaser shall cause the Deed to be submitted for recording to the office of the City Register for Kings County (the "City Register") and, in connection therewith, shall deliver an executed counterpart of the RPT Return and Combined Form to the City Register.

(b) Purchaser shall pay the full amount of the taxes set forth above in this Section 10 notwithstanding the inapplicability of such taxes to this transaction or any exemption which Seller, Purchaser or the transaction involved may enjoy under law.

(c) Purchaser shall also cause the deed from the GSA to Seller to be submitted for recording to the City Register.

Section 11. Representations, Warranties and Covenants of Purchaser and Seller.

(a) Purchaser represents and warrants to Seller that:

(1) Purchaser has inspected the Property and is fully familiar with the physical condition and state of repair thereof, and Purchaser is purchasing the Property based solely upon its inspections, examinations and investigations of the Property, and accepts it "as-is", "where is" and "with all faults" in its condition and state of repair as of the date hereof and without abatement or reduction in the Purchase Price by reason of same.

(2) Purchaser has made a full and thorough examination and investigation before entering into this Contract and, in entering into this Contract, Purchaser has not been induced by and has not relied upon any representations, warranties or statements, whether oral or written, express or implied, made by Seller or any agent, employee or other representative of Seller or by any broker or any other person representing or purporting to represent Seller, which are not expressly set forth in this Contract concerning the Property, its state of title, condition or state of repair, tenancies or occupancies, the absence or presence of Hazardous Substances and materials on, in, at or under the Property, or any other matter affecting or relating to the Property or this transaction.

(3) Purchaser is a limited liability company, validly existing and in good standing under the laws of the State of New York, and has all requisite power and authority to execute, deliver and perform this Contract. Upon execution and delivery of this Contract by the parties hereto, this Contract shall constitute a legal, valid, binding and enforceable obligation of Purchaser.

(4) Purchaser represents that, upon execution of this Contract, Purchaser has delivered to Seller an administrative fee in the amount of \$ 125,000 (the "Administrative Fee"), receipt of which is hereby acknowledged by Seller. Purchaser agrees that such Administrative Fee is intended to compensate Seller for its time and effort spent in negotiating and administering this Contract. In the event that a successful Closing does not occur and Purchaser is entitled to the return of the Down Payment, the Administrative Fee, without interest, shall also be refunded to Purchaser. At Closing the Administrative Fee, without interest, will be applied towards the Purchase Price or any other fee or expense payable hereunder. This representation and agreement shall survive the termination of this Contract.

(b) Purchaser covenants and agrees that:

(1) (i) With regard to each July 1 - June 30 period during which any part of the seven (7) years from the date of the Closing falls (the "Reporting Period"), Purchaser agrees that it, and its successors and assigns, will submit to Seller, by August 1, on an annual basis, an employment and benefits report (the "Employment and Benefits Report") in the form attached hereto as Exhibit C (with the dates therein updated to reflect the applicable fiscal year). Purchaser must include in such Employment and Benefits Report information collected by Purchaser from Tenants.

(ii) Purchaser agrees that during the Reporting Period it, and its successors and assigns, will receive and in good faith consider such proposals as the Seller and Seller-related entities may make with regard to jobs Purchaser, or its successors and assigns will seek to fill in relation to its activities on or concerning the Property and shall provide the Seller and such entities with the opportunity (a) to refer candidates who are City residents having the requisite experience for the positions in question, and/or (b) to create a program to train City

residents for those jobs.

(iii) Each Lease Agreement (as defined in Section 4(d) hereof) entered into by Purchaser, or its successors or assigns, prior to the end of the Reporting Period, shall include provisions requiring the Tenant:

(A) with regard to each July 1 - June 30 fiscal year period during the Reporting Period, to complete with regard to itself and its subtenants items 1-5, 15 and 16 of the Employment and Benefits Report (with the dates therein updated to reflect the applicable fiscal year) and to sign such report and submit it to Purchaser or its successors and assigns before the August 1<sup>st</sup> immediately following such fiscal year period; and

(B) to receive and in good faith consider such proposals as the Seller and Seller-related entities may make with regard to jobs such Tenant will seek to fill in relation to its activities on or concerning the Property, and to provide the Seller and such entities with the opportunity (i) to refer candidates who are City residents having the requisite experience for the positions in question, and/or (ii) to create a program to train City residents for those jobs, and to report to Seller, upon Seller's request, regarding the status of its consideration of such proposals.

Such agreement must provide that both Purchaser and Seller and their successors and assigns shall be beneficiaries of each such agreement by each Tenant. Purchaser and its successors and assigns must reserve the right, on behalf of themselves and Seller and its successors, designees and assigns, as third party beneficiaries, to seek specific performance by Tenants, at the expense of such Tenants, of the obligations set forth in Section II(b)(1)(iii) above and to fulfill those other obligations set forth in such Sections.

(iv) Purchaser must retain for six (6) years all forms completed by its

Affiliates and Tenants and at Seller's request must permit Seller upon reasonable notice to inspect such forms and provide Seller with a copy of such forms.

(v) In the event that Purchaser or any subsequent owner of all or part of the Property sells all or part of the Property prior to the end of the Reporting Period, each such owner of all or part of the Property subsequent to Purchaser shall comply with the requirements of Section 11(b)(1) hereof in the same manner as if such subsequent owner was Purchaser and had not sold the Property.

In addition to any other requirements with regard to any sale of all or part of the Property, the seller of all or part of the Property during the Reporting Period shall promptly notify Seller in writing, at the address for notices to it under this Contract, of the name and address of each purchaser of all or part of the Property. Each instrument of sale shall include the requirements set forth above in this paragraph.

(vi) The provisions of this Section (11)(b)(1) shall survive the Closing.

(2) No membership interest of Purchaser shall be sold, assigned or otherwise transferred other than Permitted Transfers, nor shall any additional membership interest in Purchaser be issued if as a consequence thereof Selim Rusi or Marvin Schein will not retain control and continue to be responsible for the day to day management and operations of Purchaser, between the date of this Contract and the Closing without the prior written approval of Seller. With respect to any transfer which requires Seller's approval, Purchaser agrees to provide Seller with such information as Seller requests in deciding whether to give such approval. Any request for approval by Seller of any of the above matters, and any notice to Seller, and any notice of approval or disapproval by Seller, shall be in writing and delivered to the other party as set forth in Section 13 hereof. If any such membership interest is sold,

assigned, transferred or issued without Seller's prior permission, Seller may consider Purchaser to be in default of this Contract and terminate this Contract by written notice to Purchaser and retain the Down Payment as provided in Section 15.

(3) If Seller's qualification and background review of Purchaser and its principals discloses, or Seller otherwise becomes aware of, any outstanding taxes, assessments, rents, fines or other charges (collectively, "City Charges") owed to the City by Purchaser or its principals or any outstanding City liens against Purchaser or its principals, then Purchaser shall pay or cause Purchaser's principals to pay, or enter into or cause such persons or entities to enter into agreements with the City to pay within a defined period of time ("Workout Agreements"), all such City Charges and Purchaser shall or shall cause such persons or entities to unconditionally discharge all such liens, and Purchaser shall deliver to Seller satisfactory evidence of such payment and discharge and/or Workout Agreements and compliance therewith, within 30 days (but in no event after the last date for the Closing set forth in Section 5) after Purchaser has been notified by Seller of such City Charges.

(4) Purchaser shall permit Seller, its agents, employees and/or professional consultants, upon reasonable advance notice to Purchaser, to make inspections of the Property during normal business hours or otherwise when construction work for the Project is in progress, and in accordance with applicable safety standards and in such manner as not to interfere with the construction work, as Seller deems necessary to observe compliance with and performance under this Agreement. Seller's entry shall be at its own risk, and Seller shall and hereby does indemnify, defend and hold harmless Purchaser for any loss, cost, damage or injury incurred by Seller or Purchaser in connection with Seller's entry, except any of the foregoing caused by Purchaser's negligence or intentional misconduct. Purchaser shall cause a complete set of plans

and specifications, as then in effect, and shop drawings to be maintained at the construction site of the Project for inspection by Seller. The omission or failure of Seller or any representative thereof to make such inspections, to identify any defects or to notify Purchaser of any observable defects or any non-compliance with the terms of this Agreement or the plans and specifications, shall in no way relieve Purchaser of its obligations under this Agreement or impose any liability upon Seller, its employees, consultants and agents.

(5) Purchaser shall use diligent efforts to achieve a LEED Silver certified rating from the USGBC for the core and shell of Federal Building #2, and not less than a minimum of LEED Silver for any building constructed on Parcel B, including hiring a LEED consultant for the Project. Not later than thirty (30) days prior to the commencement of construction, Purchaser shall furnish Seller with a copy of Purchaser's Green Building Application for said LEED Silver rating for the Project. Purchaser shall as promptly as practicable thereafter submit such Green Building Application to the USGBC and diligently pursue achieving a LEED Silver rating for the core and shell of Federal Building #2, and any other building in the Project in accordance with the requirements therefor. Notwithstanding the foregoing, the parties agree to discuss possible ways of achieving a LEED Silver rating from the USGBC, including, without limitation, by reviewing Purchaser's existing documents in connection with LEED (including, but not limited to, the checklist dated February 19, 2010, attached hereto as Exhibit E).

(6) Purchaser shall provide Seller, at Seller's request, an opportunity to review any proposed lease(s), purchase agreement(s), or letter(s) of intent to lease or purchase any portion of the Project at Seller's place of business upon written notice made not less than three (3) business days before the requested date of such review.



(7) Not later than thirty (30) days prior to the commencement of construction, Purchaser shall furnish Seller with an update of the Outreach and Marketing Plan delivered by Purchaser pursuant to Section 4(g)(3) hereof.

(c) The representations, warranties and covenants of Purchaser set forth in this Section 11 shall survive the Closing and transfer of title.

(d) Seller hereby represents and warrants to Purchaser that:

(1) Seller is a not-for-profit corporation duly organized, validly existing and in good standing under the laws of the State of New York; it has the power, right, authority and legal capacity to execute and deliver this Agreement and the other documents, instruments, certificates and agreements required to be executed and delivered by it hereunder and to enter into and perform the transactions contemplated hereby.

(2) The Property being conveyed hereunder is being acquired directly from GSA by Seller and immediately thereafter is being sold by Seller to Purchaser, in accordance with the terms and conditions set forth herein.

Section 12. Title Defects. Nothing contained in this Contract shall obligate Seller to incur any expense or to bring any action or proceeding in order to cure any defects, encumbrances or other objections to title or to render title marketable or in accordance with this Contract. Any title evidence which may be desired by Purchaser will be procured at its sole cost and expense, and Seller will not be obligated to pay for any expense incurred in connection with title matters or survey of the Property.

Section 13. Notice. Any notice, demand, or request that, under the terms of this Contract must or may be given or made by either of the parties hereto to the other party shall be in writing, and either (i) sent by any of the parties hereto or their respective attorneys, by

registered or certified mail, return receipt requested, postage prepaid, or (ii) delivered in person or by nationally recognized overnight courier, with receipt acknowledged, to the addresses given below, or to such other address for such party as such party shall hereafter designate by notice given to the other party pursuant to this Section 13. The respective addresses for notice purposes are as follows:

If to Seller:

New York City Economic Development Corporation  
110 William Street  
New York, New York 10038  
Attn: General Counsel

With a copy to:

New York City Economic Development Corporation  
110 William Street  
New York, New York 10038  
Attn: Executive Vice President for Development

If to Purchaser:

Salmar Properties, LLC  
c/o Platinum Maintenance Corp.  
120 Broadway  
New York, New York 10271  
Attn: Selim Rusi and Marvin Schein

With copies to:

Ackerman, Levine, Cullen, Brickman & Limmer, LLP  
1010 Northern Boulevard, Suite 400  
Great Neck, NY 11021

and

Jacobi, Sieghardt, Bousanti, Piazza & Fitzpatrick, PC  
235 Forest Avenue  
Staten Island, NY 10301

Any such notice, demand or request sent by mail shall be deemed given on the third business day following the date of mailing the same, and when delivered in person or by nationally recognized overnight courier shall be deemed given when delivered.

Section 14. Broker. Seller and Purchaser mutually agree that no broker brought about this sale. Purchaser agrees, however, to defend, indemnify and hold harmless the Seller and their respective officers, directors, members, principals, agents, representatives and employees from and against any obligation, liability, claim, demand, penalty, fine, damages, cost, expense and judgment incurred by Seller as a result of any claim for commission or other similar compensation brought by any broker or brokerage firm or other firm or individual relating to the proposed or actual purchase described herein. The Seller may participate in the defense of any action or matter of a type described above, with an attorney chosen by the Seller at Seller's sole cost and expense. The provisions of this Section shall survive the Closing.

Section 15. Purchaser's Default.

(a) If by the Closing Date (1) (x) all the Conditions for Closing have been satisfied or (y) all the Seller Conditions for Closing have been satisfied or in Seller's sole judgment, could be satisfied by the Closing Date if Purchaser were willing to close by the Closing Date, and (2) Purchaser refuses or willfully fails to close by the Closing Date, then Purchaser shall be in default of this Contract.

(b) If Purchaser shall default in the manner set forth in Section 15(a) or shall materially breach any of its other obligations under this Contract or shall make a material false representation in this Contract, then Purchaser shall be in default under this Contract, and Seller shall have the right at its option to retain Purchaser's Down Payment and Administrative Fee in which event Purchaser shall be relieved of further liability or, without forfeiting said Down

Payment and Administrative Fee Seller may avail itself of any legal or equitable rights which it may have against Purchaser under this Contract by reason of such default.

(c) If this Contract is terminated by Purchaser, or by Seller in accordance with this Contract, Seller shall have an unrestricted right to use any and all reports, studies, surveys and other documents, materials or work product, other than construction drawings and plans, prepared for or in connection with this Contract by or on behalf of Purchaser, as if Seller were the owner thereof, for any purpose at any time and from time to time, in whole or in part, without paying any charge, cost or compensation to Purchaser therefor, and make modifications thereof for any purposes whatsoever.

Section 16. Environmental Provisions.

(a) For purposes of this Contract, "Hazardous Substances" shall mean any (1) "hazardous substance" as defined under CERCLA, or (2) "hazardous waste" as defined under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., or (3) "hazardous materials" as defined under the Hazardous Materials Transportation Authorization Act, 49 U.S.C. Section 5101 et seq., or (4) "hazardous waste" as defined under New York Environmental Conservation Law, Section 27-0901 et seq., or (5) "petroleum" as defined under New York Navigation Law, Section 172.15 et. Seq., or (6) "hazardous substance" as defined under the Clean Water Act, 33 U.S.C. Section 1321 et seq., and the regulations adopted and publications promulgated pursuant to the above, and all other applicable laws, rules or regulations of all Federal, State and local authorities having jurisdiction over the Property.

(b) For purposes of this Contract, "Environmental Laws" shall mean, collectively, CERCLA, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., the Hazardous Materials Transportation Authorization Act, 49

U.S.C. Section 5101 et seq., the New York Environmental Conservation Law, Section 27-0901 et seq., New York Navigation Law, Article 12 et. Seq., the Clean Water Act, 33 U.S.C. Section 1321 et seq., and any Federal, State, or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, radioactive, biohazardous or dangerous waste, substance or materials, including any regulations adopted and publications promulgated with respect thereto.

(c) Pursuant to CERCLA, the GSA has warranted and covenanted to Seller substantially as set forth in this Section 16(c) (the "USA Cercla Covenant") which runs with the land and Purchaser, as title holder or "Grantee" to the Property shall be a beneficiary of the USA Cercla Covenant. The GSA warrants that all remedial action necessary to protect human health and the environment shall have been taken before the Closing Date, and that it shall take any additional response action found to be necessary after the Closing Date regarding hazardous substances located on the Property on the Closing Date.

(1) This covenant shall not apply: (a) in any case in which the Grantee, its successors or assigns; or any successor in interest to the property or part thereof is a Potentially Responsible Party (PRP) with respect to the property immediately prior to the Closing Date; or (b) to the extent that such additional response action or part thereof found to be necessary is the result of an act or failure to act of the Grantee, its successors or assigns, or any party in

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possession after the Closing Date that either: (i) results in a release or threatened release of a hazardous substance that was not located on the property on the Closing Date; or (ii) causes or exacerbates the release or threatened release of a hazardous substance the existence and location of which was known and identified to the applicable regulatory authority as of the Closing Date.

(2) In the event Grantee, its successors or assigns, seeks to have the GSA conduct any additional response action, and, as a condition precedent to the GSA incurring any additional cleanup obligation or related expenses, the Grantee, its successors or assigns, shall provide the GSA at least 45 days written notice of such a claim. In order for the 45-day period to commence, such notice must include credible evidence that: (a) the associated contamination existed prior to the date of this conveyance; and (b) the need to conduct any additional response action or part thereof was not the result of any act or failure to act by the Grantee, its successors or assigns, or any party in possession. The GSA reserves a right of access to all portions of the property for environmental investigation, remediation or other corrective action. This reservation includes the right of access to and use of available utilities at reasonable cost to the GSA. These rights shall be exercisable in any case in which a remedial action, response action or corrective action is found to be necessary after the date of this conveyance, or in which access is necessary to carry out a remedial action, response action, or corrective action on adjoining property. Pursuant to this reservation, the GSA, and its respective officers, agents, employees, contractors and subcontractors shall have the right (upon reasonable advance written notice to the record title owner) to enter upon the property and conduct investigations and surveys to include drilling, test-pitting, borings, data and records compilation and other activities related to environmental investigation, and to carry out remedial or removal actions as required or necessary, including but not limited to the installation and operation of monitoring wells, pumping wells, and treatment facilities. Any such entry, including such activities, responses or remedial actions, shall be coordinated with record title owner and shall be performed in a manner that minimizes interruption with activities of authorized occupants.

(d) Purchaser expressly represents, warrants, and agrees that it has been given a full and fair opportunity to inspect the Property for the presence of any Hazardous Substance on, at, in, under or beneath the Property and Purchaser has inspected the Property and is fully familiar with the environmental, health and safety condition of the Property, and acknowledges and agrees that it is purchasing the Property "as is" based solely on its inspections, examinations and investigations of the Property and Seller shall not be liable for any latent or patent defects in the Property.

(e) Purchaser, for itself and its successors and assigns, hereby absolutely waives, and agrees that neither it nor its successors and assigns, if any, shall make any claim for damages, contribution, indemnification or otherwise against the Seller, which Purchaser or its successors or assigns may now or hereafter have or discover in connection with Hazardous Substances on, in, at, under, beneath, emanating from or affecting the Property, or in connection with any voluntary or required removal or remediation thereof (including, without limitation, claims relating to the release, threatened release, disturbance, emission or discharge of Hazardous Substances). Seller shall have no liability to Purchaser, or its successors or assigns, with regard to Hazardous Substances, on, at, in, under, beneath, emanating from or affecting the Property. Such waiver of liability shall cover, without limitation, any and all liability to Purchaser, both known and unknown, present and future, for any and all environmental liabilities, including without limitation any and all strict and other liability, costs, claims, fines, penalties, damages under any and all Environmental Laws with respect to investigating, remediating, mitigating, removing, treating, encapsulating, containing, monitoring, abating, or disposing of any Hazardous Substance, and any costs incurred to come into compliance with Environmental Laws.

(f) Purchaser, its officers, directors, employees, agents, predecessors, successors, and assigns, and each of them (collectively referred to herein as "Purchaser and Agents") agree to indemnify, defend, reimburse, and hold harmless the Seller, and its officials, officers, directors, employees, agents, successors, and assigns, and each of them from and against any and all environmental liabilities under any Environmental Laws.

(g) The obligations of Purchaser and Agents shall include, without limitation the burden and expenses of defending against any environmental liabilities under any Environmental Law, with counsel reasonably approved by the Seller.

(h) The provisions of this Section 16 and the obligations of Purchaser, its successors and assigns, hereunder shall survive this Contract and the delivery of the Deed.

Section 17. Miscellaneous.

(a) Purchaser's interest under this Contract shall not be assigned, nor shall Purchaser divest itself of any interest herein except with respect to Permitted Transfers, without the prior written consent of Seller, which consent shall not be unreasonably withheld provided such assignment is to a newly formed special purpose entity that is under the same control and management as Purchaser, and provided that such new entity expressly assumes all obligations under this Contract and has submitted all background investigation forms and other due diligence requests required by Seller and none of such submissions shall have revealed any information which, under Seller's policies would preclude the sale of the Property to such entity. Any attempted assignment in contravention of this paragraph shall be void.

(b) This Contract constitutes the full agreement between the parties with respect to the transaction contemplated herein, and all prior understandings and agreements are merged into this Contract. Neither this Contract nor any provision hereof may be changed or canceled except



by agreement in writing signed by the party (acting by a duly authorized partner or officer thereof if the party is a partnership or corporation) against whom any purported change is sought to be enforced.

(c) This Contract shall be governed by, and construed in accordance with, the laws of the State of New York.

(d) The captions in this Contract are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this Contract or any of the provisions hereof.

(e) This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

(f) The gender used in this Contract shall be deemed to refer to the masculine, feminine, or neuter gender, as the identity of the contracting parties may require. The singular shall include the plural as the context may dictate.

(g) Seller and Purchaser shall each act in good faith and diligently and honestly proceed to fulfill its respective obligations under this Contract, and support and cooperate with the other to legally and diligently discharge their respective obligations under this Contract which are dependent in any measure on another's party's performance; provided, however, the

foregoing shall not obligate Seller to incur any expense or bring any action or proceeding to cause the GSA or the City or any other party that Seller does not control to perform, where such party has separate jurisdiction over any aspect of the Property or the Project, or to cause such other party to incur any expense or bring any action or proceeding to facilitate its performance.

Section 18. Binding Agreement. Neither the submission of this Contract form to Purchaser nor the execution of this Contract by Purchaser nor the submission of the Down Payment by Purchaser to Seller nor the receipt and deposit of the Down Payment by Seller shall constitute an offer by Seller to Purchaser to sell the Property to Purchaser or an agreement by Seller to sell the Property to Purchaser. This Contract shall not be or become binding upon Seller to any extent or for any purpose unless and until it is executed by Seller and Purchaser and a fully executed counterpart thereof is delivered to Purchaser.

Each of the signatories below represents that it has authority to sign on behalf of the party for which it signed and has the power to bind such party.

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the date first above written.

NEW YORK CITY ECONOMIC  
DEVELOPMENT CORPORATION

By: Patrick J. O'Sullivan, Jr.  
Name: Patrick J. O'Sullivan, Jr.  
Title: Executive Vice President

SALMAR PROPERTIES, LLC

By: Salmar Realty, LLC, its manager

By: [Signature]  
Name:  
Title:

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY (Subject to update in accordance herewith)

850 Third Avenue (Section Block 671 DR-1) and  
Portion 870 Third Avenue (Section Block 675 DR-2)

All that tract, piece or parcel of land, situate in the Borough of  
Brooklyn, Kings County, New York, bounded and described as follows:

Beginning at a point where the westerly line of Third Avenue intersects the southerly line of Thirtieth Street; running thence South  $38^{\circ}23'03''$  West, along the westerly line of said Third Avenue 200.353 feet to its intersection with the northerly line of Thirty-First Street; running thence North  $51^{\circ}36'57''$  West, along said northerly line of Thirty-First Street 25.0 feet to its intersection with the westerly line of said Thirty-First Street; running thence South  $28^{\circ}55'19''$  West, along said westerly line 60.82 feet to its intersection with the southerly line of said Thirty-First Street; running thence South  $51^{\circ}36'57''$  East, along said southerly line of Thirty-First Street 15.0 feet to its intersection with the first mentioned westerly line of Third Avenue; thence South  $38^{\circ}23'03''$  west, along said westerly line of Third Avenue 200.353 feet to its intersection with the northerly line of Thirty-Second Street; running thence North  $51^{\circ}36'57''$  West, along said northerly line of Thirty-Second Street 20.0 feet to its intersection with the westerly line of said Thirty-Second Street; running thence South  $38^{\circ}23'03''$  West along the last mentioned westerly line 30.0 feet to its intersection with the centerline of said Thirty-Second Street; running thence North  $51^{\circ}36'57''$  West, along a prolongation of said centerline 367.00 feet to a point, the last mentioned course also being the division line between the lands of 1-10 Industries Associates, LLC on the south and the United States of America on the north; running thence through the lands of the United States of America the following two courses: (1) North  $38^{\circ}23'03''$  East, 138.00 feet to a point; and (2) North  $51^{\circ}36'57''$  West, 313.00 feet to its intersection with the easterly line of Second Avenue; running thence North  $38^{\circ}23'03''$  East along said easterly line of Second Avenue, 352.71 feet; running thence South  $51^{\circ}36'57''$  East, 700.00 feet to the point of beginning, being 7.00 acres of land more or less.

**EXHIBIT B**

**INITIAL EMPLOYMENT REPORT**

See separate attachment

**INITIAL EMPLOYMENT REPORT**

In order to comply with Local Law reporting requirements, the Company is required to complete and return this form to NYCEDC, 110 William Street, Attention: Compliance, New York, NY 10038 on or before the execution and delivery of its Project Agreement. The Company shall submit one report that covers (i) the Company and its Affiliates and (ii) Tenants and subtenants of Tenants. Each Tenant must complete a copy of this form with respect to itself and any of its subtenants and return it to the Company.

1. Please provide the total number of employees in each category below that will be employed at the Project Location(s) by the Company and its Affiliates and any Tenants and subtenants of Tenants on or about the date of the Project Agreement (for land sales please use the date of the deed):

Permanent Full-Time Employees: 1932 Non-Permanent Full-Time Employees: \_\_\_\_\_  
 Permanent Part-Time Employees: \_\_\_\_\_ Non-Permanent Part-Time Employees: \_\_\_\_\_  
 Full-Time Equivalent Employees: \_\_\_\_\_ Contract Employees: \_\_\_\_\_

2. Please estimate the total number of employees in each category below that will be employed (both retained and created jobs) at the Project Location(s) by the Company and its Affiliates and any Tenants and subtenants of Tenants on June 30<sup>th</sup> of the next eight (8) years following the Closing date:

	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>	5 <sup>th</sup>	6 <sup>th</sup>	7 <sup>th</sup>	8 <sup>th</sup> year
Full-Time Employees	14 <i>in transition</i>	706	1532	1932	1932	1932	1532	1535
Part-Time Employees								
Full-Time Equivalent Employees								
Contract Employees								

**DEFINITIONS:**

**"Affiliate"** is (i) a business entity in which more than fifty percent is owned by, or is subject to a power or right of control of, or is managed by, an entity which is a party to a Project Agreement, or (ii) a business entity that owns more than fifty percent of an entity which is a party to a Project Agreement or that exercises a power or right of control of such entity.

**"Company"** includes any entity that is a party to a Project Agreement.

**"Contract Employee"** is a person who is an independent contractor (i.e., a person who is not an "employee"), or is employed by an independent contractor (an entity other than the Company or its Affiliate, a Tenant or a subtenant of a Tenant), who provides services at a Project Location.

**"Full-Time Employee"** is an employee who works at least 35 hours per week at a Project Location.

**"Full-Time Equivalent Employee"** is two or more Part-Time Employees who collectively work at least 35 hours per week at a Project Location.

**"Part-Time Employee"** is an employee who works less than 35 hours per week at a Project Location.

**"Project Agreement"** is any agreement or instrument (such as a lease agreement or deed) pursuant to which an entity purchases or leases (directly or by assignment from NYCEDC) property from NYCEDC.

**"Project Location"** is any location that is leased (directly or by assignment from NYCEDC) or purchased by the Company from NYCEDC.

**"Tenant"** is a tenant or subtenant (excluding the Company and its Affiliates) that leases or subleases facilities from the Company or its Affiliate at any Project Location.

Certification: I, the undersigned, an authorized officer or principal owner of the Company/Affiliate/Tenant, hereby certify to the best of my knowledge and belief, that all information contained in this report is true and complete. 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 of NYCEDC and/or the City of New York; and, without limiting the

foregoing, such information may be included in (x) reports prepared by NYCEDC pursuant to New York City Charter Section 1301 et. seq., (y) other reports required of NYCEDC, and (z) any other reports or disclosure required by law.

Entity Name: S&A 42 Properties LLC  
Signature By: [Signature] Date: 3/21/11  
Name (print): David S. Scher S&A 42 RUSI Title: 2011-11 B.211 B.211 member

**Exhibit B**  
**GSA #1-G-NY-0872A**

Note: This table displays the Hazardous Wastes that were Shipped by Generators from the Brooklyn Federal Building (No. 3 Site at 836 Third Avenue Brooklyn, NY) from 1/5/1990 through 9/28/2000. Source: Phase I Site Assessment Report done by Sandstone Environmental Associates in May 2007. The table was compiled from data contained in this May 2007 report.

Hazardous Substance Name	Related CASRN	RCRA Hazardous Waste No (40 CFR 261.30)	Total Quantity Shipped	Units	Warehouse	Known Spill / Release / Disposal at Property
Arsenic 3.0 mg/l TCLP	7440-38-2	D004	45	pounds	Shipped from site by generator	unknown
Chromium 5.0 mg/l TCLP	7440-47-3	D007	2450	pounds	Shipped from site by generator	unknown
Formaldehyde	50-00-0	U122	2	gallons	Shipped from site by generator	unknown
Halo Solv + Still Bottoms FM Rec of Solv		F002	455	gallons	Shipped from site by generator	unknown
Halo Solv + Still Bottoms FM Rec of Solv		F002	927.8	pounds	Shipped from site by generator	unknown
Lead 5.0 mg/l TCLP	7439-92-1	D008	490	pounds	Shipped from site by generator	unknown
Lead Acetate	301-84-2	U144	400	pounds	Shipped from site by generator	unknown
Mercury 0.2 mg/l TCLP	7439-97-6	D009	1	gallons	Shipped from site by generator	unknown
Mercury 0.2 mg/l TCLP	7439-97-6	D009	1006	pounds	Shipped from site by generator	unknown
Methyl Parathion	298-00-0	F071	20	pounds	Shipped from site by generator	unknown
Methyl Parathion	298-00-0	P071	5	gallons	Shipped from site by generator	unknown
Non-Listed Corrosive wastes		D002	57	gallons	Shipped from site by generator	unknown
Non-Listed Corrosive Wastes		D002	201	pounds	Shipped from site by generator	unknown
Non-Listed Ignitable Wastes		D001	1092	gallons	Shipped from site by generator	unknown
Non-Listed Ignitable Wastes		D001	8147.4	pounds	Shipped from site by generator	unknown
Non-Listed Reactive Wastes		D003	6	pounds	Shipped from site by generator	unknown
Petroleum Oil with 50 bar <500ppm PCB		B002	500	pounds	Shipped from site by generator	unknown
Phthalic Anhydride	85-44-9	U190	30	pounds	Shipped from site by generator	unknown
Potassium Cyanide	151-50-8	P098	19	pounds	Shipped from site by generator	unknown
Saccharin + Salts	81-07-1	U202	630	pounds	Shipped from site by generator	unknown
Silver 5.0 mg/l TCLP	7440-22-4	D011	29	pounds	Shipped from site by generator	unknown
Sodium Azide		R105	1	pounds	Shipped from site by generator	unknown
Unknown		F001	165	gallons	Shipped from site by generator	unknown
Vandium Pentoxide	1314-62-1	P120	2	pounds	Shipped from site by generator	unknown

- c. Grantee shall at all times keep the Warden, MDC Brooklyn, informed of any activity incident to access, including information on the beginning and completion of access, including 72 hour notification prior to ingress to the affected land. Access may be delayed or temporarily suspended at the discretion of the Warden, MDC Brooklyn, should it be determined that access would likely create disruptions to safe and orderly operation of the MDC. The notice requirements set forth herein do not apply to access for emergency vehicles and emergency egress from Federal Building #2.
  - d. Grantee shall maintain, modify, construct, and reconstruct such drainage facilities as necessary to provide elimination of surface water resulting from Grantee's activities without causing destructive erosion to the property of the United States of America, and also assume all responsibility for damage by flooding resulting from its activities.
  - e. Grantee shall relocate any and all existing gas lines, sewer lines, water lines, poles and all other utility lines and pipes which are to be disturbed because of its activities.
  - f. Grantee shall protect any existing boundary markers removed by construction and reset them in their original location.
  - g. GSA shall observe any and all regulations of the Bureau and the MDC regarding the storage of tools, machinery, and equipment including the supervision of motor vehicles on, or in the proximity of the property under the custody and control of the MDC.
5. These terms may be amended by joint agreement of the Grantee, its successors or assigns, and the Bureau or its assigns.



feet, for access to the existing street entrance at the rear of Federal Building #2. All deliveries accessing the area shall be subject to inspection by Metropolitan Detention Center (MDC), Brooklyn staff. Access may be temporarily suspended at the discretion of the Warden, MDC Brooklyn, should it be determined by the Warden, MDC Brooklyn, that access would likely create disruptions to safe and orderly operation of the MDC.

2. A perpetual and non-exclusive right of access to pass and repass over and across a portion of 30th Street, between 2nd and 3rd Avenues that measures 20 feet from the rear of Federal Building #2 for the following purpose: trucks and construction equipment for rehabilitation and repair work to Federal Building #2. Access will be in accord with and subject to the provisions of Paragraph 4 below.

3. A perpetual and non-exclusive right of access to pass and repass over and across a portion of 30th Street, between 2nd and 3rd Avenues, that measures 30' 1" from the rear of Federal Building #2 for the following purposes: Emergency vehicles and emergency egress from Federal Building #2; and, the installation, maintenance and repair of utilities in and under 30th Street and the transformers adjacent to Federal Building #2. Access will be in accord with and subject to the provisions of Paragraph 4 below. The MDC will not place anything in this area that will permanently encroach upon the area subject to this right of access, and this restriction shall be binding on any assigns of the MDC.

4. The following conditions are imposed regarding the rights of access set forth in Paragraphs 2 and 3, as amended, herein:

- a. Use of the rights of access by Grantee shall be done with as little inconvenience to the MDC as is consistent with reasonable progress, and any damage to the land subject to the rights of access, including fences, roads, or other facilities, shall be properly corrected to the satisfaction of the Warden, MDC Brooklyn.
- b. Grantee shall perform all activities in a manner which complies with all pertinent Federal and State environmental laws and in a manner so as to prevent and avoid any threatened or actual release or disposal of any hazardous substance as identified in accordance with any pertinent Federal or State environmental laws. In the event any liability does arise under Federal and/or State environmental laws, as a result of activities of Grantee associated with the rights of access, Grantee shall indemnify the Bureau to the extent permitted by law for any remediation costs, response costs, natural resource damages, penalties, or any other costs for which the United States of America is found liable, including the cost of any studies and investigations necessary to determine an appropriate response to the contamination, and of any clean up or other response costs which the United States of America is required or obliged to undertake.

Exhibit A

GSA RESERVES THE RIGHT TO AMEND THIS DESCRIPTION BASED ON THE  
APPROVED REVISED SURVEY

LEGAL DESCRIPTION

850 Third Avenue (Section Block 671 DR-1) and  
Portion 870 Third Avenue (Section Block 675 DR-2)

All that tract, piece or parcel of land, situate in the Borough of  
Brooklyn, Kings County, New York, bounded and described as follows:

Beginning at a point where the westerly line of Third Avenue intersects the southerly line of Thirtieth Street; running thence South  $38^{\circ}23'03''$  West, along the westerly line of said Third Avenue 200.353 feet to its intersection with the northerly line of Thirty-First Street; running thence North  $51^{\circ}36'57''$  West, along said northerly line of Thirty-First Street 25.0 feet to its intersection with the westerly line of said Thirty-First Street; running thence South  $28^{\circ}55'19''$  West, along said westerly line 60.82 feet to its intersection with the southerly line of said Thirty-First Street; running thence South  $51^{\circ}36'57''$  East, along said southerly line of Thirty-First Street 15.0 feet to its intersection with the first mentioned westerly line of Third Avenue; thence South  $38^{\circ}23'03''$  west, along said westerly line of Third Avenue 200.353 feet to its intersection with the northerly line of Thirty-Second Street; running thence North  $51^{\circ}36'57''$  West, along said northerly line of Thirty-Second Street 20.0 feet to its intersection with the westerly line of said Thirty-Second Street; running thence South  $38^{\circ}23'03''$  West along the last mentioned westerly line 30.0 feet to its intersection with the centerline of said Thirty-Second Street; running thence North  $51^{\circ}36'57''$  West, along a prolongation of said centerline 367.00 feet to a point, the last mentioned course also being the division line between the lands of 1-10 Industries Associates, LLC on the south and the United States of America on the north; running thence through the lands of the United States of America the following two courses: (1) North  $38^{\circ}23'03''$  East, 138.00 feet to a point; and (2) North  $51^{\circ}36'57''$  West, 313.00 feet to its intersection with the easterly line of Second Avenue; running thence North  $38^{\circ}23'03''$  East along said easterly line of Second Avenue, 352.71 feet; running thence South  $51^{\circ}36'57''$  East, 700.00 feet to the point of beginning, being 7.00 acres of land more or less.

Further granting to the Grantee and its successors and assigns, certain access rights in the land owned by the United States of America, acting by and through the Federal Bureau of Prisons (the "Bureau") that lies along the northeasterly boundary of the Property, commonly known as 30<sup>th</sup> Street, between 2<sup>nd</sup> and 3<sup>rd</sup> Avenues. The access rights are granted with specific conditions set forth herein.

1. A perpetual and non-exclusive right of access to the eastern end of 30th Street, running from its intersection with Third Avenue to the existing fence, approximately 61

IN WITNESS WHEREOF, the UNITED STATES OF AMERICA, acting by and through the Administrator of General Services has caused these presents to be duly executed for and in its name and behalf by Glenn C. Rotondo, Regional Commissioner, Public Buildings Service General Services Administration, who has this \_\_\_ day of August 2011, hereunto set his hand and seal.

UNITED STATES OF AMERICA  
Acting by and through the  
Administrator of General Services

\_\_\_\_\_  
Glenn C. Rotondo  
Regional Commissioner  
Public Buildings Service  
General Services Administration  
Boston, Massachusetts

#### ACKNOWLEDGEMENT

Commonwealth of Massachusetts  
County of Suffolk, ss.

In Boston, in said County and State, on this \_\_\_ day of August 2011 before me personally appeared Glenn C. Rotondo, Regional Commissioner, duly empowered and authorized, proved to me through satisfactory evidence of identification, which was a U.S. General Services Administration ID Card, to be the person whose name is signed on the preceding instrument and by him duly executed, to be his free act and deed in his capacity as  
\_\_\_\_\_  
Regional Commissioner, Public Buildings Service, General Services Administration,  
Boston, Massachusetts.

\_\_\_\_\_  
Carol H. Chirico, Notary Public  
My commission expires October 14, 2016

(b) None of the allowable costs described in paragraph (b) of this section will be deductible if defrayed by Federal grants or if used as matching funds to secure Federal grants.

(c) In order to verify compliance with the terms and conditions of this covenant, the Grantee, or its successors or assigns, shall submit an annual report for each of the subsequent three years to the Grantor on the anniversary date of this deed. Each report will identify the property involved in this transaction and will contain such of the following items of information as are applicable at the time of submission:

- 1) A statement indicating whether or not a resale has been made;
- 2) A description of each portion of the property that has been resold;
- 3) The sale price of each such resold portion;
- 4) The identity of each Grantee;
- 5) The proposed land use; and
- 6) An enumeration of any allowable costs incurred and paid that would offset any realized profit.

(e) The Grantor may monitor the Property and inspect records related thereto to ensure compliance with the terms and conditions of this covenant and may take any actions which it deems reasonable and prudent to recover any excess profits realized through the resale of the Property.

**TO HAVE AND TO HOLD** the Property with all privileges and appurtenances thereunto belonging to said Grantee, its successors and assigns.

**NOTICE REGARDING THE PRESENCE OF LEAD BASED PAINT.** The Grantee hereby acknowledges the required disclosure in accordance with the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4852d (Title X), of the presence of any known lead-based paint and/or lead-based paint hazards in target housing constructed prior to 1978 on the Property. The Property contains no improvements defined by Title X as target housing. The Grantee covenants and agrees that it will comply with all Federal, state, local, and any other applicable law regarding the lead-based paint hazards with respect to the Property.

**EXCESS PROFITS COVENANT FOR NEGOTIATED SALES TO PUBLIC BODIES.** This covenant shall run with the land for a period of three years from the date of conveyance. With respect to the Property, if at any time within a three-year period from the date of transfer of title by the Grantor, the Grantee, or its successors or assigns, shall sell or enter into agreements to sell the Property, either in a single transaction or in a series of transactions, it is covenanted and agreed that all proceeds received or to be received in excess of the Grantee's or a subsequent seller's actual allowable costs will be remitted to the Grantor. In the event of a sale of less than the entire Property, actual allowable costs will be apportioned to the Property based on a fair and reasonable determination by the Grantor.

(a) For purposes of this covenant, the Grantee's or a subsequent seller's allowable costs shall include the following:

- 1) The purchase price of the Property;
- 2) The direct costs actually incurred and paid for improvements which serve only the Property, including road construction, storm and sanitary sewer construction, other public facilities or utility construction, building rehabilitation and demolition, landscaping, grading, and other site or public improvements;
- 3) The direct costs actually incurred and paid for design and engineering services with respect to the improvements described in (b)(2) of this section; and
- 4) The finance charges actually incurred and paid in conjunction with loans obtained to meet any of the allowable costs enumerated above.

accepts the transfer and Deed of the Property subject to the terms and conditions contained herein:

- 1) The Grantee is warned that the Property contains asbestos-containing materials. Asbestos is a hazardous material. Unprotected exposure to asbestos fibers has been determined to significantly increase the risk of cancer, mesothelioma, and asbestosis. These diseases can cause serious bodily harm resulting in disability or death.
- 2) The Grantee is deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Property, including any asbestos hazard or concerns.
- 3) No warranties, either express or implied, are given with regard to the condition of the Property including, without limitation, whether the Property does or does not contain asbestos or is or is not safe for a particular purpose. The failure of Grantee to have inspected or to be fully informed as to the condition of all or any portion of the Property shall not constitute grounds for any claim or demand against Grantor.
- 4) The description of the Property as set forth herein, and any other information provided with respect to the Property was based on the best information available to the General Services Administration's Real Property Utilization and Disposal Division and is believed to be correct, but any error or omission shall not constitute grounds or reason for any claim by Grantee against Grantor, including, without limitation, any claim for allowance, refund or deduction from the purchase price for such Property.
- 5) Grantor assumes no liability for damages for personal injury, illness, disability or death to Grantee or to Grantee's employees, invitees, or any other person subject to Grantee's control or direction, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Property.
- 6) Grantee further agrees by acceptance of the Deed to the Property that, in its use and occupancy of the Property, it will comply with all Federal, State, and local laws, ordinances, orders and regulations relating to asbestos.

release of a hazardous substance the existence and location of which was known and identified to the applicable regulatory authority as of the date of this conveyance.

- 2) In the event Grantee, its successors or assigns, seeks to have Grantor conduct any additional response action, and, as a condition precedent to Grantor incurring any additional cleanup obligation or related expenses, the Grantee, its successors or assigns, shall provide Grantor at least 45 days written notice of such a claim. In order for the 45-day period to commence, such notice must include credible evidence that: (a) the associated contamination existed prior to the date of this conveyance; and (b) the need to conduct any additional response action or part thereof was not the result of any act or failure to act by the Grantee, its successors or assigns, or any party in possession.

Reservation of Right of Access. Grantor reserves a right of access to all portions of the Property for environmental investigation, remediation or other corrective action. This reservation includes the right of access to and use of available utilities at reasonable cost to Grantor. These rights shall be exercisable in any case in which a remedial action, response action or corrective action is found to be necessary after the date of this conveyance, or in which access is necessary to carry out a remedial action, response action, or corrective action on adjoining property. Pursuant to this reservation, the United States of America, and its respective officers, agents, employees, contractors and subcontractors shall have the right (upon reasonable advance written notice to the record title owner) to enter upon the Property and conduct investigations and surveys, to include drilling, test-pitting, borings, data and records compilation and other activities related to environmental investigation, and to carry out remedial or removal actions as required or necessary, including but not limited to the installation and operation of monitoring wells, pumping wells, and treatment facilities. Any such entry, including such activities, responses or remedial actions, shall be coordinated with record title owner and shall be performed in a manner that minimizes interruption with activities of authorized occupants.

**NOTICE OF THE PRESENCE OF ASBESTOS.** The Grantee, in accepting of this Deed, acknowledges that it has been informed by Grantor that the Property contains asbestos-containing materials, and that Grantee has been provided with the following notice and warning by Grantor. Grantee, in accepting of this deed, acknowledges that it

**CONDITION OF PROPERTY.** The Grantee, in accepting this Deed, acknowledges and attests that it has inspected, is aware of, and accepts the condition and state of repair of the Property. It is understood and agreed that the Property is conveyed 'as is' and 'where is' without any representation, warranty or guarantee of any kind or nature, express or implied, including, without limitation, any representation, warranty or guarantee as to quantity, quality, character, condition, size or kind, or that the same is in any particular condition or fit to be used for any particular purpose. The Grantee, in accepting this Deed, acknowledges that the Grantor has made no representation or warranty concerning the condition or state of repair of the Property that has not been fully set forth in this Deed.

**NOTICE & COVENANT REGARDING HAZARDOUS SUBSTANCE ACTIVITY.** Pursuant to 40 CFR 373.2 and Section 120(h)(3)(A)(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA) (42 U.S.C. 9620 (h)(3)(A)(i)), and based upon a complete search of agency files, the Grantor gives notice that Exhibit B provides the following information: (1) the type and quantity of hazardous substances that were known to have been released or disposed of or stored for one year or more on the Property; (2) the time such storage, release or disposal took place; and (3) the description of remedial action taken if any.

CERCLA Covenant. Grantor warrants that all remedial action necessary to protect human health and the environment shall have been taken before the date of this conveyance. Grantor warrants that it shall take any additional response action found to be necessary after the date of this conveyance regarding hazardous substances located on the Property on the date of this conveyance.

- 1) This covenant shall not apply: (a) in any case in which Grantee, its successors or assigns, or any successor in interest to the Property or part thereof is a Potentially Responsible Party (PRP) with respect to the Property immediately prior to the date of this conveyance; or (b) to the extent that such additional response action or part thereof found to be necessary is the result of an act or failure to act of the Grantee, its successors or assigns, or any party in possession after the date of this conveyance that either: (i) results in a release or threatened release of a hazardous substance that was not located on the Property on the date of this conveyance; or (ii) causes or exacerbates the release or threatened



Exhibit F to  
Contract of Sale

**DRAFT DEED**

KNOW ALL BY THESE PRESENTS, that the UNITED STATES OF AMERICA, acting by and through the Administrator of General Services, under and pursuant to the general authority contained in the provisions of the Property Act, 116 Stat. 1062, 40 USC 545(b)(8), and the rules, regulations and orders promulgated thereunder, having an address of the Thomas P. O'Neill Federal Building, 10 Causeway Street, Boston, Massachusetts 02222, (the "Grantor"), for and in consideration of the sum of TEN MILLION DOLLARS AND NO CENTS (\$10,000,000.00) the receipt of which is hereby acknowledged, does hereby GRANT, GIVE, REMISE, AND RELEASE, without covenants, warranties or representations of any kind or nature, express or implied, unto the NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION having its principal office at 110 William Street, New York, New York 10038, its successors and assigns, (the "Grantee") all such right, title, and interest as the Grantor has in and to certain real property, commonly known as the Federal Building 2 in Brooklyn, located at 850-870 Third Avenue, Borough of Brooklyn, County of Kings, New York 11232, GSA No: 1-G-NY-0872A (the "Property"). The Property is comprised of a parcel of land containing *approximately 7.0 acres* together with any improvements thereon, more particularly described in Exhibit A attached hereto and incorporated herein.

The Property is conveyed subject to any and all existing reservations, easements, restrictions, covenants, and rights, of record, including those for roads, highways, streets, railroads, power lines, telephone lines and equipment, pipelines, drainage, sewer and water mains and lines, public utilities, and rights-of-way, and including but not limited to, any specific easements, reservations, rights, and covenants described herein; any state of facts that would be disclosed by a physical examination of the Property; any state of facts that an accurate and adequate survey of the Property would disclose; and any and all other matters of record.

The Property is conveyed subject to the following further covenants, conditions, and restrictions:

**EXHIBIT F**

**GSA FORM OF DEED**

See separate attachment

#### **OTHER ISSUES**

LEED encompasses many other issues, such as transportation, non-roof heat island effect, etc. Some issues are not addressed by LEED explicitly, such as maintenance using non-toxic agents. The team will consider these aspects in its work. For example, the team will consider using only lighting that has low mercury content, to reduce the amount of toxic waste.

### Renewable Energy

We will consider PVs benefit from significant Federal tax incentives. Wind power is not applicable to this site. Biomass energy does not appear to be an option either.

- o Building Integrated Photovoltaic panels on roof, spandrel panels, canopies, and mechanical room to be investigated

### WATER CONSERVATION AND EFFLUENT REDUCTION

We will consider strategies that could reduce the storm water discharge, including the use of a vegetated ("green") roof, possibly in conjunction with a rainwater collection tank.

Vegetated roofs can be placed by either using a turnkey system that provides all roof elements (e.g., American Hydrotech), or using demountable methods, where vegetated trays are placed on the roof. The latter system has the advantage that the trays can be easily removed for maintenance or leak detection.

The rainwater will be used for irrigation (with drip irrigation), and possibly for cooling tower make-up water (if cooling towers present).

Fixtures with low water usage include:

- o metered faucets (e.g., 0.5 gpm)
- o low-flow showers
- o low-flow urinals (e.g., 0.5 gpf)
- o dual-flush toilets, or low-flow toilets

### MATERIALS

#### *Low-emission materials*

At this time, the premium for low-emission materials is so low as to warrant inclusion in all aspects of the building. Specifically, there is no cost premium for low-VOC products as follows:

- o Adhesives and sealants
- o Paints and coatings
- o Carpeting

The more significant price increase is posed by wood products with no added urea formaldehyde. As this is an important aspect of indoor air quality, Salmar Properties LLC and its team will investigate it carefully.

### WASTE REDUCTION

Recycled content requirements will be achieved with careful advance planning.

Diversion of the waste stream from dumps will be performed at little or no cost.

Sustainably-harvested wood (certified wood) adds about 10% premium, and is a spec item that can be decided upon as the project progresses.

- Thermally broken windows and thermally-broken mullions for the office/retail areas
- Walls with reduced thermal short circuits
- Increased roof insulation
- Airtight construction, both to reduce air infiltration at exterior walls and to reduce stack effect

#### Lighting

- Fluorescent lighting with electronic ballasts for common areas
- Occupancy sensors in corridors, enabled during off hours (e.g., 10 p.m. to 5 a.m.); occupancy sensors in all common areas and maintenance (core and shell) spaces for office and retail
- Daylight dimming sensors for areas with significant solar access
- L.E.D. exit signs
- Mandatory guidelines for tenants on occupancy sensors
- Voluntary guidelines for tenants on cost-effective, low-density lighting design, and on daylight dimming and automatic shading devices

#### HVAC

- If electric chillers are ultimately selected, use high efficiency (0.52-0.55 kw/ton) with variable speed drive.
- If absorption chillers are selected, use high COP (1.0-1.2), modulating flame and heat-recovery module with high efficiency (85% or higher)
- If DX equipment is selected, use high efficiency (0.8 kw/ton, such as Mammoth), multiple compressor equipment for superior part-load performance
- In all cases, the cooling tower will have strainer cycle, wetbulb reset and variable-speed drives
- In the case of electric cooling, the boilers will be high-efficiency, condensing (90-93% efficiency)
- VSDs for pump and fan motors
- Premium-efficiency motors to be used throughout
- Consider microturbines, to the extent that the fire code regulations will be settled at the time, to indicate that this type of equipment is permitted.

#### Appliances

- EnergyStar computers, printers, copiers in the core and shell areas, and voluntary guidelines for tenants to help them make the more efficient selection

#### Combined heat and power (cogeneration)

- A full-size, 400kw fuel cell produces too much heat to be usable without special central plant equipment (e.g., absorption chillers) and other costly measures. It also needs to run continuously. For these reasons, at this time fuel cells do not appear to be cost-effective for such application.
- We will consider a microturbine or reciprocating cogeneration engine, gas-fired. Such systems are available in smaller sizes (from 60kw to 300kw), and do not need to run continuously, so it is more likely that the technology can be integrated.

# SUNSET PARK INDUSTRIAL PLAZA

## *High Performance/ Green Building Development*

### **Green Building/Sustainable Design : LEED Silver Score Sheet**

Sustainable design is very important to our team and to this project. Sunset Park Industrial Plaza meets the criteria for Silver LEED rating certification. We have designed the project to ensure enhanced energy efficiency; we have taken advantage of natural light; our utilization of recycled/refurbished materials keeps the use of raw materials to a minimum; and we have concentrated on design strategies to improve the indoor air quality and overall experience through integrated design, best practices and emerging technologies.

The following measures are to be taken with regard to the design and building of our project (please also see the following score sheets/notes):

#### **ENERGY EFFICIENCY**

Energy efficiency is one of the most attractive sustainability strategies because it produces a conspicuous payback and because reductions in energy use result in reductions in pollution. Just through the energy efficiency measures contemplated for the building's core and shell, the entire building (including the tenant areas) could be 12 to 16 percent more energy-efficient than required by Code (as represented by the ASHRAE Standard 90.1-2007) while realizing a payback in the five-year range. This would result in 5-7 LEED NC 2.2 points.

Our overall strategy is to reduce the cooling and heating loads by means of a superior envelope and efficient lighting. For example, low-e, spectrally-selective glazing will allow generous light into the building while reducing the solar heat gain (approx 40 to 60 percent more light than heat, depending on the specific glass selection). At the same time, the low-e coating in conjunction with superior thermal breaks in the frames will reduce heat loss during winter. This strategy will reduce the size of the HVAC equipment (chillers or DX, fans, pumps) helping pay for a portion of the cost for improvements in the envelope. The HVAC will also be energy-efficient.

#### **Site**

- o Sitescape design will provide shelter from wind in specific areas

#### **Envelope**

- o Spectrally selective glass (e.g., Viracon VE-1-2M w/ VT = 70%, SHGC = 0.37, U-value = 0.29; or equivalent); this glass allows more light than heat, allowing daylighting strategies without any penalty in heat gain during summer

ID	LEED CS 3.0 Prerequisites and Credits (Note: LEED prerequisites have been abbreviated in some cases to show only those items relevant to this analysis.)  Institute / World Business Council for Sustainable Development (IWBCSD) (predecessor)	Available	Project Score			
			Silver	Gold - additional	Less Likely	Not Viable
ID-2	Innovation in Design - LEED Accredited Professional	1	1			1
	Innovation & Design Sub-Total	6	6	0	0	6

RP	Regional Priority	Available	Silver	Gold - additional	Less Likely	Not Viable
	Regional Priority					
	Based on the USGBC's published database for states and regions, Potential additional points can be achieved by earning the following credits: SSc5.1, SSc6.1, WE2, Eac1 - 40% new/38% ext. or EAc2 - 1% MRed. 1 - 75%	4	1	1	2	4
	A maximum of 4 points is allowed in this section.					
	Regional Priority Sub-Total	4	1	1	2	4

RP	54	10	20	25
	1	1	1	1

ID	LEED CS 3.0 Prerequisites and Credits  (Note: LEED requirements have been abbreviated in some cases to show only those items relevant to this analysis.)	Available	Project Score				
			Strict	Goal - Additional	Less Likely	Not Viable	
ID-1.2	Innovation in Design - Green Housekeeping Develop a Low Environmental Impact Cleaning Policy based on LEED-EB v.3.0, Credit EQ-3.1. Reduce exposure of building occupants and maintenance personnel to potentially hazardous chemical, biological and particle contaminants, which adversely impact air quality, health, building finishes, building systems, and the environment. Any cleaning products included in the policy must meet the requirements of LEED-EB v.3.0 credits MR 4.1.4: 2.	1	1				1
ID-1.3	Innovation in Design - Green Building Education Two of the following three elements must be included to achieve a LEED credit: 1) A comprehensive signage program built into the building's spaces to educate the occupants and visitors of the benefits of green buildings; This program may include windows to view energy-saving mechanical equipment or signs to call attention to water conserving landscape features. 2) The development of a manual, guidelines or case study to inform the design of other buildings based on the successes of this project. This manual will be made available to the USGBC for sharing with other projects. 3) An educational outreach program or guided tour could be developed to focus on sustainable living, using the project as an example. The outreach program could use, for instance, a continuous web broadcast of the energy use in the building, efficiency of different components, etc.	1	1				1
ID-1.4	Innovation in Design - Exemplary Performance, Mass Transit An additional LEED point can be earned for building near at least 2 subway lines, 4 bus stops, or a combination thereof. A minimum of 200 available rides per day must be documented.	1	1				1
ID-1.5	Innovation in Design - Emissions Reduction Reporting Identify building performance parameters that reduce conventional energy use and emissions, quantify those reductions and report them to a formal tracking program. Track and record emissions reductions delivered by energy efficiency, renewable energy and other building emissions reduction measures, including reductions from the purchase of renewable energy credits. Report emissions reductions using a third-party voluntary reporting or certification program (e.g., U.S. Environmental Protection Agency (EPA) Climate Leaders, ENERGY STAR or World Resources	1	1				1



ID	LEED CS 3.0 Prerequisites and Credits <small>(Note: LEED requirements have been abbreviated in some cases to show only those items relevant to this analysis.)</small>	Available	Project Score				
			Silver	Gold - Additional	Less Likely	Not Viable	
EQc8.2	<p><b>Daylight &amp; Views: Daylight for 75% of Spaces</b></p> <p><b>OPTION 1 - Simulation</b> Demonstrate, through computer simulation, that a minimum daylight illumination level of 25 footcandles has been achieved in a minimum of 75% (1 point for NC, Schools &amp; OS) or 90% (1 point for Schools) of all regularly occupied areas. Modeling must demonstrate a minimum of 25 footcandles and a maximum of 500 footcandles under clear sky conditions on September 21st at 9:00 am and 3:00 pm; areas with illuminance levels above or below the range do not comply. However, designs with view-preserving automated shades for glare control may demonstrate compliance for only the 25 footcandle illuminance level.</p> <p><b>OPTION 2 - Prescriptive Side-lighting:</b> - Achieve a value, calculated as the product of the visible light transmittance (VLT) and window-to-floor area ratio (WFR) of daylight zone 0.15 and 0.18. The window area included in the calculation must be at least 30 inches above the floor. <math>0.15 &lt; VLT * WFR &lt; 0.18</math> Top-lighting (Skylights): (Not shown)</p> <p><b>OPTION 3 - Measurement (Not shown)</b></p>	1					1
	<p><b>Daylight &amp; Views: Views for 80% of Spaces</b></p> <p>Achieve direct line of sight via vision glazing to the outdoor environment via vision glazing between 2'-6" and 7'-6" above finish (knock for building occupants) in 80% of all regularly occupied areas.</p>	1	1				
<b>Environmental Quality Sub-Total</b>		#REF!	7	1	8	0	12
<b>ID Innovation and Design Process</b>							
ID-1.1	<p><b>Innovation in Design - Low mercury Lighting</b></p> <p>Establish and maintain a toxic material source reduction program to reduce the amount of mercury brought into buildings through purchases of light bulbs. Maintain mercury content of mercury-containing light bulbs below 90 picograms per lumen hour of light output for the building and associated grounds.</p>	1	1				1

ID	LEED CS 3.0 Prerequisites and Credits  (Note: LEED requirements have been abbreviated in some cases to show only those items relevant to this analysis.)	Available	Project Score			
			Silver	Gold - Additional	Less Likely	Not Viable
EQc6	<p><b>Controllability of Systems: Thermal Comfort</b> Provide individual comfort controls for 50% (minimum) of the building occupants to enable adjustments to suit individual task needs and preferences. Operable windows can be used in lieu of comfort controls for occupants of areas that are 20 feet wide of and 10 feet to either side of the operable part of the window. The areas of operable window must meet the requirements of ASHRAE 62.1-2007 paragraph 5.1 Natural Ventilation (with errata but without addenda). AND Provide comfort system controls for all shared multi-occupant spaces to enable adjustments to suit group needs and preferences. Conditions for thermal comfort are described in ASHRAE Standard 55-2007 to include the primary factors of air temperature, radiant temperature, air speed and humidity. Comfort system control for the purposes of this credit is defined as the provision of control over at least one of these primary factors in the occupant's local environment.</p>	1			1	
	<p>Core and shell projects that do not purchase and/or install the mechanical system or operable window (or a combination of both) have not met the intent of this credit. See the LEED 3.0 Reference Guide Appendix 1 for Default Occupancy Counts for occupancy count requirements and guidance.  Core and shell HVAC duct design for tenant spaces are typically incomplete. The intent of this credit in LEED Core &amp; Shell is to provide building HVAC systems that can be expanded to allow for a high degree of occupant control. Buildings that use an overhead variable volume air system will need to demonstrate that it is possible for the system to provide enough control points for 50% of the occupants.</p>					
EQc7	<p><b>Thermal Comfort: Design</b> Design HVAC systems and the building envelope to meet the requirements of ASHRAE Standard 55-2004, Thermal Comfort Conditions for Human Occupancy. Demonstrate design compliance in accordance with the Section 8.1.1 Documentation. The core and shell base building mechanical system must allow for the tenant build-out to meet the requirements of this credit. Project teams that design their project for mechanical ventilation that do not purchase or install the mechanical equipment are not eligible to achieve this credit. See the LEED 3.0 Reference Guide Appendix 1 for Default Occupancy Counts for occupancy count requirements and guidance.</p>	1	3			1

ID	LEED CS 3.0 Prerequisites and Credits (Note: LEED requirements have been abbreviated in some cases to show only those items relevant to this analysis.)	Available	Project Score			
			Silver	Gold - Additional	Less Likely	Not Viable
EQ-4.3	<p><b>Low-Emitting Materials: Flooring Systems</b></p> <p>All flooring must comply with the following as applicable to the project scope:</p> <ul style="list-style-type: none"> <li>- All carpet installed in the building interior shall meet the testing and product requirements of the Carpet and Rug Institute's Green Label Plus program.</li> <li>- All carpet cushion installed in the building interior shall meet the requirements of the Carpet and Rug Institute Green Label program.</li> <li>- All carpet adhesive shall meet the requirements of EQ Credit 4.1: VOC limit of 50 g/L.</li> <li>- All wall surfaces must be certified as compliant with the FibroScan standard (current as of the date of this rating system - or more stringent version) by an independent third party. Flooring products covered by FibroScan include vinyl, linoleum, laminate flooring, wood flooring, ceramic flooring, flexible flooring and wall base.</li> </ul>	1	1			
EQ-4.4	<p><b>Low-Emitting Materials: Composite Wood &amp; Agrifiber Products</b></p> <p>Composite wood and agrifiber products used on the interior of the building (defined as inside of the weatherproofing system) shall contain no added urea-formaldehyde resins. Laminating adhesives used to fabricate on-site and pre-applied composite wood and agrifiber assemblies shall contain no added urea-formaldehyde resins. Composite wood and agrifiber products are defined as: particle board, medium density fiberboard (MDF), plywood, whalboard, plywood, panel substrate and deck cores. Materials considered flood, furniture, and equipment (FFBE) are not considered base building elements and are not included.</p>	1				
EQ-5	<p><b>Indoor Chemical &amp; Pollutant Source Control</b></p> <p>Design to minimize and control pollutant entry into buildings and later cross-contamination of regularly occupied areas:</p> <ul style="list-style-type: none"> <li>- Employ permanent airway systems at least ten feet long in the primary direction of travel to capture dirt and particulates from entering the building at all entryways that are directly connected to the outdoors.</li> <li>- Where hazardous gases or chemicals may be present or used (including garages, housekeeping/utility areas and copying/printing rooms, science laboratories, prep rooms, art rooms, shops of any kind), exhaust each space sufficiently to create negative pressure with respect to adjacent spaces with the doors to the room closed.</li> <li>- In mechanically ventilated buildings, install new air filtration media in regularly occupied areas prior to occupancy; these filters must provide a minimum efficiency reporting value (MERV) of 13 or higher. Filtration should be applied to process both return and outside air that is delivered to supply air.</li> <li>- Provide containment (i.e., a closed container for storage for off-site disposal in a regulatory compliant storage area, preferably outside the building) for appropriate disposal of hazardous liquid wastes in pipes where water and chemical concentrates mixing occurs (e.g., housekeeping, janitorial and science laboratories).</li> </ul>	1	1			

ID	LEED CS 3.0 Prerequisites and Credits (Note: LEED requirements have been supplemented in some cases to show only those items relevant to this analysis.)	Project Score				
		Available	Silver	Gold - Additional	Less Likely	Not Viable
EQ04.1	<p>Low-Emitting Materials, Adhesives &amp; Sealants</p> <p>All adhesives and sealants used on the interior of the building (defined as inside of the weatherproofing system and exposed on-site) shall comply with the requirements of the following reference standards:</p> <ul style="list-style-type: none"> <li>• Adhesives, Sealants, and Spewers: Florida South Coast Air Quality Management District (SCAQMD) Rule # 1198. VOC limits must correspond to an effective date of July 1, 2005 and any amendment date of January 1, 2008.</li> <li>• Aerosol Adhesives: Green Seal Standard for Commercial Adhesives GS-38 (supplements in effect on October 19, 2000).</li> </ul>	1	1			1
EQ04.2	<p>Low-Emitting Materials: Paints &amp; Coatings</p> <p>Paints and coatings used on the interior of the building (defined as inside of the weatherproofing system and applied on-site) shall comply with the following criteria:</p> <ul style="list-style-type: none"> <li>• Architectural paints, coatings and primers applied to interior walls and ceilings: Do not exceed the VOC content limits established in Green Seal Standard GS-11, Paints, First Edition, May 20, 1993. <ul style="list-style-type: none"> <li>o Flats: 50 g/L</li> <li>o Non-Flats: 150 g/L</li> </ul> </li> <li>• Antifouling and anti-rust paints applied to interior ferrous metal substrates: Do not exceed the VOC content limit of 250 g/L established in Green Seal Standard GS-03, Antifouling Paints, Second Edition, January 1, 1997.</li> <li>• Clear wood finishes, floor coatings, stains, and finishes applied to interior elements: Do not exceed the VOC content limits established in Green Seal Air Quality Management District (SCAQMD) Rule 1113, Architectural Coatings, rules in effect on January 1, 2004. <ul style="list-style-type: none"> <li>o Clear wood finishes: maximum 250 g/L, maximum 550 g/L</li> <li>o Floor coatings: 100 g/L</li> <li>o Stains: waterproofing solvent: 250 g/L, sanding solvents 275 g/L, all other solvents 200 g/L.</li> <li>o Shellacs: Clear 730 g/L, pigmented 550 g/L</li> </ul> </li> </ul>	1	1			1

LEED (S 9.0) Prerequisites and Credits	Project Score	Project Score			
		Silver	Gold - Additional	Less Likely	Not Viable
1D LEED (S 9.0) Prerequisites and Credits (Note: LEED requirements have been abbreviated in some cases to show only those items relevant to this analysis.)	Available				
EQp2 Environmental Tobacco Smoke (ETS) Control CASE 1: All Projects. Option 1 Prohibit smoking in the building. Prohibit on-property smoking within 25 feet away from entrance, outdoor air intakes, and operable windows. Provide signage to allow smoking in designated areas; prohibit smoking in designated areas or prohibit smoking on the entire property. Option 2 Prohibit smoking in the building except in designated smoking areas. Prohibit on-property smoking within 25 feet away from intakes, outdoor air intakes, and operable windows. Provide signage to allow smoking in designated areas; prohibit smoking in designated areas or prohibit smoking on the entire property.	POD				
EQc1 Outdoor Air Delivery Monitoring Install permanent monitoring systems to ensure that ventilation systems maintain design minimum requirements. Configure all monitoring equipment to generate an alarm when the air flow values or carbon dioxide (CO2) levels vary by 10% or more from the design values, via either a building automation system alarm to the building operator or via a visual or audible alert to the building occupants. AND CASE 1: Mechanically Ventilated Spaces Monitor carbon dioxide concentrations within all densely occupied spaces (those with a design occupant density greater than or equal to 25 people per 1000 sq ft), CO2 monitoring locations shall be between 3 feet and 6 feet above the floor. Provide a direct outdoor airflow measurement device capable of measuring the minimum outdoor airflow rate with an accuracy of plus or minus 15% of the design minimum outdoor air rate, as defined by ASHRAE 62.1:2007 (with errata but without addenda) for mechanical ventilation systems where 20% of hours of the design airflow serves non-densely occupied spaces. CASE 2: Naturally Ventilated Spaces (not shown)	1				
EQc2 Increased Ventilation CASE 1: Mechanically Ventilated Spaces Increase breathing zone outdoor air ventilation rates to air occupied spaces by at least 30% above the minimum rates required by ASHRAE Standard 62.1:2007 (with errata but without addenda) as determined by EQ Prerequisite 1. CASE 2: Naturally Ventilated Spaces (not shown)	1				
EQc3 Construction IAQ Management Plan; During Construction Develop and implement an Indoor Air Quality (IAQ) Management Plan for the construction and pre-occupancy phases of the building as follows: + During construction input or exceed the recommended Control Measures of the Sheet Metal and Air Conditioning National Contractors Association (SMACNA) IAQ Guidelines for Occupied Buildings under Construction, 1995, Chapter 3.	1				

ID	LEED CS 3.0 Prerequisites and Credits (Note: LEED requirements have been abbreviated in some cases to show only those items relevant to this analysis.)	Available	Project Score			
			Silver	Gold - Additional	Less Likely	Not Viable
EQ	<b>Indoor Environmental Quality</b>					
EQ01	<p>Minimum IAQ Performance</p> <p>CASE 1. Mechanically Ventilated Spaces Meets the minimum requirements of Section 4 through 7 of ASHRAE Standard 62.1-2007. Ventilation for Acceptable Indoor Air Quality (with errata but without addenda). Mechanical ventilation systems shall be designed using the Ventilation Rate Procedure of the applicable local code, whichever is more stringent.</p> <p>CASE 2. Naturally Ventilated Spaces Naturally ventilated buildings shall comply with ASHRAE Standard 62.1-2007, paragraphs 5.1 (with errata but without addenda).</p>	RQ1	1	1	1	1

ID	LEED CS 3.0 Prerequisites and Credits (Note: LEED requirements have been abbreviated in some cases to show only those items relevant to this analysis.)	4 Available	Project Score			
			Silver	Gold - additional	Less Likely	Not Viable
MReq1	<p>Recycled Content Use materials with recycled content such that the sum of post-consumer recycled content plus one-half of the pre-consumer content constitutes at least 10% (based on cost) of the total value of the materials in the project. The minimum percentage materials reused for each point threshold is as follows:</p> <p>Recycled Content Points 30% 1 20% 2</p>	2	1	1		2
MReq5	<p>Regional Materials Use building materials or products that have been extracted, harvested or recovered, as well as manufactured, within 500 miles of the project site for a minimum of 10% (based on cost) of the total materials value. The minimum percentage materials reused for each point threshold is as follows:</p> <p>Regional Materials Points 10% 1 20% 2</p>	2				2
MReq6	<p>Certified Wood Use a minimum of 50% of wood-based materials and products, which are certified in accordance with the Forest Stewardship Council's (FSC) Principles and Criteria, for wood building components. These components include, but are not limited to, structural framing and general dimensional framing, flooring, subflooring, wood doors and finishes. Only include materials permanently installed in the project. Furniture may be included, providing it is included consistently to MR Req 3-7.</p>	1				1
		13	8	2	1	13
		Materials & Resources Sub-Total				

ID	LEED CS 3.0 Prerequisites and Credits <small>(Note: LEED requirements have been abbreviated in some cases to show only those items relevant to this analysis.)</small>	Available	Project Score				
			Silver	Gold - Additional	Less Likely	Not Viable	
<b>MR Materials and Resources</b>							
MRp1	<b>Storage &amp; Collection of Recyclables</b> Provide an easily accessible area that serves the entire building and is dedicated to the collection and storage of non-hazardous materials for recycling, including (at a minimum) paper, corrugated cardboard, glass, plastics and metals.  <b>Recycling Area Guidelines:</b> Comm. Building (SF)    Min. Recycling Area (SF) 0 to 5,000                    0? 5,001 to 15,000                125 15,001 to 50,000               175 50,001 to 100,000              225 100,001 to 200,000             275 200,001 or greater             500	RQD					
MRc1	<b>Building Reuse: Maintain Existing Walls, Floors &amp; Roof</b> Maintain the existing building structure (including structural floor and roof decking) and envelope (the exterior skin and framing, excluding window assemblies and non-structural roofing material). Hazardous materials that are remediated as part of the project must be excluded from the calculation of the percentage maintained. The minimum percentage building reuse for each point threshold is as follows: Building Reuse    Points 25%                    1 33%                    2 42%                    3 50%                    4 75%                    5	5	5			5	
MRc2	<b>Construction Waste Management:</b> Recycle and/or salvage construction and demolition debris. Develop and implement a construction waste management plan that, at a minimum, identifies the materials to be diverted from disposal and whether the materials will be sorted on-site or commingled. Excavated soil and land-clearing debris do not contribute to this credit. Calculations can be done by weight or volume, but must be consistent throughout. The minimum percentage building reuse for each point threshold is as follows: Recycled or Salvaged    Points 50%                    1 75%                    2	2	2			2	
MRc3	<b>Materials Reuse: Reuse building materials and products</b> Use salvaged, refurbished or reused materials to a percentage, based on cost of the total value of materials on the project. The minimum percentage materials reused for each point threshold is as follows: Reused Materials        Points					1	



ID	LEED CS 3.0 Prerequisites and Credits (Note: LEED requirements have been abbreviated in some cases to show only those representative to this analysis.)	Available	Project Score			
			Silver	Gold - additional	Less Likely	Not Viable
1	Energy & Atmosphere Sub-Total	37	8	7	6	23
						37

ID	LEED CS 3.0 Prerequisites and Credits  (Notes: LEED requirements have been abbreviated in some cases to show only those items relevant to this analysis.)	Available	Project Score				
			Silver	Gold - additional	Less Likely	Not Viable	
EAc4	Enhanced Refrigerant Management OPTION 1 Do not use refrigerants OR OPTION 2 Select refrigerants and HVAC&R that minimize or eliminate the emission of compounds that contribute to ozone depletion and global warming. The base building HVAC&R equipment shall comply with the following formula, which sets a maximum threshold for the combined contributions to ozone depletion and global warming potential: $LCCWP + LOODP \times 105 \leq 100$	2	2			2	
EAc5	Develop and implement a Measurement & Verification (M&V) Plan consistent with Option D of the IPMVP Base Building (3 points)	B			4	0	
	Measurement & Verification - Tenant Submetering Provide for the on-going accountability of building electricity consumption performance.  Include a centrally monitored electronic metering network in the base building design that is capable of being expanded to accommodate the future tenant sub-metering as required by LEED 2009 for Commercial Interiors Rating System Credit EAc5 (Measurement and Verification). Develop a tenant M&V Plan that document and advise future tenants of this opportunity and the means of their achievement. Provide a process for corrective action if the results of the M&V plan indicate that energy savings are not being achieved.						
EAc6	Green Power Provide at least 35% of the building's electricity from renewable sources by engaging in at least a two-year renewable energy contract. Renewable sources are as defined by the Center for Resource Solutions (CRS) Green-e products certification requirements. All purchases of green power shall be based on the quantity of energy consumed, not the cost.	2	2			2	

ID	LEED CS/0 Prerequisites and Credits (Note: LEED requirements have been abbreviated in some cases to show only those items relevant to this analysis.)	Available	Project Score			
			Silver	Gold	Platinum	Not Visible
EAC1	<p><b>Optimize Energy Performance</b></p> <p>Select one of the three compliance path options described below. Project teams documenting achievement using any of the three options are assumed to be in compliance with EA Prerequisite 2.</p> <p><b>OPTION 1 - WHOLE BUILDING ENERGY SIMULATION</b></p> <p>Demonstrate a percentage improvement in the proposed building performance rating compared to the baseline building performance rating per ASHRAE/IESNA Standard 90.1-2007 (with errata but without adjustments) by a whole building project simulation using the Building Performance Rating Method in Appendix G of the Standard. The Option 1 analysis must be the same as required for EAC2. The minimum energy cost savings percentage for each point threshold is as follows:</p> <p>New Building: 12% - 4pts (1 pt - 19 pts) - 1 additional point is earned for every 2% improvement.</p> <p>Building Renovation: 8% - 4pts (1 pt - 19 pts) - 1 additional point is earned for every 2% improvement.</p>	21	2	2	17	21
EAC2	<p><b>On-Site Renewable Energy</b></p> <p>Use on-site renewable energy systems to offset building energy cost. Calculate project performance by expressing the energy produced by the renewable systems as a percentage of the building annual energy cost, with points earned as follows:</p> <p>Percentage Renewable Energy Points</p> <p>1% 4</p>	4			4	4
EAC3	<p><b>Enhanced Commissioning</b></p> <p>Implement or have a contract in place to implement the following additional commissioning process activities in addition to the requirements of EA Prerequisite 1 and in accordance with the LEED v3.0 Reference Guide:</p> <ol style="list-style-type: none"> <li>1. Prior to the start of the construction documents phase, designate an Independent Commissioning Authority (ICA) to lead, review, and oversee the completion of all commissioning process activities.</li> <li>2. The ICA shall conduct, at a minimum, one commissioning design review of the Owner's Project Requirements (OPR), Basis of Design (BOD), and design documents prior to final construction document phase and check-check the review comments in the subsequent design submission.</li> <li>3. The ICA shall review contractor submittals applicable to systems being commissioned for compliance with the OPR and BOD. This review shall be concurrent with A/E review and submitted to the design team and the Owner.</li> <li>4. Develop a systems manual that provides future operating staff the information needed to understand and optimally operate the commissioned systems.</li> <li>5. Verify that requirements for training operating personnel and building occupants are completed.</li> <li>6. Assure the involvement by the ICA in reviewing building operation within 10 months after substantial completion with O&amp;M staff and occupants. Include a plan for resolution of outstanding ICA-related issues.</li> </ol>	2	2		2	2

ID	LEED CS 3.0 Prerequisites and Credits (Note: LEED prerequisites have been abbreviated in some cases to show only those items relevant to this analysis.)	Available	Project Score			
			Silver	Gold + additional	Less Likely	Not Viable
EAp2	<p><b>Minimum Energy Performance</b>            Demonstrate a 10% improvement in the proposed building performance rating for new buildings, or a 5% improvement in the proposed building performance rating for renovations to existing, compared with the baseline building performance rating.            Calculate the baseline building performance rating according to the building performance method in Appendix G of ASHRAE/IESNA Standard 90.1-2007 with errata but without additional using a computer simulation for the whole building project.</p>	RQD				
EAp3	<p><b>Fundamental Refrigerant Management</b>            Zero use of CFC-based refrigerant in new base building HVAC/R systems. When reusing existing base building HVAC equipment, complete a comprehensive CFC phase-out conversion prior to project completion.            Phase-out plans extending beyond the project completion date will be considered on their merits.</p>	RQD				

ID	LEED CS 3.0 Prerequisites and Credits (Note: LEED requirements have been abbreviated in some cases to show only those items relevant to this analysis.)	Available	Project Score				10	4	2	2	10
			Silver	Gold - Additional	Less Likely	Not Visible					
WE03	Water Use Reduction Employ strategies that in aggregate use a minimum of 30%, 35% or 40% less water than the water use baseline calculated for the project under Prerequisite WE01. 30% = 2 points 35% = 3 points 40% = 4 points	4	2	2							
	<b>Water Efficiency Sub-Total</b>	<b>10</b>	<b>4</b>	<b>2</b>	<b>2</b>	<b>10</b>					
<b>EA</b>	<b>Energy and Atmosphere</b>										
EA01	Fundamental Commissioning of the Building Energy Systems The following commissioning process activities shall be completed by the commissioning team in accordance with the LEED-NC 3.0 Reference Guide. 1) Designate an individual as the Commissioning Authority (CxA) to lead, review and oversee the completion of the commissioning process activities. 2) The Owner shall document the Owner's Project Requirements (OPR). The design team shall develop the Basis of Design (BOD). The CxA shall review these documents for clarity and completeness. The Owner and design team shall be responsible for updates to their respective documents. 3) Develop and incorporate commissioning requirements into the construction documents. 4) Develop and implement a commissioning plan. 5) Verify the installation and performance of the systems to its commissioning. 6) Complete a summary commissioning report. Commissioning System: Commissioning process activities shall be completed for the following energy-related systems, at a minimum: * Heating, ventilating, air conditioning, and refrigeration (HVAC&R) systems (mechanical and passive) and associated ductwork * Lighting and daylighting controls * Domestic hot water systems * Renewable energy systems (wind, solar etc.)										

ID	<p>LEED CS 3.0 Prerequisites and Credits          (Note: LEED requirements have been abbreviated in some cases to show only those items relevant to this analysis.)          Graywater, and on-site or municipally treated wastewater)          OPTION 2</p>	Available	Project Score			
			Silver	Gold - additional	Less likely	Not Viable

ID	LEED CS 3.0 Prerequisites and Credits (Note: LEED requirements have been abbreviated in some cases to show only those items relevant to this analysis.)	Available	Project Score			
			Silver	Gold - Additional	Less Likely	Not Viable
<b>WE Water Efficiency</b>						
WE01	<p><b>Water-Use Reduction</b></p> <p>Employ strategies that in aggregate use a minimum of 20% less water than the water use baseline calculated for the building (not including irrigation).</p> <p>Calculate the baseline according to the commercial and/or residential baseline outlines below. Calculations are based on estimated occupant usage and must include only the following fixtures and fixture fittings (as applicable to the project scope): water closets, urinals, lavatory faucets, showers, kitchen sink faucets and pre-rinse spray valves.</p>	RQD	1	1	1	1
WE01	<p><b>Water-Efficient Landscaping</b></p> <p><b>OPTION 1: Reduce by 50% (2 points)</b></p> <p>Reduce potable water consumption for irrigation by 50% from a contractor mid-summer baseline case. (2 points)</p> <p>Reductions shall be attributed to any combination of the following items:</p> <ul style="list-style-type: none"> <li>• Plant species factor</li> <li>• Irrigation efficiency</li> <li>• Use of captured rainwater</li> <li>• Use of recycled wastewater</li> <li>• Use of water treated and conveyed by a public agency specifically for non-potable use</li> </ul> <p><b>OPTION 2: No Potable Water Use for Irrigation (4 points)</b></p> <p>Achieve WECredit 1.1 and:</p> <p><b>Path 1:</b> Use only captured rainwater, recycled wastewater, recycled graywater, or water treated and conveyed by a public agency specifically for non-potable use for irrigation.</p> <p><b>Path 2:</b> Install landscaping that does not require permanent irrigation systems.</p>	4	2	2	4	
WE02	<p><b>Innovative Wastewater Technologies</b></p> <p><b>OPTION 1:</b> Reduce potable water use for building sewage conveyance by 50% through the use of water conserving fixtures (water closets, urinals) or non-potable water (captured rainwater, recycled</p>	2				2

ID	LEED CS 3.0: Prerequisites and Credits  (Note: LEED requirements have been abbreviated in some cases to show only those items relevant to this analysis.)	Available	Project Score				
			Silver	Gold - additional	Less Leaky	Not Viable	
SSc9	Tenant Design & Construction Guidelines Provide tenants with a descriptive tool that both educates and helps them implement sustainable design and construction features in their tenant improvement build-outs.						
	Tenant Design and Construction Guidelines benefit the Core and Shell certified project for two important reasons: First the guidelines will help tenants design and build sustainable interiors and adopt green building practices; second the Guidelines will help in coordinating LEED 2009 for Commercial Interiors with LEED-2009 for Core and Shell Development certifications:  Publish an illustrated document that provides tenants with design and construction information that: 1) Provides a description of the sustainable design and construction features incorporated in the core and shell project and delineates the project intent with respect to sustainability goals and objectives including those for tenant spaces. 2) Provides information that enables a tenant to coordinate their space design and construction with the core and shell's building systems. 3) Provides information on the LEED-Green Building Rating System for Commercial Interiors (LEED-CI) and how the core and shell building contributes to achieving these credits.	1	1				
	Sustainable Sites Sub-Total	28	20	3	4	1	28



ID	LEED CS 3.0 Prerequisites and Credits (Note: LEED requirements have been abbreviated in some cases to show only those items relevant to this analysis.)	Available	Project Score			
			Silver	Gold - Pre-Approved	Platinum	Not Verifiable
SSe7.1	<p><b>Heat Island Effect-Non-Roof</b></p> <p><b>Option 1:</b> Provide any combination of the following strategies for 50% of the site landscape (including roads, sidewalks, courtyards and parking lots):  <ul style="list-style-type: none"> <li>1. Shade from existing tree canopy or within 5 years of landscape installation. Landscaping trees must be in place at the time of occupancy.</li> <li>Provide shade from structures covered with solar panels that produce energy used to offset some non-renewable source.</li> <li>Provide shade from architectural devices that have a solar reflectance index (SRI) of at least 29. <ul style="list-style-type: none"> <li>• Use hardscape materials with an SRI of at least 29.</li> <li>• Open grid pavement system (at least 50% porous).</li> </ul> </li> </ul> </p>	1				1
SSe7.2	<p><b>Heat Island Effect-Roof</b></p> <p><b>Option 1:</b> Use roofing materials having a Solar Reflectance Index (SRI) equal to or greater than the following values for a minimum of 75% of the roof surface: &lt; 2:12 slope = 78; ≥ 2:12 slope = 29</p> <p><b>Option 2:</b> Install a vegetated roof for at least 50% of the roof area.</p> <p><b>Option 3:</b> Install high albedo and vegetated roof surfaces that, in combination, meet the following criteria:  <math>(Area of SRI Roof / 0.15) + (Area of vegetated roof / 0.5) &gt; = Total Roof Area</math></p>	1				1
88eB	<p><b>Light Pollution Reduction FOR EXTERIOR LIGHTING</b></p> <p><b>Option 1:</b> Reduce the input power (by automatic device) of all non-emergency luminaires with a direct line of sight to any openings in the envelope (transparent or translucent) by at least 50% between 11 p.m. and 5 a.m.. After hours overdrive may be provided by a manual or occupant sensing device provided that the overdrive lasts no more than 30 minutes.</p> <p><b>Option 2:</b> All openings in the envelope (transparent or translucent) with a direct line of sight to any non-emergency luminaires must have shielding that is controlled/adjusted by automatic device for a resultant transmittance of less than 10% between 11pm and 5 am.</p> <p><b>FOR EXTERIOR LIGHTING</b> Only light areas as required for safety and comfort. Do not exceed 80% of the lighting power densities for exterior areas and 50% for building facades and landscape features as defined in ANSI/IESNA/IESNA Standard RP-1-2007 for the specified zone. Meet exterior lighting control requirements from ANSI/ASHRAE/IESNA Standard 90.1-2007.</p> <p>Classify the project under 1 of the following zones, as defined in IESNA RP-33, and follow all the requirements for that zone (L24 - L24).</p>	1				1

ID	LEED CS 3.0 Prerequisites and Credits (Note: LEED requirements have been abbreviated in some cases to show only those items relevant to this analysis.)	Available	Project Score			
			Silver	Silver - additional	Less Likely	Not Viable
SS66.2	Stormwater Design - Quantity Control Class 2: Sites with Existing Imperviousness Greater Than 50% Implement a stormwater management plan that results in a 25% decrease in the volume of stormwater runoff from the 2-year 24-hour design storm.	1	1			
SS66.2	Stormwater Design - Quality Control Implement a stormwater management plan that reduces impervious cover, promotes infiltration, and captures and treats the stormwater runoff from 90% of the average annual rainfall, using acceptable best management practices (BMPs). BMPs used to treat runoff must be capable of removing 80% of the average annual post development total suspended solids (TSS) load based on existing monitoring reports.	1		1		

ID	LEED CE 3.0 Prerequisites and Credits (Note: LEED requirements have been abbreviated in some cases to show only those items relevant to this analysis.)	Available	Project Score			
			Silver	Gold	Platinum	Not Viable
SS64.4	<p>Alternative Transportation - Parking Capacity</p> <p>CASE 1: Non-Residential Projects</p> <p>Option 1: Size parking capacity to meet but not exceed minimum local zoning requirements. Provide preferred parking for carpools or vanpools for 5% of the total parking spaces.</p> <p>OR</p> <p>Option 2: For projects that provide parking for less than 5% of building equivalent (FTE) building occupants, Provide preferred parking for carpools or vanpools, matched as such, for 5% of total parking spaces.</p> <p>OR</p> <p>OPTION 3: Provide no new parking.</p>	2				2
SS65.1	<p>Site Development: Protect or Restore Habitat</p> <p>Case 1: Previously Developed or Disturbed Sites: Restore or protect a minimum of 50% of the site area (excluding the building footprint) or 20% of the total site area (including building footprint), whichever is greater, with native or adapted vegetation. Native/adapted plants are plants indigenous to a locality or cultivars of native plants that are adapted to the local climate and are not considered invasive species or noxious weeds. Projects earning SS Credit 2 and using vegetated roof surfaces may apply the vegetated roof surface to this calculation if the plants meet the definition of native/adapted.</p>	1				1
SS65.2	<p>Site Development: Maximize Open Space</p> <p>Case 1: Reduce the development footprint (defined as the total area of the building footprint, hardcape, access roads and parking) and/or provide vegetated open space within the project boundary to exceed the local zoning's open space requirement for the site by 25%.</p> <p>Case 2: For areas with no local zoning requirements (e.g., some university campuses, military bases), provide vegetated open space area adjacent to the building that is equal to the building footprint.</p> <p>Case 3: Where a zoning ordinance exists, but there is no requirement for open space (and), provide vegetated open space equal to 20% of the project's site area.</p>	1				1

ID	LEED CS 3.0 Prerequisites and Credits (Note: LEED requirements have been appropriated in some cases to show only those items relevant to this analysis.)	Available	Project Score			
			Sever	Good - Additional	Less Likely	Not Viable
SSc4.3	Greenfield Redevelopment Develop on a site documented as contaminated (by means of an ASTM E 1300.037 Phase I Environmental Site Assessment) Option, as site classified as a Brownfield by a local, state or federal government agency.	1	1			1
SSc4.1	Alternative Transportation - Public Transportation Option 1: Locate project within 1/2 mile (measured from the main building entrance) of an existing, or planned and funded, commuter rail, light rail or subway station. Option 2: Locate project within 1/4 mile of one or more stops for two or more public or paratransit services usable by building occupants. Alternative Transportation - Bicycles Storage and Changing Rooms Case 1: Provide secure bicycle racks and/or storage (within 200 yards of a building entrance) for 5% or more of all building users (measured at peak periods), AND, provide shower and changing facilities at the building; or within 200 yards of a building entrance, for 0.5% of Full-Time Equivalent (FTE) occupants. Case 2: For residential buildings, provide covered storage facilities for securing bicycles for 15% or more of building occupants in lieu of changing/shower facilities.	6	6			6
SSc4.2	Alternative Transportation - Low Emission & Fuel Efficient Vehicles Reduce pollution and land development impacts from automobile use. OPTION 1: Provide preferred parking for low-emitting and fuel-efficient vehicles for 5% of the total vehicle parking capacity of the site.	2		2		2
SSc4.3	Alternative Transportation - Low Emission & Fuel Efficient Vehicles Reduce pollution and land development impacts from automobile use. OPTION 1: Provide preferred parking for low-emitting and fuel-efficient vehicles for 5% of the total vehicle parking capacity of the site.	3	3			3

1

ID	LEED CS 3.0 Prerequisites and Credits  (Note: LEED requirements have been abbreviated in some cases to show only those items relevant to this analysis.)	Available	Project Score			
			Silver	Gold - additional	Less Likely	Not Viable
	<p><b>Option 2 - Community Connectivity</b>            Construct or renovate building on a previously developed site AND within 1/2 mile of a residential zone or neighborhood with an average density of 10 units per acre not AND within 1/2 mile of at least 10 Basic Services AND with pedestrian access between the building and the services.            Basic Services include, but are not limited to:            1) Bank; 2) Place of Worship; 3) Convenience Grocery; 4) Day Care; 5) Cleaners; 6) Fire Station; 7) Beauty; 8) Hardware; 9) Laundry; 10) Library; 11) Medical/Dental; 12) Senior Care Facility; 13) Park; 14) Pharmacy; 15) Post Office; 16) Restaurant; 17) School; 18) Supermarket; 19) Theater; 20) Community Center; 21) Fitness Center; 22) Museum.</p>	5				

**Federal Building Redevelopment**

1	20	30	40	50	60	70	80
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ID	LEED CS 3.0 Prerequisites and Credits (Note: LEED requirements have been abbreviated in some cases to show only those items relevant to this analysis.)	Available	Project Score				
			Silver	Silver + additional	Less Likely	Not Viable	
1	<p><b>SS Sustainable Sites</b></p> <p><b>SSp1 - Construction Activity Pollution Prevention</b>                      Create and implement an erosion and sedimentation control plan for all construction activities associated with the project. The plan must conform to erosion and sedimentation requirements of the 2003 EPA Construction General Permit, Off local erosion and sedimentation control standards and codes, whichever is more stringent. The plan shall describe the measures implemented to accomplish the following objectives:                      • Prevent loss of soil during construction by stormwater runoff and/or wind erosion, including protecting topsoil by stockpiling for reuse.                      • Prevent sedimentation of storm sewer or receiving streams.                      • Prevent polluting the air with dust and particulate matter.</p>	RQD	1	1	1	1	1
1	<p><b>SSc1 - Site Selection</b>                      Do not develop buildings, landscapes, roads or parking areas on portions of sites that meet any one of the following criteria:                      • Prime farmland as defined by the US Department of Agriculture in the US Code of Federal Regulations, Title 7, Volume 9, Parts 400 to 699, Section 657.5 (relating to CRP1657.5)                      • Previously undeveloped land whose elevation is lower than 5 feet above the elevation of the 100-year flood as defined by FEMA                      • Land that is specifically identified as habitat for any species on Federal or State threatened or endangered lists                      • Within 100 feet of any wetlands as defined by US Code of Federal Regulations, 40 CFR, Parts 230, 233 and Part 22, and isolated wetlands or areas of special concern identified by state or local rule OR within setback distances from wetlands prescribed in state or local regulations, as defined by local or state rule or law, whichever is more stringent.                      • Previously undeveloped land that is within 50 feet of a water body defined as seas, lakes, rivers, streams and tributaries which support or could support fish, recreation or industrial use                      • Land which prior to acquisition for the project was public parkland, unless land of equal or greater value as parkland is accepted in trade by the public landowner.</p>	1	1	1	1	1	
1	<p><b>SSc2 - Development Density &amp; Community Connectivity</b>                      Option 1 - Development Density                      Construct a new building on a previously developed site AND in a community with a minimum density of 60,000 square feet per acre job (note: density calculation must include the area of the project being built and is based on a typical job-size downtown development).</p>					1	

**General Building / 2 / Redevelopment**

6REPI	54	113	20	49
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ID	LEED CS 3.0 Prerequisites and Credits <small>(Notes: LEED requirements have been abbreviated in some cases to show only those items relevant to this analysis.)</small>	Available	Project Score			
			Silver	Gold - additional	Less Likely	Not Viable

**SS Sustainable Sites**

SSp1	<p><b>Construction Activity Pollution Prevention</b> Create and implement an erosion and sedimentation control plan for all construction activities associated with the project. The plan must conform to erosion and sedimentation requirements of the 2003 EPA Construction General Permit OR local erosion and sedimentation control standards and codes, whichever is more stringent. The Plan shall describe the measures implemented to accomplish the following objectives:</p> <ul style="list-style-type: none"> <li>Prevent loss of soil during construction by stormwater runoff and/or wind erosion, including protecting topsoil by stockpiling for reuse.</li> <li>Prevent sedimentation of storm sewers or receiving streams.</li> <li>Prevent polluting the air with dust and particulate matter.</li> </ul>	RQD	-	-	-	-
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SSc1	<p><b>Site Selection</b> Do not develop buildings, hardstands, roads or parking areas on portions of sites that meet any one of the following criteria:</p> <ul style="list-style-type: none"> <li>Prime farmland as defined by the US Department of Agriculture in the US Code of Federal Regulations, Title 7, Volume 6, Parts 400 to 899; Section 657.5 (citation 7CFR657.5)</li> <li>Previously undeveloped land whose elevation is lower than 5 feet above the elevation of the 100-year flood as defined by FEMA</li> <li>Land that is specifically identified as habitat for any species on Federal or State threatened or endangered lists</li> <li>Within 100 feet of any wetlands as defined by US Code of Federal Regulations 40 CFR, Parts 230, 233 and Part 22, and isolated wetlands or areas of special concern identified by state or local rule, OR within setback distances from wetlands prescribed in state or local regulations, as defined by local or state rule or law, whichever is more stringent.</li> <li>Previously undeveloped land that is within 50 feet of a water body, defined as seas, lakes, rivers, streams and tributaries which support or could support fish, recreation or industrial use</li> <li>Land which prior to acquisition for the project was public parkland, unless land of equal or greater value as parkland is accepted in trade by the public landowner</li> </ul>	1	1			1
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SSc2	<p><b>Development Density &amp; Community Connectivity</b> Option 2 - Development Density Construct or renovate building on a previously developed site AND in a community with a minimum density of 80,000 square feet per acre net. (Note: density calculation must include the area of the project site built and is based on a typical residential/retail/office development)</p>					0
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**EXHIBIT E**

**LEED CHECKLIST**

See separate attachment





**EXHIBIT D**

**BASELINE SURVEY**

See separate attachment

DEFINITIONS:

"Affiliate" is (i) a business entity in which more than fifty percent is owned by, or is subject to a power or right of control of, or is managed by, an entity which is a party to a Project Agreement, or (ii) a business entity that owns more than fifty percent of an entity which is a party to a Project Agreement or that exercises a power or right of control of such entity.

"Company" includes any entity that is a party to a Project Agreement.

"Contract Employee" is a person who is an independent contractor (i.e., a person who is not an "employee"), or is employed by an independent contractor (an entity other than the Company or its Affiliate, a Tenant or a subtenant of a Tenant), who provides services at a Project Location.

"Full-Time Employee" is an employee who works at least 35 hours per week at a Project Location.

"Part-Time Employee" is an employee who works less than 35 hours per week at a Project Location.

"Project Agreement" is any agreement or instrument (such as a lease agreement or deed) pursuant to which an entity purchases or leases (directly or by assignment from NYCEDC) property from NYCEDC.

"Project Location" is any location that is leased (directly or by assignment from NYCEDC) or purchased by the Company from NYCEDC.

"Tenant" is a tenant or subtenant (excluding the Company and its Affiliates) that leases or subleases facilities from the Company or its Affiliates at any Project Location.

ITEM INSTRUCTIONS For each Project Agreement, please submit one report that covers (i) the Company and its Affiliates and (ii) Tenants and subtenants of Tenants at all Project Locations covered by the Project Agreement. Each Tenant must complete items 1-5, 15 and 16 on this form with regard to itself and its subtenants and return it to the Company. The Company must include in its report information collected by the Company from its Affiliates and Tenants. The Company must retain for six (6) years all forms completed by its Affiliates and Tenants and at NYCEDC's request must permit NYCEDC upon reasonable notice to inspect such forms and provide NYCEDC with a copy of such forms.

1-4. Items 1, 2, 3 and 4 must be determined as of June 30th of the applicable fiscal year and must include all permanent and non-permanent Full-Time Employees and Part-Time Employees at all Project Locations, including, without limitation, those employed by the Company or its Affiliates and by Tenants and subtenants of Tenants at the Project Locations. Do not include Contract Employees in Items 1, 2, 3 and 4.

5. Report all Contract Employees providing services to the Company and its Affiliates and Tenants and subtenants of Tenants at all Project Locations.

6-14. Report information requested only with respect to the Company and its Affiliates at all Project Locations. For item 6, report only the permanent and non-permanent Full-Time Employees and Part-Time Employees of the Company and its Affiliates. Do not report employees of Tenants. Do not report Contract Employees.

9. Indicate the number of employees included in item 6 who are classified as "Exempt", as defined in the federal Fair Labor Standards Act. Generally, an Exempt employee is not eligible for overtime compensation.

10. Indicate the number of employees included in item 6 who are classified as "Non-Exempt", as defined in the federal Fair Labor Standards Act. Generally, a Non-Exempt employee is eligible for overtime compensation.

14. Report all sales and use tax exemption benefits realized at all Project Locations by the Company and its Affiliates and granted by virtue of the exemption authority of the City of New York. Do not include any sales and use tax savings realized under the NYS Empire Zone Program.

15. Report all CEP benefits received by the Company and its Affiliates and any Tenants and subtenants of Tenants at all Project Locations. CEP is a package of tax benefits designed to help qualified businesses to relocate or expand in designated relocation areas in New York City. For more information regarding CEP, please visit <http://www.nyc.gov/dof>.

16. Report all REAP benefits received by the Company and its Affiliates and any Tenants and subtenants of Tenants at all Project Locations. REAP is designed to encourage qualified businesses to relocate employees to targeted areas within New York City. REAP provides business income tax credits based on the number of qualified jobs connected to the relocation of employees. For more information regarding REAP, please visit <http://www.nyc.gov/dof>.

**EMPLOYMENT and BENEFITS REPORT**  
For the Fiscal Year July 1, xxxx – June 30, xxxx (FY 'xx)

In order to comply with Local Law reporting requirements, the Company is required to complete and return this form to NYCEDC, 110 William Street, Attention: Compliance, New York, NY 10038 no later than August 1, xxxx.

**PLEASE SEE THE ATTACHED INSTRUCTIONS AND DEFINITIONS OF CAPITALIZED TERMS USED ON THIS PAGE.**

1. Number of permanent Full-Time Employees as of June 30, 2006 .....
2. Number of non-permanent Full-Time Employees as of June 30, 2006 .....
3. Number of permanent Part-Time Employees as of June 30, 2006 .....
4. Number of non-permanent Part-Time Employees as of June 30, 2006 .....
5. Number of Contract Employees as of June 30, 2006 .....
6. Total Number of employees of the Company and its Affiliates included in Items 1, 2, 3 and 4 .....

For each employee included in this item 6, attach the NYS-45 Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Return for the period including June 30, 2006.

7. Number of employees included in item 6 above who reside in the City of New York .....
8. Do the Company and its Affiliates offer health benefits to all Full-Time Employees? ..... Y N (please circle Y or N)  
 Do the Company and its Affiliates offer health benefits to all Part-Time Employees? ..... Y N (please circle Y or N)

If the answer to item 6 above is 250 or more employees, please complete Item 9 through 13 below:

9. Number of employees in item 6 who are "Exempt" .....
10. Number of employees in item 6 who are "Non-Exempt" .....
11. Number of employees in item 10 that earn up to \$25,000 annually .....
12. Number of employees in item 10 that earn \$25,001 - \$40,000 annually .....
13. Number of employees in item 10 that earn \$40,001 - \$50,000 annually .....

For items 14 through 16, indicate the value of the benefits realized at Project Locations during FY'06:

14. Value of sales and use tax exemption benefits ..... \$ .....
15. Value of Commercial Expansion Program ("CEP") benefits ..... \$ .....
16. Value of Relocation and Employment Assistance Program ("REAP") benefits ..... \$ .....
17. Were physical improvements made to any Project Location during FY '06 at a cost exceeding 10% of the current assessed value of the existing improvements at such Project Location? ..... Y N (please circle Y or N)  
 If the Company and/or its Affiliates have applied for Industrial and Commercial Incentive Program ("ICIP") benefits for new physical improvements at Project Location(s), please provide the ICIP application number(s) ..... # .....

Certification: I, the undersigned, an authorized officer or principal owner of the Company/Affiliate/Tenant, hereby certify to the best of my knowledge and belief, that all information contained in this report is true and complete. 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 of NYCEDC and/or the City of New York; and, without limiting the foregoing, such information may be included in (x) reports prepared by NYCEDC pursuant to New York City Charter Section 1301 et. seq., (y) other reports required of NYCEDC, and (z) any other reports or disclosure required by law.

Entity Name: \_\_\_\_\_  
 Signature By: \_\_\_\_\_ Date: \_\_\_\_\_  
 Name (print): \_\_\_\_\_ Title: \_\_\_\_\_

**EXHIBIT C**

**EMPLOYMENT AND BENEFITS REPORT**

See separate attachment

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# INDUSTRIAL PLAZA

## *Employment Generation*

We estimate that our project will generate the following types and number of full-time jobs (see next page for accompanying assumptions and calculations; we are using NYC EDC assumptions):

<u>Job Type:</u>	<u>Jobs Created:</u>
Industrial	1,213
Retail	176
Showroom/office	70
Parking/Loading	73
Construction	<u>225</u>
<b>TOTAL</b>	<b>1,757</b>

## *Additional Economic Benefits to the City (and State):*

In addition to immediate employment generation, our project will result in significant and ongoing direct and indirect benefit by creating millions of dollars in incremental City (and State) tax revenues.

**EXHIBIT L**  
**NYCDOT MEMORANDUM**



## Department of Transportation

JANETTE SADIK-KHAN, Commissioner

To: Douglas Rice, Vice President  
Economic Development Corporation

From: Naim Rasheed, Director *Naim Rasheed*  
Traffic Planning

Re: Sunset Marketplace (aka Federal Building No. 2)  
Environmental Assessment Form

Date: June 2, 2011

We have completed our review of the Environmental Assessment Form (EAF) for the above referenced project. The proposed action is seeking performance-based financial assistance from the New York City Industrial Development Agency (IDA) for the development of an estimated 1,008,000 sq. ft. of light industrial use (based on 97% occupancy) and 77,600 sq. ft. of neighborhood retail (based on 97% occupancy). The development site consists of an estimated 1.12 M sq. ft. eight-story vacant industrial. The project site is located in an industrial/manufacturing waterfront area along the Gowanus Bay in the Sunset Park area of Brooklyn and is bounded by 30<sup>th</sup> Street to the north, 3<sup>rd</sup> Avenue on the east, 32<sup>nd</sup> Street on the south, and 2<sup>nd</sup> Avenue on the west.

To the north of the property, commonly referred to as Federal Building #2 is the Metropolitan Detention Center, which was the site of Federal Building #1. A large portion of Federal Building #1 was demolished to accommodate the federal prison in 1990, and the remaining portion was demolished in 1999 for the federal prison expansion. It was the intention of the federal government to use Federal Building #2 as a support building servicing the adjacent federal prison. However, the city expressed a desire to acquire the building and have it occupied with industrial uses in keeping with the goals of the city's Industrial Policy—the attraction and retention of industrial businesses in this area of Sunset Park.

In the absence of the proposed action, the project site would be developed as-of-right, as allowed under the current zoning. The EAF analyzes the incremental differences between the proposed action and the future without the proposed action (as-of-right development). The estimated net incremental difference between Future No-Action and Future With-Action condition of vehicle trips (autos + taxis) during the AM, Midday and PM peak hours were 27, 7 and 30, respectively. The estimated net incremental difference between Future No-Action and Future With-Action condition of pedestrian trips (pedestrians + transit) during the AM, Midday and PM peak hours were 84, 185 and 128, respectively.

The applicant has proposed to perform, at its expense, a trip generation assessment study to verify the trips to generated by the proposed action (industrial and neighborhood retail) and credit taken for the as-of-right development when the project is built and occupied by performing a DOT approved survey of Federal Building #2. The applicant would also undertake at its own expense the analysis and implementation of any subsequent Transportation System Management (TSM) improvement measures at the immediate intersections around the project site, should the



Douglas Rice, Vice President  
Economic Development Corporation  
Re: Sunset Marketplace (aka Federal Building No. 2)  
Environmental Assessment Form  
June 2, 2011

Page 2 of 2

survey indicate that the proposed project's peak hour vehicle trip generation is 50 or greater than the as-of-right building.

If you have any questions, please call me at (212)839-7710 or Marjorie Bryant at (212) 839-7756.

c: D/C G. Soffian, A/C R. Russo, B/C J. Palmieri, S. Ahmed, M. Bryant, File  
c:/docs/Bryant/Sunset Marketplace 2

**EXHIBIT M-1**  
**SUBTENANT SURVEY**  
**For Calendar Year 20--**

Salmar Properties, LLC  
 120 Broadway  
 New York, New York 10271

Complete this Survey for calendar year 20\_\_ and return to the Agency no later than February 1, 20\_\_.

COMPANY: Salmar Properties, LLC

PROJECT  
 LOCATION:

850 Third Avenue, Brooklyn, NY 11232

Part 1: TOTAL BUILDING SQUARE FOOTAGE AT THIS PROJECT LOCATION: \_\_\_\_\_ square feet

TOTAL LAND SQUARE FOOTAGE AT THIS PROJECT LOCATION: \_\_\_\_\_ square feet

Part 2: LIST TENANT(S) AND PROVIDE DETAILS:

Name of Tenant	Name of Tenant's Principal	Tenant Affiliation to Company, if any	EIN #	Floor	Square Footage Leased	% of Leased Space/Total Rentable Square Footage at Facility	Use of Leased Space; Choose one: (a) Industrial Use or (b) Retail / Other Use	Gross Rent for prior annual period	Annual Base Rent	Average of Industrial Employees for 12 months ending Dec 31	Annual Average of Industrial Employees for 5 year period ending Dec 31	Lease Begins	Lease Expiration

(Please continue on a separate page if necessary)

Part 3: I, the undersigned, hereby certify that the information reported above is true, correct and complete for the calendar year indicated above and that the tenants listed above are the only occupants, subtenants and/or licensees at the Project Location. I understand that this information is submitted pursuant to the requirements of the Agreement.

Name: \_\_\_\_\_ Date: \_\_\_\_\_  
 Signature: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
 Title: \_\_\_\_\_ Email: \_\_\_\_\_

Return documents via Fax to: 212-618-5738 or Mail to: NYCIDA Attention: Compliance Dept., 110 William Street, 3rd Flr, New York, NY 10038  
 For questions about the Subtenant Occupancy Survey please call: the Compliance Hotline at 212-312-3963  
 Compliance Website: [www.nycedc.com/ComplianceReporting](http://www.nycedc.com/ComplianceReporting)

**EXHIBIT M-2**

**CERTIFICATE REQUIRED PURSUANT TO  
SECTION 5.1(d)(ii) OF LEASE AGREEMENT**

The undersigned, an authorized representative of Salmar Properties, LLC (the "Lessee"), a limited liability company organized and existing under the laws of the State of New York, DOES HEREBY CERTIFY, REPRESENT AND WARRANT to the New York City Industrial Development Agency (the "Agency") pursuant to Section 5.1(d)(iii) of that certain Agency Lease Agreement, dated as of September 1, 2011, between the Agency and the Lessee (the "Lease Agreement") that as of [*insert applicable Adjustment Date*] that the Average Equivalent Full time Employee Number was \_\_\_\_\_.

Capitalized terms used and not otherwise defined herein shall have the meaning ascribed to such terms in the Lease Agreement.

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

**SALMAR PROPERTIES, LLC**

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

Name:

Title:

**EXHIBIT N**

**ANNUAL EMPLOYMENT AND BENEFITS REPORT**

In order to comply with State and Local Law reporting requirements, the Company is required to complete and return this form to NYCIDA, 110 William Street, Attention: Compliance, New York, NY 10038 no later than **August 1, 2011**. PLEASE SEE THE ATTACHED INSTRUCTIONS AND DEFINITIONS OF CAPITALIZED TERMS USED ON THIS PAGE.

- 1. Number of permanent Full-Time Employees (including Subtenant's employees) as of June 30<sup>th</sup>, 2011.....
- 2. Number of non-permanent Full-Time Employees (including Subtenant's employees) as of June 30<sup>th</sup>, 2011 .....
- 3. Number of permanent Part-Time Employees (including Subtenant's employees) as of June 30<sup>th</sup>, 2011.....
- 4. Number of non-permanent Part-Time Employees (including Subtenant's employees) as of June 30<sup>th</sup>, 2011.....
- 5a. Number of "non-Construction" Contract Employees as of June 30<sup>th</sup>, 2011.....
- 5b. Average number of Construction Employees during Fiscal Year ending June 30<sup>th</sup>, 2011.....
- 6. Total Number of employees of the Company and its Affiliates included in Items 1, 2, 3 and 4 .....  
(Excluding Subtenants)

For each employee included in item 6, attach the Summary Page of the NYS-45 Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Return for the period including June 30, 2011.

- 7. Number of employees included in item 6 above who reside in the City of New York.....
- 8. Do the Company and its Affiliates offer health benefits to all Full-Time Employees? .....Yes No All Part-Time Employees?.....Yes No

**If the answer to item 6 above is fewer than 250 employees, please skip questions 9 - 13 and continue with questions 14 - 18.**

- 9. Number of employees in item 6 who are "Exempt" .....
- 10. Number of employees in item 6 who are "Non-Exempt" .....
- 11. Number of employees in item 10 that earn up to \$25,000 annually.....
- 12. Number of employees in item 10 that earn \$25,001 - \$40,000 annually.....
- 13. Number of employees in item 10 that earn \$40,001 - \$50,000 annually.....

**For Items 14 - 18, indicate the value of the benefits realized by the Company and its Affiliates at Project Locations during FY'11.**

- 14. What was the value of sales and use tax exemption savings realized by the Company and its Affiliates as a result of the Company's receipt of NYCIDA Financial Assistance during the FY'11. (Do not include any sales and use tax savings realized under the NYS Empire Zone Program or through a not-for-profit exemption)..... \$ .....
- 15. What was the value of BIR Energy Assistance realized by the Company and its Affiliates during the FY'11..... \$ .....
- 16. Does the Company and/or its Affiliates receive Commercial Expansion Program ("CEP") benefits?.....Yes No  
If yes, what was the value realized during FY'11. .... \$ .....
- 17. Does the Company and/or its Affiliates receive Relocation and Employment Assistance Program ("REAP") benefits? Yes No  
If yes, what was the value realized during FY'11..... \$ .....
- 18. Has the Company and/or its Affiliates applied for Industrial and Commercial Abatement Program ("ICAP") or Industrial and Commercial Incentive Program ("ICIP") benefits for new physical improvements at the Project Location(s)? .....Yes No  
If yes, please provide the application number(s).....

Certification: I, the undersigned, an authorized officer or principal owner of the Company/Affiliate/Tenant, hereby certify to the best of my knowledge and belief that all information contained in this report is true and complete. This form and information provided pursuant hereto may be disclosed to the New York City Economic Development Corporation ("NYCEDC"), New York City Industrial Development Agency ("NYCIDA") and/or New York City Capital Resource Corporation ("NYCCRC") and may be disclosed by NYCEDC, NYCIDA and/or NYCCRC in connection with the administration of the programs of NYCEDC, NYCIDA and/or NYCCRC and/or the City of New York; and, without limiting the foregoing, such information may be included in (x) reports prepared by NYCEDC pursuant to New York City Charter Section 1301 et. seq., (y) other reports required of NYCIDA, NYCCRC or NYCEDC, and (z) any other reports or disclosure required by law.

Project Name: \_\_\_\_\_  
Signature By: \_\_\_\_\_  
Name (print): \_\_\_\_\_

Date: \_\_\_\_\_  
Title: \_\_\_\_\_

"Affiliate" is (i) a business entity in which more than fifty percent is owned by, or is subject to a power or right of control of, or is managed by, an entity which is a party to a Project Agreement, or (ii) a business entity that owns more than fifty percent of an entity which is a party to a Project Agreement or that exercises a power or right of control of such entity.

"Agreement" is the Lease Agreement, Installment Sale Agreement and/or the Project Agreement pursuant to which an entity received or receives Financial Assistance.

"Company" includes any entity that is a party to an Agreement.

"Construction Employee" is a person who is an independent contractor or subcontractor, or an employee thereof, who provides construction services to the Company, an Affiliate or a Subtenant at a Project Location.

"Contract Employee" is a person who is an independent contractor (i.e., a person who is not an "employee"), or is employed by an independent contractor (an entity other than the Company, an Affiliate or a Tenant), who provides services at a Project Location.

"Financial Assistance" is any of the following forms of financial assistance provided by or at the direction of NYCIDA and/or NYCEDC: a loan, grant, tax benefit and/or energy benefit pursuant to the Business Incentive Rate (BIR) or New York City Public Utility Service (NYCPUS) program.

"Full-Time Employee" is an employee who works at least 35 hours per week at a Project Location.

"Part-Time Employee" is an employee who works less than 35 hours per week at a Project Location.

"Project Location" is any location (a) with regard to which Financial Assistance has been provided to the Company and/or its Affiliates during the fiscal year reporting period covered by the Employment and Benefits Report, or (b) that is occupied by the Company and/or its Affiliates at which such entities have employees who are eligible to be reported per the terms of the Agreement with the Company and/or its Affiliates.

"Subtenant" is a tenant or subtenant (excluding the Company and its Affiliates) that leases or subleases facilities from the Company or its Affiliates (or from tenants or subtenants of the Company or its Affiliates) at any Project Location.

**INSTRUCTIONS** For each Project Agreement, please submit one report that covers (i) the Company and its Affiliates and (ii) Subtenants at all Project Locations covered by the Project Agreement.

Each Subtenant should complete a separate Subtenant's Employment and Benefits Report. All Subtenant employment info should be aggregated, combined with employment information for the Company and its Affiliates at all Project Locations, and reported on the Company's Employment and Benefits Report. Additionally, please include the completed Subtenant's Employment and Benefits Report(s) along with the Company's Employment and Benefits Report when submitting to NYCIDA. The Company must retain for six (6) years all forms completed by its Affiliates and Subtenants and at NYCIDA's request must permit NYCIDA upon reasonable notice to inspect such forms and provide NYCIDA with a copy of such forms.

1-4. Items 1, 2, 3 and 4 must be determined as of June 30, 2011 and must include all permanent and non-permanent Full-Time Employees and Part-Time Employees at all Project Locations, including those employed by the Company or its Affiliates and by Subtenants at the Project Locations. Do not include Contract Employees or Construction Employees in Items 1, 2, 3 and 4.

5.(a) Report all Contract Employees providing services to the Company and its Affiliates and Subtenants at all Project Locations. Do not include Construction Employees in question 5a. (b) Report the 12 month average of Construction Employees providing services to the Company and its Affiliates and Subtenants at all Project Locations for the previous fiscal year. Use the number of construction employees on the last payroll date of each month to compute this average.

6-13. Report information requested only with respect to the Company and its Affiliates at all Project Locations. For item 6, report only the permanent and non-permanent Full-Time Employees and Part-Time Employees of the Company and its Affiliates. Do not report employees of Subtenants. Do not report Contract Employees & Construction Employees.

9. Indicate the number of employees included in item 6 who are classified as "Exempt", as defined in the federal Fair Labor Standards Act. Generally, an Exempt employee is not eligible for overtime compensation.

10. Indicate the number of employees included in item 6 who are classified as "Non-Exempt", as defined in the federal Fair Labor Standards Act. Generally, a Non-Exempt employee is eligible for overtime compensation.

16. Report all CEP benefits received by the Company and its Affiliates and any Subtenants at all Project Locations. CEP is a package of tax benefits, administered by the New York City Department of Finance, designed to help qualified businesses to relocate or expand in designated relocation areas in New York City. For more information regarding CEP, please visit <http://www.nyc.gov/dof>.

17. Report all REAP benefits received by the Company and its Affiliates and any Subtenants at all Project Locations. REAP is administered by the New York City Department of Finance, and is designed to encourage qualified businesses to relocate employees to targeted areas within New York City. REAP provides business income tax credits based on the number of qualified jobs connected to the relocation of employees. For more information regarding REAP, please visit <http://www.nyc.gov/dof>.

14. Report all sales and use tax exemption benefits realized at all Project Locations by the Company and its Affiliates and granted by virtue of the exemption authority of NYCIDA or the City of New York. Do not include any savings realized under the NYS Empire Zone Program or through a not-for-profit exemption.

15. For purposes of this form, "BIR Energy Assistance Agreement" is any agreement with the NYCEDC pursuant to which the Company and/or its affiliates receive BIR Energy Assistance. "BIR Energy Assistance" is any reduction in energy delivery charges or other benefits or energy discounts provided pursuant to the Business Incentive Rate (BIR) program administered by Consolidated Edison Company of New York, Inc. or its affiliates.

Please review the information required below for the location or locations that are receiving benefits and make any necessary changes.

**Eligible Project Locations:**

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Please review the current Project Contact Information below and make any necessary changes: (Please print CLEARLY)

Project Name: \_\_\_\_\_

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

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-mail: \_\_\_\_\_

Signature: \_\_\_\_\_

**Backup Contact Information:**

Name: \_\_\_\_\_ Title: \_\_\_\_\_ Phone: \_\_\_\_\_

**PLEASE MAIL TO:**  
**New York City Industrial Development Agency**  
**Attention: Compliance Department**  
**110 William Street**  
**New York, NY 10038**

**OR FAX YOUR RESPONSE TO: 212-618-5738**

**QUESTIONS? Please contact the Compliance Hotline at (212) 312-3963**

In order to comply with State and Local Law reporting requirements, please complete and return this form no later than **August 1, 2011**. PLEASE SEE BELOW FOR THE INSTRUCTIONS AND DEFINITIONS OF CAPITALIZED TERMS USED ON THIS PAGE.

Please copy this form and have each subtenant occupying space at an NYCIDA project location complete a Subtenant's Employment and Benefits Report. All Subtenant employment info should be aggregated, combined with Company employees (where appropriate), and reported on the Company's Employment and Benefits Report. Please include the completed Subtenant's Employment and Benefits Report(s) along with the Company's Employment and Benefits Report when submitting to NYCIDA.

1. Number of permanent Full-Time Employees as of June 30<sup>th</sup>, 2011 .....
2. Number of non-permanent Full-Time Employees as of June 30<sup>th</sup>, 2011 .....
3. Number of permanent Part-Time Employees as of June 30<sup>th</sup>, 2011 .....
4. Number of non-permanent Part-Time Employees as of June 30<sup>th</sup>, 2011 .....
- 5a. Number of "non-Construction" Contract Employees as of June 30<sup>th</sup>, 2011 .....
- 5b. Average number of Construction Employees during Fiscal Year ending June 30<sup>th</sup>, 2011 .....
6. Does the Company receive Relocation and Employment Assistance Program ("REAP") benefits?  Yes  No  
If yes, what was the value realized during FY'11  
\$ .....
7. Does the Company receive Relocation and Employment Assistance Program ("REAP") benefits?  Yes  No  
If yes, what was the value realized during FY'11  
\$ .....

**DEFINITIONS:**

**"Construction Employee"** is a person who is an independent contractor or subcontractor, or an employee thereof, who provides construction services to the Subtenant at a Project Location.

**"Contract Employee"** is a person who is an independent contractor (i.e., a person who is not an "employee"); or is employed by an independent contractor (an entity other than the Company, an Affiliate or a subtenant), who provides services at a Project Location.

**"Full-Time Employee"** is an employee who works at least 35 hours per week at a Project Location.

**"Part-Time Employee"** is an employee who works less than 35 hours per week at a Project Location.

**INSTRUCTIONS:** Each Subtenant should complete a separate Subtenant's Employment and Benefits Report.

**Item 1- 4.** Items 1, 2, 3 and 4 must be determined as of June 30, 2011 and must include all permanent and non-permanent Full-Time Employees and Part-Time Employees at all Project Locations of the Subtenant at the Project Locations. Do not include Contract or Construction Employees in Items 1, 2, 3 and 4.

**Item 5.(a)** Report all Contract Employees providing services to the Subtenants at all Project Locations. Do not include Construction Employees in question 5a. (b) Report the 12 month average of Construction Employees providing services to the Subtenants at all Project Locations for the previous fiscal year. Use the number of construction employees on the last payroll date of each month to compute this average.

**Item 6.** Report all CEP benefits received by the Subtenants at all Project Locations. CEP is a package of tax benefits, administered by the New York City Department of Finance, designed to help qualified businesses to relocate or expand in designated relocation areas in New York City. For more information regarding CEP, please visit <http://www.nyc.gov/dof>.

**Item 7.** Report all REAP benefits received by the Subtenants at all Project Locations. REAP is administered by the New York City Department of Finance, and is designed to encourage qualified businesses to relocate employees to targeted areas within New York City. REAP provides business income tax credits based on the number of qualified jobs connected to the relocation of employees. For more information regarding REAP, please visit <http://www.nyc.gov/dof>.

Certification: I, the undersigned, an authorized officer or principal owner of the Company/Affiliate/Tenant, hereby certify to the best of my knowledge and belief that all information contained in this report is true and complete. This form and information provided pursuant hereto may be disclosed to the New York City Economic Development Corporation ("NYCEDC"), New York City Industrial Development Agency ("NYCIDA") and/or New York City Capital Resource Corporation ("NYCCRC") and may be disclosed by NYCEDC, NYCIDA

and/or NYCCRC in connection with the administration of the programs of NYCEDC, NYCIDA and/or NYCCRC and/or the City of New York; and, without limiting the foregoing, such information may be included in (x) reports prepared by NYCEDC pursuant to New York City Charter Section 1301 et. seq., (y) other reports required of NYCIDA, NYCCRC or NYCEDC, and (z) any other reports or disclosure required by law.

Subtenant  
Name \_\_\_\_\_

Project  
Name \_\_\_\_\_

Signature \_\_\_\_\_  
Date \_\_\_\_\_

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



**EXHIBIT O**

**RIDER TO SUBLEASE AGREEMENT DATED \_\_\_\_\_, 20\_\_**

<b>SUBLESSOR:</b>	
<b>SUBLESSEE:</b>	
<b>FLOOR(S)/ UNIT(S):</b>	
<b>SUBLESSEE'S EIN #:</b>	
<b>PREMISES:</b>	850 Third Avenue Brooklyn, New York 10271
<b>NYCIDA:</b>	New York City Industrial Development Agency
<b>LEASE AGREEMENT:</b>	Lease Agreement between NYCIDA and Sublessor, dated as of _____, 20__, wherein NYCIDA leases the Premises to Sublessor.

1. **Acknowledgment and Release.** Sublessee acknowledges that NYCIDA holds a leasehold estate in the entire Premises; and Sublessee releases NYCIDA from any past, present or future claims that Sublessee has or may have against NYCIDA.
2. **Representation Regarding Relocation.** Sublessee represents that as a result of entering into the Sublease Agreement and occupying the Sublease Premises, it will not have relocated any of its plants or facilities from outside of New York City (but within the State of New York) to the Sublease Premises; nor will Sublessee have abandoned any of its plants or facilities outside of New York City (but within the State of New York).
3. **Representation and Covenants Regarding Compliance.** Neither the Sublessee, nor any of the Principals of the Entity, nor any Person that directly or indirectly Controls, is Controlled by, or is under common Control with the Entity is, nor at any time during the term of the Sublease Agreement, shall be a Non-Compliant Person.

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.

"Non-Compliant Person" shall mean an individual or any Entity that:

- (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 felony and/or any crime involving moral turpitude in the preceding ten (10) years;
- (c) has received written notice of default in the payment to the City of any taxes, sewer rents or water charges in excess of \$5,000 that has not been cured or satisfied, unless such default is then being contested with due diligence in proceedings in a court or other appropriate forum; or
- (d) has, at any time in the three (3) preceding years, owned any property which, while in the ownership of such Person, was acquired by the City by in rem tax foreclosure, other than a property in which the City has released or is in the process of releasing its interest to such Person pursuant to the Administrative Code of the City.

"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.

4. **Subordination.** Sublessee acknowledges and agrees that the Sublease Agreement is subject and subordinate to the Lease Agreement and that any conflict between the terms of the Lease Agreement and the terms of the Sublease Agreement shall be resolved in favor of the former.
5. **Indemnity.** Sublessee agrees to defend, indemnify and hold harmless NYCIDA, its officers, directors, employees and agents from and against any and all losses, claims, suits, damages, costs, expenses and liabilities arising from or attributable to any act or omission of Sublessee, its employees or agents in the use or occupancy of the Sublease Premises.
6. **Insurance.** Sublessee agrees to obtain and maintain throughout the term of the Sublease Agreement, Commercial General Liability insurance ("CGL") on a per occurrence basis in the following amounts: minimum \$1,000,000 per occurrence and minimum \$2,000,000 in the aggregate per location. The Sublessee additionally agrees that:
  - a. The CGL policy shall contain coverage for contractual liability, premises operations, and products and completed operations; and
  - b. The CGL policy shall be written on Form CG-0001; and
  - c. The CGL policy shall name NYCIDA as an additional insured; and
  - d. The Sublessee shall provide to the Sublessor at least thirty (30) days before expiration of the CGL policy (and to NYCIDA upon NYCIDA's request), an ACORD certificate evidencing that the Sublessee has obtained CGL; and that such ACORD certificate shall indicate NYCIDA as an additional insured as follows: *New York City Industrial Development Agency is an additional insured on a primary and non-contributory basis*

*for Commercial General Liability which is written on Form CG-0001 without modification to the contractual liability or waiver-of-subrogation provisions therein and covering the following premises: \_\_\_\_\_.*

7. **Employment Information.** Sublessee acknowledges that under the Lease Agreement, Sublessor (or Sublessor's affiliate) is obligated to provide to NYCIDA employment information pertinent to all occupants of the Premises; accordingly, Sublessee agrees to provide to Sublessor and, if requested by NYCIDA, to NYCIDA, information regarding Sublessee's employment at the Sublease Premises, including the then-current New York State Department of Labor's Form NYS-45; and NYCIDA's employment and benefits report form for subtenants, a form of which is annexed hereto (or any replacement and/or successor form as may be required by the Agency as a result of a change in law or as required by New York States agencies ).
  
8. **Incorporation in Sublease Agreement; Third-Party Beneficiary.** Sublessee agrees and acknowledges that this RIDER is a part of and incorporated in the Sublease Agreement; and that NYCIDA is a third-party beneficiary of the foregoing provisions of this RIDER.

\_\_\_\_\_  
SUBLESSOR

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
SUBLESSEE

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT P**

**CERTIFICATE REQUIRED PURSUANT TO  
SECTION 8.9(b)(ii) OF LEASE AGREEMENT**

The undersigned, an authorized representative of Salmar Properties, LLC (the "Lessee"), a limited liability company organized and existing under the laws of the State of New York, DOES HEREBY CERTIFY, REPRESENT AND WARRANT to the New York City Industrial Development Agency (the "Agency") pursuant to Section 8.9(b)(ii) of that certain Agency Lease Agreement, dated as of September 1, 2011, between the Agency and the Lessee (the "Lease Agreement") THAT:

1. Attached hereto is a fully executed copy of a certain sublease agreement and Rider to Sublease, dated \_\_\_\_\_ (the "Tenant Lease"), by and between the Lessee and \_\_\_\_\_.

2. Lessee is in compliance with Section 8.19(d) of the Lease Agreement and will continue to be in compliance with said section on and after the effective date of such Tenant Lease.

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

**SALMAR PROPERTIES, LLC**

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

Name:

Title:

**EXHIBIT Q**

**CERTIFICATE REQUIRED PURSUANT TO  
SECTION 8.16(f) OF LEASE AGREEMENT**

The undersigned, an authorized representative of Salmar Properties, LLC (the "Lessee"), a limited liability company organized and existing under the laws of the State of New York, DOES HEREBY CERTIFY, REPRESENT AND WARRANT to the New York City Industrial Development Agency (the "Agency") pursuant to Section 8.16(f) of that certain Agency Lease Agreement, dated as of September 1, 2011, between the Agency and the Lessee (the "Lease Agreement") THAT:

1. The Lessee is in compliance with Section 8.19(d) of the Lease Agreement.
2. No portion of the Facility is being used or occupied for any purpose that does not qualify as an Industrial, a Retail Use, or an Other Use.
3. There are at least 1,300 Equivalent Full Time Employees constituting Industrial Employees employed at the Facility.

Capitalized terms used and not otherwise defined herein shall have the meaning ascribed to such terms in the Lease Agreement.

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

**SALMAR PROPERTIES, LLC**

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