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**AGENCY LEASE AND AGREEMENT  
(SBMT ASSET FACILITY)**

Dated as of March 1, 2025

by and between

**NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY**

and

**SBMT ASSET LLC,**  
a limited liability company organized and existing under  
the laws of the State of Delaware, having an address at  
600 Washington Blvd., Suite 800, Stamford, Connecticut 06901,  
as Lessee

2025 SBMT Asset Project

Affecting the Land comprising the South Brooklyn Marine Terminal,  
being between 29<sup>th</sup> and 39<sup>th</sup> Streets and  
west of 2<sup>nd</sup> Avenue in Sunset Park, Brooklyn, New York  
Borough of Brooklyn, Block 662 and Lots 1, 130, 136, 137 and 155

On the Official Tax map of Kings County,  
City and State of New York  
as more particularly described in  
(y) Exhibit A to this Agency Lease and Agreement (SBMT Asset Facility)  
on the Official Tax Map of Kings County, and  
(z) those items of personalty described in Exhibit B to this  
Agency Lease and Agreement (SBMT Asset Facility)

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**AGENCY LEASE AND AGREEMENT  
(SBMT ASSET FACILITY)**

This **AGENCY LEASE AND AGREEMENT (SBMT ASSET FACILITY)**, dated as of March 1, 2025 (this “**Agreement**”), is by and between **NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York (the “**Agency**”), having its principal office at One Liberty Plaza, New York, New York 10006, as landlord and party of the first part, and **SBMT ASSET LLC**, a limited liability company organized and existing under the laws of the State of Delaware (the “**Lessee**”), having an address at 600 Washington Blvd., Suite 800, Stamford, Connecticut 06901, as lessee and party of the second part (capitalized terms used herein shall have the respective meanings assigned to such terms throughout this Agreement).

**WITNESSETH:**

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

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

**WHEREAS**, to accomplish the purposes of the Act, the Agency has entered into certain agreements with each of the Lessee and EOW regarding two interrelated “projects” within the meaning of the Act and within the territorial boundaries of the City, consisting of the construction, furnishing, equipping and installation of industrial facilities for the purpose of connecting OSW power from EOW’s Future OSW Development to the City’s power grid; and

**WHEREAS**, such industrial facilities require that improvements be made at the SBM Terminal, and to consist of, in connection with implementing the Future OSW Development:

- (i) on the part of the Lessee, the construction, furnishing and equipping of upgrades at the SBM Terminal, including an operations and maintenance facility for OSW operations, the construction of a staging site for the assembly of the wind turbines and other equipment, and the upgrading of the port infrastructure at the SBM Terminal (but not including the substation to be constructed by EOW as provided below and as part of the

EOW Project) to support the industrial machinery necessary for the Future OSW Development and to consist of dredging, bulkhead upgrades, electrical, water and plumbing infrastructure improvements, electric cable installations and grid connections, crane foundations, pier reinforcement, utility systems and other construction and demolition; and

- (ii) on the part of EOW, the construction of the EOW Substation, the acquisition of substation equipment for use at the SBM Terminal as part of an onshore substation to be constructed by EOW, and the acquisition, construction and installation of electric cables that will connect the OSW power from the Future OSW Development to the City's power grid, such cables being limited to those within the jurisdictional limits of the City; and

**WHEREAS**, the Lessee represents to the Agency that the SBMT Asset Project will have an estimated cost of \$1,100,000,000; and

**WHEREAS**, (i) the City is the owner of the SBM Terminal, including the improvements thereon and the adjacent lands underwater pursuant to riparian rights, and has leased the SBM Terminal Property to NYCEDC pursuant to the Master Lease; (ii) NYCEDC has subleased the SBM Terminal Property to SSBMT pursuant to the NYCEDC Lease; (iii) SSBMT has subleased the SBM Terminal Property to the Lessee pursuant to the SBMT Asset Lease; (iv) the Lessee has subleased the Facility Realty (SBMT Asset Facility) and leased the Facility Personalty (SBMT Asset Facility) to the Agency pursuant to the Company Lease (SBMT Asset Facility); (v) the Agency is subleasing the Facility Realty (SBMT Asset Facility) and the Facility Personalty (SBMT Asset Facility) to the Lessee pursuant to this Agreement; and (vi) the Lessee is subleasing a portion of the SBM Terminal Property to EOW for the construction of the EOW Substation as part of the EOW Project pursuant to the EOW Sublease; and

**WHEREAS**, the Lessee is an indirect subsidiary of Equinor, and Equinor is a global leader in developing oil, gas, wind and solar energy projects, including the development of offshore wind projects; and

**WHEREAS**, the SBMT Asset 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 SBMT Asset Project, the Agency has entered into a Straight-Lease Transaction pursuant to which (i) the Lessee has subleased the Facility Realty (SBMT Asset Facility) and leased the Facility Personalty (SBMT Asset Facility) to the Agency pursuant to the Company Lease (SBMT Asset Facility), and (ii) the Agency will sublease the Facility Realty (SBMT Asset Facility) and the Facility Personalty (SBMT Asset Facility) to the Lessee pursuant to this Agreement; and

**WHEREAS**, in furtherance of the Straight-Lease Transaction, the Agency adopted its Inducement Resolution and its Authorizing Resolution (i) inducing and authorizing the undertaking of the SBMT Asset Project and the SBMT Asset Project Work, (ii) authorizing the sublease of the Facility Realty (SBMT Asset Facility) and the Facility Personalty (SBMT

Asset Facility) by the Lessee to the Agency pursuant to the Company Lease (SBMT Asset Facility), and (iii) authorizing the sublease of the Facility Realty (SBMT Asset Facility) and the Facility Personalty (SBMT Asset Facility) by the Agency to the Lessee pursuant to this Agreement; 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, EOW and Equinor to proceed with the Equinor Projects and the Future OSW Development, and if the Agency does not provide such Financial Assistance, the Lessee and EOW could not feasibly proceed with the respective Equinor Projects, and Equinor could not feasibly proceed with the Future OSW Development; and

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

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

## ARTICLE I

### DEFINITIONS AND CONSTRUCTION

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

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

**Additional Improvements (SBMT Asset Facility)** shall mean any buildings, structures, foundations, related facilities, fixtures, and other improvements (including all replacements, improvements, additions, extensions and substitutions to the Existing Improvements (SBMT Asset Facility)), constructed, erected, placed and/or installed on, under and/or above the Land (SBMT Asset Facility) after the SBMT Asset Project Completion Date, but shall not include improvements that are part of the SBMT Asset Project Work.

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

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

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

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

**Agency Lease Agreement (EOW Facility)** shall mean the Agency Lease Agreement (EOW Facility), dated as of even date herewith, between the Agency, as landlord, and EOW, as tenant, as the same may be amended and supplemented in accordance with its terms and as permitted by the terms thereof.

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

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

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

**Application Date** shall mean the date on which the Inducement Resolution was adopted with respect to the application of the Lessee and EOW for Financial Assistance.

**Approved SBMT Asset Facility** shall mean the Facility as occupied, used and operated substantially for the Approved SBMT Asset Project Operations.

**Approved SBMT Asset Project Operations** shall mean the operation of the Facility for a Qualified Use by the Lessee, by Equinor USH and any of its subsidiaries, or, after the Lease Termination Date, by any other Entity designated by the Lessee.

**Asserted Cure** shall have the meaning specified in Section 8.24(k)(i).

**Asserted LW Violation** shall have the meaning specified in Section 8.24(k)(i).

**Authorized Representative** shall mean, (i) in the case of the Agency, the Chairperson, Vice Chairperson, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary, Executive Director, Deputy Executive Director or General Counsel, or any other officer or employee of the Agency who is authorized to perform specific acts or to discharge specific duties, (ii) in the case of the Lessee, a person named in Exhibit C – “Authorized Representative,” or any other officer or employee of the Lessee who is authorized to perform specific duties hereunder or under any other SBMT Asset Project Document and of whom another Authorized Representative of the Lessee has given written notice to the Agency, and (iii) in the case of the Guarantor, a person named in Exhibit C – “Authorized Representative,” or any other officer or employee of the Guarantor who is authorized to perform specific duties hereunder or under any other SBMT Asset Project Document and of whom another Authorized Representative of the Guarantor has given written notice to the Agency; 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 SBMT Asset 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 March 12, 2024, as amended on January 28, 2025, providing for Financial Assistance and authorizing, among other documents, the SBMT Asset Project Documents to which the Agency is a party.

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

**Benefits (SBMT Asset Facility)** shall mean, collectively, the Sales Tax Savings and all miscellaneous monetary benefits derived from the Agency’s participation in the Straight-Lease Transaction contemplated by this Agreement.

**Business Day** shall mean any day that shall not be:

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

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

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

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

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

**Change in Control** shall mean, with respect to an Entity, any direct or indirect change in the ownership or control of any legal, beneficial or equitable interest in any or all of the shares, equity or interests in such Entity (including the Control over the exercise of voting rights conferred on equity, shares or membership interests or the Control over the right to appoint or remove directors, a general partner, a managing member or other managers), including, without limitation, changes arising from the assignment or transfer of existing equity, shares or membership interest, merger, consolidation, amendment of a limited liability company certificate or other reorganization, or any other direct or indirect change which results in a Person or group of Persons, other than the equity holders of the Entity immediately prior to the change, directly or indirectly (provided, however, changes in officers or management structure of an Entity shall not by itself be deemed a “Change in Control”):

(a) Controlling the composition of the majority of the board of trustees, directors or managers of such Entity or of a general partner or manager of such Entity;

(b) Controlling the decisions made by or on behalf of such Entity, including by controlling the voting power of the board of trustees, directors or managers of such Entity or by controlling the voting power of any class of shareholders or equity holders of any such Entity, a general partner of such Entity or a manager of such Entity, or otherwise; or

(c) holding equity (either beneficially or otherwise) of such Entity with a subscribed value (taking into account contributions to be made in the case of a limited liability company) of more than one-half of the subscribed value (taking into account contributions to be made in the case of a limited liability company) or equity (either beneficially or otherwise) of such Entity with more than one-half of the voting rights.

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

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

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

**Commencement Date** shall mean March 6, 2025, on which date this Agreement was executed and delivered.

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

**Company Lease (EOW Facility)** shall mean the Company Lease Agreement (EOW Facility), dated as of even date herewith, between EOW, 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.

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

**Completion Deadline (SBMT Asset Facility)** shall mean April 1, 2028, as such deadline may be extended due to a Construction Delay.

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

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

**Condemnation Event** shall have the meaning specified in Section 6.1.

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

**Construction Delay** shall mean any delay in the scheduled completion of the construction and installation of the SBMT Asset Project beyond April 1, 2028 caused by any *force majeure* (as defined in Section 11.1) event, equipment manufacturing delay, equipment delivery delay, contractor or subcontractor failure to achieve schedule milestones, construction or permanent financing delay (caused not by reason of the Lessee's financial condition or inability to obtain financing), litigation, or political change negatively impacting development, land or permitting rights or approvals of the SBMT Asset Project, provided, that, in each case, (i) the Lessee has informed the Agency upon the occurrence of such delay, (ii) the Lessee informs the Agency upon the resolution of any such delay (as applicable), and (iii) the information provided by the Lessee shall not be binding upon the Agency

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

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

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

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

**Damage Event** shall have the meaning specified in Section 6.1.

**DCWP** shall have the meaning specified in Section 8.24(b).

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

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

**Eligible Items** shall mean the following items of personal property and services, but excluding any Ineligible Items, with respect to which the Lessee and any Agent shall be entitled to claim a Sales Tax Exemption in connection with and as part of the SBMT Asset Project:

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

(ii) purchases or leases of any item of materials, goods, machinery, equipment, furniture, furnishings, trade fixtures and other tangible personal property having a useful life of one year or more, and which are located at, and constitute part of, the Facility, but which are not required to be incorporated into the Facility Realty (SBMT Asset Facility) as an integral component thereof;

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

(iv) purchases of materials, goods and supplies that are to be used and substantially consumed in the course of construction or renovation of the Facility Realty (SBMT Asset Facility) (but excluding (y) the EOW Substation and (z) fuel, materials or substances that are consumed in the course of operating machinery and equipment or parts containing fuel, materials or substances where such parts must be replaced whenever the substance is consumed); and

(v) leases of machinery and equipment solely for temporary use in connection with the construction or renovation of the Facility Realty (SBMT Asset Facility) other than the EOW Substation.

**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 Determinations** shall mean those certain determinations, resolutions, analyses, statements, findings, actions and assessments referred to, or incorporated within, the Authorizing Resolution with respect to the Equinor Projects and the Future OSW Development.

**EOW** shall mean Empire Offshore Wind LLC, a limited liability company organized and existing under the laws of the State of Delaware, and its permitted successors and assigns; provided, however, that nothing contained in this definition shall be deemed to limit or modify the obligations of EOW under Section 8.9 or 8.20 of the Agency Lease Agreement (EOW Facility).

**EOW Facility** shall have the meaning assigned to the term “Facility” in the Agency Lease Agreement (EOW Facility).

**EOW Project** shall have the meaning assigned to such term by the Agency Lease Agreement (EOW Facility).

**EOW Sublease** shall mean that certain Agreement of Sub-Sublease, dated as of December 24, 2024, between the Lessee, as landlord, and EOW, as tenant, with respect to the demise of the EOW Substation, as the same may be amended and supplemented in accordance with its terms and as permitted by the terms thereof.

**EOW Substation** shall mean that electrical substation located on the Land (EOW Facility) at the SBM Terminal to be constructed by EOW as part of the EOW Project and to consist of substation equipment, steel structures, bus bars, switches, breakers, metering, relaying, buildings, security devices, lighting, fencing, grounding, communications equipment, lightning protectors, secondary power feeders and related accessories and components for a full substation.

**Equinor** shall mean Equinor ASA, a company organized under the laws of Norway, and its permitted successors and assigns.

**Equinor Projects** shall mean, collectively, the SBMT Asset Project and the EOW Project.

**Equinor USH** shall mean Equinor US Holdings Inc., a corporation organized and existing under the laws of the State of Delaware, and its permitted successors and assigns pursuant to the Guaranty Agreement (SBMT Asset Facility).

**Estimated SBMT Asset Project Cost** shall mean \$1,100,000,000.

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

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

**Existing Improvements (SBMT Asset Facility)** 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 (SBMT Asset Facility) 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 SBMT Asset Project Work, and (ii) is in fact demolished by the Completion Deadline (SBMT Asset Facility).

**Expiration Date** shall mean the later of (y) the end of the Recapture Period, and (z) December 31, 2038 (but in no event sooner than the end of the Recapture Period), subject to the option of the Lessee under Section 10.2 and 10.3 to terminate this Agreement on an earlier date (but not sooner than the end of the Recapture Period).

**Facility** shall mean, collectively, the Facility Personalty (SBMT Asset Facility) and the Facility Realty (SBMT Asset Facility).

**Facility Leasehold Estate** shall mean the leasehold estate of the Agency in the Facility as granted by the Lessee to the Agency under the Company Lease (SBMT Asset Facility), and subleased by the Agency to the Lessee pursuant to this Agreement.

**Facility Lien** shall have the meaning specified in Section 8.11(a).

**Facility Operations Commencement Date** shall mean, as stated in the SBMT Asset Project Completion Certificate in the form attached hereto as Exhibit G signed by an Authorized Representative of the Lessee and delivered to the Agency, the date the Lessee has lawfully commenced use and occupancy of the SBMT Asset Project Improvements on or after the SBMT Asset Project Completion Date, subject to the review, verification and acceptance of such certification and related documentation by the Agency, in its sole discretion.

**Facility Personalty (SBMT Asset Facility)** shall mean those Eligible Items consisting of materials, equipment, machinery and other items of personal property acquired to effect the acquisition, construction, renovation, improvement, repair, furnishing, installing and equipping of the Facility, all as described in Exhibit B- "Description of Facility Personalty (SBMT Asset Facility)" attached hereto, 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 (SBMT Asset Facility) shall, in accordance with the provisions of Sections 3.6 and 6.4, include all property substituted for or replacing items of Facility Personalty (SBMT Asset Facility) and exclude all items of Facility Personalty (SBMT Asset Facility) so substituted for or replaced, and further exclude all items of Facility Personalty (SBMT Asset Facility) removed as provided in Section 3.6.

**Facility Realty (SBMT Asset Facility)** shall mean, collectively, the Land (SBMT Asset Facility) and the Improvements (SBMT Asset Facility).

**Facility Transfer** shall have the meaning specified in Section 8.20(a)(viii).

**Facility Transfer Transferee** shall have the meaning specified in Section 8.20(b) (iv).

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

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

**Financially Qualified Replacement Guarantor** shall have the meaning assigned to that term in the Guaranty Agreement (SBMT Asset Facility).

**Fiscal Year** shall mean a year of 365 or 366 days, as the case may be, commencing on January 1 and ending on December 31 of each calendar year, or such other fiscal year of similar length used by the Lessee 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.

**Fitch** shall mean Fitch Ratings, Inc., a Delaware corporation, its successors and assigns, and if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Fitch” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Agency, by notice to the Lessee.

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

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

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

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

**Future OSW Development** shall have the meaning assigned to such term in the Agency Lease Agreement (EOW Facility).

**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 an Entity, except that any accounting principle or practice required to be changed by the Financial Accounting Standards Board (or other appropriate board or committee of the said Board) in order to continue as a generally accepted accounting principle or practice may be so changed.

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

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

**Governing Body** shall mean, when used with respect to 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.

**Guaranteed Obligations** shall have the meaning assigned to such term under the Guaranty Agreement (SBMT Asset Facility).

**Guarantor** shall mean Equinor USH as Guarantor under the Guaranty Agreement (SBMT Asset Facility), and any Successor Guarantor pursuant to Section 3.7 of the Guaranty Agreement (SBMT Asset Facility); provided, however, that upon the Replacement Guaranty Effective Date, any references within this Agreement to the “Guarantor” shall be deemed to refer to the Replacement Guarantor.

**Guaranty Agreement (SBMT Asset Facility)** shall mean the Guaranty Agreement (SBMT Asset Facility), dated as of even date herewith, from the Guarantor to the Agency, as the same may be amended and supplemented in accordance with its terms; provided, however, that upon the Replacement Guaranty Effective Date, any references within this Agreement to the “Guaranty Agreement (SBMT Asset Facility)” shall be deemed to refer to the Replacement Guaranty Agreement (SBMT Asset Facility).

**Hazardous Materials** shall include any petroleum, flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 5101, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental law, ordinance, rule, or regulation.

**Impositions** shall mean any 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.

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

**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, conditioned or delayed).

**Inducement Resolution** shall mean the resolution of the Agency adopted on March 12, 2024, as amended on January 28, 2025, inducing the SBMT Asset Project and the EOW Project.

**Ineligible Items** shall mean the following items of personal property and services with respect to which the Lessee and any Agent shall not be entitled to claim a Sales Tax Exemption in connection with the SBMT Asset Project:

- (i) vehicles of any sort, including watercraft and rolling stock;
- (ii) personalty having a useful life of one year or less;
- (iii) any cost of utilities, cleaning services or supplies or other ordinary operating costs;
- (iv) fine art and other similar decorative items;
- (v) plants, whether potted or landscaped;
- (vi) ordinary office supplies such as pencils, paper clips and paper;
- (vii) any materials or substances that are consumed in the operation of machinery;
- (viii) the EOW Substation;
- (ix) any personal property or services (x) located outside of the Facility Realty (SBMT Asset Facility), (y) the acquisition or purchase of which shall have preceded the Commencement Date, or (z) the acquisition or purchase of which shall not have been effected in accordance with this Agreement and the Sales Tax Agent Authorization Letter (SBMT Asset Facility);
- (x) equipment or parts containing materials or substances where such parts must be replaced whenever the substance is consumed; and
- (xi) maintenance of the type as shall constitute janitorial services.

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

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

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

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

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

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

**Land (SBMT Asset Facility)** shall mean that certain lot, piece or parcel of land in the Borough of Brooklyn, Block 662 and Lots 1, 130, 136, 137 and 155, generally known as the South Brooklyn Marine Terminal, being an approximately 66.2 acre of land and being between 29<sup>th</sup> and 39<sup>th</sup> Streets and west of 2<sup>nd</sup> Avenue in Sunset Park, Brooklyn, New York, all as more particularly described in Exhibit A - "Description of the Land (SBMT Asset Facility)," together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto; but excluding, however, (y) that certain lot, piece or parcel of land subleased by the Lessee to EOW pursuant to the EOW Sublease, and (z) any real property or interest therein released pursuant to Section 8.10(c).

**Land Square Footage (SBMT Asset Facility)** shall mean approximately 3,209,501 square feet, which measurement shall be subject to further review and confirmation by the Agency with the cooperation of the Lessee.

**Leasehold Removal Provisions** shall mean Sections 3.1, 3.2, 3.3(a) through (f) inclusive, 3.7, 3.8, 4.1, 7.1, 7.2, 7.3, 8.1, 8.5, 8.12, 8.14(g), 8.15(b), 8.27, 9.2(a)(i) and (v), and 10.1.

**Lease Termination Date** shall mean that date immediately following the exercise by the Lessee of its option under Section 10.1 to terminate the Company Lease (SBMT Asset Facility), the Facility Leasehold Estate and the Term of Lease.

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

**Lessee** shall mean SBMT Asset LLC, a limited liability company organized and existing under the laws of the State of Delaware, and its permitted successors and assigns under this Agreement; provided, however, that nothing contained in this definition shall be deemed to limit or modify the obligations of the Lessee under Section 8.9 or 8.20.

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

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

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

**Loss Event** shall have the meaning specified in Section 6.1.

**LW** shall have the meaning specified in Section 8.24(b).

**LW Agreement** shall have the meaning specified in Section 8.24(b).

**LW Agreement Delivery Date** shall have the meaning specified in Section 8.24(b).

**LW Event of Default** shall have the meaning specified in Section 8.24(b).

**LW Law** shall have the meaning specified in Section 8.24(b).

**LW Term** shall have the meaning specified in Section 8.24(b).

**LW Violation Final Determination** shall have the meaning specified in Section 8.24(k)(i)(1), Section 8.24(k)(i)(2)(A) or Section 8.24(k)(i)(2)(B), as applicable.

**LW Violation Initial Determination** shall have the meaning specified in Section 8.24(k)(i)(2).

**LW Violation Notice** shall have the meaning specified in Section 8.24(k)(i).

**LW Violation Threshold** shall have the meaning specified in Section 8.24(b).

**Master Lease** shall mean that certain Lease, dated as of June 29, 2015, as amended, between the City, as landlord, and NYCEDC, as tenant, as the same may hereafter be amended and supplemented in accordance with its terms.

**Maximum Sales Tax Savings Amount** shall mean the aggregate maximum dollar amount of Sales Tax Savings that the Lessee and all Agents acting on behalf the Lessee are permitted to receive under this Agreement, which amount (x) shall equal the “Estimated value of New York State and local sales and use tax exemption provided” as stated in the most recent Form ST-60 filed by the Agency with respect to the Lessee and the SBMT Asset Project pursuant to Section 5.2, (y) shall be subject to a one-time adjustment pursuant to Section 5.2(k), and (z) shall, together with the “Maximum Sales Tax Savings Amount” as such term is defined in the Agency Lease Agreement (EOW Facility), not exceed \$15,000,000 as of the Commencement Date.

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

**Minimum Investment Grade Rating** shall mean, with respect to a Person, that such Person has a long term credit rating of no less than, as applicable, “BBB-” from S&P, or a comparable rating from Moody’s or Fitch.

**Minimum Net Worth** shall mean, with respect to a Person, that such Person has a Net Worth of at least \$1,000,000,000.

**Moody’s** shall mean Moody’s Investors Service, Inc., a Delaware corporation, its successors and assigns, and if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any

other nationally recognized securities rating agency designated by the Agency, by notice to the Lessee.

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

**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.

**MW** shall mean megawatt.

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

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

**Net Worth**, with respect to a Person, shall have the meaning assigned to such term by GAAP or such other accounting principle methodology as shall be acceptable to the Agency in its reasonable judgment.

**Non-Facility Lien** shall have the meaning specified in Section 8.11(a).

**Non-Qualified Use** shall mean any use other than a Qualified Use.

**Non-Qualified USF** shall mean Usable Square Feet of the Improvements (SBMT Asset Facility) that on the date(s) or period(s) of determination does not qualify as Qualified USF.

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

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

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

**NYCEDC Lease** shall mean that certain Amended and Restated Agreement of Lease, dated as of February 28, 2022, as amended, between NYCEDC, as landlord, and SSBMT, as tenant, as the same may hereafter be amended and supplemented in accordance with its terms.

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

**NYSpsc** shall mean the New York State Public Service Commission and any successor Entity.

**Opinion of Counsel** shall mean a written opinion of counsel for the Lessee or any other Person (which counsel shall be reasonably acceptable to the Agency) with respect to such

matters as required under any SBMT Asset 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.

**OSW** shall mean offshore wind power.

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

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

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

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

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

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

**Permitted Encumbrances** shall mean:

(i) the Master Lease, the NYCEDC Lease, the SBMT Asset Lease, this Agreement, the Company Lease (SBMT Asset Facility), the EOW Sublease, the Company Lease (EOW Facility), the Agency Lease Agreement (EOW Facility) and any Qualified Mortgage (provided, that the Lessee shall not consent to any amendment or

deletion of any of the Qualified Mortgage Implementing Provisions of a Qualified Mortgage without the prior written consent of the Agency);

(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 use and enjoyment of the Facility for Approved SBMT Asset Project Operations as herein provided;

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

(vi) those exceptions to title to the Facility Realty (SBMT Asset Facility) enumerated in any title insurance policy insuring the lien of any Qualified Mortgage on the interest of the Lessee in the Facility, so long as such exceptions are reflected in the title report delivered to the Agency pursuant to Section 3.8 on or prior to the Commencement Date;

(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;

(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;

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

(xv) any non-disturbance agreements, subordination, non-subordination and attornment agreements, and other similar instruments relating to the Facility without the prior consent of the Agency.

**Permitted Transferee** shall mean a Person with respect to whom all of the conditions set forth in Section 8.20(c) have been met.

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

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

**Predecessor Guarantor** shall mean the Guarantor under a Predecessor Guaranty Agreement (SBMT Asset Facility).

**Predecessor Guaranty Agreement (SBMT Asset Facility)** shall mean that Guaranty Agreement (SBMT Asset Facility) which is being replaced by a Replacement Guaranty Agreement (SBMT Asset Facility) pursuant to this Agreement and Section 3.8 of the Guaranty Agreement (SBMT Asset Facility).

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

**Prevailing Wage Building Services Law** shall have the meaning specified in Section 8.24(b).

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

**Project Application Information** shall mean the eligibility application and questionnaire submitted to the Agency by or on behalf of the Lessee and EOW for approval by the Agency of the SBMT Asset Project and the EOW 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 Counsel** shall mean attorneys or a firm of attorneys selected by the Agency to render legal advice to the Agency in connection with the transactions contemplated by this Agreement.

**Qualified Mortgage** shall mean a mortgage, pledge, collateral assignment or security interest or other like grant (and/or an assignment of leases and/or rents) on the leasehold interest of the Lessee under the SBMT Asset Lease and/or on the interest of the Lessee in the Facility Personalty (SBMT Asset Facility), or all or any portion thereof, which, in each and any case, (i) does not include the Agency as a party thereto nor assert any exemption from Mortgage Recording Tax in reliance upon the Agency's interest in the Facility, (ii) does not assign, pledge, mortgage, Lien, grant a security interest in or otherwise encumber (A) any or all of this Agreement or the Guaranty Agreement (SBMT Asset Facility) or any right, title or interest of the Lessee or of the Guarantor in any or all of the same, (B) the rights of the Agency under any or all of this Agreement or the Guaranty Agreement (SBMT Asset Facility), (C) any liability insurance policy or proceeds therefrom in favor of the Agency, or (D) any amounts paid or payable under any or all of this Agreement or the Guaranty Agreement (SBMT Asset Facility), (iii) constitutes security for bona fide arms'-length indebtedness owing by the Lessee to an unrelated third party, and (iv) does not subject the Agency or any of its directors, members, officers, employees, agents or servants to any personal, contractual or pecuniary liability of any nature whatsoever.

**Qualified Mortgage Facility Transferee** shall have the meaning set forth in Section 8.20(b)(v).

**Qualified Mortgage Implementing Provisions** shall mean clauses (i) through (iv), inclusive, of the definition of "Qualified Mortgage".

**Qualified Use** shall mean (a) offshore wind turbine generation and foundation marshaling, staging, assembly, storage and preparation of and offshore wind equipment and manufacturing of offshore wind components; (b) an operations and maintenance facility and control room facility for offshore wind power production supporting the Future OSW Development (or, after the Lease Termination Date, any other offshore wind project operated by a Tenant or its Affiliates as approved under the Master Lease); (c) in the case of the EOW Facility, the EOW Substation; (d) together with ancillary and incidental office and administrative use, parking facilities, storage of equipment and materials (including, without limitation, inter-array cable staging and storage and training of employees) to the extent ancillary to or necessary for the performance of the above uses; and (e) any such other uses approved under the SBMT Asset Project Documents.

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

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

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

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

(i) the failure by the Lessee to cause the SBMT Asset Project Completion Date to occur by the Completion Deadline (SBMT Asset Facility);

(ii) the liquidation of all or substantially all operating assets of the Lessee at the Facility) and/or cessation of all or substantially all of the operations of the Lessee at the Facility;

(iii) the transfer of all or substantially all of the employees of the Lessee to a location outside of the City;

(iv) the Facility shall have ceased to be the Approved SBMT Asset Facility and/or the Lessee shall have substantially changed the scope and nature of its operations at the Facility;

(v) the Lessee shall have sold, transferred or disposed of, directly or indirectly, all or substantially all of the Facility, or a Change in Control of the Lessee shall have occurred, except in each case to the extent expressly permitted under this Agreement;

(vi) during the Term of Lease, the Lessee shall have subleased all or part of the Facility in violation of Section 8.9; or

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

its sole discretion, and any employee of the Lessee and of an Affiliate shall not be counted twice.

Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event is deemed, in the sole discretion of the Agency, to be a cause of undue hardship to the Lessee were the Agency to recapture any Benefits, including, but not limited to, Recapture Events arising as a direct, immediate result of (x) force majeure as defined in Section 11.1, (y) a taking or condemnation by governmental authority of all or substantially all of the Facility, or (z) the inability at law of the Lessee to rebuild, repair, restore or replace the Facility 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.

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

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

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

**Replacement Guarantor** shall have the meaning assigned to that term in the Guaranty Agreement (SBMT Asset Facility).

**Replacement Guaranty Agreement (SBMT Asset Facility)** shall have the meaning assigned to such term in the Guaranty Agreement (SBMT Asset Facility).

**Replacement Guaranty Effective Date** shall have the meaning assigned to that term in the Guaranty Agreement (SMBT Asset Facility).

**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.”

**S&P** shall mean S&P Global Ratings, a division of Standard & Poor’s Financial Services LLC, a Delaware limited liability company, its successors and assigns, and is such limited liability company shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “S&P” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Agency, by notice to the Lessee.

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

**Sales Tax Agent Authorization Letter (SBMT Asset Facility)** shall mean the Sales Tax Agent Authorization Letter (SBMT Asset Facility), substantially in the form set forth

in Exhibit H – “Form of Sales Tax Agent Authorization Letter (SBMT Asset Facility)” and to be delivered in accordance with Section 5.2(e).

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

**Sales Tax Exemption Termination Date** shall have the meaning assigned to that term in Section 5.2(b)(i).

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

**Sales Tax Savings** shall mean all Sales Tax Exemption savings realized by or for the benefit of the Lessee, including any savings realized by any Agent, pursuant to this Agreement and each Sales Tax Agent Authorization Letter (SBMT Asset Facility) issued in connection with the SBMT Asset Project.

**SBMT Asset Lease** shall mean the Agreement of Sublease, dated as of February 28, 2022, as amended, between SSBMT, as landlord, and the Lessee, as tenant, as the same may be amended and supplemented in accordance with its terms and as permitted by the terms thereof.

**SBMT Asset Project** shall mean the construction, furnishing and equipping of upgrades at the SBM Terminal, including the construction of an operations and maintenance facility for OSW operations, the construction of a staging site for the assembly of OSW equipment, and the upgrading of the port infrastructure at the SBM Terminal (but not including the EOW Substation) to support the industrial machinery necessary for the Future OSW Development to consist of dredging, bulkhead upgrades, electrical, water and plumbing infrastructure improvements, electric cable installations and grid connections, crane foundations, pier reinforcement, utility systems and other construction and demolition at the Facility Realty (SBMT Asset Facility), all in support of the construction, operation and maintenance of the Future OSW Development and the implementation of the Qualified Use.

**SBMT Asset Project Completion Date** shall mean the date which an Authorized Representative of the Lessee certifies to the Agency by signing and delivering to the Agency a certification substantially in the form set forth in Exhibit G – “Form of SBMT Asset Project Completion Certificate,” together with all attachments required thereunder, that the SBMT Asset Project Work has been finished and the SBMT Asset Project Improvements shall have been completed substantially in accordance with the plans and specifications therefor, and the Lessee shall have provided the Agency with a copy of a temporary certificate of occupancy issued by the New York City Department of Buildings (the “NYC DOB”), if required by the NYC DOB, subject to the review, verification and acceptance of such certification and related documentation by the Agency, in its sole discretion.

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

**SBMT Asset Project Document Pledge** shall mean a pledge, collateral assignment, hypothecation or encumbrance of the interest of the Lessee in all or any of the SBMT Asset Project Documents.

**SBMT Asset Project Document Pledge Transferee** shall have the meaning set forth in Section 8.20(b)(vi).

**SBMT Asset Project Documents** shall mean, collectively, the Company Lease (SBMT Asset Facility), this Agreement, the Uniform Project Agreement (SBMT Asset Facility), the Sales Tax Agent Authorization Letter (SBMT Asset Facility), the Guaranty Agreement (SBMT Asset Facility) and the SBMT Asset Lease.

**SBMT Asset Project Fee** shall mean \$3,224,216.15 (being the original SBMT Asset Project Fee of \$3,803,182.15, less the application fee of \$5,000, and less the down payment toward the SBMT Asset Project Fee of \$573,966.00), less any amount paid with respect to the EOW Project Fee.

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

**SBMT Asset Project Improvements** shall mean all buildings, structures, foundations, related facilities, fixtures and other improvements resulting from the SBMT Asset Project Work.

**SBMT Asset Project Improvements Investment** shall mean the costs and expenses to be incurred by the Lessee after the Commencement Date and prior to the Completion Deadline (SBMT Asset Facility) for the construction, reconstruction, acquisition, equipping or installation of the SBMT Asset Project Improvements in connection with the SBMT Asset Project Work which are (a) described in the SBMT Asset Project Cost Budget and (b) considered hard costs of construction under normal industry standards, including, without limitation: (1) payments to contractors, subcontractors, suppliers and materialmen for labor performed and materials supplied and (2) costs and expenses for labor, services, facilities or equipment customarily considered as “general conditions” items, including the premium paid for payment and performance bonds and/or insurance policies that may be required in connection with the SBMT Asset Project Work pursuant to this Agreement.

**SBMT Asset Project Payments** shall mean all Rental Payments and other amounts due and payable under this Agreement.

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

**SBM Terminal** shall mean the South Brooklyn Marine Terminal, being that property so named and located on an approximately 66.2 acre parcel of land, being between 29<sup>th</sup> and 39<sup>th</sup> Streets and west of 2<sup>nd</sup> Avenue in Sunset Park, Brooklyn, and being all or a portion of Tax Block 662, Lots 1, 130, 136, 147 and 155.

**SBM Terminal Property** shall mean that property and interests therein which are subject to the leasehold of the Master Lease, the NYCEDC Lease and the SBMT Asset Lease.

**SSBMT** shall mean SSBMT, L.P., a limited partnership organized and existing under the laws of the State of Delaware, and its permitted successors and assigns as tenant under the NYCEDC Lease, and as landlord under the SBMT Asset Lease.

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

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

**Site Affiliates** shall have the meaning specified in Section 8.24(b).

**Site Employee** shall have the meaning specified in Section 8.24(b).

**Small Business Cap** shall have the meaning specified in Section 8.24(b).

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

**Specific Performance Remedy Covenants** shall mean those performance or observance covenants (not otherwise comprising a payment covenant) of the Lessee under the following enumerated provisions and Sections of this Agreement, the failure to observe or comply with which shall give rise to the right of the Agency to enforce such covenants by the remedy of specific performance or injunction (but which failure shall not limit the right of the Agency to declare a default or Event of Default, as applicable, or to exercise any other remedy at law or in equity or as otherwise set forth in this Agreement or in the Guaranty Agreement (SBMT Asset Facility), including, without limitation, the remedy of seeking monetary damages or the payment of the Recapture Amount, terminating the Sales Tax Agent Authorization Letters (SBMT Asset Facility), and/or terminating this Agreement) with respect to such enumerated provisions and Sections); it being agreed that the Agency shall not have the right to enforce the specific performance by the Lessee of any other covenant in this Agreement other than the Specific Performance Remedy Covenants: (i) Section 1.1 Definitions of “Land Square Footage (SBMT Asset Facility)” and “Recapture Event”, (ii) Section 3.3(f) through (i), inclusive, (iii) Section 3.4(a)(ii), (iv) Section 4.2, (v) Section 4.4, (vi) Section 5.1, (vii) Section 5.2, (viii) Section 5.4(e), (ix) Section 6.1(iii), (x) Section 6.3, (xi) Section 6.4, (xii) Section 8.1, (xiii) Section 8.2, (xiv) Section 8.5, (xv) Section 8.7, (xvi) Section 8.8, (xvii) Section 8.9, (xviii) Section 8.10(a), (xix) Section 8.11, (xx) Section 8.13, (xxi) Section 8.14, (xxii) Section 8.15, (xxiii) Section 8.16, (xxiv) Section 8.17(c), (xxv) Section 8.18, (xxvi) Section 8.19, (xxvii) Section 8.20, (xxviii) Section 8.21, (xxix) Section 8.22, (xxx), Section 8.23, (xxxi) Section 8.24, (xxxii) Section 8.27, (xxxiii) Section 8.28, (xxxiv) Section 10.2, (xxxv) Section 10.3, (xxxvi) Section 10.4, (xxxvii) Section 11.1 (second paragraph), (xxxviii) Section 11.4, (xxxix) Section 11.6, (xxxx) Section 11.11 and (xxxxi) Section 11.13.

**Specified Contract** shall have the meaning specified in Section 8.24(b).

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

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

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

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

**Successor Control Entity** shall have the meaning set forth in Section 8.20(b)(iii)(1).

**Successor Guarantor** shall have the meaning assigned to such term in Section 3.7 of the Guaranty Agreement (SBMT Asset Facility) as entered into on the Commencement Date.

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

**Surviving Agreement Provisions** mean Sections 5.1, 5.2, 5.3, 5.4, 8.2, 8.24, 8.27, 9.2, 9.6, 9.7, 9.8, 11.4, 11.5, 11.6, 11.11, 11.13 and 11.14 (and those provisions of this Agreement necessary to implement these stated Sections), all of which shall survive any such action until the expiration of the applicable statute of limitations, if any.

**Tenant** shall mean any subtenant, sub-subtenant or permittee occupying all or a portion of the Facility.

**Tenant Lease** shall mean any agreement with a Tenant relating to the use and occupancy of all or a portion of the Facility.

**Term of Agreement** shall have the meaning set forth in Section 4.2.

**Term of Lease** shall have the meaning set forth in Section 4.2.

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

**Total Improvements USF** shall mean total USF of the Improvements (SBMT Asset Facility), which as of the Commencement Date is estimated by the Lessee to be 2,998,235 USF upon completion of the SBMT Asset Project Improvements.

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

**Transferee Transaction** shall have the meaning set forth in Section 8.20(a)(v).

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

**Uniform Project Agreement (SBMT Asset Facility)** shall mean the Uniform Project Agreement (SBMT Asset Facility), dated as of even date herewith, between the Agency and the Lessee, as the same may be amended and supplemented in accordance with its terms and as permitted by the terms thereof.

**Usable Square Footage or Usable Square Feet or USF** shall mean square footage within the Improvements (SBMT Asset Facility), including revenue-generating below-grade, cellar and sub-surface space, excluding (i) public elevator shafts and elevator machines and their enclosing walls; (ii) public stairs shafts and elevator machines and their enclosing walls; (iii) heating, ventilating and air conditioning facilities (including pipes, ducts and shafts) and their enclosing walls, except equipment, mechanical room space or shafts serving a specific floor; (iv) fire towers and fire tower courts and their enclosing walls; (v) main telephone equipment rooms and main electrical switchgear rooms, except telephone equipment, and electric switchgear serving a specific floor; and (vi) with respect to revenue-generating below grade, cellar and sub-surface space, excluding machine rooms and pump rooms and their enclosing walls, electrical switchgear rooms and their enclosing walls, telephone equipment rooms and their enclosing walls, and all space devoted to servicing the operation of the Improvements (SBMT Asset Facility), i.e., cleaning contractors, storage, building maintenance shop, building engineers office, etc.

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

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

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

(b) Assuming the accuracy of representations made by or on behalf of the Lessee, the Agency is authorized and empowered to enter into the transactions contemplated by this Agreement and any other SBMT Asset 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 SBMT Asset 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 a limited liability company duly organized under the laws of the State of Delaware, is validly existing and in good standing under the laws of the State of Delaware, 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 SBMT Asset Project Document to which it is or shall be a party.

(b) This Agreement and the other SBMT Asset 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 SBMT Asset 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 SBMT Asset 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 SBMT Asset 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 SBMT Asset 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 SBMT Asset Facility and a qualified "project" within the meaning of the Act.

(k) During the Term of this Agreement, the Facility will be occupied and used for Approved SBMT Asset Project Operations.

(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 SBMT Asset Project Document to which it shall be a party.

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

(n) The Lessee (i) is in compliance, and will continue to comply, with all applicable Legal Requirements relating to the SBMT Asset Project, the SBMT Asset Project Work and the operation of the Facility and (ii) certifies, under penalty of perjury, that it is in substantial compliance with all local, state and federal tax, worker protection and environmental laws, rules and regulations.

(o) The Lessee is in compliance with the SBMT Asset Lease and the EOW Sublease, and is not in default of either thereunder, and each of the SBMT Asset Lease and the EOW Sublease is in full force and effect.

(p) To the best of the Lessee's knowledge, the Lessee has not used Hazardous Materials on, from, or affecting the Facility in any manner that violates any applicable Legal Requirements governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and except as set forth in the Environmental Determinations, no prior owner or occupant of the Facility has used Hazardous Materials on, from, or affecting the Facility in any manner that could reasonably be expected to result in a material adverse effect on (x) the financial condition of the Lessee, (y) the operation of the Facility as contemplated by the SBMT Asset Project Documents, or (z) the consummation on the part of the Lessee of the transactions contemplated by the SBMT Asset Project Documents

(q) The SBMT Asset Project Cost Budget attached as Exhibit E – "SBMT Asset Project Cost Budget" represents a true, correct and complete budget as of the Commencement Date of the proposed costs of the SBMT Asset Project; the Estimated SBMT Asset Project Cost is a fair and accurate estimate of the SBMT Asset Project Cost as of the Commencement Date; and the funding sources of the Estimated SBMT Asset Project Cost are as set forth on Exhibit E - "SBMT Asset Project Cost Budget." The Lessee has no reason to believe that any of such funding sources sufficient to complete the SBMT Asset Project will not be obtainable. The Lessee represents and warrants that as of the Commencement Date the SBMT Asset Project Improvement for the SBMT Asset Project is estimated to be \$676,552,780.

(r) The amounts available and accessible to the Lessee are sufficient to pay all costs in connection with the completion of the SBMT Asset Project.

(s) All of the Land (SBMT Asset Facility) comprises five (5) complete tax lots and no portion of any other 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 (SBMT Asset Facility).

(u) The Usable Square Footage and the Land Square Footage (SBMT Asset Facility) are true and correct.

(v) The Fiscal Year is true and correct.

(w) To the best of the Lessee's knowledge, none of the Lessee, the Principals of the Lessee, or any Person that is an Affiliate of the Lessee:

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

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

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

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

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

(x) The Project Application Information with respect to the Lessee and the SBMT Asset Project 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 with respect to the Lessee and the SBMT Asset Project 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 ownership interests in the Lessee, as set forth in Exhibits D-1 and D-2, is true, correct and complete.

(z) Equinor USH exercises sole Control over the Lessee.

(aa) The Lessee has not been determined by NYSPSC to be a qualified owner or operator of the Facility pursuant to Article 4 and Article VII of the New York Public Service Law, and no such determination is required of the Lessee under applicable Legal Requirements for the Lessee to own or operate the Facility.

## ARTICLE III

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

#### **Section 3.1. The Company Lease (SBMT Asset Facility).**

(a) Pursuant to the Company Lease (SBMT Asset Facility), the Lessee has subleased and is subleasing to the Agency (i) the Facility Realty (SBMT Asset Facility), and all rights or interests therein or appertaining thereto, and (ii) the Facility Personalty (SBMT Asset Facility), in each case free and clear of all Liens, claims, charges, encumbrances, security interests and servitudes other than Permitted Encumbrances.

(b) A valid leasehold interest in (i) all SBMT Asset Project Improvements incorporated or installed in the Facility Realty (SBMT Asset Facility) as part of the SBMT Asset Project shall vest in the Agency pursuant to the Company Lease (SBMT Asset Facility) immediately upon delivery to or installation or incorporation into the Facility Realty (SBMT Asset Facility) or payment therefor, whichever shall occur first; and (ii) the Facility Personalty (SBMT Asset Facility) shall vest in the Agency pursuant to the Company Lease (SBMT Asset Facility).

(c) The Lessee shall take all action necessary to vest a valid leasehold interest in the Agency in the Facility 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 SBMT Asset 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 SBMT Asset 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 SBMT Asset Project Work,
- (iii) paying all fees, costs and expenses incurred in the SBMT Asset 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 SBMT Asset 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 SBMT Asset Project Work.

### **Section 3.3. Manner of SBMT Asset Project Completion.**

(a) The Lessee will complete the SBMT Asset Project Work, or cause the SBMT Asset Project Work to be completed, by the Completion Deadline (SBMT Asset Facility), and in compliance with the other SBMT Asset Project Documents. The Lessee shall not materially revise the scope of the SBMT Asset Project Work without the prior written consent of the Agency (which consent shall not be unreasonably withheld, conditioned or delayed). The Lessee will cause the SBMT Asset Project Completion Date to occur by the Completion Deadline (SBMT Asset Facility). The Completion Deadline (SBMT Asset Facility) shall be extended by a period of time equal to the total documented delay in the scheduled completion of construction and installation of the SBMT Asset Project to the extent constituting a Construction Delay.

(b) In undertaking the SBMT Asset 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 SBMT Asset Project Work in accordance with the terms of the contracts therefor, including the correction of any defective work.

(c) The cost of the SBMT Asset Project Work shall be financed in accordance with the SBMT Asset Project Finance Plan. In the event moneys derived from third party sources are not sufficient to pay the costs necessary to complete the SBMT Asset Project Work in full, the Lessee shall pay or cause to be paid that portion of such costs of the SBMT Asset Project Work as may be necessary to complete the SBMT Asset 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 (SBMT Asset Facility) and in the Facility Personalty (SBMT Asset Facility), 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 SBMT Asset Project Work.

(e) The Lessee will perform or cause to be performed the SBMT Asset 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 SBMT Asset Project Work, and in accordance with all applicable SBMT Asset Project Documents. Promptly upon finishing of the SBMT Asset Project Work and the completion of the SBMT Asset 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 SBMT Asset Facility and shall furnish copies of same to the Agency immediately upon the Agency's demand therefor.

(f) Upon completion of the SBMT Asset Project Work, the Lessee shall (i) deliver to the Agency the Final SBMT Asset Project Cost Budget, which budget will include a comparison with the SBMT Asset Project Cost Budget, and indicate the source of funds for each cost item, together with a certificate of an Authorized Representative of the Lessee in substantially the form set forth in Exhibit G – “Form of SBMT Asset Project Completion Certificate,” together with all attachments required thereunder, and (ii) deliver and surrender to the Agency all original Sales Tax Agent Authorization Letters (SBMT Asset Facility) issued by the Agency in connection with the SBMT Asset Project.

(g) Upon the reasonable request by the Agency, the Lessee shall make available to the Agency copies of any relevant bills, invoices or other evidences of costs as shall have been incurred in the effectuation of the SBMT Asset Project Work in order for the Agency to ascertain compliance by the Lessee with the requirements of this Agreement.

(h) In the event that the aggregate costs of the SBMT Asset Project Work upon the completion thereof shall be significantly different from the estimated costs thereof set forth in the SBMT Asset Project Cost Budget (i.e., more than a fifteen percent (15%) difference in either total SBMT Asset Project costs or in major categories of SBMT Asset 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 SBMT Asset Project Work as originally approved by the Agency has not been modified in a material manner without the prior written consent of the Agency.

(i) The Lessee covenants to invest or cause the investment of at least \$676,552,780 as its SBMT Asset Project Improvements Investment.

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

(a) During the Term of Lease, 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 SBMT Asset 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) reasonably necessary to ensure that the operations of the Lessee at the Facility shall not be materially impaired or diminished in any way.

(b) All replacements, renewals and repairs shall be made and installed in compliance with all applicable Legal Requirements and all applicable SBMT Asset Project Documents.

(c) The Agency shall be under no obligation to replace, service, test, adjust, erect, maintain or effect replacements, renewals or repairs of the Facility, to effect the replacement of any inadequate, obsolete, worn out or unsuitable parts of the Facility, or to

furnish any utilities or services for the Facility, and the Lessee hereby agrees to assume full responsibility therefor.

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

(a) The Lessee shall have the right from time to time to make Additional Improvements (SBMT Asset Facility) to the Facility 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 (SBMT Asset Facility), the fair market value of the Facility is not materially reduced below its fair market value immediately before the Additional Improvements (SBMT Asset Facility) are made and the usefulness, structural integrity or operating efficiency of the Facility is not materially impaired,

(ii) the Additional Improvements (SBMT Asset Facility) are effected with due diligence and in compliance with all applicable Legal Requirements and all applicable SBMT Asset Project Documents,

(iii) the Additional Improvements (SBMT Asset Facility) 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 (SBMT Asset Facility) do not change the nature of the Facility so that it would not constitute the Approved SBMT Asset Facility and a qualified “project” within the meaning of the Act.

(b) All Additional Improvements (SBMT Asset Facility) shall constitute a part of the Facility, and, where applicable, subject to the Company Lease (SBMT Asset Facility), this Agreement, the SBMT Asset Lease, the NYCEDC Lease, the Master Lease and the EOW Sublease.

(c) If at any time after the Facility Operations Commencement Date but prior to the Lease Termination Date, the Lessee shall make any Additional Improvements (SBMT Asset Facility) having an estimated cost of construction exceeding \$2,500,000, the Lessee shall notify an Authorized Representative of the Agency of such Additional Improvements (SBMT Asset Facility) by delivering written notice thereof within thirty (30) days after the completion of the Additional Improvements (SBMT Asset Facility).

(d) In addition to the Facility Personalty (SBMT Asset Facility), the Lessee shall have the right to install or permit to be installed at the Facility Realty (SBMT Asset Facility), machinery, equipment and other personal property at the Lessee’s own cost and expense (the “**Lessee’s Property**”). Once installed, the Lessee’s Property shall not constitute Facility Personalty (SBMT Asset Facility) and shall not be subject to the Company Lease (SBMT Asset Facility) or this Agreement, nor constitute part of the Facility, provided that the same is not made fixtures appurtenant to the Facility Realty (SBMT Asset Facility). 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 (SBMT Asset Facility) or any machinery, equipment or other item of personal property constituting part of the Facility Personalty (SBMT Asset Facility) (in any such case, the "**Existing SBMT Asset Facility Property**"), and thereby remove such Existing SBMT Asset Facility Property from the leasehold estates of the Company Lease (SBMT Asset Facility) and this Agreement; provided, however, that no such removal shall be effected during the Term of Lease:

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

(ii) if (v) such removal would be in default or violation of any of the SBMT Asset Project Documents, (w) such removal would change the nature of the Facility as the Approved SBMT Asset Facility and a qualified "project" within the meaning of the Act, (x) such removal would materially impair the usefulness, structural integrity or operating efficiency of the Facility, (y) such removal would materially reduce the fair market value of the Facility below its value immediately before such removal, or (z) there shall exist and be continuing an Event of Default hereunder.

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

(c) The removal from the Facility of any Existing SBMT Asset 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 SBMT Asset Project Document.

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

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

(b) The Lessee agrees to pay all costs and expenses (including reasonable counsel fees) incurred by the Agency in subjecting to, or releasing from, the Company Lease

(SBMT Asset Facility) and this Agreement any property installed or placed on, or removed from, the Facility as part of the Facility pursuant to Section 3.5 or 3.6.

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

**Section 3.8. Title Report, Municipal Department Searches and Survey.** On or prior to the Commencement Date, the Lessee will obtain and deliver to the Agency (a) a title report reflecting all matters of record with respect to the Land (SBMT Asset Facility) and Existing Improvements (SBMT Asset Facility), and (b) a full set of municipal department search results (including housing and building department violation search, fire department violation search, street report, emergency repair lien search, department of highways, air resources, fuel oil burner, vault search, landmark search, flood search, patriot act search and bankruptcy search) showing only Permitted Encumbrances and in form and substance acceptable to the Agency.

## ARTICLE IV

### SUBLEASE OF FACILITY AND RENTAL PROVISIONS

**Section 4.1. Sublease of the Facility.** The Agency hereby subleases the Facility Realty (SBMT Asset Facility) and the Facility Personalty (SBMT Asset Facility) to the Lessee, and the Lessee hereby subleases the Facility Realty (SBMT Asset Facility) and the Facility Personalty (SBMT Asset Facility) from the Agency, for and during the Term of Lease 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 of Lease and of Term of Agreement.** The Agency and the Lessee acknowledge and agree that this Agreement is intended to function as both a sublease of the Facility Leasehold Estate, and a contractual agreement between the parties, and that the Lessee has the option, under Article VIII of the Company Lease (SBMT Asset Facility) and Section 10.1 hereof, to terminate the Facility Leasehold Estate as a part of this Agreement, and the Leasehold Removal Provisions shall no longer have effect within this Agreement to the extent fulfilled.

The term of sublease under this Agreement of the Facility Leasehold Estate shall commence on the Commencement Date and shall expire at 11:58 pm. (New York City time) on the earliest of (i) the termination or expiration of any of the Master Lease, the NYCEDC Lease or the SBMT Asset Lease, (ii) the termination of the Facility Leasehold Estate as a remedy by the Agency following the occurrence and continuance of an Event of Default, (iii) the termination of the Facility Leasehold Estate upon the exercise by the Lessee of its option as set forth in Article VIII of the Company Lease (SBMT Asset Facility) and in Section 10.1 hereof, (iv) the Expiration Date or (v) the Termination Date (if any) (the “**Term of Lease**”). Notwithstanding that if the Facility Leasehold Estate shall terminate prior to the Expiration Date, (y) this Agreement shall remain and continue in full force and effect (other than the Leasehold Removal Provisions which shall no longer have effect under this Agreement to the extent fulfilled) until the earlier of the Expiration Date and the Termination Date, and (z) the Surviving Agreement Provisions shall continue until the expiration of the applicable statutes of limitation.

The term of this Agreement (the “**Term of Agreement**”) shall commence on the Commencement Date and expire at 11:58 p.m. (New York City time) on the earliest of (i) the Expiration Date or (ii) the Termination Date (if any); provided, however, the Surviving Agreement Provisions shall continue until the expiration of the applicable statutes of limitation.

### **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) 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 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 any or all of the SBMT Asset Project, the EOW Project or the Future OSW Development has been completed as provided in this Agreement, and whether or not any lender 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 thirty (30) days' prior written notice to the Lessee 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 SBMT Asset Project Document to which the Agency is a party, make such payment or otherwise cure any failure by the Lessee to perform and to observe its other obligations hereunder. All amounts so advanced therefor by the Agency shall become an additional obligation of the Lessee to the Agency, which amounts, together with interest thereon at the rate of twelve percent (12%) per annum, compounded daily, from the date advanced, the

Lessee will pay upon demand therefor by the Agency. Any remedy herein vested in the Agency for the collection of Rental Payments or other amounts due hereunder shall also be available to the Agency for the collection of all such amounts so advanced.

**Section 4.8. No Warranty of Condition or Suitability.** THE AGENCY HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE FACILITY, OR THE SUITABILITY OF THE FACILITY FOR THE PURPOSES OR NEEDS OF THE LESSEE, OR THE EXTENT TO WHICH FUNDS AVAILABLE TO THE LESSEE WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE SBMT ASSET PROJECT. THE LESSEE ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE FACILITY PERSONALTY (SBMT ASSET FACILITY) 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 (SALES TAX EXEMPTION AND NO MORTGAGE RECORDING TAX EXEMPTION); RECAPTURE OF PUBLIC BENEFITS

**Section 5.1. Payments in Lieu of Real Estate Taxes.** 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 acknowledge and agree, however, that (i) the City is the fee owner of the Facility Realty (SBMT Asset Facility), (ii) the applicable provisions for the making of payments in lieu of Real Estate Taxes on the part of the Lessee are set forth in the SBMT Asset Lease, and (iii) the Lessee shall not assert or claim any exemption from the payment of Real Estate Taxes by reason of the Facility Leasehold Estate.

#### **Section 5.2. Sales Tax Exemption.**

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

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

(i) The Sales Tax Exemption shall be effective only for a term commencing on the Commencement Date and expiring upon the earliest of (A) the Expiration Date, (B) the expiration or termination of this Agreement, (C) the Completion Deadline (SBMT Asset Facility), (D) the SBMT Asset Project Completion Date, (E) the termination of the Sales Tax Exemption authorization pursuant to Section 9.2, or (F) the termination of the Facility Leasehold Estate (the earliest of such dates being the "**Sales Tax Exemption Termination Date**").

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

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

(iv) The Sales Tax Exemption shall only be utilized for Eligible Items which shall be purchased, rented, incorporated, completed or installed for use at the Facility Realty (SBMT Asset Facility) (and not with any intention to sell, transfer or otherwise dispose of any such Eligible Item to a Person as shall not constitute the Lessee), it being the intention of the Agency and the Lessee that the Sales Tax Exemption shall not be made available with respect to any Eligible Item unless such item is used solely by the Lessee and its Affiliates at the Facility Realty (SBMT Asset Facility).

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

(vi) The Sales Tax Exemption shall not be used to benefit any individual or Entity, including any Tenant located at the Facility Realty (SBMT Asset Facility), other than the Lessee and its Affiliates, without the prior written consent of the Agency.

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

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

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

(x) Each contract, agreement, invoice, bill, purchase order or other documentation pursuant to which the Lessee or an Agent is acting as agent for the Agency under any Sales Tax Agent Authorization Letter (SBMT Asset Facility) shall expressly provide that the Agency shall have no personal, financial or other responsibility or liability for any payments, obligations, covenants or agreements under any such contract, agreement, invoice, bill, purchase order or other documentation.

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

(i) General Municipal Law Section 874(9) and Form ST-60 and the regulations relating thereto require that within thirty (30) days of the date that the Agency appoints a project operator or other person or entity to act as agent of the Agency for purposes of extending a sales or use tax exemption to such person or entity, the Agency

must file with the State a completed Form ST-60 with respect to such person or entity. Accordingly, for each Agent, the Lessee must complete and submit Form ST-60 to the Agency. The Agency requires Form ST-60 to be submitted electronically. Please download Form ST-60 via the internet by typing [http://www.tax.ny.gov/pdf/current\\_forms/st/st60\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st60_fill_in.pdf) into the address bar of your internet browser and saving the "fill-in" PDF of the form (using Adobe Acrobat). The downloaded form may then be completed electronically, saved and transmitted to the Agency by emailing it to [Compliance@nycedc.com](mailto:Compliance@nycedc.com).

(ii) The appointment of each such Agent as an agent for the Agency shall be effective only upon execution by the Agency and the Agent of a Sales Tax Agent Authorization Letter (SBMT Asset Facility) in the form attached hereto as Exhibit H, following receipt of the completed Form ST-60 by the Agency. The determination whether or not to approve the appointment of an Agent shall be made by the Agency, which approval shall not be unreasonably withheld, conditioned or delayed. If executed, a completed copy of the Sales Tax Agent Authorization Letter (SBMT Asset Facility) shall be sent to the Lessee within five (5) Business Days following such execution. The Lessee shall provide a copy of such executed Sales Tax Agent Authorization Letter (SBMT Asset Facility) together with a copy of this Agreement to the Agent within five (5) Business Days after receipt thereof by the Lessee.

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

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

(e) Form ST-123 Requirement. As an agent of the Agency, the Lessee agrees that it will, and will cause each Agent to, present to each seller or vendor a completed and signed Form ST-123 for each contract, agreement, invoice, bill or purchase order entered into by the Lessee or by any Agent, as agent for the Agency, for the acquisition, construction, renovation, improvement, repair, furnishing and equipping of the SBMT Asset Project. Form ST-123

requires that each seller or vendor accepting Form ST-123 identify the SBMT Asset Project on each bill and invoice and invoice for purchases and indicate on the bill or invoice that the Agency or Agent or Lessee, as Project operator of the Agency, was the purchaser. The Lessee shall retain copies of all such contracts, agreements, invoices, bills and purchase orders for a period of not less than six (6) years from the date thereof. For each Agent the Form ST-123 shall be completed as follows: (i) the "Project Information" section of Form ST-123 should be completed using the name and address of the SBMT Asset Project as indicated on the Form ST-60 used to appoint the Agent; (ii) the date that the Agent was appointed as an agent should be completed using the date of the Agent's Sales Tax Agent Authorization Letter (SBMT Asset Facility); and (iii) the "Exempt purchases" section of Form ST-123 should be completed by marking "X" in box "A" only.

(f) Form ST-340 Filing Requirement. The Lessee shall annually (currently, by each February 28<sup>th</sup> with respect to the prior calendar year) file a Form ST-340 with NYSDTF, in a manner and consistent with such regulations as is or may be prescribed by the Commissioner of NYSDTF, of the value of all Sales Tax Savings claimed by the Lessee and each Agent in connection with the SBMT Asset Project. Should the Lessee fail to comply with the foregoing requirement, the Lessee and each Agent shall immediately cease to be agents of the Agency in connection with the SBMT Asset Project without any further action of the Agency and the Lessee shall immediately and without demand notify each Agent appointed by the Agency in connection with the SBMT Asset Project of such termination. The Lessee shall annually file with the Agency a copy of the Form ST-340 filed with NYSDTF for the prior calendar year.

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

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

(i) The Lessee covenants and agrees to comply, and to cause each of its contractors, subcontractors, Agents, persons or entities to comply, with the requirements of General Municipal Law Sections 875(1) and (3) (the "**Special Provisions**"), as such provisions may be amended from time to time. In the event of a conflict between the other provisions of this Agreement and the Special Provisions, the Special Provisions shall control.

(ii) The Lessee acknowledges and agrees that, pursuant to General Municipal Law Section 875(3), the Agency shall have the right to recover, recapture, receive, or otherwise obtain from the Lessee State Sales Tax Savings taken or purported to be taken by the Lessee, any Agent or any other person or entity acting on behalf of the Lessee to which Lessee is not entitled or which are in excess of the Maximum Sales Tax

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

(iii) The Lessee is hereby notified (provided that such notification is not a covenant or obligation and does not create a duty on the part of the Agency to the Lessee or any other party) that the Agency is subject to certain requirements under the General Municipal Law, including the following:

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

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

General Municipal Law Section 859(1)(b), and the consequences shall be the same as provided in General Municipal Law Section 859(1)(e).

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

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

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

(k) At any time prior to the Sales Tax Exemption Termination Date, the Lessee (in conjunction with EOW under Section 5.2(l) of the Agency Lease Agreement (EOW Facility)) may exercise a one-time option to adjust the Maximum Sales Tax Savings Amount (concurrently with EOW exercising its one-time option to adjust the "Maximum Sales Tax Savings Amount" as defined in the Agency Lease Agreement (EOW Facility)). Such option shall be exercised by:

(i) the Lessee delivering to the Agency a certificate of an Authorized Representative certifying, as of the date of such certificate (the "Certification Date"), (1) that no default exists on the part of the Lessee under this Agreement or any other SBMT Asset Project Document, (2) as to the cumulative Sales Tax Savings realized by or for the benefit of the Lessee under this Agreement (the

“SBMT Asset Certification Date Sales Tax Savings Amount”), together with the requested adjustment to the Maximum Sales Tax Savings Amount (the “SBMT Asset Adjusted Maximum Sales Tax Savings Amount”), and (3) that the Lessee will not realize any Sales Tax Savings by or for its benefit within the next ten (10) Business Days, and

(ii) EOW delivering to the Agency a certificate of an Authorized Representative (as such term is defined in the Agency Lease Agreement (EOW Facility)) certifying, as of the Certification Date, (1) that no default exists on the part of EOW under the Agency Lease Agreement (EOW Facility) or any other EOW Project Document (as such term is defined in the Agency Lease Agreement (EOW Facility)), (2) as to the cumulative Sales Tax Savings (as such term is defined in the Agency Lease Agreement (EOW Facility)) realized by or for the benefit of EOW under the Agency Lease Agreement (EOW Facility) (the “EOW Certification Date Sales Tax Savings Amount”), together with the requested adjustment to the Maximum Sales Tax Savings Amount (as such term is defined in the Agency Lease Agreement (EOW Facility)) (such requested adjustment amount being the “EOW Adjusted Maximum Sales Tax Savings Amount”), and (3) that EOW will not realize any Sales Tax Savings by or for its benefit within the next ten (10) Business Days.

THEN, the Agency shall, within ten (10) Business Days of receipt of such certificates from the Lessee and EOW, prepare and file with the State an amended Form ST-60 for the Lessee evidencing the SBMT Asset Adjusted Maximum Sales Tax Savings Amount, and shall provide a copy of the amended Form ST-60 to the Lessee, and thereafter the Maximum Sales Tax Savings Amount shall be such SBMT Asset Adjusted Maximum Sales Tax Savings Amount.

**Section 5.3. Mortgage Recording Tax Exemption.** The Lessee acknowledges and agrees that the Agency is not obligated to exempt in whole or in part the payment of Mortgage Recording Taxes for the recording of any mortgage, or on any extension, modification or other amendment to, or any assignment, consolidation or restatement of, any mortgage.

**Section 5.4. Recapture of Benefits.** It is understood and agreed by the parties to this Agreement that the Agency is entering into this Agreement in order to provide Financial Assistance to the Lessee for the SBMT Asset Project and to accomplish the public purposes of the Act. In consideration therefor, the Lessee hereby agrees as follows:

(a) If there shall occur a Recapture Event during the Recapture Period, the Lessee shall pay to the Agency as a return of Financial Assistance conferred by the Agency, a recapture amount (the “**Recapture Amount**”) equal to the product of (y) all Benefits (SBMT Asset Facility) realized by the Lessee and (z) the recapture percentage below (the “**Recapture Percentage**”) for the period during which the Recapture Event occurs, as determined by the Agency:

(i) if the Recapture Event occurs during the period commencing on the Commencement Date and ending on the day before the third anniversary of the Facility Operations Commencement Date, the Recapture Percentage is 130%;

(ii) if the Recapture Event occurs during the period commencing on the third anniversary of the Facility Operations Commencement Date and ending on the day before the fourth anniversary of the Facility Operations Commencement Date, the Recapture Percentage is 120%;

(iii) if the Recapture Event occurs during the period commencing on the fourth anniversary of the Facility Operations Commencement Date and ending on the day before the fifth anniversary of the Facility Operations Commencement Date, the Recapture Percentage is 110%;

(iv) if the Recapture Event occurs during the period commencing on the fifth anniversary of the Facility Operations Commencement Date and ending on the day before the sixth anniversary of the Facility Operations Commencement Date, the Recapture Percentage is 100%; or

(v) if the Recapture Event occurs during the period commencing on the sixth anniversary of the Facility Operations Commencement Date and ending on or before the tenth anniversary of the Facility Operations Commencement Date, the Recapture Percentage is 100% minus the product of (y) 1.666% and (z) the number of months elapsed since the sixth anniversary of the Facility Operations Commencement Date.

(b) Interest on any Recapture Amount due pursuant to the provisions of Section 5.4(a) shall accrue at a rate equal to the higher of nine percent (9%) per annum, or the amount of interest and penalties imposed by the Act or other law, from the date that the Recapture Event occurred until the date of repayment of the Recapture Amount to the Agency.

(c) Notwithstanding the foregoing, with respect to State Sales Tax Savings, the computation of the amount of State Sales Tax Savings to be recaptured shall equal the greater of the amount determined pursuant to this Section 5.4 and the amount due to the State pursuant to the Special Provisions.

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

(e) The Lessee shall furnish the Agency with written notification of any Recapture Event within twenty (20) days of its occurrence and shall subsequently provide to the Agency in writing any additional information that the Agency may request.

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

## ARTICLE VI

### DAMAGE, DESTRUCTION AND CONDEMNATION

**Section 6.1. Damage, Destruction and Condemnation.** In the event that at any time during the Term of Agreement the whole or part of the Facility shall be damaged or destroyed (a “**Damage Event**”), 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 “**Condemnation Event**”; a Damage Event or a Condemnation Event are referred to collectively as 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 SBMT Asset 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) if the damages in any Damage Event exceeds, at any one time, \$60,000,000, or in the case of a Condemnation Event, 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 (and be subordinate to the rights of any Mortgagee under a Qualified Mortgage).

(b) The Lessee shall be entitled to the Net Proceeds of any insurance proceeds or condemnation award, compensation or damages attributable to the Facility, provided that nothing contained in this Agreement shall be deemed to modify the obligations of the Lessee pursuant to any Qualified 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), promptly and diligently rebuild, replace, repair or restore the Facility in

accordance with its obligations under the SBMT Asset Lease, 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 the Facility Leasehold Estate under this Agreement as provided and to the extent permitted in the Company Lease (SBMT Asset Facility) and 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 as contemplated hereby, the Lessee shall exercise its option to terminate the Facility Leasehold Estate under this Agreement as provided and to the extent permitted in the Company Lease (SBMT Asset Facility) and Section 10.1.

(b) As soon as practicable but no later than ninety (90) days after the occurrence of (i) a Damage Event to the extent the damages of such Damage Event exceed \$60,000,000 in value, or (ii) a Condemnation 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 (SBMT Asset Facility) and this Agreement,

(ii) in the case of a Condemnation Event, or in the case a Damage Event to the extent the damages of such Damage Event exceed \$60,000,000 in value 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 SBMT Asset Facility and a qualified "project" as defined in the Act,

(iii) be effected in compliance with all applicable Legal Requirements and all SBMT Asset Project Documents and be promptly and fully paid for by the Lessee in accordance with the terms of the applicable contract(s) therefor,

(iv) restore the Facility to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, and to a state and condition that will permit the Lessee and its Affiliates to use and operate the Facility as the Approved SBMT Asset 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 a good and valid leasehold interest in all property constituting part of the Facility Realty (SBMT Asset Facility) and the Facility Personalty (SBMT Asset Facility), and all property of the Facility is subject to the Company Lease (SBMT Asset Facility) and this Agreement, subject to Permitted Encumbrances, and (v) that the restored Facility is ready for occupancy, use and operation for the Approved SBMT Asset Project Operations. Notwithstanding the foregoing, such certificate may state (x) that it is given without prejudice to any rights against third parties by the Lessee 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 and obtain renewals of such temporary certificate of occupancy as needed), if required, and any and all permissions, licenses or consents required of governmental authorities for the occupancy, operation and use of the Facility for the purposes contemplated by this Agreement; (ii) a certificate of an Authorized Representative of the 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 other than those encumbrances consented to in writing by the Agency.

## ARTICLE VII

### COVENANT OF THE AGENCY

**Section 7.1. Quiet Enjoyment.** The Agency covenants and agrees that, subject to the terms and provisions of the Permitted Encumbrances (and any other impairments of title), so long as (i) 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, (ii) the Facility Leasehold Estate shall not have terminated, and (iii) an Event of Default shall not exist hereunder, the Agency shall take no action to disturb the peaceful, quiet and undisputed possession of the Facility by the Lessee under this Agreement, and the Agency (at the sole cost and expense of the Lessee) shall from time to time take all necessary action to that end.

**Section 7.2. Rights of Possession in the Facility.** Except as provided in this Agreement after the occurrence of an Event of Default hereunder or a termination of the Facility Leasehold Estate, but subject to the terms and provisions of this Agreement, as between the Lessee and the Agency, (i) the Lessee has the exclusive right to possess the Facility and to make improvements relating thereto, and (ii) the leasehold interest of the Agency under the Company Lease (SBMT Asset Facility) in the Facility, prior to the termination of the Facility Leasehold Estate, is only for the purposes set forth in the Act and the Authorizing Resolution, and is intended to be passive for such purposes. Further, except as provided in the last sentence of this Section 7.2, nothing contained in this Agreement shall be deemed to authorize or permit the Agency to

(a) take possession of the Facility,

(b) have managerial or executive rights, or participating interests, in the Facility; the Lessee shall have sole and exclusive discretion, determination rights and decisional control over and with respect to the development, construction and operation of, and the structuring of agreements and relationships relating to the Facility, for any and all purposes (including, without limitation, for the purposes of financing, equity investment, disposition of renewable energy credits and other benefits and proceeds of operation, and for the purposes contemplated by the Lessee's interest in the Facility Realty (SBMT Asset Facility) and the Facility Personality (SBMT Asset Facility), without the consent of, or any notice to, the Agency, and

(c) exercise operational or managerial control over the Lessee.

However, nothing contained in this Section 7.2 shall be deemed to modify, alter, condition, release or waive any payment, obligation, covenant or agreement of the Lessee under this Agreement or any other SBMT Asset Project Document, nor to condition, amend, modify, impair or diminish any right or remedy of the Agency under this Agreement or any other SBMT Asset Project Document.

**Section 7.3. Tax Benefits with Respect to the Facility.** The Agency agrees not to claim or assert (i) any depreciation deductions or accelerated cost recovery system deductions with respect to any depreciable property in the Facility pursuant to sections 167 and

168 of the Internal Revenue Code of 1986, as amended (the “Code”), (ii) any credits under the Code with respect to any portion of the Facility, (iii) any other federal or State tax benefits associated with the ownership, construction or operation of the Facility other than the Benefits (SBMT Asset Facility) as and to the extent provided in this Agreement, or (iv) that the Agency is the owner of the Facility for federal income tax purposes. The Agency is entering into this Agreement and the other SBMT Asset Project Documents, and is initially taking the Facility Leasehold Estate to accomplish the purposes of the Act and the Authorizing Resolution. **Nothing contained in this Section 7.3, or elsewhere in this Agreement or in any other SBMT Asset Project Document shall be considered a warranty, representation or guarantee by the Agency to the Lessee of the entitlement of the Lessee to any federal, state or local tax benefit with respect to the Facility.**

## ARTICLE VIII

### COVENANTS OF THE LESSEE

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

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

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

**CGL** means commercial general liability insurance.

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

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

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

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

**Insured** 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 Lease (and continuing until the sixth (6<sup>th</sup>) anniversary of the Lease Termination Date), except during periods of Construction, the Insured shall obtain, maintain or cause to be maintained, the following insurance:

(i) CGL with \$2,000,000 minimum per occurrence and \$4,000,000 minimum in the aggregate, per-project 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 \$30,000,000 minimum per occurrence on terms consistent with CGL. The excess coverage provided under U/E shall follow form to the CGL; such coverage must also apply to auto liability (when such coverage applies; see Section 8.1(b)(iii)), whether auto liability coverage is provided by endorsement to the Insured's CGL or by a stand-alone policy.

(iii) Auto liability insurance with \$1,000,000 combined single limit and \$1,000,000 for uninsured or under-insured vehicles. If the Insured does not own any vehicles and intends to hire or lease vehicles, it shall obtain auto liability insurance in the foregoing amounts for hired and non-owned vehicles. Notwithstanding, in the event that the Authorized Representative of the Lessee delivers a certificate to the Agency certifying that it does not own, hire, rent or use a vehicle of any sort, the Agency shall deem such certifications to satisfy the requirements of this subsection "iii."

(iv) Workers Compensation satisfying State statutory limits for employees working within the State. Coverage for employer liability shall be in respect of any work or operations in, on or about the Facility Realty (SBMT Asset Facility). Notwithstanding, in the event that the Authorized Representative of the Lessee delivers a certificate to the Agency that the Lessee does not have, and does not intend to have, any employees, the Agency shall deem such certification to satisfy the requirements of this clause (iv); provided, however, that the Lessee agrees to immediately deliver notice in writing to the Agency upon the Lessee commencing to have any employees in which event the Lessee shall be obligated to maintain coverage for workers compensation in satisfaction of State statutory limits.

(v) Pollution legal liability insurance with \$10,000,000 minimum per occurrence and \$10,000,000 minimum in the aggregate, per-project aggregate, and on a per occurrence basis.

(c) Required Insurance During Periods of Construction. In connection with any Construction and throughout any period of such Construction, but only during the Term of Lease (and continuing until the sixth (6<sup>th</sup>) anniversary of the Lease Termination Date), the Lessee shall cause the following insurance requirements to be satisfied:

(i) The Insured shall obtain, maintain or cause to be maintained for itself Policies in accordance with all requirements set forth in Section 8.1(b).

(ii) Any GC or CM shall be a named insured on the following Policies:

(A) CGL, written on ISO Form CG 00 01 or its equivalent and with no modification (y) to contractual liability coverage provided therein, or (z) to U/E with \$10,000,000 minimum per occurrence on terms consistent with CGL as provided in Section 8.1(b) (ii) above, with limits not less than (1) \$1,000,000 per occurrence, (2) \$2,000,000 general aggregate which must apply on a per location/per project basis, and (3) \$2,000,000 products completed operations aggregate; if the contractor's work includes construction activities of any kind, then the contractor must maintain Products/Completed Operations coverage for no less than six (6) years after the construction work is completed and continue to include additional insured protection for the Insured and the Agency for the prescribed timeframe; when providing evidence of insurance the subcontractor must include a completed Acord Form;

(B) Auto liability insurance of not less than \$1,000,000 via any combination of primary and excess coverage;

(C) Workers' Compensation insurance in accordance with the requirements in Section 8.1(b); and

(D) Contractor's pollution liability insurance in accordance with the requirements in Section 8.1(b) unless it is provided by the Lessee.

(iii) Notwithstanding preceding subsections "i" and "ii," during Construction aggregate minimum coverage in the amount of \$10,000,000 (combined CGL and U/E as required by Sections 8.1(b) and 8.1(c)) may be achieved by any combination of coverage amounts among the Insured and the GC or CM.

(d) Required Policy Attributes. Except as the Agency shall expressly otherwise agree in writing in its sole and absolute discretion, during the Term of Lease (and continuing until the sixth (6<sup>th</sup>) anniversary of the Lease Termination Date):

(i) The Lessee shall, within sixty (60) days following the Commencement Date, cause its CGL and Contractor's Pollution Liability and Pollution Legal Liability Policies which are required under this Agreement to be maintained 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) 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 its CGL Policy will include ISO Form CG00 01 04 13, with no amendment to either of the following Coverage A exclusions and their associated exceptions: Exclusion "b. Contractual Liability" or "e. Employer's Liability" and which Policy includes as additional insureds those entities required to be included as additional insureds under written contract. Where further required by contract, the Policy will act as primary and non-contributory to any insurance on which the additional insured is a named insured.

(iii) The Insured's U/E shall follow the form of CGL except that U/E may be broader.

(iv) In each of the Insured's Policies, where required by written contract, the Insurer shall waive any right of subrogation or recovery.

(v) 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 during the Term of Lease (and continuing until the sixth (6<sup>th</sup>) anniversary of the Lease Termination Date) must be issued by Insurers satisfying the following requirements:

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

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

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

(f) Required Evidence of Compliance. The Lessee shall deliver or cause to be delivered, throughout the Term of Lease, 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 the 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 within thirty (30) days after the Commencement Date. If the Lessee's Certificate 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 regarding the construction of an operations and maintenance facility, the construction of a staging site for the assembly of offshore wind equipment and the upgrading of the port infrastructure of the South Brooklyn Marine Terminal to support the industrial machinery necessary for the offshore wind turbine project to consist of dredging, bulkhead upgrades, electrical, water and plumbing infrastructure improvements, electric cable installations and grid connections, crane foundations, pier reinforcement, utility systems and other construction and*

*demolition at the South Brooklyn Marine Terminal. The referenced CGL is written on ISO Form CG-0001 without modification to either of the following Coverage A exclusions and their associated exceptions: Exclusion “b. Contractual Liability”, or Exclusion “e. Employer’s Liability”.*

(ii) Insurance to be obtained by GCs and CMs. Ten days after 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).

(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 (SBMT Asset Facility)) that are not disclosed in Subsection (h)(i) of this Section 8.1, the Lessee shall in writing notify the Agency of such additional properties.

(h) Miscellaneous.

(i) If, in accordance with the terms and conditions of this Section 8.1, the 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.

(ii) The 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.

(iii) If, throughout the Term of Lease (and continuing until the sixth (6<sup>th</sup>) anniversary of the Lease termination Date), insurance industry standards applicable to properties similar to the Facility Realty (SBMT Asset Facility) 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.

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

(v) The Agency, in its sole discretion and without obtaining the consent of any lender or the 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.

(vi) Notwithstanding any provisions of this Agreement to the contrary, the Lessee shall remain liable under this Agreement (including, without limitation, for purposes of Section 8.2) whether or not the Policies are in place following an insurable event.

(vii) 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 ITS 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 (collectively, the "**Indemnified Parties**" and each an "**Indemnified Party**") harmless of, from and against any and all claims (whether in tort, contract or otherwise), taxes (of any kind and by whomsoever imposed), demands, penalties, fines, liabilities, lawsuits, actions, proceedings, settlements, costs and expenses, including attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses (collectively, "**Claims**") of any kind for losses, damage, injury and liability (collectively, "**Liability**") of every kind and nature and however caused (except, with respect to any Indemnified Party, Liability arising from the gross negligence or willful misconduct of such Indemnified Party), arising during the period commencing on the Application Date, and continuing throughout the Term of Agreement, arising upon, about, or in any way connected with the Facility, the SBMT Asset Project or the Future OSW Development or any of the transactions with respect thereto, including:

(i) the financing of the costs of the Facility or any or all of the SBMT Asset Project or the Future OSW Development,

(ii) the planning, design, acquisition, site preparation, SBMT Asset Project Work, construction, renovation, equipping, installation or completion of the SBMT Asset 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 SBMT Asset Project Document, or other document or instrument delivered in connection herewith or therewith or the enforcement of any of the terms or provisions hereof or thereof or the transactions contemplated hereby or thereby,

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

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

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

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

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

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

**Section 8.3. Compensation and Expenses of the Agency and Agency Administrative and SBMT Asset 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 SBMT Asset Project Document including Project Counsel.

(b) On the Commencement Date, the Lessee shall pay to the Agency the following amounts: (i) the Initial Annual Administrative Fee, and (ii) the SBMT Asset 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; provided, however, that any such failure of the Lessee to pay the Annual Administrative Fee on the due date shall not constitute an Event of Default unless the Agency has delivered written notice of such failure to the Lessee, and the Lessee has failed to pay the amount owed within twenty (20) days of receipt of such notice.

**Section 8.4. Current Facility Personalty (SBMT Asset Facility) Description.**

The Lessee covenants and agrees that throughout the Term of Lease, including upon the completion of the SBMT Asset Project or of any replacement, repair, restoration or reconstruction of the Facility pursuant to Article VI, it will cause Exhibit B – “Description of the Facility Personalty (SBMT Asset Facility)” to be an accurate and complete description of all current items of Facility Personalty (SBMT Asset Facility). To this end, the Lessee covenants and agrees that (y) no item of Facility Personalty (SBMT Asset Facility) 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 (SBMT Asset Facility) shall be delivered and installed at the Facility Realty (SBMT Asset Facility) 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 (SBMT Asset Facility),” and the Lessee shall from time to time prepare and deliver to the Agency supplements to such Appendices in compliance with the foregoing. Such supplements shall be executed and delivered by the appropriate parties.

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

*FINANCIAL ASSISTANCE PROVIDED  
THROUGH THE  
NEW YORK CITY INDUSTRIAL*

*DEVELOPMENT AGENCY*  
*Mayor Eric Adams*

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. Unless otherwise permitted, 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) During the Term of Lease, 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, except in compliance with all applicable Legal Requirements and SBMT Asset Project Documents.

(b) During the Term of Lease, 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.

(c) During the Term of Lease, 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.

**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 SBMT Asset 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 (SBMT Asset Facility) 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 the Lessee which is pertinent to the Lessee and

the employees of the Lessee 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 and the employees of the Lessee 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 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 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 any Tenant of the Facility 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 or Sublease.**

(a) Except for assignments, pledges and transfers permitted as provided in, and upon compliance with the provisions of, Section 8.20, the Lessee shall not at any time directly or indirectly assign, pledge or transfer this Agreement (an “**Agreement Assignment**”), or prior to the Lease Termination Date enter into a Tenant Lease to sublet to a Tenant all or any part of the Facility, without the prior written consent of the Agency, which consent shall (y) not be unreasonably withheld, conditioned or delayed and (z) take into consideration the Agency’s policies as in effect from time to time. Any such requested Agreement Assignment or Tenant Lease requiring the prior written consent of the Agency shall be subject to (1) the Lessee providing the Agency a written request for such Agreement Assignment or Tenant Lease on a timely basis and in the form prescribed by the Agency, and (2) the satisfaction of the following conditions (to the reasonable satisfaction of the Agency) and such other conditions as the Agency may reasonably require in delivering any such written consent:

(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 SBMT Asset Project Document to which it shall be a party;

(ii) the Lessee shall not be in default under this Agreement or any of the other SBMT Asset Project Documents, and shall deliver to the Agency a certificate of an Authorized Representative of the Lessee to such effect;

(iii) any assignee or transferee of the Lessee under an Agreement Assignment, or, during the Term of Lease, Tenant under a Tenant Lease for all or substantially all of the Facility, shall in either case 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 SBMT Asset 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 solvent, shall be subject to service of process in the State, and shall be qualified to do business in the State;

(iv) any assignee or transferee of the Lessee under an Agreement Assignment, or during the Term of Lease,

(v) Tenant under a Tenant Lease, shall in either case utilize the Facility as the Approved SBMT Asset Facility and a qualified “project” within the meaning of the Act;

(vi) such assignment, transfer or Tenant Lease shall not violate any provision of this Agreement or any other SBMT Asset Project Document, and the Lessee shall deliver to the Agency a certificate of an Authorized Representative of the Lessee to such effect;

(vii) during the Term of Lease, such Tenant Lease shall in no way diminish or impair the Lessee’s obligation to carry the insurance required under Section 8.1, and the Lessee shall furnish written evidence satisfactory to the Agency that such

insurance coverage shall in no manner be diminished or impaired by reason of such assignment, transfer or sublease;

(viii) any such assignee or transferee, or, during the Term of Lease, Tenant, shall deliver to the Agency the Required Disclosure Statement in the form of “Exhibit F — Form of Required Disclosure Statement”, or, if deviating from such form, then such Required Disclosure Statement shall be required to be in form and substance satisfactory to the Agency acting in its sole discretion, 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 deemed to be in default under this Agreement;

(ix) each such Agreement Assignment or Tenant Lease shall contain such other provisions as the Agency may reasonably require;

(x) the Lessee shall furnish or cause to be furnished to the Agency a copy of any such Agreement Assignment or Tenant Lease in substantially final form at least thirty (30) days prior to the date of execution thereof;

(xi) a Replacement Guaranty Agreement (SBMT Asset Facility) by a Financially Qualified Replacement Guarantor guaranteeing the Guaranteed Obligations of any such assignee or transferee under an Agreement Assignment, together with such other documents set forth in Section 3.8 of the Guaranty Agreement (SBMT Asset Facility) shall have been delivered to the Agency; and, upon the Agency accepting such Replacement Guaranty Agreement (SBMT Asset Facility), the Agency shall execute a release and discharge of the Predecessor Guarantor under the Predecessor Guaranty Agreement (SBMT Asset Facility); and

(xii) an Opinion of Counsel, with respect to the assignee or transferee, and the Successor Guarantor, shall have been delivered to the Agency, in form and substance acceptable to the Agency in its sole discretion.

(b) Any consent by the Agency to any act of assignment or transfer or, during the Term of Lease, sublease (including any Agreement Assignment or Tenant Lease) 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 or transfer or, during the Term of Lease, sublease (or other Agreement Assignment or Tenant Lease), or as modifying or limiting the rights of the Agency under the foregoing covenant by the Lessee.

(c) If the prior written consent of the Agency is required for the Lessee to enter into a Tenant Lease for a portion of the Facility Realty (SBMT Asset Facility) during the Term of Lease, such consent will be within the sole discretion of the Agency but subject to the following conditions and any additional conditions required by the Agency:

(i) after giving effect to such Tenant Lease, not more than 10% of the Total Improvements USF will be used, in the aggregate, by Tenants for Non-Qualified Uses,

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

(iii) the Lessee shall not be in default under this Agreement or any other SBMT Asset Project Document, and the Lessee shall deliver to the Agency a certificate of an Authorized Representative of the Lessee to such effect,

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

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

(vi) the Tenant Lease shall not violate any provision of this Agreement or any other SBMT Asset Project Document, and the Lessee shall deliver a certificate of an Authorized Representative of the Lessee to such effect, and

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

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

(e) If, during the Term of Lease, the Facility or any part thereof is sublet or occupied by any Person other than the Lessee or any of its Affiliates, 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.

(f) The Lessee covenants and agrees that it shall not, without the prior written consent of the Agency, amend, modify, terminate or assign, or to suffer any amendment, modification, termination or assignment of, any Tenant Lease entered into during the Term of

Lease in accordance with this Section in a manner inconsistent with the requirements set forth herein.

(g) For purposes of this Section 8.9, (y) any license or other right of possession or occupancy granted by the Lessee with respect to the Facility or any portion thereof shall be deemed a sublease subject to the provisions of this Section 8.9, and (z) during the Term of Lease, nothing contained in this Agreement shall prevent the Lessee from entering into a Tenant Lease, license, easement or any other right of possession, occupancy or use with respect to the Facility or any portion thereof with any Person.

**Section 8.10. Retention 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 (SBMT Asset Facility), or any part of the Facility or interest therein during the Term of Agreement, except as set forth in Sections 3.6, Article VI, 8.9, 8.20, 9.2 and 10.1 or in this Section, without the prior written consent of the other, and any purported disposition without such consent shall be void. The Agency requires a minimum of fifteen (15) Business Days' notice in order to consider any request to approve any such Lien, security interest, encumbrance, or charge.

(b) The Lessee may, at any time during the Term of Agreement (but upon prior written notice to the Agency during the Term of Lease), so long as there exists no Event of Default hereunder, grant such rights of way or easements over, across, or under, the Facility Realty (SBMT Asset Facility), or grant such permits or licenses in respect to the use thereof, free from the leasehold estate of the Company Lease (SBMT Asset Facility) 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 SBMT Asset 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 (SBMT Asset Facility) and of this Agreement.

(c) So long as there exists no Event of Default hereunder, the Lessee may from time to time during the Term of Lease request in writing to the Agency the release of and removal from the leasehold estate of the Company Lease (SBMT Asset Facility) and of this Agreement of any unimproved part of the Land (SBMT Asset Facility) (on which none of the Improvements (SBMT Asset Facility), including the buildings, structures, major appurtenances, fixtures or other property comprising the Facility Realty (SBMT Asset Facility), is situated), provided that such release and removal will not adversely affect the use or operation of the Facility as the Approved SBMT Asset 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 (SBMT Asset Facility) from the leasehold estates of the Company Lease (SBMT Asset Facility) 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 or any Affiliate to perform or observe any of the agreements on its respective part contained in this Agreement or in any other SBMT Asset Project Document; (iv) Permitted Encumbrances (other than the Liens of the Company Lease (SBMT Asset Facility) 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 (SBMT Asset Facility) 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 SBMT Asset 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 SBMT Asset 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 or the Lessee (a “**Facility Lien**”) or against any of the Rental Payments payable under the Company Lease (SBMT Asset Facility) or under this Agreement, or payments under the Guaranty Agreement (SBMT Asset Facility), or the interest of the Agency, the Lessee or the Guarantor under the Company Lease (SBMT Asset Facility), under this Agreement or under the Guaranty Agreement (SBMT Asset Facility) (collectively, a “**Non-Facility Lien**”), 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; provided, however, after the Lease Termination Date, the Lessee shall have no obligation to discharge, remove or nullify a Facility Lien. 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) With respect to a Facility Lien during the Term of Lease, or a Non-Facility Lien during the Term of Agreement, 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 (SBMT Asset Facility), in this Agreement or in the Guaranty Agreement (SBMT Asset Facility), of the Agency or the Lessee or against any of the Rental Payments payable under the Company Lease (SBMT Asset Facility) or under this Agreement or of the Guarantor or in any amounts payable under the Guaranty Agreement (SBMT Asset Facility), (ii) neither the Facility nor any part thereof or interest therein would be in any danger of being sold, forfeited or lost, and (iii) none of the Lessee, the Guarantor or 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.

**Section 8.12. Recording and Filing.** A memorandum of this Agreement shall be recorded, or caused to be recorded by the Agency (at the sole cost and expense of the Lessee) 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 ownership interest of the Lessee, or the interest of the Agency, the Lessee or the Guarantor in the Facility, the Company Lease (SBMT Asset Facility), this Agreement or the Guaranty Agreement (SBMT Asset Facility), except for Permitted Encumbrances; provided, however, after the Lease Termination Date, the Lessee shall have the right without the prior consent of the Agency to grant a mortgage, encumbrance, lien, security interest, claim or charge against the Facility but not with respect to, or otherwise encumbering, this Agreement or the Guaranty Agreement (SBMT Asset Facility) or any rights of the Agency hereunder or thereunder, or any amounts payable hereunder or thereunder. Notwithstanding the foregoing, except as expressly set forth and following compliance with the terms and conditions of Section 8.20, in no event shall the Lien of any mortgage or assignment of leases and rents include (y) the rights of the Lessee under the Company Lease (SBMT Asset Facility), this Agreement, the Uniform Project Agreement (EOW Facility) or the Guaranty Agreement (SBMT Asset Facility), or (z) the rights of the Agency under the Company Lease (SBMT Asset Facility), this Agreement, the Uniform Project Agreement (SBMT Asset Facility) or the Guaranty Agreement (SBMT Asset Facility), including any rentals or other amounts paid or payable under any or all of the Company Lease (SBMT Asset Facility), this Agreement or the Guaranty Agreement (SBMT Asset Facility)

**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 SBMT Asset Project Document, including, without limitation, under the SBMT Asset Lease. 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), (y) or (z) would, if made on any date during the Term of Agreement and deemed made as of such date, be false, misleading or incorrect in any material respect.

(c) Within twenty (20) Business Days after receipt from the Agency of any subtenant survey and questionnaire pertaining to the Facility, the Lessee shall complete and execute such survey and questionnaire and return the same to the Agency, unless a different deadline is provided by such survey or questionnaire.

(d) During the Term of Lease, the Lessee shall deliver all insurance-related documents required by Sections 8.1(f) and 8.1(g).

(e) During the Term of Lease, 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) (SBMT Asset Facility) to the Agency.

(f) During the Term of Lease, if a removal involving property having a value in the aggregate exceeding \$2,500,000 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 SBMT Asset Project, but no later than five (5) Business Days following the receipt of a temporary or permanent certificate of occupancy, if applicable, with respect to the Facility, the Lessee shall deliver to the Agency the Final SBMT Asset Project Cost Budget together with a certificate as to SBMT Asset Project completion in substantially the form set forth in Exhibit G – “Form of SBMT Asset Project Completion Certificate,” together with all attachments required thereunder.

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

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

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

(k) Within 10 days after the earlier of the Sales Tax Exemption Termination Date and the Termination Date, the Lessee shall (y) file with the Agency a completed Sales Tax Registry which accounts for all Sales Tax Savings realized by the Lessee and each Agent during the period from the preceding July 1<sup>st</sup> to the Facility Operations Commencement Date; and

(z) deliver and surrender to the Agency each Sales Tax Agent Authorization Letter (SBMT Asset Facility) and all copies thereof for cancellation.

**Section 8.15. Requested Documents.** Upon request of the Agency (but for each no more than annually except upon good cause), the Lessee shall deliver or cause to be delivered to the Agency within five (5) Business Days (unless a different time period is specified) of the date so requested (provided, however, that the documents in Section 8.15(b), (d) and (e) may only be requested during the Term of Lease):

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

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

(c) copies of any (y) relevant bills, invoices or other evidences of cost as shall have been incurred in connection with the SBMT Asset Project Work in order for the Agency to ascertain compliance by the Lessee with the requirements of this Agreement, and (z) permits, authorizations and licenses from appropriate authorities relative to the occupancy, operation and use of the Facility;

(d) if no action was taken by the Lessee pursuant to Section 3.5 or no action involving the removal of property having a value in the aggregate exceeding \$2,500,000 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 \$2,500,000 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 SBMT Asset Project Document (including, without limitation, the SBMT Asset Lease) to which it shall be a party, and if such Authorized Representative shall have obtained knowledge of any default in such compliance or notice of such default, he shall disclose in such certificate such default or defaults or notice thereof and the nature thereof,

whether or not the same shall constitute an Event of Default hereunder, and any action proposed to be taken by the Lessee with respect thereto;

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

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

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

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

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

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

(c) If and for so long as the same shall be required by law, the Lessee shall annually (currently, by each February 28 with respect to the prior calendar year) file a statement with the New York State Department of Taxation and Finance, on a form and in a manner and consistent with such regulations as is or may be prescribed by the Commissioner of the New York State Department of Taxation and Finance (Form ST-340 or any successor or additional mandated form), of the value of Sales Tax Savings claimed by the Lessee and all Agents in

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

(d) By August 1<sup>st</sup> of each year, the Lessee shall file with the Agency, a certificate of an Authorized Representative of the Lessee with respect to the twelve-month reporting period ending on the prior June 30<sup>th</sup>, a certificate listing all Tenants at the Facility during such reporting period, in the form prescribed by the Agency. The certification shall include: (i) a list of all Tenant Leases in effect at any time during the reporting period; (ii) the rentable square footage specified in each Tenant Lease; (iii) the Usable Square Footage as applicable to such Tenant Lease; (iv) the Name, Employer Identification Number, contact person and telephone number for each Tenant; (v) a summary of the uses permitted under each Tenant Lease; (vi) the number of days such Tenant Lease was in effect during the reporting period; and (vii) any other information requested by the Agency. The Agency reserves the right to review and verify information submitted by the Lessee. At the Agency's request, the Lessee will promptly retain, at its own cost, a third party acceptable to the Agency with expertise in building measurement to verify the Usable Square Feet calculations submitted by the Lessee to the Agency and such third party shall submit such verification in writing to the Agency.

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

(f) If there shall have been a Tenant, other than the Lessee, with respect to all or part of the Facility, at any time during the twelve-month period terminating on the immediately preceding June 30, but prior to the Lease Termination Date, the Lessee shall deliver to the Agency by the next following August 1, a completed employment and benefits report for all such Tenants with respect to such twelve-month period, in the form prescribed by the Agency.

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

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

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

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

(a) The Lessee shall pay when the same shall become due all taxes and assessments, general and specific, if any, levied and assessed upon or against the Facility, the Company Lease (SBMT Asset Facility), this Agreement, any Tenant Leases, 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 (SBMT Asset Facility) or hereunder or under any Tenant Leases during the Term of Agreement, and 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 (SBMT Asset Facility) is exempt from Impositions solely due to the Facility Leasehold Estate, the Lessee shall pay all Impositions to the appropriate taxing authorities equivalent to the Impositions that would have been imposed on the Facility Realty (SBMT Asset Facility) if the Lessee were the owner of record of the Facility Realty (SBMT Asset Facility) and the Agency had no Facility Leasehold Estate.

(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 (SBMT Asset Facility) or in this Agreement, of the Agency or the Lessee or against any of the Rental Payments payable under the Company Lease (SBMT Asset Facility) 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) none of the Lessee, the Guarantor or 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.

#### **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, as determined by a final non-appealable judgment or decree by a court of competent jurisdiction, or make void or voidable any insurance then in force with respect thereto.

(b) Throughout the Term of Agreement and at its sole cost and expense, the Lessee shall promptly observe and comply with all applicable Legal Requirements (including, without limitation, as applicable, the LW Law, the Prevailing Wage Building Services Law, and the Earned Sick Time Act, constituting Chapter 8 of Title 20 of the New York City Administrative Code), whether foreseen or unforeseen, ordinary or extraordinary, that shall now or at any time hereafter be binding upon or applicable to the Lessee, the Facility, any occupant, user or operator of the Facility or any portion thereof, and will observe and comply with all conditions, requirements, and schedules necessary to preserve and extend all rights, licenses, permits (including zoning variances, special exception and non-conforming uses), privileges, franchises and concessions. The Lessee will not, without the prior written consent of the Agency (which consent shall not be unreasonably withheld, conditioned 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, and (ii) such contest shall not result in the Lessee, the Guarantor or the Agency being in any danger of any civil or any criminal liability for failure to comply therewith.

#### **Section 8.19. Operation as Approved SBMT Asset Facility and as a “Project”.** During the Term of Lease:

(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 SBMT Asset Facility or a qualified “project” within the meaning of the Act;

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

(c) the Lessee will permit the Agency, or its duly authorized agent, upon reasonable notice, at all reasonable times, to enter the Facility, provided that (y) such access will not interfere with the business conducted at the Facility, and (z) other than in the case of a default or upon cause, no more than once annually, but in any event solely for the purpose of assuring that the Lessee is operating the Facility, or is causing the Facility to be operated, as the Approved SBMT Asset Facility and a qualified “project” within the meaning of the Act

consistent with the Approved SBMT Asset Project Operations and with the public purposes of the Agency.

**Section 8.20. Restrictions on Dissolution, Merger, Transfers, Change in Control, Mortgages, Pledges, Sales, Assignments and Transfers.**

(a) The Lessee covenants and agrees that at all times during the Term of Agreement, except in each case as expressly permitted by the applicable provisions of Section 8.20(b), it will

(i) maintain its existence as a limited liability company organized and existing under the laws of the State of Delaware,

(ii) continue to be solvent and subject to service of process in the State,

(iii) continue to be qualified to do business in the State,

(iv) not, as transferor, liquidate, wind-up or dissolve, transfer, sell, convey or otherwise dispose of to another Entity all or substantially all of its property, business or assets (a “**Transferor Transaction**”), except as provided in Section 8.20(b)(i) or (ii), as applicable,

(v) not, as transferee, take title to all or substantially all of the property, business or assets (a “**Transferee Transaction**”) of and from another Entity, except as provided in Section 8.20(b)(i),

(vi) not consolidate with or merge into another Entity, or permit one or more Entities to consolidate with or merge into it (a “**Merge**” or “**Merger**”), except as provided in Section 8.20(b)(i) or (ii), as applicable,

(vii) not change or permit, or suffer, a Change in Control to a Person other than Equinor USH, such that Equinor USH is no longer in sole Control of the Lessee, except as provided in Section 8.20(b)(iii),

(viii) not, as transferor, liquidate, wind-up, dissolve, transfer, sell, convey or otherwise dispose of all or any portion of its right, title or interest in all or any portion of the Facility, or assign any or all of the SBMT Asset Project Documents (a “**Facility Transfer**”), except as permitted in Section 8.20(b)(iv),

(ix) not encumber, hypothecate, mortgage or pledge all or any portion of its right, title or interest in the Facility (including by mortgage, deed of trust or personal property security agreement, but excluding an SBMT Asset Project Document Pledge), except for a Qualified Mortgage and as referenced in Section 8.20(b)(v),

(x) not pledge, mortgage, make a collateral assignment, grant a security interest in, hypothecate, pledge or otherwise encumber any of the right, title or

interest of the Lessee in any or all of the SBMT Asset Project Documents (an “**SBMT Asset Project Document Pledge**”), except as referenced in Section 8.20(b)(vi),

(xi) not change or permit the change of any Principal of the Lessee from any of the existing Principals as shown in Exhibit D-1 and Exhibit D-2, except in each case as provided in the applicable provisions of this Section 8.20.

(b) Notwithstanding the provisions of Section 8.20(a)(v) or (vi), as the case may be, at any time during the Term of Lease, the Lessee may, with the prior written consent of the Agency (and after the Lease Termination Date, without the prior written consent of the Agency), which consent shall (y) not be unreasonably withheld, conditioned or delayed and (z) take into consideration the Agency’s policies as in effect from time to time, (v) Merge or participate in a Transferee Transaction, (w) have a Change in Control of the Lessee as provided in Section 8.20(b)(iii), (x) have a Facility Transfer as provided in Section 8.20(b)(iv), (y) have a Qualified Mortgage as provided in Section 8.20(b)(v), or (z) have an SBMT Asset Project Document Pledge as provided in Section 8.20(b)(vi), if, in each case, in addition to the prior written consent of the Agency during the Term of Lease, the following conditions are satisfied on or prior to the Merger or Transferee Transaction, Change in Control, Facility Transfer, Qualified Mortgage, or SBMT Asset Project Document Pledge, as applicable:

(i) in the case of a Merger, Transferor Transaction or Transferee Transaction when the Lessee is the surviving, resulting or transferee Entity,

(1) the Lessee shall deliver to the Agency, in form and substance acceptable to the Agency, an opinion of an Independent Accountant to the effect that, after such Merger or Transferee Transaction, the Guarantor under the Guaranty Agreement (SBMT Asset Facility) as then in effect, either has the Minimum Net Worth or the Minimum Investment Grade Rating,

(2) the Lessee shall deliver to the Agency a certificate of an Authorized Representative of the Lessee certifying that (x) no default exists on the part of the Lessee under any of the SBMT Asset Project Documents, (y) each of the SBMT Asset Project Documents continues in full force and effect and (z) no Change in Control shall have occurred such that Equinor USH (or any Successor Guarantor) is no longer in sole Control of the Lessee, except in accordance with Section 8.20(b)(iii), and

(3) the Lessee shall deliver to the Agency a Required Disclosure Statement with respect to itself as surviving Entity in the form of “Exhibit F— Form of Required Disclosure Statement”, or, if deviating from such form, then such Required Disclosure Statement shall be in form and substance satisfactory to the Agency acting in its sole discretion, 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 deemed to be in default under this Agreement; or

(ii) in the case of a Merger or Transferor Transaction 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 SBMT Asset Project Document, and shall deliver to the Agency a certificate of an Authorized Representative of the Lessee certifying that such is the case,

(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 SBMT Asset Project Documents to which the Predecessor Lessee shall have been a party, with such assignment and assumption agreement to be reasonably acceptable to the Agency,

(4) the Successor Lessee and each Principal of the Successor Lessee shall have delivered to the Agency a Required Disclosure Statement with respect to itself and the Guarantor (or the Successor Guarantor, if applicable) in the form of “Exhibit F — Form of Required Disclosure Statement”, or, if deviating from such form, then such Required Disclosure Statement shall be in form and substance satisfactory to the Agency acting in its sole discretion, provided that if any such modification to the form of such Required Disclosure Statement is not acceptable to the Agency acting in its sole discretion, then the Successor Lessee shall be deemed to be in default under this Agreement;

(5) 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 SBMT Asset Project Documents to which the Successor Lessee shall be a party will constitute the legal, valid and binding obligations of the Successor Lessee, that such SBMT Asset Project Documents are enforceable in accordance with their terms, and as to such other matters as the Agency may reasonably require,

(6) the Successor Lessee shall have delivered to the Agency insurance certificates reasonably acceptable to the Agency evidencing compliance by the Successor Lessee with the insurance requirements under Section 8.1,

(7) the Successor Lessee shall have delivered to the Agency in form and substance acceptable to the Agency, (y) a written confirmation by the Guarantor to the effect that its Guaranteed Obligations under the Guaranty Agreement (SBMT Asset Facility) with respect to the Predecessor Lessee shall continue in full force and effect with respect to the Successor Lessee as if the Successor Lessee had been the Lessee to this Agreement as of the

Commencement Date, which written confirmation shall be accompanied by an Opinion of Counsel to the effect that such confirmation constitutes the legal, valid and binding obligation of the Guarantor, and that such confirmation is enforceable against the Guarantor in accordance with its terms, or (z) a Replacement Guaranty Agreement (SBMT Asset Facility) by a Financially Qualified Replacement Guarantor guaranteeing the Guaranteed Obligations of the Successor Lessee under this Agreement together with such other documents set forth in Section 3.8 of the Guaranty Agreement (SBMT Asset Facility) shall have been delivered to the Agency; and, upon the Agency accepting such Replacement Guaranty Agreement (SBMT Asset Facility), the Agency shall execute a release and discharge of the Predecessor Guarantor under the Predecessor Guaranty Agreement (SBMT Asset Facility); and

(8) the Successor Lessee shall have delivered to the Agency, in form and substance acceptable to the Agency, an opinion of an Independent Accountant to the effect that the Successor Guarantor either has the Minimum Net Worth or the Minimum Investment Grade Rating;

(iii) in the case of a Change in Control of the Lessee to a Person other than Equinor USH, such that Equinor USH (or any successor Entity who shall then be in Control of the Lessee) is no longer in sole Control of the Lessee:

(1) the Lessee shall deliver a certificate of an Authorized Representative of the Lessee to the Agency certifying as to (y) the name, type of Entity, state of organization and other details as the Agency may reasonably request with respect to the Entity who shall thereafter be in Control of the Lessee (and whether such Control shall be in sole Control of the Lessee or shared Control with other Entities similarly identified in such certificate), and (z) the Minimum Net Worth or Minimum Investment Grade Rating of any Successor Guarantor (each such Entity as shall thereafter be in Control of the Lessee being referred to as the “**Successor Control Entity**”),

(2) the Lessee and each Principal of each Successor Control Entity shall deliver to the Agency a Required Disclosure Statement with respect to each Successor Control Entity in the form of “Exhibit F — Form of Required Disclosure Statement”, or, if deviating from such form, then such Required Disclosure Statement shall be in form and substance satisfactory to the Agency acting in its sole discretion, 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 deemed to be in default under this Agreement, and

(3) the Lessee shall deliver to the Agency, in form and substance acceptable to the Agency, (y) a written confirmation by the Guarantor under the then existing Guaranty Agreement (SBMT Asset Facility) to the effect that the Guaranteed Obligations under the Guaranty Agreement (SBMT Asset Facility) with respect to the Lessee shall continue in full force and effect, which

written confirmation shall be accompanied by an Opinion of Counsel to the effect that such confirmation constitutes the legal, valid and binding obligation of the Guarantor, and that such confirmation is enforceable against the Guarantor in accordance with its terms, or (z) a Replacement Guaranty Agreement (SBMT Asset Facility) by a Financially Qualified Replacement Guarantor guaranteeing the Guaranteed Obligations of the Lessee under this Agreement together with such other documents set forth in Section 3.8 of the Guaranty Agreement (SBMT Asset Facility); and, upon the Agency accepting such Replacement Guaranty Agreement (SBMT Asset Facility), the Agency shall execute a release and discharge of the Predecessor Guarantor under the Predecessor Guaranty Agreement (SBMT Asset Facility);

provided, further, that for so long as the provisions of this Section 8.20(b) are complied with, and the prior written consent of the Agency shall have been obtained during the Term of Lease, nothing elsewhere contained in this Agreement shall (y) prevent, restrict or limit the right of any Principal or member of the Lessee to sell, convey, transfer, encumber or otherwise dispose of its membership interest(s) in the Lessee (or a portion thereof) to one or more Persons, or divide its membership interest(s) into different classes, and sell, convey, transfer, encumber or otherwise dispose of such divided interest(s) to one or more Persons, or (z) prevent, restrict or limit in any way the right of any Person that owns an interest, directly or indirectly, in any Principal or member of the Lessee to sell, convey, transfer, encumber otherwise dispose of such interest in such Principal or member of the Lessee (or a portion thereof) (whether for equity investment purposes or otherwise);

(iv) in the case of a Facility Transfer, the Person to whom the transfer is being effected by the Lessee (the “**Facility Transfer Transferee**”) must qualify as a Permitted Transferee;

(v) in the case of a Qualified Mortgage, the Person to whom all right, title and interest in the Facility, or to whom all right, title and interest in the membership interest(s) in the Lessee, is transferred by the Mortgagee following proceedings undertaken with respect to a default under such Qualified Mortgage (the “**Qualified Mortgage Facility Transferee**”) must qualify as a Permitted Transferee; and

(vi) in the case of an SBMT Asset Project Document Pledge, the Person to whom all right, title and interest under the SBMT Asset Project Documents is transferred following proceedings undertaken with respect to a default under such SBMT Asset Project Document Pledge (the “**SBMT Asset Project Document Pledge Transferee**”) must qualify as a Permitted Transferee.

(c) For purposes of this Section 8.20, a “**Permitted Transferee**” shall mean, if the SBMT Asset Project Documents are still to remain in full force and effect after the transaction resulting in a Permitted Transferee (including, if not previously terminated or surrendered and cancelled, the Sales Tax Agent Authorization Letter (SBMT Asset Facility)), a Person who:

(i) is an Entity duly organized and existing under the laws of a state within the United States,

(ii) is solvent and subject to service of process in the State,

(iii) is qualified to do business in the State,

(iv) has assumed in writing (and shall have executed and delivered to the Agency an instrument in form for recording) and has agreed to keep and perform all of the terms of this Agreement and each other SBMT Asset Project Document on the part of the Lessee to be kept and performed, with such assignment and assumption agreement to be in form and substance reasonably acceptable to the Agency,

(v) shall agree to utilize the Facility as the Approved SBMT Asset Facility and a qualified “project” within the meaning of the Act,

(vi) shall deliver to the Agency the Required Disclosure Statement with respect to itself, its Principals and each Entity who Controls it, and any Successor Guarantor, in the form of “Exhibit F — Form of Required Disclosure Statement”, or, if deviating from such form, then such Required Disclosure Statement shall be required to be in form and substance satisfactory to the Agency acting in its sole discretion, 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 deemed to be in default under this Agreement and the Permitted Transferee shall not succeed to the Lessee’s rights in and to the SBMT Asset Project Documents,

(vii) shall have delivered to the Agency, in form and substance acceptable to the Agency, an opinion of an Independent Accountant to the effect that the Successor Guarantor under a Replacement Guaranty Agreement (SBMT Asset Facility) has the Minimum Net Worth or Minimum Investment Grade Rating,

(viii) shall have caused to be delivered to the Agency a Replacement Guaranty Agreement (SBMT Asset Facility) by a Financially Qualified Replacement Guarantor guaranteeing the Guaranteed Obligations of such Permitted Transferee as Lessee under this Agreement together with such other documents set forth in Section 3.8 of the Guaranty Agreement (SBMT Asset Facility); and, upon the Agency accepting such Replacement Guaranty Agreement (SBMT Asset Facility), the Agency shall execute a release and discharge of the Predecessor Guarantor under the Predecessor Guaranty Agreement (SBMT Asset Facility);

(ix) shall have delivered to the Agency an Opinion of Counsel with respect to such Person and such Successor Guarantor, in form and substance acceptable to the Agency in its sole discretion, including that each of the SBMT Asset Project Documents assumed by such Person or such Successor Guarantor, as applicable, will constitute the legal, valid and binding obligations of the Permitted Transferee and such Successor Guarantor, and that the SBMT Asset Project Documents are enforceable against the Permitted Transferee and such Successor Guarantor in accordance with their respective terms, and such other matters as the Agency may reasonably require,

(x) shall have caused to be delivered to the Agency a certificate of an Authorized Representative of the Lessee to the effect that the Lessee shall not have been in default under any of the SBMT Asset Project Documents (excluding any default which shall have resulted in the Permitted Transferee claiming rights with respect to the Facility) immediately prior to the transaction resulting in the Permitted Transferee, and

(xi) shall have delivered to the Agency insurance certificates reasonably acceptable to the Agency evidencing compliance by the Permitted Transferee with the insurance requirements under Section 8.1.

The Lessee shall not permit 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, without first delivering to the Agency written notice of such proposed transfer thereof (including all details that would result in a change to Exhibit D-1 — “Principals of the Lessee” or Exhibit D-2 — “Owners of the Lessee”) together with a Required Disclosure Statement in the form of Exhibit F — Form of Required Disclosure Statement”, or, if deviating from such form, then such Required Disclosure Statement shall be in form and substance satisfactory to the Agency acting in its sole discretion, 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 deemed to be in default under this Agreement.

(d) Notwithstanding that the prior written consent of the Agency as provided in Section 8.20(b) is only required during the Term of Lease, nothing contained in this Section shall be deemed a waiver, amendment or modification to any other contractual restrictions to which the Lessee shall be subject with respect to the Facility, including, without limitation, the NYCEDC Lease and the SBMT Asset Lease.

**Section 8.21. Certain Covenants with Respect to the SBMT Asset Lease.**

The Lessee covenants and agrees that it shall promptly deliver to the Agency any terminations, amendments or modifications, assignments or transfers, or notices of default, effected, given or received, under the SBMT Asset Lease.

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

**Section 8.23. HireNYC Program.** The Lessee shall use its good faith efforts to achieve the hiring and workforce development goals of the HireNYC Program (or a successor community hiring and workforce development program established by the Agency pursuant to Section 917 of the General Municipal Law) and shall perform the requirements of the HireNYC Program, all as set forth in Exhibit K.

**Section 8.24. Living Wage and Prevailing Wage Building Services.**

(a) The Lessee acknowledges and agrees that it and its Site Affiliates have received “financial assistance” as defined in the LW Law and agrees that it is a “covered developer” under and as defined in the Prevailing Wage Building Services Law. The Lessee agrees to comply with all applicable requirements of the LW Law and the Prevailing Wage Building Services Law. The Lessee acknowledges that the terms and conditions set forth in this Section 8.24 are intended to implement the Mayor’s Executive Order No. 7 dated September 30, 2014.

(b) The following capitalized terms shall have the respective meanings specified below for purposes hereof.

**Asserted Cure** has the meaning specified in Section 8.24(k)(i).

**Asserted LW Violation** has the meaning specified in Section 8.24(k)(i).

**Comptroller** means the Comptroller of The City of New York or his or her designee.

**Concessionaire** means a Person that has been granted the right by the Lessee, an Affiliate of the Lessee or any tenant, subtenant, leaseholder or subleaseholder of the Lessee or of an Affiliate of the Lessee to operate at the Facility Realty (SBMT Asset Facility) for the primary purpose of selling goods or services to natural persons at the Facility Realty (SBMT Asset Facility).

**Covered Counterparty** means a Covered Employer whose Specified Contract is directly with the Lessee or one of its Affiliates to lease, occupy, operate or perform work at the Facility Realty (SBMT Asset Facility).

**Covered Employer** means any of the following Persons: (a) the Lessee, (b) a Site Affiliate, (c) a tenant, subtenant, leaseholder or subleaseholder of the Lessee or of an Affiliate of the Lessee that leases any portion of the Facility Realty (SBMT Asset Facility) (or an Affiliate of any such tenant, subtenant, leaseholder or subleaseholder if such Affiliate has one or more direct Site Employees), (d) a Concessionaire that operates on any portion of the Facility Realty (SBMT Asset Facility), and (e) a Person that contracts or subcontracts with any Covered Employer described in clauses (a), (b), (c) or (d) above to perform work for a period of more than ninety days on any portion of the Facility Realty (SBMT Asset Facility), including temporary services or staffing agencies, food service contractors, and other on-site service contractors; provided, however, that the term “Covered Employer” shall not include (i) a Person of the type described in Section 6-134(d)(2), (3), (4) or (5) of the New York City Administrative Code, (ii) a Person that has annual consolidated gross revenues that are less than the Small Business Cap unless the revenues of the Person are included in the consolidated gross revenues of a Person having annual consolidated gross revenues that are more than the Small Business Cap, in each case calculated based on the fiscal year preceding the fiscal year in which the determination is being made, and in each case calculated in accordance with generally accepted

accounting principles, (iii) any otherwise covered Person operating on any portion of the Facility Realty (SBMT Asset Facility) if residential units comprise more than 75% of the total Facility Realty (SBMT Asset Facility) area and all of the residential units are subject to rent regulation, (iv) any otherwise covered Person that the Agency has determined (in its sole and absolute discretion) in writing to be exempt on the basis that it works significantly with a Qualified Workforce Program, (v) a Person whose Site Employees all are paid wages determined pursuant to a collective bargaining or labor agreement, (vi) if the Lessee is a “covered developer” under and as defined in the Prevailing Wage Building Services Law, a Person that is a “building services contractor” (as defined in the LW Law) so long as such Person is paying its “building service employees” (as defined in the Prevailing Wage Building Services Law) no less than the applicable “prevailing wage” (as defined in the Prevailing Wage Building Services Law), or (vii) a Person exempted by a Deputy Mayor of The City of New York in accordance with the Mayor’s Executive Order No. 7 dated September 30, 2014.

**DCWP** means the Department of Consumer and Worker Protections (formerly known as the Department of Consumer Affairs) of The City of New York, acting as the designee of the Mayor of The City of New York, or such other agency or designee that the Mayor of The City of New York may designate from time to time.

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

**LW Agreement** means, with respect to any Covered Counterparty, an enforceable agreement in the form attached hereto as Exhibit L (except only with such changes as are necessary to make such Covered Counterparty the obligor thereunder).

**LW Agreement Delivery Date** means, with respect to any Covered Counterparty, the latest of (a) the effective date of such Covered Counterparty’s Specified Contract, (b) the date that such Covered Counterparty becomes a Covered Employer at the Facility Realty (SBMT Asset Facility) and (c) the Commencement Date.

**LW Event of Default** means the satisfaction of the following two conditions: (a) two or more LW Violation Final Determinations shall have been imposed against the Lessee or its Site Affiliates in respect of the direct Site Employees of the Lessee or its Site Affiliates in any consecutive six year period

during the LW Term and (b) the aggregate amount of Owed Monies and Owed Interest paid or payable by the Lessee in respect of such LW Violation Final Determinations is in excess of the LW Violation Threshold in effect as of the date of the second LW Violation Final Determination. For the avoidance of doubt, the Owed Monies and Owed Interest paid or payable by the Lessee in respect of the Site Employees of a Covered Counterparty that is not an Affiliate of the Lessee (pursuant to Section 8.24(k)(v)) shall not count for purposes of determining whether the conditions in clauses (a) and (b) of the preceding sentence have been satisfied.

**LW Law** means the Fair Wages for New Yorkers Act, constituting Section 6-134 of the New York City Administrative Code, as amended, supplemented or otherwise modified from time to time, and all rules and regulations promulgated thereunder.

**LW Term** means the period commencing on the Commencement Date and ending on the later to occur of (a) the date on which the Lessee is no longer receiving financial assistance under this Agreement or (b) the date that is ten years after the Facility commences operations.

**LW Violation Final Determination** has the meaning specified in Section 8.24(k)(i)(1), Section 8.24(k)(i)(2)(A) or Section 8.24(k)(i)(2)(B), as applicable.

**LW Violation Initial Determination** has the meaning specified in Section 8.24(k)(i)(2).

**LW Violation Notice** has the meaning specified in Section 8.24(k)(i).

**LW Violation Threshold** means \$100,000 multiplied by 1.03<sup>n</sup>, where “n” is the number of full years that have elapsed since January 1, 2015.

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

**Owed Monies** means, as the context shall require, either (a) the total deficiency of LW required to be paid by the Lessee or a Site Affiliate in accordance with this Section 8.24 to the Lessee’s or its Site Affiliate’s (as applicable) direct Site Employee(s) after taking into account the wages actually paid (which shall be credited towards the “living wage rate” component of the LW), and the monetary value of health benefits actually provided (which shall be credited towards the “health benefits supplement rate” component of the LW), to such direct Site Employee(s), all as calculated on a per pay period basis; or (b) if the Lessee or its Site Affiliate failed to obtain a LW Agreement from a Covered Counterparty as required under Section 8.24(f) below, the total deficiency of LW

that would have been required to be paid under such Covered Counterparty's LW Agreement to its direct Site Employee(s) after taking into account the wages actually paid (which shall be credited towards the "living wage rate" component of the LW), and the monetary value of health benefits actually provided (which shall be credited towards the "health benefits supplement rate" component of the LW), to such direct Site Employee(s), all as calculated on a per pay period basis, during the period commencing on the LW Agreement Delivery Date applicable to such Covered Counterparty and ending immediately prior to the execution and delivery by such Covered Counterparty of its LW Agreement (if applicable).

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

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

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

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

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

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

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

(d) During the LW Term, if and for so long as the Lessee is a Covered Employer (or if and so long as a Site Affiliate is a Covered Employer, as applicable), the Lessee shall (or shall cause the applicable Site Affiliate to, as applicable), on or prior to the day on which each direct Site Employee of the Lessee or of a Site Affiliate begins work at the Facility Realty (SBMT Asset Facility), (i) post a written notice detailing the wages and benefits required to be paid to Site Employees under this Section 8.24 in a conspicuous place at the Facility Realty (SBMT Asset Facility) that is readily observable by such direct Site Employee and (ii) provide such direct Site Employee with a written notice detailing the wages and benefits required to be paid to Site Employees under this Section 8.24. Such written notice shall also provide a statement advising Site Employees that if they have been paid less than the LW they may notify the Comptroller and request an investigation. Such written notice shall be in English and Spanish.

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

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

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

(h) The Lessee hereby acknowledges and agrees that the City, the DCWP and the Comptroller are each intended to be third party beneficiaries of the terms and provisions of this Section 8.24. The Lessee hereby acknowledges and agrees that the DCWP, the Comptroller and the Agency shall each have the authority and power to enforce any and all provisions and remedies under this Section 8.24 in accordance with paragraph (k) below. The Lessee hereby

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

(i) No later than 30 days after the Lessee's receipt of a written request from the Agency, the DCWP and/or the Comptroller, the Lessee shall provide to the Agency, the DCWP and the Comptroller (i) a certification stating that all of the direct Site Employees of the Lessee and its Site Affiliates are paid no less than an LW (if such obligation is applicable hereunder) and stating that the Lessee and its Site Affiliates are in compliance with this Section 8.24 in all material respects, (ii) a written list of all Covered Counterparties, together with the LW Agreements of such Covered Counterparties, (iii) certified payroll records in respect of the direct Site Employees of the Lessee or of any Site Affiliate (if applicable), and/or (iv) any other documents or information reasonably related to the determination of whether the Lessee or any Site Affiliate is in compliance with their obligations under this Section 8.24.

(j) Annually, by August 1 of each year during the LW Term, the Lessee shall (i) submit to the Agency a written report in respect of employment, jobs and wages at the Facility Realty (SBMT Asset Facility) as of June 30 of such year, in a form provided by the Agency to all projects generally, (ii) submit to the Agency and the Comptroller the annual certification required under Section 6-134(f) of the LW Law (if applicable), and (iii) submit to the Agency and the Comptroller the annual certification required under Section 6-130(c) of the Prevailing Wage Building Services Law.

(k) Violations and Remedies.

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

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

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

(A) Accept the LW Violation Initial Determination and shall perform the Asserted Cure specified in the LW Violation Initial Determination no later than 30 days after its receipt of the LW Violation Initial Determination (after such 30 day period has lapsed, but subject to clause (B) below, the LW Violation Initial Determination shall be deemed to be a **“LW Violation Final Determination”**), or

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

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

(iii) For the second and any subsequent LW Violation Final Determinations imposed on the Lessee or any Site Affiliate in respect of any direct Site Employees of the Lessee or of a Site Affiliate, at the direction of the Agency or the

DCWP (but not both), (A) the Lessee shall pay the Owed Monies and Owed Interest in respect of such direct Site Employees of the Lessee or of a Site Affiliate to such direct Site Employees, and the Lessee shall pay fifty percent (50%) of the total amount of such Owed Monies and Owed Interest to the DCWP as an administrative fee; and/or (B) in the case of a violation that does not result in monetary damages owed by the Lessee, the Lessee shall cure, or cause the cure of, such non-monetary violation.

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

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

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

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

be terminated or rescinded by the Agency, the DCWP or the Comptroller by virtue of violations by the Lessee or another Covered Counterparty.

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

**Section 8.25. [Reserved].**

**Section 8.26. [Reserved].**

**Section 8.27. M/WBE Program.**

(a) The Lessee has submitted to the Agency an M/WBE Participation Plan which states the Lessee's proposed plans for participation by minority-owned business enterprises ("MBEs") and women-owned business enterprises ("WBEs," together with MBEs collectively referred to as "M/WBEs") in the SBMT Asset Project Work until the SBMT Asset Project Completion Deadline, and includes the MWBE Participation Goals, defined as the target percentage of the SBMT Asset Project Improvements Investment that will be paid to M/WBEs. The M/WBE Participation Plan is attached hereto as Exhibit O-1.

(b) The Lessee agrees that from the Commencement Date until the SBMT Asset Project Completion Deadline, the Lessee and its successors and assigns shall use its good faith efforts to comply with the terms and conditions and reach the goals outlined in the Lessee's M/WBE Participation Plan set forth in Exhibit O-1. The Lessee agrees to be bound by each of the provisions in such M/WBE Participation Plan, including without limitation, the provision of all Compliance Reports (as defined therein) and the payment of any liquidated damages set forth therein.

**Section 8.28. Prevailing Wages for Construction.** Pursuant to Labor Law Section 224-a(8)(d), the Agency hereby notifies the Lessee that it is the intended recipient of "public funds" as such term is defined in Labor Law Section 224-a(2), in connection with the SBMT Asset Project. The nature and dollar value of such public funds is set forth in Exhibit P to this Agreement. The Agency has determined that such public funds are not excluded under Labor Law Section 224-a(3). The Lessee is hereby further notified that the prevailing wage requirements set forth in Labor Law Section 224-a shall apply to each "covered project" as defined therein. In accordance with Labor Law Section 224-a(8)(a), if the SBMT Asset Project is a "covered project" the Lessee is required to certify under penalty of perjury within five days of commencement of construction work whether the SBMT Asset Project is subject to the provisions of Labor Law Section 224-a through the use of a standard form developed by the Commissioner of the Department of Labor.

## 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 any Rental Payment within fifteen (15) days of the due date thereof, and the continuation thereof for a period of twenty (20) days after written notice thereof is given by the Agency to the Lessee;

(b) The occurrence of a Recapture Event;

(c) Failure of the Lessee to observe and perform any covenant or agreement on its part to be performed under Section 8.9 or 8.20;

(d) 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 fifteen (15) days after receipt by the Lessee of written notice specifying the nature of such default from the Agency;

(e) Failure of the Lessee to observe and perform any covenant, condition or agreement on its part to be performed under Sections 5.1, 5.2, 5.3, 5.4, 8.2, 8.3, 8.13, 8.27, 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;

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

(g) 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) or (f)) 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;

(h) The Lessee or the 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 (excluding debt secured by a Qualified Mortgage) 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;

(i) A proceeding or case shall be commenced, without the application or consent of the Lessee or the 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 the 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 the Guarantor shall be entered in an involuntary case under the Federal Bankruptcy Code; the terms “dissolution” or “liquidation” of the Lessee or the Guarantor as used above shall not be construed to prohibit any action otherwise permitted by Section 8.20 or Section 3.7 of the Guaranty Agreement (SBMT Asset Facility);

(j) Any representation or warranty made by the Lessee or the Guarantor (i) in the Application Information and related materials submitted to the Agency for approval of the SBMT Asset Project or the transactions contemplated by this Agreement, (ii) herein, in the Uniform Project Agreement (SBMT Asset Facility), in the Company Lease (SBMT Asset Facility) or in the Guaranty Agreement (SBMT Asset Facility), (iii) by or on behalf of the Guarantor, the Lessee or any other Person in any Required Disclosure Statement delivered pursuant to this Agreement or the Guaranty Agreement (SBMT Asset Facility), 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;

(k) Any loss of the leasehold estate of the Lessee in the Facility Realty (SBMT Asset Facility);

(l) If any Required Disclosure Statement delivered to the Agency under this Agreement or the Guaranty Agreement (SBMT Asset Facility) deviates from the form set forth in Exhibit F- “Form of Required Disclosure Statement” and is not satisfactory to the Agency acting in its sole discretion;

(m) Failure of the SBMT Asset Project to be completed by the Completion Deadline (SBMT Asset Facility) and achieve the SBMT Asset Project Completion Date (as evidenced in Exhibit G-1 to this Agreement) after any applicable extension due to a Construction Delay, or, if so completed, the cessation of operations of the Facility for a continuous period of at least eighteen (18) months, subject, in each case, to Sections 3.3 and 11.1;

(n) An “Event of Default” under the Guaranty Agreement (SBMT Asset Facility), or any default under the Company Lease (SBMT Asset Facility) or the Uniform Project Agreement (SBMT Asset Facility) shall occur and be continuing after any applicable cure periods; or

- (o) The occurrence of an LW Event of Default.

## **Section 9.2. Remedies on Default.**

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

(i) Unless the Facility Leasehold Estate shall have previously been terminated, the Agency may terminate the Facility Leasehold Estate (with the effect that the Term of Lease shall be deemed to have expired on such date of termination) in which case 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 (SBMT Asset Facility) of record as required by law. 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 terminate this Agreement (with the effect that the Term of Agreement shall be deemed to have expired on such date of termination) in which case this Agreement shall cease and terminate;

(iii) The Agency may bring an action for damages, injunction or specific performance, but, any such action for specific performance, or injunction with respect to the performance or observance, of a covenant under this Agreement, shall be limited to only the Specific Performance Remedy Covenants and to no other covenant or agreement under this Agreement;

(iv) The Agency may take whatever action at law or in equity (subject to the limitation set forth in paragraph (iii) above) 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

(v) The Agency may suspend or terminate its authorization hereunder and pursuant to any Sales Tax Agent Authorization Letter (SBMT Asset Facility) with respect to the Sales Tax Exemption.

(b) No action taken pursuant to this Section 9.2 (including termination of this Agreement pursuant to this Section 9.2 or by operation of law or otherwise) shall, except as expressly provided herein, relieve the Lessee from the Lessee's obligations hereunder, including the obligations of the Lessee under the Surviving Agreement Provisions, all of which shall survive any such action until the expiration of the applicable statute of limitations, if any.

(c) Prior to the exercise of any remedy by the Agency under this Agreement following the occurrence of an Event of Default, the Lessee and any Mortgagee shall have an absolute right to cure such Event of Default during the time period, if any, allowed for curing the same. If, prior to the occurrence of an Event of Default, the Lessee shall have delivered a written request to the Agency that notices by the Agency to the Lessee of any default be also provided to a Mortgagee (which notice shall be accompanied by the notice address of such Mortgagee), such Mortgagee shall be afforded on behalf of the Lessee an additional sixty (60) days (beyond the period, if any, allowed for the Lessee to cure) within which to cure an Event of Default.

**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 (subject to the limitation set forth in Section 9.2(a)(ii)). 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 (subject to the limitation set forth in Section 9.2(a)(iii)) 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 SBMT Asset 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 SBMT Asset 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 SBMT Asset Project Document, the Lessee agrees that it will on demand therefor pay to the Agency the reasonable fees and disbursements of such attorneys or other consultants and such other expenses so incurred.

**Section 9.7. Certain Continuing Representations.** If at any time during the Term, any representation or warranty made by the Lessee pursuant to Section 2.2(w) would, if made on any date during the Term of 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 (11th) 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 (SBMT Asset Facility).** The Lessee shall have the option, not sooner than ninety (90) days following the later of (y) the SBMT Asset Project Completion Date, and (z) the filing of all forms, registries and reports required under Section 5.2 as to all Sales Tax Savings realized with respect to the SBMT Asset Project through and including the SBMT Asset Project Completion Date, to terminate the Company Lease (SBMT Asset Facility), the Facility Leasehold Estate and the Term of Lease. 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 Article VIII of the Company Lease (SBMT Asset Facility) and 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 the scheduled termination date of the Facility Leasehold Estate, the Lessee shall take the actions required by Article VIII of the Company Lease (SBMT Asset Facility), and such termination shall become effective on such scheduled termination date, subject, however, to the provisions of Section 4.2.

**Section 10.2. Termination of Company Lease (SBMT Asset Facility) 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 Facility Leasehold Estate (if not previously terminated) and this Agreement, the Lessee shall take the actions described in Section 10.3(a) and terminate the Facility Leasehold Estate, the Company Lease (SBMT Asset Facility) and this Agreement.

(b) In the event the Lessee does not terminate the Facility Leasehold Estate, the Company Lease (SBMT Asset Facility) 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 Facility Leasehold Estate, the Company Lease (SBMT Asset Facility) and this Agreement in accordance with the provisions thereof and hereof.

(c) On or after the end of the Recapture Period, the Lessee shall have the option to terminate this Agreement by providing prior written notice to the Agency at least twenty (20) Business Days prior to the proposed termination date, performing all unperformed obligations and paying all amounts due under this Agreement, including those amounts referenced in Section 10.3.

**Section 10.3. Actions Upon Termination.**

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

(i) pay to the New York City Department of Finance any amounts due and payable pursuant to Section 5.1,

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

(iii) perform all accrued obligations hereunder.

(b) On the date of the termination of this Agreement pursuant to Section 10.2, the Agency will, upon the Lessee's fulfillment of its obligations pursuant to Section 10.3(a), deliver or cause to be delivered to the Lessee:

(i) if the Facility Leasehold Estate shall not have been terminated, termination agreements and all other necessary documents confirming the release of the Agency's right, title and interest in and to the Facility Realty (SBMT Asset Facility) and the Facility Personalty (SBMT Asset Facility), and terminating the Facility Leasehold Estate, the Company Lease (SBMT Asset Facility) and this Agreement (subject to the provisions of Section 10.4), and

(ii) 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 the Guarantor 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 (SBMT Asset Facility) and the Facility Leasehold Estate, 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 the Company Lease (SBMT Asset Facility) as a document of record with respect to the Facility Realty (SBMT Asset Facility), subject to Section 10.4.

**Section 10.4. Survival of Lessee Obligations.** Upon the termination of this Agreement, and the release of the Agency's interest in the Facility pursuant to Sections 10.2 or 10.3, all Surviving Agreement Provisions shall survive such termination until the expiration of the applicable statute of limitations, if any.

## ARTICLE XI

### MISCELLANEOUS

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

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

**Section 11.2. Priority.** The Company Lease (SBMT Asset Facility) and this Agreement shall be subject and subordinate in Lien (but not in contract rights of the Agency) to the Master Lease, the NYCEDC Lease and the SBMT Asset Lease and to any Qualified Mortgage and to the mortgage Liens and security interests so created thereby; provided, however, that nothing in any of the Master Lease, the NYCEDC Lease or the SBMT Asset Lease or in any Qualified Mortgage shall impair the Agency’s ability to enforce its rights against the Lessee or the 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 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 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 agent 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 agent shall not have any power or authority to enter into any appearance or to file any pleadings in connection with any suit, action or other legal proceedings against the Lessee or to conduct the defense of any such suit, action or any other legal proceeding except as expressly authorized by the Lessee.

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

(1) if to the Agency, to

New York City Industrial Development Agency  
One Liberty Plaza  
New York, New York 10006  
Attention: General Counsel

with a copy to

New York City Industrial Development Agency  
One Liberty Plaza  
New York, New York 10006  
Attention: Executive Director

- (2) if to the Lessee, to

SBMT Asset LLC  
600 Washington Blvd., Suite 800  
Stamford, Connecticut 06901  
Attention: Aude Schwarzkopf – Manager – SBMT Asset

with a copy to

Barclay Damon LLP  
Barclay Damon Tower  
125 East Jefferson Street  
Syracuse, New York 13202  
Attention: Matthew S. Moses, Esq.

- (3) if to the DCWP, to

Department of Consumer and Worker Protection of The City of New York  
42 Broadway  
New York, New York 10004  
Attention: Living Wage Division

- (4) if to the Comptroller, to

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

- (5) if to the City, to

New York City Law Department  
100 Church Street  
New York, New York, 10007  
Attention: Chief, Economic Development

The Agency shall deliver to any Mortgagee (to the extent that the Lessee shall have delivered to the Agency the written notice address for such Mortgagee) a copy of any notice of default or notice of its intent to terminate this Agreement 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. Further, upon the reasonable request of the Agency by an Authorized Representative of the Lessee prior to the Lessee executing a Qualified Mortgage, and no more frequently than once in any twelve-month period following the execution of a Qualified Mortgage, the Agency shall deliver a certificate of an Authorized Representative of the Agency to the related Mortgagee as to whether this Agreement remains in full force and effect, and whether the Agency has delivered to the Lessee a written notice of a default which has not been cured by written consent or waiver of the Agency.

The Agency, the Lessee, the DCWP and the Comptroller may, by like notice, designate any further or different recipients or 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 SBMT Asset Project Document, the Facility, the SBMT Asset Project, the relationship between the Agency and the Lessee, the Lessee's leasehold, use or occupancy of the Facility and/or any claim for injury or damages may be brought in the courts of record of the State in New York County or the United States District Court for the Southern District of New York; (ii) consents to the jurisdiction of each such court in any such suit, action or proceeding; (iii) waives any objection which it may have to the venue of any such suit, action or proceeding in such courts; and (iv) waives and relinquishes any rights it might otherwise have (x) to move to dismiss on grounds of forum non conveniens, (y) to remove to any federal court other than the United States District Court for the Southern District of New York, and (z) to move for a change of venue to a New York State Court outside New York County.

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

**Section 11.7. Prior Agreements Superseded.** This Agreement shall completely and fully supersede all other prior understandings or agreements, both written and oral, between the Agency and the Lessee relating to the Facility, other than any other SBMT Asset 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, the Indemnified Parties, DCWP and the Comptroller.

**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 SBMT Asset Project, the relationship between the Agency and the Lessee, the Lessee's leasehold, 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 (other than the Lessee) 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 (other than the Lessee) 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.

All covenants, stipulations, promises, agreements and obligations of the Lessee contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Lessee, and not of any member, officer, manager, director, partners, employee or agent of the Lessee in their individual capacity, and no recourse shall be had for the payment of any amounts hereunder against any member, director, officer, manager, partner, employee or agent of the Lessee.

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

[Signature Page Follows]

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

**NEW YORK CITY INDUSTRIAL  
DEVELOPMENT AGENCY**

By: 

\_\_\_\_\_  
Noah Schumer  
Deputy Executive Director

**SBMT ASSET LLC**

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

Theodore Muhlfelder  
President

[Signature Page to Agency Lease and Agreement (SBMT Asset Facility)]

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

**NEW YORK CITY INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Noah Schumer  
Deputy Executive Director

**SBMT ASSET LLC**

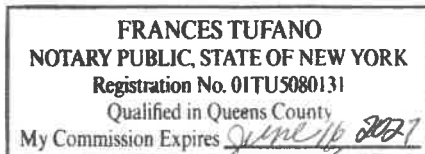
By: \_\_\_\_\_  
Theodore Muhlfelder  
President

**[Signature Page to Agency Lease and Agreement (SBMT Asset Facility)]**

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

On the 3 day of March, in the year two thousand twenty-five, before me, the undersigned, personally appeared Noah Schumer, 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



STATE OF CONNECTICUT       )  
  : ss.: STAMFORD  
COUNTY OF FAIRFIELD       )

On this 3<sup>rd</sup> day of MARCH, 2025, before me personally appeared Theodore Muhlfelder, the President of the limited liability company described in the foregoing instrument as the Lessee, whose name is SBMT Asset LLC, he being thereunto duly authorized Signer of the foregoing instrument, and he acknowledged the same to be severally his free act and deed and the free act and deed of the limited liability company before me.

  
\_\_\_\_\_  
Commissioner of the Superior Court  
Notary Public/My Commission Expires:

**SILVIA M. ANTONETZ**  
NOTARY PUBLIC  
State of Connecticut  
My Commission Expires  
October 31, 2026

## **APPENDICES**

**EXHIBIT A**

**DESCRIPTION OF THE LAND (SBMT ASSET FACILITY)**

Borough of Brooklyn - Block 662 Part of Lot 1 and Lots 130, 136, 137 & 155

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

BEGINNING at a point at the intersection of the northwesterly line of 2<sup>nd</sup> Avenue with the northeasterly line of 39<sup>th</sup> Street:

thence, from said point of beginning the following eighteen (18) courses and distances:

1. along said northeasterly line of 39<sup>th</sup> Street, N51°37'06"W 780.00 feet;
2. thence, along the same, N61°55'23"W 111.80 feet;
3. thence, along the same, N51°37'06"W 540.00 feet;
4. thence, along the northwesterly line of said 39<sup>th</sup> Street, S38°22'54"W 50.00 feet;
5. thence, along the same, N51°37'06"W 5.00 feet;
6. thence, along the same, S38°22'54"W 30.00 feet;
7. thence, along the southwesterly line of said 39<sup>th</sup> Street, S51°37'06"E 128.50 feet to the intersection of said southwesterly line of 39<sup>th</sup> Street with the northerly corner of lands now or formerly of 19-20 Bush Terminal Owner LP;
8. thence, along said lands of 19-20 Bush Terminal Owner LP, S38°22'54"W 36.24 feet;
9. thence, along the same, S83°22'54"W 53.03 feet;
10. thence, along the same, S38°22'54"W 156.61 feet to the intersection of the northwesterly corner of said 19-20 Bush Terminal Owner LP with the northeasterly line of lands now or formerly of the City of New York, said line of the City of New York also being the prolongation of the centerline of 40<sup>th</sup> Street;
11. thence, along said line of the City of New York N51°37'06"W 1184.11 feet to the U.S. Pierhead Line as shown on the Brooklyn Record Map "FS-41" and "FS-42";
12. thence, along said U.S. Pierhead Line, in a northeasterly direction, 30.16 feet;
13. thence, along the same, 1318.60 feet;
14. thence, along the same, 824.79 feet;
15. thence, along the same, 559.61 feet;
16. thence, along the same, 496.76 feet to the intersection of the southwesterly corner of lands now or formerly of Astoria Generating Company, L.P. and said U.S. Pierhead Line;
17. thence, along the southwesterly line of said Astoria Generating Company, L.P. and the southwesterly line of lands now or formerly of DCAS, said line also being the prolongation of the southwesterly line of 28<sup>th</sup> Street, S51°37'06"E 1659.20 feet to the northwesterly line of 2<sup>nd</sup> Avenue;
18. thence, along said northwesterly line of 2<sup>nd</sup> Avenue, S38°22'54"W 2763.88 feet to the Point or Place of Beginning;

containing in area 144.93± acres of land.

2024-11-22\_4310-004-SBMT Desc.doc

**BUT EXCLUDING FROM THE ABOVE THE FOLLOWING PARCEL:**

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

BEGINNING at a point, said point being distant the following two courses and distances from the intersection formed by the northwesterly line of 2nd Avenue with the northeasterly line of 39th Street:

a. N38°22'54"E 1745.95 feet; and

b. N51°37'06"W 129.04 feet,

thence, from said point of beginning the following eight (8) courses and distances:

1. N51°28'09"W 370.96 feet to a point on the City Bulkhead Line as shown on the Brooklyn record maps 41 & 42;

2. thence, along said City Bulkhead Line, N38°22'54"E 613.94 feet;

3. thence, S51°18'39"E 6.27 feet;

4. thence, S51°00'20"E 31.72 feet;

5. thence, S46°08'02"E 27.10 feet;

6. thence, on a non-tangential curve to the right having a radius of 365.79 feet, an arc length of 434.00 feet, a central angle of 67°58'46" and a chord bearing of S13°00'27"E 408.99 feet;

7. thence, S38°22'54"W 269.55 feet;

8. thence, S47°14'13"W 88.23 feet to the point or place of beginning.

Excluding the adjacent lands under water.

Containing in area 4.85± acres of land.

2024-12-24\_4310-004-PROP-Lease Area 4-Desc.doc

**CONTAINING IN AREA 4.85± ACRES OF LAND.**

## **EXHIBIT B**

### **DESCRIPTION OF FACILITY PERSONALTY (SBMT ASSET FACILITY)**

All equipment, fixtures, machinery, building materials and items of personal property and all appurtenances (A) acquired, constructed, renovated, improved, repaired, furnished, installed or equipped, or intended to be acquired, constructed, renovated, improved, repaired, furnished, installed or equipped, in connection with the acquisition, construction, renovation, improvement, repair, furnishing, installing and equipping of the 2025 SBMT Asset Project (the “Project”) of the New York City Industrial Development Agency (the “Agency”), said Project to be acquired, constructed, installed and equipped by SBMT Asset LLC (the “Lessee”), as agent of the Agency, pursuant to a certain agency lease agreement (the “Agency Lease”) by and between the Agency and the Lessee and (B) now or hereafter attached to, contained in or used in connection with the Facility (as defined in the Agency Lease) or placed on any part thereof, including but not limited to the following, but excluding Ineligible Items (as defined in the Agency Lease):

(1) Pipes, screens, fixtures, heating, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, call systems, stoves, ranges, refrigerators and other lunchroom facilities, rugs, movable partitions, cleaning equipment, maintenance equipment, shelving, flagpoles, signs, waste containers, outdoor benches, drapes, blinds and accessories, security system, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors and machinery;

(2) Machinery, equipment, materials, supplies and personal property, such as:



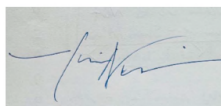
- Building materials, equipment and supplies;
- Concrete, rebar, inserts for concrete, and anchor bolts and anchor rings;
- Grounding cables and appurtenances;
- Junction boxes, switches, fittings, transformers and general electrical materials;
- Control systems, SCADA systems, and related cabling;
- Communications circuits and related equipment (T-1, fiber optic, etc.);
- Gravel, rock and geotextile fabric for roads, lots, foundations and pads;
- Sheet piling and bulkhead materials;
- Cranes and specialized rigging equipment for equipment and material movement;
- Hardware for road entrances (gates);
- Protective materials and facilities (bollards, fencing, etc.);
- Environmental protection materials (silt fence, liners, traps, hay bales, curlex, jute netting, etc.);
- Culverts and other drainage accessories for road and water crossings;
- Back-up generators;
- Operations and maintenance equipment;
- Security equipment, facilities and devices;
- Safety equipment and devices;
- Related spare parts for all of above;
- Hand tools and equipment;
- Nuts, bolts, pipe and pipe fittings, tape, adhesives and other miscellaneous

- hardware;
- Miscellaneous hardware and paint;
- Office trailers, portable toilets; and
- Rental equipment (air compressors, generators, padding machines, bending machines, stump grinders, skidders, all-terrain type vehicles, sheet piling hammers, coating equipment, welders, earth-moving equipment, cranes, etc.).

(3) Together with any and all products of any of the above, all substitutions, replacements, additions or accessions therefor and any and all cash proceeds or non-cash proceeds realized from the sale, transfer or conversion of any of the above.

**EXHIBIT C****AUTHORIZED REPRESENTATIVE**

(i) of the Lessee:

<u>Name</u>	<u>Title</u>	<u>Signature</u>
Theodore Muhlfelder	President	
Wissam Nour	Controller F&C	
Justin Niswander	Sr. Counsel & Secretary	

(ii) of Equinor US Holdings, Inc.:

<u>Name</u>	<u>Title</u>	<u>Signature</u>
Molly Morris	Director	
Nicholas Potter	Director	
Josh Kaplan	Managing Counsel & Secretary	
Elizabeth Perreca	Assistant Secretary	
Matthew Brotmann	Assistant Secretary	
Todd Walls	Manager Accounting	
Kathleen Parchinski	Leader Tax	

**EXHIBIT D-1**

**PRINCIPALS OF THE LESSEE**

**Lessee:**

Name

Title

Renewable Energy Shared Assets LLC

Member-Manager

Theodore Muhlfelder

Officer - President

Wissam Nour

Officer - Controller F&C

Justin Niswander

Officer - Senior Counsel,  
Secretary

**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>
Renewable Energy Shared Assets LLC	100%

<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>

**EXHIBIT E****PROJECT COST BUDGET**

					SBMT Project Improvements Investment
	<b>O&amp;M Base</b>	<u>USD</u>			<u>USD</u>
	Construction Hard Costs	247,573,732			187,306,400
	Construction Soft Costs	<u>86,969,593</u>			<u>62,046,154</u>
		334,543,325			249,352,554
					SBMT Project Improvements Investment
	<b>Staging Port</b>	<u>USD</u>			<u>USD</u>
	Construction Hard Costs	547,550,679			308,254,645
	Construction Soft Costs	<u>217,905,996</u>			<u>118,945,581</u>
		765,456,675			427,200,226
	<u>Total</u>	<u>Equity</u>	<u>Debt</u>	<u>EDC Funds</u>	<u>NYSERDA</u>
	O&M Base	334,543,325	301,854,275	14,441,232	18,247,818
	Staging Port	<u>765,456,675</u>	<u>631,654,725</u>	<u>92,049,768</u>	<u>41,752,182</u>
		1,100,000,000	933,509,000	106,491,000	60,000,000

**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 and Agreement (SBMT Asset Facility), dated as of March 1, 2025, between the Agency and SBMT Asset LLC, a limited liability company organized and existing under the laws of the State of Delaware (the “Lease Agreement”) THAT:

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

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

1. is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Agency, NYCEDC or the City, unless such default or breach has been waived in writing by the Agency, NYCEDC or the City, as the case may be;
2. has been convicted of a misdemeanor related to truthfulness and/or business conduct in the past five (5) years;
3. has been convicted of a felony in the past ten (10) years;
4. has received formal written notice from a federal, state or local governmental agency or body that such Person is currently under investigation for a felony criminal offense; or
5. has received written notice of default in the payment to the City of any taxes, sewer rents or water charges, which have not been paid, unless such default is currently being contested with due diligence in proceedings in a court or other appropriate forum.

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

“City” shall mean The City of New York.

“Control” or “Controls” shall mean the power to direct the management and policies of a Person (x) through the ownership, directly or indirectly, of not less than a majority of its voting securities, (y) through the right to designate or elect not less than a majority of the

members of its board of directors or trustees or other Governing Body, or (z) by contract or otherwise.

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

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

“NYCEDC” shall mean New York City Economic Development Corporation, a New York not-for-profit corporation, and any successor thereof.

“Person” shall mean an individual or any Entity.

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

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

**[NAME OF CERTIFYING ENTITY]**

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

Name:

Title:

**FORM OF SBMT ASSET PROJECT  
COMPLETION CERTIFICATE OF LESSEE AS  
REQUIRED BY SECTIONS 3.3(f)(i) AND 8.14(g) OF THE LEASE AGREEMENT**

The undersigned, an Authorized Representative (as defined in the Lease Agreement referred to below) of SBMT Asset LLC, a limited liability company organized and existing under the laws of the State of Delaware (the “Lessee”), HEREBY CERTIFIES that this Certificate is being delivered in accordance with the provisions of Section 3.3(f) and 8.14(g) of that certain Agency Lease and Agreement (SBMT Asset Facility), dated as of March 1, 2025 (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 SMBT Asset Project Work was finished and the SMBT Asset Project Improvements were completed substantially in accordance with the plans and specifications therefor [**Specify Date:** \_\_\_\_\_, 20\_\_\_\_\_] (the “SMBT Asset Project Completion Date” as defined in the Lease Agreement);

(ii) the SMBT Asset Project Improvement (as defined in the Lease Agreement) made by the Lessee in connection with the SMBT Asset Project is not less than \$676,552,780, consistent with the Lessee’s representation in Section 2.2(q) of the Lease Agreement;

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

(iv) attached hereto is a copy of the temporary certificate of occupancy, if applicable;

(v) there is no certificate, license, permit, written approval or consent or other document required to permit the occupancy, operation and use of the Facility as the Approved SBMT Asset Facility that has not already been obtained or received, except for such certificates, licenses, permits, authorizations, written approvals and consents that will be obtained in the ordinary course of business and the issuance of which are ministerial in nature;

(vi) the Lessee commenced occupancy, use and operation for the Approved SMBT Asset Project Operations of the SMBT Asset Project Improvements in accordance with all applicable laws, regulations, ordinances and guidelines on [**Specify Date:** \_\_\_\_\_, 20\_\_ (the “Facility Operations Commencement Date” as defined in the Lease Agreement);

(vii) check as applicable:

- ☐ all costs for SBMT Asset Project Work have been paid, or
- ☐ all costs for SBMT Asset Project Work have been paid except for
  - ☐ amounts not yet due and payable (attach itemized list) and/or
  - ☐ amounts the payments for which are being contested in good faith (attach itemized list with explanations); and

(viii) releases of mechanics' liens have been obtained from the general contractor and from all contractors and materialmen who supplied work, labor, services, machinery, equipment, materials or supplies in connection with the SBMT Asset Project Work, except for releases-of-liens pertinent to (y) amounts not yet due and payable, or (z) any amount the payment of which is being contested in good faith; copies of all such releases of mechanics' liens are attached hereto, and

(ix) the Lessee shall discontinue use of, and shall cause all Agents to discontinue use, of each Sales Tax Agent Authorization Letter (SBMT Asset Facility), and shall cause each Sales Tax Agent Authorization Letter (SBMT Asset Facility) to be surrendered to the Agency for cancellation.

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

*Notwithstanding anything herein or elsewhere that may be inferred to the contrary, the undersigned hereby understands and agrees on behalf of the Lessee as follows:* (a) the Agency does not waive its right to require delivery of releases-of-liens in connection with the costs of SBMT Asset Project Work; (b) the Agency does not waive its right under the Lease Agreement to demand the discharge of mechanics' and materialmens' liens encumbering the Facility Realty (SBMT Asset Facility), whether by bond or otherwise; and (c) the Certificate shall be deemed incomplete if, in the Agency's sole discretion, the Lessee has unreasonably failed to bond or otherwise discharge any liens in respect of the costs of SBMT Asset Project Work when payment for the same is due.

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

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

**SBMT ASSET LLC**

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

[FORM OF SALES TAX AGENT AUTHORIZATION LETTER (SBMT ASSET FACILITY)]

**SALES TAX AGENT AUTHORIZATION LETTER (SBMT ASSET FACILITY)**

**EXPIRATION DATE: April 1, 2028**

**ELIGIBLE LOCATION:**

**South Brooklyn Marine Terminal in Sunset Park, Brooklyn, New York**

\_\_\_\_\_, 20\_\_

TO WHOM IT MAY CONCERN

Re: New York City Industrial Development Agency  
(2025 SBMT Asset Project)

Ladies and Gentlemen:

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

1. Pursuant to a certain Agency Lease and Agreement (SBMT Asset Facility), dated as of March 1, 2025 (the “Agreement”), between the Agency and SBMT Asset LLC, a limited liability company organized and existing under the laws of the State of Delaware (the “Lessee”), the Agency has authorized the Lessee to act as its agent in connection with the SBMT Asset Project described therein including the Facility Realty (SBMT Asset Facility) located at the Eligible Location described above. Certain capitalized terms used herein and not defined shall have the respective meanings given to such terms in the Agreement.

2. Upon the Lessee’s request, the Agency has appointed [insert name of Agent] (the “Agent”), pursuant to this Sales Tax Agent Authorization Letter (SBMT Asset Facility) (the “Sales Tax Agent Authorization Letter”) to act as the Agency’s agent for the purpose of effecting purchases exempt from sales or use tax in accordance with the terms, provisions of this Sales Tax Agent Authorization Letter and the Agreement. **The Agent should review the definitions of Eligible Items and Ineligible Items in Exhibit A hereto with respect to the scope of Sales Tax Exemption provided under the Agreement and hereunder.**

3. The effectiveness of the appointment of the Agent as an agent of the Agency is expressly conditioned upon the execution by the Agency of New York State Department of Taxation and Finance Form ST-60 “IDA Appointment of Project or Agent” (“Form ST-60”) to evidence that the Agency has appointed the Agent as its agent (the form of which to be completed by the Agent and the Lessee). Pursuant to the exemptions from sales and use taxes available to the Agent under this Sales Tax Agent Authorization Letter, the Agent shall avail itself of such exemptions when purchasing eligible materials and services in connection with the SBMT Asset/Equinor Project and shall not include such taxes in its contract price, bid or reimbursable costs, as the case may be.

4. The Agent acknowledges that the executed Form ST-60 shall not serve as a sales or use tax exemption certificate or document. No agent or project operator may tender a copy of the executed Form ST-60 to any person required to collect sales tax as a basis to make such purchases exempt from tax. No such person required to collect sales or use taxes may accept the executed Form ST-60 in lieu of collecting any tax required to be collected. THE CIVIL AND CRIMINAL PENALTIES FOR MISUSE OF A COPY OF FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT OR FOR FAILURE TO PAY OR COLLECT TAX SHALL BE AS PROVIDED IN THE TAX LAW. IN ADDITION, THE USE BY AN AGENT, PROJECT OPERATOR, OR OTHER PERSON OR ENTITY OF SUCH FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT SHALL BE DEEMED TO BE, UNDER ARTICLES TWENTY EIGHT AND THIRTY SEVEN OF THE TAX LAW, THE ISSUANCE OF A FALSE OR FRAUDULENT EXEMPTION CERTIFICATE OR DOCUMENT WITH THE INTENT TO EVADE TAX.

5. As agent for the Agency, the Agent agrees that it will present to each seller or vendor a completed and signed **NYSDTF Form ST-123 “IDA Agent or Project Operator Exempt Purchase Certificate”** or such additional or substitute form as is adopted by NYSDTF for use in completing purchases that are exempt from Sales and Use Taxes (“Form ST-123”) for each contract, agreement, invoice, bill or purchase order entered into by the Agent, as agent for the Agency, for the construction, renovation, improvement, repair, furnishing and equipping of the SMBT Asset Project. Form ST-123 requires that each seller or vendor accepting Form ST-123 identify the SMBT Asset Project on each bill and invoice and invoice for purchases and indicate on the bill or invoice that the Agency or Agent or Lessee, as Project operator of the Agency, was the purchaser. The Agent shall complete Form ST-123 as follows: (i) the “Project Information” section of Form ST-123 should be completed using the name and address of the SMBT Asset Project as indicated on the Form ST-60 used to appoint the Agent; (ii) the date that the Agent was appointed as an agent should be completed using the date of the Agent’s Sales Tax Agent Authorization Letter; and (iii) the “Exempt purchases” section of Form ST-123 should be completed by marking “X” in box “A” only.

6. The Agent agrees to comply with the terms and conditions of the Agreement. The Agent must retain for at least six (6) years from the date of expiration of its Contract copies of (a) its contract with the Lessee to provide services in connection with the SMBT Asset Project, (b) all contracts, agreements, invoices, bills or purchases entered into or made by such Agent using the Letter of Authorization for Sales Tax Exemption, and (c) the executed Form ST-60 appointing the Agent as an agent of the Agency, and shall make such records available to the Agency upon reasonable notice, but no more than once annually (except for cause), for the limited purpose of confirming compliance with the Agreement. This provision shall survive the expiration or termination of this Sales Tax Agent Authorization Letter and continue for so long as the Agreement shall be in effect.

7. In order to assist the Lessee in complying with its obligation to file New York State Department of Taxation and Finance Form ST-340 “Annual Report of Sales and Use Tax Exemptions Claimed by Project Operator of Industrial Development Agency/Authority” (“Form ST-340”), the Agent covenants and agrees that it shall file semi-annually with the Lessee (no later than January 15th and July 15th of each calendar year in which it has claimed sales and use tax exemptions in connection with the SMBT Asset Project) a written statement of all sales and use tax exemptions claimed by such Agent for the preceding six-month period (ending on June

30th or December 31st, as applicable) in connection with the SMBT Asset Project and the Facility by completing and submitting to the Lessee the **Sales Tax Registry** attached hereto as **Exhibit B**. If the Agent fails to comply with the foregoing requirement, the Agent shall immediately cease to be the agent for the Agency in connection with the SMBT Asset Project (such agency relationship being deemed to be immediately revoked) without any further action of the parties, the Agent shall be deemed to have automatically lost its authority to make purchases as agent for the Agency, and shall desist immediately from all such activity.

8. The Agent agrees that if it fails to comply with the requirements for sales and use tax exemptions, as described in this Sales Tax Agent Authorization Letter, it shall pay any and all applicable Sales Tax Savings and any interest and penalties thereon. This provision shall survive the expiration or termination of this Sales Tax Agent Authorization Letter.

#### **9. Special Provisions Relating to State Sales Tax Savings.**

(a) The Agent covenants and agrees to comply, and to cause each of its contractors, subcontractors, persons or entities to comply, with the requirements of General Municipal Law Sections 875(1) and (3) (the “Special Provisions”), as such provisions may be amended from time to time. In the event of a conflict between the other provisions of this Sales Tax Agent Authorization Letter or the Agreement and the Special Provisions, the Special Provisions shall control.

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

(c) The Agent is hereby notified (provided that such notification is not a covenant or obligation and does not create a duty on the part of the Agency to the Agent, the Lessee or any other party) that the Agency is subject to certain requirements under General Municipal Law, including the following:

(i) In accordance with General Municipal Law Section 875(3)(c), if the Agency recovers, recaptures, receives, or otherwise obtains, any amount of State Sales Tax Savings from the Agent, the Agency shall, within thirty days of coming into possession of such amount, remit it to the Commissioner, together with such information

and report that the Commissioner deems necessary to administer payment over of such amount. The Agency shall join the Commissioner as a party in any action or proceeding that the Agency commences to recover, recapture, obtain, or otherwise seek the return of, State Sales Tax Savings from the Agent, the Lessee or other person or entity.

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

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

10. Subject to the provisions of Section 9 hereof, in the event that the Agent shall utilize the Sales Tax Exemption in violation of the provisions of the Agreement or this Sales Tax Agent Authorization Letter, the Agent shall promptly deliver notice of same to the Lessee and the Agency, and the Agent shall, upon demand by the Agency, pay to or at the direction of the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the rate of twelve percent (12%) per annum compounded daily from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was availed of by the Agent.

11. Upon request by the Agency with reasonable notice to the Agent, the Agent shall make available at reasonable times to the Agency all such books, records, contracts, agreements, invoices, bills or purchase orders of the Agent, and require all appropriate officers and employees of the Agent to respond to reasonable inquiries by the Agency as shall be necessary

(y) to indicate in reasonable detail those costs for which the Agent shall have utilized the Sales Tax Exemption and the dates and amounts so utilized, and (z) to permit the Agency to determine any amounts owed by the Agent under Section 10.

12. The Agent represents and warrants that, except as otherwise disclosed to the Agency, none of the Agent, the Principals of the Agent, or any Person that is an Affiliate of the Agent:

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

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

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

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

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

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

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

“City” shall mean The City of New York.

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

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

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

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

“Person” shall mean an individual or any Entity.

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

13. By execution of this Sales Tax Agent Authorization Letter, the Agent agrees to accept the terms hereof and represent and warrant to the Agency that the use of this Sales Tax Agent Authorization Letter by the Agent is strictly for the purposes stated herein.

14. The Agent acknowledges that this Sales Tax Agent Authorization Letter will terminate on the date (the “Sales Tax Exemption Termination Date”) that is the earliest of (i) the Expiration Date referred to above, (ii) the expiration or termination of the Agreement, (iii) the Completion Deadline (SBMT Asset Facility), (iv) the SBMT Asset Project Completion Date, (iv) the termination of the Sales Tax Exemption authorization as provided in the Agreement, and (v) the termination of the Facility Leasehold Estate. Upon the Sales Tax Exemption Termination Date, the agency relationship between the Agency and the Agent shall terminate.

[Signature Page Follows]

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

**NEW YORK CITY INDUSTRIAL  
DEVELOPMENT AGENCY**

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

ACCEPTED AND AGREED TO BY:

          **[AGENT]**          

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

[Signature Page to Sales Tax Agent Authorization Letter (SBMT Asset Facility)]

## **Exhibit A**

**To**

### **SALES TAX AGENT AUTHORIZATION LETTER (SBMT ASSET FACILITY)**

Set forth below is a description of items that are eligible for the Sales Tax Exemption

**Eligible Items** shall mean the following items of personal property and services, but excluding any Ineligible Items, with respect to which the Agent shall be entitled to claim a Sales Tax Exemption in connection with and as part of the SBMT Asset Project:

- (i) purchases of materials, goods, personal property and fixtures and supplies that will be incorporated into and made an integral component part of the Facility Realty (SBMT Asset Facility) other than the EOW Substation;
- (ii) purchases or leases of any item of materials, goods, machinery, equipment, furniture, furnishings, trade fixtures and other tangible personal property having a useful life of one year or more, and which are located at, and constitute part of, the Facility, but which are not required to be incorporated into the Facility Realty (SBMT Asset) as an integral component thereof;
- (iii) with respect to the eligible items identified in clauses (i) or (ii) above: purchases of freight, installation, maintenance and repair services required in connection with the shipping, installation, use, maintenance or repair of such items; provided that maintenance shall mean the replacement of parts or the making of repairs;
- (iv) purchases of materials, goods and supplies that are to be used and substantially consumed in the course of construction or renovation of the Facility Realty (SBMT Asset Facility) (but excluding the EOW Substation and fuel, materials or substances that are consumed in the course of operating machinery and equipment or parts containing fuel, materials or substances where such parts must be replaced whenever the substance is consumed); and
- (v) leases of machinery and equipment solely for temporary use in connection with the construction or renovation of the Facility Realty (SBMT Asset Facility) other than the EOW Substation.

**Ineligible Items** shall mean the following items of personal property and services with respect to which the Agent shall not be entitled to claim a Sales Tax Exemption in connection with the SBMT Asset Project:

- (i) vehicles of any sort, including watercraft and rolling stock;
- (ii) personalty having a useful life of one year or less;
- (iii) any cost of utilities, cleaning services or supplies or other ordinary operating costs;

- (iv) fine art and other similar decorative items;
- (v) plants, whether potted or landscaped;
- (vi) ordinary office supplies such as pencils, paper clips and paper;
- (vii) any materials or substances that are consumed in the operation of machinery;
- (viii) the EOW Substation;
- (ix) any personal property or services (x) located outside of the Facility Realty (SBMT Asset Facility), (y) the acquisition or purchase of which shall have preceded the Commencement Date, or (z) the acquisition or purchase of which shall not have been effected in accordance with the Agreement and the Sales Tax Agent Authorization Letter;
- (x) equipment or parts containing materials or substances where such parts must be replaced whenever the substance is consumed; and
- (ix) maintenance of the type as shall constitute janitorial services.

**Exhibit B**

**To**

**SALES TAX AGENT AUTHORIZATION LETTER (SBMT ASSET FACILITY)**

**SALES TAX REGISTRY**

Please Complete: **REPORTED PERIOD:** SEMI-ANNUAL PERIOD FROM [JANUARY 1][JULY 1], 20\_\_ to [JUNE 30][DECEMBER 31], 20\_\_

<b>Description of Item (incl. Serial #, if applicable)</b>	<b>Location of Item</b>	<b>Dollar Amount</b>	<b>Vendor Description</b>	<b>Date of Payment</b>	<b>Purchase order or invoice number</b>	<b>Sales Tax Savings</b>

<b>TOTAL SALES TAX SAVINGS REALIZED DURING THE SEMI-ANNUAL REPORTED PERIOD:</b>	
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Certification: I, the undersigned, an authorized officer or principal owner of the company identified below, hereby certify to the best of my knowledge and belief that all information contained in this report is true and complete. The information reported in this form includes all Sales Tax Savings realized by the company identified below and its principals, affiliates, tenants, subtenants, contractors and subcontractors. This form and information provided pursuant hereto may be disclosed to the New York City Industrial Development Agency ("NYCIDA") and New York City Economic Development Corporation ("NYCEDC"), and may be disclosed by NYCIDA and/or NYCEDC in connection with the administration of the programs by NYCIDA and/or NYCEDC; and, without limiting the foregoing, such information may be included in reports or disclosure required by law.

**Name of Agent:** \_\_\_\_\_

**Signature By:** \_\_\_\_\_

**Name (print):** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**EXHIBIT I****SALES TAX REGISTRY**

Please Complete:     **REPORTED PERIOD:** ANNUAL PERIOD FROM JULY 1, 20\_\_ to JUNE 30, 20\_\_

Description of Item (incl. Serial #, if applicable)	Location of Item	Dollar Amount	Vendor Description	Date of Payment	Purchase order or invoice number	Sales Tax Savings
SEMI-ANNUAL PERIOD FROM JULY 1, [____] to DECEMBER 31, [____]						
<b>TOTAL SALES TAX SAVINGS REALIZED DURING THE SEMI-ANNUAL PERIOD FROM JULY 1, [____] to DECEMBER 31, [____]:</b>						
SEMI-ANNUAL PERIOD FROM JANUARY 1, [____] to JUNE 30, [____]						
<b>TOTAL SALES TAX SAVINGS REALIZED DURING THE SEMI-ANNUAL PERIOD FROM JANUARY 1, [____] to JUNE 30, [____]:</b>						

<b>TOTAL SALES TAX SAVINGS REALIZED DURING THE ANNUAL REPORTED PERIOD:</b>	
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Certification: I, the undersigned, an authorized officer or principal owner of the Lessee, hereby certify to the best of my knowledge and belief that all information contained in this report is true and complete. The information reported in this form includes all Sales Tax Savings realized by the Lessee below and its principals, affiliates, tenants, subtenants, contractors, subcontractors and any other person or entity pursuant to the LETTER OF AUTHORIZATION FOR SALES TAX EXEMPTION issued to the Lessee, and any SALES TAX AGENT AUTHORIZATION LETTER issued to any other person or entity at the direction of the Lessee, by New York City Industrial Development Agency. This form and information provided pursuant hereto may be disclosed to the New York City Economic Development Corporation ("NYCEDC"), and may be disclosed by NYCEDC in connection with the administration of the programs by NYCEDC; and, without limiting the foregoing, such information may be included in reports or disclosure required by law.

**Lessee Name:** \_\_\_\_\_

**Signature By:** \_\_\_\_\_

**Name (print):** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**PROJECT FINANCE PLAN**

The plan for financing the cost of the SBMT Asset Project Work, which the Lessee estimates to be \$495,561,045 from the following sources:

Project construction is fully funded by owner equity.

**HireNYC**

The Lessee must collaborate with the New York City Department of Small Business Services or such other a New York City agency as may be designated by NYCEDC in a notice to the Lessee (“**Designated City Agency**”). The Designated City Agency will assist the Lessee in implementing the HireNYC Program to produce Eligible Jobs (as defined below) including the screening of candidates from the target population (“**Target Population**”), defined as persons who have an income that is below two hundred percent (200%) of the poverty level as determined by the New York City Center for Economic Opportunity (a description of the income level meeting this threshold for each household size is available at

**[http://www.nyc.gov/html/ceo/downloads/pdf/ceo\\_poverty\\_measure\\_2005\\_2013.pdf](http://www.nyc.gov/html/ceo/downloads/pdf/ceo_poverty_measure_2005_2013.pdf)**).

“**Eligible Jobs**” shall be mean all new and replacement entry and mid-level office and non-office full-time equivalent (“**FTE**”) positions with a preference for an associate’s degree or less and created in connection with the Facility but excluding jobs relocated from other sites. For the avoidance of doubt, contingent workers, third-party contractors and consultants are not FTE positions and therefore shall not count as Eligible Jobs.

The HireNYC Program will be in effect for a period of eight (8) years from the Facility Operations Commencement Date (“**HireNYC Program Term**”). “**Facility Operations Commencement Date**” shall mean, with respect to the Facility, the date by which the Agency shall have received a signed certificate of an Authorized Representative certifying that the SMBT Asset Project Completion Date has occurred and that the Facility is in fact being occupied, used and operated for the Approved SMBT Asset Project Operations.

The HireNYC Program will apply to the Lessee, its successors and assigns, and to all other subtenants and sublessees at the Facility during the HireNYC Program Term.

I. Goals. The HireNYC Program includes, at a minimum, the following hiring and workforce development goals (collectively, the “**Goals**”):

Hiring Goal: Fifty percent (50%) of all Eligible Jobs created in connection with the Facility (including jobs created by subtenants and sublessees, but excluding jobs relocated from other sites) will be filled by members of the Target Population referred by the Designated City Agency for a period beginning, for each employer, at commencement of business operations and continuing through the end of the HireNYC Program Term. Notwithstanding the foregoing, the Hiring Goal shall only apply to hiring on occasions when the Lessee (or a subtenant or sublessee) is hiring for five (5) or more Eligible Jobs.

Retention Goal: Forty percent (40%) of all employees whose hiring satisfied the Hiring Goal will be retained for at least nine (9) months from date of hire.

Advancement Goal: Thirty percent (30%) of all employees whose hiring satisfied the Hiring Goal will be promoted to a higher paid position within one (1) year of date of hire.

Training Goal: Cooperation with NYCEDC and the Designated City Agency to provide skills-training or higher education opportunities to members of the Target Population.

II. Program Requirements. HireNYC Program includes all of the following requirements:

1. Designation of a workforce development liaison by the Lessee to interact with NYCEDC and the Designated City Agency during the course of the HireNYC Program.
2. Commitment by the Lessee to do the following:
  - a. use good faith efforts to achieve the Goals;
  - b. notify NYCEDC six (6) weeks prior to commencing business operations;
  - c. with respect to initial hiring for any Eligible Jobs associated with the commencement of business at the Facility (but only if initial hiring is for five (5) or more Eligible Jobs):
    - (i) provide NYCEDC and the Designated City Agency with the approximate number and type of jobs that will become available, and for each job type a description of the basic job qualifications, at least three (3) months before commencing hiring; and
    - (ii) consider only applicants referred by the Designated City Agency for the first ten (10) business days, until the Hiring Goal is achieved or until all Eligible Jobs are filled, whichever occurs first;
  - d. with respect to ongoing hiring on occasions when hiring for five (5) or more Eligible Jobs:
    - (i) provide NYCEDC and the Designated City Agency with the approximate number and type of jobs that will become available, and for each job type a description of the basic job qualifications, at least one (1) month before commencing hiring or as soon as information is available, but in all cases not later than one (1) week before commencing hiring; and
    - (ii) consider only applicants referred by the Designated City Agency for the first five business days, until the Hiring Goal is achieved or until all Eligible Jobs are filled, whichever occurs first;
  - e. notify NYCEDC thirty (30) days prior to execution of any subtenant or sublessee lease at the Facility;
  - f. provide NYCEDC with one (1) electronic copy of all subtenant and sublessee leases at the Facility within fifteen (15) days of execution;
  - g. submit to NYCEDC an annual HireNYC Employment Report in the form provided by NYCEDC (or quarterly reports at the discretion of NYCEDC);

- h. cooperate with annual site visits and, if requested by NYCEDC, employee satisfaction surveys relating to employee experience with the Lessee's HireNYC Program;
- i. provide information related to the HireNYC Program and the hiring process to NYCEDC upon request; and
- j. allow information collected by NYCEDC and the Designated City Agency to be included in public communications, including press releases and other media events.

***[If any of the following additional commitments have been made by the Lessee, include them, appropriately worded in 2 above. In the usual course, if a project has 500 or more new permanent jobs but fewer than 1,000, the Lessee would be expected to commit to either 1 or 2 below. If the project has 1,000 or more new permanent jobs, the Lessee would be expected to commit to 3 below and either 1 or 2 below.]***

- 1. If the SMBT Asset Project is expected to produce 500 or more Eligible Jobs, the Lessee is to commit to spend a minimum of \$1,000 per job created for training resources, which include but are not limited to contextualized job training, creation of internship and/or apprenticeship opportunities and job readiness workshops.
- 2. If the SMBT Asset Project is expected to produce 500 or more Eligible Jobs, the Lessee is to commit to spend a minimum of \$1,000 per job created for technology-based tools, which include but are not limited to web-based training programs and/or an online job application portal for application uploads that includes links connecting jobseekers to job readiness services.
- 3. If the SMBT Asset Project is expected to produce 1,000 or more Eligible Jobs, the Lessee is to provide temporary space and personnel for a satellite outreach or workforce development site at or near the Facility to provide outreach and screening of jobseekers, distribute job applications and inform the public of available job opportunities leading up to the commencement of business operations.

### III. General Requirements. The following are general requirements of the HireNYC Program:

- 1. The Lessee is required to incorporate the terms of its HireNYC Program into all subtenant and sublessee leases obligating subtenants and sublessees to comply with the Goals and other requirements in the Lessee's HireNYC Program to the same extent as the Lessee is required to comply with such Goals and other requirements.
- 2. Enforcement. In the event NYCEDC determines that the Lessee or any of its subtenants or sublessees has violated any of the HireNYC Program requirements, including, without limitation, a determination that the Lessee or any of its subtenants or sublessees, has failed to use good faith efforts to fulfill the Goals, NYCEDC shall notify the Agency of the violation and the Agency may (1) assess liquidated damages set forth immediately below; and/or (2) assert any other right or remedy it has under the Agreement.

3. Liquidated Damages. If the Lessee, or any of its subtenants or sublessees, does any of the following:
- (i) fails to comply with its obligations set forth in Section II(2) clauses (a)(with respect to the Hiring Goal), (c), and/or (d), and as a result the Designated City Agency was unable to refer applicants or participate in the hiring process as required by the HireNYC Program; or
  - (ii) fails to comply with its obligations set forth in Section II(2) clauses, (f), (g), (h), (i), and/or (j) and such failure shall continue for a period of thirty (30) days after receipt of notice from NYCEDC,

then, in the case of clause (i), the Agency may assess liquidated damages in the amount of \$2,500 for each position for which the Designated City Agency was unable to refer applicants or otherwise participate in hiring as required by the HireNYC Program; and in the case of clause (ii), the Agency may assess damages for breach of each requirement in the amount of \$1,000. In view of the difficulty of accurately ascertaining the loss which the Agency will suffer by reason of the Lessee's failure to comply with HireNYC Program requirements, the foregoing amounts are hereby fixed and agreed as the liquidated damages that the Agency will suffer by reason of such failure, and not as a penalty. The Lessee shall be liable for and shall pay to the Agency all damages assessed against the Lessee or any of its subtenants or sublessees at the Facility upon receipt of demand from the Agency.

**FORM OF LW AGREEMENT**

**LIVING WAGE AGREEMENT**

This LIVING WAGE AGREEMENT (this “Agreement”) is made as of [\_\_\_\_], by [\_\_\_\_] (“Obligor”) in favor of the Lessee, the Agency, the City, the DCWP and the Comptroller (each as defined below) (each, an “Obligee”). In consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Obligor hereby covenants and agrees as follows:

1. Definitions. As used herein the following capitalized terms shall have the respective meanings specified below.

“Agency” means New York City Industrial Development Agency, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having its principal office at One Liberty Plaza, New York, New York 10006.

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

“Asserted Cure” has the meaning specified in paragraph 10(a).

“Asserted LW Violation” has the meaning specified in paragraph 10(a).

“City” means The City of New York.

“Comptroller” means the Comptroller of The City of New York or his or her designee.

“Concessionaire” means a Person that has been granted the right by the Lessee, an Affiliate of the Lessee or any tenant, subtenant, leaseholder or subleaseholder of the Lessee or of an Affiliate of the Lessee to operate at the Facility for the primary purpose of selling goods or services to natural persons at the Facility.

“Control” or “Controls,” including the related terms “Controlled by” and “under common Control with,” means the power to direct the management and policies of a Person (a) through the ownership, directly or indirectly, of not less than a majority of its voting equity, (b) through the right to designate or elect not less than a majority of the members of its board of directors, board of managers, board of trustees or other governing body, or (c) by contract or otherwise.

“Covered Counterparty” means a Covered Employer whose Specified Contract is directly with Obligor or an Affiliate of Obligor to lease, occupy, operate or perform work at the Obligor Facility.

“Covered Employer” means any of the following Persons: (a) Obligor, (b) a tenant, subtenant, leaseholder or subleaseholder of Obligor that leases any portion of the Obligor Facility (or an Affiliate of any such tenant, subtenant, leaseholder or subleaseholder if such Affiliate has one or more direct Site Employees), (c) a Concessionaire that operates on any portion of the Obligor Facility, and (d) a Person that contracts or subcontracts with any Covered Employer described in clauses (a), (b) or (c) above to perform work for a period of more than ninety days on any portion of the Obligor Facility, including temporary services or staffing agencies, food service contractors, and other on-site service contractors; provided, however, that the term “Covered Employer” shall not include (i) a Person of the type described in Section 6-134(d)(2), (3), (4) or (5) of the New York City Administrative Code, (ii) a Person that has annual consolidated gross revenues that are less than the Small Business Cap unless the revenues of the Person are included in the consolidated gross revenues of a Person having annual consolidated gross revenues that are more than the Small Business Cap, in each case calculated based on the fiscal year preceding the fiscal year in which the determination is being made, and in each case calculated in accordance with generally accepted accounting principles, (iii) any otherwise covered Person operating on any portion of the Obligor Facility if residential units comprise more than 75% of the total Facility area and all of the residential units are subject to rent regulation, (iv) any otherwise covered Person that the Agency has determined (in its sole and absolute discretion) in writing to be exempt on the basis that it works significantly with a Qualified Workforce Program, (v) a Person whose Site Employees all are paid wages determined pursuant to a collective bargaining or labor agreement, (vi) if the Lessee is a “covered developer” under and as defined in the Prevailing Wage Building Services Law, a Person that is a “building services contractor” (as defined in the LW Law) so long as such Person is paying its “building service employees” (as defined in the Prevailing Wage Building Services Law) no less than the applicable “prevailing wage” (as defined in the Prevailing Wage Building Services Law), or (vii) a Person exempted by a Deputy Mayor of The City of New York in accordance with the Mayor’s Executive Order No. 7 dated September 30, 2014.

“DCWP” means the Department of Consumer and Worker Protection (formerly known as the Department of Consumer Affairs) of The City of New York, acting as the designee of the Mayor of The City of New York, or such other agency or designee that the Mayor of The City of New York may designate from time to time.

“Facility” means the land and real property improvements located at the South Brooklyn Marine Terminal, being between 29<sup>th</sup> and 39<sup>th</sup> Streets and west of 2<sup>nd</sup> Avenue in Sunset Park, Brooklyn, New York, Borough of Brooklyn, Block 662 and Lots 1, 130, 136, 137 and 155.

“Lessee” means SBMT Asset LLC, a limited liability company organized and existing under the laws of the State of Delaware, having its principal office at 600 Washington Blvd., Suite 800, Stamford, Connecticut 06901, or its permitted successors or assigns as the Lessee under the Project Agreement.

“LW” has the same meaning as the term “living wage” as defined in Section 6-134(b)(9) of the New York City Administrative Code and shall be adjusted annually in accordance therewith, except that as of April 1, 2015, the “living wage rate” component of the LW shall be eleven dollars and sixty-five cents per hour (\$11.65/hour) and the “health benefits supplement rate” component of the LW shall be one dollar and sixty-five cents per hour

(\$1.65/hour). The annual adjustments to the “living wage rate” and “health benefits supplement rate” will be announced on or around January 1 of each year by the DCWP and will go into effect on April 1 of such year.

“LW Agreement” means, with respect to any Covered Counterparty, an enforceable agreement in the form attached hereto as Attachment 1 (except only with such changes as are necessary to make such Covered Counterparty the obligor thereunder).

“LW Agreement Delivery Date” means, with respect to any Covered Counterparty, the latest of (a) the effective date of such Covered Counterparty’s Specified Contract, (b) the date that such Covered Counterparty becomes a Covered Employer at the Obligor Facility and (c) the date of this Agreement.

“LW Law” means the Fair Wages for New Yorkers Act, constituting Section 6-134 of the New York City Administrative Code, as amended, supplemented or otherwise modified from time to time, and all rules and regulations promulgated thereunder.

“LW Term” means the period commencing on the date of this Agreement and ending on the date that is the earlier to occur of: (a) the later to occur of (i) the date on which the Lessee is no longer receiving financial assistance under the Project Agreement or (ii) the date that is ten years after the Facility commences operations; or (b) the end of the term of Obligor’s Specified Contract (including any renewal or option terms pursuant to any exercised options), whether by early termination or otherwise.

“LW Violation Final Determination” has the meaning specified in paragraph 10(a)(i), paragraph 10(a)(ii)(1) or paragraph 10(a)(ii)(2), as applicable.

“LW Violation Initial Determination” has the meaning specified in paragraph 10(a)(ii).

“LW Violation Notice” has the meaning specified in paragraph 10(a).

“LW Violation Threshold” means \$100,000 multiplied by  $1.03^n$ , where “n” is the number of full years that have elapsed since January 1, 2015.

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

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

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

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

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

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

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

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

“Project Agreement” means that certain Agency Lease and Agreement (SBMT Asset Facility), dated as of March 1, 2025, between the Agency and the Lessee (as amended, restated, supplemented or otherwise modified from time to time), pursuant to which the Lessee has or will receive financial assistance from the Agency.

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

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

work location or home base of such person is at the Obligor Facility (for the avoidance of doubt, a natural person who works at least seventeen and a half (17.5) hours in any consecutive seven day period at the Obligor Facility shall thereafter constitute a Site Employee).

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

“Specified Contract” means (a) in the case of Obligor, the [\_\_\_\_], dated as of [\_\_\_\_], by and between Obligor and [\_\_\_\_], or (b) in the case of any other Person, the principal written contract that makes such Person a Covered Employer hereunder.

2. Commencing on the Operational Date and thereafter during the remainder of the LW Term, if and for so long as Obligor is a Covered Employer, Obligor shall pay each of its direct Site Employees no less than an LW.
3. Commencing on the Operational Date and thereafter during the remainder of the LW Term, if and for so long as Obligor is a Covered Employer, Obligor shall, on or prior to the day on which each direct Site Employee of Obligor begins work at the Obligor Facility, (a) post a written notice detailing the wages and benefits required to be paid to Site Employees under this Agreement in a conspicuous place at the Obligor Facility that is readily observable by such direct Site Employee and (b) provide such direct Site Employee with a written notice detailing the wages and benefits required to be paid to Site Employees under this Agreement. Such written notice shall also provide a statement advising Site Employees that if they have been paid less than the LW they may notify the Comptroller and request an investigation. Such written notice shall be in English and Spanish.
4. Commencing on the Operational Date and thereafter during the remainder of the LW Term, if and for so long as Obligor is a Covered Employer, Obligor shall not take any adverse employment action against any Site Employee for reporting or asserting a violation of this Agreement.
5. During the LW Term, Obligor shall cause each Covered Counterparty to execute an LW Agreement on or prior to the LW Agreement Delivery Date applicable to such Covered Counterparty; provided that Obligor shall only be required to use commercially reasonable efforts (without any obligation to commence any action or proceedings) to obtain an LW Agreement from a Covered Counterparty whose Specified Contract with Obligor was entered into prior to the date hereof (a “Pre-Existing Covered Counterparty” and a “Pre-Existing Specified Contract”). Prior to the renewal or extension of any Pre-Existing Specified Contract (or prior to entering into a new Specified Contract with a Pre-Existing Covered Counterparty), Obligor shall cause or otherwise require the Pre-Existing Covered Counterparty to execute an LW Agreement, provided that the foregoing shall not preclude Obligor from renewing or extending a Pre-Existing Specified Contract pursuant to any renewal or extension options granted to the Pre-Existing Covered Counterparty in the Pre-Existing Specified Contract as such option exists as of the date

hereof. Obligor shall deliver a copy of each Covered Counterparty's LW Agreement to the Agency, the DCWP and the Comptroller at the notice address specified in paragraph 12 below and promptly upon written request. Obligor shall retain copies of each Covered Counterparty's LW Agreement until six (6) years after the expiration or earlier termination of such Covered Counterparty's Specified Contract.

6. Commencing on the Operational Date and thereafter during the remainder of the LW Term, in the event that an individual with managerial authority at Obligor receives a written complaint from any Site Employee (or such individual otherwise obtains actual knowledge) that any Site Employee has been paid less than an LW, Obligor shall deliver written notice to the Agency, the DCWP and the Comptroller within 30 days thereof.
7. Obligor hereby acknowledges and agrees that the Agency, the City, the DCWP and the Comptroller are each intended to be direct beneficiaries of the terms and provisions of this Agreement. Obligor hereby acknowledges and agrees that the DCWP, the Comptroller and the Agency shall each have the authority and power to enforce any and all provisions and remedies under this Agreement in accordance with paragraph 10 below. Obligor hereby agrees that the DCWP, the Comptroller and the Agency may, as their sole and exclusive remedy for any violation of Obligor's obligations under this Agreement, bring an action for damages (but not in excess of the amounts set forth in paragraph 10 below), injunctive relief or specific performance or any other non-monetary action at law or in equity, in each case subject to the provisions of paragraph 10 below, as may be necessary or desirable to enforce the performance or observance of any obligations, agreements or covenants of Obligor under this Agreement. The agreements and acknowledgements of Obligor set forth in this Agreement may not be amended, modified or rescinded by Obligor without the prior written consent of the Agency or the DCWP.
8. No later than 30 days after Obligor's receipt of a written request from the Agency, the DCWP and/or the Comptroller, Obligor shall provide to the Agency, the DCWP and the Comptroller (a) a written list of all Covered Counterparties, together with the LW Agreements of such Covered Counterparties. From and after the Operational Date, no later than 30 days after Obligor's receipt of a written request from the Agency, the DCWP and/or the Comptroller, Obligor shall provide to the Agency, the DCWP and the Comptroller (b) a certification stating that all of the direct Site Employees of Obligor are paid no less than an LW and stating that Obligor is in compliance with this Agreement in all material respects, (c) certified payroll records in respect of the direct Site Employees of Obligor, and/or (d) any other documents or information reasonably related to the determination of whether Obligor is in compliance with its obligations under this Agreement.
9. From and after the Operational Date, Obligor shall, annually by August 1 of each year during the LW Term, submit to the Lessee such data in respect of employment, jobs and wages at the Obligor Facility as of June 30 of such year that is needed by the Lessee for it to comply with its reporting obligations under the Project Agreement.

10. Violations and Remedies.

- (a) If a violation of this Agreement shall have been alleged by the Agency, the DCWP and/or the Comptroller, then written notice will be provided to Obligor for such alleged violation (an “LW Violation Notice”), specifying the nature of the alleged violation in such reasonable detail as is known to the Agency, the DCWP and the Comptroller (the “Asserted LW Violation”) and specifying the remedy required under paragraph 10(b), (c), (d), (e) and/or (f) (as applicable) to cure the Asserted LW Violation (the “Asserted Cure”). Upon Obligor’s receipt of the LW Violation Notice, Obligor may either:
- (i) Perform the Asserted Cure no later than 30 days after its receipt of the LW Violation Notice (in which case a “LW Violation Final Determination” shall be deemed to exist), or
  - (ii) Provide written notice to the Agency, the DCWP and the Comptroller indicating that it is electing to contest the Asserted LW Violation and/or the Asserted Cure, which notice shall be delivered no later than 30 days after its receipt of the LW Violation Notice. Obligor shall bear the burdens of proof and persuasion and shall provide evidence to the DCWP no later than 45 days after its receipt of the LW Violation Notice. The DCA shall then, on behalf of the City, the Agency and the Comptroller, make a good faith determination of whether the Asserted LW Violation exists based on the evidence provided by Obligor and deliver to Obligor a written statement of such determination in reasonable detail, which shall include a confirmation or modification of the Asserted LW Violation and Asserted Cure (such statement, a “LW Violation Initial Determination”). Upon Obligor’s receipt of the LW Violation Initial Determination, Obligor may either:
    - (1) Accept the LW Violation Initial Determination and shall perform the Asserted Cure specified in the LW Violation Initial Determination no later than 30 days after its receipt of the LW Violation Initial Determination (after such 30 day period has lapsed, but subject to clause (2) below, the LW Violation Initial Determination shall be deemed to be a “LW Violation Final Determination”), or
    - (2) Contest the LW Violation Initial Determination by filing in a court of competent jurisdiction or for an administrative hearing no later than 30 days after its receipt of the LW Violation Initial Determination, in which case, Obligor’s obligation to perform the Asserted Cure shall be stayed pending resolution of the action. If no filing in a court of competent jurisdiction or for an administrative hearing is made to contest the LW Violation Initial Determination within 30 days after Obligor’s receipt thereof, then the LW Violation Initial Determination shall be deemed to be a

“LW Violation Final Determination.” If such a filing is made, then a “LW Violation Final Determination” will be deemed to exist when the matter has been finally adjudicated. Obligor shall perform the Asserted Cure (subject to the judicial decision) no later than 30 days after the LW Violation Final Determination.

- (b) For the first LW Violation Final Determination imposed on Obligor in respect of any direct Site Employees of Obligor, at the direction of the Agency or the DCWP (but not both), (i) Obligor shall pay the Owed Monies and Owed Interest in respect of such direct Site Employees of Obligor to such direct Site Employees; and/or (ii) in the case of a violation that does not result in monetary damages owed by Obligor, Obligor shall cure, or cause the cure of, such non-monetary violation.
- (c) For the second and any subsequent LW Violation Final Determinations imposed on Obligor in respect of any direct Site Employees of Obligor, at the direction of the Agency or the DCWP (but not both), (i) Obligor shall pay the Owed Monies and Owed Interest in respect of such direct Site Employees of Obligor to such direct Site Employees, and Obligor shall pay fifty percent (50%) of the total amount of such Owed Monies and Owed Interest to the DCWP as an administrative fee; and/or (ii) in the case of a violation that does not result in monetary damages owed by Obligor, Obligor shall cure, or cause the cure of, such non-monetary violation.
- (d) For the second and any subsequent LW Violation Final Determinations imposed on Obligor in respect of any direct Site Employees of Obligor, if the aggregate amount of Owed Monies and Owed Interest paid or payable by Obligor in respect of its direct Site Employees is in excess of the LW Violation Threshold for all past and present LW Violation Final Determinations imposed on Obligor, then in lieu of the remedies specified in subparagraph (c) above and at the direction of the Agency or the DCWP (but not both), Obligor shall pay (i) two hundred percent (200%) of the Owed Monies and Owed Interest in respect of the present LW Violation Final Determination to the affected direct Site Employees of Obligor, and (ii) fifty percent (50%) of the total amount of such Owed Monies and Owed Interest to the DCWP as an administrative fee.
- (e) If Obligor fails to obtain an LW Agreement from its Covered Counterparty in violation of paragraph 5 above, then at the discretion of the Agency or the DCWP (but not both), Obligor shall be responsible for payment of the Owed Monies, Owed Interest and other payments described in subparagraphs (b), (c) and (d) above (as applicable) as if the direct Site Employees of such Covered Counterparty were the direct Site Employees of Obligor.
- (f) Obligor shall not renew the Specified Contract of any specific Covered Counterparty or enter into a new Specified Contract with any specific Covered Counterparty if both (i) the aggregate amount of Owed Monies and Owed Interest paid or payable by such Covered Counterparty in respect of its direct Site

Employees for all past and present LW Violation Final Determinations (or that would have been payable had such Covered Counterparty entered into an LW Agreement) is in excess of the LW Violation Threshold and (ii) two or more LW Violation Final Determinations against such Covered Counterparty (or in respect of the direct Site Employees of such Covered Counterparty) occurred within the last 6 years of the term of the applicable Specified Contract (or if the term thereof is less than 6 years, then during the term thereof); provided that the foregoing shall not preclude Obligor from extending or renewing a Specified Contract pursuant to any renewal or extension options granted to the Covered Counterparty in the Specified Contract as in effect as of the LW Agreement Delivery Date applicable to such Covered Counterparty.

- (g) It is acknowledged and agreed that (i) the sole monetary damages that Obligor may be subject to for a violation of this Agreement are as set forth in this paragraph 10, and (ii) in no event will the Specified Contract between Obligor and a given Covered Counterparty be permitted to be terminated or rescinded by the Agency, the DCWP or the Comptroller by virtue of violations by Obligor or a Covered Counterparty.
- 11. Obligor acknowledges that the terms and conditions of this Agreement are intended to implement the Mayor's Executive Order No. 7 dated September 30, 2014.
  - 12. All notices under this Agreement shall be in writing and shall be delivered by (a) return receipt requested or registered or certified United States mail, postage prepaid, (b) a nationally recognized overnight delivery service for overnight delivery, charges prepaid, or (c) hand delivery, addressed as follows:
    - (a) If to Obligor, to [Obligor's Name], [Street Address], [City], [State], [Zip Code], Attention: [Contact Person].
    - (b) If to the Agency, to New York City Industrial Development Agency, One Liberty Plaza, New York, NY 10006, Attention: General Counsel, with a copy to New York City Industrial Development Agency, One Liberty Plaza, New York, NY 10006, Attention: Executive Director.
    - (c) If to the DCWP, to Department of Consumer and Worker Protection of The City of New York, 42 Broadway, New York, NY 10004, Attention: Living Wage Division.
    - (d) If to the Comptroller, to Office of the Comptroller of The City of New York, One Centre Street, New York, NY 10007, Attention: Chief, Bureau of Labor Law.
  - 13. This Agreement shall be governed by, and shall be construed and enforced in accordance with, the laws of the State of New York.
  - 14. Obligor hereby irrevocably and unconditionally (a) agrees that any suit, action or other legal proceeding arising out of this Agreement may be brought in the courts of record of the State of New York in New York County or the United States District Court for the

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

15. Notwithstanding any other provision of this Agreement, in no event shall the partners, members, counsel, directors, shareholders or employees of Obligor have any personal obligation or liability for any of the terms, covenants, agreements, undertakings, representations or warranties of Obligor contained in this Agreement.

IN WITNESS WHEREOF, Obligor has executed and delivered this Agreement as of the date first written above.

[\_\_\_\_\_]

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

Name:

Title:

**ATTACHMENT 1 to EXHIBIT L**  
**FORM OF LW AGREEMENT**

**LIVING WAGE AGREEMENT**

This LIVING WAGE AGREEMENT (this “Agreement”) is made as of [\_\_\_\_], by [\_\_\_\_] (“Obligor”) in favor of the Lessee, the Agency, the City, the DCWP and the Comptroller (each as defined below) (each, an “Obligee”). In consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Obligor hereby covenants and agrees as follows:

1. Definitions. As used herein the following capitalized terms shall have the respective meanings specified below.

“Agency” means New York City Industrial Development Agency, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having its principal office at One Liberty Plaza, New York, New York 10006.

“Asserted Cure” has the meaning specified in paragraph 9(a).

“Asserted LW Violation” has the meaning specified in paragraph 9(a).

“City” means The City of New York.

“Comptroller” means the Comptroller of The City of New York or his or her designee.

“Covered Employer” means Obligor; provided, however, that the term “Covered Employer” shall not include (i) a Person of the type described in Section 6-134(d)(2), (3), (4) or (5) of the New York City Administrative Code, (ii) a Person that has annual consolidated gross revenues that are less than the Small Business Cap unless the revenues of the Person are included in the consolidated gross revenues of a Person having annual consolidated gross revenues that are more than the Small Business Cap, in each case calculated based on the fiscal year preceding the fiscal year in which the determination is being made, and in each calculated in accordance with generally accepted accounting principles, (iii) any otherwise covered Person operating on any portion of the Obligor Facility if residential units comprise more than 75% of the total Facility area and all of the residential units are subject to rent regulation, (iv) any otherwise covered Person that the Agency has determined (in its sole and absolute discretion) in writing to be exempt on the basis that it works significantly with a Qualified Workforce Program, (v) a Person whose Site Employees all are paid wages determined pursuant to a collective bargaining or labor agreement, (vi) if the Lessee is a “covered developer” under and as defined in the Prevailing Wage Building Services Law, a Person that is a “building services contractor” (as defined in the LW Law) so long as such Person is paying its “building service employees” (as defined in the Prevailing Wage Building Services Law) no less than the applicable “prevailing wage” (as defined in the Prevailing Wage Building Services Law), or (vii) a Person exempted by a Deputy Mayor of The City of New York in accordance with the Mayor’s Executive Order No. 7 dated September 30, 2014.

“DCWP” means the Department of Consumer and Worker Protection (formerly the Department of Consumer Affairs) of The City of New York, acting as the designee of the Mayor of The City of New York, or such other agency or designee that the Mayor of The City of New York may designate from time to time.

“Facility” means the land and real property improvements located at the South Brooklyn Marine Terminal, being between 29<sup>th</sup> and 39<sup>th</sup> Streets and west of 2<sup>nd</sup> Avenue in Sunset Park, Brooklyn, New York, Borough of Brooklyn, Block 662 and Lots 1, 130, 136, 137 and 155.

“Lessee” means SBMT Asset LLC, a limited liability company organized and existing under the laws of the State of Delaware, having its principal office at 600 Washington Blvd., Suite 800, Stamford, Connecticut 06901, or its permitted successors or assigns as the Lessee under the Project Agreement.

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

“LW Law” means the Fair Wages for New Yorkers Act, constituting Section 6-134 of the New York City Administrative Code, as amended, supplemented or otherwise modified from time to time, and all rules and regulations promulgated thereunder.

“LW Term” means the period commencing on the date of this Agreement and ending on the date that is the earlier to occur of: (a) the later to occur of (i) the date on which the Lessee is no longer receiving financial assistance under the Project Agreement or (ii) the date that is ten years after the Facility commences operations; or (b) the end of the term of Obligor’s Specified Contract (including any renewal or option terms pursuant to any exercised options), whether by early termination or otherwise.

“LW Violation Final Determination” has the meaning specified in paragraph 9(a)(i), paragraph 9(a)(ii)(1) or paragraph 9(a)(ii)(2), as applicable.

“LW Violation Initial Determination” has the meaning specified in paragraph 9(a)(ii).

“LW Violation Notice” has the meaning specified in paragraph 9(a).

“LW Violation Threshold” means \$100,000 multiplied by 1.03<sup>n</sup>, where “n” is the number of full years that have elapsed since January 1, 2015.

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

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

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

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

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

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

“Project Agreement” means that certain Agency Lease and Agreement (SBMT Asset Facility), dated as of March 1, 2025, between the Agency and the Lessee (as amended, restated, supplemented or otherwise modified from time to time), pursuant to which the Lessee has or will receive financial assistance from the Agency.

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

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

“Small Business Cap” means three million dollars; provided that, beginning in 2015 and each year thereafter, the Small Business Cap shall be adjusted contemporaneously with the

adjustment to the “living wage rate” component of the LW using the methodology set forth in Section 6-134(b)(9) of the New York City Administrative Code.

“Specified Contract” means (a) in the case of Obligor, the [\_\_\_\_], dated as of [\_\_\_\_], by and between Obligor and [\_\_\_\_], or (b) in the case of any other Person, the principal written contract that makes such Person a Covered Employer hereunder.

2. Commencing on the Operational Date and thereafter during the remainder of the LW Term, if and for so long as Obligor is a Covered Employer, Obligor shall pay each of its direct Site Employees no less than an LW.
3. Commencing on the Operational Date and thereafter during the remainder of the LW Term, if and for so long as Obligor is a Covered Employer, Obligor shall, on or prior to the day on which each direct Site Employee of Obligor begins work at the Obligor Facility, (a) post a written notice detailing the wages and benefits required to be paid to Site Employees under this Agreement in a conspicuous place at the Obligor Facility that is readily observable by such direct Site Employee and (b) provide such direct Site Employee with a written notice detailing the wages and benefits required to be paid to Site Employees under this Agreement. Such written notice shall also provide a statement advising Site Employees that if they have been paid less than the LW they may notify the Comptroller and request an investigation. Such written notice shall be in English and Spanish.
4. Commencing on the Operational Date and thereafter during the remainder of the LW Term, if and for so long as Obligor is a Covered Employer, Obligor shall not take any adverse employment action against any Site Employee for reporting or asserting a violation of this Agreement.
5. Commencing on the Operational Date and thereafter during the remainder of the LW Term, in the event that an individual with managerial authority at Obligor receives a written complaint from any Site Employee (or such individual otherwise obtains actual knowledge) that any Site Employee has been paid less than an LW, Obligor shall deliver written notice to the Agency, the DCWP and the Comptroller within 30 days thereof.
6. Obligor hereby acknowledges and agrees that the Agency, the City, the DCWP and the Comptroller are each intended to be direct beneficiaries of the terms and provisions of this Agreement. Obligor hereby acknowledges and agrees that the DCWP, the Comptroller and the Agency shall each have the authority and power to enforce any and all provisions and remedies under this Agreement in accordance with paragraph 9 below. Obligor hereby agrees that the DCWP, the Comptroller and the Agency may, as their sole and exclusive remedy for any violation of Obligor’s obligations under this Agreement, bring an action for damages (but not in excess of the amounts set forth in paragraph 9 below), injunctive relief or specific performance or any other non-monetary action at law or in equity, in each case subject to the provisions of paragraph 9 below, as may be necessary or desirable to enforce the performance or observance of any obligations, agreements or covenants of Obligor under this Agreement. The agreements and

acknowledgements of Obligor set forth in this Agreement may not be amended, modified or rescinded by Obligor without the prior written consent of the Agency or the DCWP.

7. From and after the Operational Date, no later than 30 days after Obligor's receipt of a written request from the Agency, the DCWP and/or the Comptroller, Obligor shall provide to the Agency, the DCWP and the Comptroller (a) a certification stating that all of the direct Site Employees of Obligor are paid no less than an LW and stating that Obligor is in compliance with this Agreement in all material respects, (b) certified payroll records in respect of the direct Site Employees of Obligor, and/or (c) any other documents or information reasonably related to the determination of whether Obligor is in compliance with its obligations under this Agreement.
8. From and after the Operational Date, Obligor shall, annually by August 1 of each year during the LW Term, submit to its counterparty to its Specified Contract such data in respect of employment, jobs and wages at the Obligor Facility as of June 30 of such year that is needed by the Lessee for it to comply with its reporting obligations under the Project Agreement.
9. Violations and Remedies.
  - (a) If a violation of this Agreement shall have been alleged by the Agency, the DCWP and/or the Comptroller, then written notice will be provided to Obligor for such alleged violation (an "LW Violation Notice"), specifying the nature of the alleged violation in such reasonable detail as is known to the Agency, the DCWP and the Comptroller (the "Asserted LW Violation") and specifying the remedy required under paragraph 9(b), (c) and/or (d) (as applicable) to cure the Asserted LW Violation (the "Asserted Cure"). Upon Obligor's receipt of the LW Violation Notice, Obligor may either:
    - (i) Perform the Asserted Cure no later than 30 days after its receipt of the LW Violation Notice (in which case a "LW Violation Final Determination" shall be deemed to exist), or
    - (ii) Provide written notice to the Agency, the DCWP and the Comptroller indicating that it is electing to contest the Asserted LW Violation and/or the Asserted Cure, which notice shall be delivered no later than 30 days after its receipt of the LW Violation Notice. Obligor shall bear the burdens of proof and persuasion and shall provide evidence to the DCWP no later than 45 days after its receipt of the LW Violation Notice. The DCWP shall then, on behalf of the City, the Agency and the Comptroller, make a good faith determination of whether the Asserted LW Violation exists based on the evidence provided by Obligor and deliver to Obligor a written statement of such determination in reasonable detail, which shall include a confirmation or modification of the Asserted LW Violation and Asserted Cure (such statement, a "LW Violation Initial Determination"). Upon Obligor's receipt of the LW Violation Initial Determination, Obligor may either:

- (1) Accept the LW Violation Initial Determination and shall perform the Asserted Cure specified in the LW Violation Initial Determination no later than 30 days after its receipt of the LW Violation Initial Determination (after such 30 day period has lapsed, but subject to clause (2) below, the LW Violation Initial Determination shall be deemed to be a "LW Violation Final Determination"), or
  - (2) Contest the LW Violation Initial Determination by filing in a court of competent jurisdiction or for an administrative hearing no later than 30 days after its receipt of the LW Violation Initial Determination, in which case, Obligor's obligation to perform the Asserted Cure shall be stayed pending resolution of the action. If no filing in a court of competent jurisdiction or for an administrative hearing is made to contest the LW Violation Initial Determination within 30 days after Obligor's receipt thereof, then the LW Violation Initial Determination shall be deemed to be a "LW Violation Final Determination." If such a filing is made, then a "LW Violation Final Determination" will be deemed to exist when the matter has been finally adjudicated. Obligor shall perform the Asserted Cure (subject to the judicial decision) no later than 30 days after the LW Violation Final Determination.
- (b) For the first LW Violation Final Determination imposed on Obligor in respect of any direct Site Employees of Obligor, at the direction of the Agency or the DCWP (but not both), (i) Obligor shall pay the Owed Monies and Owed Interest in respect of such direct Site Employees of Obligor to such direct Site Employees; and/or (ii) in the case of a violation that does not result in monetary damages owed by Obligor, Obligor shall cure, or cause the cure of, such non-monetary violation.
- (c) For the second and any subsequent LW Violation Final Determinations imposed on Obligor in respect of any direct Site Employees of Obligor, at the direction of the Agency or the DCWP (but not both), (i) Obligor shall pay the Owed Monies and Owed Interest in respect of such direct Site Employees of Obligor to such direct Site Employees, and Obligor shall pay fifty percent (50%) of the total amount of such Owed Monies and Owed Interest to the DCWP as an administrative fee, and/or (ii) in the case of a violation that does not result in monetary damages owed by Obligor, Obligor shall cure, or cause the cure of, such non-monetary violation.
- (d) For the second and any subsequent LW Violation Final Determinations imposed on Obligor in respect of any direct Site Employees of Obligor, if the aggregate amount of Owed Monies and Owed Interest paid or payable by Obligor in respect of its direct Site Employees is in excess of the LW Violation Threshold for all past and present LW Violation Final Determinations imposed on Obligor, then in lieu of the remedies specified in subparagraph (c) above and at the direction of the

Agency or the DCWP (but not both), Obligor shall pay (i) two hundred percent (200%) of the Owed Monies and Owed Interest in respect of the present LW Violation Final Determination to the affected direct Site Employees of Obligor, and (ii) fifty percent (50%) of the total amount of such Owed Monies and Owed Interest to the DCWP as an administrative fee.

- (e) It is acknowledged and agreed that the sole monetary damages that Obligor may be subject to for a violation of this Agreement are as set forth in this paragraph 9.
- 10. Obligor acknowledges that the terms and conditions of this Agreement are intended to implement the Mayor's Executive Order No. 7 dated September 30, 2014.
  - 11. All notices under this Agreement shall be in writing and shall be delivered by (a) return receipt requested or registered or certified United States mail, postage prepaid, (b) a nationally recognized overnight delivery service for overnight delivery, charges prepaid, or (c) hand delivery, addressed as follows:
    - (a) If to Obligor, to [Obligor's Name], [Street Address], [City], [State], [Zip Code], Attention: [Contact Person].
    - (b) If to the Agency, to New York City Industrial Development Agency, One Liberty Plaza, New York, NY 10006, Attention: General Counsel, with a copy to New York City Industrial Development Agency, One Liberty Plaza, New York, NY 10006, Attention: Executive Director.
    - (c) If to the DCWP, to Department of Consumer and Worker Protection of The City of New York, 42 Broadway, New York, NY 10004, Attention: Living Wage Division.
    - (d) If to the Comptroller, to Office of the Comptroller of The City of New York, One Centre Street, New York, NY 10007, Attention: Chief, Bureau of Labor Law.
  - 12. This Agreement shall be governed by, and shall be construed and enforced in accordance with, the laws of the State of New York.
  - 13. Obligor hereby irrevocably and unconditionally (a) agrees that any suit, action or other legal proceeding arising out of this Agreement may be brought in the courts of record of the State of New York in New York County or the United States District Court for the Southern District of New York; (b) consents to the jurisdiction of each such court in any such suit, action or proceeding; (c) waives any objection which it may have to the venue of any such suit, action or proceeding in such courts; and (d) waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of forum non conveniens, (ii) to remove to any federal court other than the United States District Court for the Southern District of New York, and (iii) to move for a change of venue to a New York State Court outside New York County.
  - 14. Notwithstanding any other provision of this Agreement, in no event shall the partners, members, counsel, directors, shareholders or employees of Obligor have any personal

obligation or liability for any of the terms, covenants, agreements, undertakings, representations or warranties of Obligor contained in this Agreement.

IN WITNESS WHEREOF, Obligor has executed and delivered this Agreement as of the date first written above.

[\_\_\_\_\_]

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

Name:

Title:

**EXHIBIT M**

**[RESERVED]**

**[RESERVED]**

## M/WBE PARTICIPATION PLAN

[illegible]

**[RESERVED]**

**EXHIBIT P****DESCRIPTION AND DOLLAR VALUE OF PUBLIC FUNDS**

	<b>Description of Public Funds</b>	<b>Dollar Value of Public Funds (PV)<sup>1</sup></b>
<input type="checkbox"/>	The payment of money, by the Issuer or a third party acting on behalf of and for the benefit of the Issuer, directly to or on behalf of the contractor, subcontractor, developer or owner that is not subject to repayment Description: Not applicable.	
<input checked="" type="checkbox"/>	The savings achieved from fees, rents, interest rates, or other loan costs, or insurance costs that are lower than market rate costs; savings from reduced taxes as a result of tax credits, tax abatements, tax exemptions or tax increment financing; savings from payments in lieu of taxes; and any other savings from reduced, waived, or forgiven costs that would have otherwise been at a higher or market rate but for the involvement of Issuer  Description: <sup>2</sup>  Real Property Tax Exemption Benefits  Sales and Use Tax Exemption Benefits  Mortgage Recording Tax Exemption Benefits	          \$0  \$6,000,000  \$0
<input type="checkbox"/>	Money loaned by the Issuer that is to be repaid on a contingent basis Description: Not applicable.	
<input type="checkbox"/>	Credits that are applied by the Issuer against repayment of obligations to the Issuer. Description: Not applicable	

<sup>1</sup> Note that the determination of value in this notification is an estimate based on the Issuer's customary methods and practices, which include discounting the value of public funds to derive an estimate of the present value (PV) of such funds. No assurance can be given to the Institution that the method of valuation used herein is acceptable to the Department of Labor.

<sup>2</sup> [NTD: Include any mortgage recording tax exemptions and value of interest savings. Indicate "Not applicable" for the other categories of public funds after confirming.]

**EXHIBIT Q****RIDER TO TENANT LEASE AGREEMENT DATED \_\_\_\_\_, 20\_\_**

LANDLORD:	[Name of Lessee]
TENANT:	[insert tenant name]
FLOOR(S)/ UNIT(S):	[insert]
TENANT'S EIN #:	[insert]
PREMISES:	[Address and a description of the Tenant Lease premises]
AGENCY:	New York City Industrial Development Agency
COMPANY LEASE:	Company Lease Agreement (SBMT Asset Facility), dated as of March 1, 2025, between SBMT Asset LLC and the Agency
AGENCY LEASE:	Agency Lease and Agreement (SBMT Asset Facility), dated as of March 1, 2025, between the Agency and SBMT Asset LLC
LEASE	Lease Agreement, dated _____, 20__, between [Name of Lessee], as Landlord, and _____, as Tenant

1. Acknowledgment and Release. Tenant acknowledges that pursuant to the Company Lease (SBMT Asset Facility), the Agency holds a leasehold estate in the entire Premises, and Tenant releases the Agency from any past, present or future claims that Tenant has or may have against the Agency.

2. Representation Regarding Relocation. Tenant represents that as a result of entering into the Lease and this Rider, and upon completion of the construction occupying the Premises, it has and will not have relocated or abandoned any plant or facility from outside of New York City (but within the State of New York).

3. Representation regarding Conduct. None of the Tenant, the Principals of the Tenant, or any Person that is an Affiliate of the Tenant:

- a. is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Agency, NYCEDC or the City, unless such

default or breach has been waived in writing by the Agency, NYCEDC or the City, as the case may be;

- b. has been convicted of a misdemeanor related to truthfulness and/or business conduct in the past five (5) years;
- c. has been convicted of a felony in the past ten (10) years;
- d. has received formal written notice from a federal, state or local governmental agency or body that such Person is currently under investigation for a felony criminal offense; or
- e. has received written notice of default in the payment to the City of any taxes, sewer rents or water charges, which have not been paid, unless such default is currently being contested with due diligence in proceedings in a court or other appropriate forum.

Capitalized terms used in this section have the meanings set forth below:

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

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

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

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

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

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

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

**Principals** shall mean, with respect to any Entity, the most senior three officers of such Entity, any Person with a ten percent (10%) or greater ownership interest in such Entity, and any

Person as shall have the power to Control such Entity, and “principal” shall mean any of such Persons.

4. Subordination. Tenant acknowledges and agrees that the Lease, as modified by this Rider, is subject and subordinate to the Agency Lease, and that any conflict between the terms of the Agency Lease and the terms of the Lease, as modified by this Rider, shall be resolved in favor of the Agency Lease.

5. Indemnity. Tenant agrees to defend, indemnify and hold harmless the Agency, 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 Tenant, its employees or agents in the use or occupancy of the Premises.

6. Insurance. Notwithstanding anything to the contrary contained in the Lease, as modified by this Rider, Tenant agrees to obtain and maintain Commercial General Liability insurance (“CGL”) on a per occurrence basis in the following amounts: minimum \$2,000,000 per occurrence and minimum \$4,000,000 in the aggregate per location. Tenant 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 the Agency as an additional insured; and

(d) Tenant shall provide to Landlord at least thirty (30) days before expiration of the CGL policy (and to the Agency upon the Agency’s request), an ACORD certificate evidencing that Tenant has obtained CGL coverage as required herein; and that such ACORD certificate shall indicate the Agency 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: *[insert premises location]*.”

7. Employment Information. Tenant acknowledges that pursuant to the Agency Lease, Landlord is obligated to provide to the Agency employment information pertinent to all occupants of the building in which the Premises are located. Accordingly, Tenant agrees to provide to Landlord and, if requested by the Agency, to the Agency, information regarding Tenant’s employment at the Premises, including, but not limited to, the then-current New York State Department of Labor’s Form NYS-45, and the Agency’s employment and benefits report form for Tenants (or any successor form as may be required by the Agency as a result of a change in law or as required by New York State agencies).

8. Living Wage. Tenant agrees to comply with all of the terms, covenants and provisions of the Living Wage requirements set forth in Appendix A hereto.

9. HireNYC. Tenant agrees to comply with all of the terms, covenants and provisions of the HireNYC requirements set forth in Appendix B hereto.

10. Non-discrimination. Tenant shall not discriminate nor permit any of its Affiliates (as defined in Section 3 above) to discriminate against any employee or applicant for employment because of race, color, creed, age, sex or national origin. Tenant shall ensure that employees and applicants for employment with Tenant 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.

11. Incorporation in Lease; Third-Party Beneficiary. Tenant agrees and acknowledges that this Rider is a part of and is incorporated into the Lease; and that the Agency is a third-party beneficiary of the foregoing provisions of this Rider. Except where modified by this Rider, the terms and conditions of the Lease, as modified by this Rider, remain unmodified and in full force and effect.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Rider as of the day and year first above written.

[NAME OF LESSEE]  
(Landlord)

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

[INSERT TENANT NAME]  
(Tenant)

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

Appendix A to Rider to Tenant Lease Agreement

*[Landlord to insert form of LW Agreement attached to the Agency Lease as Exhibit L]*

Appendix B to Rider to Tenant Lease Agreement

*[Landlord to insert HIRENYC program requirements attached to the Agency Lease as Exhibit K]*

Appendix C to Rider to Tenant Lease Agreement

*[Landlord to insert executed Labor Peace Agreement if required in accordance with Section 8.25 of the Agency Lease in the form attached to the Agency Lease as Exhibit M]*