



**Annual Investment Projects  
Report Pursuant to**

**New York City  
Administrative Code  
§22-823**

**FY 2018, Volume III  
January 30, 2019**

**NYCEDC**

New York City Economic Development Corporation

110 William Street, New York, NY 10038



# Land Sale List

No.	Project Name	Closing Date	Address	City	State	Postal Code	Total Purchase Price
1	Mount Hope Community Center, Inc.	2/8/2005	55 East 175th Street	Bronx	NY	10453	\$ 436,500.00
2	West-Chambers Street Associates, LLC	2/9/2005	177 West Street	New York	NY	10007	\$ 40,448,220.00
3	Charleston Enterprises, LLC	2/15/2005	West Shore Expressway	Staten Island	NY	10309	\$ 15,000,000.00
4	Erma Realty, LLC #1 (2005)	3/1/2005	2074 Atlantic Avenue	Brooklyn	NY	11233	\$ 210,000.00
5	Modi Realty Inc #1 (2005)	3/31/2005	149 Powell Street	Brooklyn	NY	11212	\$ 275,000.00
6	Kingswood Partners LLC	4/29/2005	1630 East 15th Street	Brooklyn	NY	11229	\$ 2,022,979.00
7	121-125 Development Realty, LLC	7/7/2005	121 East 110th Street	New York	NY	10029	\$ 1,300,000.00
8	20 Rewe Street, LTD.	7/12/2005	Cherry Street	Brooklyn	NY	11211	\$ 407,664.00
9	Museum of Arts and Design	10/19/2005	990 8th Avenue	New York	NY	10019	\$ 17,050,000.00
10	270 Greenwich Street Associates LLC	12/14/2005	270 Greenwich Street	New York	NY	10007	\$ 110,082,967.00
11	Clarendon Holding Co., Inc. #5 (2006b)	1/19/2006	691 Zerega Avenue	Bronx	NY	10473	\$ 1,391,606.00
12	Related Retail Hub, LLC	2/16/2006	2984 3rd Avenue	Bronx	NY	10455	\$ 1,050,000.00
13	NY Brush, LLC	3/14/2006	650 Brush Avenue	Bronx	NY	10465	\$ 4,250,000.00
14	Plaza 163 LLC	4/12/2006	446 East 164 Street	Bronx	NY	10456	\$ 722,636.50
15	Generation Next Of Zerega, LLC	4/26/2006	635 Seward Avenue	Bronx	NY	10473	\$ 1,211,250.00
16	Vista Matro, LLC	6/28/2006	154- 168 Brookville Boulevard	Queens	NY	11422	\$ 2,254,244.00
17	Logan Property, Inc.	6/30/2006	154-68 Brookville Boulevard	Ozone Park	NY	11422	\$ 3,834,460.00
18	ADD Holdings LLC	12/19/2006	134 Evergreen Avenue	Brooklyn	NY	11206	\$ 38,000.00
19	John Catsimatidis	12/28/2006	180 Myrtle Avenue	Brooklyn	NY	11201	\$ 4,726,440.00
20	Myrtle Owner LLC	3/16/2007	156 Myrtle Avenue	Brooklyn	NY	11201	\$ 4,531,940.00
21	East Harlem Tutorial Program Inc.	6/7/2007	2040 2 Avenue	Manhattan	NY	10029	\$ 1,470,000.00
22	QFC Associates LLC	6/26/2007	89-14 Parsons Boulevard	Jamaica	NY	11432	\$ 8,000,000.00
23	Canarsie Plaza LLC	10/31/2007	8925 Avenue D	Brooklyn	NY	11236	\$ 8,300,000.00
24	Erma Realty, LLC #2 (2008)	1/10/2008	2120 Atlantic Avenue	Brooklyn	NY	11233	\$ 275,000.00
25	5225, LLC	6/13/2008	16-16 Whitestone Expressway	Whitestone	NY	11357	\$ 1,124,000.00
26	Allied 345 Retail, LLC	6/27/2008	345 Adams Street	Brooklyn	NY	11201	\$ 5,770,000.00
27	Hinsdale Commercial Property, LLC	7/9/2008	251 Snediker Ave	Brooklyn	NY	11207	\$ 750,000.00
28	Clarendon Holding Co., Inc. #6 (2008)	3/24/2009	178 Sheffield Avenue	Brooklyn	NY	11207	\$ 180,000.00
29	Seaview Senior Living Corporation	11/11/2009	Brielle Avenue	Staten Island	NY	10314	\$ 1.00
30	Homeport I LLC	11/1/2011	455 Front Street	Staten Island	NY	10304	\$ 7,410,000.00
31	210 Joralemon	4/30/2012	210 Joralemon Street	Brooklyn	NY	11201	\$ 10,000,000.00
32	Broadway Plaza	6/8/2012	5534 Broadway	Bronx	NY	10463	\$ 7,500,000.00
33	Taystee Create LLC	6/13/2012	461 West 125th Street	New York	NY	10027	\$ 3,425,000.00
34	Triangle Plaza Hub LLC (Hub at 149th Street)	11/30/2012	East 149th Street	Bronx	NY	10455	\$ 2,060,000.00
35	Toys "R" Us - Delaware, Inc.	2/21/2013	2875 Flatbush Avenue	Brooklyn	NY	11234	\$ 13,000,000.00
36	CJSA Realty LLC (Zerega Havermeyer)	6/11/2013	1200 Zerega Avenue	Bronx	NY	10473	\$ 1,200,000.00
37	Goldex Limited aka 307 Rutledge	6/13/2013	307 Rutledge Street	Brooklyn	NY	11211	\$ 1,030,000.00
38	20 Lafayette LLC	7/1/2013	300 Ashland Place (113 Flatbush Ave)	Brooklyn	NY	11217	\$ 16,500,000.00
39	Civic Center Community Group Broadway LLC	12/11/2013	346 Broadway	New York	NY	10013	\$ 125,100,000.00
40	Bricktown Pass, LLC	12/20/2013	2995 Veterans Road West	Staten Island	NY	10307	\$ 7,500,000.00
41	Flushing Commons, LLC	12/30/2013	37-10 37th Avenue	Flushing	NY	11101	\$ 20,000,000.00
42	707 East 211th Street LLC	7/23/2014	707 East 211th Street	Bronx	NY	10467	\$ 475,000.00
43	Yeshivah Rambam	10/8/2014	3340 Kings Highway	Brooklyn	NY	11234	\$ 1,200,000.00
44	New York Proton Management LLC (Proton Center)	7/15/2015	225 East 126th Street	New York	NY	10035	\$ 14,000,000.00
45	Seward Park	11/25/2015	236 Broome Street	New York	NY	10002	\$ 15,800,000.00
46	MTA East Houston Street	5/20/2016	19 East Houston Street	New York	NY	10012	\$ 25,825,000.00
47	Gotham Center	6/30/2016	28-10 Queens Plaza South	Long Island City	NY	11101	\$ 2,000,000.00
48	Joseph P. Addabbo Family Health Center, Inc., The	8/3/2016	62-00 Beach Channel Drive	Arverne	NY	11692	\$ 479,700.00
49	S & L Aerospace Metals, LLC.	2/1/2017	120-12 28th Avenue	Flushing	NY	11354	\$ 3,200,000.00
50	Cadman Associates LLC	6/15/2017	280 Cadman Plaza West	Brooklyn	NY	11201	\$ 52,000,000.00
51	JEMB Albee Square, LLC	7/5/2017	418 Albee Square	Brooklyn	NY	11201	\$ 456,177.00
52	Teleport Site A	7/27/2017	Teleport Drive	Staten Island	NY	10311	\$ 4,200,000.00
53	Seward Park Site 8	11/1/2017	140 Essex Street	New York	NY	10002	\$ 7,000,000.00

## Land Sales Details

No.	Usage Restriction Begin Date	Usage Restriction End Date	Usage Restriction	Conveyance Restriction Begin Date	Conveyance Restriction End Date	Conveyance Restriction
1	2/8/2005	2/8/2038	(Deed Mod 12/28/2006): For 30 years from substantial completion, the premises, except of the Transfer Property, shall be used by non-profit groups for community recreation and education facilities that may contain meeting rooms and administrative office space and for such public use, including affordable housing, for the benefit of the residents of the City as the City shall approve, through the Director of the City's Office of Management and Budget and (ii) the transfer Property shall be used for affordable housing for the benefit of the residents of the City.	2/8/2005	2/8/2038	(Deed Mod 12/28/2006): For 30 years from substantial completion, the premises, except for the Transfer Property shall not be transferred to any Person whose ownership of the premises or use thereof would jeopardize the tax exemption of bonds issued to provide Funding.
2	2/9/2005	2/9/2015	For 10 years, the premises and any improvements thereon (except for the Community Facility and the DOE/NFP Space and any improvements thereon) shall be used for such residential or retail purposes, all to the extent permitted under the ULURP approval and under applicable zoning law, and for no other purposes, except with the prior written approval of Grantor, provided that if at least 75% of the Premises is used for residential purposes, office use shall be a permitted use.	2/9/2005	2/9/2015	For 10 years, Grantee shall not convey the premises (or any improvements thereon) or any interest in either, except with the prior written approval of grantor, such approval to be given, conditioned or denied in the reasonable discretion of Grantor.
3	2/15/2005	2/15/2010	For 5 years, the Grantee covenants that the premises and any improvements thereon shall be used for Retail Space and for no other purposes, except with the prior written approval of Grantor (the "Use Restriction").	2/15/2005	2/15/2010	For 5 years, the Grantee shall not convey a Phase (or any improvements thereon) or any interest in either, except as permitted by this deed or with the prior written approval of Grantor (the "Transfer Restriction"); it being understood that the leasing or subleasing of a Phase shall not be prohibited by the Transfer Restriction; provided, however, that Grantee, its successors and assigns may not convey a Phase (or any improvements thereon) or any interest in either at any time until the GF A of Retail Space to be constructed on a Phase pursuant to this deed has been completed, except with the prior written approval of Grantor or as permitted by the LDA.
4	3/1/2005	3/1/2010	For 5 years, the premises and any improvements thereon and the Adjacent Property and any improvements thereon shall be used in connection with the non-residential business operations and corporate purposes of AM&G Waterproofing LLC and Park Ave Building & Roofing Supplies, LLC, primarily in connection with User's operational, retail, storage and warehouse purposes as building exterior and restoration and waterproofing companies and for no other purposes, except with prior written approval of Grantor.	3/1/2005	3/1/2010	For 5 years, Grantee shall not convey the premises or any interest in either, except (i) as part of a bona fide sale of User's entire business or (ii) with prior written approval of Grantor or (iii) to IDA in connection with financial assistance provided by IDA to Grantee in connection with Grantee's purchase of the premises and/or construction of the building space required hereby to be constructed on the premises and the Adjacent Property, provided, however, that Grantee, its successors and assigns may not convey the premises or any interest in either, or the Adjacent Property or any interest in either, at any time, except to IDA as indicated above until the Construction required on the premises and/or the Adjacent Property has been completed, except with the prior written approval of the Grantor.
5	3/31/2005	3/31/2010	For 5 years, the premises shall be used primarily in connection with User's manufacture and refinishing of metal, brass, and stainless steel products.	3/31/2005	3/31/2010	For 5 years, Grantee shall not convey the premises (or any improvements thereon) or an interest in either, except (i) as part of a bona fide sale of User's entire business or (ii) with the prior written approval of Grantor; provided, however, that Grantee, its successors and assigns may not convey the premises (or any improvements thereon) or any interest in either at any time until the Construction required on the premises by the deed has been completed, except with the prior written approval of Grantor.

No.	Usage Restriction Begin Date	Usage Restriction End Date	Usage Restriction	Conveyance Restriction Begin Date	Conveyance Restriction End Date	Conveyance Restriction
6	4/29/2008	4/29/2015	For 5 years from when Phase II Construction is substantially complete, the premises and any improvements thereon shall be used in connection with the non-residential business operations and corporate purpose of retail and commercial tenants including parking, and for no other purposes, except with the prior written consent of Grantor; and (ii) for 10 years from date of deed, that portion of the premises containing the Stand Alone Garage shall be used for an attended parking facility, unless another purpose is previously approved in writing by Grantor.	4/29/2008	4/29/2013	For 5 years from when Phase II Construction is substantially complete, Grantee shall not convey the premises (or any improvements thereon) or any interest in either, except with the prior written approval of Grantor; provided, however, that Grantee, its successors and assigns may not convey the premises (or any improvements thereon) or any interest in either at any time until the Phase I Construction and the Phase II Construction required by the deed have been completed, except with prior written approval of Grantor.
7	6/30/2009	6/30/2014	(Deed mod 12/21/2006): For 5 years from the date of the Certificate of Occupancy, the premises and any improvements thereon shall be used in connection with the business operations and corporate purposes of User as a meat market business, and for no other purposes, except with prior written approval of Grantor which approval shall not be unreasonably withheld or delayed; provided, however, that Grantee may use the upper floors of a building constructed on the premises as residential housing so long as User notifies Community Board 11 of the residential plans, and Grantee may also use the premises for other food-related uses that are related to User's meat market business, including as food-related retail space as a restaurant, and for related office space, as long as User, a controlled affiliate of User or a successor to User occupies not less than 50% of the commercial, non-housing floor space of the building on the premises.	6/30/2009	6/30/2014	(Deed mod 12/21/2006): For 5 years from the date of the Certificate of Occupancy, Grantee shall not convey the premises (or any improvements thereon) or any interest in either, except (i) as part of a bona fide sale of User's entire business, (ii) sales of the upper floors of a building constructed on the premises or portions thereof as residential condominium units, or (iii) with the prior written approval of Grantor; provided, however, that Grantee, its successors and assigns may not convey the premises (or any improvements thereon) or any interest in either at any time until the construction required on the premises by the deed has been completed, except with prior written approval of Grantor.
8	7/12/2005	7/12/2010	For a period of five (5) years from the date hereof, the Premises and any improvements thereon and the Adjacent Property and any improvements thereon shall be used in connection with the non-residential business operations and corporate purposes of Grantee and its Tenant, primarily in connection with Tenant's wholesale building materials supply and distribution business, unless Grantor gives its prior written approval.	7/12/2005	7/12/2010	For a period of five (5) years from the date hereof, Grantee shall not convey the Premises (or any improvements thereon) or any interest in either, or the Adjacent Property (or any improvements thereon) or any interest in either, except (i) as part of a bona fide sale of Grantee's entire business, (ii) a conveyance of either owner's stock to the other owner or (iii) with the prior written approval of Grantor; provided, however, that Grantee, its successors and assigns may not convey the Premises (or any improvements thereon) or any interest in either, or the Adjacent Property (or any improvements thereon) or any interest in either, at any time until the Site Work required on the Premises by this deed has been completed, except with the prior written approval of Grantor.
9	10/19/2005	10/19/2020	For 15 years, the premises and any improvements thereon shall be used in connection with the non-residential business operations and corporate purposes of Grantee, primarily in connection with a public museum and for no other purpose, except with the prior written approval of Grantor.	10/19/2005	10/19/2020	For 15 years, Grantee shall not convey the premises (or any improvements thereon) or any interest in either without the prior written approval of Grantor; provided, however, that Grantee, its successors and assigns may not convey the premises (or any improvements thereon) or any interest in either at any time until the renovation and the site work required on the premises by the deed has been completed pursuant to paragraph 1 of the deed, except with the prior written approval of Grantor.

No.	Usage Restriction Begin Date	Usage Restriction End Date	Usage Restriction	Conveyance Restriction Begin Date	Conveyance Restriction End Date	Conveyance Restriction
10	12/14/2005	12/14/2015	For 10 years, the Retail Space may be leased to and occupied only by retail tenants, (ii) the residential units in the Residential Condominium Space may be purchased and occupied only for residential use and/or leased and occupied only for residential use, and (iii) the residential units in the Residential Rental Space may be leased and occupied only by residential tenants in accordance with the Regulatory Agreement, and (iv) the Parking Facility Space shall be operated as a public parking garage, and for no other purposes, except with the prior written approval of Grantor.	12/14/2008	12/14/2018	For 10 years, Grantee, its successors and assigns, shall not convey the premises (or any improvements thereon) or any interest in either except with the prior written approval of Grantor, which approval shall not be unreasonably withheld or delayed; provided, however, that notwithstanding the provisions provided by the deed.
11	1/19/2006	1/19/2011	For 5 years, the premises and any improvements thereon shall be used in connection with the private school bus transportation operations of Grantor and/or Grantee's affiliated entities, and for no other purposes, except with the prior written approval of Grantor.	1/19/2006	1/19/2011	For 5 years, Grantee shall not convey the premises (or any improvements thereon) or any interest in either, except (1) as part of a bona fide sale of Grantee's entire business or (ii) with the prior written approval of Grantor; provided, however, that Grantee, its successors and assigns may not convey the premises (or any improvements thereon) or any interest in either at any time until the construction required on the premises by the deed has been completed, except with prior written approval of Grantor.
12	2/16/2006	2/16/2011	For 5 years, the premises and any improvements thereon shall be used for non-residential business operations and purposes, primarily for office space, retail uses allowed by the Urban Renewal Plan and not otherwise prohibited by zoning, parking and access, and for no other purposes except with the prior written approval of Grantor.	2/16/2006	2/16/2011	Grantee shall not convey the premises (or any improvements thereon) or any interest in either until the construction on Lot 24 of the premises and the rehabilitation of Lot 16 of the premises pursuant to the deed have been completed (i.e. issuance of a temporary or permanent certificate of occupancy), except (A) leasehold title to IDA in connection with certain tax benefits provided by IDA to Grantee in connection with Grantee's purchase of the premises and/or construction/rehabilitation of the building space required by the deed to be constructed/rehabilitated on the premises, or (B) with the prior written approval of Grantor, such approval not to be unreasonably withheld.
13	3/14/2006	3/14/2011	For 5 years, the premises and any improvements thereon shall be used in connection with the non-residential business operations and corporate purposes of Pepsi-Cola Bottling Company of New York, Inc. ("User"), primarily in connection with User's beverage distribution and other food and beverage-related business and for no other purposes, except with the prior written approval of Grantor.	3/14/2006	3/14/2011	For 5 years, Grantee shall not convey the premises (or any improvements thereon) or any interest in either, except (i) without the prior written approval of Grantor, or (ii) a leasehold interest to User, or (iii) to convey a leasehold interest to IDA in connection with tax benefits provided by IDA to Grantee in connection with Grantee's purchase of the premises and/or construction of the building space required hereby to be constructed on the premises; provided, however, that Grantee, its successors and assigns may not convey the premises (or any improvements thereon) or any interest in either at any time (except pursuant to (i) or (ii) of the aforementioned paragraph) until the construction required on the premises by the deed has been completed, except with the prior written approval of Grantor.
14	12/31/2011	12/31/2016	For 5 years following Grantee's receipt of the temporary or permanent certificate of occupancy allowing for the use of the premises as a retail center, the premises shall be used solely in connection with Grantee's non-residential commercial retail uses, and for no other purposes, except with the prior written approval of Grantor.	12/31/2011	12/31/2016	For 5 years following Grantee's receipt of the temporary or permanent certificate of occupancy allowing for the use of the premises as a retail center, it shall not convey the premises (or any improvements thereon) or any interest in either, except (i) as part of a bona fide sale of Grantee's entire business (excluding corporate dissolutions, liquidations, bankruptcy, or sales where the stock and/or assets of the business are sold separately) to a purchase who shall agree to all covenants contained in the deed, or (ii) with the prior written approval of Grantor; provided, however, that Grantee, its successors and assigns may not convey the premises (or any improvements thereon) or any interest in either at any time until the construction has been completed, except with the prior written approval of Grantor.

No.	Usage Restriction Begin Date	Usage Restriction End Date	Usage Restriction	Conveyance Restriction Begin Date	Conveyance Restriction End Date	Conveyance Restriction
15	4/26/2006	4/26/2011	For 5 years, the premises and any improvements thereon shall be used in connection with the assembly and wholesale distribution of denim products business of Federal Jeans Inc. ("User"), and for no other purposes, except with prior written approval of Grantor, not to be unreasonably withheld or delayed.	4/26/2006	4/26/2011	For 5 years, Grantee shall not convey the premises (or any improvements thereon) or any interest in either, except (i) as part of a bona fide sale of Grantee/User's entire business, (ii) with the prior written approval of Grantor, (iii) as part of inheritance or estate planning purposes, or (iv) to other members of Grantee, provided such members were members as of the date hereof; provided further, however, that Grantee, its successors and assigns may not convey the premises (or any improvements thereon) or any interest in either at any time until the Construction required on the premises by this deed has been completed without first obtaining the prior written approval of Grantor, except for purposes of (ii), (iii), or (iv) above.
16	6/28/2006	6/28/2016	For 10 years, the premises and any improvements thereon shall be used in connection with the non-residential business operations and corporate purposes of Quick International Courier, Inc., an air cargo and delivery company ("Quick") or any Successor User, primarily in connection with Quick's (or a Successor User's) air cargo and delivery service business and for no other purposes, except with the prior written approval of Grantor.	6/28/2006	6/28/2011	For 5 years from the later of (i) the date of deed or (ii) the completion of the building to be constructed on the premises pursuant to the deed, Grantee shall not convey the premises (or any improvements thereon) or any interest in either, except with the prior written approval of Grantor.
17	7/2/2012	7/2/2017	For 5 years from the date of receipt of the earlier of a temporary or permanent certificate of occupancy for the premises, the premises and any improvements thereon shall be used for the non-residential business operations and corporate purposes of Users, primarily in connection with Users' transportation business and operations and for no other purposes, except with the prior written approval of Grantor, which approval shall not be unreasonably withheld.	7/2/2012	7/2/2017	For 5 years from the date of receipt of the earlier of a temporary or permanent certificate of occupancy for the premises, Grantee shall not convey the premises (or any improvements thereon) or any interest in either, except (i) in connection with a bona fide sale of the entire business operations of all of the Users, or (ii) with the prior written approval of Grantor; provided, however, that Grantee, its successors and assigns may not convey the premises (or any improvements thereon) or any interest in either, at any time until the construction required on the premises by the deed has been completed, except with the prior written approval of Grantor.
18	12/19/2006	12/19/2011	Grantee, on behalf of itself, its successors and assigns, covenants that, for a period of five (5) years from the date hereof, the premises and any improvements thereon shall be used in connection with the non-residential business operations and corporate purposes of ADD Plumbing Inc., primarily in connection with User's plumbing contracting and pipe fabrication business and for no other purposes, except with the prior written approval of Grantor.	12/19/2006	12/19/2011	Grantee, on behalf of itself, its successors and assigns, further covenants that, for a period of 5 years after the initial 5 year period mentioned above, the premises shall either be (i) used for the above-described purposes or (ii) used by Grantee, or if Grantee has conveyed the premises to another entity, by such other entity, for industrial uses permitted in a M1-1 zone under the City's Zoning resolution and for no other purposes, except with the prior written approval of Grantor. (C) Grantee, on behalf of itself, its successors and assigns, covenants that, for a period of five (5) years from the date hereof, it shall not convey the premises (or any improvements thereon) or any interest in either, except (i) as part of a bona fide sale of Grantee's/User's entire business or (ii) with the prior written approval of Grantor; provided, however, that Grantee, its successors and assigns may not convey the premises (or any improvements thereon) or any interest in either at any time until the Construction required on the premises by this deed has been completed, except with the prior written approval of Grantor. The above restrictions and covenants in this paragraph shall run with the land.

No.	Usage Restriction Begin Date	Usage Restriction End Date	Usage Restriction	Conveyance Restriction Begin Date	Conveyance Restriction End Date	Conveyance Restriction
19	12/28/2006	12/28/2013	<p>Purchaser covenants that for a period until the later of (i) five (5) years from the commencement of the Project construction and (ii) three (3) years following the issuance of a temporary Certificate of Occupancy for the Project ("Restriction Termination Date"), the premises and any improvements thereon and the Adjacent Property and any improvements thereon shall be used for the development of the Project and sale or rental of the residential and commercial units contained therein and for no other purposes, except with prior written approval of the Agency. The above restrictions do not apply in the (x) event of a foreclosure sale and (y) not preclude the customary use of the Project as constructed in the event that Sewer termination and Utility Relocation have not occurred by the second anniversary of the closing date. Further the Purchaser covenants to develop the Premises and Adjacent Property in strict accordance with the Urban renewal Plan, as amended.</p>	12/28/2006	12/28/2013	<p>Purchaser covenants that for a period until the Restriction Termination Date (or three (3) years following the issuance of a temporary Certificate of Occupancy for the Project) shall not convey the premises (or any improvements thereon) or any interest in either, or the Adjacent Property (or any improvements thereon) except with the prior written approval of the Agency.</p>
20	3/16/2007	3/16/2012	<p>Purchaser covenants that, for a period until the later of (1) five (5) years from the date hereof and (2) three (3) years following the initial issuance of a temporary Certificate of Occupancy for a residential unit in the project, the premises and any improvements thereon and the Adjacent Property and any improvements thereon shall be used for the development of the project and sale or rental of the residential and commercial units contained therein and for no other purposes, except with the prior written approval of the Agency.</p>	3/16/2007	3/16/2012	<p>Purchaser, on behalf of itself and its successors and assigns, covenants that, for a period until the Restriction Termination Date, it shall not convey the Premises (or any improvements thereon) or any interest in either, or the Adjacent Property (or any improvements thereon) or any interest in either, except with the prior written approval of the Agency, which approval shall not be unreasonably withheld or delayed; provided, however, that notwithstanding the foregoing, Purchaser may, without the prior consent of the Agency, (A) enter into retail and/or residential leases for the retail and/or residential space in the Project, (B) sell or enter into an agreement for the lease or operation and use of the parking facility space in the project; provided that purchaser/lessee/operator has a presently valid license issued by the appropriate licensing authority of the City for the operation of such parking facility, (C) sell residential or commercial condominium units in the Project to any persons; provided that any proposed bulk sale of residential condominium units to a single buyer, provided further that the total floor area of commercial space that may be sold pursuant to this clause (C) shall not be greater than 25 percent of the floor area originally contemplated for residential units, (D) act as a declarant under any condominium declaration that may hereafter be established for the premises and the Adjacent Property thereby converting its interest therein and improvem</p>
21	6/7/2007	6/30/2037	<p>For 30 years, the premises and any improvements thereon shall be used by Grantee and/or other not-for-profit entities (provided that such not-for-profit entities and their principals shall be subject to Grantor's and Grantor's Inspector General's qualification and background review, and further provided that only Grantee, and not other not-for-profit entities, shall have the right to use the premises for the first 5 years from the date of deed as a not-for-profit community recreation and education facility and for such other public uses that will benefit the residents of the City of New York as Grantor shall approve, and for no other purposes, except with the prior written approval of Grantor.</p>	3/15/2017	3/15/2022	<p>(Deed Mod 6/6/2011) For 5 years from date of receipt of temporary/permanent certificate of occupancy, whichever is earlier, Grantee shall not convey the premises (or any improvements thereon) or any interest in either, except (i) in connection with a bona fide sale of Grantee's entire business or (ii) with the prior written approval of Grantor, provided, however, that Grantee, its successors and assigns may not convey the premises (or any improvements thereon) or any interest in either at any time until the construction required on the premises by the deed has been completed, except with the prior written approval of Grantor.</p>



No.	Usage Restriction Begin Date	Usage Restriction End Date	Usage Restriction	Conveyance Restriction Begin Date	Conveyance Restriction End Date	Conveyance Restriction
22	6/26/2007	6/26/2015	Purchaser covenants that for a period of five (5) years from the date of Substantial Completion (or from the date of receipt of a temporary certificate of occupancy), the Property shall be used in connection with the maintenance and operation of the New development and for no other purposes, except with the prior written approval of the Agency. Notwithstanding the foregoing, the use of the Community Space for community facility purposes, as described in Paragraph I(A)(2) above, shall continue for not less than twenty (20) years from the date of Substantial Completion.	6/26/2007	6/26/2012	Purchaser covenants that for a period of five (5) years from the date of closing (or until June 26, 2012), purchaser shall not convey the Property (or any improvements thereon) or any interest therein, except with the prior written approval of Grantor; provided, however, that Grantee, its successors and assigns may not convey the property (or any improvements thereon) or any interest in either at any time until Substantial Completion, except with prior written approval of Grantor, provided that (A)(x) the parties and entities holding interests in Dermot QFC LLC on the date of the Contract continue to hold their respective interests therein or (y) upon the removal of the managing member of Grantee (pursuant to the organizational documents of, and other agreements among, Grantee and the parties and entities holding interests therein on the date of the Contract, including, without limitation, any "buy-sell" rights inuring to the benefit of the members of Grantee)
23	10/31/2007	10/31/2012	Grantee, on behalf of itself, its successors and assigns, covenants that, for a period of five (5) years from the date hereof, the premises and any improvements thereon shall be used in connection with the non-residential business operations and corporate purposes of Grantee and its commercial and retail tenants, and for no other purposes, except with the prior written approval of Grantor. The above restrictions and covenants in this paragraph shall not apply to the premises after a foreclosure sale or a transfer in lieu of foreclosure under a mortgage held by an institutional lender securing financing with regard to the purchase of the premises by Grantee or construction financing with regard to construction on the premises or a permanent "take-out" loan with regard to such construction financing.	10/31/2007	10/31/2012	Grantee, on behalf of itself, its successors and assigns, covenants that, for a period of five (5) years from the date hereof, it shall not convey the premises (or any improvements thereon) or any ownership interest in either, except with the prior written approval of Grantor.
24	1/10/2008	1/10/2013	For 5 years, the premises and any improvements thereon and the Adjacent Property and any improvements thereon shall be used in connection with the non-residential business operations and corporate purposes of AM&G Waterproofing LLC ("User"), primarily as a vehicle maintenance facility in connection with User's operational, storage, and warehouse purposes as a building exterior and restoration and waterproofing company, and for no other purposes, except with the prior written approval of Grantor.	1/10/2008	1/10/2013	For 5 years, Grantee shall not convey the premises (or any improvements thereon) or any ownership interest in either, or the Adjacent Property (or any improvements thereon) or any ownership interest in either, except (i) as part of a bona fide sale of User's entire business or (ii) with the prior written approval of Grantor.
25	6/13/2008	11/29/2020	For 5 years, the premises and any improvements thereon (subject to the covenants and restrictions contained in the deed) and the Adjacent Property and any improvements thereon shall be used in connection with the non-residential business operations and corporate purposes of Grantee, primarily in connection with Grantee's construction business and for no other purposes, except with the prior written approval of Grantor.	6/13/2008	6/13/2013	For 5 years, Grantee shall not convey the premises (or any improvements thereon) or any ownership interest in either, except (i) as part of a bona fide sale of Grantee's entire business or (ii) with the prior written approval of Grantor; provided, however, that Grantee, its successors and assigns may not convey the premises (or any improvements thereon) or any interest in either, or the Adjacent Property (or any improvements thereon) or any interest in either, at any time until the construction required on the Adjacent Property by the deed has been completed, except with the prior written approval of Grantor.
26	6/22/2011	6/22/2016	Grantee, on behalf of itself, its successors and assigns, covenants that, for a period of five (5) years from the date hereof (June 22, 2011, date of Deed Modification), the Unit shall be used in connection with the non-residential business operations and corporate purposes of Grantee, exclusively for retail uses, either by Grantee or tenant of Grantee, and for no other purposes, except in each case with the prior written approval of Grantor.	6/22/2011	6/22/2016	For 5 years, Grantee shall not convey the Unit (or any improvements thereon) or any ownership interest in either, except (i) as part of a bona fide sale of Grantee's entire business or (ii) a lease(s) to retail tenant(s) or (iii) with the prior written approval of Grantor or (iv) to a special purposes entity in connection with financing provided to Grantee's acquisition of the Unit and/or rehabilitation of the Unit; provided, however, that Grantee, its successors and assigns may not convey the Unit (or any improvements thereon) or any interest in the Unit at any time (except pursuant to clause (i) or (iv) above) until the Rehabilitation required of the Unit by the deed has been completed, except with the prior written approval of Grantor.

No.	Usage Restriction Begin Date	Usage Restriction End Date	Usage Restriction	Conveyance Restriction Begin Date	Conveyance Restriction End Date	Conveyance Restriction
27	7/9/2008	7/9/2013	For 5 years, the premises and any improvements thereon shall be used in connection with the non-residential business operations and corporate purposes of Air Tech Lab Inc. ("User"), primarily in connection with User's asbestos abatement business and other light industrial and retail uses by tenants and for no other purposes, except with the prior written approval of Grantor. For 5 years, the Premises and any improvements thereon shall be used in connection with the non-residential business operations and corporate purposes of Consolidated Bus Transit, Inc. ("User"), primarily in connection with User's provision of school bus transportation services and for no other purposes, except with the prior written approval of Grantor.	7/9/2008	7/9/2013	For 5 years, Grantee shall not convey the premises (or any improvements thereon) or any ownership interest in either, except (i) as part of a bona fide sale of User's entire business or (ii) with the prior written approval of Grantor; provided, however, that Grantee, its successors and assigns may not convey the premises (or any improvements thereon) or any interest in either at any time until construction required on the premises by the deed has been completed, except with the prior written approval of Grantor.
28	3/24/2009	3/24/2014	Grantee, on behalf of itself, its successors and assigns, covenants that, for a period commencing on the date hereof and concluding thirty (30) years from the date of Substantial Completion of the construction of the Phase I and Phase II, as applicable: (A) the Phase I Premises shall be used as a senior citizen housing complex comprised of: (x) an assisted living facility containing a minimum of 120 ALUs for seniors age 62 years or older, (y) the Staff Residence to be used for purposes ancillary and incidental to the assisted living facility, which may include but shall not be limited to overnight accommodations for staff and visitors thereto and offices for staff and management thereof, and (z) the Commons Building to be used as a community facility serving the senior housing complex as well as the general public; (B) the Phase II Premises shall be used as a senior citizen housing complex comprised of three buildings containing 213 ILUs for seniors age 55 years and older, one building (approximately 71 ILUs) of which shall remain within a range affordable to households within the 75% to 195% area median income range; (C) for purposes ancillary and incidental to the foregoing uses provided that such ancillary and incidental uses promote, and not derogate from, use of the premises for the purposes authorized above, as the case may be; and (D) for such other use for the benefit of the people of the City of New York as the City shall approve through the Mayor of the City of New York or the Mayor's designee.	3/24/2009	3/24/2014	For 5 years, Grantee shall not convey the premises (or any improvements thereon) or any ownership interest in either, except (i) as part of a bona fide sale of User's entire business or (ii) with the prior written approval of Grantor.
29	11/11/2015	11/11/2045	Grantee, on behalf of itself, its successors and assigns, covenants that, for a period until the later of (i) five years from the date hereof and (ii) for each Phase, three (3) years following Substantial Completion of such Phase, the Property shall be used for the development of the Project and rental and/or sale of the residential and commercial units, including any condominium and cooperative units, contained therein and for no other purposes, except with the prior written approval of Grantor.	11/11/2015	11/11/2020	For 5 years from the date of Substantial Completion of the Construction of the Project, Grantee shall not convey the premises (or any improvements thereon) and/or rights to use the Emergency Access Easement, or any part of either, except in a Permitted Transfer, without the prior written approval of both the Grantor and the City, acting through the Director of OMB; provided, however, that Grantee, its successors and assigns may not convey the premises (or any improvements thereon) or any part in either, except in a Permitted Transfer, at any time until all buildings and other improvements to be constructed on the premises in Phase I and Phase II pursuant to the deed have been completed.
30	11/11/2011	11/11/2016	Grantee, on behalf of itself and its successors and assigns, covenants that, for a period until the later of (i) five years from the date hereof and (ii) for each Phase, three (3) years following Substantial Completion of such Phase, the Property shall be used for the development of the Project and rental and/or sale of the residential and commercial units, including any condominium and cooperative units, contained therein and for no other purposes, except with the prior written approval of Grantor.			Grantee, on behalf of itself, its successors and assigns, covenants that prior to the earlier of (a) twelve (12) months following the date that such Phase shall be Substantially Complete and (b) the date on which such Phase shall be Stabilized (the "Release Date") it shall Complete and (b) the date on which such Phase shall be Stabilized (the "Release Date") it shall not convey any Phase of the Project except with the prior written approval of Grantor.

No.	Usage Restriction Begin Date	Usage Restriction End Date	Usage Restriction	Conveyance Restriction Begin Date	Conveyance Restriction End Date	Conveyance Restriction
31	4/30/2014	4/30/2029	Grantee, on behalf of itself, its successors and assigns, covenants that, for a period of ten (10) years from the Restriction Commencement Date (as defined), all tenants under leases affecting the Retail Unit shall be required to be open for business no less than nine hours each day. Grantee further covenants and agrees that, (i) during the five-year period commencing on the Restriction Commencement Date, the Retail Unit shall not be occupied by in excess of (7) tenants (one of whom shall be at least 10,000 square feet); and (2) for a period of fifteen (15) years from the Restriction Commencement Date, one occupant of the Retail Unit shall be a sit-down full service restaurant.	4/30/2014	4/30/2024	Grantee covenants that, until the Restriction Commencement Date, Albert Laboz shall remain a managing member of Grantee unless he is unable to do so by reason of death or disability, in which case, either Jason Laboz or Jody Laboz shall be managing member of Grantee. Furthermore, for a period often (10) years from the Restriction Commencement Date, Grantee shall be controlled and managed by Albert Laboz, Jason Laboz and/or Joseph Jody Laboz (collectively, the "Laboz Brothers"). In addition to the foregoing, Grantee, on behalf of itself, its successors and assigns, covenants that, for a period often (10) years from the Restriction Commencement Date, it shall not convey the Retail Unit or any interest therein, except (i) as a lease(s) to a retail tenant(s) in accordance with the terms of sections (b) above and (d) below, or (ii) With the prior written approval of Grantor.
32	12/28/2014	12/28/2019	Grantee, on behalf of itself and its successors and assigns, covenants that, for a period of five (5) years from the date of final completion of construction of the Project (as evidenced by the issuance of a certificate of occupancy for the Project from the applicable governmental authority, the "Final Completion"), the Property shall be used in connection with the business operations of Grantee's commercial and/or retail tenants and for no other purposes, except with the prior written approval of Grantor.	12/28/2014	12/28/2019	Grantee, on behalf of itself and its successors and assigns, covenants that, for a period of five (5) years from the date of Final Completion, it shall not convey the Property (or any improvements thereon) or any interest in either, except for leases in the ordinary course of business or otherwise, without the prior written approval of Grantor.
33	7/31/2016	7/31/2021	Grantee, on behalf of itself, its successors and assigns, covenants that, for a period of 5 years commencing on the date that a certificate of occupancy is issued for the Property (or any portion thereof) for the Permitted Uses, Grantee, or a successor entity approved by the Grantor, shall use the Property for Permitted Uses and for no other purposes, except with the prior written approval of Grantor.	6/13/2012	6/13/20174	Grantee, on behalf of itself, its successors and assigns, covenants that, for a period of five (5) years from the date hereof, it shall not convey the premises (or any improvements thereon) or any ownership interest in either, except with the prior written approval of Grantor.
34	11/30/2016	11/30/2021	Grantee, on behalf of itself, its heirs, successors and assigns, covenants that, for a period of five (5) years from the Construction Completion Date, the Premises shall be used in connection with the non-residential business operations and corporate purposes of the Users, for the operation of a supermarket, restaurant, and other retail and office uses on Lot 59, Lot 60 and Lot 30, and for no other purposes, except with the prior written approval of Grantor.	11/30/2016	11/30/2021	Grantee, on behalf of itself, its successors and assigns, covenants that, except as provided below, for a period of five (5) years from the Construction Completion Date, it shall not convey the Premises (or any improvements thereon) or any interest in either to any entity other than an Affiliate, except with the prior written approval of Grantor.
35	2/21/2013	2/21/2033	Property shall be used a toy store for a period of twenty years from the date of this deed.	2/21/2013	2/21/2018	Grantee, on behalf of itself and its successors and assigns, covenants that, until the expiration of the fifth (5th) year of the Restricted Period, it shall not convey or lease the Property.
36	6/11/2013	6/11/2018	Grantee, on behalf of itself, successors and assigns, covenants that, for a period of five (5) years from the date hereof, the Property shall be used in connection with the nonresidential business operations and corporate purposes of D&J Service, Inc., D-J Ambulette Service Inc. (d/b/a CITICARE), and M.J.S.A., Inc. (d/b/a CITICAR)	6/11/2013	6/11/2018	Grantee, on behalf of itself, successors and assigns, covenants that, for a period of five (5) years from the date hereof, it shall not convey the Property (or any improvements thereon) or any interest in either, except as part of a bona fide sale of Grantee's and/or the Users' entire businesses with the prior written approval of the Grantor.
37	6/13/2015	6/13/2020	Grantee, on behalf of itself, its successors and assigns, covenants that, for a period of five (5) years from the date of final completion of the Construction (as evidenced by the issuance of a temporary certificate of occupancy for the premises from the applicable governmental authority, (the "Final Completion"), the Property and any improvements thereon shall be used in connection with the business operations of Grantee and Grantee's commercial and/or retail tenants and for a community facility of approximately 3,700 square feet and for no other purposes, except with the prior written approval of Grantor.	6/13/2015	6/13/2020	Grantee, on behalf of itself, its successors and assigns, covenants that, for a period of five (5) years from the date of the Final Completion, it shall not convey the premises (or any improvements thereon) or any interest in either, except for leases in the ordinary course of business or otherwise, without the prior written approval of Grantor. In addition to the foregoing, no stock of Grantee may be sold, assigned or otherwise transferred, nor may any additional stock in Grantee be issued, until five (5) years from the date of the Final Completion, without the written approval of Grantor.

No.	Usage Restriction Begin Date	Usage Restriction End Date	Usage Restriction	Conveyance Restriction Begin Date	Conveyance Restriction End Date	Conveyance Restriction
38	7/10/2013	6/17/2017	Building shall be constructed predominantly for residential, community facility and commercial uses, including 50,000 interior gross square foot cultural space. The use of ground floor of the ground floor of building is restricted to commercial or community facility uses, (excluding such portions of the ground floor that are (i) a part of the City Unit(s), (ii) used for mechanical or other building systems, (iii) necessary to provide ingress and egress to the Building, (iv) customary "back of the house" uses), (v) used as common areas, a parking ramp for the Parking Facility or to provide access to various amenities in the Building. Sponsor shall make good faith efforts to make a portion of the Building available for use as a "destination restaurant." The Plaza will be used for public open space purposes as determined by the City OED. The Condominium will consist of two units with apartment common elements. At least one unit will be owned by the Sponsor (Developer Unit), which may be used for residential, commercial, or other uses permitted under zoning regulations. One or more additional units, comprising the Plaza and and Community Space, will be conveyed to the City and shall be used for community space.	7/10/2013	6/17/2017	Promptly following the completion of the Initial Scope of Work, Sponsor shall convey to the City, or its designee, the City Unit(s) and the respective rights to the limited common elements and common elements appurtenant to the City Unit(s), free and clear of all encumbrances other than the Declaration. Prior to Completion of Construction, Sponsor shall not permit any total or partial conveyance of the Disposition Area.
39	12/11/2013	12/11/2023	For a period ending on the tenth (10th) anniversary of the Full Vacancy Date, the premises shall only be used for any lawful use permitted under the Zoning Resolution of New York City in effect as of the date of the Contract (as defined below), including, without limitation: (1) for residential rental apartments and/or condominium units and uses incidental to such residential use, such as residential amenities, laundry facilities, storage space, home offices and commercial space; (2) for hotel purposes and uses incidental to such hotel use, such as restaurant space, banquet space, event space, catering uses, meeting rooms, spa, retail and health facility uses; (3) for retail and restaurant uses; (4) for parking purposes and/or (5) for office use and ancillary uses; provided, however, for such period the premises may not be used for Prohibited Uses (as defined below). The above restrictions in this paragraph 2 shall not apply to the premises after a foreclosure sale or a transfer in lieu of foreclosure under or in connection with a Recognized Mortgage.	12/11/2013	12/11/2018	Until the fifth (5th) anniversary of the date of this deed, Grantee shall not convey the premises or any interest in either, except with the prior written approval of Grantor. The above restrictions and covenants in this paragraph shall not prohibit, or apply to, a foreclosure sale or a transfer in lieu of foreclosure under or in connection with a Recognized Mortgage, nor to any sale or other transfer subsequent to such a foreclosure sale or transfer in lieu of foreclosure. The above restrictions and covenants in this paragraph shall not prohibit, or apply to, the conveyance of (a) residential condominium units, (b) occupied commercial condominium units below grade or on the ground floor or (c) commercial condominium units below grade or on the ground floor to parties intending to occupy such space.
40	12/20/2013	12/20/2023	Grantee, on behalf of itself, its successors and assigns, covenants that for a period of ten (10) years from the date that the temporary certificate of occupancy is issued for the uses described in (a) hereof (the "Use Period"), the Property shall be used for the Permitted Use and no other purpose. Permitted use is retail tenants and other customer-service business tenants.	12/20/2013	12/20/2018	Grantee, on behalf of itself, its successors and assigns, covenants that, for a period of five (5) years from the date hereof, it shall not convey the Property (or any improvements thereon) or any interest in either, other than by a space lease or ground lease to a tenant for the Permitted Use, except with the prior written approval of Grantor; provided, however, Grantee may, without the prior approval of Grantor, during such period: (i) enter into or impose a condominium or cooperative regime on the Property; if Grantee remains responsible for the day-to-day operations of the Property or (ii) remove the managing member of Grantee, pursuant to the organizational documents of, and other agreements among, Grantee and the parties and entities holding interests therein.

No.	Usage Restriction Begin Date	Usage Restriction End Date	Usage Restriction	Conveyance Restriction Begin Date	Conveyance Restriction End Date	Conveyance Restriction
41	12/30/2013	12/30/2018	For a period commencing on the date hereof until five (5) years from the date of Substantial Completion of the Phase I Project, the Phase I Project shall be used in accordance with the City Planning Approval and for no other purposes, except with the prior written approval of Grantor. For a period commencing on the date hereof until five (5) years from the date of Substantial Completion of the Phase II Project, Building E (including the YMCA Unit being used as a recreational and community facility) and the Open Space shall be used in accordance with the City Planning Approval and for no other purposes, except with the prior written approval of Grantor.	12/30/2013	12/30/2018	<p>Phase I Property Owner, or their heirs, assigns, successors and assigns, covenants that, from the date hereof until five (5) years from the date of Substantial Completion of the Phase I Project, it shall not convey fee title to the Property or any portion thereof (or any improvements thereon) or any interest in either, except (i) with the prior written approval of Grantor, (ii) after Substantial Completion of all of the Phase I Project, a conveyance of all or any portion of the Phase I Land and improvements thereon, (iii) after Substantial Completion of all of the Phase I Project, or, if applicable, upon the Phase II Alternate Closing Date, a conveyance of the Phase II Land to Phase II Property Owner as permitted pursuant to Section 8(b) of this indenture, (iv) the grant of a leasehold interest to a User or the conveyance of a Unit to a User; and/or (v) the conveyance of the South Garage or the North Garage, after Substantial Completion thereof, to a successor grantee approved by</p>
42	7/23/2014	7/23/2019	Grantee, on behalf of itself, its successors and assigns, covenants that, for a period of five (5) years from the date of Substantial Completion of the Project required on the Property hereof, the Property shall be used in connection with the business operations of Grantee and Grantee's commercial and/or retail tenants, as well as its residential tenants in the event that Grantee constructs a residential tower on top of the Project and for no other purposes, except with the prior written approval of Grantor.	7/23/2014	7/23/2019	<p>Grantee, on behalf of itself, its successors and assigns, covenants that, for a period of five (5) years from the date of Substantial Completion of the Project, it shall not convey the Property (or any improvements thereon) or any interest therein, except for leases in the ordinary course of business or otherwise, without the prior written approval of Grantor. In addition to the foregoing, no membership interests of Grantee may be sold, assigned or otherwise transferred, nor may any additional membership interests in Grantees be issued, until five (5) years from the date of Substantial Completion, without the written approval of Grantor.</p>
43	10/8/2014	10/8/2024	Grantee, on behalf of itself, its heirs, successors and assigns, covenants that, for a period of ten (10) years from the date hereof, the Premises shall be used in connection with the non-residential business operations and corporate purposes of Grantee, primarily in connection with education and related purposes and for no other purposes, except with the prior written approval of Grantor. The above restrictions in this paragraph shall not apply to the Premises after a foreclosure sale or a transfer in lieu of foreclosure under a mortgage held by an Institutional Lender securing financing with regard to the purchase of the Premises by the Grantee herein or construction financing with regard to construction on the Premises or a permanent "take-out" loan held by an Institutional Lender with regard to such construction financing.	10/8/2014	10/8/2019	<p>Grantee, on behalf of itself, its heirs, successors and assigns, covenants that, for a period of five (5) years from the date hereof, it shall not convey the Premises (or any improvements thereon) or any interest in either, except with the prior written approval of Grantor. Notwithstanding the above, Grantee may enter a lease or leases for the basement and first floor of the building on the Premises as it exists on the date hereof, provided such spaces are used for the educational purposes ("Permitted Transfer").</p>
44	7/15/2025	7/15/2025	Grantee, on behalf of itself, its successors and assigns, covenants that, for a period of ten (10) years from the date hereof, the Property shall be used in connection with the non-residential business operations and corporate purposes of Grantee, New York Proton Management, LLC ("Proton Management"), or either of their respective affiliates, successors and assigns, and/or The New York Proton Center ("NYPC"), as an ambulatory diagnostic and treatment healthcare facility, including a proton beam cancer therapy center, and for other ancillary healthcare-related services and accessory uses as shall be permitted by the Zoning Resolution (the "Project"), and for no other purposes, except with the prior written approval of Grantor.	7/15/2020	1/15/2022	<p>Grantee, on behalf of itself, its successors and assigns, covenants that, until the date which is eighteen (18) months after the date that the first patient receives treatment pursuant to the Project, Grantee shall not convey the Property (or any improvements thereon) or any fee interest in either, except (i) to an affiliate of Grantee, (ii) to Proton Management or its affiliates, provided that NYPC, a New York not-for-profit corporation, or one or more of the constituent members of Proton Management retains operational control, (iii) to one or more of the constituent members (e.g. Memorial Sloan Kettering Cancer Center, Montefiore Medical Center, Mount Sinai Medical Center, and/or ProHealth Medical Management, LLC, or its or their affiliate(s)) holding a direct or indirect interest in Proton Management or NYPC, or (iv) with the prior written approval of Grantor.</p>

No.	Usage Restriction Begin Date	Usage Restriction End Date	Usage Restriction	Conveyance Restriction Begin Date	Conveyance Restriction End Date	Conveyance Restriction
45	11/25/2015	11/25/2025	<p>Grantee covenants and agrees that, for the period commencing on the date hereof and ending on the tenth (10th) anniversary of the date hereof (the "Restriction Period"), the Premises shall not be converted to dormitory use. Grantee covenants and agrees that, for the Restriction Period, the Premises shall include 15,000 square feet of Floor Area devoted to community facility uses; provided, however, that if the Premises shall be converted to a condominium form of ownership, then from and after such conversion only the Community Facility Unit (as defined below) shall be required to include 15,000 square feet of Floor Area devoted to community facility uses for the balance of the Restriction Period.</p>	11/25/2015	11/25/2025	<p>Grantee covenants and agrees that, during the Restriction Period, Grantee shall not transfer or convey the Premises or any interest therein without the prior written approval of Grantor (which may be granted, withheld or conditioned in Grantor's sole discretion). Notwithstanding the foregoing, Grantee shall have the right, without the requirement of Grantor's approval, to transfer or convey any or all of its interest in the Premises to a Permitted Person, provided (A) the Completion of the Construction Work shall have occurred prior to such transfer or conveyance and (B) such transfer or conveyance shall be a part of a bona fide sale of the entire business of Grantee's parent company.</p>
46	5/20/2016	5/20/2026	<p>For a period of ten (10) years from the date of final completion of construction on the Property as required herein (as evidenced by the issuance of a temporary certificate of occupancy for the Property from the applicable governmental authority, "Final Completion"), the Property shall not be used for any use other than the Project (in each case subject to periods when there may not be operations due to alterations, vacancy, casualty, interruption of services or other reasons) and for no other purposes, except with the prior written approval of Grantor. The above restrictions in this paragraph shall not apply to the Property after a mortgage or UCC foreclosure sale, appointment of a receiver or exercise of any other similar remedy, or a transfer in lieu of foreclosure under a mortgage held by an institutional lender securing financing with regard to the purchase, development, leasing, improvement, sale or refinancing of the Property or construction financing with regard to construction on the Property or a permanent "take-out" loan with regard to such construction financing (a "Mortgagee").</p>	5/20/2016	5/20/2026	<p>Grantee, on behalf of itself, its successors and assigns, covenants that, for the period commencing on the date hereof and ending on the date that shall be ten (10) years from the date of Final Completion, it shall not convey the Property (or any improvements thereon) or any interest therein, except for leases, licenses and other use agreements in the ordinary course of business or otherwise, without the prior written approval of Grantor, which approval shall not be unreasonably withheld, conditioned, or delayed. In addition to the foregoing, for the period commencing on the date hereof and ending on the date of Final Completion, no membership interests of Grantee may be sold, assigned or otherwise transferred, nor may any additional membership interests in Grantee be issued, without the written approval of Grantor.</p>
47	1/31/2020	1/31/2035	<p>Following Substantial Completion of the Construction, to use the Property only for use as commercial office building(s), which may include retail and parking facilities, and arts and cultural spaces and, in each case, all uses incidental thereto, for a period of fifteen (15) years from the date hereof. If Grantee transfers title to, or a leasehold interest in, the Property to New York City Industrial Development Agency ("IDA") in connection with obtaining financial assistance, Grantee, on behalf of itself and Grantee's successors, covenants that, so long as it or its successor leases the Property from or to IDA or a successor agency, Grantee or Grantee's successor will be bound by and will complete the Construction required by this paragraph as if Grantee or Grantee's successor had retained title to, and had not granted a leasehold interest in, the Property. Grantor will not require that IDA or a successor agency do such Construction or have recourse against IDA or a successor agency in connection therewith. If Grantee transfers title to, or a leasehold interest in, the Property to IDA in connection with obtaining financial assistance, IDA on behalf of itself and any successor agency will covenant that, until the Construction required by this paragraph has been completed, any lease of the Property from it or such successor agency shall require the lessee of the Property to complete such Construction as if such lessee were the title holder of the Property and to provide in such lease of the Property that Grantor and its successors and assigns and designees are a named third party beneficiary of such obligation.</p>	6/30/2016	1/31/2020	<p>Grantee, on behalf of itself, its successors and assigns, covenants that, until Stabilization and Substantial Completion of the Building, (A) it shall not convey all or any part of the Property (or any improvements thereon) except (i) to an entity in which Tishman Speyer Crown Equities, L.L.C. ("TSCE") or an entity controlled by TSCE (x) holds at least ten percent (10%) of the stock, capital, membership, or partnership interest, or other equity interests, and (y) is the managing member or general partner (subject to customary major decision rights of the other members or partners), or (ii) with the prior written approval of Grantor, or (iii) to IDA in connection with financial assistance provided by IDA to Grantee in connection with Grantee's purchase of the Property and/or construction/rehabilitation of the building space required hereby to be constructed/rehabilitated on the Property, and (B) it shall not admit a new partner or member in Grantee or change the interest of any partner or member of Grantee, except (i) if, following such admission or change, as applicable, an entity controlled by TSCE (x) continues to hold at least ten percent (10%) of the stock, capital, membership, or partnership interest, or other equity interests in Grantee, and (y) remains the managing member or general partner of Grantee.</p>

No.	Usage Restriction Begin Date	Usage Restriction End Date	Usage Restriction	Conveyance Restriction Begin Date	Conveyance Restriction End Date	Conveyance Restriction
48	8/3/2019	8/3/2049	<p>Grantee, on behalf of itself, its successors and assigns, covenants that: (i) from the date hereof and continuing in perpetuity, the Property shall be used as a community healthcare and educational facility by not-for-profit groups; and (ii) for 30 years from the date of Completion of construction required on the Property hereby the Property shall be used by not-for-profit groups as a community healthcare and educational facility of Grantee and its affiliates, (in each case subject to periods when there may not be operations due to alterations that are being continuously and diligently progressed or a casualty) and the Property may be used for no other purposes, except with the prior written approval of Grantor.</p>	8/3/2019	8/3/2049	<p>Grantee, on behalf of itself, its successors and assigns, covenants that, for the period commencing on the date hereof and ending on the date that shall be thirty (30) years from the date of Completion of construction required on the Property hereby (as evidenced by the issuance of a temporary certificate of occupancy for the Property from the applicable governmental authority (the "Final Completion"), it shall not convey the Property (or any improvements thereon) or any interest therein, except (i) as part of a bona fide sale of Grantee's entire healthcare business to another not-for-profit corporation or (ii) with the prior written approval of Grantor; provided, however, that Grantee, its successors or assigns may not convey the Property (or any improvements thereon), or any interest in either, at any time until the construction to be Completed of the Property pursuant to this deed has been Completed, except with the prior written approval of Grantor.</p>
49	8/1/2019	8/1/2034	<p>For a period of fifteen (15) years from the date of completion (the "Completion Date") of (i) the Renovation and (ii) construction of the New Building (the "Fifteen Year Use Period"), the Property and the Adjacent Property shall be used in connection with the nonresidential business operations and corporate purposes of User or an affiliated entity, primarily in connection with User's or an affiliated entity's aerospace parts manufacturing business and for no other purposes, except with the prior written approval of Grantor.</p>	8/1/2019	8/1/2024	<p>For a period of five (5) years from the date of completion of (i) the Renovation and (ii) construction of the New Building, they shall not convey the Property (or any improvements thereon) or any interest in either, or the Adjacent Property (or any improvements thereon) or any interest in either, except as part of a bona fide sale of User's entire business or with the prior approval of Grantor.</p>
50	6/15/2017	6/15/2025	<p>Grantee covenants and agrees that for the period commencing on the date of Deed and ending on the fifth (5th) anniversary of the Completion of the Construction Work, the Premises (other than the City Condo Unit) shall be used solely for the residential, commercial, Community Facility and parking uses specified and for no other purpose, except with the prior written approval of Grantor.</p>	6/15/2017	6/15/2025	<p>Grantee covenants and agrees that for the period commencing on the date hereof and ending on the fifth (5th) anniversary of the Completion of the Construction Work, Grantee shall not transfer or convey the Premises or any interest therein without the prior written approval of Grantor (which may be granted, withheld or conditioned in Grantor's sole discretion), except as otherwise expressly provided in this paragraph. Notwithstanding the foregoing, Grantee shall have the right, without the requirement of Grantor's approval, to transfer or convey (i) the City Condo Unit (as hereinafter defined) to the City in accordance with Section 2.01(g), (ii) residential condominium units to third-parties for residential occupancy pursuant to arm's-length transactions, and (iii) a condominium unit to the New York City School Construction Authority, a public benefit corporation of the State of New York ("SCA") for use as a Community Facility for education purposes, including uses ancillary thereto.</p>
51	10/1/2021	10/1/2026	<p>Grantee, on behalf of itself, its heirs, successors and assigns, covenants that it shall operate and develop the Project Property in accordance with the Urban Renewal Plan and the development plan for the Project Property submitted to and approved by the City and Grantee prior to the date hereof (the "BLDS Plans"), and any amendments thereto, provided by Grantee and approved in writing by Grantor and HPD.</p>	10/1/2021	10/1/2026	<p>Grantee, on behalf of itself, its heirs, successors and assigns, covenants that, for a period of five (5) years from the date of Substantial Completion of the Building, it shall not convey the Project Property (or any improvements thereon) or any interest in either, except as permitted under paragraph (E) below or with the prior written approval of Grantor, which approval shall not be unreasonably conditioned, withheld or delayed.</p>

No.	Usage Restriction Begin Date	Usage Restriction End Date	Usage Restriction	Conveyance Restriction Begin Date	Conveyance Restriction End Date	Conveyance Restriction
52	7/27/2019	7/27/2039	Grantee, on behalf of itself, its successors and assigns, covenants that for a period of twenty (20) years from the date of Substantial Completion of the Building on the Property, the Property and any improvements thereon, including the Building, shall be used for commercial offices and as follows: for five (5) years from the date of Substantial Completion of the Building, 20% of the rentable square feet of the Building (and any replacement building) shall be used for the following medical uses and in accordance with the Zoning Resolution, as it may be amended: mini clinic, physician practices, wellness centers, rehabilitation facilities, other retail out-patient care, urgent care clinic, ambulatory care center, research facilities and laboratories, medical trade schools, administrative offices for home health care providers (collectively)	7/27/2019	7/27/2024	Grantee, on behalf of itself, its successors and assigns, covenants that for a period of five (5) years from the date of Substantial Completion, it shall not convey the Property (or any improvements thereon) or any interest in either, except with the prior written approval of Grantor. Grantee, its successors and assigns, may not convey the Property (or any improvements thereon) or any interest in either at any time until the Building is Substantially Complete. In addition to the foregoing, any additional member in Grantee, and any change in the interest of any member of Grantee in Grantee, must be approved in writing by Grantor.
53	11/1/2017	11/1/2027	Grantee covenants and agrees that, for the period commencing on the date hereof and ending on the tenth (10th) anniversary of the date hereof (the "Restriction Period"), the Premises shall not be converted to dormitory use, it being agreed and acknowledged that the use of the Premises for low-income housing in accordance with the Regulatory Agreement shall not be deemed to be dormitory use.	11/1/2017	11/1/2027	Grantee covenants and agrees that, during the Restriction Period, Grantee shall not transfer or convey the Premises or any interest therein without the prior written approval of Grantor (which may be granted, withheld or conditioned in Grantor's sole discretion). Notwithstanding the foregoing, Grantee shall have the right, without the requirement of Grantor's approval, to transfer or convey any or all of its interest in the Premises to a Permitted Person, provided (A) the Completion of the Construction Work shall have occurred prior to such transfer or conveyance and (B) such transfer or conveyance shall be a part of a bona fide sale of the entire business of Grantee's parent company.



# Leases List

No.	BUILDING NAME	LEASED	MRI Lease ID	Revenue 7/17 - 6/18	Address
1	Battery Maritime Building	10 SSA Landlord, LLC	M04410-000912	1,359,375.97	10 South Street, Battery Maritime Building, New York, NY 10004
2	Alexandria Center	ARE - East River Science Park, LLC	D02000-ARE01	2,311,813.44	450 East 29th Street, New York, NY 10016
3	200-240 Food Center Drive	Dairyland HP LLC	M21000-DAIRY1	1,883,265.98	200-240 Food Center Drive, Bronx, NY 10474
4	One Dekalb Avenue	Albee Development, LLC	C05500-ALBB1	1,159,839.66	One Dekalb Avenue, Brooklyn, NY
5	Lighthouse Point	5 Bay Street, LLC	C04015-PH3LLC	852,035.50	5 Bay Street, Staten Island, NY 10301
6	Astoria Studios Bldgs 1-4, 13	American Museum of Moving Image	C02800-AMMI01	1.00	36-01 35th Avenue, Astoria, NY 11106
7	550 Food Center Drive	Anheuser-Busch distributors of NY, Inc.	M21350-000510	818,110.44	550 Food Center Drive, Bronx NY 10474
8	Atlantic Center Mall	Atlantic Center Fort Greene	C01000-ATLA01	2,035,360.88	Atlantic Center Mall, South Elliott Place & Fort, Brooklyn, NY
9	155 Food Center Drive	Baldor Specialty Foods, Inc.	M20900-BSFI01	3,199,542.12	155 Food Center Drive, Bronx, NY 10474
10	Fulton Fireboat/Shed	Bargemusic, Ltd.	M02800-BARG01	TRANSFERRED TO PARKS	Fulton Ferry Landing, Brooklyn NY 11201
11	Pier 36 East River	Basketball City USA, LLC	M04560-BACIO1	426,115.00	Pier 36 and East River, New York, NY 10038
12	Bridgemarket	Bridgemarket Associates, L.P	C04200-BRID01	561,558.07	Bridgemarket, 2nd Avenue & Queensboro Bridge, NY
13	Renaissance Plaza	Brooklyn Renaissance Plaza, LLC	C00600-RENA01	15,820,713.20	350 Jay Street, Brooklyn, NY
14	Renaissance Plaza	Brooklyn Renaissance Plaza, LLC	C00600-RENA02	101,958.36	350 Jay Street, Brooklyn, NY
15	Renaissance Plaza	Brooklyn Renaissance Plz-Garage	C00600-RENA04	573,633.12	350 Jay Street, Brooklyn, NY
16	Renaissance Plaza	Brooklyn Renaissance Plz-Hotel	C00600-RENA05	140,525.76	350 Jay Street, Brooklyn, NY
17	Renaissance Plaza	Brooklyn Renaissance Plz-Retail	C00600-RENA03	29,647.56	350 Jay Street, Brooklyn, NY
18	Gateway Plaza	BTM Development Partners, LLC	C02150-000490	736,954.14	Gateway Plaza, Bronx Terminal Market, Bronx, NY
19	600 Food Center Drive	Citarella Operating LLC	M21400-000188	748,206.03	600 Food Center Drive, Bronx, NY 10474
20	Skyports	Community Environmental Center	M04650-000235	1.00	23rd and the East River, New York, NY 10010
21	Essex Bldg A/150 Essex Street	Community Healthcare Network	M05000-NEW001	304,221.90	150 Essex Street, New York, NY 10002
22	Flatbush Parking Deck	Flatbush Center Parking LLC	C01500-FBCP01	1.00	1007 Flatbush Avenue, Brooklyn, NY 11226
23	Flatbush Parking Deck	Flatbush Delaware Holding LLC	C01500-FBDH01	150,000.00	1007 Flatbush Avenue, Brooklyn, NY 11226
24	Nine Metrotech (Flatbush)	Forest City - Flatbush Assoc.	C00500-FORE01	112,640.04	Nine Metrotech (Flatbush), Brooklyn, NY 11201
25	Two Metrotech (Bridge St)	Forest City Bridge St. Assoc.	C00300-FORE02	1,254,480.85	Two Metrotech Center, Brooklyn NY 11201
26	One Metrotech (Jay Street)	Forest City Jay Street Assoc.	C00200-FORE01	4,086,694.87	One Metrotech Center, Brooklyn NY 11201
27	Nine South Metrotech (Myrtle)	Forest City Myrtle Assoc., LL	C00550-000167	1,349,707.92	Nine South Metrotech (Myrtle), Brooklyn, NY 11201
28	Pierrepoint Plaza	Forest City Pierrepoint Assoc.	C00100-FORE04	1,601,641.92	159 Pierrepoint Street, Brooklyn NY 11201
29	Eleven Metrotech (Tech Place)	Forest City Tech Place	C00400-FORE03	937,760.22	Eleven Metrotech (Tech Place), Brooklyn, NY 11201
30	13th Avenue Market, Bklyn	13th Avenue Retail Market, LLC	M02500-000214	281,988.00	3910 13th Avenue, Brooklyn, NY 10274
31	Fulton Fireboat/Shed	Fulton Ferry Holdings, LLC	M02800-FULT01	217,603.36	Fulton Ferry Landing, Brooklyn NY 11201
32	Gansevoort Meat Market	Gansevoort Market, Inc.	M22900-000047	1,623,073.60	569 West Street, New York, NY 10014
33	Jamaica Farmer's Market	Greater Jamaica Devt. Corp.	C03400-GREA01	33,083.16	90-04 161st Street, Jamaica, NY 11412
34	355 Food Center Drive	Hunts Point Co-op Market, Inc.	M21100-HUNT01	9,285,743.92	355 Food Center Drive, Bronx, NY 10474
35	NYC Terminal Market	Hunts Point Terminal Produce Coop	M21500-HUNT01	4,099,999.96	37 Terminal Market Center, Bronx, NY 10474
36	Kaufman Astoria Studios	KAS Production Center LLC & New Stage LLC	C03000-001085	220,942.08	34-12 36th Street, Astoria, NY 11106
37	Astoria Studios Bldgs 1-4, 13	Kaufman Astoria Studios	C02800-KAUF01	497,118.99	34-12 36th Street, Astoria, NY 11106
38	400 Food Center Drive	KFI Food Center Dist., Inc.	M02130-KFI001	702,160.27	400 Food Center Drive, Bronx, NY 10474
39	25th Street Pier	La Farge Building Materials, Inc.	M00400-000301	2,013,182.27	25th Street Pier, Brooklyn, NY 11232
40	SBMT 2nd Ave Site (29-39th)	1-10 Industry City Associates LLC	M02000-ICAL01	610,386.00	2nd Ave, b/w 35th & 37th St., Brooklyn NY 11232
41	Logan Bus Parking Lots	Linn-Ann Enterprises, Inc.	C04500-LINN01	178,182.34	97-14 Atlantic Ave, New York, NY 11416
42	M. Parisi & Son	M.Parisi & Son Construction Co	C03700-MPAR01	120,000.00	54-65 48th Street, Jamaica, NY 11434
43	Maramont Building	Maramont Corporation	M20100-MARA01	334,332.09	Maramont Corporation, Bronx, NY 10474
44	Jamaica Center 1	Mattone Group Jamaica Co.,LLC	C03550-000049	590,372.68	One Jamaica Center, Jamaica, NY
45	The Water Club	MDO Development Corp	M04675-000054	598,950.00	East 30th St. East 32nd St, New York, NY
46	New York Times	New York Times	C03200-NEW001	552,000.00	College Point Ind. Park, College Point, NY
47	Mill Basin Waterfront	Nick's Lobster House	M00300-NICK02	181,132.80	Mill Basin Waterfront, Avenue U, Brooklyn NY
48	Arthur Avenue Market	North Bronx Market, Inc.	M03300-NORT02	183,750.00	2344 Arthur Avenue, Bronx, NY 10410
49	Livingston Plaza	NYC Transit Authority	C00700-TA0001	1,329,890.64	130 Livingston Plaza, Brooklyn, NY 11201
50	Astoria Studios Bldg 6 School	Our World Neighborhood Charter School	C02900-000087	437,427.78	36-12 35th Street, Astoria, NY 11106
51	Pier A	Battery Park City Authority	M04000-BPCA01	1.00	Pier A between Battery Park and Battery Park City, New York, NY
52	Teleport	Port Authority NY & NJ- Teleport	C03900-TELE01	802,933.07	1 Teleport Drive, Suite 301, Staten Island, NY 10311
53	Red Hook Terminal	Port Authority of NY & NJ- Red Hook	M00700-PA0001	-	Red Hook Marine Terminal, NY
54	Howland Hook Terminal	Port Authority of NY/NJ - Howland Hook	M06000-PA0001	3,377,052.84	3551 Richmond Terrace, Staten Island, NY
55	Bathgate Development Blocks	Port Authority of NY-NJ - Bathgate Deve. Blocks	C02300-POR01	1,711,030.61	1701 Bathgate Avenue, Bronx, NY 10457
56	Pier 79 - Ferry Landing	Port Imperial Ferry Corp., d/b/a NY Waterway	D00100-000306	220,369.00	Pier 79 - Ferry Landing, New York, NY
57	SBMT - 29th Street Building	Royal Wine Corp.	M01800-ROYA01	425,564.94	SBMT - 29th Street Building, Brooklyn, NY
58	Mill Basin Waterfront	Sea Traveler's Realty Inc.	M00300-SEA001	77,170.00	Mill Basin Waterfront, Avenue U, Brooklyn NY
59	Seaport Associates (97 block)	Seaport Associates	M21600-SOUT01	375,166.52	19 Fulton Street, New York, NY 10038
60	Seaport Marketplace - GGP	South Street Seaport Limited Partnership	M21810-SSSL02	1,743,047.16	19 Fulton Street, New York, NY 10038
61	Seaport - Museum	South Street Seaport Museum	M21820-SOUT02	-	207 Front Street, New York, NY 10038
62	Staten Is Minor League Stadium	Staten Island Yankees	C04000-SIMLH1	(17,033.56)	St. George Station, Staten Island, NY
63	600 Food Center Drive	Sultana Dist. Services, Inc.	M21400-000048	1,081,732.36	600 Food Center Drive, Bronx, NY 10474
64	800 Food Center Drive	The New Fulton Fish Mkt Coop HP, Inc	M21450-000995	2,978,465.22	800 Food Center Drive, Bronx, NY 10474
65	Audubon	Trustees of Columbia University	D01500-000245	1.00	650 West 168th Street #BB07, New York, 10032
66	United Nations Developmt Corp.	United Nations Development Crp	C04100-UNDC01	1,763,219.27	Two United Nations, New York, NY 10017
67	LaMarqueta Lots 6&7	Urban Garden Center, LLC	M05516-URBG02	48,440.19	115th Street and Park Avenue, NY 10029
68	Winking Group, LLC	Winking Group, LLC	C04300-WINK01	208,372.56	75/85 East Broadway, New York, NY
69	Site 1	Times Square Tower Associates LLC	F01000-TSTA01	5,983,707.24	7 Times Square, New York, NY 10036
70	Site 3	3 Times Square Associates	F03000-TMSQ3	2,751,339.87	3 Times Square, New York, NY 10036
71	Site 4	RXR 5TS Owner LLC	F04000-TMSQ5	4,544,856.87	5 Times Square, New York, NY 10036
72	Site 5	The New 42nd Street	F05000-THEAT9	10.00	330 W. 42nd St., New York, NY 10036
73	Site 6	New Amsterdam Theater	F06000-AMST01	2,234,616.97	214 W. 42nd St., New York, NY 10036
74	Site 8E E/R	FC-42nd Street Associates, LP	F08000-RETAIL	3,050,367.99	241 W. 41st St., New York, NY 10036
75	Site 8E HOTEL	Sunstone Hotel Partnership, LLC	F08100-SUNSTN	2,486,381.52	241 W. 41st St., New York, NY 10036
76	Site 8S-FC OFFICE	FC Eighth Ave, LLC	F09000-FCEA01	7,899,355.84	620-632 8th Ave, New York, NY 10036
77	Site 8S-FC RETAIL	FC Eighth Ave, LLC	F09100-FCRE01	211,729.05	620-632 8th Ave, New York, NY 10036
78	Site 8S - NYT	620 Eighth NYT - (NY) Limited Partnership	F09200-8SNYT	9,664,356.97	620-632 8th Ave, New York, NY 10036
79	Site 8S - NYT-2	NYT Building Leasing Company, LLC	F09300-000788	19,363.15	620-632 8th Ave, New York, NY 10036
80	Site 12	Four Times Square Associates, LLP	F12000-DURS12	6,605,889.24	4 Times Square, New York, NY 10036
81	Former Loew's Kings Theater	Kings Theatre Redevelopment Company, L.L.C.	C01800-KTRC01	50.00	1027 Flatbush Avenue, Brooklyn, New York 11226

82	Roosevelt Island	Cornell University	C04210-001060	1.00	Block 1373, P/O Lot 20 and P/O Lot 1, New York, New York
83	JFK-Prologis Site	Prologis, L.P.	C03650-PROLP1	277,597.80	Block 14260, Lot 100, Queens, New York
84	Staten Island Retail	St. George Outlet Development	C04011-RETAIL	1,500,000.00	Block 2, Lot 15 (fka p/o Lots 1, 5, 10 and 20 on Block 2), Staten Island, NY
85	NY Wheel LLC	New York Wheel LLC	C04012-NYWL01	1,010,000.00	Block 2, Lot 22, Air Space of Block 2, part of Lot 20, Staten Island, NY
86	Lighthouse Point	5 Bay Street, LLC	C04015-LSVL01	240,000.00	5 Bay Street, Staten Island, NY 10301
87	370 Jay Street	New York University	C00650-NYUC01	1.00	370 Jay Street, Brooklyn, NY
88	Coney Island Amphitheater	Seaside Park, LLC	C20400-SSPL01	1.00	3052 West 21st Street, Brooklyn, NY 11224
89	CitiPostal, Inc.	CitiPostal, Inc.	C01900-CITIPL	4,381,854.96	20 North 12th Street, 5 North 11th Street and 33 North 10th Street, Brooklyn, NY 11211

The data collected is in compliance with NYC Admin. Code §22-823. This list of leases of City Owned Land consisting of Ground Leases and Net Leases of buildings including revenue for the previous FY2018. This list also includes the leased street addresses.

# LEASES DETAIL



# 10 SSA Landlord LLC

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

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

## ARTICLE 6

### UTILITIES

#### Section 6.01. Utility Service to Premises.

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

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

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

## ARTICLE 7

### USE OF PREMISES

#### Section 7.01. Permitted Use.

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

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

- (i) a hotel consisting of up to 70 rooms, amenity space on the second floor mezzanine of the Building and a lobby area on the first floor (collectively, the “**Hotel**”);
- (ii) a restaurant located on the fifth floor and roof deck of the Building (the “**Restaurant**”);
- (iii) a hall on the second floor of the Building, the loggia along South Street, and an at grade entrance area providing access to the hall and loggia (as more specifically delineated in Exhibit K hereof, the “**Great Hall**”), which will be available to the general public and will comprise a mix of cultural uses, food vendors, restaurants and public seating areas, all in accordance with Section 7.02 hereof;
- (iv) a shared waiting area within the ground floor of the Building and access from said waiting area to the DOT Premises, as further depicted in Exhibit J hereto and further described in the Operating Agreement (the “**DOT Waiting Area**”), for use by the public in connection with ferries docking at the DOT Premises and Tenant’s invitees; and
- (v) a sidewalk area adjacent to the entire South Street façade of the Building that conforms to the East River Esplanade design as set forth in the drawings and specifications included in the contract documents prepared for the construction of the East River Esplanade, including, but not limited to, Section 02780 of the specifications, dated June 7, 2010, forming part of said contract documents, a copy of which section is annexed hereto as Exhibit P, as said contract documents may be modified from time to time and, in any event, to the East River Esplanade sidewalk that is actually installed in the other areas of the East River Esplanade.

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

### Section 7.02. Operation of the Great Hall.

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

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

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

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

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

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

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

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

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

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

Section 7.06. No Representations or Warranty by Landlord.

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

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



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

### ARTICLE 8

#### EASEMENTS

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

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

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

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

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

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Term option, the Term shall expire in sixty (60) days from delivery of such notice. A Recognized Mortgagee shall on behalf of Tenant have the right to exercise the options for an Extended Term set forth in this Section 2.4.

## Section 2.5 Non-Competition.

(a) Prior to the earlier to occur of (i) the issuance of a temporary certificate of occupancy for the East Tower, or (ii) April 1, 2010, neither the City nor Lease Administrator will allow any redevelopment project or new construction project to break ground if such new project is (x) located on City-owned land; and (y) expected to include more than 25% of Rentable Square Feet dedicated to Commercial Life Science Use.

(b) Notwithstanding the foregoing Section 2.5(a), neither the City nor the Lease Administrator would be prohibited from pursuing or assisting the projects commonly known as (i) Audubon IV; (ii) Brooklyn Army Terminal; and (iii) any other projects not located on City-owned land, which may be assisted with, or benefited by, economic benefits or economic incentives provided by the IDA.

(c) To the extent that the City or Lease Administrator breaches the provisions of Section 2.5(a), the number of Rentable Square Feet required to be devoted to Commercial Life Science Use pursuant to the special use requirements set forth on Schedule A hereof shall be reduced one Rentable Square Foot for each Rentable Square Foot developed or constructed in violation of the requirements of Section 2.5. By way of illustration only: if a new building, containing 20,000 Rentable Square Feet of space, is developed, and one-half is dedicated to Commercial Life Science Use, the number of Rentable Square Feet required to be devoted to Commercial Life Science Use in the Project shall be reduced by 5,000 Rentable Square Feet (i.e., the number of Rentable Square Feet in excess of twenty-five percent (25%) of the Rentable Square Footage of the new building devoted to life science use).

Section 2.6 Use of Psychiatric Building. Tenant has been advised by Lease Administrator that the New York City Department of Homeless Services intends to discontinue its current use of the Psychiatric Building. In the event that the Psychiatric Building continues to be used to provide shelter beds and "intake" services for homeless individuals, and such use continues for any period following the date which is three (3) years after the Commencement Date, the initial eighteen (18) month period described in the first paragraph of Schedule A, under the Heading "Commercial Use," shall be reduced by three (3) days for each day (subsequent to the expiration of such three (3) year period) that the Psychiatric Building continues to be used to provide shelter beds and "intake" services for homeless individuals. Lease Administrator agrees to inform Tenant, on a regular basis, of the status of the efforts by the New York City Department of Homeless Services to discontinue its current use of the Psychiatric Building.

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

## Section 5.05. Taxes.

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

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

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

## Section 5.07. Intentionally Omitted.

## Section 5.08. Survival.

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

## ARTICLE 6

### USE AND DEVELOPMENT OF PREMISES

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

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

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

Section 6.03. Unlawful Use; No Representation of Landlord.

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

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

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

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

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

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

## ARTICLE 7

### INSURANCE

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

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

ARTICLE 21NO ABATEMENT OF RENTAL

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

ARTICLE 22PERMITTED USE; NO UNLAWFUL OCCUPANCY; PEDESTRIAN STREET

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

Section 22.02.

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

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

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mortgage on Landlord's interest in the Premises. Landlord agrees to include in such mortgage a subordination clause reasonably satisfactory to Tenant and to the Recognized Mortgagee most senior in lien in order to accomplish such subordination. Such mortgage shall also include a waiver and release by the mortgagee of any claims to any insurance proceeds or condemnation awards properly applicable to a Condemnation Restoration or a Casualty Restoration. If the mortgagee refuses to include such provisions, Landlord shall not enter into the mortgage and to do so shall constitute a material default by Landlord under the terms of this Master Lease. For the purposes of this provision, it is understood and agreed that the lien of any such mortgage shall be subordinate to the lien of this Master Lease and the lien of any Severance Lease, and to Tenant's interest in this Master Lease and Tenant's leasehold estate, any Severance Tenant's interest in its Severance Lease and the Severance Tenant's leasehold estate thereunder, or to any new lease granted pursuant to Section 11.4, notwithstanding that as a technical legal matter the leasehold estate created pursuant to this Master Lease may have terminated prior to the execution, delivery and recordation of a memorandum of such new lease. Any such mortgage shall, upon foreclosure under such mortgage, be entitled to succeed only to the interest of Landlord.

### **ARTICLE 12** **USE OF PREMISES**

Section 12.1 Permitted Use. Tenant shall use and occupy the Premises, or cause the Premises to be used and occupied, as provided in this Master Lease for the sole purpose of constructing and operating a mixed-use project described in the Project Plan (the "Permitted Use"). In furtherance of, and not in limitation of, the foregoing, Tenant shall use and operate the Premises continuously and without interruption in accordance with the Project Plan. Tenant shall not use the Premises, or permit the Premises to be used, for any purpose other than the Permitted Use, except with the prior written approval of Landlord, to be given at Landlord's sole and absolute discretion.

#### Section 12.2 Performance of the Project.

##### (a) Commencement of Each Phase.

(1) The Project will be developed sequentially. The Commencement of Construction with regard to Phase 1 is to occur as and when provided in the Phase 1 Severance Lease, subject to Unavoidable Delays and to the provisions of Section 12.3 below. The Commencement of Construction with regard to Phase 3 is to occur not later than eighteen (18) months after the Commencement of Construction of Phase 1, subject to Unavoidable Delays and to the provisions of Section 12.3 below. Subject to Tenant's right to change the sequencing of the Project as set forth in Section 12.4 below, the Commencement of Construction with regard to Phase 2 shall occur after the issuance of a temporary certificate (or certificates) of occupancy or completion (which, with respect to a commercial space, may be the equivalent of a "core and shell" temporary certificate of occupancy) (as the case may be, with respect to any Phase, collectively a "Phase TCO") covering all of the Buildings required to be constructed as part of, or in conjunction with, Phases 1 and 3. The development of each Phase will be

governed by a separate Severance Lease therefor, having a term of 49 years (subject to the provisions in Section 12.2(a)(5) below regarding Phase 2).

(2) Not later than five (5) Business Days after the issuance of Phase TCOs with respect to Phase 1 and Phase 3 (whichever shall be the later to occur), Tenant shall give Landlord written notice thereof (a "Phase Completion Notice"), which Phase Completion Notice shall be accompanied by a copy of the applicable Phase TCO(s) and the Architect's certification required to be delivered under Section 13.5, along with both (i) Tenant's written request for a Severance Lease for Phase 2 and (ii) Tenant's certification that completed Background Qualification Forms then required for Landlord's due diligence procedures for Tenant or the designated Severance Tenant for Phase 2, as the case may be, were previously delivered to Landlord no more than 120 days and no less than 60 days prior to delivery of said Phase Completion Notice. Provided no Event of Default exists under this Master Lease, within ten (10) Business Days after Landlord's receipt of a Phase Completion Notice for Phase 1 or 3 (whichever shall be the later to be received by Landlord) and all required accompanying materials when and as provided for above, Landlord shall deliver to Tenant execution counterparts of the Phase 2 Severance Lease. Within five (5) Business Days after Tenant's receipt of execution counterparts of the Phase 2 Severance Lease from Landlord, Tenant or its designated Phase 2 Severance Tenant shall sign all of such execution counterparts, and Tenant shall return them to Landlord along with the same number of signed and notarized counterparts of a memorandum of lease with respect thereto in the same form as the memorandum of lease recorded in connection with the Phase 1 Severance Lease. Tenant's failure to return all of such signed execution counterparts to Landlord within said five (5) Business Day period shall be deemed a forfeiture of the right to enter into the Phase 2 Severance Lease. Within ten (10) Business Days after Landlord's receipt of signed execution counterparts of the Phase 2 Severance Lease and memorandum of lease from Tenant, Landlord shall countersign all of such execution counterparts, have its signature of the Memorandum of Lease notarized and return not less than two (2) fully executed counterparts to Tenant; ***provided, however***, that Landlord shall not be obligated to return fully executed counterparts if the Phase 2 Severance Tenant is an Unqualified Person. In no event shall Tenant Commence the Construction Work with respect to Phase 2 until Tenant receives a fully-executed Severance Lease for such Phase.

(3) Tenant acknowledges that the requirements to Commence the Construction Work with regard to a Phase by the Construction Commencement Date therefor and to Substantially Complete the Construction of the Building(s) in a Phase by the Scheduled Completion Date therefor, as provided and in accordance with the Project Plan, are important to Landlord, and for such reason Landlord and Tenant have provided for the Extension Options described in Section 12.3 for construction of Buildings for the Project. Tenant further acknowledges and agrees that Tenant's failure to comply with the requirements of the Project Plan will cause loss and damage to Landlord, the precise extent of which is difficult to ascertain in monetary terms. For this reason, and in such



event, in addition to any other remedies available to Landlord under this Master Lease, Landlord and Tenant have provided for the adjustment to Base Rent payable pursuant to the various Severance Leases to the amounts as set forth in Exhibit K (“Adjusted Base Rent”), and Landlord shall also be entitled to avail itself of any remedies under this Master Lease and any existing Severance Leases regardless of Landlord’s receipt of the Adjusted Base Rent, if a Severance Tenant fails to Commence the Construction Work with regard to a Phase by the Construction Commencement Date therefor or to Substantially Complete the Construction of the Building(s) in a Phase by the Scheduled Completion Date therefor, subject to extension as provided in Section 12.3.

(4) Notwithstanding anything in this Master Lease which may be provided or be construed to the contrary (including Unavoidable Delay and Extension Options provisions), Tenant acknowledges that the development of Phase 1 is crucial to Landlord, and that the Phase 1 Severance Tenant’s failure to Commence the Construction Work on the Building(s) required to be constructed as part of, or in conjunction with, Phase 1 within two (2) years following the CTP Date (referred to herein as a “Project Commencement Default”), provided, however, said failure will not be a Project Commencement Default if the Phase 1 Severance Tenant has filed for all permits and approvals required for Phase 1 and is awaiting final determination of such permits and approvals from the applicable Governmental Authorities, will cause loss and damage to Landlord the precise extent of which is difficult to ascertain in monetary terms; and for this reason and in such event, Tenant waives any right to prior notice and/or a cure period for a Project Commencement Default. Upon the occurrence of a Project Commencement Default, Tenant agrees that Landlord shall be thereby entitled to (x) exercise its rights to terminate this Master Lease and the Phase 1 Severance Lease, and (y) in its sole discretion, elect to solicit and negotiate offers for the Premises or any portion thereof. Tenant covenants, if Landlord exercises its right to terminate this Master Lease and the Phase 1 Severance Lease upon the occurrence of a Project Commencement Default as provided herein, to execute and deliver in proper form for recordation an acknowledgement of the termination of this Master Lease and the Phase 1 Severance Lease.

(5) Landlord and Tenant acknowledge that Tenant expects to apply for Historic Tax Credits in Phase 2. In the event the IRS issues a private letter ruling that identifies the forty-nine (49) year term of the Phase 2 Severance Lease as a material factor in its determination that Tenant has failed to evidence an ownership interest in the Premises for the purpose of obtaining Historic Tax Credits, and Tenant has otherwise satisfied (or reasonably demonstrates to Landlord that it is capable of satisfying) all other conditions and requirements needed to obtain the Historic Tax Credits, Landlord shall extend the term of Phase 2 Severance Lease to the minimum extent necessary to comply with the IRS’s requirements or as the parties shall agree respecting the Phase 2 Parcel.

(6) If, for a continuous period greater than two (2) years, any Governmental Authority denies a Severance Tenant access to an entire Parcel

following the Phase Commencement Date for such Phase, due to no fault, action or omission of such Severance Tenant, then either Landlord or Tenant may terminate the Project and this Master Lease and Severance Lease for the applicable Phase by giving written notice to the other party hereto. Upon such termination, Tenant may elect to purchase, as provided in Section 12.6, any Substantially Completed Phase(s) for a purchase price equal to the fair market value of the land upon which such Phase(s) are located, determined by an appraiser selected and paid by Tenant and reasonably approved by Landlord and the First Recognized Mortgagee.

(7) Tenant, the applicable Severance Tenant, or Triangle shall give written notice to Landlord of the Commencement of Construction for each Phase, which notice shall be given not less than five (5) days prior to the Construction Commencement Date for such Phase. Unless and until such notice shall be given with regard to a Phase, the Commencement of Construction of such Phase shall not be considered to have occurred. The Lease Administrator shall use the date set forth in such notice with respect to a Phase to determine the Scheduled Completion Date for such Phase. For so long as the Lease Administrator is NYCEDC, each such notice shall be given, in the manner set forth in Article 25 below, to: (i) New York City Economic Development Corporation, 110 William Street, New York, New York 10038, Attention: Real Estate Transaction Services; (ii) New York City Economic Development Corporation, 110 William Street, New York, New York 10038, Attention: Accounting Division; and (iii) New York City Economic Development Corporation, 110 William Street, New York, New York 10038, Attention: Asset Management Division.

(b) City Funds. City capital budget funds remain appropriated on the date hereof to fund eligible costs of the Project in the amount of \$6,200,000.00 (the "City Funds") in connection with the Parking Garage. The following provisions shall apply with regard thereto:

(1) the Lease Administrator and the Phase 1 Severance Tenant have agreed upon the form of an agreement respecting such City Funds (the "Funding Agreement"), pursuant to which the Lease Administrator shall provide the City Funds it obtains from the City to the Phase 1 Severance Tenant for the purpose of funding eligible costs respecting certain capital improvements in connection with the development of the Parking Garage. The form of the Funding Agreement is attached hereto as Exhibit L. Notwithstanding the foregoing, or anything to the contrary in this Master Lease, the Phase 1 Severance Lease, or otherwise, Landlord and Tenant acknowledge that OMB is not acting on behalf of (a) the City in its capacity as Landlord and (b) the Lease Administrator. Landlord and Tenant further acknowledge that OMB, in its sole discretion, will approve or deny the Funding Agreement, and that any terms, conditions, or restrictions, as required by the Funding Agreement, are subject to any modification by OMB in its sole discretion.

(2) Landlord, Tenant and the Lease Administrator shall each diligently take such actions and provide such information within its control as is required regarding the Funding Agreement, including providing all requested information, and resubmitting any documents or information with changes reasonably requested by the Lease Administrator, and as is required by OMB for its review and issuance of the Certificate to Proceed. The Phase 1 Severance Tenant shall agree in its Severance Lease to do the same, as well as to execute and deliver the Funding Agreement with Landlord as promptly as practicable after receipt of the necessary approvals from OMB and all other requirements under the Funding Agreement have been satisfied.

The parties acknowledge and agree that, but for the opportunity to obtain the City Funds as described above, as well as the parties' anticipation that OMB will require the Phase 1 Severance Tenant to agree to the provisions set forth in Section 12.1(b) of the Phase 1 Severance Lease, as well as in Section 12.1 of that certain form of amended and restated lease attached as Exhibit N-4 hereto, as a condition to obtaining the City Funds, Landlord would not have required Tenant to agree to such provisions, and Tenant would not have agreed to the same. In the event that OMB agrees to provide the City Funds upon less restrictive operating restrictions and conditions than those set forth in Section 12.1(b) of the Phase 1 Severance Lease and Section 12.1 of Exhibit N-4 hereto, Landlord and Tenant (at Tenant's sole cost and expense) shall, as promptly as is practicable after the written request of either of them, proceed diligently, reasonably and in good faith to agree upon, and thereafter promptly execute, acknowledge and exchange, amendments to this Master Lease and the Phase 1 Severance Lease to render the said Sections 12.1(b) and 12.1 consistent with the less restrictive requirements of OMB.

### Section 12.3 Extension of Development Schedule.

(a) The development and construction schedule for the Project is set forth in the Project Plan (subject to the provisions of Section 12.5 below), and all Buildings for the Project, as set forth in the Project Plan, shall be Substantially Completed in accordance with the respective Severance Leases by the Scheduled Completion Date for Phase 2 as of the date hereof, subject to Unavoidable Delays. Notwithstanding the foregoing, Tenant may purchase up to an aggregate of twenty-four (24) one-month extension periods for the Project to extend the Construction Commencement Date or Scheduled Completion Date for a Phase, provided that (x) no Event of Default exists under this Master Lease, (y) Tenant requests such Extension Option in writing no later than five (5) days prior to the first day of such one-month extension and (z) Tenant shall pay on or before the day upon which such request is made a non-refundable extension fee for the applicable amount in accordance with schedules 1 & 2, respectively, on Exhibit M (each, an "Extension Option" and collectively, "Extension Options"). Notwithstanding the foregoing sentence, Tenant shall not be required to purchase any such Extension Option to extend a Construction Commencement Date or a Scheduled Completion Date in the event of an Unavoidable Delay. As an example of the operation of the foregoing provisions, absent Unavoidable Delay, the Construction Commencement Date for Phase 1 was January 31, 2015, and so notice and payment to extend the Construction Commencement Date for Phase 1 by one month, to February 28, 2015, was due on or

before January 26, 2015. Each Extension Option shall be for a period of one month, and no partial month extension, or pro-rated extension fee, will be permitted. The Parties acknowledge and agree that nine (9) Extension Options have been purchased heretofore pursuant to the provisions of Section 12.3 of the Original Lease, and therefore that (i) the number of Extension Options remaining available for exercise by Tenant under this Master Lease from and after the Lease Date shall be deemed to be reduced to fifteen (15) Extension Options and (ii) the amounts of the extension fees for such remaining Extension Options shall be determined, pursuant to the aforesaid schedules 1 & 2, giving full effect to the purchases of Extension Options that occurred prior to the Lease Date pursuant to Section 12.3 of the Original Lease.

(b) The fees to purchase said Extension Options are cumulative for the entire Project, but independent of each other. By way of example, if Tenant purchases an Extension Option to extend the Construction Commencement Date for Phase 1 by 3 months, the purchase of an Extension Option in Phase 3 would start with “month 4” on the appropriate schedule on Exhibit M. However, if Tenant also purchases an Extension Option to extend the Scheduled Completion Date for Phase 1, it would start with the fee amount in “month 1” on Schedule 2 of Exhibit M.

(c) For so long as the Lease Administrator is NYCEDC, each request for extension pursuant to Section 12.3(a)(y) above shall be given, in the manner set forth in Article 25 below, to: (i) New York City Economic Development Corporation, 110 William Street, New York, New York 10038, Attention: Real Estate Transaction Services; (ii) New York City Economic Development Corporation, 110 William Street, New York, New York 10038, Attention: Accounting Division; and (iii) New York City Economic Development Corporation, 110 William Street, New York, New York 10038, Attention: Asset Management Division

(d) The provisions of this Section 12.3 shall survive the expiration of this Master Lease.

Section 12.4 Revision of Lot Lines; Occupancy of the Apartments Unit. Tenant shall not have the right to revise the lot lines depicted on Exhibit A-2 without Landlord’s prior written consent. Further, in no event shall the Apartments Unit be occupied by residential or other tenants unless and until the below-grade parking on the Phase 1 Parking Overlap shall be Substantially Completed, opened and operating, which portion shall be sufficient to satisfy, when taken together with the parking in the Parking Unit, all zoning requirements concerning the lawful occupancy of Phases 1 and 3, without waiver.

Section 12.5 Prohibited Uses. Tenant shall not use or occupy the Premises, and neither permit nor suffer the Premises or any part thereof to be used or occupied, for any purpose other than a Permitted Use. Without limiting the generality of the preceding sentence, Tenant shall not use the Premises, or either permit or suffer the Premises to be used, for any unlawful or illegal business, use or purpose or for any purpose, or in any way in violation of the provisions of Section 12.1 or Article 16 hereof or the certificate(s) of occupancy for the Premises, or in such manner as may make void or voidable any insurance then in force with respect to the Premises. Immediately upon its discovery of any such unlawful or illegal business, use or purpose, or use

or occupation in violation of Section 12.1 or Article 16 hereof, Tenant shall take all necessary steps, legal and equitable, to compel the discontinuance of such business or use, including, if necessary, the removal from the Premises of any Subtenants using a portion of the Premises for an unlawful or illegal business, use or purpose or in violation of Section 12.1 or Article 16 hereof. The provisions of this Section 12.5 shall not restrict Tenant's rights under Article 34 hereof to contest any Requirements.

Section 12.6 Purchase Options.

(a) Purchase Option One. Subject in all respects to the provisions of Section 12.6(c) below:

(1) Those Severance Tenants that are Permitted Triangle Entities shall have the option ("Purchase Option One"), subject to and in accordance with the terms set forth in this Section 12.6(a), and provided that no Event of Default then exists under the applicable Severance Lease(s) beyond any applicable cure periods, to purchase Landlord's fee simple title in and to the Retail Unit, the Apartments Unit and the Phase 2 Remainder Unit(s) (collectively, the Purchase Option One Premises"), which option will lapse if it is not exercised during the Purchase Option One Period. If such Severance Tenants desire to exercise Purchase Option One, they shall together give Landlord written notice (the "Purchase Option One Notice") of their exercise of the option for the respective Purchase Option One Premises that are then under lease to them, which Purchase Option One Notice will not be effective unless it is given during the Purchase Option One Period. If any Severance Tenant having the right to purchase fails to join in such Purchase Option One Notice, then such Purchase Option One Notice shall be ineffectual to exercise Purchase Option One. If Purchase Option One shall lapse, Tenant shall execute and deliver to Landlord, promptly after Landlord's written request to Tenant therefor, an acknowledgement of the termination of Purchase Option One in proper form for recordation. If there shall be more than one Severance Lease in effect, and if there are multiple Severance Tenants under the Severance Leases, then each Severance Tenant shall have the option as part of Purchase Option One, under this Section 12.6(a), to purchase the Purchase Option One Premises as to which such Severance Tenant is the tenant under a Severance Lease, provided, however, that such sales close simultaneously.

(2) The purchase and sale of Landlord's fee titles under this Section 12.6(a) shall be on the terms and conditions of the purchase agreements (the "Purchase Option One Agreements") attached hereto as Exhibit N-1 (applies to the Retail Unit only), Exhibit N-2 (applies to the Phase 2 Remainder Unit(s) only) and Exhibit N-3 (applies to the Apartments Unit only). The closing for the purchase shall take place on a date mutually agreed upon by Landlord and all of the Severance Tenants, which in no event shall occur earlier than the Phase 2 Condominium Conversion Date nor later than ninety (90) days after the date upon which the Purchase Option One Notice is given to Landlord (provided, however, that, if Tenant shall have proceeded diligently and in good faith to create the Phase 2 Condominium prior to the expiration of such ninety (90) day period, but

the Phase 2 Condominium Conversion Date shall not occur prior to such outside date, then the outside date for the closing for such purchase shall be extended until the day that is thirty (30) days after the Phase 2 Condominium Conversion Date). Each Severance Tenant shall deliver an executed counterpart of the applicable Purchase Agreement, together with the completed Background Qualification Forms then required, to Landlord within thirty (30) days after the Purchase Option One Notice is given to Landlord. If a Severance Tenant shall fail or neglect to make such submission within such thirty (30) day period, or if such submission shall be made but shall be unsatisfactory or incomplete (including, without limitation, with regard to such Background Qualification Forms), Landlord shall give a written notice to all Severance Tenants specifying what documents and/or information is missing, unsatisfactory, or incomplete. Such Severance Tenant shall then have fifteen (15) days from the date of Landlord's notice to supplement or correct its prior submission, and such Severance Tenant's failure to so do shall result in all Severance Tenants' forfeiture of Purchase Option One.

(3) The Purchase Option One Price for the Purchase Option One Premises shall be Five Million One Hundred Thousand (\$5,100,000) Dollars, subject to any applicable credits thereto in accordance with Section 3.3 (which credits shall be allocated, if there are more than one purchasing Severance Tenants, as such Severance Tenants shall determine). The Purchase Option One Price with respect to separate purchases by more than one Severance Tenant shall, in each case, be the portion of such Purchase Option One Price allocated to the Parcel(s) being purchased, which allocation shall be 17.8524% for the Retail Unit, 58.9421% for the Phase 2 Remainder Unit(s) and 23.2055% for the Apartments Unit, subject to any applicable credits thereto in accordance with Section 3.3. The base rent under each of the Severance Leases for the Purchase One Option Premises shall be apportioned as of the closing date, but there shall be no other closing apportionments of income or expenses with regard to the Purchase Option One Premises.

(4) At the closing of title to the Purchase Option One Premises, the Phase 2 Severance Lease and the Phase 3 Severance Lease shall be terminated as of the closing date. Additionally, the City, as landlord, and the Phase 1 Severance Tenant immediately prior to the termination of the Phase 1 Severance Lease (such tenant, along with its successors and assigns as the tenant under the Second A/R Phase 1 Lease, is called the "Second A/R Phase 1 Tenant"), as tenant, shall execute and deliver a Second Amended and Restated Severance Lease (Phase 1) (the "Second A/R Phase 1 Lease"), which will amend and restate the Phase 1 Severance Lease in its entirety, terminate the Phase 1 Severance Lease with respect to the Retail Unit only, confirm that the premises demised under the Phase 1 Severance Lease (as so amended) will consist exclusively of the Parking Unit and the Parking Overlap Unit and revise the terms, covenants and conditions governing such leasing, which Second A/R Phase 1 Lease shall be in the form annexed hereto as Exhibit N-4.

(b) Purchase Option Two. Subject in all respects to the provisions of Section 12.6(c) below:

(1) The then Second A/R Phase 1 Tenant, provided that such tenant shall be a Permitted Triangle Entity, shall have the option ("Purchase Option Two"), subject to and in accordance with the terms set forth in this Section 12.6(b), and provided that no Event of Default then exists under the Second A/R Phase 1 Lease beyond any applicable cure period, to purchase Landlord's fee simple titles in and to the Parking Unit and the Parking Overlap Unit, which option will lapse if it is not exercised during the Purchase Option Two Period. If such tenant desires to exercise such option, it shall give Landlord written notice (the "Purchase Option Two Notice") of its exercise of the option for the Parking Unit and the Parking Overlap Unit, which Purchase Option Two Notice will not be effective unless it is given during the Purchase Option Two Period. If the purchase option shall lapse, Tenant shall execute and deliver to Landlord, promptly after Landlord's written request to Tenant therefor, an acknowledgement of the termination of such purchase option in proper form for recordation.

(2) The purchase and sale of Landlord's fee titles in and to the Parking Unit and the Parking Overlap Unit shall be on the terms and conditions of the purchase agreement (the "Purchase Option Two Agreement") attached hereto as Exhibit N-5. The closing for the purchase shall take place on a date mutually agreed upon by Landlord and the then Second A/R Phase 1 Tenant, which in no event shall occur later than ninety (90) days after the date upon which the Purchase Option Two Notice is given to Landlord. Such tenant shall deliver an executed counterpart of the Purchase Option Two Agreement, together with the completed Background Qualification Forms then required, to Landlord within thirty (30) days after the Purchase Option Two Notice is given to Landlord. If such tenant shall fail or neglect to make such submission within such thirty (30) day period, or if such submission shall be made but shall be unsatisfactory or incomplete (including, without limitation, with regard to such Background Qualification Forms), Landlord shall give a written notice to such tenant specifying what documents and/or information is missing, unsatisfactory, or incomplete. Such tenant shall then have fifteen (15) days from the date of Landlord's notice to supplement or correct its prior submission, and such tenant's failure to so do shall result in its forfeiture of said purchase option.

(3) The purchase price for the Parking Unit and the Parking Overlap Unit shall be Ten (\$10.00) Dollars. The base rent under the Second A/R Phase 1 Lease shall be apportioned as of the closing date, but there shall be no other closing apportionments of income or expenses with regard to the Parking Unit or the Parking Overlap Unit.

(4) At the closing of title to the Parking Unit and the Parking Overlap Unit, the Second A/R Phase 1 Lease shall be terminated as of the closing date.

(c) Combination of Purchase Options. The Parties acknowledge and agree that the option to purchase Landlord's fee title in and to the Retail Unit, the Apartments Unit, the Phase 2 Remainder Unit(s), the Parking Unit and the Parking Overlap Unit has been split into Purchase Option One and Purchase Option Two in order to keep the operating restrictions set forth in Section 12.1 of the Second A/R Phase 1 Lease in force and effect for a period expiring on the first day of the Purchase Option Two Period. But for the opportunity to obtain the City Funds as described in Section 12.2(b) above, as well as the parties' anticipation that OMB will require the Severance Tenant to agree to split the purchase options a condition to obtaining the City Funds, there would be only one purchase option provided for in this Section 12.6, the Phase 1 Severance Lease would be terminated at such closing and the Phase 1 Severance Tenant would not be required to enter into the Second A/R Phase 1 Lease. Therefore, unless the City Funds shall be provided by Landlord to the Phase 1 Severance Tenant for the purpose of funding eligible costs respecting certain capital improvements in connection with the development of the Parking Garage, notwithstanding anything to the contrary provided in this Master Lease, this Section 12.6 shall be deemed to have been amended to:

(1) consolidate Purchase Option One and Purchase Option Two, so that (x) both of such purchase options shall be exercised by Tenant, if at all, by giving both the Purchase Option One Notice and the Purchase Option Two Notice to Landlord together, within the Purchase Option One Period;

(2) require Landlord and the Phase 1 Severance Tenant to execute and deliver the Purchase Option Two Agreement at the same time as their execution and delivery of the Purchase Option One Agreement for the Retail Unit pursuant to Section 12.6(a) above;

(3) provide that the closing of title under the Purchase Option Two Agreement shall occur at the same time as the closing of title under the Purchase Option One Agreement;

(4) no longer require that the Phase 2 Condominium be established prior to the closing of title under such purchase agreements and, if the Phase 2 Condominium is not established, provide that fee title to the entire Phase 2 (including, without limitation, the Phase 1 Parking Overlap) be conveyed to the Phase 2 Severance Tenant;

(5) provide that the Second A/R Phase 1 Lease shall not be executed or delivered by Landlord and the Phase 1 Severance Tenant, and shall be deemed to have been deleted as an exhibit to this Master Lease; and

(6) provide that the Phase 1 Severance Lease shall be terminated at the closing.

(d) Reservation of Excess Development Rights. Any floor area development rights with regard to the Project Premises that are in excess of one hundred twenty (120%) percent of those floor area development rights required for the Construction of



the Buildings pursuant to the Zoning Resolution (collectively, the “Excess Floor Area Development Rights”) shall be reserved to, and shall continue to be owned by, Landlord. Promptly after the written request of Landlord, made at any time during the Term after the Plans and Specifications for all of the Buildings to be constructed on the Project Property have been approved by Landlord, Landlord and Tenant shall execute, acknowledge and exchange a Zoning Lot Development Agreement (the “ZLDA”), pursuant to which, among other things, Landlord shall reserve and retain as its own separate and specific asset the Excess Floor Area Development Rights, for use and/or disposition as Landlord sees fit. Promptly after the execution and delivery thereof, Tenant shall cause the ZLDA to be recorded, at Tenant’s sole cost and expense, against the Project Property in the Real Property Records.

The provisions of this Section 12.6 shall survive delivery of the Severance Leases and the expiration or termination of this Master Lease.

Section 12.7 Right to Terminate a Severance Lease. If the conditions set forth in clauses (a)-(c) below have been met, the applicable Severance Tenant shall have the right to terminate any Severance Lease for a Parcel following Commencement of Construction with respect to such Phase, and Tenant shall have the right to terminate this Master Lease with respect to any future Phase(s) by giving written notice to such effect to Landlord: (a) a Governmental Authority denies such Severance Tenant access to the entire Parcel during the Construction of the Buildings for the applicable Phase for a continuous period greater than two (2) years after the Commencement of Construction for such Parcel, (b) such denial is due to no fault, action or omission of Tenant, such Severance Tenant, any other Severance Tenant, or their respective affiliates, contractors, or agents, and (c) Tenant or the applicable Severance Tenant shall have provided written notice to the Lease Administrator of such denial of access no later than ninety (90) days after it has first occurred.

## **ARTICLE 13**

### **CONSTRUCTION WORK**

#### Section 13.1 Construction of the Building(s).

(a) Commencement and Completion of Construction. With respect to each Phase, the applicable Severance Lease shall provide that the Severance Tenant thereunder shall (i) commence the Construction of the Building(s) required to be constructed as part of, or in conjunction with, such Phase (including, without limitation, with respect to Phase 3 only, all of the Common Elements underlying, enclosing, supporting, roofing, servicing, or otherwise intended to be constructed with regard to Phase 3 pursuant to the Approved Plans and Specifications) not later than the Construction Commencement Date for such Phase (subject to Unavoidable Delay), (ii) thereafter continue to prosecute the Construction of the Building(s) required to be constructed as part of, or in conjunction with, such Phase with diligence and continuity in accordance with a development and construction schedule approved by Landlord and Tenant, (iii) Substantially Complete the Building(s) required to be constructed as part of, or in conjunction with, such Phase on or before the Scheduled Completion Date for such Phase (subject to Unavoidable Delays), and (iv) diligently and in good faith seek a permanent certificate of occupancy for all

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

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

ARTICLE 2  
PREMISES AND TERM OF LEASE

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

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

ARTICLE 3  
RENT

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

(a) "Base Rent" as follows:

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

10/1/24 - 9/30/24

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

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

ARTICLE 8

INTENTIONALLY OMITTED

ARTICLE 9

USE OF PREMISES

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

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

ARTICLE 23

PERMITTED USE; NO UNLAWFUL OCCUPANCY

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

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

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

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

Section 7.04. Additional Deposits.

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

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

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

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

ARTICLE 8

INTENTIONALLY OMITTED

ARTICLE 9

USE OF PREMISES

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

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

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

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

**Section 9.04. No Representations or Warranty by Landlord.**

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

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

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

## ARTICLE 10

### INTENTIONALLY OMITTED

## ARTICLE 11

### INSURANCE

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

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

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

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

(iii) contain independent contractor coverage;

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

(v) contain an unintentional errors and omissions clause;

## ARTICLE 7

INTENTIONALLY DELETED

## ARTICLE 8

NO DREDGING; SUNKEN CRAFT

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

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

## ARTICLE 9

USE OF PREMISES

Section 9.01. Permitted Use.

Restrictions on Use.

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



forth in Article 11 hereof.

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

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

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

Section 9.04. Use of the Pier.

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

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

Section 9.06. No Representations or Warranty by Landlord.

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

ARTICLE 6

UTILITIES

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

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

ARTICLE 7

(INTENTIONALLY OMITTED)

ARTICLE 8

INTENTIONALLY OMITTED

ARTICLE 9

USE OF PREMISES

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

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

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

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

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

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

Section 9.05. Representations or Warranty by Landlord.

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

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

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

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

## ARTICLE 10

### CONSTRUCTION, MANAGEMENT AND MAINTENANCE OF PUBLIC ACCESS AREA

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

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

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

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

ARTICLE 7  
LATE CHARGES

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

ARTICLE 8  
DEVELOPMENT, USE AND OPERATION OF PROJECT

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

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

#### Section 8.02

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

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

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

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

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

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

## ARTICLE 23

### PERMITTED USE; NO UNLAWFUL OCCUPANCY

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

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



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

## ARTICLE 24

### EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES, ETC.

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

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

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

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

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

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

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

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

## ARTICLE 23

### PERMITTED USE; NO UNLAWFUL OCCUPANCY

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

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

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

## ARTICLE 24

### EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES, ETC.

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

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

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

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

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

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

## ARTICLE 23

PERMITTED USE; NO UNLAWFUL OCCUPANCY

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

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

## ARTICLE 24

EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES, ETC.

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

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

## ARTICLE 23

PERMITTED USE: NO UNLAWFUL OCCUPANCY

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

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

## ARTICLE 24

EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES, ETC.

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

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

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

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

## ARTICLE 23

### PERMITTED USE; NO UNLAWFUL OCCUPANCY

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

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

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

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

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

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

ARTICLE 23

PERMITTED USE; NO UNLAWFUL OCCUPANCY

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

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

## ARTICLE 24

### EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES, ETC.

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

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

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

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

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



Section 5.05. Taxes.

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

Section 5.06. Utility Service to Premises and Payment Therefor.

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

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

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

Section 5.08. Survival Clause for Sections 5.06 and 5.07.

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

ARTICLE 6

USE AND DEVELOPMENT OF PREMISES

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

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

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

Section 6.03. Unlawful Use: No Representation of Landlord.

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

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

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

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

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

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

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

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

ARTICLE 5

THE ELC PROJECT

Section 5.01. Use of the Premises.

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

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

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

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

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

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

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

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

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

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

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

#### Section 5.02. Development of the Premises.

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

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

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

# 21 Community Healthcare Network

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

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

## Section 7.04. Additional Deposits.

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

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

## ARTICLE 8

### INTENTIONALLY OMITTED

## ARTICLE 9

### USE OF PREMISES

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

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

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

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

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

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

Section 9.05. No Representations or Warranty by Landlord.

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

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

ARTICLE 10

EASEMENTS

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

ARTICLE 11

INSURANCE

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

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

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

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

ARTICLE 5

USE AND DEVELOPMENT OF PREMISES

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



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

Section 5.02. Requirements for Conduct of Business.

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

Section 5.03. Unlawful Use.

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

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

#### ARTICLE 3: RENT

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

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

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

#### ARTICLE 4: USE

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

## ARTICLE 23

PERMITTED USE; NO UNLAWFUL OCCUPANCY

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

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

ARTICLE 23

PERMITTED USE; NO UNLAWFUL OCCUPANCY

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

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

ARTICLE 23

PERMITTED USE: NO UNLAWFUL OCCUPANCY

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

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

ARTICLE 23PERMITTED USE; NO UNLAWFUL OCCUPANCYSection 23.1 Type of Use.

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

Section 23.2 Prohibited Uses.

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

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

ARTICLE 9

Permitted Use, No Unlawful Occupancy

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

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

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

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

## ARTICLE 10

### Construction

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



## ARTICLE 23

PERMITTED USE; NO UNLAWFUL OCCUPANCY

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

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

# 30 13TH AVENUE RETAIL MARKET

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

## ARTICLE 3

### USE OF PREMISES

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

# 31 Fulton Ferry Holdings

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

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

## ARTICLE 5

### USE AND DEVELOPMENT OF PREMISES

Section 5.01. Use of Premises.

#### Restrictions on Use.

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

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

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

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

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

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

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

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

ARTICLE FIRST

Term

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

ARTICLE SECOND

Use of Property

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

ARTICLE 9PERMITTED USE; UNLAWFUL OCCUPANCY

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

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

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

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

#### ARTICLE 10

#### TITLE TO IMPROVEMENTS AND EQUIPMENT

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

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

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

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

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

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

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

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

ARTICLE 2

Use of Property

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



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

### ARTICLE 3

#### Assignment or Mortgage

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

35 Hunts Point Terminal Produce Coop

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

Section 2.04. No Abatement Or Set-Offs And Additional Rent. Tenant shall pay the Annual Rental, as increased pursuant to this Lease, without demand or notice and without abatement, deduction, counterclaim or set-off, and will similarly pay, as additional rent, all other payments which Tenant in any of the provisions of this Lease assumes or agrees to pay, and, in the event of any non-payment thereof, Landlord shall have (in addition to all other rights and remedies) all the rights and remedies provided herein or by law in the case of non-payment of rent. All installments of Annual Rental when paid shall be made at the office of the Landlord indicated above Attn: Bureau of Accounts. Annual Rental hereunder shall be absolutely net to Landlord, and Landlord shall not be obligated to pay any costs, expenses or charges of any kind or nature relating to the Demised Premises, except as shall be hereafter provided with respect to Infrastructure.

ARTICLE 3  
USE OF PREMISES

Section 3.01. Tenant shall use and occupy the Demised Premises

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

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#### ARTICLE 4

#### IMPOSITIONS AND UTILITIES

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

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

ARTICLE 23

USE OF THE PREMISES

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

Section 23.02. Prohibited Uses.

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

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

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

#### ARTICLE 24

##### EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES, ETC.

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

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

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

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

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

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

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

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

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

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

ARTICLE 22  
NO ABATEMENT OF RENTAL

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

ARTICLE 23  
PERMITTED USE; NO UNLAWFUL OCCUPANCY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Use of Property

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

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



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

Assignment  
or  
Mortgage

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

## ARTICLE 9

USE OF PREMISES

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

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

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

Section 9.04. No Representations or Warranty by Landlord.

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

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

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

ARTICLE 10

EASEMENTS

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

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

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

ARTICLE 11

INSURANCE

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

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

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

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

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

## ARTICLE 7

### USE

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

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

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

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

## ARTICLE 8

### EASEMENTS

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

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

## ARTICLE 5

CONDITIONS PRECEDENT

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

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

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

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

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

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

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

## ARTICLE 6

USE

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

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

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

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

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

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

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

ARTICLE 7

**EASEMENTS**

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

ARTICLE 4Impositions

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

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

ARTICLE 5Use; Construction; Alterations and Additions; Non-Discrimination

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



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

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

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

Section 5.02.

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

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

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

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

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

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

### ARTICLE 3

#### USE OF PREMISES

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

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

#### ARTICLE 4

##### UTILITIES

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

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

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

## ARTICLE 23

PERMITTED USE; NO UNLAWFUL OCCUPANCYSection 23.01. Permitted Uses.

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

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

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

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

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

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

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

## ARTICLE 8

### INTENTIONALLY OMITTED

## ARTICLE 9

### USE OF PREMISES

#### Section 9.01. Permitted Use.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 9.05 No Representations or Warranty by Landlord.

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



ARTICLE 23

USE OF THE PREMISES

Section 23.01. Permitted Uses.

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

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

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

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

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

Section 10.04. No Representations or Warranty by Landlord.

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

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

Term

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

Premises

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

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

Use of Property

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

## ARTICLE 23

PERMITTED USE; NO UNLAWFUL OCCUPANCY

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

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

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

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

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

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

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

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

ARTICLE 23  
USE OF THE PREMISES

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

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

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

#### ARTICLE 24

#### EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES, ETC.

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

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

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

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

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

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

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

Section 22.02. Amount Paid by Landlord as Additional Rental.

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

Section 22.03. Waiver, Release and Assumption of Obligations.

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

Section 22.04. Proof of Damages.

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

## ARTICLE 23

### PERMITTED USE; NO UNLAWFUL OCCUPANCY.

Section 23.01. Permitted Uses.

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

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

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

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

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

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

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

Section 23.02. Excess Development Rights.

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



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

**Section 23.03. Adjacent Property; Access.**

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

**ARTICLE 24**

**EVENTS OF DEFAULT. CONDITIONAL LIMITATIONS. REMEDIES. ETC.**

**Section 24.01. Definition.**

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

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

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

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

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

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

Section 3. Rights of User

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

3.2 As used herein:

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

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

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

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

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

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

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

RHMP 4478

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

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

October 25, 1979

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

WHEREAS, by resolutions duly adopted by its Board of Commissioners on September 14, 1978 copies of which are annexed hereto, hereby made a part hereof, and marked "Exhibit AAAA", the Port Authority has authorized the execution and delivery of this Agreement;

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

1. LETTING AND USE

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

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

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

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

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

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

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

(Amendments)

Use:

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

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

ARTICLE 23PERMITTED USE; NO UNLAWFUL OCCUPANCY

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

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

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

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

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

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

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



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

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

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

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

Section 4.07. Rent.

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

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

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

57 Royal Wine Corp.

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

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

ARTICLE 8

INTENTIONALLY OMITTED

ARTICLE 9

USE OF PREMISES

Section 9.01. Permitted Use.

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

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

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

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

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

**Section 9.04. No Representations or Warranty by Landlord.**

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

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

ARTICLE 10

EASEMENTS

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

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

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

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

Use

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

Maintenance, Repairs and Alterations

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

ARTICLE 23

OPERATION; PERMITTED USE; NO UNLAWFUL OCCUPANCY

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

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

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

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

ARTICLE 22

**LANDLORD'S RIGHT TO DISCHARGE LIENS**

Section 22.1 Discharge of Liens. If Tenant shall fail to cause any mechanic's, laborer's, vendor's, materialman's or similar statutory lien or any public improvement lien to be discharged in accordance with the provisions of Article 17 hereof, and if such lien shall continue for an additional forty-five (45) days after the applicable cure period provided for in Article 17, then, subject to any rights granted to a Recognized Mortgagee under this Lease, Landlord may, but shall not be obligated to, discharge such lien of record by procuring the discharge of such lien by deposit or by bonding proceedings. Landlord may also compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowances.

Section 22.2 Reimbursement for Amounts Paid by Landlord Pursuant to this Article. Any amounts paid by Landlord pursuant to Section 22.1 hereof, including all costs and expenses incurred by Landlord in connection therewith, shall be paid to Landlord within fifteen (15) days of Landlord's demand, together with a late charge on the amounts so paid by Landlord, calculated at the Late Charge Rate from the date of any such payment by Landlord to the date on which payment of such amounts is received by Landlord.

Section 22.3 Waiver, Release and Assumption of Obligations. Landlord's payment or performance pursuant to the provisions of this Article 22 shall not be, nor be deemed to be (a) a waiver or release of the Default or Event of Default with respect thereto (or any past or future Default or Event of Default) or of Landlord's right to take such action as may be permissible hereunder, or (b) Landlord's assumption of Tenant's obligations to pay or perform any of Tenant's past, present or future obligations hereunder.

Section 22.4 Proof of Damages. Landlord shall not be limited in the proof of any damages that it may claim against Tenant arising out of, or by reason of, Tenant's failure to provide and keep insurance in force in accordance with the provisions of this Lease to the amount of the insurance premium or premiums not paid. However, subject to the provisions of Section 42.10 hereof, Landlord shall be entitled to seek, and if successful, to recover, as damages for such Default or Event of Default, the uninsured amount of any loss and damage sustained or incurred by it and the costs and expenses of any suit in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements.

ARTICLE 23

**OPERATION; PERMITTED USES; NO UNLAWFUL OCCUPANCY**

Section 23.1 Use and Other Requirements. During the Term, Landlord and Tenant shall use and occupy their respective portions of the Project Premises in accordance with the terms and provisions of this Article 23, and for no other purpose, and shall not permit or suffer the same to be used or occupied except in accordance with the terms and provisions of this Article 23. Notwithstanding anything to the contrary herein, Tenant shall be excused from

continuously using, maintaining and operating the Premises to the extent a closure of all or a portion of the Premises is necessary due to (a) a casualty or condemnation at the Premises, (b) Tenant complying with Article 14 hereof or (c) Tenant undertaking the Initial Renovation Work and any Material Alteration.

Section 23.2 Development; Use; Promotion; Operation.

(a) In recognition of the historic and cultural importance of the South Street Seaport and in fulfillment of the public purposes to which the development of the Project Premises is dedicated, throughout the Term, Tenant shall cause the Premises to be (i) maintained and continuously operated as a first-class, specialty retail marketplace including, without limitation, for the operation of a performance and entertainment venue or a cinema or movie theater facility, in accordance with the provisions of this Article, and in a manner at least equal to the current standards of operation of Faneuil Hall Marketplace in Boston and Harborplace in Baltimore; and (ii) used incidentally to the purposes permitted by clause (i) above to provide supporting clerical, administrative and executive offices (but not in excess of 10,000 square feet of Gross Leasable Area and only on the second or higher floor) therefor.

(b) In Subleasing the Premises and the Commercial Areas to Subtenants, Tenant agrees that (i) in the aggregate, no more than 100,000 square feet of Gross Leasable Area in the Premises and the Commercial Areas shall be used for "fast-food" type operations (said 100,000 square foot area to be proportionately reduced, but not below 30,000 square feet, if this Lease shall be terminated in respect of any portion of the Premises); (ii) no portion of the Premises located in the Museum Block or the Schermerhorn Block shall be used for the operation of a "fast-food" business, except as an incidental part of a restaurant located therein and except for such uses by Subtenants existing on the date as of which this Lease is made; (iii) no part of the Premises located on the ground floor of the Market Block and adjacent to Fulton, Front or Beekman Streets shall be used for the operation of a "fast-food" business, except as incidental to the operation of another type of food business; and (iv) no portion of the Premises located on the Museum Block shall be used for the operation of a food business other than a restaurant or cafe (including "fast-food" sales incidental thereto). As used herein, the term "fast food" shall mean a food service establishment having a limited menu of precooked meals that shall be wrapped in paper or boxes and sold to patrons in paper bags, disposable containers and/or on plastic trays (such as a "McDonald's", "Burger King", "Dunkin Donuts", "Wendy's" or "Ranch One Chicken"), it being agreed that (i) the failure of a restaurant to provide waiter or waitress service or tablecloth dining shall not automatically be deemed to constitute "fast food", (ii) the existence of cafeteria type dining shall not automatically be deemed to constitute "fast food." and (iii) a restaurant such as "Starbucks", "Pret A Manger", "Cosi" and other similar restaurants that are upscale and high-quality shall not be deemed to constitute "fast food".

(c) Tenant shall continuously, uninterruptedly, actively and diligently operate a specialty retail marketplace seven days per week, at least nine hours per day on Mondays through Saturdays and six hours on Sundays, and shall require substantially all Subtenants to operate and conduct their respective businesses on all such days and for such hours, except when

Tenant and/or any Subtenants shall be prevented from doing so by strike, fire, other casualty or other cause beyond the reasonable control of Tenant and/or any such Subtenants, and except on the following holidays: New Year's Day; first and second days of Passover; Good Friday; Easter Sunday; Rosh Hashanah; Yom Kippur; Thanksgiving Day; and Christmas Day. Landlord and/or Tenant shall also make available to the general public, at least during the hours set forth above (but consistent with reasonable maintenance and security requirements of Landlord, Tenant and the Subtenants) and free of charge or admission, all public circulation and seating areas of Pier 17, the Buildings on Pier 17 and throughout other portions of the Premises, other than the roof areas of the Buildings on the Premises (for which Tenant may charge members of the public to access), substantially in accordance with Tenant's plans and specifications therefor to be approved in accordance with applicable provisions of this Lease. Tenant shall obtain Landlord's prior written consent to any material modification of the Requirements of the City Planning Commission or any other public approvals with respect to the Premises.

(d) Tenant shall cause a food market that includes locally and regionally sourced food items and that is open to the public seven days a week to open within the Premises. Tenant shall, subject to Force Majeure, use commercially reasonable efforts to open such food market prior to October 1, 2014.

#### Section 23.3 Use of Pier 17 Roof.

(a) All areas of the roof of the Pier 17 improvements (other than those areas reserved for restaurant use and mechanical equipment) (the "Rooftop Space") shall be open to the public at no charge; provided, however, that Tenant shall have the right to temporarily close portions of the Rooftop Space (other than the Rooftop Access Area, as defined in the Restrictive Declaration) for private use as described in section 5(a) of the Restrictive Declaration so long as Tenant shall use reasonable good faith efforts to provide free public access to as much of the Rooftop Space as is reasonably possible during such times of private use. On up to four occasions/year (of which up to two can be on a Saturday, Sunday or legal holiday), Tenant shall make available, for no rental charge, to a community based organization (such as the PTA of the neighborhood school or neighborhood senior citizen or youth center) ("CBO") of which it has reasonably approved either up to one-half of the Rooftop Space or the stage within the prolongation of Fulton Street for an event or activity sponsored by such organization.

(b) No later than June 30, 2014, Tenant shall hire an acoustical engineer to make recommendations as to reasonable measures to reduce sound transmission from the Rooftop Space and the pier level event space. Tenant shall direct such acoustical engineer to promptly prepare and submit to Tenant a report describing the proposed sound reduction measures and promptly after such report is submitted to Tenant, Tenant will transmit a copy thereof to Speaker Quinn, Councilwoman Chin, the City Council Land Use Division, and Lease Administrator, and shall work in good faith to implement the noise reduction measures set forth in the report that are both commercially reasonable and feasible.



(c) At such times as there are events being held simultaneously on both the Rooftop Event Space and pier levels of Pier 17, Tenant shall consult with the New York City Police Department as to a reasonable interval between the ending times for each event, and it shall thereafter establish, in its discretion, the ending time of each such event.

Section 23.4 Intentionally omitted.

Section 23.5 Pedestrian Walkways. Landlord and Tenant confirm that the Commercial Areas, Titanic Park, Marginal street, wharf or place and all other outdoor pedestrian walkways within the Project Premises (including, but not limited to, the Former Streets) are intended for use primarily for public circulation, free of charge or admission, and Landlord and Tenant shall not permanently or materially impede or obstruct public access to or circulation in such areas, except (i) for reasonable security and maintenance purposes, and (ii) as otherwise expressly permitted in this Lease (including the Demapping Resolution and Exhibit C hereto) (including construction plans and specifications approved thereunder). In particular, but without limiting the generality of the foregoing:

(a) Titanic Park shall be developed and maintained by Landlord as landscaped open space, with adequate seating facilities, accessible to the general public at all times without charge or admission.

(b) Tenant shall use and occupy the Commercial Areas, and shall require all Subtenants using any portion thereof to use and occupy the Commercial Areas, in accordance with the terms, covenants and conditions of the Demapping Resolution and Exhibit C hereto and this Lease.

(c) Intentionally omitted.

(d) The Former Streets shall at all times be accessible to emergency vehicles (including, but not limited to, ambulances, fire trucks and police cars), and no structures shall be erected that impede access to, or passage through, the Former Streets by such emergency vehicles.

(e) It is hereby understood that public access to that portion of Marginal street wharf or place that is within the Premises is intended to be for the purpose of pedestrian passage and circulation, not for the placement of vending units of any kind, except for vending units placed on said portion of Marginal street wharf or place pursuant to Subleases entered into by Tenant under the terms of this Lease. Subject to the provisions of this Lease regarding public access and circulation, Tenant is granted the exclusive commercial right to use and lease to Subtenants such areas of Marginal street.

Section 23.6 Use. Landlord shall cause all space (other than public circulation areas) within the Buildings located in Landlord's Premises, other than the Museum Premises (unless the

Museum Premises shall cease to be used for their respective purposes permitted under this Article 23), to be used and occupied only for appropriate office purposes, and for no other purposes without the prior consent of Tenant, which consent shall not be unreasonably withheld or delayed except that (a) Landlord may let portions of such space for use as artists' studios and as residential space to persons occupying or having a right to occupy portions of the Project Premises for such purposes on the date as of which this Lease is made, and (b) Landlord may sublet for retail or restaurant uses, without the consent of Tenant, any portion of the Option Premises (hereinafter defined) which Tenant shall have failed to lease pursuant to its option set forth in Section 23.9 hereof, subject, however, to the provisions of subsection (d) of Section 23.9 hereof.

**Section 23.7 Illegality.** Tenant and Landlord shall not use or occupy, nor permit or suffer the Premises or any part thereof, the Commercial Areas or Landlord's Premises or any part thereof, as the case may require, to be used or occupied for any unlawful or illegal business, use or purpose, or for any business, use or purpose which is immoral or disreputable (including without limitation "adult entertainment establishments" and "adult" bookstores) or extra-hazardous, or in such manner as to constitute a nuisance of any kind (public or private), or for any purpose or in any way in violation of the certificates of occupancy (or other similar approvals of applicable Governmental Authorities), the Demapping Resolution and Exhibit C hereto, or of any present or future Requirements, or which may make void or voidable any insurance then in force on the Premises or any other portion of the Project Premises. If any such unlawful, illegal, immoral, disreputable or extrahazardous use shall occur, Tenant, if such use be on the Premises or the Commercial Areas, and Landlord, if such use be on any other portion of the Project Premises, agree promptly to take all lawful steps which may be necessary to compel the discontinuance of such use and/or to oust and remove any Subtenants causing or responsible for such unlawful, illegal, immoral, disreputable or extra-hazardous use or conduct.

**Section 23.8 Landlord's Title.** Tenant shall not suffer or permit the Premises or any portion thereof to be used by any Person or by the public without restriction or in such manner as might reasonably tend to impair Landlord's title to the Premises or any portion thereof, or in such manner as might reasonably make possible a claim or claims of prescriptive rights or adverse possession by any Person or by the public, as such, or of implied dedication of the Premises or any portion thereof.

**Section 23.9 Option Premises.** If at any time:

(a) any part of Option Premises I shall be or become vacant and shall not be relet for a period of six (6) months after the date of vacating of such space; or

(b) any part of Option Premises I or Option Premises II shall be operated in nonconformity with the terms of this Article 23, or with respect to the Museum Premises, in nonconformity with Article 23 of the Museum Lease as such provisions exist on June 29, 2012, and Tenant shall give notice to Landlord of such nonconforming use, then (1) if any Subtenant shall remain in occupancy of such part, Landlord shall use its best efforts to cause such nonconforming use to cease (which efforts shall include, if necessary, the institution of actions or

proceedings to terminate the Sublease of such Subtenant and to recover possession of such part of the Option Premises), and (2) if Landlord shall recover possession of such part of the Option Premises, and if Landlord shall not have relet such vacant space for use and operation substantially in accordance with the terms of this Article 23, or with respect to the Museum Premises, in nonconformity with Article 23 of the Museum Lease, within six (6) months following the later of (x) Tenant's aforesaid notice with respect to such part, and (y) Landlord's recovery of possession of such part;

then Tenant shall have the right and option, which it may exercise by notice to Landlord given at any time within sixty (60) days after the expiration of the aforesaid six (6) month period, to lease from Landlord all or any such part of the Option Premises referred to above, under this Lease and upon and subject to all of the terms and conditions contained herein, except that:

(i) in respect of Option Premises I or any part thereof so leased to Tenant, the Base Rent, for each Fiscal Year, applicable to such part of the Option Premises I shall consist of the greater of the following sums: (A) full Taxes attributable to the Land and Buildings (or space) so leased, and (B) eighty percent (80%) of the average Base Rent payable by Tenant hereunder for the preceding three Fiscal Years multiplied by a fraction, the numerator of which shall be the number of square feet of Gross Leasable Area of the Option Premises I so leased and the denominator of which shall be the average number of square feet of Gross Leasable Area included in the Premises during said three Fiscal years; and]

(ii) in respect of Option Premises II or any part thereof so leased to Tenant, the Base Rent, for each Fiscal Year, applicable to such part of the Option Premises II shall be an amount equal to the fair market rental value of said premises at the time of the addition of said premises to the Premises demised hereunder, determined in accordance with an appraisal conducted in the manner provided in Article 35 hereof. The scope of said appraisal shall be prepared by Lease Administrator in accordance with its policies and reviewed and approved by Tenant, in its reasonable discretion.

(c) (i) The term "Option Premises" shall mean Option Premises I and Option Premises II, collectively, each as described below and depicted on Exhibit A-4 hereto.

(ii) The term "Option Premises I" shall mean, collectively, the following portions of Landlord's Premises: (x) the first (ground) and second stories of Buildings on the Museum Block, and (y) space located in the ground floor of Schermerhorn Block and known as Nos. 12 and 14 Fulton Street (except that then existing public circulation areas within No. 12 Fulton Street shall remain as public circulation areas).

(iii) The term "Option Premises II" shall mean, collectively, the following portions of Landlord's Premises: (x) space located above the second story of Buildings on the Museum Block, (y) the Tin Building, and (z) all portions of Schermerhorn Block other than the space referred to in clause (ii) (z) above.

(d) If Tenant shall have declined to exercise its option to lease all or any part of the Option Premises at the respective rentals set forth therefor in this Section 23.9, and Landlord shall subsequently propose to relet such space to a third party for retail or restaurant use and at a rental below the rental at which Tenant declined to exercise its option as aforesaid, then Landlord shall give notice of such proposed reletting to Tenant, which notice shall set forth the amount of rental proposed to be charged in respect of such space, and Tenant shall have the right to lease such space at a rental equal to the rental set forth in Landlord's notice, and otherwise upon and subject to all of the terms and conditions of this Lease. Tenant shall exercise such right by giving notice to Landlord of its intention to lease such space upon the aforesaid terms within thirty (30) days after Landlord shall have given its aforesaid notice. Tenant's right to lease such space, as set forth in this subsection (d), shall apply only to Landlord's initial reletting of such space for retail or restaurant uses, and not to any subsequent reletting.

(e) Whenever Tenant shall elect to lease any portion of the Option Premises, the same shall be leased under this Lease as aforesaid, and Landlord and Tenant shall enter into a modification of this Lease, in recordable form, setting forth the terms of such letting in accordance with the provisions of this Section 23.9.

(f) If, pursuant to this Section 23.9, Tenant shall have had the opportunity to exercise its option to lease the Tin Building from Landlord and Tenant shall have failed timely to exercise such option, then commencing with the earlier of (a) the date of expiration of such option, and (b) the date Tenant shall give Landlord notice that Tenant declines to exercise such option, all of Landlord's obligations in respect of the Tin Building shall cease and terminate as fully as if the Tin Building were no longer part of Landlord's Premises or the Project Premises.

#### Section 23.10 John Street ROFO.

(a) The provisions of this Article 23 notwithstanding, in lieu of any right or interest it currently has or may ever have, including arising from this Lease or from any other agreement with regard to that certain lot located on the southeast corner of John Street and South Street, designated as Block 74, part of Lot 1 in the Tax Map of the City of New York for the Borough of Manhattan (the "John Street Lot"), Tenant or any nominee or designee thereof reasonably approved by Landlord ("John Street Offeree") shall have the rights set for in this Section 23.10.

(b) If the City or its assignee shall propose to lease or sell the John Street Lot, then the City or its assignee, prior to offering such sale or lease to any party, shall give written notice of such proposed lease or sale to Tenant (a "John Street ROFO Trigger Notice").

(c) Within forty-five (45) days of receipt of a John Street ROFO Trigger Notice (the "John Street Exercise Period"), John Street Offeree, shall have the right to offer (which offer shall be irrevocable) to purchase or lease all of the John Street Lot, by giving written notice of such offer to Landlord (the "John Street ROFO Offer"), which John Street ROFO Offer shall set forth the cash price John Street Offeree would be willing to pay to purchase or lease the John Street Lot (the "John Street ROFO Price").

(d) If John Street Offeree does not timely make a John Street ROFO Offer or if John Street Offeree affirmatively waives its right of first offer in writing then (A) John Street Offeree shall be deemed to have elected not to purchase or lease the John Street Lot and (B) the City or its designee shall be free to proceed to initiate and consummate the sale or lease of the John Street Lot to any Person at any price and on such other terms as determined by the City in its sole discretion; provided, however, that if such sale or lease of the John Street Lot is not consummated within one hundred eighty (180) days after the expiration of the John Street Exercise Period, then a second attempt to consummate a sale of the John Street Lot within five years after the John Street Exercise Period shall again be subject to the provisions of this **Error! Reference source not found.**, but no further attempts shall be subject to said provisions.

(e) If John Street Offeree timely delivers a John Street ROFO Offer to Landlord, then at Landlord's option, Landlord shall either:

(i) accept the John Street ROFO Offer and proceed with the consummation of the sale of the John Street Lot in accordance with this Section 23.10 and the John Street ROFO Offer; or

(ii) proceed to initiate and consummate the sale of the John Street Lot to a Person other than John Street Offeree (a "Third Party John Street Sale"), at a price not less than one hundred and ten percent (110%) of the John Street ROFO Price and otherwise on substantially the same or better economic terms offered by John Street Offeree (including, without limitation, any guaranties, deposits and payments and the timing thereof, which value shall be determined by Tenant and Landlord acting reasonably and in good faith); provided, however, if a Third Party John Street Sale fails to close within one hundred eighty (180) days after the John Street Exercise Period, then a second attempt to consummate a sale or lease of the John Street Lot within five years after the John Street Exercise Period shall again be subject to the provisions of this Section 23.10, but no further attempts shall be subject to said provisions.

(f) Any closing of a sale or lease of the John Street Lot to John Street Offeree pursuant to this Section 23.10 shall be consummated in accordance with the following provisions:

(i) closing shall occur at such date as may be agreed between Landlord and John Street Offeree, not to be earlier than sixty (60) days nor later than one hundred twenty (120) days after Landlord's acceptance of the John Street ROFO Offer;

(ii) Landlord shall execute and deliver to John Street Offeree such deeds, lease, instruments of conveyance, assignments and/or other instruments as may be reasonably necessary or reasonably desirable to effectuate the transfer or lease of the John Street Lot to John Street Offeree;

(iii) the John Street ROFO Price shall be payable to Landlord at the closing in immediately available funds, in the case of a sale.

(g) Subject to Section 23.10(d) hereof, any proposals to lease or sell the John Street Lot after an initial John Street ROFO Trigger Notice shall not be subject to the provisions of this Section 23.10.

## ARTICLE 24

### EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES, ETC.

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

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

(b) if Tenant shall enter into an Assignment, Transfer or Major Sublease without compliance with the provisions of this Lease and such Assignment, Transfer or Major Sublease shall not be made to comply with the provisions of this Lease or canceled within thirty (30) days after Landlord's notice thereof to Tenant;

(c) if Tenant shall fail to comply with its obligations pursuant to Article 14 (Maintenance and Repairs) and such failure shall continue for a period of thirty (30) days after notice thereof from Landlord to Tenant specifying such failure (unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed within such thirty (30) day period, in which case no Event of Default shall be deemed to exist as long as Tenant shall have commenced curing the same within the thirty (30) day period and shall diligently and continuously prosecute the same to completion);

ARTICLE 22

NO ABATEMENT OF RENTAL

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

ARTICLE 23

OPERATION; PERMITTED USE; NO UNLAWFUL OCCUPANCY

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

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

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

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

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

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



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

**ARTICLE 4  
USE OF PREMISES.**

**Section 4.01 Tenant's Use of Premises**

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

**Section 4.02 Required Use by Tenant**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Section 4.05 Sharing of Revenues from Special Events.**

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

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

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

(c) **Definitions.**

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

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

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

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

**Section 5.05. Taxes.**

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

**Section 5.06. Intentionally Omitted.**

**Section 5.07. Intentionally Omitted.**

**Section 5.08. Survival.**

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

**ARTICLE 6**

**USE AND DEVELOPMENT OF PREMISES**

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

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

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

Section 6.03. Unlawful Use; No Representation of Landlord.

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

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

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

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

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

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

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

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

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

## ARTICLE 7

### INSURANCE

#### Section 7.01. Insurance Requirements.

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

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

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

**ARTICLE 20**  
**PERMITTED USE; NO UNLAWFUL OCCUPANCY**

**Section 20.01. Permitted Uses.**

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

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

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

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

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

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

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

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

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

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

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

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



ARTICLE 23

PERMITTED USE: NO UNLAWFUL OCCUPANCY

Section 23.01. Permitted Use Generally.

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

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

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

Section 23.02 Prohibited Uses.

OF

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

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

**Section 23.03. New Building Space Leasing Requirements.**

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

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

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

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

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

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

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

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

ARTICLE VII

COVENANTS TO MAKE REPAIRS AND AGAINST WASTE

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

ARTICLE VIII

COMPLIANCE WITH ORDERS, ORDINANCES, ETC.

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

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

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

#### ARTICLE IX

##### LIENS

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

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

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

#### ARTICLE X

#### SURRENDER OF THE PROJECT AREA

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

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

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

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

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

ARTICLE 3. Use and Occupancy of the Premises

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

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

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

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

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

#### ARTICLE 4. Rent

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

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

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

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

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

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

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



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

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

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

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

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

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

## ARTICLE 23

### PERMITTED USE; NO UNLAWFUL OCCUPANCY

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

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

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

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

#### ARTICLE 24

##### EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES, ETC.

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

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

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

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

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SITE 7 ACQUISITION AGREEMENT

among

THE CITY OF NEW YORK,

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION,

NEW YORK STATE URBAN DEVELOPMENT CORPORATION

and

42ND ST. DEVELOPMENT PROJECT, INC.

Premises

Block: 1014

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

dated

as of October 7, 1994.

## ARTICLE 7

USE OF THE PROPERTYSection 7.01. Permitted Use.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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AMENDED AND RESTATED

AGREEMENT OF LEASE

between

42ND ST. DEVELOPMENT PROJECT, INC.,  
Landlord

and

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

Premises

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

Dated as of October 7, 1994

#40062304.2

ARTICLE 23

PERMITTED USE: NO UNLAWFUL OCCUPANCY

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

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



Section 23.3. Restriction of Public Use. At

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

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AMENDED AND RESTATED

AGREEMENT OF LEASE

between

42ND ST. DEVELOPMENT PROJECT, INC.,  
Landlord

and

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

Premises

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

Dated as of October 7, 1994

#40062305.2

ARTICLE 23

PERMITTED USE: NO UNLAWFUL OCCUPANCY

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

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

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

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## INDEX

### NEW 42 - SITE 5 THEATERS

#### Funding Agreement

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

#### Theater Development Agreement

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

#### Theater Project Agreement

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

#### Master Lease

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

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

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

## ARTICLE 20

### RIGHT OF INSPECTION

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

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

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

## ARTICLE 21

### PERMITTED USE; NO UNLAWFUL OCCUPANCY

#### **Section 21.01. Permitted Uses.**

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

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

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

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

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

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

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

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

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

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

## ARTICLE 22

### EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES, ETC.

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

- (a) if Tenant shall fail to pay when due any installment of Base Rent or Additional Rent or any part thereof, and such default shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant;
- (b) if Tenant shall fail to make any other payment of Rental required to be paid by Tenant hereunder for a period of thirty (30) days after written notice thereof from Landlord to Tenant;
- (c) if Tenant shall fail to observe or perform one or more of the other terms, conditions, covenants or agreements of this Lease and such failure shall continue for a period of sixty (60) days after written notice thereof by Landlord to Tenant specifying such failure, unless (i) such failure requires work to be performed, acts to be done, or conditions to be removed which cannot by their nature reasonably be performed, done or removed, as the case may be, within such sixty (60) day period, in which case no default shall be deemed to exist as long as Tenant shall have commenced curing the same within such sixty (60) day period and shall thereafter diligently and continuously prosecute the same to completion or (ii) such failure requires work to be performed, acts to be done, or conditions to be removed which arise as a consequence of any failure by a Subtenant to perform its obligations under its Sublease, then such sixty (60) day period shall be extended if and for so long as Tenant is diligently pursuing its remedies against such Subtenant;
- (d) if Tenant shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under present or any future federal bankruptcy act or any other present or future applicable federal, state or other statute of law, or if Tenant shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant or of all or any substantial part of its properties or of the Premises or any interest of Tenant therein or if Tenant shall admit in writing the inability to pay its debts as they become due or makes a general assignment for the benefit of its creditors; provided, however, that, if this Lease shall be assigned with the consent of



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**PHASE II FUNDING AGREEMENT**

**BETWEEN**

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

**and**

**NEW AMSTERDAM DEVELOPMENT CORPORATION**

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**Dated: as of December 29, 1994**

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**Premises:**

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

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## ARTICLE 6

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

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

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

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

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

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

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

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

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

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

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

1. Definitions

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

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

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

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

2. Uses

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

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

3. Hours of Operation

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

4. **Anchor Subtenants**

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

5. **Minimum Number of Demised Spaces**

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

6. **Alternative Proposal**

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

## **EXHIBIT 1**

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

**bowling alleys<sup>1</sup>**

**concert halls**

**cabarets**

**jazz and other contemporary music clubs**

**comedy clubs**

**state-of-the-art media shows**

**interactive amusement centers**

**eating or drinking establishments where entertainment is the predominant activity**

**tourist or educationally oriented multi-medial events**

**art, scientific and educational exhibitions**

**interactive theme exhibitions**

**museums**

**motion picture production shows**

**movie theaters**

**recording studios**

**rehearsal studios**

**performance studios**

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<sup>1</sup>Permitted only if design and theme are tourist or entertainment related.

## EXHIBIT 2

All Uses in Exhibit 1  
Art Galleries  
Art, Needlework<sup>1</sup>  
Artist Supply Stores<sup>1</sup>  
Athletic Good Stores  
Bakeries  
Book Stores or Card Stores  
Candy Stores<sup>1</sup>  
Catering Establishments<sup>1</sup>  
Cigar Stores<sup>1</sup>  
Clothing Stores  
Coin Stores<sup>1</sup>  
Costume Rental Establishment<sup>1</sup>  
Dance Halls, Public  
Delicatessens  
Dressmaking Shops, Custom<sup>1</sup>  
Drug Stores<sup>1</sup>  
Eating and Drinking Establishments  
Florists<sup>1</sup>  
Gift Shops (including tourist/entertainment super stores)  
Ice Cream Stores<sup>1</sup>  
Jewelry Shops<sup>1</sup>  
Leather Goods or Luggage Stores<sup>1</sup>  
Music Stores  
Photographic Studios<sup>1</sup>  
Pool or Billiard Halls  
Record Stores  
Shoe Stores<sup>1</sup>  
Skating Rinks, indoor<sup>1</sup>  
Stamp Stores<sup>1</sup>  
Stationery Stores<sup>1</sup>  
Ticket Sales<sup>1</sup>  
Tobacco Stores<sup>1</sup>  
Tour Operator<sup>1</sup>  
Travel Bureau<sup>1</sup>  
Variety Stores

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

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Draft dated December 30, 1994

SITE 8 EAST ACQUISITION AGREEMENT

among

THE CITY OF NEW YORK,

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION,

NEW YORK STATE URBAN DEVELOPMENT CORPORATION

and

42ND ST. DEVELOPMENT PROJECT, INC.

Premises

Block: 1013

Lots: 12, 53, 55 and 57

dated

as of \_\_\_\_\_, 199\_\_

#40067870.6



## ARTICLE 7

**USE OF THE PROPERTY****Section 7.01. Permitted Use.**

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

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

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

(d) [Intentionally Omitted].

(e) **Full Operating Condition.**

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

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

**SCHEDULE G**

**Use And Operating Requirements**

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

**1. Definitions**

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

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

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

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

**2. Uses**

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

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

**3. Hours of Operation**

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

4. **Anchor Subtenants**

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

5. **Minimum Number of Demised Spaces**

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

6. **Alternative Proposal**

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

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

**Section 7.1 Permitted Use.**

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

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

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

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

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

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

**Section 7.3 Interim and Long-Term Maintenance Obligations.**

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) except to the extent permitted under applicable Legal Requirements and all permits and authorizations required thereunder, not obstruct the sidewalks in any manner and maintain and keep the Property, and sidewalks and curbs adjacent thereto, free and clear of rubbish, dirt, ice and snow and shall not impede the free use of or obstruct the same or allow the same to be obstructed in any manner;

(C) to the extent any Existing Improvement has not been demolished, keep such Existing Improvement locked and secure;

(D) to the extent any Existing Improvement has not been demolished, ensure that the exterior of such Existing Improvement is well lit from dusk until dawn every day;

(E) keep the Property free of graffiti and posters; and

(F) comply with the DUO.

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

(c) Long-Term Maintenance Obligations. (i) At all times during the term of this Lease from and after the Substantial Completion Date, Tenant shall (and/or shall cause each Subtenant (by incorporating the following provisions in every Sublease and using all reasonable efforts to enforce the same) to):

(A) not cause any waste to or upon the Property or any part thereof, nor permit or suffer any waste to or upon the Property;

(B) not cause physical damage (other than as part of any Construction Work permitted hereunder or as caused by a Casualty or Taking) to the Property or any part thereof, including the Core and Shell and Tenant's Subway Improvements (except in accordance with the Site & South Subway Agreement);

(C) take good care of the Property, make all repairs, restorations and replacements thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen, necessary to (1) comply with all Legal Requirements, Insurance Requirements and the DUO and (2) maintain and operate the Property to a standard at least of that of a Class "A" office building (as understood on the date hereof) in midtown Manhattan;

(D) maintain, repair, keep, use and occupy the Property in compliance with the DUO;

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

(F) maintain and keep the sidewalks and vaults adjacent to the Property in good order, repair and condition (including the prompt repair of cracks therein and the maintenance of an even level thereof) and at all times keep the same in compliance with the DUO and Legal Requirements;

(G) operate the Retail Space for the conduct of business during the hours of operation set forth in the DUO;

(H) operate and maintain the Public Amenity as set forth in the DUO and in Section 30.4 hereof;

(I) prohibit sales through window openings on the streetwall, except in the case of (1) a Subtenant whose business is primarily the operation of a newsstand or ticket sales or (2) the sale of tickets for movies and other attractions, i.e., display windows shall be used for display only and not as a point of sale; and

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

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

**Section 7.4 Compliance with Legal Requirements.** Tenant shall promptly comply with all Legal Requirements and Insurance Requirements, foreseen or unforeseen, ordinary as well as extraordinary, structural or non-structural. Tenant shall have the right to contest the validity of any Legal Requirement or the application thereof in accordance with this Section 7.4. During such contest, compliance with any such contested Legal Requirement may be deferred by Tenant upon condition that before instituting any such proceedings, Tenant shall furnish to Landlord



security reasonably satisfactory to Landlord (it being agreed that an acceptable guaranty of an Acceptable Guarantor shall be security reasonably satisfactory to Landlord under this Section 7.4), securing compliance with the contested Legal Requirement and payment of all interest, penalties, fines, fees and expenses in connection therewith. Any such proceeding instituted by Tenant shall be commenced as soon as is reasonably possible after the issuance of any notification by the applicable governmental authority with respect to required compliance with such Legal Requirement and shall be prosecuted to final adjudication with reasonable diligence. Tenant hereby agrees to indemnify Landlord from and against any and all Claims arising out of such proceeding. Notwithstanding the foregoing, Tenant promptly shall comply with any such Legal Requirement and compliance shall not be deferred if at any time there is a condition imminently hazardous to human life or health, the Property, or any part thereof, shall be in danger of being forfeited or lost, or if Landlord shall be in danger of being subject to criminal and/or civil liability or penalty (other than a fine which Tenant agrees to pay or in regard to which Tenant provides to Landlord an indemnity of Landlord by an Acceptable Guarantor) by reason of noncompliance therewith. The Obligations of Tenant to indemnify Landlord under this Section 7.4 shall survive the expiration or earlier termination of this Lease.

**Section 7.5 No Waste.** Except in connection with the Demolition Work, Tenant will not do, permit or suffer any waste to or upon the Property or any part thereof. Tenant shall have the right at any time and from time to time to sell or dispose of any Equipment, subject to this Lease, which may have become obsolete or unfit for use or which is no longer useful, necessary or economical in the operation of the Property; provided, however, that Tenant shall have substituted or shall promptly substitute for the property so removed from the Property other Equipment not necessarily of the same character but at least of equal quality in the performance of the particular function in question as that of the property so removed unless, in Tenant's reasonable opinion as set forth in a written notice to Landlord, the property so removed was performing an obsolete function or a function no longer required in connection with the then current use of the Property and replacement thereof is not necessary or appropriate to maintain, without impairment, the operation or character of the Property, its use and occupancy by Subtenants or its overall value.

**Section 7.6 Right of Entry.** Landlord (and its designee(s)) shall have the right to enter upon the Property, or any part thereof, at any time during the term hereof, for the purpose of ascertaining the condition of the Property or whether Tenant or any Subtenant is observing and performing their respective obligations hereunder, all without hindrance or molestation from Tenant or any Person claiming by, through or under Tenant. The above mentioned rights of entry shall be exercisable (other than in the case of an emergency) at reasonable times, at reasonable hours and on reasonable, prior written notice, and Landlord shall use reasonable efforts to minimize interference with Tenant and any Subtenants, and shall exercise such right under the supervision of Tenant's (and any such Subtenant's) employees, agents or designees provided the same are made reasonably available to Landlord for such purpose upon reasonable advance notice to Tenant and any such Subtenant (as applicable).

**Section 7.7 Utilities; Services; No Landlord Responsibility.** Tenant shall be responsible for all charges for gas, electricity, light, heat, water, sewerage and power, for protective and security services, for telephone and other communication services, and for all other public or private utility services which shall be used, rendered or supplied upon or in connection with the Property, or any part thereof, at any time during the term of this Lease. Landlord shall not be required to furnish any services, utilities or facilities whatsoever to the Property, nor shall Landlord have any duty or obligation to make any Alteration or repair to the Property. Tenant assumes the full

and sole responsibility for the condition, operation, repair, alteration, improvement, replacement, maintenance and management of the Property.

**Section 7.8 Environmental.** Tenant shall not undertake, permit or suffer any Environmental Activity at the Property other than (a) in compliance with all applicable Insurance Requirements and Legal Requirements and (b) in such a manner as shall keep the Property free from any lien imposed in respect or as a consequence of such Environmental Activity. Tenant shall take all necessary steps to ensure that any permitted Environmental Activity undertaken or permitted at the Property is undertaken in a manner as to provide prudent safeguards against potential risks to human health or the environment or to the Property. Tenant shall notify Landlord within twenty-four (24) hours after Tenant becomes aware of the release or discharge of any Hazardous Materials from or at the Property and Tenant shall forthwith remediate or remove such Hazardous Materials, subject to the last sentence of this Section 7.8. Landlord shall have the right from time to time to conduct an environmental audit of the Property, provided Landlord has reasonable cause to believe (i) Hazardous Materials have been released or discharged or is otherwise present at the Property or (ii) Tenant is otherwise in violation of any Legal Requirement or Insurance Requirement relating to Hazardous Materials, and Landlord provides written notice of its intention to conduct an environmental audit together with a statement setting forth the reasons therefor. Tenant shall cooperate in the conduct of such environmental audit. The cost of such audit shall be payable by Tenant upon Landlord's demand therefor; provided, however, that if Tenant objects to such audit by written notice received by Landlord prior to the initiation of such audit and such audit (and any more-detailed environmental audit of the same circumstances (e.g., a so-called phase II environmental assessment)) fails to identify any Environmental Activity in violation of Legal Requirements, Landlord shall pay the costs of such audit. Such audit shall be performed at reasonable times, at reasonable hours and on at least five (5) Business Days notice (except in the case of an emergency), Landlord shall make reasonable efforts to minimize interference with Tenant and any Subtenants, and shall require its audit contractor to carry commercial liability insurance in a commercially reasonable amount, naming Tenant and Landlord as additional insureds, and to deliver Tenant evidence thereof no less than five (5) Business Days prior to commencing such audit. Notwithstanding anything to the contrary in the foregoing portions of this Section 7.8: (A) nothing contained in this Section 7.8 shall require Tenant to remove or remediate any Hazardous Waste unless required to do so by Legal Requirements; and (B) Tenant shall have the right, in accordance with Section 7.4, to contest the validity of any Legal Requirement applicable to the remediation or removal of Hazardous Materials, provided Tenant forthwith takes all necessary steps to prevent any further discharge or release of Hazardous Materials or any other or further deterioration to the Property caused by Hazardous Materials; provided, however, that, in any event, Tenant may not delay such remediation or removal during the pendency of such contest if the presence of such Hazardous Materials poses an imminent threat to the Property or any persons or if such delay could expose Landlord to increased liability arising from such Hazardous Materials.

**Section 7.9 Equitable Relief.** Tenant hereby acknowledges that Landlord may suffer irreparable harm by reason of a breach or threatened breach of the provisions of this Article VII, and, accordingly, in addition to any other remedy that Landlord may have under this Lease or as may be permitted by applicable law, Landlord shall be entitled to seek to enjoin the action, activity or inaction that gives rise to such breach or threatened breach by Tenant.

**Section 7.10 Windows.** Tenant shall not clean or require, permit, suffer or allow any window in the Improvements to be cleaned from the outside in violation of Section 202 of the Labor Law or any other Legal Requirements or Insurance Requirements.

**Section 7.11 Adverse Possession.** Tenant shall not suffer or permit the Property or any portion thereof to be used by the public or any Person without restriction or in such manner as would, with the lapse of time, impair title to the Property or any portion thereof, or create the basis for a legitimate claim or claims of adverse usage or adverse possession by the public, as such, or any Person, or of implied dedication of the Property, or any portion thereof.

**Section 7.12 Pre-Possession Obligations.** Except as expressly set forth hereunder or in a separate agreement between ESDC and Tenant, Tenant shall have no rights, obligations or liability in respect of the Property prior to the delivery of Possession.

ARTICLE VII  
USE AND MAINTENANCE OF THE PROPERTY

**Section 7.1 Permitted Use.**

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

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

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

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

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

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

**Section 7.3 Interim and Long-Term Maintenance Obligations.**

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) except to the extent permitted under applicable Legal Requirements and all permits and authorizations required thereunder, not obstruct the sidewalks in any manner and maintain and keep the Property, and sidewalks and curbs adjacent thereto, free and clear of rubbish, dirt, ice and snow and shall not impede the free use of or obstruct the same or allow the same to be obstructed in any manner;

(C) to the extent any Existing Improvement has not been demolished, keep such Existing Improvement locked and secure;

(D) to the extent any Existing Improvement has not been demolished, ensure that the exterior of such Existing Improvement is well lit from dusk until dawn every day;

(E) keep the Property free of graffiti and posters; and

(F) comply with the DUO.

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

(c) Long-Term Maintenance Obligations. (i) At all times during the term of this Lease from and after the Substantial Completion Date, Tenant shall (and/or shall cause each Subtenant (by incorporating the following provisions in every Sublease and using all reasonable efforts to enforce the same) to):

(A) not cause any waste to or upon the Property or any part thereof, nor permit or suffer any waste to or upon the Property;

(B) not cause physical damage (other than as part of any Construction Work permitted hereunder or as caused by a Casualty or Taking) to the Property or any part thereof, including the Core and Shell and Tenant's Subway Improvements (except in accordance with the Site 8 South Subway Agreement);

(C) take good care of the Property, make all repairs, restorations and replacements thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen, necessary to (1) comply with all Legal Requirements, Insurance Requirements and the DUO and (2) maintain and operate the Property to a standard at least of that of a Class "A" office building (as understood on the date hereof) in midtown Manhattan;

(D) maintain, repair, keep, use and occupy the Property in compliance with the DUO;

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

(F) maintain and keep the sidewalks and vaults adjacent to the Property in good order, repair and condition (including the prompt repair of cracks therein and the maintenance of an even level thereof) and at all times keep the same in compliance with the DUO and Legal Requirements;

(G) operate the Retail Space for the conduct of business during the hours of operation set forth in the DUO;

(H) operate and maintain the Public Amenity as set forth in the DUO and in Section 30.4 hereof;

(I) prohibit sales through window openings on the streetwall, except in the case of (1) a Subtenant whose business is primarily the operation of a newsstand or ticket sales or (2) the sale of tickets for movies and other attractions, i.e., display windows shall be used for display only and not as a point of sale; and

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

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

**Section 7.4 Compliance with Legal Requirements.** Tenant shall promptly comply with all Legal Requirements and Insurance Requirements, foreseen or unforeseen, ordinary as well as extraordinary, structural or non-structural. Tenant shall have the right to contest the validity of any Legal Requirement or the application thereof in accordance with this Section 7.4. During such contest, compliance with any such contested Legal Requirement may be deferred by Tenant upon condition that before instituting any such proceedings, Tenant shall furnish to Landlord

security reasonably satisfactory to Landlord (it being agreed that an acceptable guaranty of an Acceptable Guarantor shall be security reasonably satisfactory to Landlord under this Section 7.4), securing compliance with the contested Legal Requirement and payment of all interest, penalties, fines, fees and expenses in connection therewith. Any such proceeding instituted by Tenant shall be commenced as soon as is reasonably possible after the issuance of any notification by the applicable governmental authority with respect to required compliance with such Legal Requirement and shall be prosecuted to final adjudication with reasonable diligence. Tenant hereby agrees to indemnify Landlord from and against any and all Claims arising out of such proceeding. Notwithstanding the foregoing, Tenant promptly shall comply with any such Legal Requirement and compliance shall not be deferred if at any time there is a condition imminently hazardous to human life or health, the Property, or any part thereof, shall be in danger of being forfeited or lost, or if Landlord shall be in danger of being subject to criminal and/or civil liability or penalty (other than a fine which Tenant agrees to pay or in regard to which Tenant provides to Landlord an indemnity of Landlord by an Acceptable Guarantor) by reason of noncompliance therewith. The Obligations of Tenant to indemnify Landlord under this Section 7.4 shall survive the expiration or earlier termination of this Lease.

**Section 7.5 No Waste.** Except in connection with the Demolition Work, Tenant will not do, permit or suffer any waste to or upon the Property or any part thereof. Tenant shall have the right at any time and from time to time to sell or dispose of any Equipment, subject to this Lease, which may have become obsolete or unfit for use or which is no longer useful, necessary or economical in the operation of the Property; provided, however, that Tenant shall have substituted or shall promptly substitute for the property so removed from the Property other Equipment not necessarily of the same character but at least of equal quality in the performance of the particular function in question as that of the property so removed unless, in Tenant's reasonable opinion as set forth in a written notice to Landlord, the property so removed was performing an obsolete function or a function no longer required in connection with the then current use of the Property and replacement thereof is not necessary or appropriate to maintain, without impairment, the operation or character of the Property, its use and occupancy by Subtenants or its overall value.

**Section 7.6 Right of Entry.** Landlord (and its designee(s)) shall have the right to enter upon the Property, or any part thereof, at any time during the term hereof, for the purpose of ascertaining the condition of the Property or whether Tenant or any Subtenant is observing and performing their respective obligations hereunder, all without hindrance or molestation from Tenant or any Person claiming by, through or under Tenant. The above mentioned rights of entry shall be exercisable (other than in the case of an emergency) at reasonable times, at reasonable hours and on reasonable, prior written notice, and Landlord shall use reasonable efforts to minimize interference with Tenant and any Subtenants, and shall exercise such right under the supervision of Tenant's (and any such Subtenant's) employees, agents or designees provided the same are made reasonably available to Landlord for such purpose upon reasonable advance notice to Tenant and any such Subtenant (as applicable).

**Section 7.7 Utilities; Services; No Landlord Responsibility.** Tenant shall be responsible for all charges for gas, electricity, light, heat, water, sewerage and power, for protective and security services, for telephone and other communication services, and for all other public or private utility services which shall be used, rendered or supplied upon or in connection with the Property, or any part thereof, at any time during the term of this Lease. Landlord shall not be required to furnish any services, utilities or facilities whatsoever to the Property, nor shall Landlord have any duty or obligation to make any Alteration or repair to the Property. Tenant assumes the full



and sole responsibility for the condition, operation, repair, alteration, improvement, replacement, maintenance and management of the Property.

**Section 7.8 Environmental.** Tenant shall not undertake, permit or suffer any Environmental Activity at the Property other than (a) in compliance with all applicable Insurance Requirements and Legal Requirements and (b) in such a manner as shall keep the Property free from any lien imposed in respect or as a consequence of such Environmental Activity. Tenant shall take all necessary steps to ensure that any permitted Environmental Activity undertaken or permitted at the Property is undertaken in a manner as to provide prudent safeguards against potential risks to human health or the environment or to the Property. Tenant shall notify Landlord within twenty-four (24) hours after Tenant becomes aware of the release or discharge of any Hazardous Materials from or at the Property and Tenant shall forthwith remediate or remove such Hazardous Materials, subject to the last sentence of this Section 7.8. Landlord shall have the right from time to time to conduct an environmental audit of the Property, provided Landlord has reasonable cause to believe (i) Hazardous Materials have been released or discharged or is otherwise present at the Property or (ii) Tenant is otherwise in violation of any Legal Requirement or Insurance Requirement relating to Hazardous Materials, and Landlord provides written notice of its intention to conduct an environmental audit together with a statement setting forth the reasons therefor. Tenant shall cooperate in the conduct of such environmental audit. The cost of such audit shall be payable by Tenant upon Landlord's demand therefor; provided, however, that if Tenant objects to such audit by written notice received by Landlord prior to the initiation of such audit and such audit (and any more-detailed environmental audit of the same circumstances (e.g., a so-called phase II environmental assessment)) fails to identify any Environmental Activity in violation of Legal Requirements, Landlord shall pay the costs of such audit. Such audit shall be performed at reasonable times, at reasonable hours and on at least five (5) Business Days notice (except in the case of an emergency), Landlord shall make reasonable efforts to minimize interference with Tenant and any Subtenants, and shall require its audit contractor to carry commercial liability insurance in a commercially reasonable amount, naming Tenant and Landlord as additional insureds, and to deliver Tenant evidence thereof no less than five (5) Business Days prior to commencing such audit. Notwithstanding anything to the contrary in the foregoing portions of this Section 7.8: (A) nothing contained in this Section 7.8 shall require Tenant to remove or remediate any Hazardous Waste unless required to do so by Legal Requirements; and (B) Tenant shall have the right, in accordance with Section 7.4, to contest the validity of any Legal Requirement applicable to the remediation or removal of Hazardous Materials, provided Tenant forthwith takes all necessary steps to prevent any further discharge or release of Hazardous Materials or any other or further deterioration to the Property caused by Hazardous Materials; provided, however, that, in any event, Tenant may not delay such remediation or removal during the pendency of such contest if the presence of such Hazardous Materials poses an imminent threat to the Property or any persons or if such delay could expose Landlord to increased liability arising from such Hazardous Materials.

**Section 7.9 Equitable Relief.** Tenant hereby acknowledges that Landlord may suffer irreparable harm by reason of a breach or threatened breach of the provisions of this Article VII, and, accordingly, in addition to any other remedy that Landlord may have under this Lease or as may be permitted by applicable law, Landlord shall be entitled to seek to enjoin the action, activity or inaction that gives rise to such breach or threatened breach by Tenant.

**Section 7.10 Windows.** Tenant shall not clean or require, permit, suffer or allow any window in the Improvements to be cleaned from the outside in violation of Section 202 of the Labor Law or any other Legal Requirements or Insurance Requirements.

**Section 7.11 Adverse Possession.** Tenant shall not suffer or permit the Property or any portion thereof to be used by the public or any Person without restriction or in such manner as would, with the lapse of time, impair title to the Property or any portion thereof, or create the basis for a legitimate claim or claims of adverse usage or adverse possession by the public, as such, or any Person, or of implied dedication of the Property, or any portion thereof.

**Section 7.12 Pre-Possession Obligations.** Except as expressly set forth hereunder or in a separate agreement between ESDC and Tenant, Tenant shall have no rights, obligations or liability in respect of the Property prior to the delivery of Possession.

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

**Section 7.1 Permitted Use.**

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

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

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

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

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

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

**Section 7.3 Interim and Long-Term Maintenance Obligations.**

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) except to the extent permitted under applicable Legal Requirements and all permits and authorizations required thereunder, not obstruct the sidewalks in any manner and maintain and keep the Property, and sidewalks and curbs adjacent thereto, free and clear of rubbish, dirt, ice and snow and shall not impede the free use of or obstruct the same or allow the same to be obstructed in any manner;

(C) to the extent any Existing Improvement has not been demolished, keep such Existing Improvement locked and secure;

(D) to the extent any Existing Improvement has not been demolished, ensure that the exterior of such Existing Improvement is well lit from dusk until dawn every day;

(E) keep the Property free of graffiti and posters; and

(F) comply with the DUO.

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

(c) Long-Term Maintenance Obligations. (i) At all times during the term of this Lease from and after the Substantial Completion Date, Tenant shall (and/or shall cause each Subtenant (by incorporating the following provisions in every Sublease and using all reasonable efforts to enforce the same) to):

(A) not cause any waste to or upon the Property or any part thereof, nor permit or suffer any waste to or upon the Property;

(B) not cause physical damage (other than as part of any Construction Work permitted hereunder or as caused by a Casualty or Taking) to the Property or any part thereof, including the Core and Shell and Tenant's Subway Improvements (except in accordance with the Site 8 South Subway Agreement);

(C) take good care of the Property, make all repairs, restorations and replacements thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen, necessary to (1) comply with all Legal Requirements, Insurance Requirements and the DUO and (2) maintain and operate the Property to a standard at least of that of a Class "A" office building (as understood on the date hereof) in midtown Manhattan;

(D) maintain, repair, keep, use and occupy the Property in compliance with the DUO;

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

(F) maintain and keep the sidewalks and vaults adjacent to the Property in good order, repair and condition (including the prompt repair of cracks therein and the maintenance of an even level thereof) and at all times keep the same in compliance with the DUO and Legal Requirements;

(G) operate the Retail Space for the conduct of business during the hours of operation set forth in the DUO;

(H) operate and maintain the Public Amenity as set forth in the DUO and in Section 30.4 hereof;

(I) prohibit sales through window openings on the streetwall, except in the case of (1) a Subtenant whose business is primarily the operation of a newsstand or ticket sales or (2) the sale of tickets for movies and other attractions, i.e., display windows shall be used for display only and not as a point of sale; and

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

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

**Section 7.4 Compliance with Legal Requirements.** Tenant shall promptly comply with all Legal Requirements and Insurance Requirements, foreseen or unforeseen, ordinary as well as extraordinary, structural or non-structural. Tenant shall have the right to contest the validity of any Legal Requirement or the application thereof in accordance with this Section 7.4. During such contest, compliance with any such contested Legal Requirement may be deferred by Tenant upon condition that before instituting any such proceedings, Tenant shall furnish to Landlord

security reasonably satisfactory to Landlord (it being agreed that an acceptable guaranty of an Acceptable Guarantor shall be security reasonably satisfactory to Landlord under this Section 7.4), securing compliance with the contested Legal Requirement and payment of all interest, penalties, fines, fees and expenses in connection therewith. Any such proceeding instituted by Tenant shall be commenced as soon as is reasonably possible after the issuance of any notification by the applicable governmental authority with respect to required compliance with such Legal Requirement and shall be prosecuted to final adjudication with reasonable diligence. Tenant hereby agrees to indemnify Landlord from and against any and all Claims arising out of such proceeding. Notwithstanding the foregoing, Tenant promptly shall comply with any such Legal Requirement and compliance shall not be deferred if at any time there is a condition imminently hazardous to human life or health, the Property, or any part thereof, shall be in danger of being forfeited or lost, or if Landlord shall be in danger of being subject to criminal and/or civil liability or penalty (other than a fine which Tenant agrees to pay or in regard to which Tenant provides to Landlord an indemnity of Landlord by an Acceptable Guarantor) by reason of noncompliance therewith. The Obligations of Tenant to indemnify Landlord under this Section 7.4 shall survive the expiration or earlier termination of this Lease.

**Section 7.5 No Waste.** Except in connection with the Demolition Work, Tenant will not do, permit or suffer any waste to or upon the Property or any part thereof. Tenant shall have the right at any time and from time to time to sell or dispose of any Equipment, subject to this Lease, which may have become obsolete or unfit for use or which is no longer useful, necessary or economical in the operation of the Property; provided, however, that Tenant shall have substituted or shall promptly substitute for the property so removed from the Property other Equipment not necessarily of the same character but at least of equal quality in the performance of the particular function in question as that of the property so removed unless, in Tenant's reasonable opinion as set forth in a written notice to Landlord, the property so removed was performing an obsolete function or a function no longer required in connection with the then current use of the Property and replacement thereof is not necessary or appropriate to maintain, without impairment, the operation or character of the Property, its use and occupancy by Subtenants or its overall value.

**Section 7.6 Right of Entry.** Landlord (and its designee(s)) shall have the right to enter upon the Property, or any part thereof, at any time during the term hereof, for the purpose of ascertaining the condition of the Property or whether Tenant or any Subtenant is observing and performing their respective obligations hereunder, all without hindrance or molestation from Tenant or any Person claiming by, through or under Tenant. The above mentioned rights of entry shall be exercisable (other than in the case of an emergency) at reasonable times, at reasonable hours and on reasonable, prior written notice, and Landlord shall use reasonable efforts to minimize interference with Tenant and any Subtenants, and shall exercise such right under the supervision of Tenant's (and any such Subtenant's) employees, agents or designees provided the same are made reasonably available to Landlord for such purpose upon reasonable advance notice to Tenant and any such Subtenant (as applicable).

**Section 7.7 Utilities; Services; No Landlord Responsibility.** Tenant shall be responsible for all charges for gas, electricity, light, heat, water, sewerage and power, for protective and security services, for telephone and other communication services, and for all other public or private utility services which shall be used, rendered or supplied upon or in connection with the Property, or any part thereof, at any time during the term of this Lease. Landlord shall not be required to furnish any services, utilities or facilities whatsoever to the Property, nor shall Landlord have any duty or obligation to make any Alteration or repair to the Property. Tenant assumes the full

and sole responsibility for the condition, operation, repair, alteration, improvement, replacement, maintenance and management of the Property.

**Section 7.8 Environmental.** Tenant shall not undertake, permit or suffer any Environmental Activity at the Property other than (a) in compliance with all applicable Insurance Requirements and Legal Requirements and (b) in such a manner as shall keep the Property free from any lien imposed in respect or as a consequence of such Environmental Activity. Tenant shall take all necessary steps to ensure that any permitted Environmental Activity undertaken or permitted at the Property is undertaken in a manner as to provide prudent safeguards against potential risks to human health or the environment or to the Property. Tenant shall notify Landlord within twenty-four (24) hours after Tenant becomes aware of the release or discharge of any Hazardous Materials from or at the Property and Tenant shall forthwith remediate or remove such Hazardous Materials, subject to the last sentence of this Section 7.8. Landlord shall have the right from time to time to conduct an environmental audit of the Property, provided Landlord has reasonable cause to believe (i) Hazardous Materials have been released or discharged or is otherwise present at the Property or (ii) Tenant is otherwise in violation of any Legal Requirement or Insurance Requirement relating to Hazardous Materials, and Landlord provides written notice of its intention to conduct an environmental audit together with a statement setting forth the reasons therefor. Tenant shall cooperate in the conduct of such environmental audit. The cost of such audit shall be payable by Tenant upon Landlord's demand therefor; provided, however, that if Tenant objects to such audit by written notice received by Landlord prior to the initiation of such audit and such audit (and any more-detailed environmental audit of the same circumstances (e.g., a so-called phase II environmental assessment)) fails to identify any Environmental Activity in violation of Legal Requirements, Landlord shall pay the costs of such audit. Such audit shall be performed at reasonable times, at reasonable hours and on at least five (5) Business Days notice (except in the case of an emergency), Landlord shall make reasonable efforts to minimize interference with Tenant and any Subtenants, and shall require its audit contractor to carry commercial liability insurance in a commercially reasonable amount, naming Tenant and Landlord as additional insureds, and to deliver Tenant evidence thereof no less than five (5) Business Days prior to commencing such audit. Notwithstanding anything to the contrary in the foregoing portions of this Section 7.8: (A) nothing contained in this Section 7.8 shall require Tenant to remove or remediate any Hazardous Waste unless required to do so by Legal Requirements; and (B) Tenant shall have the right, in accordance with Section 7.4, to contest the validity of any Legal Requirement applicable to the remediation or removal of Hazardous Materials, provided Tenant forthwith takes all necessary steps to prevent any further discharge or release of Hazardous Materials or any other or further deterioration to the Property caused by Hazardous Materials; provided, however, that, in any event, Tenant may not delay such remediation or removal during the pendency of such contest if the presence of such Hazardous Materials poses an imminent threat to the Property or any persons or if such delay could expose Landlord to increased liability arising from such Hazardous Materials.

**Section 7.9 Equitable Relief.** Tenant hereby acknowledges that Landlord may suffer irreparable harm by reason of a breach or threatened breach of the provisions of this Article VII, and, accordingly, in addition to any other remedy that Landlord may have under this Lease or as may be permitted by applicable law, Landlord shall be entitled to seek to enjoin the action, activity or inaction that gives rise to such breach or threatened breach by Tenant.

**Section 7.10 Windows.** Tenant shall not clean or require, permit, suffer or allow any window in the Improvements to be cleaned from the outside in violation of Section 202 of the Labor Law or any other Legal Requirements or Insurance Requirements.



**Section 7.11 Adverse Possession.** Tenant shall not suffer or permit the Property or any portion thereof to be used by the public or any Person without restriction or in such manner as would, with the lapse of time, impair title to the Property or any portion thereof, or create the basis for a legitimate claim or claims of adverse usage or adverse possession by the public, as such, or any Person, or of implied dedication of the Property, or any portion thereof.

**Section 7.12 Pre-Possession Obligations.** Except as expressly set forth hereunder or in a separate agreement between ESDC and Tenant, Tenant shall have no rights, obligations or liability in respect of the Property prior to the delivery of Possession.

# 79 NYT Building Leasing Company, LLC

## ARTICLE VII USE AND MAINTENANCE OF THE PROPERTY

### Section 7.1 Permitted Use.

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

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

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

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

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

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

### Section 7.3 Interim and Long-Term Maintenance Obligations.

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) except to the extent permitted under applicable Legal Requirements and all permits and authorizations required thereunder, not obstruct the sidewalks in any manner and maintain and keep the Property, and sidewalks and curbs adjacent thereto, free and clear of rubbish, dirt, ice and snow and shall not impede the free use of or obstruct the same or allow the same to be obstructed in any manner;

(C) to the extent any Existing Improvement has not been demolished, keep such Existing Improvement locked and secure;

(D) to the extent any Existing Improvement has not been demolished, ensure that the exterior of such Existing Improvement is well lit from dusk until dawn every day;

(E) keep the Property free of graffiti and posters; and

(F) comply with the DUO.

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

(c) Long-Term Maintenance Obligations. (i) At all times during the term of this Lease from and after the Substantial Completion Date, Tenant shall (and/or shall cause each Subtenant (by incorporating the following provisions in every Sublease and using all reasonable efforts to enforce the same) to):

(A) not cause any waste to or upon the Property or any part thereof, nor permit or suffer any waste to or upon the Property;

(B) not cause physical damage (other than as part of any Construction Work permitted hereunder or as caused by a Casualty or Taking) to the Property or any part thereof, including the Core and Shell and Tenant's Subway Improvements (except in accordance with the Site 8 South Subway Agreement);

(C) take good care of the Property, make all repairs, restorations and replacements thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen, necessary to (1) comply with all Legal Requirements, Insurance Requirements and the DUO and (2) maintain and operate the Property to a standard at least of that of a Class "A" office building (as understood on the date hereof) in midtown Manhattan;

(D) maintain, repair, keep, use and occupy the Property in compliance with the DUO;

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

(F) maintain and keep the sidewalks and vaults adjacent to the Property in good order, repair and condition (including the prompt repair of cracks therein and the maintenance of an even level thereof) and at all times keep the same in compliance with the DUO and Legal Requirements;

(G) operate the Retail Space for the conduct of business during the hours of operation set forth in the DUO;

(H) operate and maintain the Public Amenity as set forth in the DUO and in Section 30.4 hereof;

(I) prohibit sales through window openings on the streetwall, except in the case of (1) a Subtenant whose business is primarily the operation of a newsstand or ticket sales or (2) the sale of tickets for movies and other attractions, i.e., display windows shall be used for display only and not as a point of sale; and

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

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

**Section 7.4 Compliance with Legal Requirements.** Tenant shall promptly comply with all Legal Requirements and Insurance Requirements, foreseen or unforeseen, ordinary as well as extraordinary, structural or non-structural. Tenant shall have the right to contest the validity of any Legal Requirement or the application thereof in accordance with this Section 7.4. During such contest, compliance with any such contested Legal Requirement may be deferred by Tenant upon condition that before instituting any such proceedings, Tenant shall furnish to Landlord

security reasonably satisfactory to Landlord (it being agreed that an acceptable guaranty of an Acceptable Guarantor shall be security reasonably satisfactory to Landlord under this Section 7.4), securing compliance with the contested Legal Requirement and payment of all interest, penalties, fines, fees and expenses in connection therewith. Any such proceeding instituted by Tenant shall be commenced as soon as is reasonably possible after the issuance of any notification by the applicable governmental authority with respect to required compliance with such Legal Requirement and shall be prosecuted to final adjudication with reasonable diligence. Tenant hereby agrees to indemnify Landlord from and against any and all Claims arising out of such proceeding. Notwithstanding the foregoing, Tenant promptly shall comply with any such Legal Requirement and compliance shall not be deferred if at any time there is a condition imminently hazardous to human life or health, the Property, or any part thereof, shall be in danger of being forfeited or lost, or if Landlord shall be in danger of being subject to criminal and/or civil liability or penalty (other than a fine which Tenant agrees to pay or in regard to which Tenant provides to Landlord an indemnity of Landlord by an Acceptable Guarantor) by reason of noncompliance therewith. The Obligations of Tenant to indemnify Landlord under this Section 7.4 shall survive the expiration or earlier termination of this Lease.

**Section 7.5 No Waste.** Except in connection with the Demolition Work, Tenant will not do, permit or suffer any waste to or upon the Property or any part thereof. Tenant shall have the right at any time and from time to time to sell or dispose of any Equipment, subject to this Lease, which may have become obsolete or unfit for use or which is no longer useful, necessary or economical in the operation of the Property; provided, however, that Tenant shall have substituted or shall promptly substitute for the property so removed from the Property other Equipment not necessarily of the same character but at least of equal quality in the performance of the particular function in question as that of the property so removed unless, in Tenant's reasonable opinion as set forth in a written notice to Landlord, the property so removed was performing an obsolete function or a function no longer required in connection with the then current use of the Property and replacement thereof is not necessary or appropriate to maintain, without impairment, the operation or character of the Property, its use and occupancy by Subtenants or its overall value.

**Section 7.6 Right of Entry.** Landlord (and its designee(s)) shall have the right to enter upon the Property, or any part thereof, at any time during the term hereof, for the purpose of ascertaining the condition of the Property or whether Tenant or any Subtenant is observing and performing their respective obligations hereunder, all without hindrance or molestation from Tenant or any Person claiming by, through or under Tenant. The above mentioned rights of entry shall be exercisable (other than in the case of an emergency) at reasonable times, at reasonable hours and on reasonable, prior written notice, and Landlord shall use reasonable efforts to minimize interference with Tenant and any Subtenants, and shall exercise such right under the supervision of Tenant's (and any such Subtenant's) employees, agents or designees provided the same are made reasonably available to Landlord for such purpose upon reasonable advance notice to Tenant and any such Subtenant (as applicable).

**Section 7.7 Utilities; Services; No Landlord Responsibility.** Tenant shall be responsible for all charges for gas, electricity, light, heat, water, sewerage and power, for protective and security services, for telephone and other communication services, and for all other public or private utility services which shall be used, rendered or supplied upon or in connection with the Property, or any part thereof, at any time during the term of this Lease. Landlord shall not be required to furnish any services, utilities or facilities whatsoever to the Property, nor shall Landlord have any duty or obligation to make any Alteration or repair to the Property. Tenant assumes the full

and sole responsibility for the condition, operation, repair, alteration, improvement, replacement, maintenance and management of the Property.

**Section 7.8 Environmental.** Tenant shall not undertake, permit or suffer any Environmental Activity at the Property other than (a) in compliance with all applicable Insurance Requirements and Legal Requirements and (b) in such a manner as shall keep the Property free from any lien imposed in respect or as a consequence of such Environmental Activity. Tenant shall take all necessary steps to ensure that any permitted Environmental Activity undertaken or permitted at the Property is undertaken in a manner as to provide prudent safeguards against potential risks to human health or the environment or to the Property. Tenant shall notify Landlord within twenty-four (24) hours after Tenant becomes aware of the release or discharge of any Hazardous Materials from or at the Property and Tenant shall forthwith remediate or remove such Hazardous Materials, subject to the last sentence of this Section 7.8. Landlord shall have the right from time to time to conduct an environmental audit of the Property, provided Landlord has reasonable cause to believe (i) Hazardous Materials have been released or discharged or is otherwise present at the Property or (ii) Tenant is otherwise in violation of any Legal Requirement or Insurance Requirement relating to Hazardous Materials, and Landlord provides written notice of its intention to conduct an environmental audit together with a statement setting forth the reasons therefor. Tenant shall cooperate in the conduct of such environmental audit. The cost of such audit shall be payable by Tenant upon Landlord's demand therefor; provided, however, that if Tenant objects to such audit by written notice received by Landlord prior to the initiation of such audit and such audit (and any more-detailed environmental audit of the same circumstances (e.g., a so-called phase II environmental assessment)) fails to identify any Environmental Activity in violation of Legal Requirements, Landlord shall pay the costs of such audit. Such audit shall be performed at reasonable times, at reasonable hours and on at least five (5) Business Days notice (except in the case of an emergency), Landlord shall make reasonable efforts to minimize interference with Tenant and any Subtenants, and shall require its audit contractor to carry commercial liability insurance in a commercially reasonable amount, naming Tenant and Landlord as additional insureds, and to deliver Tenant evidence thereof no less than five (5) Business Days prior to commencing such audit. Notwithstanding anything to the contrary in the foregoing portions of this Section 7.8: (A) nothing contained in this Section 7.8 shall require Tenant to remove or remediate any Hazardous Waste unless required to do so by Legal Requirements; and (B) Tenant shall have the right, in accordance with Section 7.4, to contest the validity of any Legal Requirement applicable to the remediation or removal of Hazardous Materials, provided Tenant forthwith takes all necessary steps to prevent any further discharge or release of Hazardous Materials or any other or further deterioration to the Property caused by Hazardous Materials; provided, however, that, in any event, Tenant may not delay such remediation or removal during the pendency of such contest if the presence of such Hazardous Materials poses an imminent threat to the Property or any persons or if such delay could expose Landlord to increased liability arising from such Hazardous Materials.

**Section 7.9 Equitable Relief.** Tenant hereby acknowledges that Landlord may suffer irreparable harm by reason of a breach or threatened breach of the provisions of this Article VII, and, accordingly, in addition to any other remedy that Landlord may have under this Lease or as may be permitted by applicable law, Landlord shall be entitled to seek to enjoin the action, activity or inaction that gives rise to such breach or threatened breach by Tenant.

**Section 7.10 Windows.** Tenant shall not clean or require, permit, suffer or allow any window in the Improvements to be cleaned from the outside in violation of Section 202 of the Labor Law or any other Legal Requirements or Insurance Requirements.

**Section 7.11 Adverse Possession.** Tenant shall not suffer or permit the Property or any portion thereof to be used by the public or any Person without restriction or in such manner as would, with the lapse of time, impair title to the Property or any portion thereof, or create the basis for a legitimate claim or claims of adverse usage or adverse possession by the public, as such, or any Person, or of implied dedication of the Property, or any portion thereof.

**Section 7.12 Pre-Possession Obligations.** Except as expressly set forth hereunder or in a separate agreement between ESDC and Tenant, Tenant shall have no rights, obligations or liability in respect of the Property prior to the delivery of Possession.



# 80 Four Times Square

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**AMENDED AND RESTATED**

**AGREEMENT OF LEASE**

**between**

**42ND ST. DEVELOPMENT PROJECT, INC.,  
Landlord**

**and**

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

**Premises**

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

**Dated as of October 7, 1994**

**#40062305.2**

ARTICLE 23

PERMITTED USE: NO UNLAWFUL OCCUPANCY

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

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

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

# 81 Loew's Kings Theater

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## AGREEMENT OF LEASE

between

**The CITY OF NEW YORK, Landlord**

and

**NEW YORK CITY LAND DEVELOPMENT CORPORATION, Tenant**

Dated as of December 28, 2012

Premises: Former Loew's Kings Theatre  
1027 Flatbush Avenue  
Brooklyn, New York

Block 5132, Lots 16, 18 and 65

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**Section 22.02. Reimbursement for Amounts Paid by Landlord Pursuant to this Article.**

Any amounts paid by Landlord pursuant to Section 22.01, including all costs and expenses incurred by Landlord in connection therewith, shall be paid to Landlord on Landlord's demand, together with a late charge on the amounts so paid by Landlord calculated at the Late Charge Rate from the date of any such payment by Landlord to the date on which payment of such amounts is received by Landlord.

**Section 22.03. Waiver, Release and Assumption of Obligations.**

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

**Section 22.04. Proof of Damages.**

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

## ARTICLE 23

### PERMITTED USE; OPERATION

**Section 23.01. Use.**

Tenant shall use and operate the Premises as a First Class Performing Arts Facility, primarily for live performances and, at Tenant's option, secondarily for motion pictures (whichever, "**Performances**"), but Tenant shall also have the right to use and operate the Premises for ancillary uses including assembly, offices, customary theatre concessions, retail sales of merchandise, food and/or beverage service (alcoholic and non-alcoholic) and other related uses; provided, however, that (x) the primary use of the Premises, and particularly those portions thereof which historically were used as the auditorium and lobby, shall be as a First Class Performing Arts Facility, (y) the use of the Premises or the pattern of programming thereof shall not compromise the character and reputation of the Premises as a First Class Performing Arts Facility and (z) the Premises may only be used as a Qualified Business. Subject to the previous sentence, but without otherwise limiting the generality of the foregoing, Tenant shall have:

(i) the right to present, or license or sublease the right to present, any and all musical, dramatic, theatrical, comedic, dance or other Performances;

(ii) the right to license or sublease all or any part of the Premises for receptions, dinners and other catered events, weddings, religious services or ceremonies, fundraising events, conventions and commercial events;

(iii) the right to license or sublease all or any part of the Premises for other public, private or commercial gatherings or assemblies;

(iv) the right to sell, or subcontract the right to sell, customary theatre concession merchandise, food and beverages (including, without limitation, alcoholic beverages);

(v) the right to sell naming and sponsorship rights as provided in Section 23.05; and

(vi) the right to operate, subcontract, or sublease the right to operate, one or more restaurants, bars, coffee shops, catering services, parking services, or other business enterprises.

**Section 23.02. Prohibited Uses.** The Premises may not be used for the sale or advertising of tobacco products. Tenant shall not use or occupy the Premises, or permit or suffer the Premises or any part thereof to be used or occupied, for any unlawful or illegal business, use or purpose or for any purpose (or in any way) in violation of the provisions of Section 23.01 or Article 16 or the certificate(s) of occupancy for the Premises, or in such manner as may make void or voidable any insurance then in force with respect to the Premises. Immediately upon its discovery of any such unlawful or illegal business, use or purpose, or use or occupation in violation of Section 23.01 or Article 16, Tenant shall take all necessary steps, legal and equitable, to compel the discontinuance of such business or use, including, if necessary, the removal from the Premises of any Subtenants using a portion of the Premises for an unlawful or illegal business, use or purpose or in violation of Section 23.01 or Article 16. The provisions of this Section shall not restrict Tenant's rights under Article 34 to contest the validity or applicability to Tenant of any Requirements.

**Section 23.03. Operation.**

(a) The operation of the Premises shall be under the exclusive supervision and control of Tenant, provided that Tenant shall in all events operate the Premises consistent with its being a First Class Performing Arts Facility. Subject to the provisions of this Lease and applicable provisions of law, Tenant shall have discretion and control, free from interference, interruptions and disturbance, in all matters relating to the management and operation of the Premises including, without limitation, programming, charges for admission, credit policies, food and beverage services, employment policies, employee fringe benefits, receipt, holding and disbursement of funds, maintenance of bank accounts, procurement of inventories and services, promotion and publicity and, generally, control of all activities necessary for the operation of the Premises. Tenant is and shall be authorized to make, enter into and perform any contracts and agreements necessary to carry out and place in effect the terms and conditions of this Lease.

(b) Promptly, but in no event later than three months following Substantial Completion of the Project Work, Tenant shall commence operation of the Premises for the purposes described in Section 23.01 above (the first Performance within the Theatre following the Substantial Completion of the Project Work is herein termed the "**Opening**") and thereafter shall establish and continue active use and operation for the Term.

(c) If, commencing with respect to the fifth Lease Year, and with respect to each Lease Year subsequent thereto, (1) the Theatre is not used, during such Lease Year and the next two succeeding Lease Years, for an average of at least 110 Performances per year or (2) an

average of fewer than 137,500 Tickets per year are sold for Performances held during such Lease Year and the next two succeeding Lease Years, then Landlord shall have the right to notify Tenant in writing that such level of use is not satisfactory, which notice must be given within 45 days after the end of any such three Lease Year period. If, during the next succeeding Lease Year, fewer than 110 Performances are held in the Theatre, or fewer than 137,500 Tickets are sold for Theatre Performances held during such Lease Year, then Tenant shall pay to Landlord, within 45 days after the end of such Lease Year, as liquidated damages for such failure, the sum of One Dollar and Seventy-Five Cents (\$1.75), as such sum is adjusted in accordance with increases in the CPI from the Commencement Date, multiplied by the number of Tickets by which 137,500 exceeds the number of Tickets sold for Theatre Performances held during such Lease Year, which damages shall constitute the sole and exclusive remedy of Landlord on account of such failure.

(d) If, for any three consecutive calendar years following the 15<sup>th</sup> anniversary of the Opening, an average of at least 90 Performances are not held at the Theatre per year or an average of fewer than 110,000 Tickets for Theatre Performances are sold per year, then Landlord shall have the option to terminate this Lease.

(e) If, following the Opening, subject to Uncontrollable Circumstances, the Theatre has no Performances for a period in excess of six months, then Landlord shall have the option to terminate this Lease.

(f) Anything in this Lease to the contrary notwithstanding, Landlord's rights with respect to the enforcement of the provisions of subdivision (a) of this Section 23.03 with respect to continuous operation shall be limited to those specifically set forth in subdivisions (b), (c) and (d) hereof.

**Section 23.04. Complimentary Booking Dates.** Tenant shall make available during each Lease Year, at no rental or similar basic occupancy fee, at such reasonable times as may be mutually agreed to by Tenant and such groups, (x) ten booking dates for the Theatre and (y) 20 booking dates for the multi-purpose facility, if any, located in the basement of the Building. Such dates will be available to non-profit groups chosen by Tenant and will be awarded by Tenant on a space-available basis in keeping with Tenant's standard booking policies. Such groups will be required to enter into a standard license agreement with Tenant and will be responsible for any incremental operating costs associated with the event, based on Tenant's published rate card at the time of licensing. No such group shall be permitted to use the Premises for any event or other use that competes with Tenant's operation of the Premises or which is inconsistent with Tenant's permitted uses and other obligations under this Lease. Each group's use of and access to the Premises under this Section shall be subject to all standard policies and procedures of Tenant, including scheduling and staffing considerations.

**Section 23.05. Naming Rights, Concessions, etc.**

(a) Subject to Landlord's right of approval set forth in (b) below, Tenant shall have the exclusive right to determine, create, grant and operate (1) all naming rights and sponsorships (including signage therefor) with respect to (a) the Premises as a whole, (b) the Theatre and other performance areas within the Premises, (c) Performances and (d) series of Performances; (2) all

concessions (including alcoholic beverages), merchandise and novelty sales at the Premises; (3) all ticketing services at and with respect to all performances at the Premises; and (4) all parking services at the Premises. In furtherance of the foregoing, Landlord hereby represents, warrants and agrees that neither it nor any agent has granted and neither it nor any agent will grant any rights with respect to the use or operation of the Premises, including such with respect to sponsorship, naming, seating, concession, ticketing or parking, during or with respect to the Term other than as provided in this Lease. Tenant shall not permit to be used any name that would have a detrimental effect on the standing or reputation of the City, or its officials, the Theatre or the neighborhood.

(b) The above notwithstanding Landlord shall have an absolute right to approve the name under which the Building and/or the Theatre operates or does business. Not less than 30 days prior to adopting or contracting with respect to any such name, Tenant shall notify Landlord of the proposed name, and a description of any associated party. Tenant shall not adopt any such name or contract with respect thereto without Landlord's written consent. Landlord shall deny such consent only where it reasonably determines that the proposed name or associated party would have a detrimental effect on the standing or reputation of the City, or its officials, the Theatre or the neighborhood. Landlord shall grant or deny its consent within 30 days after a property request from Tenant.

(c) Landlord hereby grants to Tenant (i) the right, which shall be exclusive except for Landlord's right to use the same for its own or related or contracted entities' purposes for tourist and other promotion and related purposes, to use the name "Kings Theatre", or any part thereof, and any likeness of the Premises, in Tenant's advertising, promotion and signage relating to the operation of the Premises, (ii) the exclusive right to market and sell apparel items, including hats, shirts and sweatshirts, bearing the name "Kings Theatre", or any part thereof, or likeness of the Premises, and (iii) the exclusive right to use, and to allow others to use, the name "Kings Theatre", or any part thereof, and any likeness of the Premises, in marketing, promotional and bidding materials and its relationship with the Premises. If Landlord, LDC or EDC holds or obtains trademark protection on items bearing the name "Kings Theatre", or any part thereof, and/or likeness, Landlord shall, or shall cause LDC or EDC to, license each such trademark to Tenant, at a nominal cost, in connection with Tenant's use of such name and likeness. The term of any such license shall be concurrent with the Term of this Lease and shall terminate automatically upon the expiration or earlier termination of this Lease, except with respect to inventory then on hand of Tenant, as to which Tenant shall have the right to continue selling after the termination of this Lease. Landlord, LDC and EDC make no representation that they have rights to the name "Kings Theatre," but intend to convey whatever rights they may have to Tenant, subject to the above.

**Section 23.06. Signage.** Tenant shall consult with and obtain the approval of Landlord in connection with the installation of any and all exterior signage at the Premises. Landlord's exercise of such right of approval shall be limited to reasonably insuring that such signage is consistent with the Premises' character as a First Class Performing Arts Facility, and with any applicable Requirements.

**Section 23.07. Permits.**



(a) Landlord acknowledges that in order for Tenant to carry out the intended uses under this Lease, Tenant will need to obtain various licenses and permits including, without limitation, licenses to sell food and beverages including alcohol ("**Tenant Permits**"). Landlord will, and will cause EDC to (x) cooperate (for example, by signing as "owner" where necessary) in Tenant's efforts to secure and maintain such Permits and (y) broadly support the Project and the operation of the Premises as provided in this Lease.

(b) Tenant shall have the option to terminate this Lease at any time upon 60 days written notice to Landlord in the event of a withdrawal, revocation or non-renewal (including the imposition of a new requirement for renewal) by any Governmental Authority having jurisdiction, of any material Tenant Permit where such withdrawal or revocation or non-renewal is due to circumstances beyond Tenant's reasonable control and through no fault of Tenant, unless such Tenant Permit, or an equivalent permit, is reinstated, reissued or renewed within such 60 days. Notwithstanding the foregoing, Tenant shall use its commercially reasonable efforts to maintain all Tenant Permits at all times throughout the Term of this Lease, and to have such Tenant Permits reinstated, reissued or renewed promptly upon their withdrawal, revocation or non-renewal.

## ARTICLE 24

### EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES, ETC.

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

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

(b) Reserved;

(c) if Tenant shall fail to Substantially Complete the Project Work within 12 months after the Scheduled Completion Date, subject to Unavoidable Delays;

(d) if, following the Opening, subject to Uncontrollable Circumstances, the Theatre has no Performances for a period in excess of six months;

(e) if Tenant shall enter into an Assignment, Transfer or Major Sublease without compliance with the provisions of this Lease and such Assignment, Transfer or Major Sublease shall not be made to comply with the provisions of this Lease or cancelled within thirty (30) days after Landlord's notice thereof to Tenant;

(f) if Tenant shall fail to observe or perform (subject to Unavoidable Delays) one or more of the other material terms, conditions, covenants or agreements of this Lease or any provisions of the Interim Agreement to be performed after the Commencement Date, or if Funding Recipient shall fail to observe or perform (subject to Unavoidable Delays) one or more of the material terms, conditions, covenants or agreements of the Funding Agreement, and such failure shall continue for a period of 60 days after Landlord's notice thereof to Tenant specifying

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

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

### **ARTICLE XXIII PERFORMANCE AND COMMITMENTS**

**Section 23.1 Use and Operating Requirements.** Tenant acknowledges and agrees that its ongoing commitment to use and operate the Overall Project in accordance with the Overall Project Commitments, and otherwise in accordance with this **Section 23.1**, is of vital importance to Landlord, and a material inducement to Landlord in agreeing to enter into this Lease, and that Tenant's failure to do so in accordance with the provisions set forth in this **Article XXIII** shall constitute a material breach under the terms of this Lease. Accordingly, at all times during the Term, Tenant shall comply with the use and operating requirements for the Overall Project as follows:

(a) Tenant shall cause the Premises, or the applicable portions thereof so indicated in the Overall Project Commitments, to be used and operated for Academic Uses (the "**Required Uses**").

(b) For a period of not less than thirty (30) years following the Substantial Completion of the First Academic Facility, Tenant shall cause the First Academic Facility to be used and operated solely as an Academic Facility by a not-for-profit corporation exempt from Federal income taxes under Internal Revenue Code Section 501(c)(3) or a limited liability company the sole member of which is a not-for-profit corporation exempt from Federal income taxes under Internal Revenue Code Section 501(c)(3); provided, that no more than ten percent (10%) of the square footage of the First Academic Facility may be used for incubator uses (the "**First Academic Facility Required Uses**").

(c) In addition to Tenant's obligation to comply with the Overall Project Commitments, Tenant may use portions of the Premises for the following additional uses: Community Uses, student lounges in residential Buildings, residences for Academic Persons, ancillary recreational uses, visitor lodging, facility maintenance and operations, eating and drinking establishments, corporate co-location space for technology-related business and other uses that are ancillary to the Academic Uses; provided, that, with respect to each of the

foregoing, such use and operation must be (i) primarily for the use of Academic Persons or other Persons utilizing the Premises at the invitation of Tenant or its Subtenants in furtherance of the Overall Project Mission and (ii) at all times in compliance with the Overall Project Commitments (collectively, the "Permitted Non-Academic Uses").

(d) Tenant shall cause each of the Phase 1 Operations, Phase 2 Operations, and/or Full Build Operations, as applicable, to comply with the applicable Phase 1 Operating Commitments, Phase 2 Operating Commitments, and/or Full Build Operating Commitments, including without limitation maintaining Tenant's accreditation to operate the Academic Uses, all as set forth in the Overall Project Commitments.

(e) Tenant shall comply with the HireNYC Program annexed as Exhibit H to this Lease.

(f) Prohibited Uses. Tenant shall not use or occupy the Premises, and shall not permit the Premises or any part thereof to be used or occupied for any purpose, other than Required Uses and Permitted Non-Academic Uses without the prior written consent of Landlord in its sole discretion. Without limiting the generality of the preceding sentence, Tenant shall not use or permit the Premises to be used (i) for any unlawful or illegal business, use or purpose, (ii) for any purpose, or in any way in violation of the provisions of this Section 23.1 or Article XVI hereof or the certificate(s) of occupancy for the Premises, (iii) in such manner as may make void or voidable any insurance then in force with respect to the Premises, or (iv) for general commercial, retail or residential uses that are not ancillary to the Overall Project Mission as set forth in the Overall Project Commitments and/or are not Permitted Non-Academic Uses. Tenant shall, promptly upon Tenant's knowledge of any business, use, purpose, or occupation of the Premises in violation of this Section 23.1, take all necessary steps, legal and equitable, to compel the discontinuance of such business, use or purpose, including, if necessary, the removal from the Premises of any Subtenants using a portion of the Premises for an unlawful or illegal business, use or purpose or in violation of this Section 23.1 or Article XVI hereof. The provisions of this Section 23.1 shall not restrict Tenant's rights under Article XXXIV hereof to contest any Requirements.

Section 23.2 Overall Project Report. Within sixty (60) days following the end of each calendar year during the Term, or at such other time as Lease Administrator may reasonably request from time to time (but not more than twice during any twelve month period) upon not less than sixty (60) days prior written notice, Tenant shall deliver a written report to Lease Administrator (the "Overall Project Report") setting forth in narrative form a status report on the Development, and the manner in which Tenant is complying with the Overall Project Commitments and the Letter Commitments, which written report shall be in a form and contain such information as shall be reasonably satisfactory to Landlord. During the 30-year period of applicability of the First Academic Facility Required Uses, Tenant shall deliver an additional copy of the Overall Project Report to the City's Office of Management and Budget at an address directed by the Lease Administrator, at the same time as the same is delivered to Lease Administrator. The Overall Project Report shall, among other things, contain Tenant's certification that (i) the Phase 1 Development, Phase 2 Development, and/or Full Build Development, as applicable, are in compliance with the applicable Phase 1 Development Commitments, Phase 2 Development Commitments, and/or Full Build Development

Commitments, (ii) the Phase 1 Operations, Phase 2 Operations, and/or Full Build Operations, as applicable, are in compliance with the applicable Phase 1 Operating Commitments, Phase 2 Operating Commitments, and/or Full Build Operating Commitments, (iii) in its reasonable and good faith judgment, Tenant anticipates that it will be able to comply timely with any Development Commitments and/or Operating Commitments to be performed in the upcoming Lease Year as set forth in the Overall Project Commitments, (iv) the First Academic Facility is being used and operated in strict compliance with the First Academic Facility Required Uses, (v) all revenue realized by Tenant as a result of any Assignment, Transfer, or Sublease has been used solely for funding the use, operation and maintenance of the Academic Facilities, the Operating Commitments or for another purpose relating to the operations of the Overall Project (which certification shall include a sources and uses reasonably satisfactory to Lease Administrator evidencing same), and (vi) the Tenant is in compliance with the Letter Commitments and in its reasonable and good faith judgment, Tenant anticipates that it will be able to comply fully with all Letter Commitments to be performed in the upcoming Lease Year. In the event that Tenant shall be unable to provide the required certification, the Overall Project Report shall identify any areas of non-compliance with specificity, and explain the reasons for such non-compliance (a "Non-Compliance Notice"). Each Overall Project Report shall also include a report by Tenant tracking the economic impact and the community benefits of the Overall Project. Each Overall Project Report shall additionally include information on the occupancy of the apartments in the first residential building demonstrating compliance with the restriction set forth in the definition of "Academic Person." Landlord shall endeavor to review each Overall Project Report and submit any questions thereto or request any additional or supporting information that it requires within thirty (30) days following Landlord's receipt of such Overall Project Report.

**Section 23.3 Failure to Comply with Development Commitments or Operating Commitments; Recovery Plan.** If the Overall Project Report shall contain any Non-Compliance Notices (other than a Non-Compliance Notice pertaining to Tenant's inability to make the certifications described in clause (iv) or (v) of Section 23.2 above), then Tenant shall submit to Landlord within ten (10) Business Days thereafter (or within ten (10) Business Days following notice from Landlord to Tenant of Tenant's Default with respect to the Overall Project Commitments) a written recovery plan (a "Recovery Plan"), which Recovery Plan shall set forth in detail Tenant's plan and commitment to restore compliance with the Overall Project Commitments and Letter Commitments in manner and within specified time periods mutually satisfactory to Landlord and Tenant. Upon Landlord's and Tenant's agreement on a Recovery Plan that is mutually satisfactory to both Landlord and Tenant, as evidenced by Landlord's written approval of the Recovery Plan (an "Approved Recovery Plan"), the underlying non-compliance shall be deemed waived if and for so long as Tenant complies with the Recovery Plan. Notwithstanding the foregoing, if a Default shall occur under Sections 24.1(b) or (c) hereunder (i.e., failure to Commence and/or Substantially Complete the Phase 1 Development on or before the scheduled dates therefor, subject to an Unavoidable Delay) or Section 24.1(i) (i.e., First Academic Facility Use Default), Tenant shall not be entitled to a tolling of its cure period or a waiver of its Default by submission of a Recovery Plan.

(b) If Tenant fails timely to submit a Recovery Plan as provided in Section 23.3(a), or there is not an Approved Recovery Plan on or before the one hundred twentieth (120th) day after Tenant's submission of a proposed Recovery Plan, then Landlord shall be entitled to proceed as provided in Article XXIV of the Lease with respect to the

applicable breach by Tenant of the Overall Project Commitments or Letter Commitments, as the case may be, without further reference to this Section 23.3 in respect of such breach.

(c) If Tenant shall be in Default of any of its obligations under Sections 24.1 (d) or (e) hereunder (i.e., failure to Commence and/or Substantially Complete the Phase 2 Development and/or Full Build Development on or before the scheduled dates therefor, subject to Unavoidable Delay), and there is no Approved Recovery Plan in effect with respect to such Default on or before the one hundred twentieth (120th) day after Landlord's notice to Tenant of such Default, then Tenant shall have the right to deliver to Landlord a notice (an "Extension Notice") setting forth Tenant's intention to delay the Commencement and/or Substantial Completion of the Phase 2 Development and/or Full Build Development, as applicable, for one or more periods, not to exceed (10) years in the aggregate, from the applicable scheduled commencement date or scheduled completion date therefor, upon the following conditions: (i) no Default on the part of Tenant (other than the Default that is the subject of the Extension Notice and any concomitant Defaults in Operating Commitments for such Phase(s)) has occurred and is then continuing; (ii) Tenant shall from and after the date of the Extension Notice pay Fair Market Rent on a monthly basis for all portions of the Premises subject to the Extension Notice (which, for avoidance of doubt, shall include all unbuilt portions of the Premises, and portions on which there is delayed Substantial Completion), until the date on which Tenant, as applicable, Commences the Construction Work and/or Substantially Completes the Construction Work which was the subject of the Extension Notice (the "Extension Period"); and (iii) the giving of the Extension Notice shall extend all of the future dates for Commencement and Substantial Completion of the Phase 2 Project and Full Build Project and concomitant Operating Commitments for such Phase(s) on a day-to-day basis for the Extension Period. Upon the cure of the Default(s) giving rise to the Default that is subject of the Extension Notice, the Fair Market Rent shall automatically be reduced to the Base Rent otherwise payable under this Lease, commencing with the next calendar month.

#### **ARTICLE XXIV EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES, ETC.**

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

- (a) if Tenant shall fail to make any payment (or any part thereof) of Rental required to be paid by Tenant hereunder (including, without limitation, any applicable Fair Market Rent) and such failure shall continue for a period of ten (10) days after notice thereof from Landlord to Tenant;
- (b) if Tenant shall fail to Commence the Construction Work for the Phase 1 Development on or before the applicable Scheduled Commencement Date for the Phase 1 Development set forth in the Overall Project Commitments (subject to Unavoidable Delays);
- (c) if Tenant shall fail to Substantially Complete the Phase 1 Development substantially in accordance with the Approved Plans and Specifications therefor, on or before the Scheduled Completion Date for the Phase 1 Development set forth in the Overall Project Commitments (subject to Unavoidable Delays);

(d) Return of Deposits. If the Event of Default that gave rise to Landlord's demand for Tenant to make deposits for Impositions or insurance premiums under the provisions of Section 7.01(a) hereof has been cured by Tenant and, for a period of twelve (12) consecutive months following such cure, no Event of Default with respect to any monetary obligation of Tenant under this Lease has occurred that has not been cured within the applicable grace period, then, at any time after the expiration of such twelve (12) month period, upon demand by Tenant and provided no Default with respect to any monetary obligation of Tenant under this Lease then exists, Landlord shall cause Depository to return to Tenant all unexpended moneys then held by Depository pursuant to the provisions of Sections 7.01(a) and (c) hereof, which shall not have been applied by Depository pursuant to the provisions of this Article 7. Thereafter, Tenant shall not be required to make any deposits required by this Article 7 unless and until there shall occur within a twenty-four (24) month period two (2) subsequent Events of Default with respect to any monetary obligation of Tenant under this Lease and Landlord has demanded of Tenant to make such deposits.

(e) Intentionally Deleted.

Section 7.02 Effect of Sale or Transfer of Premises By Landlord In the event of Landlord's sale or transfer of the Premises, Depository shall continue to hold any moneys deposited with it pursuant to the provisions of Sections 7.01(a) and (c) hereof and shall transfer such deposits to a special account with established in the name of the Person who acquires the Premises and becomes Landlord for the purposes provided in the applicable provisions of this Lease. Upon such sale or transfer, the transfer of such deposits and notice thereof to Tenant, Landlord shall be deemed to be released to the extent of the deposits so transferred from all liability with respect thereto and Tenant shall look solely to the new Landlord with respect thereto. Landlord shall promptly deliver to Tenant a copy of the instrument of transfer to the new Landlord. The provisions of this Section shall apply to each successive transfer of such deposits.

Section 7.03 Effect of Termination Upon the Expiration of the Term, if this Lease shall terminate, or the Term shall terminate or expire and a new lease shall not be entered into, all deposits then held by Depository, shall be applied by Landlord on account of any and all sums due under this Lease and the balance, if any, remaining thereafter with the interest, if any, earned thereon and remaining after application by Landlord as aforesaid, shall be returned to Tenant within ninety (90) days or, if there shall be a deficiency, Tenant shall pay such deficiency to Landlord on demand.

## ARTICLE 8. USE OF PREMISES

### Section 8.01 Permitted Use.

Subject to the provisions herein, Tenant shall use the Premises for the sole purposes of constructing, equipping, operating and occupying, for its own use and Authorized User(s)' use, as an approximately 212-space paved, lit, and landscaped parking lot containing approximately 179 spaces for standard vehicles, 7 spaces for accessible vehicles, 15 spaces for small trucks and 11 spaces for large trucks, and uses incidental to the foregoing ("Permitted Uses"). A list of Authorized User(s) shall be made available to Landlord upon written request. At all times, the

Permitted Uses must be in accordance with the New York City Zoning Resolution, as amended from time to time, relevant certificates of occupancy, Federal Aviation Administration ("FAA") use and height restrictions, and applicable Requirements rules and regulations. Subject to Landlord's written approval which approval shall not be unreasonably withheld or delayed, Tenant may use the Premises for manufacturing purposes provided that such use is in accordance with the New York City Zoning Resolution, as amended from time to time, relevant certificates of occupancy, Federal Aviation Administration ("FAA") use and height restrictions, and applicable Requirements. Except as provided herein, Tenant shall not use the Premises or permit the Premises to be used for any other purpose except with the prior written approval of Landlord to be given in its sole discretion.

**Section 8.02 Requirements for Conduct of Business.**

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

**Section 8.03 Unlawful Use.**

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

**Section 8.04 Hazardous Substances.**

(a) Tenant shall not cause or permit, as the result of any intentional or unintentional act or omission on the part of Tenant, and/or their respective Representatives, occupants, invitees and licensees to release Hazardous Substances in, from, at or onto any portion of the Premises in violation of any Environmental Laws.

(b) The Premises shall be delivered "as-is". As of the Lease Commencement Date, Tenant shall assume all liability for Hazardous Substances on the Premises from that day forward until the end of the Term, including but not limited, to the disturbance of any pre-existing conditions, except that Tenant shall have no liability for claims made by third parties relating to any tort or environmental liabilities under any Environmental Law for any injury

suffered during the period prior to the date when Tenant took possession of the Premises. Further, Tenant shall not be responsible for liability for Hazardous Substances to the extent arising from any negligent acts or omissions of Landlord, NYCLDC, NYCEDC, or DCAS and/or any of their respective agents, representatives and contractors. Notwithstanding the previous sentence, to the extent pre-existing conditions are disturbed as a result of actions that occur during Tenant's occupancy of the Premises, Tenant shall be responsible for any resulting liability (except for liability for third party actions referenced in the second sentence of this paragraph). For the purposes hereof, Tenant's possession of the Premises shall be deemed to include, but not be limited to, any period during which Tenant made use and/or occupancy of the Premises pursuant to any month to month lease between AMB Property L.P. (and any affiliated entities, and/or Prologis, L.P. and any affiliated entities) and Landlord for the Premises (the "City-Prologis Month to Month Lease"). In the event any Hazardous Substances shall be found within, under, or upon the Premises, Tenant shall (x) promptly take or cause to be taken any action required by a Governmental Authority under any applicable Environmental Laws with respect to such Hazardous Substances, (y) notify Landlord of the discovery of any occurrence or conditions on the Premises, or any real property adjoining or in the vicinity of the Premises to the extent that Tenant has knowledge of same, provided that Tenant shall have no duty to make independent inquiry or investigation unless required by any applicable law, and solely to the extent the occurrence or conditions is or are reasonably likely to cause the Premises or any part thereof to be subject to any liability or action under any Environmental Law, and (z) notify Landlord of any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted or threatened against the Premises pursuant to any applicable Environmental Law. The expense for all such action shall be the responsibility of the Tenant, except that Tenant shall not have any duty to pay for or to reimburse Landlord for any costs or expenses resulting from any negligent acts or omissions of Landlord, NYCLDC, NYCEDC, or DCAS and/or any of their respective agents, representatives and contractors, and Landlord shall bear all costs and expenses for any such negligent acts or omissions. All action with respect to any Hazardous Substances on the Premises shall be performed in accordance with all Requirements and receive the necessary regulatory department sign offs. To the extent Landlord shall not incur any cost, Landlord shall make good faith efforts to cooperate with Tenant in Tenant's efforts to obtain any necessary regulatory department sign offs. Notwithstanding the above, provided the Requirement specifically provides for challenge or deferral, Tenant shall have the right to so challenge and defer compliance with such Requirement in accordance with the terms therewith, if no dangerous or hazardous condition then exists or would be caused or lien would be created by such deferral and Tenant complies with the reasonable requirements of the Landlord regarding the Hazardous Substances at issue. In addition, prior to commencing any work of removal, repair, restoration or any other construction work under this Article, Tenant shall submit or cause to be submitted to Landlord a schedule indicating the estimated dates on which the various phases of all such work will be commenced and completed. Tenant shall have the right to amend and change such schedule without prejudice and, upon each such amendment or change, shall provide Landlord with an updated schedule.

(c) Tenant shall comply with or cause to be complied with all applicable federal, state and local laws concerning any Hazardous Substance that Tenant or other occupant of the Premises produces, brings on, keeps, uses, stores, disposes or treats in, at or about the Premises or transports from the Premises. Tenant shall also comply with all applicable federal, state, and local laws related to the health and safety of its employees.



Section 8.05 No Representations or Warranty by Landlord.

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

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

Section 8.06 Termination Right.

To the extent the Permitted Uses, as they relate solely to the Tenant and Authorized User(s), are no longer permitted on the entire Premises as a result of change in the Requirements and Port Authority Airport Lease (as defined in Section 19:02), Tenant shall be permitted to terminate the Lease upon at least thirty (30) days' but not more than ninety (90) days' notice to the Landlord from the date of the Requirement change. In such event, Landlord shall in a reasonably prompt manner refund to Tenant the amount of the Unencumbered Premises Base Rent as prorated from the date of termination for the remainder of the Initial Term or the then-current Renewal Term (as applicable). Notwithstanding the previous sentence, Tenant's termination notice set forth in the immediately preceding sentence shall not be effective if Landlord delivers to Tenant, within fifteen (15) days after the date Landlord receives Tenant's termination notice, a waiver or other written authorization that would either immediately or by a reasonable date certain allow the Tenant and any Authorized User to use the Premises for the Permitted Uses.

**ARTICLE 9.**Intentionally Deleted.**ARTICLE 10.**LANDLORD'S ACCESS TO ENTER

Landlord hereby reserves for itself and Lease Administrator, and their respective Representatives and invitees, a right of access to enter the Premises for the following purposes: (i) to maintain, replace and repair existing municipal facilities including but not limited to railroads located within, above or below the Premises, if any, and (ii) to maintain its fire communications facilities, sewers, water mains and street sub-surface below the Premises, if any.

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any of the Indemnitees arising out of any claim by any Person alleging bodily injury as a result of exposure to any Hazardous Substances occurring on the Premises prior to the Effective Date (except to the extent, if any, the same was caused by the act, omission or negligence of any party claiming by, through or under Tenant at any time including during Tenant's due diligence activities).

## ARTICLE 22 LANDLORD'S RIGHT TO DISCHARGE LIENS

Section 22.1 Discharge of Liens. If Tenant shall fail to cause any mechanic's, laborer's, vendor's, materialman's or similar statutory lien or any public improvement lien to be discharged in accordance with the provisions of Article 17 hereof, and if such lien shall continue for an additional twenty (20) days after the applicable cure period provided for in Article 17, then, subject to any rights granted to a Recognized Mortgagee under this Lease, Landlord may, but shall not be obligated to, discharge such lien of record by procuring the discharge of such lien by deposit or by bonding proceedings. Landlord may also compel the prosecution of an action for the foreclosure of such lien by the lien or and to pay the amount of the judgment in favor of the lien or with interest, costs and allowances.

Section 22.2 Reimbursement for Amounts Paid by Landlord Pursuant to this Article. Any amounts paid by Landlord pursuant to Section 22.1 hereof, including all costs and expenses incurred by Landlord in connection therewith, shall be reimbursed by Tenant within fifteen (15) days of Landlord's demand therefor, together with a late charge on the amounts so paid by Landlord, calculated at the Late Charge Rate from the date of any such payment by Landlord to the date on which payment of such amounts is received by Landlord.

Section 22.3 Waiver, Release and Assumption of Obligations. Landlord's payment or performance pursuant to the provisions of this Article 22 shall not be, nor be deemed to be (a) a waiver or release of the Default or Event of Default with respect thereto (or any past or future Default or Event of Default) or of Landlord's right to take such action as may be permissible hereunder, or (b) Landlord's assumption of Tenant's obligations to pay or perform any of Tenant's past, present or future obligations hereunder.

Section 22.4 Proof of Damages. Landlord shall not be limited in the proof of any damages that it may claim against Tenant arising out of, or by reason of, Tenant's failure to provide and keep insurance in force in accordance with the provisions of this Lease to the amount of the insurance premium or premiums not paid. However, Landlord shall be entitled to seek, and if successful, to recover, as damages for such Default or Event of Default, the uninsured amount of any loss and damage sustained or incurred by it and the costs and expenses of any suit in connection therewith, including reasonable attorneys' fees and disbursements.

## ARTICLE 23 PERFORMANCE AND COMMITMENTS

Section 23.1 Use and Operating Requirements. Tenant acknowledges and agrees that its ongoing commitment to use and operate the Project in accordance with the Project Commitments, and otherwise in accordance with this Section 23.1, and for no other use or

purpose, is of paramount importance to Landlord, and a material inducement to Landlord in agreeing to enter into this Lease, and that Tenant's failure to do so in accordance with the provisions set forth in this Article 23 shall constitute a material breach under the terms of this Lease. Accordingly, at all times during the Term, Tenant shall comply with the use and operating requirements for the Project, including as follows:

(a) Tenant shall (i) continuously, on a daily basis throughout the Term, use the Premises (and cause the Premises to be used) primarily for the conduct of retail business within the Retail Portion of the Project, the operation of the Hotel within the Hotel Portion of the Project, and the provision of banquet or catering services within the Banquet Facility Portion, each as more fully described in the Project Commitments, (ii) provide and operate, or cause to be operated, the Required Parking in accordance with Section 23.3 (the uses under this clause (a) above, collectively, the "Required Uses").

(b) So long as the provisions of Section 23.1(a) above are complied with, the balance of the Retail Portion of the Premises not used for the conduct of retail business may be used for retail food services purposes (including restaurants and cafes) complementary to the Required Uses so long as the same is in compliance with Requirements and this Lease (the uses under this clause (b), collectively, the "Permitted Ancillary Uses").

(c) Tenant shall, and shall cause, the Retail Portion of the Premises (including all portions of the Premises covered by a Sublease), to be operated and open for business every day of each Lease Year during the Term, starting at no later than ten (10) a.m. and continuing until at least nine (9) p.m. during each such day (the "Required Hours").

(d) Tenant shall comply with the HireNYC Program annexed as Exhibit N (HireNYC Program) to this Lease.

(e) Tenant shall not use or occupy the Premises, and shall not permit the Premises or any part thereof to be used or occupied for any purpose other than Required Uses and Permitted Ancillary Uses, without (in any such instance) the prior written consent of Landlord in its sole discretion. Without limiting the generality of the preceding sentence, Tenant shall not use or permit any portion of the Premises to be used (i) for any unlawful or illegal business, use or purpose, (ii) for any purpose, or in any way in violation of the provisions of this Section 23.1 or Article 16 hereof or the certificate(s) of occupancy for the Premises, (iii) in such manner as may make void or voidable any insurance then in force with respect to the Premises, (iv) for any residential use, or (v) for any of the Prohibited Uses, and Tenant shall make good faith efforts to refrain from engaging in any unethical or disreputable method of business operation and shall make good faith efforts to cause other Persons on the Premises (including Subtenants) to refrain from using such methods of business operation. Tenant shall, promptly upon Tenant's knowledge of any business, use, purpose, or occupation of the Premises in violation of this Section 23.1, take all necessary steps, legal and equitable, to compel the discontinuance of such business, use or purpose, including, if necessary, the removal from the Premises of any Subtenants using a portion of the Premises for an unlawful or illegal business, use or purpose or in violation of this Section 23.1 or Article 16 hereof. The provisions of this Section 23.1 shall not restrict Tenant's rights under Article 34 hereof to contest any Requirements.

(f) Tenant shall cooperate with the City in connection with the Project and with the public facilities and uses surrounding the Premises (including, without limitation, the Ferry Terminal, the ballpark and the railroad right-of-way adjacent to the Premises), by among other things (i) cooperating with, and avoiding interference with, the nearby operations of DOT, (ii) complying with the New York City Police Department's counterterrorism policies, (iii) allowing for the use, from time to time, of the railroad right-of-way adjacent to the Premises and cooperating with the Metropolitan Transportation Authority or any other relevant agency in connection therewith, (iv) avoid attaching any structures to the Ferry Terminal or its vehicle ramps except as provided in the Approved Plans and Specifications and as required (in the sole determination of the Lease Administrator and DOT should any connections be desired to be made to DOT owned structures or facilities) to fulfill the "Development Goals" (as set forth in the RFEI), (v) ensuring free and unfettered access through the Premises to the nearby DOT facilities, including as provided in applicable Site Easements, (vi) anticipating, in the development of the Plans and Specifications and other planning related to the Project, that DOT conducts ongoing operations, including ferry operations and construction work at the current nearby vehicle ramp and other future intermittent construction work and that such ferry operations and construction work will produce noise, (vii) complying with the Ballpark Easement by, among other things, permitting pedestrian and vehicular ingress and egress in the easement area; (viii) diligently, continuously and in good faith cooperating with Landlord, Lease Administrator and the Ballpark Tenant to finalize an amendment to the Ballpark Easement promptly following the Effective Date pursuant to Paragraph 3(c) of the Ballpark Lease 4<sup>th</sup> Amendment. With respect to items (i), (iii), (v) and (vi) above, Landlord shall make reasonable efforts to cause Adjacent Property Owners to also cooperate with Tenant in connection with Tenant's performance of such obligations.

#### Section 23.2 Project Report: Aqua Swirl Reporting.

(a) Within sixty (60) days following the end of each calendar year during the Term, or at such other time as Lease Administrator may reasonably request from time to time (but not more than twice during any twelve month period) upon not less than sixty (60) days prior written notice, Tenant shall deliver a written report to Lease Administrator (the "Project Report") setting forth in narrative form a status report on the Project, and the manner in which Tenant is complying with the Project Commitments and the Approved ULURP Application, which written report shall be in a form and contain such information as shall be reasonably satisfactory to Landlord. The Project Report shall, among other things, contain Tenant's certification that (i) the Premises and that all applicable Phases of the development of the Project are in compliance with the Project Commitments and the Approved ULURP Application, (ii) the Premises are in compliance with the Operating Commitments, (iii) in its reasonable and good faith judgment, Tenant anticipates that it will be able to comply timely with any Project Commitments and/or Operating Commitments to be performed in the upcoming Lease Year as set forth in the Project Commitments, including the commencement or completion of any Phase of development scheduled to be commenced or completed in such upcoming Lease Year. In the event that Tenant shall be unable to provide the required certification, the Project Report shall identify any areas of non-compliance with specificity, and explain the reasons for such non-compliance (a "Non-Compliance Notice"). Landlord shall endeavor to review each Project Report and submit any questions thereto or request any additional or supporting

information that it requires within thirty (30) days following Landlord's receipt of such Project Report.

(b) With respect to the Aqua Swirl, Tenant shall make available to DOT all reports and other information required under applicable Requirements and as required in accordance with the terms of the FTA grant to DOT pursuant to which Federal funds were made available to finance the original Aqua Swirl.

### Section 23.3 Parking.

(a) Tenant acknowledges that prior to the Effective Date Tenant has received a true and complete copy of the Ballpark Lease and has fully reviewed the provisions in the Ballpark Lease that are relevant to the Parking Garage to be built as part of the Project.

(b) During the Term, Tenant shall cause the Required Parking to be open to the general public twenty-four (24) hours per day for each day during the Term, shall ensure that an adequate number of parking attendants employed by the Parking Operator are present to operate the Required Parking, and that there is appropriate lighting and security in and around the Required Parking.

(c) After the Substantial Completion Date of the Phase 2 Development Tenant shall make available, on the days of each Ballpark Event, for use by attendees at such Ballpark Event, no less than Three-Hundred Eighty (380) parking spaces on the Premises, for a time period commencing two (2) hours before and ending one (1) hour after such Ballpark Event, at parking rates established from time to time by the tenant under the Ballpark Lease (including the right to cause Tenant to issue free parking passes during such periods) ("Ballpark-Controlled Parking").

(d) No later than sixty (60) days prior to the Substantial Completion Date of the Phase 1 Development, Tenant shall enter into the Parking Management Agreement with the Parking Operator (whether or not a Recognized Sublease of the Parking Garage has been entered into) and shall provide a copy of such fully executed Parking Management Agreement to Landlord.

(e) Except as otherwise provided in this Lease, in connection with the operation and management of the Parking Areas, following the Effective Date Tenant shall perform or cause the Parking Operator to perform the services and undertake the obligations (the "Parking Management Services") as set forth in Part A of Exhibit O (Parking Management Services; Form of Parking Rent Statement).

### Section 23.4 Other Commitments

(a) Commuter Parking: Tenant will operate (or cause the Parking Operator to operate) (i) four (4) temporary off-Premises parking lots with an aggregate total of at least Seven Hundred Eighty-Six (786) parking spaces during the construction of the Phase 1 Development and the Phase 2 Development until such time as temporary replacement parking

spaces are available on the North Site Redevelopment (as defined in the Ballpark Lease 4<sup>th</sup> Amendment attached hereto as part of the Ballpark Lease Amendment Documents) or parking spaces on the Premises may lawfully be made available to the public, and (ii) upon completion of construction of such North Site Redevelopment and confirmation of such completion by the City, pursuant to Section 11.01(d) of the Ballpark Lease, to the extent the use of any parking lots located on the Premises as of the Effective Date has been or continues to be suspended or discontinued, Tenant will operate (or cause the Parking Operator to operate) replacement parking spaces which are within reasonable walking distance of the stadium immediately adjacent to the Premises unless otherwise agreed in writing by Landlord and the Ballpark Tenant. With respect to such off-Premises parking lots, Tenant shall operate free ADA-accessible shuttle bus service, which will run on a continuous loop during peak commuter hours between such temporary off-Premises parking lots and the Ferry Terminal during the duration of such construction or until such replacement parking spaces within a reasonable walking distance of the stadium immediately adjacent to the Premises are made available. Tenant will to hire a unionized contractor to operate such shuttle bus services. Tenant shall cause the timing of such shuttle bus service to be coordinated with Ferry boat arrivals and departures from the Ferry Terminal.

Tenant shall provide fair parking rates for commuters using Parking Garage or any portion of the Required Parking. Tenant will cap commuter parking rates for no less than Seven Hundred, Eighty-Six (786) parking spaces at Eight dollars (\$8) per day until the earlier to occur of (1) the Substantial Completion of the Phase 1 Development and the Phase 2 Development or the third (3rd) anniversary of the Effective Date. After such period, Tenant shall (i) cap such commuter parking rates at no more than Nine dollars and fifty cents (\$9.50) per day for the next five (5) years with limited annual increases at no more than fifty cents (\$0.50) in any one year and (ii) thereafter Tenant will provide written notification to the local councilmember, Community Board 1, and the Deputy Mayor for Economic Development no less than Forty-Five (45) days before any change to the commuter parking rate, with a final approval by the Deputy Mayor for Economic Development for any increases.

(b) Community Association Advisory Board: Tenant will work with a Community Association Advisory Board. Board meetings would commence within the first three months of the start of project construction and continue for the duration of construction and one year after operation commences. The Board will be comprised of representatives from the Councilmember, Borough President, Community Board 1, and other community organizations, as determined by the Councilmember. Tenant will designate, from its general contractor/construction manager, an individual to act as a liaison to the Board ("Construction Liaisons"). This designation shall occur no later than 30 days prior to the commencement of any construction on the Premises. Upon request of the Board, the Construction Liaisons shall address, on a regular basis, the questions and concerns of the Board about construction related issues. The Construction Liaisons and the Tenant shall, promptly and in good faith, work with the Board and others, if necessary, to address such questions and concerns, as appropriate.

(c) Traffic Mitigation: Tenant shall undertake at its expense the actions set forth in the Project Commitments identified therein under the heading "Traffic Mitigation"

(d) HireNYC Program: The Tenant commits to adhere to the goals set forth herein pertaining to the HireNYC Program set forth in Exhibit N (HireNYC Program) to this Lease (which shall mean to include any replacement program of similar character and with similar goals) to make good faith efforts to create meaningful opportunities for low- income persons in addition to potential for later advancement. The Tenant will provide progress reports on the HireNYC Program upon the local Councilmember's request. The hiring and workforce development goals include the goals identified in Exhibit N or, at the Tenant's discretion, higher goals (collectively, the "Goals"); provided, that in no event shall the Tenant or any of their tenants be subject to any liability, loss, claim, damage or expense for failure to achieve the Goals.

Tenant commits to working with the West Brighton Community Local Development Corporation as a community-based organization to help implement the Goals. NYCEDC will provide technical assistance including NYCEDC staff resources to West Brighton Community Local Development Corporation in their support of the HireNYC Program.

(e) M/WBE Contractors/Subcontractors: Tenant will strive to hire no less than 25% Minority, Women and Local Business participation by contractors and subcontractors. Towards this end, Tenant will consider, in choosing a general contractor or construction manager ("GC/CM") for the Project, the GC/CM's prior qualifications and experience in working with M/WBE firms. All M/WBE requirements will be monitored by the City.

(f) Wages: Tenant agrees that in constructing the Project it shall use Building and Construction Trades Council of Greater New York union labor pursuant to a PLA for the construction of the Phase 1 Development and Phase 2 Development. Tenant has entered into an agreement with the New York Hotel & Motel Trades Council, AFL-CIO as well as with 32BJ/SEIU. Tenant shall hire a unionized contractor for shuttle bus services.

## **ARTICLE 24 EVENTS OF DEFAULT, REMEDIES, ETC.**

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

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

(b) if (i) Tenant fails to Commence any Phase of the Initial Construction Work on or before the applicable Scheduled Commencement Date for such Phase (subject to Unavoidable Delays); and (ii) in connection with all such failures, including failures to Commence other Phases of the Initial Construction Work on or before the Scheduled Commencement Date applicable to such other Phase, together with failures (if any) described in

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## ARTICLE XXII LANDLORD’S RIGHT TO DISCHARGE LIENS

Section 22.1 Discharge of Liens. If Tenant shall fail to cause any mechanic’s, laborer’s, vendor’s, materialman’s or similar statutory lien or any public improvement lien to be discharged in accordance with the provisions of Article XVII hereof, and if such lien shall continue for an additional twenty (20) days after the applicable cure period provided for in Article XVII, then, subject to any rights granted to a Recognized Mortgagee under this Lease, Landlord may, but shall not be obligated to, discharge such lien of record by procuring the discharge of such lien by deposit or by bonding proceedings. Landlord may also compel the prosecution of an action for the foreclosure of such lien by the lien or and to pay the amount of the judgment in favor of the lien or with interest, costs and allowances.

Section 22.2 Reimbursement for Amounts Paid by Landlord Pursuant to this Article. Any amounts paid by Landlord pursuant to Section 22.1 hereof, including all costs and expenses incurred by Landlord in connection therewith, shall be reimbursed by Tenant within fifteen (15) days of Landlord’s demand therefor, together with a late charge on the amounts so paid by Landlord, calculated at the Late Charge Rate from the date of any such payment by Landlord to the date on which payment of such amounts is received by Landlord.

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

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

## ARTICLE XXIII PERFORMANCE AND COMMITMENTS

Section 23.1 Use and Operating Requirements. Tenant acknowledges and agrees that its ongoing commitment to use and operate the Project in accordance with the Project Commitments, and otherwise in accordance with this Section 23.1, is of paramount importance to Landlord, and a material inducement to Landlord in agreeing to enter into this Lease, and that Tenant’s failure to do so in accordance with the provisions set forth in this Article XXIII shall constitute a material breach under the terms of this Lease. Accordingly, at all times during the Term, Tenant shall comply with the use and operating requirements for the Project, including without limitation as follows:



(a) Tenant shall (i) from and after the Opening Date, continuously, on a daily basis throughout the Term, operate the Observation Wheel at the Premises, provided that Tenant shall be permitted reasonable closures or interruptions in operation from time to time by reason of repairs, maintenance, replacements, alterations and inclement weather, which in no event shall (other than by reason of a Casualty, condemnation or Unavoidable Delay) exceed ninety-five (95) days in the aggregate in any calendar year (and with it being understood that Tenant will use commercially reasonable efforts to address the closure or interruption with diligence and continuity), and (ii) from and after the completion of the parking garage component of the Initial Construction Work, provide and operate on a 24/7 basis (subject to Casualty, condemnation or Unavoidable Delay) a parking garage with at least 950 parking spaces (the “Required Parking”; the uses under this clause (a), collectively, the “Required Uses”).

(b) So long as the provisions of Section 23.1(a) above are complied with, the balance of the Premises may be used for any commercial, retail, educational and/or civic uses that are complementary or ancillary to the Required Uses so long as the same is in compliance with Requirements and this Lease and is not a Prohibited Use (including, without limitation, Section 23.1(d) below) (the uses under this clause (b), collectively, the “Permitted Ancillary Uses”). Landlord and Tenant agree that the following uses are complementary and ancillary to the Required Uses: (i) amusement, exposition or entertainment uses, (ii) restaurants and other food service establishments for on-site consumption, (iii) retail uses (except for any Prohibited Use), (iv) museums, galleries or exhibition spaces, (v) parking areas, and (vii) other uses as Landlord and Tenant may reasonably agree.

(c) Tenant shall comply with the HireNYC Program annexed as Exhibit H to this Lease (which shall mean to include any replacement program of similar character and with similar goals).

(d) Tenant shall not use or occupy the Premises, and shall not permit the Premises or any part thereof to be used or occupied for any purpose other than Required Uses and Permitted Ancillary Uses, without (in any such instance) the prior written consent of Landlord in its sole discretion. Without limiting the generality of the preceding sentence, Tenant shall not use or permit any portion of the Premises to be used (i) for any unlawful or illegal business, use or purpose, (ii) for any purpose, or in any way in violation of the provisions of this Section 23.1 or Article XVI hereof or the certificate(s) of occupancy for the Premises, (iii) in such manner as may make void or voidable any insurance then in force with respect to the Premises or (iv) for any residential use. Tenant shall, promptly upon Tenant’s knowledge of any business, use, purpose, or occupation of the Premises in violation of this Section 23.1, take all necessary steps, legal and equitable, to compel the discontinuance of such business, use or purpose, including, if necessary, the removal from the Premises of any Subtenants using a portion of the Premises for an unlawful or illegal business, use or purpose or in violation of this Section 23.1 or Article XVI hereof. The provisions of this Section 23.1 shall not restrict Tenant’s rights under Article XXXIV hereof to contest any Requirements.

(e) During the Term, Tenant shall upon completion of the parking garage component of the Initial Construction Work (subject to Casualty, condemnation or Unavoidable Delay) cause the Required Parking to be open to the general public twenty-four (24) hours per day for each day during the Term, shall ensure that an adequate number of parking

attendants employed by the Parking Operator are present to operate the Required Parking, and that there is appropriate lighting and security in and around the Required Parking. Tenant shall retain a Person with demonstrated resources, capabilities and experience operating parking lots located in New York City which are substantially similar to the parking component of this Project to manage and operate such parking. In addition to the Ballpark-Controlled Parking, upon completion of the parking garage component of the Initial Construction Work Tenant shall make available to the tenant under the Ballpark Lease (i) a total of 12 spaces, in the locations required under the Ballpark Lease, at no charge to the tenant under the Ballpark Lease, and (ii) the option to purchase 6 monthly parking passes each month during the Term for entry into the parking area on the Premises at the rate of \$100 per month for each pass, provided that on November 1, 2015 (the “Initial Increase Date”) and on each anniversary of the Initial Increase Date the monthly parking pass rate shall be increased by CPI (CPI being defined as the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor for the New York-Northeastern New Jersey Area, all items (1982-1984=100), or any successor index thereto; if the CPI ceases to be published, the CPI shall be replaced by such other reasonably similar index as Landlord shall designate) but in no event shall the monthly parking pass rate be less than the immediately prior period’s monthly rate.

(f) Tenant shall cooperate with the City in connection with the public facilities and uses surrounding the Premises (including, without limitation, the ferry terminal, the ballpark and the railroad right-of-way adjacent to the Premises), by among other things (i) cooperating with, and avoiding interference with, the nearby operations of the Department of Transportation, (ii) complying with the New York City Police Department’s counterterrorism policies, (iii) allowing for the use and/or reuse of the railroad right-of-way adjacent to the Premises and cooperating with the Metropolitan Transportation Authority or any other relevant agency in connection therewith, and (iv) complying with the Ballpark Easement (as defined in Exhibit D hereto) by, among other things, permitting pedestrian and vehicular ingress and egress and loading and unloading in the easement area.

(g) Tenant shall (with Lease Administrator’s cooperation) obtain the written and enforceable consent of the New York State Department of Environmental Conservation (“DEC”) to one or more amendments (or applicable replacements or modifications) of the DEC Exceptions (as defined in Exhibit D), in form and substance reasonably acceptable to Lease Administrator, Landlord and Tenant (the “New DEC Documents”), so that the DEC Exceptions do not, in Lease Administrator’s and Tenant’s reasonable determination, materially adversely affect Tenant’s ability to construct and/or operate the Project. Tenant shall coordinate with Lease Administrator the scheduling of any meetings to be held with DEC with respect to the Premises and shall not meet with DEC without Lease Administrator being present at such meetings (provided that Lease Administrator shall make itself reasonably available to attend such meetings and provided also that Lease Administrator may, in its sole discretion, waive its right to be present at such meetings), and Tenant shall provide Lease Administrator with copies of any documents to be presented to DEC with respect to the Premises prior to submission of such documents to DEC. Tenant shall pay for the recording of the New DEC Documents. The New DEC Documents shall be deemed part of the Title Matters to which this Lease is subject. Throughout the Term, Tenant shall at its sole cost and expense (i) comply with the oversight, monitoring and reporting obligations imposed by

DEC with respect to the Premises and simultaneously provide to Lease Administrator copies of any reports or other required deliverables sent to DEC with respect thereto, (ii) provide information to Lease Administrator periodically as shall be necessary for Lease Administrator and/or Landlord to comply (or ensure compliance) with the oversight, monitoring and reporting obligations imposed by DEC with respect to the Premises and (iii) pay all actual out-of-pocket costs and expenses incurred by Lease Administrator and Landlord with respect to the oversight, monitoring and reporting obligations imposed by DEC with respect to the Premises (including, without limitation, costs and expenses of engineers and consultants hired by Lease Administrator or Landlord to ensure compliance by Tenant with the requirements of DEC with respect to the Premises). Landlord and/or Lease Administrator shall have the right, but not the obligation, to oversee and ensure compliance by Tenant with the requirements of DEC with respect to the Premises, and Tenant shall cooperate with the efforts of Landlord and/or Lease Administrator in furtherance thereof.

Section 23.2 Project Report. Within sixty (60) days following the end of each calendar year during the Term, or at such other time as Lease Administrator may reasonably request from time to time (but not more than twice during any twelve month period) upon not less than sixty (60) days prior written notice, Tenant shall deliver a written report to Lease Administrator in form reasonably acceptable to Lease Administrator and Tenant (the “Project Report”) setting forth the status of the Project, and the manner in which Tenant is complying with the Project Commitments and Required Use as of the end of the immediately preceding calendar year (or, in the case of a Project Report otherwise requested by Lease Administrator, as of the date of such request). The Project Report shall, among other things, contain Tenant’s certification as to whether (i) the Premises are in compliance in all material respects with the applicable Project Commitments and the Required Use, (ii) the Premises are in compliance in all material respects with the Operating Commitments, and (iii) in Tenant’s reasonable and good faith judgment, Tenant anticipates that Tenant will be able to comply timely in all material respects with any Project Commitments and/or Operating Commitments to be performed in the upcoming Lease Year. In the event that Tenant shall be unable to provide the required certifications, the Project Report shall identify any areas of non-compliance with specificity, and explain the reasons for such non-compliance (a “Non-Compliance Notice”). Landlord shall endeavor to review each Project Report and submit any questions thereto or request any additional or supporting information that it requires within thirty (30) days following Landlord’s receipt of such Project Report.

## **ARTICLE XXIV EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES, ETC.**

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

(a) if Tenant shall fail to make any payment (or any part thereof) of Base Rent required to be paid by Tenant hereunder and such failure shall continue for a period of ten (10) days after notice thereof from Landlord to Tenant, or if Tenant shall fail to make any payment (or any part thereof) of other Rental required to be paid by Tenant hereunder and such failure shall continue for a period of thirty (30) days after notice thereof from Landlord to Tenant;

Section 22.4 Proof of Damages. Landlord shall not be limited in the proof of any damages that it may claim against Tenant arising out of, or by reason of, Tenant's failure to provide and keep insurance in force in accordance with the provisions of this Lease to the amount of the insurance premium or premiums not paid. However, subject to the provisions of Section 41.7 hereof, Landlord shall be entitled to seek, and if successful, to recover, as damages for such Default or Event of Default, the uninsured amount of any loss and damage sustained or incurred by it and the costs and expenses of any suit in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements.

**ARTICLE 23**  
**ADDITIONAL USE COVENANTS**

Section 23.1 Use and Operating Requirements. Tenant shall comply with the following use and operating requirements:

(a) The Premises shall be used during the Term as provided in Section 12.1 hereof.

(b) For each Lease Year, Tenant shall, not later than thirty (30) days following the end of such Lease Year, certify that it complied with Sections 23.1(a), 23.1(b) and 23.1(c) for such Lease Year or the applicable portion thereof. If, at any time during the Term, Tenant shall be unable to use the Premises in full compliance with Sections 23.1(a), 23.1(b) and/or 23.1(c), Tenant shall promptly notify the Lease Administrator thereof.

(c) The provisions of the Maintenance Agreement.

Section 23.2 Coordination with DOT.

(a) Tenant acknowledges the existence of the Ferry Terminal, Ferry Maintenance Facility and the operations of the Staten Island Ferry Service (collectively the "Ferry") located in the vicinity of the Project Premises. Tenant acknowledges that the Ferry Terminal is a major transit hub, and that the Ferry Maintenance Facility is an industrial ship repair facility performing round-the-clock repair and maintenance of ferry boats and docks. Noises from the Ferry include, but are not limited to, regular ferry whistles, pile driving, maintenance noises and vehicular traffic. In addition to noise, Ferry operations produce engine exhaust, odors and vibrations.

(1) Tenant shall take reasonable precautions to keep any resident and users of the Premises from entering onto the Ferry Maintenance Facility, including without limitation, installing appropriate signage and fencing, and shall take such additional precautions as Landlord may reasonably require. Any security breach, threat to public safety or significant disruption to Ferry maintenance operations, construction projects or services shall, upon notice by DOT, be promptly remedied by Tenant to the satisfaction of the DOT.

(2) Tenant's activities shall not in any way interfere with the operations of the Ferry (including without limitation, provision of services,

security procedures and pedestrian and vehicular access, safety and flow); nor shall Tenant encroach upon any Ferry property. Should Tenant receive notification at any point that it or its activities or its tenants or the activities of its tenants are interfering with operations, services or facilities of the Ferry and/or encroaching upon the same, Tenant shall remedy such interference or encroachment immediately.

(3) Any interference or encroachment that may reasonably be understood as presenting a security risk, threat to public safety or significant disruption to Ferry maintenance operations, construction projects or services shall, upon notice, immediately be remedied by Tenant to the satisfaction of DOT or else shall be deemed grounds for default. Alternately, the City shall have the right to remedy such interference or encroachment to its satisfaction and at its own expense and seek full compensation for its expenses from Tenant; in such case, Tenant's failure to reimburse the City for its expenses within 30 days of invoice shall be considered grounds for default.

(b) Notwithstanding anything to the contrary in this Lease, the Master Lease, any Other Severance Lease, the Maintenance Agreement, or any other agreement with Landlord or the Lease Administrator in connection with the Project, Tenant shall obtain DOT's written consent to the plans and specifications for any construction hereunder that directly touches the Ferry (the "DOT Approval") by submitting drawings and/or plans and specifications for the Construction Work and a site plan of the Premises ("DOT Approval Plans"). Within ten (10) days of such submission, DOT shall either (A) issue the DOT Approval, or (B) notify Tenant in writing of any elements of such construction will interfere with the Ferry, in which case Tenant shall submit revised DOT Approval Plans which shall address such defects, and the DOT shall issue the DOT Approval within ten (10) days after receipt thereof, or the plans will be deemed approved.

(c) Tenant will defend, indemnify and hold harmless the Lease Administrator, the City, NYCEDC and NYCLDC from any and all claims and causes of action for personal injury, death, nuisance or damage to property asserted by any individual or other entity lawfully occupying any portion of the Premises arising from noise, fumes, or vibrations from the Ferry. The foregoing provision will only apply to the lawful, ordinary operation of the Ferry and to claims not arising out of the negligent or intentional wrongful conduct of the Ferry or DOT, its agents or assigns.

(d) Tenant hereby agrees to comply with the following guidelines:

(1) to maintain and repair its constructions, in accordance with the provisions below;

(2) to construct any building on the Land as a non-combustible construction (minimum Class C as defined in the 1968 Building Code of the City of New York), fully sprinklered with a hydraulically designed automatic sprinkler system, with (i) occupied portions of any such building having wet sprinklers and (ii) unheated portions (e.g., enclosed garage space) having a dry-pipe automatic

Any amounts paid by Landlord pursuant to Section 22.1 hereof, including all Out of Pocket Costs incurred by Landlord in connection therewith, shall be reimbursed by Tenant within fifteen (15) days of Landlord's demand therefor, together with a late charge on the amounts so paid by Landlord, calculated at the Late Charge Rate from the date of any such payment by Landlord to the date on which payment of such amounts is received by Landlord.

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

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

## ARTICLE XXIII PERFORMANCE AND COMMITMENTS

Section 23.1 Use and Operating Requirements. Tenant acknowledges and agrees that its ongoing commitment to use and operate the Project in accordance with the Project Commitments, and otherwise in accordance with this Section 23.1, is of vital importance to Landlord, and a material inducement to Landlord in agreeing to enter into this Lease, and that Tenant's failure to do so in accordance with the provisions set forth in this Article XXIII shall constitute a material breach under the terms of this Lease. Accordingly, at all times during the Term, Tenant shall comply with the use and operating requirements for the Project, including without limitation as follows:

(a) Tenant shall cause not less than 190,000 square feet of gross building area within the Building (the "Academic Use Minimum Area") to be used and operated solely for Academic Uses by a not-for-profit corporation exempt from Federal income taxes under Internal Revenue Code Section 501(c)(3) or a limited liability company the sole member of which is a not-for-profit corporation exempt from Federal income taxes under Internal Revenue Code Section 501(c)(3) (the uses required under this clause (a), collectively, the "Academic Facility Required Uses").

(b) So long as the provisions of Section 23.1(b) above are complied with, the balance of the Premises may be used for any purpose so long as the same is in compliance with Requirements and this Lease (including, without limitation, Section 23.1(e) below) (the uses under this clause (b), collectively, the "Permitted Non-Academic Uses").

(c) Tenant shall at all times maintain Tenant's accreditation to operate the Academic Uses, all as set forth in the Project Commitments.

(d) Tenant (and any Subtenants that are University Affiliates or CUSP Affiliates) shall comply with the HireNYC Program annexed as Exhibit H to this Lease (it being understood that nothing in this Lease shall require any Subtenants that are not University Affiliates or CUSP Affiliates to comply with the HireNYC Program).

(e) Tenant shall not use or occupy the Premises, and shall not permit the Premises or any part thereof to be used or occupied for any purpose other than Academic Facility Required Uses and Permitted Non-Academic Uses, without (in any such instance) the prior written consent of Landlord in its sole discretion.

Without limiting the generality of the preceding sentence, Tenant shall not use or permit any portion of the Premises to be used (i) for any unlawful or illegal business, use or purpose, (ii) for any purpose, or in any way in violation of the provisions of this Section 23.1 or Article XVI hereof or the certificate(s) of occupancy for the Premises, (iii) in such manner as may make void or voidable any insurance then in force with respect to the Premises or (iv) for any residential use. Tenant shall, promptly upon Tenant's knowledge of any business, use, purpose, or occupation of the Premises in violation of this Section 23.1, take all necessary steps, legal and equitable, to compel the discontinuance of such business, use or purpose, including, if necessary, the removal from the Premises of any Subtenants using a portion of the Premises for an unlawful or illegal business, use or purpose or in violation of this Section 23.1 or Article XVI hereof. The provisions of this Section 23.1 shall not restrict Tenant's rights under Article XXXIV hereof to contest any Requirements.

Section 23.2 Project Report. Within sixty (60) days following the end of each Reporting Year during the Term, or at such other time as Landlord may reasonably request from time to time (but not more than twice during any twelve month period), Tenant shall deliver a written report to Landlord substantially in the form attached hereto as Exhibit M (the "Project Report") with respect to the status of the Project and the manner in which Tenant is complying with the Project Commitments, each as of the end of such Reporting Year (or, with respect to Project Reports requested by Landlord, as of the date of the request). If, at the time in question, a funding agreement with the City is in effect with respect to capital projects relating to the Project, Tenant shall deliver an additional copy of the Project Report to the City's Office of Management and Budget at an address directed by Landlord, at the same time as the same is delivered to Landlord. The Project Report shall, among other things, contain Tenant's certification as to whether, as of the applicable time, (i) Tenant is in compliance in all material respects with the terms of this Agreement, (ii) the Project is in compliance in all material respects with the applicable Project Commitments in effect at such time, and (iii) in its reasonable and good faith judgment, Tenant anticipates that in the upcoming Reporting Year it will be able to comply timely in all material respects with this Lease and all of the applicable Project Commitments to be performed in such Reporting Year. Tenant shall include in the Project Report a reasonably detailed report on the economic impact and the community benefits of the Project. In the event that Tenant shall be unable to provide all of the required certifications in the affirmative, the Project Report shall identify any areas of non-compliance with specificity, and explain the reasons for such non-compliance (the "Non-Compliance

Notice”) and University, at its option pursuant to Section 23.3, shall submit to Landlord a proposed Recovery Plan pursuant to Section 23.3. Landlord shall endeavor to review each Project Report and submit any questions thereto or request any additional or supporting information that it requires within thirty (30) days following Landlord’s receipt of such Project Report.

Section 23.3 Failure to Comply with Development Commitments or Operating Commitments; Recovery Plan.

(a) Notwithstanding any provision of this Section 23.2 or Article XXIV, if (i) Tenant reasonably believes that any future Project Report would (absent a change in the Project Commitments) contain a Non-Compliance Notice, (ii) any Project Report shall contain any Non-Compliance Notice or (iii) Landlord or NYCEDC shall give Tenant a notice with respect to any default by University (without reference to cure periods) described in Section 24.1(e) or (h), then Tenant may, at its option, submit to NYCEDC within sixty (60) Business Days following the Project Report or such notice, as applicable, a written recovery plan (a “Recovery Plan”), which Recovery Plan shall set forth in detail Tenant’s plan and commitment to restore compliance in a manner and within specified time periods described below or otherwise mutually and reasonably satisfactory to NYCEDC and Tenant. During the period after which Tenant has submitted a Recovery Plan and during which NYCEDC and Tenant are actively negotiating such Recovery Plan and, thereafter, upon NYCEDC’s and Tenant’s agreement on a Recovery Plan that is mutually and reasonably satisfactory to both NYCEDC and Tenant, as evidenced by NYCEDC’s and Tenant’s written approval of the Recovery Plan (the “Approved Recovery Plan”), the underlying non-compliance shall be deemed waived (and no Event of Default shall exist by reason thereof) but only if and for so long as Tenant complies in all material respects with the Recovery Plan (or, with respect to a particular item of non-compliance with the Recovery Plan relating to a numeric commitment, Tenant complies with the corresponding numeric commitment in the initial Project Commitments in any year during the operative period of the Recovery Plan and there is not a shortfall in such numeric initial Project Commitment at any later time during the operative period of the Recovery Plan exceeding twenty-five percent (25%) for three (3) or more consecutive years)).

(b) Provided that Tenant has theretofore made diligent and good faith efforts with respect to the CUSP program, if in connection with a Recovery Plan proposal during the first fifteen (15) years after the Phase I Operations Commencement Date Tenant proposes that the specific Project Commitments with respect to the subject matter of the CUSP program be supplemented (but not replaced) with an Alternate Applied Sciences Program, Landlord shall not unreasonably withhold, delay or condition its consent to such supplementing (including a reasonable time to implement the same).

(c) After the fifteen (15) year anniversary of the Phase I Operations Commencement Date (but not prior thereto), Tenant shall have the right (either as part of a Recovery Plan or otherwise upon prior written notice to NYCEDC and Landlord with reasonable specificity) to replace or supplement the specific Project Commitments with respect to the subject matter of the CUSP program with an Alternate Applied Sciences Program, in which event the milestone dates in the Project Commitments will be adjusted equitably to allow Tenant a reasonable time under the circumstances to put such Alternate Applied Sciences Program in



effect.

(d) Notwithstanding the foregoing, if Tenant fails timely to submit a Recovery Plan as provided in this Section 23.3 after receiving a notice of an Event of Default from Landlord or NYCEDC due to a failure by Tenant described in Section 24.1(h), or there is not an Approved Recovery Plan on or before the one hundred twentieth (120th) day after Tenant's submission of a proposed Recovery Plan after Tenant receives a notice of an Event of Default from NYCEDC or Landlord due to a failure by Tenant described in Section 24.1(h) (which one hundred twenty (120) day period shall be subject to extension in the event that NYCEDC or Landlord is required under this Section 23.3 to be reasonable and has not, in fact been reasonable), then the same shall be an Event of Default and Landlord shall be entitled to proceed under Article XXIV with respect thereto without further reference to this Section 23.3 in respect of such breach.

#### Section 23.4 CUSP Affiliate Agreements.

(a) Tenant has delivered to NYCEDC true, correct and complete copies of all CUSP Affiliate Agreements (including all amendments thereto as of the Effective Date) and any terminations of CUSP Affiliate Agreements entered into prior to the Effective Date.

(b) Tenant shall submit copies to NYCEDC of all CUSP Affiliate Agreements (and/or amendments to, or terminations of, CUSP Affiliate Agreements) as may be entered into after the Effective Date (and all such CUSP Affiliate Agreements, amendments or terminations shall, in any event, comply with the Project Commitments and with the RFP Response).

(c) Subject, in any event, to Section 23.3, (i) Tenant shall not be deemed in default under this Lease by reason of any CUSP Affiliate Agreement being modified or terminated so long as Tenant shall continue to materially perform its programmatic obligations under the Project Commitments, which may include entering into additional or modified CUSP Affiliate Agreements with academic institutions and/or business partners in furtherance of the CUSP mission and (ii) if any modification and/or termination of an CUSP Affiliate Agreement or CUSP Affiliate Agreements renders Tenant unable to continue to materially perform its programmatic obligations hereunder, then Tenant shall, within twelve (12) months after any determination that such an inability exists, enter into additional CUSP Affiliate Agreements or modify such existing CUSP Affiliate Agreements so that Tenant shall be able to materially perform its programmatic obligations hereunder.

### ARTICLE XXIV

#### EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES, ETC.

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

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

(b) if Tenant shall fail to Commence the Initial Renovation Work on or before

applicable governmental authorities. On the basis of such environmental report, Tenant shall have purchased the Pollution Legal Liability coverage required by Section 7.7.

Section 21.2 Indemnification. Tenant shall defend, indemnify and save the Indemnitees harmless from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, court costs and reasonable attorneys' fees and disbursements, that may be imposed upon, or incurred by, or asserted against, any of the Indemnitees (i) arising out of, or in any way related to the presence, storage, transportation, disposal, release or threatened release of any Hazardous Substances over, under, in, on, from or affecting the Premises, and any persons, real property, personal property, or natural substances thereon or affected thereby during the Term of this Lease, including, without limitation, any such liability, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses imposed upon, incurred by or asserted against Landlord or Lease Administrator under CERCLA, (ii) arising out of any action taken by Tenant or any of its contractors, employees, agents or subcontractors relating to Hazardous Substances, and (iii) any violations of any Environmental Laws. The indemnity provisions set forth in Article XX shall also apply to the indemnity obligations of Tenant set forth in this Section 21.2. The provisions of this Article XXI shall survive the Expiration of the Term.

## **ARTICLE XXII LANDLORD'S RIGHT TO DISCHARGE LIENS**

Section 22.1 Discharge of Liens. If Tenant shall fail to satisfy any claim or cause any mechanic's, laborer's, vendor's, materialman's or similar statutory lien or any public improvement lien to be discharged in accordance with the provisions of Article XVII hereof, and if such claim or lien shall continue for an additional twenty (20) days after the applicable cure period provided for in Article XVII, then Landlord may, but shall not be obligated to, upon notice to Tenant, satisfy such claim by payment thereof and/or discharge such lien of record by procuring the discharge of such lien by deposit or by bonding proceedings. Landlord may also compel the prosecution of an action for the foreclosure of such lien by the lien or and to pay the amount of the judgment in favor of the lien or with interest, costs and allowances.

Section 22.2 Reimbursement for Amounts Paid by Landlord Pursuant to this Article. Any amounts paid by Landlord pursuant to Section 22.1 hereof, including all costs and expenses incurred by Landlord in connection therewith, shall be reimbursed by Tenant within fifteen (15) days of Landlord's demand therefor, together with a late charge on the amounts so paid by Landlord, calculated at the Late Charge Rate from the date of any such payment by Landlord to the date on which payment of such amounts is received by Landlord.

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

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

## ARTICLE XXIII PERFORMANCE AND COMMITMENTS

Section 23.1 Use and Operating Requirements. Tenant acknowledges and agrees that its ongoing commitment to use and operate the Project in accordance with the Project Commitments and otherwise in accordance with this Article XXIII is of vital importance to Landlord, and a material inducement to Landlord in agreeing to enter into this Lease, and that Tenant's failure to do so in accordance with the provisions set forth in this Article XXIII shall constitute a material breach under the terms of this Lease. Accordingly, at all times during the Term, Tenant shall comply with the use and operating requirements for the Project set forth in this Article XXIII, including without limitation as follows:

(a) General; Definitions. During the Term, Tenant shall use the Premises, or cause the Premises to be used, for the Required Uses and, at Tenant's option (provided that the Premises are at all times being used for the Required Uses), for the Permitted Uses as defined in and in accordance with this Section 23.1 and for no other uses or purposes. For purposes of this Article XXIII, "Community Events" means any arts, cultural, concert, school, charitable, sporting, and/or civic event at the Premises, as well as the event known as the "Mermaid Parade," that is open to the general public on a free or paid basis; provided that all Required Events shall be free to the public.

(b) Required Amphitheater Uses. Tenant shall use and operate the Amphitheater Property as a first class amphitheater for outdoor Community Events in accordance with the terms of this Section 23.1. In furtherance of the foregoing, Tenant shall make the Amphitheater Property available to Producer (hereinafter defined) for up to fifteen (15) free concert events annually (the exact annual number to be determined by the Producer, provided that Producer shall be required to hold not less than six (6) free concerts annually), including for so long as it is produced the maximum fifteen (15) free concerts that comprise the Seaside Summer Concert Series produced by Seaside Summer Concert Series, Inc. (the "Seaside Producer"), or any successor producer thereof (the Seaside Producer and any successor producer of the Seaside Summer Concert Series or any other Producer designated as such pursuant to the terms of this Lease being hereinafter referred to as, the "Producer"), with scheduled start times on Monday, Tuesday, Wednesday, Thursday, Sunday and, at the option of Producer, on one of the following (hereinafter referred to as the "Producer's Three Weekend Nights"): (i) three (3) Friday nights, (ii) three (3) Saturday nights, or (iii) a combination of Friday and Saturday nights for a total of three (3) Friday and Saturday nights in the aggregate, between 6:00 PM and 8:30 PM as requested by the Producer (understanding that the Producer may request times outside of such days and hours, but Producer shall have priority with respect to such days and hours)

during the period from Memorial Day through Labor Day (the “Summer Season”) of each Scheduling Year (hereinafter defined) during the Term (the uses described in this sentence being hereinafter referred to, collectively, as the “Required Amphitheater Uses,” and the events described in this sentence being the “Required Events”). The parties acknowledge that the exact number of Required Events to be held annually, up to a maximum of fifteen (15), shall be determined by Producer; provided that Producer shall be required to hold not less than six (6) concerts annually unless Landlord shall waive such minimum requirement in writing. During Required Events, Tenant shall make the Amphitheater Property available to Producer at no cost to Producer, except that Producer shall be responsible to Tenant for any and all stage hand labor, security, cleaning, lighting, sound, video, utility, vendor and all other variable costs for services or items incurred or provided by Tenant in connection with the Required Events (without mark-up by Tenant) that would not otherwise have been incurred or provided by Tenant if the Required Events had not been scheduled (whether or not such scheduled Required Events actually occur) and as between Tenant and Producer, Producer shall be liable for any damage, injuries and claims directly related to the Required Events (provided that Tenant shall not be relieved of liability under this Lease for such damage, injuries and claims). However, if Producer provides Tenant with fifteen (15) Business Days prior notice of cancelation of a Required Event, then Producer shall not be liable for any costs specified in the immediately preceding sentence. Producer shall carry its own Commercial General Liability insurance for the Required Events, name Tenant and the Additional Insureds as additional insureds and provide Tenant with a certificate evidencing such coverage prior to each Required Event. If the Seaside Summer Concert Series is no longer produced or if Producer fails to continue to qualify as a Qualified Producer (as defined in Article I) or is otherwise terminated by Landlord as described in Section 23.1(h) hereof, either: (a) Tenant shall use its best efforts to promptly identify a successor producer acceptable to Landlord in its sole discretion to produce a similar series of free concerts, or (b) Landlord may designate a successor and, in either case, such successor shall be the “Producer” for all purposes of this Lease; provided that if Landlord designates a successor, Landlord’s decision shall control. In connection with the foregoing, Tenant acknowledges that one of Landlord’s goals in undertaking the Project is to maximize the use of the Amphitheater Property by and on behalf of the residents of Brooklyn and the City of New York by providing the Required Events described in this Article XXIII. At Producer’s request and subject to the restrictions on use set forth in this Article XXIII and in Exhibit J hereto, Tenant shall permit Producer’s sponsors listed on Exhibit N hereto (“Producer’s Approved Sponsors”) as well as Producer’s other sponsors (“Producer’s Other Sponsors”) to advertise and sell merchandise during the Required Events; provided that with respect to Producer’s Other Sponsors, such sponsors’ advertising and sales are not prohibited by the express terms of any written advertising or sponsorship agreement entered into by Tenant. Tenant shall not be entitled to any portion of the proceeds from, or any compensation with respect to, Producer’s advertising and sales arrangements described in the immediately preceding sentence. For the avoidance of doubt, in order to give effect to the terms of this Article XXIII, Tenant shall enter into a license agreement with Producer to provide the Required Amphitheater Uses and the Required Events in accordance with the terms of this Article XXIII throughout the Term of this Lease.

(c) Additional Community Events. So long as the provisions of Section 23.1(b) above are complied with, the Amphitheater Property may also be used for additional Community Events; provided that such events comply with the terms of this Lease,

including all Requirements (including all permits of the New York City Planning Commission that govern the Premises).

(d) Required Childs Building Uses. Subject to Section 23.2(c) and Section 23.2(d) below, Tenant shall use and operate the Childs Building solely for additional Community Events, retail and/or restaurant purposes as well as related office space (including not more than 200 square feet for an office for Principals of Tenant pursuant to a Permitted Sublease), storage of personal property used in the operation of the Amphitheater and the location of the stage for the Amphitheater (the "Required Childs Building Uses") (the Required Childs Building Uses together with the Required Amphitheater Uses being hereinafter referred to, collectively, as the "Required Uses"); provided that in all cases the use of the Childs Building (i) shall be for a first class business of the type of business being operated by Tenant (by way of example, if Tenant is operating a hamburger restaurant in the Childs Building, Tenant shall operate the business as a first class hamburger restaurant), operated in a clean and professional manner and (ii) shall not compromise the character and reputation of the Amphitheater Property as a first class amphitheater or be antithetical to the Project as a prominent symbol of the City or State of New York as determined by Landlord in its sole discretion. Tenant shall not use the Childs Building, or permit the Childs Building to be used, for any use other than the Required Childs Building Uses.

(e) Ancillary Uses for Amphitheater Property. So long as the provisions of Section 23.1(b) above are complied with, Tenant shall also have the right to use and operate the Amphitheater Property for the following ancillary uses: customary theatre concessions, retail sales of merchandise relating to Amphitheater Property events, food and/or beverage service (alcoholic (subject to obtaining the insurance required in Article VII) and non-alcoholic) and advertising in connection with use of the Amphitheater (subject to the terms of this Lease regarding advertising); provided, however, that (x) the primary use of the Amphitheater Property shall be as an amphitheater for outdoor Community Events described in this Article XXIII, and (z) the use of the Premises or the pattern of programming thereof shall not compromise the character and reputation of the Amphitheater Property as a first class amphitheater. In connection with the foregoing, the stage for the Amphitheater shall be placed within the Childs Building facing outwards onto the Amphitheater Property as set forth in the Approved Plans and Specifications. The uses under this clause (e) and the preceding clause (c), collectively, shall be known as the "Permitted Uses."

(f) HireNYC Program. Tenant shall comply with the HireNYC Program annexed as Exhibit H hereto.

(g) Prohibited Uses. The Premises may not be used for the sale or advertising of tobacco products. Tenant shall not use or occupy the Premises, or permit or suffer the Premises or any part thereof to be used or occupied, for any purpose other than the Required Uses and the Permitted Uses without (in each instance) the prior written consent of Landlord in its sole discretion. Without limiting the generality of the preceding sentence, Tenant shall not use or occupy, or permit or suffer any portion of the Premises to be used or occupied (i) for any unlawful or illegal business, use or purpose, (ii) for any purpose, or in any way in violation of the provisions of this Section 23.1 or Article XVI hereof or the certificate(s) of occupancy or the Special Permit for the Premises, (iii) in such manner as may make void or voidable any

insurance then in force with respect to the Premises, (iv) in any manner that would compromise the character and reputation of the Amphitheater Property as a first class amphitheater or the character and reputation of the business operated in the Child's Building as a first class business of the type of business being operated by Tenant in the Childs Building operated in a clean and professional manner, (v) in any manner that would be antithetical to the Project as a prominent symbol of the City or State of New York as determined by Landlord in its sole discretion. or (vi) for any residential use. Tenant shall, promptly upon Tenant's knowledge of any business, use, purpose, or occupation of the Premises, or any part thereof, in violation of this Section 23.1, take all necessary steps, legal and equitable, to compel the discontinuance of such business, use or purpose, including, if necessary, the removal from the Premises of any Subtenants or licensees using a portion of the Premises for an unlawful or illegal business, use or purpose or in violation of this Section 23.1 or Article XVI hereof. The provisions of this Section 23.1 shall not restrict Tenant's rights under Article XXXIV hereof to contest any Requirements.

(h) Requirements of the Producer. For purposes of this Article XXIII and notwithstanding anything to the contrary in this Lease, any Producer hereunder, including the Seaside Producer, shall be a Qualified Producer and shall be required to enter into a license agreement with Tenant for use of the Amphitheater in accordance with the terms of this Lease. In the event of any disagreement between Producer and Tenant regarding the terms of such license agreement (all of which shall be customary and reasonable for a business of the type and size of Producer), the parties shall submit such disagreement to Lease Administrator whose decision shall be final and binding on Producer and Tenant. On the Effective Date and prior to the appointment of any Person as Producer hereunder, the Seaside Producer and each such other prospective Producer (collectively, for purposes of this paragraph a "proposed Producer"), as applicable, shall be required to provide documentation requested by Lease Administrator to demonstrate its status as a Qualified Producer, including Required Disclosure Statements in the form of Exhibit E hereto, and otherwise in a form reasonably satisfactory to Lease Administrator. In the event that the information set forth in the Required Disclosure Statements or other document provided pursuant to this paragraph reveals a proposed Producer with whom the City and/or NYCEDC will generally not do business, or if such information is otherwise not acceptable to the Lease Administrator, acting in its sole discretion, then the proposed Producer shall not be acceptable and another Person shall be chosen by Landlord as Producer, subject to the same qualification process. On an annual basis, Producer shall be required to submit the information reasonably requested by Lease Administrator to confirm that Producer continues to meet the requirements of a Qualified Producer and in the event that Producer fails to continue to meet such requirements, Landlord may replace Producer, and Tenant shall use its best efforts to assist Landlord in identifying a replacement. Further notwithstanding anything to the contrary in this Lease, if at any time Landlord determines, in its sole discretion, that Producer is not holding at least six (6) Required Events annually, is not performing in a professional manner, or any Person's continuation as Producer hereunder is antithetical to the Project as a prominent symbol of the City or State of New York or otherwise antithetical to the Project Commitments, as determined by Landlord in its sole discretion, then Landlord may terminate the status of such Person as Producer hereunder and designate another Person to act as Producer and Tenant shall use its best efforts to assist Landlord in identifying a replacement producer and, if necessary and requested by Landlord, terminate any outstanding license agreement with the Producer being replaced and enter into a new license agreement with the Person then designated by Landlord as the new Producer.

Section 23.2 Operation. Subject to the terms of this Article XXIII, the operation of the Premises shall be under the exclusive supervision and control of Tenant, provided that Tenant shall in all events operate the Amphitheater Property or cause the Amphitheater Property to be operated consistent with the Amphitheater Property being a first class amphitheater and operate the business in the Childs Building, or cause the business in the Childs Building to be operated, as a first class business of the type of business being operated by Tenant in the Childs Building operated in a clean and professional manner and which shall not compromise the character and reputation of the Amphitheater Property as a first class amphitheater or be antithetical to the Project as a prominent symbol of the City or State of New York. The requirements for the operation of the Premises set forth in this Section 23.2 are hereinafter referred to as the "Operating Commitments."

(a) Subject to the terms of this Section 23.2, (i) on or before May 27, 2016, Tenant shall commence operation of the Amphitheater and (ii) on or before May 26, 2017, Tenant shall commence operation of the entire Childs Building, in the case of both clause (i) and clause (ii) for the purposes described in Section 23.1 above and thereafter shall continue active use and operation of the Premises for the Term. The time periods set forth in Section 23.2(a), (b) and (c) with regard to Operating Commitments shall be subject to Unavoidable Delays as the result of events limited to those specified in clauses (v), (vi) and (vii) of the definition of "Unavoidable Delays" in each instance not to exceed ninety (90) days. For the avoidance of doubt, the terms of the immediately preceding sentence shall not affect any of the various dates for the completion of phases of the Initial Construction Work described in Section II of Exhibit B hereto wherever such dates are referenced in this Lease (including without limitation in Article XIII and in Article XXIV hereof).

(b) Promptly, but in no event later than the Scheduled Completion Date, Tenant shall make the Amphitheater available as required by this Section 23 for the Required Events in each Scheduling Year (including the balance of the first Scheduling Year in which occurs commencement of operation of the Amphitheater) for the balance of the Term. For the avoidance of doubt, Tenant is required to permit up to fifteen (15) Required Events to be held annually in the Amphitheater, the final number to be determined by Producer, and to make the Amphitheater available for the scheduling and holding of such events by Producer during each Scheduling Year, subject to the scheduling requirements set forth in Section 23.4 hereof.

(c) On or before May 26, 2017, Tenant shall commence operation of the Childs Building for the Required Childs Building Uses for the balance of the Term. In furtherance thereof, Tenant shall operate the Childs Building, or cause the Childs Building to be operated, for the Required Childs Building Uses so that not less than Seven Thousand Five Hundred (7,500) square feet of the first floor of the building is active and open to the public (the "Full Time Use Space") on an annual basis not less than five (5) days per week (other than during the weeks in which Christmas and New Year's Day occur, in which case the requirement shall be four (4) days during such weeks) and (i) during the period from May 1<sup>st</sup> through October 31<sup>st</sup> not less than thirty (30) hours per week, including three (3) hours on each of five (5) days during the week and (ii) during the period from November 1<sup>st</sup> to April 30<sup>th</sup> not less than three (3) hours per day on each of five (5) days (four (4) days during the weeks in which Christmas and New Year's occur) during the week (all of such days and hours being hereinafter

referred to, collectively, as the "Full Time Requirement"); provided, however, that , (1) all office use located on the first floor may not exceed 1,000 square feet, (2) storage of personal property used in the operation of the Amphitheater shall be located solely in the basement and (3) the Full Time Use Space must be used for either (i) retail use open to the public in accordance with the Full Time Requirement or (ii) restaurant use open to the public in accordance with the Full Time Requirement. For the avoidance of doubt, the entire Full Time Use Space must be used for either the use specified in clause (i) or the use specified in clause (ii) in the immediately preceding sentence and not for a combination of such uses. In the event that all of the Full Time Use Space is not open to the public and operating for either a (i) retail or (ii) restaurant use in accordance with the Full Time Requirement for six (6) consecutive months (excluding one (1) period not to exceed two (2) consecutive months of construction build-out for a restaurant or retail use in any two (2) year period), then Landlord may terminate this Lease effective immediately upon delivery of notice to Tenant; provided that Landlord's right to terminate the Lease set forth in this Section 23.2(c) shall be in addition to and shall not limit Landlord's rights and remedies set forth in Article XXIV or elsewhere in this Lease. Tenant acknowledges that in order to comply with the terms of this Section 23.2(c), if Tenant shall not be the operator of the Full Time Use Space, then the operator of the entire Full Time Use Space must be a Permitted Subtenant under a single Permitted Sublease with a term of not less than two (2) years and short-term or "pop-up" businesses will not satisfy the requirements of this Section with regard to the Full Time Use Space.

(d) During the period beginning on May 27, 2016 and ending on September 5, 2016 (the "2016 Summer Period") Tenant shall operate, or cause to be operated, not less than 4,000 square feet of the Childs Building (all or a portion of such space may be located on the roof of the Childs Building) as an active restaurant, bar or retail use that is not prohibited by the terms of this Lease. If Tenant elects not to operate or otherwise use the "white box" interior space of the Childs Building during the 2016 Summer Period, Tenant shall make such space available to Landlord, at no cost to Landlord, for Community Events and other Landlord programming; provided however, that Landlord shall coordinate its use of such space in a manner that does not interfere with any construction or other Tenant activities in the Childs Building.

Section 23.3 Project Report. Within sixty (60) days following the end of each calendar year during the Term, or at such other time as Lease Administrator may reasonably request from time to time (but not more than twice during any twelve (12) month period) upon not less than sixty (60) days prior written notice, Tenant shall deliver a written report to Lease Administrator (the "Project Report") setting forth in narrative form a status report on the Project and the manner in which Tenant is complying with the Project Commitments and the Operating Commitments, which written report shall be in a form and contain such information as shall be reasonably satisfactory to Landlord. The Project Report shall, among other things, contain Tenant's certification that (i) the Premises are in compliance with the Project Commitments, (ii) the Premises are in compliance with the Operating Commitments and Article XXIII of the Lease, (iii) in its reasonable and good faith judgment, Tenant anticipates that it will be able to comply timely with any Project Commitments and/or Operating Commitments to be performed in the upcoming calendar year, and (iv) the Premises is being used and operated in strict compliance with the Required Uses and the Permitted Uses and no other uses. In the event that Tenant shall be unable to provide the required certification, the Project Report shall identify any



areas of non-compliance with specificity and explain the reasons for such non-compliance (a “Non-Compliance Notice”). Landlord shall endeavor to review each Project Report and submit any questions or request any additional or supporting information that it requires within thirty (30) days following Landlord’s receipt of such Project Report.

Section 23.4 Preparation of Event Schedule for each Scheduling Year. All Required Events scheduled in accordance with the required timeframes set forth below shall be added to the Event Schedule prior to any other event being added thereto.

(a) Event Schedule. At all times during the Term, the following shall apply: Each calendar year, a schedule of Required Events and Community Events to take place at the Amphitheater during the following Scheduling Year shall be prepared as follows (subject to the conditions set forth in clauses (b) and (c) of this Section 23.4):

(i) On or before February 1st of each calendar year, Producer and/or Landlord shall provide Tenant with a written schedule (the “Required Events Schedule”) of the dates of all Required Events scheduled for the period from May 1st of such calendar year to April 30th of the following calendar year (such period being hereinafter referred to as, the “Scheduling Year”). The parties acknowledge and agree that because Producer is required by this paragraph to commit to dates prior to the time Producer normally would book Required Events, Producer and/or Landlord may reserve up to a total of fifteen (15) dates pursuant to this paragraph and shall not be required to have commitments for such dates (for the avoidance of doubt, Tenant may not similarly reserve dates on the Event Schedule except for the Tenant Reserved Dates (hereinafter defined)). Furthermore, because it is the agreement of the parties that Producer shall have the absolute right on or before February 1<sup>st</sup> of each calendar year to designate fifteen (15) dates for Required Events in the Amphitheater as provided in this paragraph, Tenant shall not schedule any Community Event prior to February 1<sup>st</sup> except in accordance with the following terms and conditions in this Section 23.4(a)(i). If before February 1<sup>st</sup> of any given year Tenant desires to schedule a Community Event, Tenant shall provide Producer and Landlord with notice of the desired scheduling and Producer shall have forty-eight (48) hours (excluding hours on days other than Business Days) to respond to Tenant and deliver to Tenant evidence that Producer has booked or is in the process of booking a Required Event for the date at issue. If Producer fails to provide the aforementioned evidence within such forty-eight (48) hour period, Tenant shall be entitled to reserve the Amphitheater on the desired date; provided, however, that Tenant’s right to so reserve the Amphitheater for a Tenant-arranged Community Event prior to February 1<sup>st</sup> and in accordance with this sentence shall be limited to four (4) instances per Scheduling Year. If at any time following February 1<sup>st</sup> of any given year Producer wishes to reschedule a Required Event or replace a previously scheduled Required Event with a Required Event to take place on a different date or change a date on the Required Events Schedule or on the Events Schedule, Producer shall provide Tenant notice of the desired schedule change

and Tenant shall have forty-eight (48) hours (excluding hours on days other than Business Days) to respond and deliver to Producer evidence that Tenant has booked or is in the process of booking an event at the Amphitheater for the date at issue. If Tenant fails to produce the aforementioned evidence within such forty-eight (48) hour period, Producer shall be entitled to the desired schedule change and Tenant shall immediately change the Events Schedule accordingly. Notwithstanding anything to the contrary, Producer shall always be provided with Producer's Three Weekend Nights in every Scheduling Year.

(ii) On or before April 1st of each calendar year, Tenant shall provide Producer and Landlord with a written schedule of the dates of all Required Events (based on the dates provided to Tenant by Producer and/or Landlord) and Community Events scheduled by Tenant (the "Event Schedule") for the following Scheduling Year, including the approximate dates for preparation therefor and clean-up thereof, which schedule Tenant may modify from time to time effective on no less than ten (10) days' written notice to Producer and Landlord (subject to this Section 23.4), except where the holding of a Community Event scheduled by Tenant could not reasonably have been foreseen ten (10) days prior to the commencement thereof, in which case Tenant shall give written notice to Producer and Landlord as soon as such event is scheduled; provided that any event not scheduled as of April 1st of any calendar year may be scheduled only for such dates during such year that do not conflict, as reasonably determined by Producer and Landlord, with events reflected on the schedule then in effect, unless Landlord and Tenant reasonably agree that the simultaneous holding of any Required Event, Landlord Event (hereinafter defined) and Tenant scheduled Community Event is operationally practicable in terms of parking, traffic flow and congestion, crowd control and security, and avoidance of interference of enjoyment by one event with the other. Notwithstanding anything to the contrary in this Lease, Tenant shall be permitted to reserve the specific five (5) days set forth on Exhibit O hereto during each Scheduling Year ("Tenant's Reserved Days") solely for the purpose of holding the event known as the "Mermaid Parade" sponsored by Coney Island USA and Community Events related to the Mermaid Parade and such days shall not be available to Producer. Each year Tenant shall notify Producer on or before January 1<sup>st</sup> that Tenant shall be using Tenant's Reserved Days for the following Scheduling Year in which case Producer shall not schedule any Required Event on such days; provided, however, that in the event that Tenant does not so notify Producer then Tenant's Reserved Days shall be forfeited for the next Scheduling Year and Producer may use such days at its option. In no event shall Tenant be entitled to use Tenant's Reserved Days or place them on the Event Schedule for any purpose other than the Mermaid Parade and related Community Events.

(iii) On or before the date which is twenty (20) Business Days after the Event Schedule has been received by Landlord (the "Landlord Scheduling Date"), Landlord may provide Tenant with a written schedule of events ("Landlord Event Schedule") that Landlord intends to be scheduled in the Amphitheater for the upcoming Scheduling Year to be added to the Event

Schedule, which events ("Landlord Events") shall be at no cost to Landlord (other than the same costs for which Producer is responsible with respect to the Required Events and subject to the same right of cancellation provided to Producer in Section 23.1(b) above) and provided that (A) Landlord shall be liable for any damage, injuries and claims directly related to the Landlord Events and (b) Landlord may not schedule a Landlord Event during a time when a Required Event or Community Event has been scheduled.

(iv) Commencing on the Landlord Scheduling Date and continuing thereafter throughout the balance of the Scheduling Year, Landlord and Tenant shall work together promptly, reasonably, and in good faith to add to the Event Schedule each additional Landlord Event (which may include additional Producer events) and Community Events that Landlord and Tenant, respectively, then desire to add, taking into account the previously scheduled events and conflicts between the parties' respective proposed additional events.

(b) Adding Events to Event Schedule. Whenever Producer or Tenant desire to book an event and include the event on the Event Schedule pursuant to Section 23.4(a), Producer and Tenant shall give written notice to Landlord (each a "New Event Notice") of its request to do so as soon as reasonably possible, but in no event less than twenty (20) days prior to the date of the proposed event. For the avoidance of any doubt, every event included on the Event Schedule shall be subject to the requirements and procedures detailed in this Section 23.4(b); that is, Producer and Tenant shall submit to Landlord a New Event Notice for each event it desires to book and include on the Event Schedule at any time.

(i) Each New Event Notice shall include a description of the proposed event, including the nature, starting time and estimated duration thereof; the expected attendance thereat; the identity and experience of the promoters and organizers of the proposed event, and their principals; a description of any special safety, security, lighting, sound, video, stage hand labor, cleaning, maintenance, restoration or other services that will be obtained in connection with the proposed event (or in the case where Tenant is providing services or items for a Required Event, Tenant will provide Producer with notice of the cost to be reimbursed by Producer in accordance with this Article XXIII ), and the approximate preparation and clean-up periods for the proposed event.

(ii) Landlord shall notify Producer or Tenant, as applicable, as soon as reasonably possible but in no event more than ten (10) days after its receipt of such New Event Notice, whether Landlord objects to the proposed event. Landlord may object to any new proposed event and prevent such event from taking place in its sole and absolute discretion; provided, however, that Landlord agrees to make such objection only if Landlord believes in good faith that the proposed event may be adverse to the interests of the City and not to object solely for the purpose of reserving a particular date . -If no objection notice is given within such ten (10) day period, the event shall be approved and included

on the Event Schedule in accordance with the terms and conditions of this Section 23.4.

(c) Required Information. In no event shall any event be included on the Event Schedule unless the scheduling thereof would be in compliance with each of the following criteria:

(i) Events shall be scheduled so as to allow reasonably sufficient preparation, clean-up and restoration periods between each event.

(ii) In the case of Tenant scheduled Community Events and Landlord Events (but not Required Events), the event must be a specific, planned event (i.e., neither party may reserve a time on the Event Schedule on the basis that it intends to hold on such date a certain type of event, as opposed to a specific event).

(iii) All events at the Amphitheater must be scheduled so they are reasonably likely to end no later than 11:00 pm. Should an event end later than 11:00 pm, the event may continue past 11:00 pm, but Tenant must use reasonable efforts to have event attendees and other staff or other personnel exit the Amphitheater as soon as possible after the end of the event.

Section 23.5 Public Access. The areas of the Premises depicted in Exhibit M shall remain open to the general public at all times within the hours of operation of the Coney Island Beach and Boardwalk (as may be modified from time to time by the New York City Department of Parks and Recreation) as publicly accessible open space, and shall remain clear and unobstructed (other than incidental obstructions by seating, planters, kiosks, etc.), provided, however, that such area(s) may be closed to the public temporarily for reasonable periods of repair and maintenance, and may be subject to reasonable crowd control measures during events. Notwithstanding the foregoing, entrance onto event areas on the site plan depicted in Exhibit M may be limited to event attendees during scheduled events.

#### **ARTICLE XXIV EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES, ETC.**

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

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

(b) if Tenant shall have failed to achieve Preparation for Construction on or before the Scheduled Construction Preparation Completion Date (which date shall not be subject to extension for Unavoidable Delays);

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## ARTICLE 3

### Use

3.1 Use. Tenant may occupy and use the Demised Premises exclusively for office space where applicable and for document storage, document management services (including, but not limited to file indexing and related services), x-ray film duplication services, document scanning and imaging services, electronic filing services, courier services, document shredding and secured construction services and other activities relating to any of the foregoing or any other lawful purpose.

3.2 Permits. If any government license or permit, other than a Certificate of Occupancy or Permission to Occupy, shall be required for the property and lawful conduct of Tenant's permitted business in the Demised Premises, or any part thereof, and if failure to secure such license or permit would in any way affect Landlord or its interest in the Demised Premises, then Tenant, at its sole expense, shall duly procure and thereafter maintain such license or permit and submit the same to inspection by Landlord. Tenant shall at all times comply with the terms and conditions of each such license or permit, but in no event shall failure to procure and maintain same by Tenant affect Tenant's obligations hereunder.

3.3 Zoning Requirements. Tenant shall not at any time use or occupy or suffer or permit anyone to use or occupy the Demised Premises, or do or permit anything to be done in the Demised Premises in violation of applicable zoning laws and any Certificate of Occupancy or Permission to Occupy for the Demised Premises or any part thereof.

3.4 Hazardous Substances. Tenant shall comply with all legal requirements regarding hazardous substances, including, without limitation, all pollutants, dangerous substances, toxic substances, hazardous wastes and hazardous substances (collectively, "Hazardous Substances") as defined or set forth in or pursuant to or covered by the Resource Conservation and Recovery Act (42 U.S.C. Section 9601, et seq.) ("RCRA"), as amended, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 6901, et seq.) ("CERCLA"), as amended, or any other federal, state or local environmental law, ordinance, rule or regulation. The existence of any Hazardous Substances used, stored, manufactured or discharged from, in, at or about the Demised Premises in violation of any of the foregoing laws and is discovered to have occurred during this Lease term and arises out of Tenant's conduct of business at the Demised Premises or any part thereof such existence of Hazardous Substances shall, for purpose of this Lease be defined as a "Toxic Waste Condition".

3.4.1 If a Toxic Waste Condition is discovered at the Demised Premises at any time and the remedying thereof is required by applicable law, as reasonably determined by Landlord, Tenant shall, at its sole cost and expense, diligently remedy such Toxic Waste Condition in full to Landlord's reasonable satisfaction within such time period as shall be required by applicable law. The Tenant shall be and remain liable for the (a) removal of all Toxic Waste Conditions if such removal is required by the provisions of applicable law, as reasonably determined by Landlord, (b) the payment of all costs and expenses associated with remedying such Toxic Waste Conditions, and (c) complying with all laws, rules and regulations relating to the presence of Toxic Waste Conditions.

3.4.2 In addition, Tenant shall indemnify and hold Landlord harmless from and against any and all liability, cost and expenses, including without limitation, attorney's fees and disbursements, arising out of, caused by or resulting from the alleged presences of a Toxic Waste Condition, including, without limitation, any personal injury claims.

3.4.3 Notwithstanding the foregoing, Tenant shall not be obligated to remedy any Toxic Waste Condition at the Demised Premises which is shown conclusively to have been directly caused by Landlord, or Landlord's agents and employees prior to commencement of the Original Lease.

3.4.4 The Tenant shall indemnify and hold Landlord harmless from and against any and all claims, actions, lawsuits, administrative proceedings judgments, awards, finds, costs, expenses and all other liability, (including, without limitation, attorneys', engineers', experts' and consulting fees) disbursements, arising out of, caused by or resulting from the alleged presence of a Toxic Waste Condition, including, without limitation, any personal injury claims and clean-up costs, whether for a Toxic Waste Condition created in the past or occurring in the future.

3.4.5 The obligations of Tenant shall remain unaffected and continue in full force and effect irrespective of and notwithstanding any action or failure to act or delay on the part of Landlord to enforce any rights or remedies against Tenant. No amendment or modification of the Lease, including any extension of the term or change in the rent, shall act to release Tenant from any of its obligations under this Section 3.4 or to modify any obligations.

3.4.6 The obligations referred to in this Section 3.4 (collectively, the "Toxic Waste Obligations") shall survive the termination of this Lease, whether by expiration of the lease term or earlier termination pursuant to its terms.

3.5 Other Restrictions. Tenant shall not at any time suffer or permit the Demised Premises or any part thereof to be used in any manner, or anything to be done therein, or suffer or permit anything to be brought into or kept therein, which would in any way: (a) violate any of the provisions of any mortgage on the Demised Premises; (b) violate any laws or requirements of public authorities; (c) make void or voidable any fire or liability insurance policy then in force with respect to the Improvements; (d) make unobtainable from reputable insurance companies authorized to do business in the State of New York at standard rates any fire insurance with extended coverage, or liability, or boiler or other insurance required to be furnished by Landlord under the terms of any mortgage to which this Lease is subordinate; (e) cause or in Landlord's reasonable opinion be likely to cause physical damage to the Improvements or any part thereof; (f) constitute a public or private nuisance; (g) impair in the opinion of Landlord the appearance, character or reputation of the Improvements; and (h) discharge objectionable fumes, vapors or odors from the buildings from the Demised Premises or flues or vents not designed to receive them or otherwise in such manner as may unreasonably offend occupancy of adjacent properties. Notwithstanding anything to the contrary contained herein, Landlord represents that Tenant's current use of the Demised Premise does not violate any provision contained herein.